



# HEALTH ALERT

28 JANUARY 2014

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## JUDGMENTS

### Commonwealth

23 January 2014 - [AstraZeneca AB v Alphapharm Pty Ltd \[2014\] FCA 9](#)

AstraZeneca AB and AstraZeneca Pty Ltd, as prospective applicants, issued an originating application against Alphapharm, as prospective respondent, requesting pre-action discovery and inspection of documents, plus delivery of samples, relating to Alphapharm products.

AstraZeneca distributes a successful proton pump inhibitor that reduces production of stomach acid. It considered Alphapharm's products could infringe one or more patents it holds for that product.

AstraZeneca's application was allowed in part. Alphapharm complied with the orders but the documents provided did not satisfy AstraZeneca. AstraZeneca filed and served an Amended Originating Application, seeking further orders for discovery and inspection of specific documents and delivery of samples, pursuant to Rule 7.23 of the *Federal Court Rules 2011* (Cth).

AstraZeneca relied specifically on Rule 7.23(1)(b), arguing it had insufficient information to decide whether to initiate proceedings to obtain relief for the threatened infringement of a particular patent, as its expert could not form a firm opinion regarding similarities between the products. Alphapharm maintained that this reference to "firm opinion" meant AstraZeneca was requesting more than just the "sufficient information" required for the purposes of the Rule.

Besanko J disagreed, concluding that the issue of what is "sufficient information" is very fact specific. He cited a Full Court [decision](#) explaining "that even where there is a reasonable cause to believe a person may have a right to relief ... that person may need information to know whether the cost and risk of litigation is worthwhile." He allowed the further discovery and inspection, but not delivery of samples.

16 January 2014 - [Davie and Comcare, Re \[2014\] AATA 1](#)

Compensation – Commonwealth employee – whether medications prescribed for compensable back injury caused sensorineural hearing loss and tinnitus – relevance of Statement of Principles in claims under *Safety Rehabilitation and Compensation Act 1988* – comparative evidentiary value of various research studies and reports of general application and specifically focused expert medical evidence – burden and standard of proof – decision affirmed.

### Queensland

2 August 2013 - [Psychology Board of Australia v Freeman \[2013\] QCAT 701](#)

These proceedings stemmed from a complaint made that Dr Freeman's behaviour constituted unsatisfactory professional conduct. The complaint was made by a prisoner for whom Dr Freeman prepared a report concerning the complainant's application for parole. Dr Freeman diagnosed the complainant with borderline personality disorder, which was alleged to be an inappropriate diagnosis. It was also alleged that Dr Freeman reported on the complainant's psychopharmacological regime "inappropriately and beyond his qualifications." This decision concerned Dr Freeman's application to have Professor Smallbone's expert evidence excluded on the basis that he was "not an entirely independent witness, free from any actual or perceived bias or conflict of interest."

Professor Smallbone had previously provided reports to the Board in disciplinary proceedings against Dr Freeman following complaints made by two other prisoners. Dr Freeman questioned the appropriateness of calling a member of the profession who had previously formed an adverse view of his professional standards to express an opinion on those standards in another matter. He submitted that an objective onlooker would conclude Professor Smallbone was biased, and his evidence should therefore not be admitted.

It was agreed that expert evidence is admissible where the expert is qualified by training or experience to give expert evidence, and where there is no other rule disqualifying the evidence. As Dr Freeman did not

challenge the relevance of Professor Smallbone's opinions or his expertise, the judge held the evidence admissible and dismissed the application.

## United Kingdom

23 January 2014 - [Jones v Portsmouth Hospitals NHS \(National Health Service\) Trust \[2014\] EWHC 42 \(QB\)](#). Necrotising myositis is a rare condition with a high mortality rate which in July 2008 infected the upper right thigh of Mrs Karen Jones, the Claimant. It led to the progressive removal of all the muscles in her upper right thigh and the recommendation to amputate her right leg through the knee. The necrotising myositis was caused by Group A streptococcal bacteria, which probably started with a sore throat that the Claimant had during the week leading up to her admission to Queen Alexandra Hospital in Portsmouth.

23 January 2014 - [C v North Cumbria University Hospitals NHS Trust \[2014\] EWHC 61 \(QB\)](#). This case concerns a narrow question: Was it negligent for a midwife to administer a second dose of a drug that induces labour?

## LEGISLATION

[Amendment statement of principles concerning posttraumatic stress disorder No. 19 of 2014](#).

[National health \(efficient funding of chemotherapy\) special arrangement amendment instrument 2014 \(No. 1\) \(No. PB 5 of 2014\)](#).

[Aged Care Act 1997 - Determination under paragraph 44-19\(1\)\(b\) \(ACA Ch. 3 No. 5/2007\) Revocation Determination 2013](#).

## REPORTS

### Australia. Department of Health & Ageing

Private Health insurance (PHI) Circulars

8 January 2014 - [PHI 01/14. Release of final data specifications for the hospital casemix protocol \(HCP\), private hospital data bureau \(PHDB\) and GT Dental 2013-14 data collections](#).

8 January 2014 - [Private health insurance \(data provision\) rules 2013 & private health insurance \(health insurance business\) rules 2013](#).

9 January 2014 - [New version \(version 1.11.0.0\) of check-it 2 released](#).

17 January 2014 - [Private hospital information](#).

20 January 2014 - [Private health insurance \(incentives\) amendment rules 2013 \(No. 1\) and private health insurance \(complying product\) amendment rules 2013 \(No. 5\)](#).

23 January 2014 - [Hospital information - name change](#).

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

24 January 2014 - All AHPRA offices will be closed on Monday 27 January 2014 due to the Australia Day national public holiday.

22 January 2014 - The national psychology board has released January 2014 figures on area of practice endorsements. [Read More](#).

### Australia. National Health & Medical Research Council (NHMRC)

17 January 2014 - [Minor amendments to the Australian immunisation handbook 10th edition](#). The NHMRC Chief Executive Officer has approved minor amendments to the Australian immunisation handbook 10th edition under section 14A of the *National Health and Medical Research Council Act 1992*. The Australian immunisation handbook provides clinical information for Australian immunisation providers on the safest and most effective use of vaccines, new vaccines and vaccine-preventable diseases in Australia. The minor amendments include text clarifications, updates, corrections and typographical errors.

### **Australia. Therapeutic Goods Administration**

21 January 2014 - [Liko overhead lifts ceiling-mounted rail systems](#). Consumers and health professionals are advised that Hill-Rom is undertaking a recall for product correction regarding ceiling-mounted rail systems.

20 January 2014 - [Generic prescription medicines: Fact sheet](#) on generic medicines for consumers.

17 January 2014 - [Joint reclassification advice: summary technical reports as interim conformity assessment evidence for partial joint components](#). This information is intended for sponsors seeking to reclassify partial hip, knee and shoulder implants.

17 January 2014 - [Reclassification of partial hip, knee and shoulder implants](#). Summary technical reports will be accepted as interim evidence to support applications for partial joint components.

17 January 2014 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#). Added Alogliptin as benzoate (Vipidia/Nesina).

### **Australian Institute of Health & Welfare**

24 January 2014 - [Medical workforce 2012 media release](#).

### **Australian Commission on Safety and Quality in Health Care**

20 January 2014 - [On the Radar – Issue 158 \(103KB\)](#).

### **New South Wales (NSW). Ministry of Health**

Media Releases

20 January 2014 - [Record number of intern doctors in 2014](#).

21 January 2014 - [Scholarships open for diploma of enrolled nursing](#).

22 January 2014 - [NSW medical devices fund stage two preliminary applications open](#).

23 January 2014 - [Project team appointed to plan next stage of St George hospital redevelopment](#).

Information Bulletins

17 January 2014 - [Medical speciality coding in StaffLink](#).

### **Queensland. Department of Health**

21 January 2014 - [Queensland health repayments hit \\$3.5 million](#). In the past fortnight, another 1,000 Queensland health staff have committed to repaying an additional \$1 million in overpayments caused by the former Labor Government's health payroll system failure.

21 January 2014 - [More telehealth services for the south west](#). Queenslanders in the south west can look forward to more telehealth services.

### **Victoria. Department of Health**

19 January 2014 - [Victorians warned against deadly impact of tanning](#). A campaign urging Victorians to guard against the dangerous effects of excessive sun exposure will hit television screens again this summer.

### **Western Australia (WA). Department of Health**

Operational Directives (OD)

23 January 2014 - [OD 0486/14](#) WA health patient identification policy 2014 describes the content, colour and use of patient identification bands for all inpatients, emergency department and day procedure patients in WA hospitals.

### **New Zealand (NZ). Ministry of Health**

17 January 2014 - **Psychoactive substances manufacturing code now in force**. Psychoactive substance manufacturers are now subject to the requirements of the new Code of Manufacturing Practice. [Read more](#).

16 January 2014 - **Gestational Trophoblastic Disease: New Zealand Gynaecologic Cancer Group guidelines**. This guideline outlines the management of women after the diagnosis of molar pregnancy in NZ as agreed to by the NZ Gynaecological Cancer Group. [Read more](#).

### **United Kingdom. Department of Health**

23 January 2014 - **Making mental health as important as physical health**.

23 January 2014 - **Treating patients as people**.

23 January 2014 - **NHS availability of erectile dysfunction drugs: proposed changes**.

23 January 2014 - **Consultation to improve regulation of health and social care providers**.

21 January 2014 - **Care needs: financial services industry to develop products to help people plan**.

20 January 2014 - **Making mental health matter more**.

17 January 2014 - **Progress on suicide prevention**.

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

23 January 2014 - **US and UK working to strengthen use of health information technology for better patient care**.

22 January 2014 - **New committee to advise HHS on needs of children in disasters**.

17 January 2014 - **Surgeon General report says 5.6 million US children will die prematurely unless current smoking rates drop**.

### **Australian Medical Association (AuMA)**

22 January 2014 - **AuMA to call for national action on alcohol** – media conference in Sydney. [Read more](#).

23 January 2014 - **Time for a National Summit on alcohol misuse and harms - AuMA**. The AuMA is today calling on the Federal Government to convene a National Summit to discuss and assess the evidence and develop effective national solutions to the epidemic of alcohol misuse and harms afflicting local communities right across the nation. [Read more](#)

### **British Medical Association (BMA)**

20 January 2014 - **BMA backs "self-care" campaign**. A national "self-care" campaign, aimed at diverting pressures away from primary and secondary care, has been backed by the BMA.

20 January 2014 - **Royal colleges urged to act on exam diversity findings**. All medical royal colleges should monitor and evaluate the diversity of candidates taking their exams, a BMA review has urged.

17 January 2014 - **Restraint of immigrant detainees alarms BMA**. The BMA has expressed concern over the way frail and seriously ill immigrants at a UK detention centre were restrained during medical treatment.

17 January 2014 - **Can a cash reward encourage breastfeeding?** The overall health of society is determined by individual choice. Every day people choose to breastfeed, lose weight and give up smoking - but would more do so for a cash reward?

17 January 2014 - **BMA secures "acting-up" allowance for SAS doctors**. Specialty doctors will be recognised for acting up in the role of consultants, following successful BMA negotiations.

## Canadian Medical Association (CMA)

23 January 2014 - **New e-newsletter to feature customized content, far larger readership.** Thanks to a relaunch of the CMA's e-newsletter, circulation is going to triple to 60,000 members in January, and for the first time the content they receive will be customized according to their membership in the student, resident or practising/retired member category.

20 January 2014 - **Medical Doctors (MD) avoiding social media in droves: poll.**

17 January 2014 - **CMA acts on physician employment worries.**

## American Medical Association (AMA)

23 January 2014 - **"A lot less of House, MD, and more of Car Talk:" A peek at medicine's future.** As the nation considers ways to lower unsustainable health care costs and enhance the quality of patient care, renowned diagnostician Gurpreet Dhaliwal, MD, says physicians can learn valuable lessons from Click and Clack, longtime hosts of the popular *Car Talk* radio program.

23 January 2014 - **Quality of clinical trial evidence varies greatly in Food and Drug Administration's (FDA)'s drug approval process.** A new study in the Journal of the American Medical Association examined the US Food and Drug Administration's approval process for about two hundred new drugs over the past several years. The study found the quality of clinical trial evidence used by the FDA as the basis for recent approvals of novel therapeutic agents varied widely.

22 January 2014 - **New faculty training program aims to transform medical education.** A select group of faculty members of the Brody School of Medicine at East Carolina University are embarking on a year-long professional development program designed to develop skills for implementing new practice design and new curricula for today's environment of team based care.

21 January 2014 - **How the AMA is easing physicians' regulatory loads.** An AMA viewpoints post by AMA President Ardis Dee Hoven, MD. We physicians are part of so many powerful stories: Stories of injuries healed, cancers overcome and chronic conditions brought under control. But there's another story happening behind the scenes of clinical care that others need to hear.

## 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.

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