



**25 NOVEMBER 2013**

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## JUDGMENTS

### Western Australia

14 November 2013 - [Medical Board of Australia and Dekker \[2013\] WASAT 182](#)

The Medical Board of Australia alleged that Doctor (Dr) Leila Dekker could be guilty of "infamous or improper conduct in a professional respect" for not stopping to render assistance after she and another vehicle nearly collided. Dr Dekker did not see the other car crash but heard noise of impact. She drove to the police station and reported the incident and possible crash, believing this to be reasonable and appropriate in the circumstances as she did not have a mobile phone or medical equipment with her. The proceeding was heard 11 and a half years after the incident.

Improper conduct is conduct reasonably regarded as improper by professional colleagues of good repute and competency. Infamous conduct is a higher threshold, being that which would reasonably be regarded as disgraceful or dishonourable. Both can be considered "in pursuit of the practitioner's profession," although outside the course of carrying out medical practice, if there is a sufficiently close nexus.

The State Administrative Tribunal concluded that "because saving human life and healing sick and injured people is a core purpose and ethic of the medical profession...failure by a medical practitioner to make an assessment and render assistance when she is aware that a motor vehicle accident...may have occurred...when the practitioner is physically able to do so would...reasonably be regarded as improper." However, if Dr Dekker had not even reported the incident, her conduct would have been considered infamous. The matter will now proceed to hearing to determine penalty and costs.

18 November 2013 - [Bernadt v Medical Board of Australia \[2013\] WASCA 259](#)

Dr Bernadt appealed the State Administrative Tribunal's verdict to dismiss an application for review of the Medical Board of Australia's decision to suspend Dr Bernadt's registration as a health practitioner under s 156 of the *Health Practitioner Regulation National Law (Western Australia) Act 2010*. Dr Bernadt had been an ENT specialist since 1974.

The Tribunal had found four areas of serious deficiency creating a reasonable belief that Dr Bernadt posed a serious risk to persons as an ENT consultant. They were: failing to record adequate medical histories from patients, failing to conduct adequate audiometry on patients, lack of up-to-date medical knowledge (including performing a discredited surgical procedure), and failing to follow up patients. Those risks were compounded by Dr Bernadt's lack of insight into his own deficiencies. Dr Jay, an expert witness, was also highly critical of Dr Bernadt's competence, saying his practice was "in no way consistent with contemporary specialist otolaryngology and surgical practice in general" and he required "extensive re-skilling and training".

Dr Bernadt argued there was insufficient evidence before the Tribunal to support its decision that he posed a serious risk and that suspension was necessary to protect public health. The Court of Appeal disagreed, concluding the Tribunal was correct in deciding it was necessary to take immediate action under 156 due to the serious risk. The appeal was dismissed.

The statutory construction of the relevant National Law relating to the "health, performance and conduct" of registered health practitioners, including s 156, was also discussed at length.

### United Kingdom

14 November 2013 - [Corbally v Medical Council & ors \[2013\] IEHC](#)

Applicant is a professor of medicine and a consultant paediatric surgeon - application brought by way of judicial review to quash decision of first named respondent, whereby sanction of admonishment imposed on the applicant in relation to his professional performance in the context of a frenulum release procedure - applicant also sought order of certiorari quashing finding of first named respondent's Fitness to Practise Committee (FPC), whereby FPC purported to make three findings of poor professional performance on the part of the applicant.

## Commonwealth

18 November 2013 - [Novartis Pharmaceuticals Australia Pty Ltd v Bayer Australia Limited \(No 2\) \[2013\] FCA 1201](#) [2013] FCA 1201

Evidence - legal professional privilege - whether implied waiver evidence - whether paragraph of affidavit admissible - whether probative value of evidence substantially outweighed by danger that it might be unfairly prejudicial to a party.

## New South Wales (NSW)

19 November 2013 - [Health Care Complaints Commission v Dr Nguyen \[2013\] NSWMT 18](#)  
Medical practitioner - allegations of inappropriate conduct by general practitioner concerning vaginal examination and offer of breast examination - allegations not proven on required standard: *Briginshaw v Briginshaw*.

## Queensland

13 September 2013 - [M v Dental Board of Queensland Dental Board of Australia \[2013\] QCAT 554](#)  
Anti-discrimination – where leave sought to amend contentions – where an order for costs found to be adequate compensation for late amendment – where costs properly payable at the conclusion of the proceeding – whether further and better particulars required – where expert medical evidence not required for assessment of impact of identified conduct whether party could have a fair hearing if leave to withdraw admission refused.

## LEGISLATION

### Commonwealth

21 November 2013 - [National Health Amendment \(Simplified Price Disclosure\) Bill 2013](#).

15 November 2013 - [Amendment Instrument 2013 \(No. 3\) \(No. PB 87 of 2013\)](#) F2013L01947 • PB 87 of 2013 as made.

15 November 2013 - [National Health \(Concession or entitlement card fee\) Amendment Determination 2013 \(No. 1\) \(No. PB 86 of 2013\)](#) F2013L01955 • PB 86 of 2013 as made.

### New South Wales

21 November 2013 - [Zoe's Law to protect fetuses passes NSW Lower House](#) (ABC News).

### Queensland

20 November 2013 - introduced [Disability Services \(Restrictive Practices\) and Other Legislation Amendment Bill 2013](#).

## REPORTS

### Australia. Department of Health & Ageing

Media releases

21 November 2013 - [Australia to send second medical team to the Philippines](#).

Private Health Insurance (PHI) Circulars

15 November 2013 - [PHI 78/13 Closure \(Revoke\) of private hospital information](#).

### Australia. Health Practitioner Regulation Agency and the boards

21 November 2013 - Medical Board announces action against Dr Jayant Patel. [Read More](#)

21 November 2013 - The Nursing and Midwifery Board of Australia (NMBA) has published a media statement on the proposed endorsement standard for nurses and midwives supplying medicines under protocol. [Read More](#)

21 November 2013 - The national Board has published an abridged NMBA strategic plan 2013 - 15 on its website. [Read More](#)

19 November 2013 - Call for applications for appointment to the Medical Radiation Practice Board national examination committee. [Read More](#)

19 November 2013 - The Dental Board releases its latest newsletter. [Read More](#)

15 November 2013 - Call for applications for appointment to national Boards. [Read More](#)

15 November 2013 - The Optometry Board has released FAQs in relation to the expressions of interest to undertake the accreditation function of CPD activities. [Read More](#)

### **Australia. National Health & Medical Research Council**

14 November 2013 - [Gene linked to common disability.](#)

13 November 2013 - [Zinc blocks protein transporter in lethal bacteria.](#)

11 November 2013 - [One-dose breast cancer radiotherapies.](#)

5 November 2013 - [New drug for irritable bowel syndrome..](#)

4 November 2013 - [Research team identifies brain tumour genes.](#)

### **Australia. Therapeutic Goods Administration (TGA)**

22 November 2013 - [Complementary medicines: Cancellations from the Australian Register of Therapeutic Goods \(ARTG\) following compliance review.](#) Cancellation of Ethical Nutrients Hi-Strength Q10 Absorb 6X 150 MG and Ethical Nutrients Hi-Strength Q10 Absorb 6X 100MG from the ARTG.

22 November 2013 - [Consultation: Chloramphenicol, propamidine, dibromopropamidine and sulfacetamide for ophthalmic use: proposed advisory statements for medicines.](#) The TGA is seeking comments from interested parties on advisory statements for chloramphenicol, propamidine, dibromopropamidine and sulfacetamide, when included in non-prescription medicines for ophthalmic use. Closing date: 10 January 2014.

22 November 2013 - [Astaxanthin esters from Haematococcus pluvialis: Draft compositional guideline.](#) Draft compositional guideline for Astaxanthin esters from Haematococcus pluvialis for information only.

22 November 2013 - [Reasons for scheduling delegates' final decisions, February 2013.](#) Added post script comment for clarification to section 3.1 Hydrogen peroxide and Carbamide peroxide.

22 November 2013 - [DHA/EPA rich Schizochytrium algal oil: Draft compositional guideline](#) Draft compositional guideline for DHA/EPA rich Schizochytrium algal oil. Closing date: 3 January 2014.

22 November 2013 - [Calcium L-threonate: Draft compositional guideline](#) Draft compositional guideline for calcium L-threonate. Closing date: 3 January 2014.

21 November 2013 - [Advisory Committee on the Safety of Medical Devices \(ACSMD\).](#) Updated ACSMD orthopaedic subcommittee member information.

21 November 2013 - [Medical Devices Safety Update, Volume 1, Number 1, November 2013.](#) Inaugural issue of Medical Devices Safety Update.

21 November 2013 - [Consultation: Invitation for public comment - Advisory Committee on Medicines Scheduling \(ACMS\) meeting, March 2014.](#) Notice inviting public submissions under Regulation 42ZCZK of the Therapeutic Goods Regulations 1990. Closing date: 19 December 2013.

20 November 2013 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) Added Atazanavir (Reyataz), Botulinum toxin type A (Botox), Dimethyl fumarate (Tecfidera), Retigabine (Trobal), Rivaroxaban (Xarelto) and Saxagliptin / Metformin hydrochloride (Kombiglyze).

18 November 2013 - [Documents released under Section 11C of the Freedom of Information Act 1982](#) Added FOI 013-1314.

18 November 2013 - [Advisory committees on medicines & chemicals scheduling \(ACMS & ACCS\)](#)  
Updated street address and meeting dates and decision timeframes.

15 November 2013 - [Acu-First weight control wrist band - MD Cosmedical Solutions - Complaint No. 2012-04-010](#) Decision in relation to advertisements about various MD Cosmedical Solutions products.

15 November 2013 - [Orphan drugs](#). Added Defibrotide.

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

20 November 2013 - [Monitoring pulmonary rehabilitation and long-term oxygen therapy for people with chronic obstructive pulmonary disease \(COPD\) in Australia](#).

22 November 2013 - [Report on monitoring activities of the national cervical screening program safety monitoring committee](#).

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

18 November 2013 - [Worldwide strategy to tackle antibiotic resistance](#). Today marks the beginning of international Antibiotic Awareness Week and Australia's Chief Medical Officer, Professor Chris Baggoey, and Australia's Chief Veterinary Officer, Dr Mark Schipp have emphasised the urgent need for the public and the medical, veterinary and agricultural sectors to work together to tackle antibiotic resistance which is one of this century's major threats to human health.

[On the Radar – 18 November 2013 – Issue 153 \(171KB\)](#).

#### **Australia. Council of Health Research**

21 November 2013 - [Dangers for doctors who treat patients without advanced care directives](#).

#### **Australia. Private Health Insurance Administration Council**

20 November 2013 - [Statistical release – trends — Nov 20, 2013](#). Statistical trends in membership and benefits data tables September 2013.

18 November 2013 - [Standard Operating Procedure \(SOP\): Appointment of an external manager](#). This circular is to advise finalisation of the Private Health Insurance Administration Council's (PHIAC's) SOP: Appointment of an external manager.

15 November 2013 - [Statistical release – September 2013 — Nov 15, 2013](#). Quarterly statistics released.

#### **Australia. National Mental Health Commission**

27 November 2013 - [Launch of a contributing life: The 2013 national report card on mental health and suicide prevention](#).

#### **Australian Capital Territory. (ACT) Health Directorate**

15 November 2013 - [NSW women to access breast screen services in ACT](#).

19 November 2013 - [Skin checks all round in the assembly to prevent skin cancer](#).

#### **New South Wales. Ministry of Health**

Media Releases

18 November 2013 - [Helping young mothers at risk of mental illness](#).

19 November 2013 - [Student artists lift spirits of sick youngsters](#).

20 November 2013 - [Mums and kids matter](#).

20 November 2013 - [\\$3.5 million equipment boost for cancer research](#).

21 November 2013 - [Organ donation: The gift of life](#).

Policy Directives & Guidelines

18 November 2013 - [Staff specialist rights of private practice arrangements - Medical indemnity PD2013\\_040](#).

20 November 2013 - [Recruitment of overseas health professionals - Panel of Overseas Recruitment Agencies \(PORA\) PD2013\\_041](#).

21 November 2013 - [Restructuring policy and procedures - NSW Ministry of Health PD2013\\_042](#).

#### Information Bulletins

18 November 2013 - [Broken Hill service employees increase in rates of pay and allowances IB2013\\_053](#).

20 November 2013 - [Notification of Middle East respiratory syndrome coronavirus under the NSW Public Health Act 2010 IB2013\\_054](#).

20 November 2013 - [Visiting Medical Officer \(VMO\) claims auditing IB2013\\_055](#).

21 November 2013 - [Notification of obsolete guideline - GL2011\\_015 IB2013\\_056](#).

#### Northern Territory. Department of Health

15 November 2013 - [Robyn Lambley - New mental health facility for Alice Springs](#). A new mental health facility providing short-term residential treatment for up to about 100 patients a year was officially opened in Alice Springs today.

#### Queensland. Department of Health

18 November 2013 - [State's senior doctors sign on](#). Queensland Health's new draft contracts for senior doctors have received a tick of approval from some of the most senior and respected members of Queensland's public health sector workforce, the Visiting Medical Officers (VMOs).

#### South Australia. (SA) Department for Health & Ageing

22 November 2013 - Royal Adelaide Hospital (RAH) site People's Choice competition launched Hon John Rau MP South Australians are being asked to vote for their favourite idea for the future of the RAH site, as the final concepts from the six design competition finalists are released today. [Read more](#)

15 November 2013 - Health award winners celebrated Hon Jack Snelling MP Health professionals from across the state gathered tonight to celebrate the achievements of their colleagues at the 2013 SA Health Awards. [Read more](#).

15 November 2013 - Largest ever investment in a country hospital officially opened Hon Jack Snelling MP The largest single investment in regional health in South Australia – the \$69 million redevelopment of the Whyalla Hospital – has been officially opened. [Read more](#)

15 November 2013 - [Let's break the smoke cycle](#).

#### Tasmania. Department of Health & Human Services

18 November 2013 - [Antibiotic awareness week](#).

20 November 2013 - [Travellers warned of measles in south east Asia](#).

21 November 2013 - [Nurse practitioner role a success at Hobart women's health centre](#).

#### Victoria. Department of Health

20 November 2013 - [Vein specialists to descend on Melbourne in 2017](#). Melbourne has secured the right to host the 2017 XVIII World Meeting of the International Union of Phlebology (UIP), succeeding against strong competitor destinations Brussels, Florence, Istanbul, Madrid, Rome and Vienna, Victorian Minister for Health and Ageing, David Davis, announced today.

21 November 2013 - [Victoria's standout public healthcare leaders honoured](#). Victoria's leading health services have been honoured at the 2013 Victorian public healthcare awards for shaping new benchmarks in the delivery of innovative, high quality healthcare.

21 November 2013 - [Mental healthcare award honour for Barwon Health](#). Barwon Health has won a top public healthcare award for a new approach to delivering mental health services that ensures consumers have an active role in their care and treatment.

21 November 2013 - [Ballarat mental health team leads the way at Victorian healthcare awards](#). Ballarat Health Services has won a top public healthcare award for leading a major revamp of child and youth mental health services in the Grampians region.

22 November 2013 - [Victorian health services geared up for a busy summer](#). Victorian hospitals, ambulance branches and health agencies are prepared for emergencies that may arise over summer, Health Minister David Davis said today.

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

#### Media Releases

20 November 2013 - [World-class paediatric facilities unveiled](#).

20 November 2013 - [Awards celebrate the best in health care](#).

#### Operational Directives (OD)

13 November 2013 - [OD 0474/13 Safe infant sleeping](#). The WA Health safe infant sleeping policy and framework is a state-wide document aimed at reducing the risk and incidence, and raising awareness of Sudden Unexpected Deaths in Infancy (SUDI) in WA. SUDI is an umbrella term that refers to a broad category of sudden unexpected infant deaths which covers SIDS, fatal sleep accidents and other types of unexpected deaths such as congenital, infections and trauma. This document was developed utilising an inter-agency collaborative approach, with the intention that it is suitable for adoption by other government departments, private, not-for-profit and non-government organisations working with parents, carers, families and communities.

### **New Zealand. Ministry of Health**

21 November 2013 - [New Zealand framework for dementia care](#).

19 November 2013 - [National consensus guideline for treatment of postpartum haemorrhage](#).

20 November 2013 - [2013 Hauora Maori scholarships special awards ceremony](#). The Hauora Māori Scholarship (HMS) programme is a national initiative that aims to strengthen the Māori health workforce, and contribute to improved health outcomes for Māori. [Read more](#).

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

15 November 2013 - [Personalised general practitioner \(GP\) care will bring back old-fashioned family doctors](#).

15 November 2013 - [Winter pressures in A&E: Department of Health statement](#).

15 November 2013 - [Professor Rory Shaw to lead national health scheme \(NHS\) international development team](#).

18 November 2013 - [Tough action needed to avoid antibiotic resistance](#).

18 November 2013 - [Campaign about transparency on clinical trials: DH response](#).

19 November 2013 - [Francis report on mid staffs: government accepts recommendations](#).

19 November 2013 - [Secretary of State: foreword to mid Staffordshire inquiry response](#).

19 November 2013 - [New era for patients and NHS as Government accepts recommendations of mid Staffordshire inquiry](#).

21 November 2013 - [Reflecting on the Francis response](#).

21 November 2013 - [Care Quality Commission state of care report – Department of Health response](#).

### **United States of America. Department of Health & Human Services**

21 November 2013 - [The great American smokeout](#).

### Australian Medical Association (AuMA)

18 November 2013 - [AuMA encourages responsible prescribing of antibiotics](#).

18 November 2013 - [AuMA congratulates Action on Smoking and Health \(ASH\) Australia on 20 years of outstanding anti-smoking advocacy](#).

20 November 2013 - [AuMA calls on Indigenous medical students to apply for AMA scholarship](#).

20 November 2013 - [New reports confirm key role of GPs as leaders in primary care](#).

21 November 2013 - [AuMA urges Government to continue momentum on organ donation education and promotion](#).

### British Medical Association (BMA)

21 November 2013 - [Hospital cash-for-flu-jab link inappropriate, says BMA](#). The BMA has expressed concerns about linking flu vaccination uptake among doctors with funding for NHS winter pressures.

21 November 2013 - [Conflict zones: medicine as a target](#). In conflict zones doctors treat patients and speak of human rights violations in the knowledge that bullseyes are firmly fixed on their backs. The BMA continues its fight for medical neutrality.

21 November 2013 - [EU maintains minimum length of medical training](#). A European decision that protects the future of UK graduate medical courses has crossed its final hurdle and is set to become law in EU member states.

20 November 2013 - [Informed public key to reducing GP workload](#) Doctors leaders want a public education campaign to explain how patients can access primary care services after warning that GPs are "on their knees."

19 November 2013 - [Doctors must be more open over mistakes, says government](#). Doctors will be required to be more open about patient safety incidents under a professional duty proposed by the government.

19 November 2013 - [Consultants on the edge of physical collapse](#) Consultants in Wales are at risk of 'burning out' because of increasing workloads, the BMA has warned.

18 November 2013 - [BMA backs royal colleges' call for greater NHS access](#). Doctors maintain that emergency, urgent and acute services should be at the forefront of proposals to extend NHS services throughout the week.

15 November 2013 - [BMA seeks doctors' views to improve NHS culture](#). The BMA wants doctors' views about its new resources that show how the NHS can begin to change its culture.

15 November 2013 - [GP contract changes put care before targets](#) GPs will have more time to spend on direct clinical care following major contractual changes to reduce bureaucracy and cut targets.

### Canadian Medical Association (CMA)

21 November 2013 - [As concussion concerns mount, CMA launches new continuing medical education course](#).

18 November 2013 - ["Support each other," MDs at meeting on physician health told](#)

### American Medical Association (AMA)

21 November 2013 - AMA Wire - [AMA backs bill to fight prescription drug abuse while helping patients in pain](#). At a house subcommittee hearing Wednesday, the AMA pushed for passage and full funding of a reauthorization bill that would help physicians combat prescription drug abuse while ensuring that patients in pain are relieved of their suffering.

20 November 2013 - AMA Wire - [AMA outlines recommendations for payment models supporting team-based care](#). With delivery models centered on team-based care emerging as the preferred method for providing coordinated and cost-effective care, the AMA Monday adopted new recommendations for creating payment mechanisms to sustain these promising new models for high-quality care.

20 November 2013 - AMA Wire - [New AMA policy represents a significant step toward Medicare reform](#) Tuesday concluded one of the most significant AMA interim meetings in recent years. As one delegate put it, the adoption of one policy in particular gave “us a voice to speak on an issue that will resonate across the country.” The issue: Repealing Medicare’s failed SGR formula.

18 November 2013 - AMA Wire - [Medical associations stand up for team-based care for veterans](#). Care delivery for the nation’s veterans is poised to turn away from modern patient-centered delivery teams under a newly proposed policy from Veterans Health Affairs (VHA). The AMA and 65 other medical associations are opposing the possible move away from coordinated, integrated care. The proposed policy, part of a new draft of the VHA nursing handbook, would require advanced practice nurses to become designated independent health care professionals.

17 November 2013 - AMA Wire - [Practice sustainability and physician satisfaction: AMA’s response to new data](#). Are you happy with your practice of medicine? Chances are, the answer to that question largely depends on how many barriers you have to overcome to provide high-quality care, the control you have over your daily practice of medicine and how much you have to struggle with your electronic health record system. Learn how the AMA is responding to recent insights fleshed out in a study conducted by the RAND Corporation.

## ABOUT US

### Andrew Forbes



Andrew practices in litigation and administrative law with a particular focus on health. He is recognised for his expertise in health regulation.

Andrew has acted in Commissions of Inquiry and led investigations into health-related incidents, such as the Hendra virus outbreak. He has acted as "counsel assisting" in internal disciplinary hearings and inquiries.

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