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JUDGMENTS

New South Wales

McKenna v Hunter & New England Local Health District [2013] NSWCA 476

In July 2004, Mr Rose (Rose) arranged for his friend, Mr Pettigrove (Pettigrove) to be taken to hospital as he was concerned about his mental state. Pettigrove was detained under the *Mental Health Act* and after psychiatric assessment, was discharged the following day into Rose's custody. While driving to Victoria that night, Pettigrove strangled and killed Rose. He told police he acted on impulse, believing Rose had killed him in a past life. Rose's family claimed the hospital breached the duty of care it owed Rose by discharging Pettigrove into his custody.

Macfarlan JA (for the majority) found the hospital owed Rose a duty of care, with relevant factors including the hospital's control over Pettigrove (who was a foreseeable risk of harm to Rose) and that Rose's safety was dependent upon the hospital's judgment because he said he would take Pettigrove to Victoria when he was well enough. Macfarlan JA concluded the risk of harm to Rose was not insignificant because, inter alia, a short time had passed since the acute psychotic episode, and Pettigrove had a history of irrationally endangering himself and others on the road during psychotic episodes. Macfarlan JA held that a reasonable person in the position of the hospital would have taken precautions against the risk of harm to Rose by continuing to detain Pettigrove. Therefore, the hospital breached its duty of care. Macfarlan JA also held that the injuries Rose, and the plaintiffs, suffered were causally related to the psychiatrist's negligence in discharging Mr Pettigrove.

South Australia

Inquest into the death of Eileen Cook 1/2013

Eileen Cook died from causes including hospital acquired pneumonia, multiple organ dysfunction and small bowel obstruction. The Inquest's focus was on the quality of care she received at South Coast District Hospital (SCDH).

Two sets of blood results from the first day of admission demonstrated dangerously high potassium levels. The deceased also had significant acute renal failure, among other problems. Despite this, Dr Byrne opted for conservative management through intravenous fluid therapy, rather than immediate transfer to a tertiary hospital for surgical management.

A transfer was eventually arranged the next day but delayed seven and a half hours due to higher category patients. The nurses who communicated with the ambulance service had been instructed by Dr Byrne that transfer be "as soon as possible" (a vague arrangement in the Coroner's view). No one saw biochemistry results that further confirmed the deceased was seriously ill. The Coroner found this to be highly unsatisfactory, as it meant the ambulance service was kept in the dark about the deceased's correct prioritisation.

The Coroner determined Dr Byrne misjudged the seriousness of the deceased's condition. "It is unfathomable that [she] was permitted to linger at the SCDH for what effectively was all of the following day when clearly [she] required...immediate transfer...to a facility that could provide appropriate care."

The Coroner found it difficult to provide recommendations, as he considered there was an element of irrationality about the deceased's clinical management which was difficult to explain. He did recommend that vague arrangements be eliminated from conversations with the ambulance service.

Commonwealth

6 February 2014 - *Kong v Minister for Health [2014] FCA 34*

Administrative law – judicial review of exercise of Minister’s discretion to personally approve pharmacy to supply pharmaceutical benefits under s 90A of *National Health Act 1953* (Cth) – whether Minister obliged to give the applicants an opportunity to be heard – whether applicants denied procedural fairness – whether applicants have standing – whether Minister misunderstood the meaning of ‘public interest.’

Queensland

20 January 2014 - [Ladhams v Australian Health Practitioner Regulation Agency \[2014\] QCAT 23](#)

Professions and trades - health care professionals - medical practitioners - licences and registration - where the Board took immediate action under Health Practitioner Regulation National Law (Queensland) s 156 and imposed conditions on the registrant’s registration – where the registrant sought a stay of the Board’s decision – whether a stay of the Board’s decision should be granted.

20 September 2014 - [Medical Board of Australia v Doolabh \[2013\] QCAT 704](#).

Health professionals - medical practitioners - disciplinary proceedings - where the Board sought to rely on more than one expert – where Practice Direction No. 4 of 2009 limits the number of experts that may give evidence in each area of expertise unless the Tribunal orders otherwise – whether the Tribunal should order that the Board is otherwise permitted to rely on more than one expert. Health professionals – medical practitioners – disciplinary proceedings – where the parties filed a proposed bundle of documents – where the registrant opposed some documents being included in the agreed bundle of documents – where the parties sought directions from the tribunal on whether the documents in dispute ought be included – whether the documents should be included.

United Kingdom

5 February 2014 - [Blankley v Central Manchester and Manchester Children's University Hospitals National Health Service \(NHS\) Trust \[2014\] EWHC 168](#)

These costs appeals raise the question of whether, where a party loses mental capacity in the course of proceedings, such loss of capacity has the automatic and immediate effect of terminating their solicitor’s retainer.

30 January 2014 - [Murrills v Berlanda \[2014\] EWCA Civ 6](#)

This is an appeal against the order made by His Honour Judge Denyer QC dated 11 February 2013, amended by an order dated 11 June 2013, striking out the claim as against Dr Maurizio Berlanda, the First Defendant to the claim, on the ground that the claim form had not been validly served on him, but granting the Claimant (the Appellant before us) permission to appeal. The Second Defendant, the Belvedere Medical Group Ltd, is in liquidation and played no part in the appeal or in the proceedings below.

COMMENTARY

Australian Professional Indemnity Blog

3 February 2014 - [Western Australia \(WA\) disciplinary tribunal says its misconduct for a doctor passing a crash not to stop and offer assistance.](#)

Eleven and a half years after a 2002 car accident south of Port Headland a radiologist has been found guilty of the Westralians’ version of professional misconduct ("improper professional conduct") but not of conduct which peers would regard as disgraceful or dishonourable, for failing to render medical assistance. The decision is [Medical Board of Australia v Dekker \[2013\] WASAT 182](#). It makes a bold assertion of general application without identifying or discussing any authority about the factual scenario in question, which must surely occur regularly all over the world and — one would have thought — be much pondered.

Airedale NHS Trust v Bland - 20 years on

[\(2013\) 21 Tort L Rev 151.](#)

This article reviews the seminal case of *Airedale NHS Trust v Bland* [1993] AC 789 in which the House of Lords permitted withdrawal of life-sustaining treatment from a patient. The article focusses particularly on

extensions to the Bland principle and attempts English law has made to define the term best interests, as based on English case law and legislation from the 20 years following the Bland case. The article argues that assigning a precise meaning to the term "best interests" remains elusive.

LEGISLATION

Commonwealth

31 January 2014 - [Private Health Insurance \(Prostheses\) Rules 2014 \(No. 1\)](#).

30 January 2014 - [Private Health Insurance \(Complying Product\) Amendment Rules 2014 \(No. 1\)](#).

3 December 2013 - [Safety, Rehabilitation and Compensation Act 1988 - Section 97E - Premium Determination Guidelines 2013](#).

Victoria

4 February 2014 - [Health Services Amendment Bill 2014](#). Amends various Acts to achieve three main objectives, namely — (a) broaden the range of health services for which Health Purchasing Victoria performs functions; (b) enable the Minister for Health the power to enter into leases and licences of Crown land in the health portfolio; and (c) restrict the investment powers of certain registered funded agencies.

REPORTS

Australia. Department of Health & Ageing

Media releases

4 February 2014 - [Mental Health Review](#). The Minister for Health Peter Dutton has announced the Terms of Reference for the review of mental health services and programmes

3 February 2014 - [Former Judge to assist ASADA Investigations](#). The Australian Sports Anti-Doping Authority (ASADA) has engaged a former Federal Court Judge to assist with its anti-doping investigations.

Private Health insurance (PHI) Circulars

6 February 2014 - [PHI 11/14 February 2014 Prostheses List](#).

6 February 2014 - [PHI 10/14 Hospital Information](#).

6 February 2014 - [PHI 09/14 Hospital Information](#).

3 February 2014 - [PHI 08/14 Private Health Insurance \(Complying Product\) Amendment Rules 2014 \(No. 1\)](#).

Note - [PHI 07/14 Hospital Information - New Private Hospital](#) has been replaced by PHI 10/14, dated 6 February 2013.

Australia. Health Practitioner Regulation Agency and the boards

4 February 2014 - The Chiropractic Board releases its latest communiqué. [Read More](#).

4 February 2014 - Forums on registration for Aboriginal and Torres Strait Islander Health Practitioners. The Aboriginal and Torres Strait Islander Health Practice Board of Australia invite you to attend its stakeholder forums. [Read More](#).

5 February 2014 - The Osteopathy Board releases its latest communiqué. [Read More](#).

Australia. National Health & Medical Research Council (NHMRC)

7 February 2014 - [NHMRC Research Tracker](#).

Australia. Therapeutic Goods Administration (TGA)

6 February 2014 - [Complementary medicines: Cancellations from the Australian Register of Therapeutic Goods \(ARTG\) following compliance review](#). Cancellation of Trans - B and Premium Shark Cartilage from the ARTG.

6 February 2014 - [Lifelixer - Lifelixer Pty Ltd - Complaint No. 2012-03-026](#). Decision under regulation 9 of the Therapeutic Goods Regulations 1990 in relation to an advertisement about the product "Lifelixer."

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

5 February 2014 - [Australian Therapeutic Goods Advisory Council meeting statement, Meeting 3, 6 August 2013](#). Australian Therapeutic Goods Advisory Council meeting statement.

5 February 2014 - [Advisory Committee on Biologicals \(ACB\)](#). 20 March 2014 meeting cancelled.

4 February 2014 - [Medtronic deep brain stimulation and spinal cord stimulation devices - multiple models](#). Consumers and health professionals are advised that Medtronic Australasia has issued a hazard alert.

4 February 2014 - [Medtronic SynchroMed II implantable infusion pump system](#). Consumers and health professionals are advised that Medtronic Australasia has issued a hazard alert.

4 February 2014 - [Advisory Committee on Medical Devices \(ACMD\)](#). 14 March 2014 meeting cancelled.

4 February 2014 - [Strontium ranelate \(Protos\) and risk of adverse events](#). The TGA is currently undertaking a review of strontium ranelate (Protos) to assess the risk of adverse events including cardiovascular events.

3 February 2014 - [Pilot web service for transmission of adverse event reports from medical software to the Therapeutic Goods Administration](#). The TGA invites medical software vendors to participate in a pilot project.

3 February 2014 - [Medicines Safety Update, Volume 5, Number 1](#). February 2014 edition of the Medicines Safety Update.

31 January 2014 - [Statutory expert committee vacancies](#). Expert advisors are being sought from a range of fields to contribute to the regulation of therapeutic goods in Australia.

31 January 2014 - [Advisory Committee on Prescription Medicines \(ACPM\) meeting statement, Meeting 295, 5-6 December 2013](#). Advisory Committee on Prescription Medicines meeting statement.

Australian Commission on Safety and Quality in Health Care

30 January 2014 - [Workforce immunisation risk matrix](#).

3 February 2014 - [On the Radar – Issue 160 \(166KB\)](#).

Australia. National Mental Health Commission

4 February 2014 - [Review of existing mental health services and programmes: terms of reference](#).

New South Wales (NSW). Ministry of Health

Media Releases

29 January 2014 - [More NSW residents say yes organ donation rates continue to climb](#).

3 February 2014 - [New nurses and midwives start work in NSW hospitals](#).

4 February 2014 - [More nurses and midwives for rural and regional NSW](#).

6 February 2014 - [Minister welcomes graduate nurses and midwives to the Hunter](#).

Policy Directives & Guidelines

31 January 2014 - [Mental health clinical documentation guidelines](#).

6 February 2014 - [Public health workforce surge guidelines](#).

Information Bulletins

6 February 2014 - [NSW nurses and midwives' association annual conference and professional day 2014](#).

Northern Territory (NT). Department of Health

6 February 2014 - **Robyn Lambley - shining a light on our nurses and midwives.** Territorians are being urged to help shine the spotlight on the Territory's top nurses and midwives by nominating them for the NT Nursing and Midwifery Excellence Awards.

Queensland. Department of Health

3 February 2014 - **Health staff target fraud.** The Department of Health has adopted a zero tolerance approach to fraud, misconduct and corruption, to prevent another fake Tahitian Prince scandal as witnessed under the former Labor Government.

South Australia. Department for Health & Ageing

31 January 2014 - **Increased funding for patient assistance transport scheme.**

Tasmania. Department of Health & Human Services

7 February 2014 - **Measles warning.**

6 February 2014 - **Warning on e-cigarettes.**

6 February 2014 - **New organisations to manage public housing.**

4 February 2014 - **BreastScreen Tasmania celebrates 21 years of service.**

3 February 2014 - **Trinity Hill project to deliver homes and jobs.**

3 February 2014 - **Ochre Health General Practitioner (GP) service begins operating on west coast.**

3 February 2014 - **Investing in local communities.**

3 February 2014 - **Tasmanians supported well by human services.**

3 February 2014 - **Report on government services.**

Victoria. Department of Health

February 2014 - **Immunisation newsletter Issue 67.**

7 February 2014 - **Victoria's world-best cardiac survival confirmed** Minister for Health David Davis announced today that a new report confirms Victorians whose hearts stop beating after suffering a cardiac arrest have a greater chance of survival than people almost anywhere else in the world.

31 January 2014 - **Minister Mary Wooldridge and VicHealth CEO team up to take on FebFast.** Victorian Minister for Mental Health Mary Wooldridge and VicHealth CEO Jerril Rechter have joined thousands of Australians who have pledged to go alcohol-free for February.

Western Australia (WA). Department of Health

Media Releases

3 February 2014 - **Esperance health campus one step closer.**

4 February 2014 - **BreastScreen WA launches online booking.**

5 February 2014 - **New Ronald McDonald House supports families.**

Operational Directives (OD)

6 February 2014 - **IC 0178/14** Intellectual Property Management in WA Health. The Circular informs WA health staff of the State government's intellectual property (IP) policy and specific IP management and reporting procedures in WA Health.

5 February 2014 - **IC 0177/14.** The practice code for the use of personal health information provided by the Department of Health (Practice Code) sets out the obligations that are imposed on all users of personal health information provided by the Department of Health and represents the minimum standard of practice to ensure the security and confidentiality of the information.

30 January 2014 - [OD 0491/14](#). National guidelines for the public health management of Pertussis. This Operational Directive outlines the recommendations for the public health management of pertussis cases/outbreaks in Western Australia.

29 January 2014 - [OD 0490/14](#). Public health follow-up of sporadic enteric disease notifications A revised version of the public health follow-up of sporadic enteric disease notifications which is mainly conducted by population health units and OzFoodNet, Department of Health.

New Zealand. Ministry of Health

3 February 2014 - [Gambling resource for local Government](#).

United Kingdom. Department of Health

6 February 2014 - [New government measures to end Female Genital Mutilation \(FGM\)](#).

6 February 2014 - ["Francis Effect" on NHS care one year on from Mid Staffs Inquiry](#).

6 February 2014 - [Wellbeing and health policy](#).

3 February 2014 - [Workforce Equality information 2014](#).

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

5 February 2014 - [HHS funds drug for bioterrorism, antimicrobial-resistant infections](#).

5 February 2014 - [Statement by Health and Human Services Secretary Kathleen Sebelius on CVS Tobacco Announcement](#).

3 February 2014 - [Statement by Secretary Kathleen Sebelius on African American history month](#).

Australian Medical Association (AuMA)

3 February 2014 - [Dr Hambleton, 6PR Perth](#). AuMA President Dr Steve Hambleton talks about superbugs. He outlines the measures taken by Australian hospitals and the precautions individuals can take to reduce the risk of superbugs. (Audio Clip).

British Medical Association (BMA)

6 February 2014 - [BMA backs zero tolerance to FGM](#). The BMA is backing today's United Nations Day of Zero Tolerance to FGM (female genital mutilation).

6 February 2014 - [Doctors urged to lobby MPs on car smoking ban](#). Doctors can use an online action tool to encourage their MPs to back a ban on smoking in cars carrying children.

5 February [Trade disagreements: the transatlantic market and healthcare](#) Negotiations are under way to create a more integrated marketplace to increase trade between the United States of America and the European Union. However, the BMA is warning of possible adverse consequences for healthcare.

5 February 2014 - [Doctors and patients need more choice information](#). Doctors and patients sometimes lack the information or opportunity to enable genuine patient choice, a BMA debate has heard.

31 January 2014 - [Doctors offered guide to drink-drug work risk](#). Doctors can access new BMA guidance to help them better understand and support patients and employers in tackling alcohol and illicit drug use.

Canadian Medical Association (CMA)

4 February 2014 - [CMA targets students, residents with first online leadership course](#).

31 January 2014 - [Specialty status granted to palliative care MDs, may aid recruiting](#).

American Medical Association (AMA)

6 February 2014 - [Residents' top concerns include time with patients, care coordination](#). What are the most important trends and pressing issues facing residents as they begin their medical careers? Residents in a recent survey reported reduced face time with patients, coordinated care and adoption of health IT among the top concerns.

6 February 2014 - **Residents' top concerns include time with patients, care coordination**. What are the most important trends and pressing issues facing residents as they begin their medical careers? Residents in a recent survey reported reduced face time with patients, coordinated care and adoption of health IT among the top concerns.

4 February 2014 - **Medical staff autonomy at stake in state supreme court case**. Physicians are standing their ground Tuesday in oral arguments before the Minnesota Supreme Court for a case that holds in the balance the ability of the state's hospital medical staffs to self-govern and stand up for patient safety.

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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