



HEALTH ALERT

10 JUNE 2014

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JUDGMENTS

New South Wales (NSW)

30 May 2014 - [McLachlan v Murrumbidgee Local Health Network \[2014\] NSWSC 688](#)

This was an application to set aside a subpoena to produce documents made to the NSW Supreme Court. The applicant was the plaintiff in proceedings alleging negligence against a hospital, which included a claim for damages for her reduced capacity to care for her children. The Hospital defendant to the proceeding issued a subpoena to the plaintiff for her to produce documents relating to any custody dispute.

The applicant argued the subpoenas should be set aside on a number of bases, including that the subpoenas would give unrestricted access to private information about her children and that they were irrelevant to the determination of her entitlement to damages. The Defendant submitted the documents related directly to a fact in issue.

During the application, the Court expressed concern that despite the defendant making undertakings, there was a risk that the documents could be utilised to fuel a collateral credit attack. The defendant therefore agreed to refine the request and only seek the production of affidavits or statements sworn by the plaintiff. The Court considered this a proper concession in relation to confidentiality and proper use of the documents.

The Court refused the application as it was persuaded that an affidavit sworn by the plaintiff regarding custody of her children bore some relevance to whether her claim for past and future costs of care is maintainable. The Court ordered the applicant to produce affidavits or sworn statement made in respect of any custody dispute that relate to the plaintiff's capacity to care for her children.

2 June 2014 - [Health Care Complaints Commission v Bousfield \[2014\] NSWCATOD 57](#)

Amendment of Complaint; complaint against a nurse; competence; conduct; costs; discretion as to costs; form of pleadings; further and better particulars; impairment; ; non-publication order; procedural fairness; performance assessments; professional misconduct; protective orders; unsatisfactory professional conduct

28 May 2014 - [Faraq, Dr Raouf Eshak \[2014\] NSWMPSC 7](#)

Dr Raouf Eshak Farag MPO 333887 is a registered medical practitioner in the general and specialist categories practising as an obstetrician and gynaecologist in private and public practice. The Complaint of the NSW Health Care Complaints Commissioner (HCCC), which was before this Professional Standards Committee (Committee) concerned the examination of Patient A, a young woman who consulted him suffering chronic pelvic pain and endometriosis of long standing.

27 May 2014 - [Abdeen, Dr Mohamed El Sayed \[2014\] NSWMPSC 6](#)

The first complaint alleged that Dr Abdeen had performed a tubal ligation without the consent of the patient in 2003, and was found proved. The second complaint alleged that Dr Abdeen had failed to make an adequate recording of the procedure, and was admitted by Dr Abdeen at the commencement of the proceedings. Because the complaint was made 7 years after the tubal ligation was performed, there were significant evidentiary problems. The Committee found the complaints proven. The Committee resolved that Dr Abdeen be cautioned.

15 May 2014 - [McMaster-Fay, Dr Roger Andrew \[2014\] NSWMPSC 5](#)

The Professional Standards Committee found a number of the Particulars of the Complaints against Dr McMaster-Fay proven. The Committee was of the view that this amounted to unsatisfactory professional conduct within the meaning of section 139B of the *Health Practitioner Regulation National Law (NSW) No 86a* (the National Law). It reprimanded Dr McMaster-Fay and imposed a number of Conditions on his registration.

Queensland

23 May 2014 - [Medical Board of Australia v Blomeley \[2014\] QCAT 160](#)

This was a complaint against a general practitioner which was referred to the Queensland Civil and Administrative Tribunal by the Medical Board of Australia. The practitioner had engaged in a sexual relationship with a female patient. After the relationship ended, the patient made a complaint to the Board.

The relationship had commenced during a consultation and sexual intercourse first occurred some weeks later. It is accepted that the relationship was sincere and both parties had strong feelings for the other. At the commencement of the relationship the female patient was vulnerable and had previously consulted the practitioner for matters including marriage difficulties and treatment for depression. The doctor / patient relationship had continued during the affair. The Board submitted that the practitioner's behaviour constituted professional misconduct and requested his registration be suspended for two years, with the suspension being suspended after 18 months. The practitioner acknowledged misconduct and cooperated fully.

The Tribunal found the practitioner's conduct amounted to professional misconduct. Despite the relationship being consensual and genuine, it was the practitioner's duty, not the patient's, to maintain the appropriate professional boundaries. The Tribunal considered a number of mitigating factors, including the references to the practitioner's dedication, skill, care and good character and that he had taken steps to reinforce his understanding of professional boundaries. They did not consider him a continuing danger to the public in any way or likely to reoffend. The Tribunal reprimanded the practitioner and suspended his registration for 15 months.

15 April 2014 - (published 4 June 2014) [Psychology Board of Australia v Germain \[2014\] QCAT 202](#)
Procedure - inferior courts - Queensland - Queensland Civil and Administrative tribunal – where the applicant made an application to produce documents – where the application is made pursuant to s 63(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) which allows the Tribunal to order third party disclosure – where the applicant seeks any 'relevant documents' to the proceeding – where the documents are not specified – where the third party cannot know what is relevant – whether the Tribunal can order a third party to disclose documents.

11 March 2014 (published 4 June 2014) - [Nigah v Medical Board of Australia \[2014\] QCAT 2014](#)

Health care professionals - medical practitioners - licences and registration - appeals and applications for order directing registration - where the applicant sought a review of the respondent's decision to refuse registration – where the application was for limited registration as a medical practitioner in an area of need – where the area of need for which the applicant can be granted limited registration – whether the Tribunal can grant limited registration.

Western Australia

4 June 2014 - [Health Solutions \(WA\) Pty Ltd v Foley \[2014\] WASC 197](#)

Civil law and procedure - contract law - summary judgment - claim for liquidated sum as return of remuneration - contract of employment said to be procured by false representations knowingly made - rescission - deceit - damages - restitution impossible.

United Kingdom

4 June 2014 - [Croakley v Rosie \[2014\] EWHC 1790 \(QB\)](#)

In January 2008, at the age of 42 years, the Claimant suffered bacterial meningitis. As a result of that infection she suffered total loss of her sight and substantial loss of hearing, with other significant but less serious neurological damage. She claims damages for these devastating injuries and consequential losses. She alleges that but for the negligence of the Defendant, then a general medical practitioner, in failing to recognise or suspect, and consequently failing to treat, the infection, when she attended the Defendant's surgery on Monday 7th January 2008, she would not have suffered the injurious sequelae.

LEGISLATION

Commonwealth

30 May 2014 - [National Health \(Residential Medication Chart\) Amendment Determination 2014 \(No. 1\) \(No. PB 24 of 2014\)](#).

29 May 2014 - [Therapeutic Goods \(Charges\) Amendment \(2014 Measures No. 1\) Regulation 2014](#).

29 May 2014 - [Therapeutic Goods Legislation Amendment \(Fees and Other Measures\) Regulation 2014](#).

29 May 2014 - [Therapeutic Goods Legislation Amendment \(In Vitro Diagnostic Medical Devices\) Regulation 2014](#).

26 May 2014 - [Amendment Declaration of Quality Assurance Activities under section 124X of the Health Insurance Act 1973 - QAA 1/2014](#).

26 May 2014 - [Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1973 – QAA 2/2014](#).

26 May 2014 - [Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1973 – QAA 3/2014](#).

29 May 2014 - [National Health \(Pharmaceutical Benefits\) Amendment \(Price Disclosure\) Regulation 2014](#).

Australian Capital Territory

[Planning and development \(symonston mental health facility\) Amendment Bill 2014](#).

New South Wales

[Health Services Amendment \(Guaranteeing Free Public Hospital Services\) Bill 2014](#).

REPORTS

Australia. Department of Health & Ageing

2 June 2014 - [Radio Interview on 2GB with Ray Hadley](#). Minister for Health Peter Dutton was interviewed on 2GB with Ray Hadley.

4 June 2014 - [Indigenous knowledge centre to help reduce alcohol and substance misuse](#).

4 June 2014 - [Third national indigenous drug & alcohol conference](#).

Australia. Health Practitioner Regulation Agency and the boards (AHPRA)

4 June 2014 - The Dental Board of Australia has published an email sent to practitioners about the recently released scope of practice registration standard and associated guidelines. [Read article](#).

3 June 2014 - The medical radiation practice board of Australia releases its supervised practice registration standard and guidelines. [Read article](#).

3 June 2014 - The nursing and midwifery board of Australia has extended the closing date for a request for tender to review the Midwife standards for practice. [Read article](#).

3 June 2014 - The Chinese medicine board of Australia releases its latest communiqué. [Read article](#).

2 June 2014 - The national board has published a new fact sheet on criterion 8 for enrolled nurses. [Read article](#).

2 June 2014 - The Osteopathy Board of Australia releases its latest newsletter. [Read article](#).

2 June 2014 - The Chinese medicine board of Australia invites practitioners and students of Chinese medicine to attend an information forum being held at University of Technology, Sydney on Monday 23 June 2014. [Read article](#).

30 May 2014 - Read more about AHPRA's work in health practitioner regulation in the latest AHPRA Report. [Read article](#).

Australia. Therapeutic Goods Administration (TGA)

5 June 2014 - [Documents released under Section 11C of the Freedom of Information Act 1982](#).

5 June 2014 - The Advisory Committee on the safety of vaccines ([ACSOV meeting statement, Meeting 4, 28 March 2014](#)). The ACSOV provides advice to the TGA and the Office of Health Protection (OHP) on matters relating to the safety, risk assessment and risk management of vaccines supplied in Australia.

4 June 2014 - [Submissions received: Consultation Regulation Impact Statement: Options for reform of the regulatory framework for pharmacy compounding](#). Submissions received on the consultation: options for reform of the regulatory framework for pharmacy compounding.

4 June 2014 - [Scientific guidelines](#). European Union guidelines pages have been re-organised to more closely align with the EMA guidelines structure.

4 June 2014 - [Pharmacy software vendor links to TGA adverse event reporting web service](#). GuildLink is the first company to provide an integrated link to the TGA's new adverse event reporting web service.

4 June 2014 - [Liquid nicotine and personal importation for use in electronic cigarettes](#). Some recent media reports about electronic cigarettes suggest that the importation of nicotine in personal amounts is exempt from regulation and this is not always the case.

4 June 2014 - [Expressions of interest: Membership of the Advisory Committee on Medicines Scheduling \(ACMS\) and the Advisory Committee on Chemicals Scheduling \(ACCS\)](#). The Department of Health is seeking expressions of interest from experts interested in contributing to the work of the national scheduling framework.

3 June 2014 - [Therapeutic Goods Committee \(TGC\)](#).

2 June 2014 - [Medicines Safety Update, Volume 5, Number 3, June 2014](#).

2 June 2014 - [Medical devices reforms](#). Added information on the extension to the timeframe for the transition to the IVD regulatory framework.

2 June 2014 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#). Added Loteprednol etabonate, Misoprostol, Pasireotide (as diaspertate), Afatinib (as dimaleate), Bevacizumab injection, Insulin detemir (rys).

30 May 2014 - [Colourings used in medicines for topical and oral use](#). Updated to include colourings permitted in medicines for topical use, and the addition of 5 colourings for use in oral medicines.

30 May 2014 - [Update 2: Provive and Sandoz propofol 1% emulsion for injection - all sizes and all batches](#). Batches of a widely used intravenous anaesthetic drug, propofol, may include some vials that have been contaminated with Ralstonia species.

Australian Institute of Health & Welfare

2 June 2014 - [Child social exclusion and health outcomes: a study of small areas across Australia](#).

Australian Commission on Safety and Quality in Health Care

2 June 2014 – on the radar - Issue 176 ([PDF 103KB](#)) ([Word 121KB](#)).

Australia. Private Health Insurance Administration Council

3 June 2014 - [Competition and Private Health Insurance](#). The private health insurance industry makes a significant contribution to Australia's health care system.

New South Wales (NSW). Ministry of Health

5 June 2014 - [Lead Design Team Appointed for Bankstown-Lidcombe Hospital Redevelopment](#).

4 June 2014 - [Illawarra Elective Surgery Centre Reaches New Heights](#).

3 June 2014 - [NSW Government boosts translational cancer research by \\$19.3 Million.](#)

3 June 2014 - [Garden fun for kids at Camden hospital.](#)

Queensland. Department of Health

3 June 2014 - [Strong plan delivers improving health services.](#) The Health budget for 2014-15 highlighted the central role of frontline services in the Queensland Government's strong plan for a better future, Treasurer Tim Nicholls said today.

2 June 2014 - [Changes coming to Health ICT.](#) Major changes to the way ICT services will be run across Queensland Health are coming, following the recent McKinsey Review.

South Australia. Department for Health & Ageing

4 June 2014 - Children's palliative care services secured. The State Government has pledged to secure the future of the women's and children's hospital palliative care service. [Read more.](#)

30 May 2014 - Innovative new resource to reduce risk of Alzheimer's. Ageing Minister Zoe Bettison has welcomed the launch of a new internet-based resource that helps to reduce the risk of developing dementia later in life. [Read more.](#)

Victoria. Department of Health

2 June 2014 - [Major public health Congress for Melbourne in 2017.](#) Minister for tourism and major events, Louise Asher and Minister for Health and Ageing, David Davis today announced that Melbourne has secured the right to host the 15th World Congress on Public Health (WCPH) in 2017, to be held at the Melbourne Convention and Exhibition Centre, against strong competition from London and Barcelona.

Western Australia. Department of Health

Operational Directives (OD)

4 June 2014 - [OD 0526/14.](#) State-wide standardised clinical documentation (SSCD) for mental health services. This operational directive requires that all mental health services fully comply with the use of state-wide standardised clinical documents. This is in line with the recommendations of the Stokes Review (July 2012) and to support the requirements of the *Mental Health Bill 2013*.

New Zealand. Ministry of Health

3 June 2014 - [Privately funded hospital discharges - 1 July 2011 to 30 June 2012.](#)

3 June 2014 - [Publicly funded hospital discharges - 1 July 2011 to 30 June 2012.](#)

United Kingdom. Department of Health (DH)

4 June 2014 - [Care Bill implementation grant.](#)

4 June 2014 - [Adults' personal social services: grant allocations.](#)

3 June 2014 - [Designing health and community care buildings \(HBN 00-01\)](#) Part of a collection: [DH Health building notes](#)

2 June 2014 - [DH FOI releases: 2014.](#)

2 June 2014 - [Nutritional and health claims legislation bulletins 2014.](#)

30 May 2014 - [DH departmental spending over £500: 2014](#) Part of a collection: [DH spending over £500.](#)

30 May 2014 - [DH departmental spending over £25,000: 2014](#) Part of a collection: [DH spending over £25,000.](#)

United States of America. Department of Health & Human Services (HHS)

3 June 2014 - [HHS announces the availability of \\$300 million in Affordable Care Act funds to expand services at the Nation's community health centers.](#)

2 June 2014 - [HHS releases new data and tools to increase transparency on hospital utilization and other trends.](#)

2 June 2014 - [EPA's Clean Power Plan.](#)

Australian Medical Association (AuMA)

2 June 2014 - [Transcript - AuMA President, A/Prof Brian Owler, Sky News, 2 June 2014](#) GP co-payments.

2 June 2014 - [AuMA Transcript - AuMA President, A/Prof Brian Owler, 774 ABC Melbourne, 2 June 2014](#) GP co-payments.

British Medical Association (BMA)

4 June 2014 - [Queen's speech includes anti-slavery bill.](#) The BMA has welcomed new protections for victims of slavery which were announced.

4 June 2014 - ['Dangerous moment' for National Health Service \(NHS\) warning.](#) The NHS has arrived at a 'dangerous moment', which will be decisive in terms of its future size and shape, shadow health secretary Andy Burnham told doctors yesterday.

3 June 2014 - [Flowchart spells out mental capacity law.](#) A new BMA tool offers practical help for doctors who need to assess the decision-making capacity of their patients.

2 June 2014 - [BMA survey reveals high GP vacancy rate.](#) Two-thirds of GP practices in an English region have had doctor vacancies in the past year.

30 May 2014 - [Seven-day clockwork.](#) There is a growing movement towards more NHS services being available seven days a week.

Canadian Medical Association (CMA)

3 June 2014 - [Pro-euthanasia comments dominate Mississauga town hall.](#) A lively public town hall meeting in Mississauga, ON, with a largely pro-euthanasia audience, concluded the Canadian Medical Association's national dialogue on end-of-life care.

ABOUT US

Michael Regos



Michael is the head of the DLA Piper health litigation group.

He practises in the areas of health law, insurance law, medical negligence and coronial enquiries. He represents Victorian public hospitals and their insurers, the Victorian Managed Insurance Authority and is the solicitor of choice for Australia's second-largest private health operator.

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