



HEALTH ALERT

17 DECEMBER 2013

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JUDGMENTS

Commonwealth

9 December 2013 - [Collin v Aspen Pharmacare Australia Pty Ltd \[2013\] FCA 1336](#)
Practice and procedure – Representative proceedings – Application for Court approval of in-principle settlement – *Federal Court of Australia Act 1976* (Cth), s 33V – Whether proposed settlement is fair and reasonable – Approval granted.

6 December 2013 - [Novartis Pharmaceuticals Australia Pty Ltd v Bayer Australia Limited \[No 3\]\[2013\] FCA 1323](#). Practice and procedure - application by respondent to withdraw admissions – relevant factors – interests of justice.

Victoria

6 December 2013 - [Smith v Colac Area Health \[2013\] VCC 1892](#)

The plaintiff, an ambulance officer, was injured when transporting an elderly patient of a nursing home owned by Colac Area Health, the defendant. The patient had become agitated while being transported and tripped the plaintiff.

The plaintiff interrogated the defendant, and asked whether the defendant knew, believed or suspected that the patient suffered from mental impairment or illness, or was likely to behave in an unpredictable, aggressive or defensive manner. The defendant objected to answering on the grounds that the question related to medical records which were privileged and confidential.

The patient had an extensive medical treatment history, and Judge O'Neill inspected the files to determine whether and to what extent medical privilege applied. His Honour found that very few documents were both relevant to the issues in the proceeding and not privileged. These were extracted and produced to the parties.

His Honour concluded that much of the information contained in the patient's files was of a medical nature, "relied upon by medical practitioners to treat or prescribe for the patient." However, the documents extracted contained observations and recommendations of staff relating to the patient's behaviour. As the patient's behaviour was at the centre of the claim, those observations which were not made in a medical context but were made by non-medical persons were not subject to privilege.

His Honour ordered the interrogatory be answered further: while the defendant was not required to answer whether the patient suffered from mental impairment or illness, the question relating to the patient's behaviour was to be further answered.

9 December 2013 - [Inquest into the death of JM COR 2009 004213](#). Death in hospital of 17 year old child from drug overdose.

6 December 2013 - [Inquest into the death of Merrilyn Ireland 2013/2355](#). Death of involuntary psychiatric patient in community care.

Queensland

1 November 2013 - [Li v Medical Board of Australia \(No 2\) \[2013\] QCAT 594](#)

Dr Li appealed the decision of the Board to take immediate action to impose conditions on her registration as a medical practitioner. The Tribunal set aside the Board's decision and removed the conditions. The substantive appeal was resolved between the parties, who consented to orders setting aside the Board's decision. While the proceeding largely concerned the issue of costs, the Tribunal also addressed the substantive issue of the Board's decision.

During Dr Li's specialist training, a report by Ms Young identified a need to improve leadership, organisational skills and communication skills. Dr Li was considered unable to communicate professionally or function independently and safely as a medical practitioner. The report was referred to the Board, which acted upon the opinion of Ms Young and took immediate action. The conditions imposed on Dr Li

prevented her practising clinical medicine and required her to undertake the international english Language testing system english language proficiency test.

The Tribunal found the Board's decision was made despite "considerable evidence to the contrary that [Dr Li] had been able to professionally communicate and function independently and safely." Dr Li had completed an oral examination for specialist registration and evidence before AHPRA supported her competency. The Tribunal stated that the Board failed to properly investigate the matter and noted that "no attention really seems to have been directed to the capacity of Ms Young to express the opinion which she did when taken into consideration with the other views expressed by expert clinicians as to their views."

15 November 2013 - *WD v Medical Board of Australia* [2013] QCAT 614

Health practitioner - medical practitioner - licences and registration - where the Board took immediate action and imposed conditions on the registrant's registration – where the registrant was required to undertake a health assessment, urine drug testing and hair drug testing – where the health assessment found the registrant had an Opioid dependence and met the criteria for cannabis abuse – where the registrant failed to attend for some of the urine tests and provided dilute samples in others – where a hair test had positive results for codeine – where the Board took further immediate action to suspend the registrant's registration – where the registrant sought a review of the Board's decision to suspend her registration – whether the registrant poses a serious risk to public health and safety – whether registrant poses a serious risk to persons – whether immediate action is necessary to protect public health and safety.

1 November 2013 - *Medical Board v Love* [2013] QCAT 608

Health practitioner - medical practitioner - disciplinary proceedings - where the former registrant engaged in a sexual relationship with a patient – where practitioner is no longer registered – where the former registrant did not participate in the proceedings – whether the former registrant has engaged in professional misconduct – whether the former registrant should be prevented from re-applying for registration for a period – whether the Tribunal should impose conditions upon the former registrant re-applying for registration – whether the former registrant should pay the Board's costs in the proceedings.

15 October 2013 - *Lee v Chinese Medicine Board of Australia* [2013] QCAT 609

Health practitioner - chinese medicine practitioner - licences and registration - where the applicant applied for general registration as a Chinese medicine practitioner in the division of Acupuncture – where the Board refused the applicant's application – where the Board's reasons for decision were that the applicant was not eligible for registration as his qualifications did not satisfy section 303(1)(b) of the Health Practitioner Regulation National Law – whether the Board may decide an individual is eligible for general registration in the profession by imposing conditions on the applicant's registration – whether the correct and preferable decision is to grant the applicant's application for general registration.

4 November 2013 - *Azam v Medical Board of Australia* [2013] CQCAT 611

Health practitioner - medical practitioner - licences and registration - where the Board decided to take immediate action and place conditions on the registrant's registration – where the registrant applied to the Board for a review of the conditions – where the Board refused to change or remove the conditions – where the registrant applied for a review of the decision in the Tribunal – where the Board submitted it was necessary for the registrant to demonstrate a material change in the registrant's circumstances before the conditions could be reviewed – whether a review period applies to the conditions on the registrant's registration – whether it has been demonstrate that in all the circumstances the conditions are no longer necessary or appropriate. Practice and procedure – where the Board decided to take immediate action and place conditions on the registrant's registration due to notifications made to the Board – where documents filed in the review application identify persons in respect of whom complaints relate – whether a non-publication order should be made.

25 October 2013 - *Shahinper v Psychology Board of Australia* [2013] QCAT 593

Health practitioner - psychologist - licences and registration - where the Board decided to take immediate action and impose conditions on the registrant's registration – where the registrant sought a review of the Board's decision to impose conditions on his registration – where the parties submitted the proceeding was in the Tribunal's appeal jurisdiction – whether the proceeding is in the Tribunal's appeal jurisdiction or review jurisdiction. Health practitioner - psychologist - licences and registration - where the Board received

notifications alleging the registrant had engaged in sexual relationships with two patients – where the Board decided to take immediate action and impose conditions on the registrant's registration – where the conditions imposed prevented the registrant from treating female patients – where the registrant sought a review of the Board's decision to impose conditions on his registration– whether the registrant poses a serious risk to persons – whether immediate action is necessary to protect public health and safety.

5 November 2013 - [Li v Medical Board of Australia \(No 1\) \[2013\] QCAT 595](#)
Health practitioner - medical practitioner - licences and registration - where a communication report concluded that the registrant was unable to professionally communicate and function independently and safely as a medical practitioner – where the registrant had recently passed the oral examination for registration with the Royal Australian and New Zealand College of Obstetrics and Gynaecology – where the registrant had previously satisfied the requirement of the Board's English Language Skills Registration Standard – where the Board decided to take immediate action and impose conditions on the registrant's registration – where the conditions on registration prevented the registrant from performing clinical work until the registrant passed an English language proficiency test – where the registrant sought a review of the Board's decision to impose the conditions – where professional colleagues provided letters attesting to the registrant's ability to communicate competently – where the registrant had previously passed the English language proficiency test – where the parties agreed at that hearing that it should be ordered by consent the decision of the Board be set aside – where the registrant sought an order for costs – whether it is appropriate in this proceeding that the registrant receive their costs.

United Kingdom

11 December 2013 - [Nyang v G4S Care & Justice Services Ltd \[2013\] EWHC 3946 \(QB\)](#). Amadou Nyang is a national of Gambia. In January 2008, he was being detained at Tinsley House, an immigration removal centre, prior to being returned to Gambia. At approximately 16.47 on 30 January 2008, Mr Nyang ran head first into a concrete wall. He suffered catastrophic injuries. He broke his spine. He is now tetraplegic and dependent on others for all the activities of daily living.

LEGISLATION

Commonwealth

12 December 2013 - [Private Health Insurance Legislation Amendment Bill 2013](#).

12 December 2013 - [Therapeutic Goods Amendment \(2013 Measures No. 1\) Bill 2013](#).

Victoria

10 December 2013 - [Assisted Reproductive Treatment Further Amendment Bill 2013](#).

REPORTS

Australia. Department of Health & Ageing

Media releases

10 December 2013 - [Early childhood key to lifelong health for indigenous Australians – report](#)
The Assistant Minister for Health, Senator Fiona Nash, has commended the Australian Medical Association for the publication of the 2012-13 Indigenous Health Report Card.

10 December 2013 - [Launch of the indigenous health report card 2012-13 "The healthy early years – Getting the right start to life"](#) The Assistant Minister for Health, Senator Fiona Nash, delivered a speech at the launch of the Indigenous health report card 2012-13 "The healthy early years – getting the right start to life."

11 December 2013 - [Regional centres gain breast care nurses](#). Thirteen regional centres across Australia will soon have specialist McGrath breast care nurses funded by the Australian Government.

12 December 2013 - [Tribute to paralympic President](#). The Minister for Sport, Peter Dutton, paid tribute to Greg Hartung OAM who is retiring after 16 years as the President of the Australian Paralympic Committee.

13 December 2013 - [Community awareness grants awarded to support DonateLife Week 2014](#). Assistant Minister for Health Senator Fiona Nash has announced \$463,000 in Community Awareness Grants which will enable 15 organisations to contribute to the national DonateLife community education campaign.

Private Health insurance Circulars (PHI)

9 December 2013 - [PHI 84/13 Public hospital information name change - SA](#).

Australia. Health Practitioner Regulation Agency and the boards

12 December 2013 - The Medical Board of Australia and the Australian Medical Council have released a fourth newsletter regarding the development of the national intern training framework. [Read More](#).

11 December 2013 - The Medical Radiation Practice Board of Australia has released its latest communiqué. [Read More](#).

11 December 2013 - The Occupational Therapy Board of Australia releases its latest communiqué. [Read More](#).

10 December 2013 - The Chiropractic Board of Australia releases its latest newsletter. [Read More](#).

9 December 2013 - The Osteopathy Board releases its latest communiqué. [Read More](#).

9 December 2013 - Information session for medical radiation Practice on national registration. The medical radiation practice board has published a presentation with voiceover for those who were unable to attend the recent information sessions. [Read More](#).

6 December 2013 - The Nursing and Midwifery Board of Australia has today released a research report on professional indemnity (PII) insurance for midwives. [Read More](#).

6 December 2013 - The Board has published its policy on considering invitations to attend events. [Read More](#).

6 December 2013 - The Podiatry Board of Australia releases its latest communiqué. [Read More](#).

6 December 2013 - The Psychology Board of Australia releases its latest communiqué. [Read More](#).

Australia. Therapeutic Goods Administration (TGA)

13 December 2013 - [Children's Panadol one to five years suspension](#). Updated information to advise the two affected batches both have an expiry date of 31 March 2015.

13 December 2013 - [Orphan drugs](#). Added Drisapersen.

12 December 2013 - E2B reports: frequently asked questions. The TGA has developed frequently asked questions on E2B reports for sponsors and manufacturers.

12 December 2013 - [Frequently asked questions about filling in the adverse event reporting form](#): Information on completing the adverse event report including answers to frequently asked questions for each section of the report.

11 December 2013 - [Dextropropoxyphene - questions and answers](#). Questions and answers on pain-killers containing dextropropoxyphene.

11 December 2013 - [LOVher capsules](#). LOVher capsules pose a serious risk to your health and should not be taken.

10 December 2013 - [Invacare power wheelchairs](#). Updated information on the recall for product correction - potential for reduced speed and unintended acceleration.

6 December 2013 - [Alanylglutamine: Draft compositional guideline](#). The TGA is seeking comments from interested parties on the "Draft compositional guideline for alanylglutamine." Closing date: 17 January 2014.

6 December 2013 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#). Added Lisdexamfetamine dimesilate, Fentanyl citrate and Romidepsin.

Australian Institute of Health & Welfare

9 December 2013 - [Developing client-based analyses for reporting on the alcohol and other drug treatment services](#).

10 December 2013 - [Youth detention population in Australia 2013](#) | [media release](#).

12 December 2013 - [Adoptions Australia 2012–13 media release](#).

Australian Commission on Safety and Quality in Health Care

9 December 2013 - [On the Radar – Issue 156 \(84KB\)](#).

Australia. Private Health Insurance Administration Council

11 December 2013 - [Reporting for changed capital adequacy and solvency standard](#). Invitation to comment and reporting requirements.

Australia. National Mental Health Commission

11 December 2013 - [Australians invited to join call for an end to seclusion and restraint of children and adults with mental health problems](#).

Australian Capital Territory. Health Directorate

11 December 2013 - [Centenary Hospital for women and children marks milestone for health system](#).

New South Wales (NSW). Ministry of Health

Media Releases

9 December 2013 - [NSW Health warning not to approach injured bats](#).

Policy Directives & Guidelines

6 December 2013 - [Burials - Exemptions from Public Health Regulation 2012 for community and religious reasons](#) PD2013_048.

9 December 2013 - [Recognition and management of patients who are clinically deteriorating](#) PD2013_049.

9 December 2013 - [Guidance on burying a body on private land - Public Health Regulation 2012](#) GL2013_016.

Information Bulletins

13 December 2013 - [Red tape reduction initiative - New reporting requirements](#) IB2013_065.

11 December 2013 - [Alprazolam up-scheduling to schedule 8](#) IB2013_064.

10 December 2013 - [Tenecteplase replacement in public hospitals for ambulance paramedics](#) IB2013_063.

10 December 2013 - [Notification of obsolete policy directive - PD2010_012](#) IB2013_062.

9 December 2013 - [Oral health fee for service schedule of fees for 2014](#) IB2013_06.

9 December 2013 - [Advertising of personal injury services by lawyers in hospitals](#) IB2013_060.

9 December 2013 - [Responsibilities of medical officers with regards to drivers](#) IB2013_059.

Northern Territory. Department of Health

5 December 2013 - [Synthetic drug warning as three men hospitalised](#).

10 December 2013 - [Ross River virus warning](#).

11 December 2013 - [Final push to banish dengue mozzies from tenant](#).

Queensland. Department of Health

12 December 2013 - [Choose Queensland produce for a healthier, happier, festive season](#).

10 December 2013 - [Don't be a fire fool this Christmas.](#)

10 December 2013 - [Lasting legacy for her Majesty's Diamond Jubilee.](#)

10 December 2013 - [Midwifery services in metro south.](#)

9 December 2013 - [Central Queensland plugs into new technology.](#)

6 December 2013 - [Clinical services to remain in-house at Sunshine Coast public university hospital.](#)

South Australia. Department for Health & Ageing

10 December 2013 - Further crackdown on synthetic drugs. [Read more.](#)

11 December 2013 - New disability respite facility for Kangaroo Island. [Read more.](#)

Victoria. Department of Health

11 December 2013 - [Laws to help donor-conceived Victorians learn about their heritage.](#) Victorians conceived through donor sperm donated before 1988 will soon be able to access information about their donors with new laws bring them another step closer today.

10 December 2013 - [Victoria's 8600 public hospital doctors to enjoy pre-Christmas pay rise.](#) Doctors in Victorian public hospitals will enjoy a pre-Christmas pay rise following the successful negotiation of an enterprise bargaining agreement, Minister for Health David Davis said today.

9 December 2013 - [More money for paramedics this Christmas.](#) Paramedics and their families would have more money in their pockets this Christmas under Ambulance Victoria's generous wage offer, Minister for Health David Davis said today.

8 December 2013 - [Contract announced for new Monash children's hospital.](#) The tender to build another world-class children's hospital in Melbourne at the Monash Medical Centre has been awarded to construction company Baulderstone Pty Ltd, Minister for Health David Davis said today.

7 December 2013 - [Cranes come down at Box Hill hospital.](#) The last crane building the Victorian Coalition Government's \$447.5 million Box Hill hospital redevelopment was today dismantled marking yet another major milestone for the project.

7 December 2013 - [Government introducing serious criminal penalties for synthetic drug "Marley."](#) A synthetic cannabinoid sold under the name "Marley" will be listed as a Schedule 11 drug of dependence following five hospitalisations attributed to the drug over the past week.

Western Australia (WA). Department of Health

Media Releases

10 December 2013 - [Virtual Education \(ED\) expands in regional WA.](#)

Operational Directives (OD)

11 December 2013 - [OD 0480/13.](#) ICT Risk Management Policy management procedures are mandatory for all components of the ICT information system lifecycle in WA Health. Given the critical role of ICT across all business areas within WA Health this places great onus on all ICT groups to identify risks, manage risks and develop continuity plans where appropriate. The ICT Risk Management Policy has been updated to enforce awareness of the importance of appropriate risk management processes

11 December 2013 - [OD 0481/13.](#) Computer software intellectual property rights policy intellectual Property (IP) is a term used to describe the results of intellectual activity and creative effort. Intellectual property assets are intangible, and their economic value exists largely in the set of exclusive rights that an owner has in the asset. The computer software intellectual property rights policy reminds WA Health ICT staff they must respect and manage intellectual property.

12 December 2013 - [IC 0173/13](#) Perinatal death transport arrangements outlines the handling and transport of all perinatal deaths.

New Zealand. Ministry of Health

- 12 December 2013 - [Health survey 2012–13.](#)
- 11 December 2013 - [Review of disability support services.](#)

United Kingdom. Department of Health

- 6 December 2013 - [Jeremy Hunt: message to National Health Service \(NHS\) staff.](#)
- 11 December 2013 - [G8 dementia: PM calls for UK to lead world in research.](#)
- 11 December 2013 - [Introduction to the dementia summit.](#)
- 11 December 2013 - [G8 dementia summit.](#)
- 11 December 2013 - [UK calls on world to tackle global crisis of dementia.](#)
- 11 December 2013 - [NHS failed families of babies who died at Furness hospital, inquiry says.](#)
- 12 December 2013 - [Mental health: measuring progress against the strategy.](#)

United States of America. Department of Health & Human Services

- December 12 2013 - [Administration takes steps to ensure Americans signing up through the Marketplace have coverage and access to the care they need on January 1.](#)
- December 11 2013 - [Health centers to help uninsured Americans gain affordable health insurance coverage.](#)
- December 11 2013 - [Nearly 365,000 Americans selected plans in the Health Insurance Marketplace in October and November.](#)

Australian Medical Association (AuMA)

- 12 December 2013 - [AuMA urges food Ministers to stick by health star rating system.](#)
- 12 December 2013 - [AuMA supports new scientific evidence-based resource to promote immunisation.](#)
- 11 December 2013 - [New app to promote lifesaving and lifelong benefits of immunisation.](#)
- 10 December 2013 - [Dr Hambleton, launch of AuMA Indigenous Report Card, Parliament House.](#)
- 10 December 2013 - [Action needed to give Indigenous children a healthier start to life.](#)

British Medical Association (BMA)

- 12 December 2013 - [Care before queues, says BMA.](#) The BMA has called for quality of patient care and clinical priorities to be put above waiting times.
- 12 December 2013 - [GP investigators must offer support, says BMA.](#) The new inspection regime for GP practices must offer the necessary support for improvement and providing the best possible care, the BMA said.
- 10 December 2013 - [Mental health checks must protect patients.](#) An overhaul to mental health service inspections must not be a "box-ticking" exercise and should ensure active engagement between patients and doctors, the BMA said.
- 10 December 2013 - [Call for "radical reform" of health boards.](#) The outgoing public services ombudsman for Wales has said the country's NHS needs greater scrutiny.
- 9 December 2013 - ["Perverse outcomes" prompt NHS targets rethink.](#) Doctors leaders have welcomed a review of NHS targets amid claims they may not always promote the best outcomes for patients.

Canadian Medical Association

- 9 December 2013 - [MDs sought for "innovative" program for health care leaders.](#)
- 12 December 2013 - [Spectre of unemployment dogging new orthopedic surgeons, Canadian Orthopedic Association says.](#)

American Medical Association (AMA)

12 December 2013 - **AMA continues push for payment updates in SGR repeal bills moving in Congress.** As legislation to eliminate Medicare's SGR formula advances in Congress, the AMA continues to urge lawmakers to include positive payment updates in the final legislation. "Reliable payment updates are essential to supporting physician practice investments and advancing health system innovation that will improve care for patients."

12 December 2013 - **Congressional support for SGR repeal builds as bills pass out of Senate, House committees.** The House and Senate committees on Thursday finished considering their draft legislation to repeal Medicare's failed SGR formula that has caused more than a decade of instability for physicians and patients. The U.S. House Ways and Means Committee concluded consideration of its version of the bill in a morning vote, passing it to 39 to 0."

12 December 2013 - **U.S., Canadian medical leaders formalize reciprocal accreditation.** In a landmark agreement signed Thursday, the accrediting bodies of U.S. and Canadian medical schools took an important step in advancing their commitment to shared quality standards in medical education. Building on more than 50 years of close work between the Liaison Committee on Medical Education (LCME) and the Committee on Accreditation of Canadian Medical Schools (CACMS), the agreement formalizes their partnership to ensure medical school graduates in the United States and Canada meet their respective countries' standards and are prepared for the next phase of their medical training.

12 December 2013 - **Medical errors curtailed through patient handoff program,** study finds Resident physicians can reduce the number of medical errors and preventable adverse events in the hospital by implementing more robust and efficient patient handoff protocols, suggests a study in the Dec. 4 issue of the Journal of the American Medical Association (JAMA). The study involved 84 resident physicians at Boston children's hospital.

10 December 2013 - **U.S. Supreme Court could take up medical board patient safety case.** Physicians are urging the highest court of the land to re-evaluate a case ruling that could have dramatic repercussions for patients and physicians alike. In a petition filed Nov. 27, the Litigation Center of the AMA and State medical societies and other medical groups urged the Supreme Court of the U.S. to consider a case in which the federal government is interfering with the states' licensure boards.

10 December 2013 - **Decrease bloodstream infections: New toolkit can help.** A new toolkit can help physicians and their organizations implement best practices to prevent central line-associated bloodstream infections. Developed by the Joint Commission, Joint Commission Resources and Joint Commission International, this toolkit can aid health care organizations in reducing these preventable infections that threaten lives and increase health care costs.

9 December 2013 - **Best practices adopted by state legislators to combat opioid abuse and diversion** policy framework to help physicians combat this public health epidemic. The AMA throughout the year has provided comments and testimony as the National Conference of Insurance Legislators (NCOIL) developed the best practices, which focus on physician prescribing practices, prescription drug monitoring programs, education and outreach, and treatment and prevention.

6 December 2013 - **HOPE for HIV-positive patients in need of transplants.** As tens of thousands of patients await organ transplants—some never to receive them—a new federal law should increase the organ transplant pool for patients who are HIV positive. The bipartisan *HIV Organ Policy Equity* (HOPE) Act, signed into law Nov. 21, repeals the federal ban on research into organ donations from HIV - positive recipients.

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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