



HEALTH ALERT

26 MAY 2014

Judgments	2
New South Wales	2
South Australia.....	2
Victoria.....	3
United Kingdom	3
Legislation	4
Commonwealth	4
Australian Capital Territory.....	4
Reports	4
Australia. Department of Health & Ageing	4
Australia. Health Practitioner Regulation Agency and the boards.....	4
Australia. Therapeutic Goods Administration	5
Australian Institute of Health & Welfare	5
Australian Commission on Safety and Quality in Health Care	5
Australia. Private Health Insurance Administration Council.....	5
Australian Capital Territory. Health Directorate	5
New South Wales. Ministry of Health.....	5
Northern Territory. Department of Health	6
Queensland. Department of Health	6
South Australia. Department for Health & Ageing.....	6
Victoria. Department of Health	7
Western Australia. Department of Health	7
New Zealand. Ministry of Health.....	7
United Kingdom. Department of Health.....	7
United States of America. Department of Health & Human Services	7
Australian Medical Association.....	7
British Medical Association	8
Canadian Medical Association	8
American Medical Association.....	8
More Information	9

JUDGMENTS

New South Wales (NSW)

21 May 2014 - [Neville v Lam \(No 3\) \[2014\] NSWSC 607](#)

The practitioner is a gynaecologist who performed an endometrial ablation on the plaintiff to treat her severe menorrhagia. The plaintiff later gave birth to a child with significant disabilities. She alleged the practitioner was negligent in failing to advise her of the risk she could still conceive after undergoing the procedure. The practitioner denied he failed to warn of the risks and relied on as evidence his usual practice and the contents of his medical notes.

The NSW Supreme Court found the plaintiff had not proved the practitioner failed to warn her and therefore dismissed her case. They considered the evidence of the practitioner's usual practice and notes from a separate consultation, in which the relative merits of treatments for contraception were discussed, to be persuasive.

The Court considered what damages would be available if the plaintiff had been successful. It determined recovery for the cost or value of voluntary care by a parent is precluded and any non-pecuniary loss which requires an assessment of the relative benefits and detriments of child rearing cannot be entertained.

As voluntary parental care was the anticipated mode of care for the child, the Court determined the plaintiff could not receive general damages for loss of enjoyment of life, for economic loss for the time spent caring for her child and the related stress that impacted her earning capacity or for gratuitous care. While past and future out of pocket expenses would be available, they declined to make a finding as to whether these would cease to be recoverable on the child turning eighteen.

21 May 2014 - [Health Care Complaints Commission v Dr Jamieson \[2014\] NSWCATOD 56](#)

Administrative Law - Civil and Administrative Tribunal (NSW) - medical law - health practitioner - professional misconduct - unsatisfactory professional conduct.

8 May 2014 - [Greater Western Area Health Service v Austin \[2014\] NSWSC 604](#)

Administrative law - workers compensation commission medical appeal panel - judicial review - jurisdictional error - error on the face of the record - whether medical appeal panel made jurisdictional error by limiting the scope of their powers through a misapprehension of a question referred - whether by limiting their power to hear questions of medical causation medical appeal panel made jurisdictional error.

South Australia

7 May 2014 - [Nestorovic v Nursing and Midwifery Board of Australia \[2014\] SAHPT 4](#)

This was an appeal to the Health Practitioners Tribunal of South Australia against a decision of the Nursing and Midwifery Board of Australia which refused to register the appellant as an enrolled nurse on the basis that she did not meet the requirements of the English language skills standard. The standard requires an applicant to have completed five years of tertiary education in Australia or achieve a minimum score in one of two approved tests. The appellant did not achieve the minimum score in either test and only completed a diploma in Australia.

The appellant argued the Board should grant an exemption because she is an Australian born citizen, has lived in Australia for many years, has gained various qualifications relating to health care and has received positive feedback from supervisors during placements. The Board argued the decision should be confirmed by the Tribunal.

The Tribunal unanimously held that the appellant should be granted registration as an enrolled nurse as she had compelling evidence demonstrating English proficiency. In coming to this decision, the Tribunal accepted the testimony of three witnesses who verified the appellant's oral and written language skills. It also considered that the appellant had worked for nine years as an English-Serbian accredited translator, whose particular skills are sought by the medical profession. The Tribunal recognised that due to the number of applications, the Board may not have appreciated the extent of the supporting evidence in coming to their decision.

22 May 2014 - [State of South Australia v Smith & Anor \[2014\] SASC 64](#)

Health Law - Burial and Cremation - Bodies and graves. Health Law - Burial and Cremation - Powers of Authorities.

19 May 2014 - [Finding of Inquest into the death of David Stanley Ayers 19/2013 \(1006/2011\)](#)

Death from sepsis due to aspirational pneumonia while deceased was subject to a level one detention and treatment order which had been imposed by a psychiatric registrar at the Royal Adelaide Hospital the day prior to his death. No recommendations made.

19 May 2014 - [Finding of Inquest into the death of Kevin George Donnell 27/2013 \(1105/2011\)](#)

Death from end stage refractory chronic congestive cardiac failure on a background of chronic renal failure and schizophrenia while deceased was detained pursuant to the *Mental Health Act 2009*. No recommendations made.

18 May 2014 - [Finding of Inquest into the death of Raffaele Sgambato 31/2013 \(1620/2011\)](#)

Death from malnutrition in combination with heart, liver and kidney failure while deceased was detained pursuant to the *Mental Health Act 2009*. Medical treatment at the Royal Adelaide Hospital was lawful, appropriate, humane and necessary. No recommendations made.

Victoria

12 May 2014 - [Finding into Death without Inquest of Mark Raymond Parsell COR 2008/3291](#)

Death from multiple injuries sustained when struck by a train in circumstances where he intended to take his own life. Contributing factors were non-compliance with antipsychotic medication, a recent deterioration in mental health, an apparent lack of adequate clinical handover (or documentation of such) between clinicians involved in his care at Dandenong Hospital on 29 July 2008, the lack of supervision despite his risk of assessment and a level of care provided to him that was, on the evidence, inadequate once he was assessed as being at risk of suicidality, self-harm, non-compliance and absconding.

United Kingdom

22 May 2014 - [Gray v Germany \[2014\] ECHR 503](#)

The applicants, relying on the Member State's general duty under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in its Section I, complained, inter alia, under the substantive aspect of Article 2 that shortcomings in the British health system in connection with the recruitment of locum doctors and supervision of out-of-hours locum services had led to their father's death as a consequence of medical malpractice by German locum doctor U. They further complained that the investigations into their father's death conducted both in the United Kingdom and in Germany had not complied with the procedural requirements inherent in Article 2 of the Convention. In each case they alternatively invoked a breach of Articles 8, 13 and 14 of the Convention.

21 May 2014 - [Hall v Thomas & Ors \[2014\] EWHC 1625 \(QB\)](#)

By his claim the Claimant seeks to establish negligence, that is to say a breach of the duty of care owed to him on the part of the Second Defendant for which the Third Defendant would be vicariously liable, in the delivery of the rehabilitation of his left knee following the initial twisting injury, and further to establish that that breach of duty has caused or materially contributed to the entirety of the additional damage to the knee which has ensued since that initial ACL rupture and tear of the lateral meniscus.

21 May 2014 - [Atkinson v South Tees Hospitals National Health Service \(NHS\) Foundation Trust \[2014\] EWHC 1590 \(QB\)](#)

As to the first operation, the Claimant's allegation involves the ulnar digital nerve ("UDN"). The liability experts disagree as to whether the UDN was divided at the first operation. They agree that it was not necessarily negligent to divide it at the operation, but it would be negligent to fail to identify that it had been divided; if it had, it would also be negligent to fail to consider repairing such a nerve. If it had been divided, and a repair attempted, then a repair would probably have been successful such that a significant number of Claimant's continuing symptoms would not be present. As to the second operation the issue involve the

palmar cutaneous nerve ("PCN"). Again the experts disagree as to whether the PCN was divided during this operation. If it was divided then the experts agree that this was negligent. Also that some of the symptoms experienced by C in the palm of his left hand would not be present.

LEGISLATION

Commonwealth

20 May 2014 - [Private Health Insurance \(Levy Administration\) Amendment Rules 2014](#).

19 May 2014 - [Therapeutic Goods Information \(Medicine Shortages Information Initiative\) Specification 2014](#).

15 May 2014 - [National Health \(Listed drugs on F1 or F2\) Amendment Determination 2014 \(No. 4\) \(PB 43 of 2014\)](#).

15 May 2014 - [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2014 \(No. 5\) \(PB 41 of 2014\)](#).

15 May 2014 - [National Health \(Highly specialised drugs program for hospitals\) Special Arrangement Amendment Instrument 2014 \(No. 5\) \(PB 40 of 2014\)](#).

12 May 2014 - [National Health \(Pharmaceutical Benefits - Early Supply\) Amendment Instrument 2014 \(No. 3\) - specification under subsection 84AAA\(2\) \(No. PB 39 of 2014\)](#).

12 May 2014 - [National Health \(Price and Special Patient Contribution\) Amendment Determination 2014 \(No. 4\) \(No. PB 37 of 2014\)](#).

12 May 2014 - [National Health \(Listing of Pharmaceutical Benefits\) Amendment Instrument 2014 \(No. 5\) \(No. PB 36 of 2014\)](#).

Australian Capital Territory

15 May 2014 - [Mental Health \(Treatment and Care\) Amendment Bill 2014](#).

REPORTS

Australia. Department of Health & Ageing

Media releases

22 May 2014 - [Minister Reaffirms Commitment to Closing The Gap](#). Assistant Minister for Health Fiona Nash has met with Indigenous health stakeholders, including the National Aboriginal Community Controlled Health Organisation and state and territory peak bodies.

22 May 2014 - [Revised recall protocol an essential part of food safety armoury for food businesses](#). Assistant Minister for Health Fiona Nash has launched a new food recall protocol saying every Australian food manufacturer, importer, wholesaler and distributor should have a copy.

21 May 2014 - [What the budget means for rural and regional Australians](#). Assistant Minister for Health Fiona Nash said the Australian Government had reaffirmed its commitment to rural and regional Australians.

20 May 2014 - [Indigenous Health Services](#). The Australian Government has a strong commitment to front line, core essential health service delivery, reducing red tape overheads and better supporting efforts to achieve health equality between Indigenous and non-Indigenous Australians.

19 May 2014 - [Report into the Personally Controlled Electronic Health Record](#). A review into the implementation and uptake of the Personally Controlled Electronic Health Record system has made 38 recommendations.

Australia. Health Practitioner Regulation Agency and the boards

16 May 2014 - Community and health practitioner feedback is sought on a review of Podiatry Board of Australia registration standards and guidelines. [Read Article](#).

16 May 2014 - Community and health practitioner feedback is sought on a review of the Board's Guidelines for infection control. [Read Article](#).

19 May 2014 - The National Board is seeking feedback on a review of registration standards and guidelines. Consultation is open until 14 July 2014. [Read Article](#).

19 May 2014 - Community and health practitioner feedback is sought on a review of Optometry Board of Australia registration standards and guidelines. [Read Article](#).

20 May 2014 - Updated Advertising guidelines published today by National Boards. [Read Article](#).

21 May 2014 - The Physiotherapy Board of Australia releases its latest communiqué. [Read Article](#).

22 May 2014 - The Dental Board of Australia releases its latest communiqué. [Read Article](#).

22 May 2014 - The Medical Board of Australia releases its latest newsletter. [Read Article](#).

Australia. Therapeutic Goods Administration

22 May 2014 - [Advisory Committee on Biologicals \(ACB\)](#). Meeting 4 is now being held on 24 July 2014.

22 May 2014 - [Aquatec Ocean VIP mobile shower and toilet commode](#). Invacare Australia is undertaking a recall for product correction of some units of its Aquatec Ocean VIP mobile shower and toilet commode due to an issue with the snap-on connectors that secure the backrest cushion.

22 May 2014 - [Advisory Committee on Non-prescription Medicines \(ACNM\)](#). Meeting for 5 June 2014 has been cancelled.

22 May 2014 - [Complementary medicines: Cancellations from the ARTG following compliance review](#). Cancellation of PM KiddieCal from the ARTG.

21 May 2014 - [Authorised prescribers](#) Updated Authorised prescriber - Agreement to treatment directions form.

19 May - [PIP silicone gel breast implants](#) The European Commission's Scientific Committee on Emerging and Newly Identified Health Risks has published the final version of its updated opinion on the safety of PIP silicone gel filled breast implants

Australian Institute of Health & Welfare

21 May 2014 - [Foundations for enhanced maternity data collection and reporting in Australia: National maternity data development project - Stage 1](#).

22 May 2014 - [Data sources for monitoring arthritis and other musculoskeletal conditions](#).

Australian Commission on Safety and Quality in Health Care

19 May 2014 - On the Radar – Issue 174 ([PDF 130KB](#)) ([Word 129KB](#)).

Australia. Private Health Insurance Administration Council

21 May 2014 - [Statistical Release – Trends — May 21, 2014](#) Statistical Trends in Membership and Benefits Data Tables March 2014.

Australian Capital Territory. Health Directorate

9 May 2014 - [Celebrating 21 years of Breast Screening](#).

14 May 2014 - [ACT Public Hospital network improved with new services at Calvary Hospital](#).

15 May 2014 - [New mental health laws seek to boost patients say in treatment options](#).

15 May 2014 - [New designs released for secure mental health unit](#).

New South Wales (NSW). Ministry of Health

Media Releases

20 May 2014 - [NSW Government Announces New \\$1.6 Million Health Facility for Jindabyne](#).

19 May 2014 - [Mona Vale beachside rehabilitation unit officially opened](#).

Policy Directives & Guidelines

19 May 2014 - [Service Specifications for Transport Providers - NEPT](#).

Information Bulletins

22 May 2014 - [Clinical Coders - Recommended Salary Levels](#).

22 May 2014 - [Publishing Procurement Plans on the e-Tendering Website](#).

21 May 2014 - [JMO Medical Officer - 2015 Recruitment Campaign Dates](#).

21 May 2014 - [Non-Admitted Patient Data Collection: Changes Effective from 1 July 2014](#).

19 May 2014 - [Commonwealth Child Dental Benefits Schedule and NSW Health Representative Public Dentists](#).

19 May 2014 - [Rescission of PSC Circular 2010-18 Staffing Freeze](#).

Northern Territory. Department of Health

20 May 2014 - [Robyn Lambley - council for disability reform focussed on results](#). The inaugural meeting of the Ministerial Advisory Council for Disability Reform has identified key issues for the Northern Territory Government to focus on, to create opportunities for Territorians with a disability.

Queensland. Department of Health

18 May 2014 - [New cardiac services for Mackay](#). Mackay residents needing lifesaving heart surgery will no longer have to travel to Brisbane or Townsville, after the Queensland Government officially opened the \$3 million Cardiac Catheter Laboratory.

21 May 2014 - ['Print on print' a winning sun-safe combo for Emily](#). The Speaker's Green at Parliament House was transformed by a sea of colourful parasols as Queensland Health announced the winner of its Project SPF fashion design competition.

22 May 2014 - [Changes to legislation to improve mental health outcomes](#) Delivering better mental health outcomes for Queenslanders is the goal of a major review of mental health legislation to pave the way for more relevant and effective laws.

22 May 2014 - [Positive change for mental health services](#) Queensland mental health consumers value and are positive about the care they have received, according to a report made available to the public for the first time.

22 May 2014 - [Mental health partners allocated \\$71.5 million](#). Community-managed mental health programs across Queensland will benefit from a total of \$71.5 million in State funding awarded by the Health Minister, Lawrence Springborg today.

South Australia. Department for Health & Ageing

22 May 2014 - [New RAH architectural floor plans released](#). South Australians can now see the final internal design of the new Royal Adelaide Hospital, following the release of the architectural floor plans.

21 May 2014 - [Peter Dutton ignores Health Minister during trip to Adelaide](#). Despite cutting \$600 million from the state's Health Budget over the next four years, the Federal Health Minister Peter Dutton has ignored requests to meet with the State Government during his current Adelaide trip.

21 May 2014 - [Alfresco dining areas out of puff](#) Outdoor dining areas will be smoke free by July 2016 in an effort to reduce the number of South Australian smokers.

21 May 2014 - [Country hospitals not immune to Federal Budget cuts](#) The Federal Government's Health Budget cuts are the equivalent of closing nearly half of all the beds in the state's country hospitals, Health Minister Jack Snelling told Parliament today.

Victoria. Department of Health

23 May 2014 - **People in Health Awards honours workforce.** Outstanding educational and training initiatives to grow and develop Victoria's health workforce were recognised last night at the inaugural *People in Health Awards* at the Melbourne Museum.

21 May 2014 - **Major milestone for Frankston Hospital expansion.** The \$81 million Frankston Hospital redevelopment has reached a historic milestone with the new building now at its full height.

20 May 2014 - **'Angel' helps build new Bendigo Hospital.** The fourth crane building the \$630 million Bendigo Hospital Project will be named Lucy in a heartfelt tribute by a Bendigo girl to her late twin sister. Lucy is the final of four cranes building the new hospital and has a 57 metre reach and the ability to lift 4.2 tonnes. The first three cranes were named Ben, Maximus and Cranium.

19 May 2014 - **Melbourne workers urged to get active in winter.** Melbourne's city workers are being urged to jump up from their desks, brave the winter chills and leap into a range of fun activities to get active and healthy around the City of Melbourne. Minister for Health David Davis today joined City of Melbourne Deputy Mayor Susan Riley and VicHealth at the City Square to launch the *100 Ways to Move It Melbourne* program of activities.

23 May 2014 - **People in Health Awards honours workforce.** Outstanding educational and training initiatives to grow and develop Victoria's health workforce were recognised last night at the inaugural *People in Health Awards* at the Melbourne Museum.

17 May 2014 - **Family Drug Treatment Court to help get lives back on track.** The Victorian Coalition Government is establishing Australia's first Family Drug Treatment Court, to improve the safety and wellbeing of young children who have been removed from their parents as a result of alcohol and drug abuse.

Western Australia (WA). Department of Health

Media Releases

23 May 2014 - **Minister for Health and Minister for Regional Development: Feedback sought on Shenton Park redevelopment.**

Operational Directives

22 May 2014 - **OD 0524/14** WA Health Day Therapy Unit Service Delivery Guidelines 2014 A formal set of guidelines developed to support consistent service delivery and to assist in maintaining equitable and consistent care across Day Therapy Units in Western Australia.

New Zealand. Ministry of Health

23 May 2014 - **Dangers of purchasing medicines over the internet highlighted - Operation PANGAEA VII.**

20 May 2014 - **Ministry takes action to ensure certainty on gambling services.**

United Kingdom. Department of Health

21 May 2014 - **Focus on Enforcement review leads to more effective regulation of care homes.**

United States of America. Department of Health & Human Services

22 May 2014 - **New funding gives states and innovators tools and flexibility to implement delivery system reform.**

20 May 2014 - **United States, Canada and Mexico strengthen information sharing in health emergencies.**

Australian Medical Association (AuMA)

23 May 2014 - **AuMA Speech - Welcome to Country and Opening of Conference.** AuMA National Conference 2014 AuMA President Dr Steve Hambleton Welcome to Country and Opening of Conference. [Read more.](#)

23 May 2014 - [Time to bust Aboriginal health myths: AuMA Indigenous Scholarship Winner](#). Decades spent caring for remote Indigenous communities on the wrong side of the nation's infamous health gap has left 2014 AuMA Indigenous Peoples' Medical Scholarship winner, Wayne Ah-Sam, determined. [Read more](#)

23 May 2014 - [MJA, MDA National prize for excellence in medical research](#). [Read more](#).

23 May 2014 - [2014 AuMA National Conference - Friday Highlights](#). [Read more](#).

22 May 2014 - [AuMA President, Dr Steve Hambleton, Doorstop Interview, 22 May 2014](#). [Read more](#).

22 May 2014 - [AuMA Transcript - AuMA President, Dr Steve Hambleton, Sky News Australia, 22 May 2014](#). [Read more](#).

19 May 2014 - [2014 AuMA National Conference](#). [Read more](#).

16 May 2014 - [AuMA President, Dr Steve Hambleton, ABC News Radio, Tanya Nolan, 16 May 2014](#). [Read more](#).

British Medical Association (BMA)

22 May 2014 - [GP outrage over threat to services by funding changes](#). GPs have deplored the damage funding changes will have on the delivery of services to patients.

21 May 2014 - [Safety paramount in e-cigarette debate, says BMA](#). The BMA has stressed the importance of regulating e-cigarettes to ensure they are safe.

20 May 2014 - [Lack of time hinders GP collaboration](#). GPs say workload pressures and lack of time are preventing them from exploring collaborative ways of working.

Canadian Medical Association

21 May 2014 - [E-cigarettes facing first rules in US](#).

American Medical Association (AMA)

21 May 2014 - [AMA to Host Virtual Discussion at the Innovation Health Jam, June 17-19, 2014](#). The AMA announced details of a virtual brainstorming discussion on potential transformative goals for your physician of the future.

21 May 2014 - [AMA Statement on Proposed Rule Regarding Meaningful Use](#). "The AMA appreciates the changes proposed by the Centers for Medicare and Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) yesterday to make it easier for physicians to achieve Meaningful Use."

ABOUT US

Caroline Atkins



Caroline Atkins is the Office Managing Partner for the Canberra office of DLA Piper and has worked extensively in the health sector for Australian Government agencies. Her experience includes the conduct of major technology projects for the health sector, such as in the e-health and aged care sectors, and in advising the Commonwealth on the implementation of policy programs in contractual arrangements (including for medical indemnity insurance and for CSO arrangements for PBS funding). She has also advised the National Blood Authority on major Commonwealth contracts for the supply of blood products including with the Red Cross and CSL. Caroline's commercial experience extends over 30 years and also includes significant experience in ICT outsourcing, whole-of-government technology procurements, intellectual property rights licensing, contract management, procurement strategy and dispute resolution.

Contact Details

T +61 2 6201 8789

caroline.atkins@dlapiper.com

MORE INFORMATION

Contact your nearest DLA Piper office:

BRISBANE

Level 29, Waterfront Place
1 Eagle Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne NSW 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152–158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 38, 201 Elizabeth Street
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 4144
sydney@dlapiper.com

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities.

For further information, please refer to www.dlapiper.com

Copyright © 2014 DLA Piper. All rights reserved.

If you would like to reproduce any of this publication, please contact Michael Regos on +61 3 9274 5437 or michael.regos@dlapiper.com.

[Doc ID: 1201956752]