



HEALTH ALERT

22 JULY 2013

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JUDGMENTS

New South Wales

[Peters v Layani \[2013\] NSWSC 695](#)

The Plaintiff brought an action against the Defendant doctor for negligently performing a laparoscopic procedure to repair a right hernia. The Defendant stapled internal mesh around the ilioinguinal and genitofemoral nerves causing entrapment of the nerves, resulting in extreme pain and associated problems, including right thigh parathesia, lower abdominal pain and movement restriction in the right leg.

The Defendant did not file an appearance, and the Plaintiff received judgement by default. The case before the court therefore concerned an assessment of damages.

The court held that causation was established and the hospital was liable. The Defendant's actions caused the Plaintiff to experience extreme pain in the lower abdominal area when performing most activities, and restricted his range of movement. The Plaintiff's ability to work and perform many functions he otherwise would have been capable of doing was significantly reduced.

The Plaintiff's damages were assessed under the *Civil Liability Act 2003*. He received general damages, past and future economic loss, past and future domestic assistance, in addition to past and future out of pocket expenses. The total damages awarded against the hospital was \$1,105,705.00.

The case highlighted the need for hospitals to take seriously actions launched against them; the hospital's failure to file an appearance allowed the Plaintiff to make significant claims against it in relation to damages, which the Defendant was unable to refute.

New Zealand

[B v Waitemata District Health Board \[2013\] NZHC 1702](#)

Two former psychiatric patients and a psychiatric nurse challenged the policy of the Waitemata District Health Board to prohibit smoking in its hospitals and surrounding grounds. The applicants argued that the policy was illegal because it was inconsistent with the Board's controlling legislation and the *Bill of Rights Act 1990*. They sought a declaration that the decision to impose a smoke-free policy was invalid and had no effect.

The Board implemented the smoke-free environment policy in 2009, requiring that employees, patients and members of the public are protected from tobacco smoke in the workplace. The policy determined that all sites are smoke-free, that smoking is not permitted inside buildings, and staff, patients and visitors may not smoke in external areas. Smokers were required to leave Board premises if they wished to smoke. The applicants did not suggest that there was a "right" to smoke, but that the ban was cruel and unfair to smokers, particularly involuntary psychiatric patients and bedridden general patients.

Judge Asher dismissed the application on the grounds that Health Boards have power to implement non-smoking policies to protect patients, staff and visitors, and to promote the cessation of smoking. Judge Asher found that there was no discrimination on the grounds of psychiatric illness or disability, as the policy applied equally to all patients, staff and visitors, and nicotine dependence from smoking is not a disability. In addition, there were no breaches of other human rights, including the right to be subject to torture and cruel treatment.

United Kingdom

[Johnson & Anor v Nursing and Midwifering Council \[2013\] EWHC 2140.](#)

Legislation

Commonwealth

[National Health \(Subsection 84C\(7\)\) Amendment Determination 2013 \(No. 1\).](#)

Reports

Australia. Department of Health & Ageing

Media releases

17 July 2013 - **Federal Government saves home care for 3500 seniors**. The Australian Government has stepped in to save home care services for Northside locals.

17 July 2013 - **Minister thanks family doctors**. The Minister for Health, Tanya Plibersek, has thanked Australia's family doctors for their vital contribution to the good health of the nation.

17 July 2013 - **Minister thanks Meals on Wheels volunteers during visit to 103 year old Brisbane lady**. Every year, more than 14 million Meals on Wheels are delivered by about 80,000 volunteers to more than 60,000 recipients Australia wide, in cities, regional and rural areas.

17 July 2013 - **Organ donation on rise in Queensland**. Parliamentary Secretary for Health and Ageing, Shayne Neumann, has acknowledged the generosity of Queenslanders for their contribution to Australia's growth in organ donation and transplantation outcomes.

17 July 2013 - **Pathology and diagnostic imaging results to be added to eHealth records**. Patients will soon be able to have pathology and diagnostic imaging results uploaded to their eHealth records thanks to an \$8 million Australian Government investment.

16 July 2013 - **Aboriginal and Torres Strait Islander kids get up and grow**. New resources that promote healthy food and physical activity for Aboriginal and Torres Strait Islander kids will be distributed to assist childcare workers, families and carers.

16 July 2013 - **Aboriginal men heed the call for better health**. About 120 Aboriginal men from across Australia have joined together at a national summit to identify ways to improve the health for Aboriginal and Torres Strait Islander males in remote communities.

16 July 2013 - **Gladstone region residents urged to "Go general practitioner not emergency department"**. Gladstone, Boyne Island and Tannum Sands residents will no longer have to attend the Gladstone hospital emergency department for after hours care as three general practices in the region now provide permanent general practitioner (GP) after hours care.

15 July 2013 - **National stroke campaign: fast response saves lives**. The Minister for Health, Tanya Plibersek, has announced \$2 million for a national stroke campaign that shows people how to recognise signs of stroke and stresses the importance of responding to them fast.

14 July 2013 - **Prostate cancer specialist nurses receive additional support**. The Minister for Health, Tanya Plibersek, has announced \$7 million in Federal Government funding to help expand and extend the national Prostate Cancer Specialists Nursing Program.

12 July 2013 - **Government extends funding for home and community care assessments**. Older Australians will continue to be assessed for care services, such as meals and personal care, in the lead up to the introduction of the new Commonwealth home support program.

Private Health Insurance Circulars

18 July 2013 - **PHI 44/13 Closure of private (same day) hospital information**.

18 July 2013 - PHI 43/13 To be released next week.

18 July 2013 - **PHI 42/13 Revoke of private (same day) hospital information**.

8 - 21 June 2013 - **Australian influenza surveillance report no.1, 2013**.

Review of Australian government health workforce programs

12 July 2013 - **Important information about 1 August 2013 changes under the living longer living better aged care reform package**.

Australia. Parliament. Senate. Community Affairs References Committee

First report: Involuntary or coerced sterilisation of people with disabilities in Australia.

Australia. National Health & Medical Research Council (NHMRC)

17 July 2013 - **Seeking "big ideas for action" from NHMRC research translation faculty members**.

19 July 2013 - [NHMRC research tracker - special edition](#).

12 July 2013 - [NHMRC research tracker](#).

Australia. Therapeutic Goods Administration (TGA)

19 July 2013 - [Submissions received: Proposed amendments to the new regulatory framework for in vitro diagnostic medical devices \(IVDs\)](#). Submissions received in response to the TGA consultation on proposed amendments to the new regulatory framework for IVDs.

18 July 2013 - [Medtronic synchroMed II and synchroMed EL implantable infusion pumps](#). Consumers and health professionals are advised that medtronic Australasia, in consultation with the TGA, has initiated a recall for product correction for its medtronic synchroMed II and synchroMed EL implantable infusion pumps.

17 July 2013 - [Urinary tract support - Health world limited - Complaint No. 2010/12/013: Update](#). The update regarding the Administrative Appeals Tribunal decision of 7 June 2013 and clarifying the date of the initial decision.

16 July 2013 - [Drug regulators from the heads of agencies consortium meet in Canberra, 20-22 May 2013](#). Meeting of the Consortium generic medicines group to advance worksharing efforts in the review of generic drugs.

16 July 2013 - [Plexus slim accelerator capsules and plexus slim accelerator 3 day trial pack](#) pack pose a serious risk to your health and should not be taken.

16 July 2013 - [Viaplus gold capsules](#) pose a serious risk to your health and should not be taken.

16 July 2013 - [Majestic slim perfect capsules](#) pose a serious risk to your health and should not be taken.

16 July 2013 - [Medtronic miniMed insulin reservoirs \(MMT-326A and MMT-332A models\)](#). Consumers and health professionals are advised that Medtronic Australasia, in consultation with the TGA, is recalling certain batches of its medtronic miniMed insulin reservoirs.

15 July 2013 - [Compositional guidelines](#). Added hesperidin to current compositional guidelines.

15 July 2013 - [Hesperidin: Proposed revision of the draft compositional guideline](#). Added submissions received and TGA response.

15 July 2013 - [Consulta Cardiac Resynchronization Therapy Pacemaker](#). Health professionals and consumers are advised that Medtronic Australasia, in consultation with the TGA, is issuing a hazard alert for its consulta cardiac resynchronization therapy pacemaker (CRT-P).

Australia. National Mental Health Commission

19 July 2013 - [Commission welcomes national seclusion data](#).

Australia. National E-Health Transition Authority

[Pathology and diagnostic imaging results to be added to eHealth records](#).

Australian Commission on Safety & Quality in Health Care

[Australian one health antimicrobial resistance colloquium background paper](#).

15 July 2013 - [On the radar – Issue 135](#).

Australian Institute of Health & Welfare

18 July 2013 - [Diabetes expenditure in Australia 2008-09 - media release](#).

19 July 2013 - [Use of restrictive practices during admitted patient care - media release](#).

16 July 2013 - [Aboriginal and Torres Strait Islander health performance framework 2012: detail analysis](#).

15 July 2013 - [Taking the next steps: identification of Aboriginal and Torres Strait Islander status in general practice](#).

Australia. National Blood Authority (NBA)

15 July 2013 - Imported plasma and recombinant products future arrangements - now available: Request for information and stakeholder consultation paper to inform NBA's decision to extend the current suite. | [Read article](#).

Australian Health Practitioner Regulation Agency (AHPRA)

16 July 2013 - The 2013/14 business plan was released this week. It identifies AHPRA's goals for the next year, explains the reasons they are attainable, and includes a plan for reaching them. | [Read article](#).

15 July 2013 - The chiropractic Board of Australia releases its latest communiqué. | [Read article](#).

15 July 2013 - The dental Board of Australia releases its latest communiqué. | [Read article](#).

15 July 2013 - The medical Board of Australia and Australian Medical Council have released a second newsletter regarding the development of the national intern training framework. | [Read article](#).

18 July 2013 - The nursing and midwifery Board of Australia has published its June communiqué. | [Read article](#).

18 July 2013 - The optometry Board of Australia releases its latest communiqué. | [Read article](#).

12 July 2013 - The physiotherapy Board releases its latest newsletter. | [Read article](#).

12 July 2013 - Binational project to develop shared entry-level qualifying statements for the physiotherapy profession - response to questions dated 11 July 2013. Please note the extended time frame for the project. | [Read article](#).

15 July 2013 - The Podiatry Board of Australia releases its latest communiqué. | [Read article](#).

15 July 2013 - The Psychology Board of Australia releases its latest communiqué. | [Read article](#).

Australian Capital Territory (ACT). Health Directorate

17 July 2013 - [Influenza report](#). As at 28 June 2013, influenza activity in the ACT remains at low levels and is stable.

[Chronic conditions strategy 2013 - 2018](#). The ACT chronic conditions strategy 2013 - 2018 sets a direction for the care and support of those living with chronic conditions in the ACT over the next five years. Although the ACT enjoys good health compared to the rest of Australia, the prevalence of chronic conditions is increasing significantly and currently accounts for nearly 80% of the total burden of disease and injury in the ACT.

[Local hospital network service level agreement 2013- 2014](#). The service level agreement between the ACT Health Minister and the Director-General of the ACT local hospital network directorate and HD, sets out key accountabilities for the ACT Public hospital services in 2012-2013.

New South Wales (NSW). Ministry of Health

Media releases

17 July 2013 - [Improvements in elective surgery a "significant achievement": NSW Auditor-General](#).

16 July 2013 - [Tender awarded for Yamba community health centre](#).

[2013 Medical devices fund grant recipients](#).

[Reform plan for aeromedical \(rotary wing\) retrieval services in NSW](#).

[Advance planning for quality care at end of life - Action plan 2013–2018](#).

Policy directives

17 July 2013 - [Ambulance service charges PD2013_020](#).

17 July 2013 - [NSW newborn & paediatric emergency transport services \(NETS\) charges PD2013_019](#)

15 July 2013 - [Health Services Act 1997 - Scale of Fees for Hospital and Other Services PD2013_018](#).

15 July 2013 - [Lifetime care and support scheme \(LTCS Scheme\) - Charging policy and rates for designated units PD2013_017](#).

12 July 2013 - [Brain injury rehabilitation program \(BIRP\) - Fees policy and schedule of fees PD2013_016](#).

12 July 2013 - [Clinical placements in NSW health PD2013_015](#).

New South Wales. Audit Office

17 Jul 2013 - [Operating theatres can perform more elective surgery](#). "Thousands more people could be operated on in the NSW public health system if operating theatres ran more efficiently," said Mr Achterstraat. "Waiting times for elective surgery will continue to increase if NSW Health does not improve its management of operating theatres," he added. | [Read article](#).

Queensland (QLD). Department of Health

Media releases

19 July 2013 - [Health Minister opens inala centre of excellence in Indigenous health](#). Health Minister Lawrence Springborg has officially opened a new \$7 million Centre of Excellence in Indigenous Health at Inala, ensuring better access to health services for the Aboriginal and Torres Strait Islander community.

17 July 2013 - [Children's hospital wins prestigious design award](#). The architects behind the Queensland children's hospital have received the prestigious future health project award in the 2013 design and health international academy awards.

17 July 2013 - [Springborg issues State of Origin challenge to Rudd](#). Prime Minister Kevin Rudd has been issued a State of Origin challenge - to reinstate \$103 million in federal health funding ripped from Queensland hospitals by his fellow Queensland Labor MP Wayne Swan.

16 July 2013 - [Rudd called out over any cuts to Queensland Health](#). Health Minister Lawrence Springborg wants Queensland Health quarantined from another round of Commonwealth cuts inspired by the political failings of another Labor Prime Minister.

12 July 2013 - [Minister reveals union's role in 'private practice' fiasco; Announces schedule for change](#). The \$800 million implosion of Labor's costly "private practice" scheme began within 12 months of a restructure in 2006, according to an internal report commissioned by the former Government and released today by Health Minister Lawrence Springborg.

South Australia. Department for Health & Aged Care

Media releases

18 July 13 - [Millicent GP agreement finalised](#).

17 July 13 - [GP services at Noarlunga GP plus super clinic](#).

12 July 13 - [Seniors community grants available](#).

Tasmania. Department of Health and Human Services

18 July 2013 - [Patient transport assistance scheme](#).

Victoria. Department of Health

Media releases

17 July 2013 - [A healthy future for Aboriginal and Torres Strait Islander people – Victoria leads the way](#). Melbourne will host a national Aboriginal and Torres Strait Islander health summit tomorrow, bringing together countryside leaders from Aboriginal community health organisations and government agencies to share best practice and help plan a better future for Indigenous people, Health Minister David Davis said today.

17 July 2013 - **Frankston Hospital expansion a boost for south east.** Expansions to the Frankston Hospital emergency department will significantly improve acute services to the south eastern suburbs with Premier Denis Napthine visiting the hospital to celebrate the beginning of construction works today.

17 July 2013 - **Boost to hospital beds to meet demand.** Twenty extra hospital beds are being opened at the Monash Medical Centre and Dandenong hospital to help the flow of patients through the emergency departments during winter, Health Minister David Davis announced today.

16 July 2013 - **Grants open for youth mental health support.** A new round of grants are available for groups and organisations to support and promote mental health initiatives for gay, lesbian, bisexual, transgender and intersex young people in local communities.

July 2013 - **Primary care partnerships : partnership reporting for 2013.**

15 July 2013 - **Update: Middle East respiratory syndrome coronavirus (MERS-CoV).**

Proposed Health Services (Private Hospitals and Day Procedure Centres) Regulations 2013.

The Department of Health advises that the guidelines for portable toilet systems, 1989 (the guidelines) have been withdrawn.

Adolescent diphtheria tetanus and pertussis (whooping cough) information and consent form.

Western Australia. Department of Health

Media releases

17 July 2013 - **Householders warned against carbon monoxide risk.**

16 July 2013 - **Study finds no evidence of adverse health effects following 2001 Bellevue fire.**

New Zealand. Ministry of Health

15 July 2013 - **Report on the performance of general practices in Whānau Ora Collectives as at March 2013.**

5 July 2013 - **Rural agricultural drinking water supply guideline: Draft for consultation.**

United Kingdom. Department of Health

Jon Rouse welcomes care and support funding consultation.

New fairer capped funding system to help everyone plan for the cost of care.

Government accepts fertility and tissue regulators review.

Oral statement – Sir Bruce Keogh review.

Jeremy Hunt sets out plans to tackle mediocrity and inadequate leadership in the national health scheme.

Overhaul of end of life care system.

People with learning disabilities still face unacceptable inequalities in healthcare.

Consultation on standardised packaging of tobacco products.

Review of human fertilisation & embryology authority and human tissue authority.

United States of America. Department of Health & Human Services

Surgeon who discriminated against HIV positive patient loses federal funding - Health and human services (HHS) office of civil rights director Leon Rodriguez announced the termination of medicaid funding to a California surgeon who intentionally discriminated against an HIV-positive patient by refusing to perform much needed back surgery. An order, issued by the HHS departmental appeals board, concluded that the surgeon violated Section 504 of the *Rehabilitation Act of 1973*, which prohibits disability discrimination by health care providers who receive federal funds.

States prepare for seamless exchange of health records after disasters - As part of an effort to help make sure their residents' health information is available after a hurricane or other wide-spread disaster, four Gulf states have partnered with six states in the East and Midwest to help patients and providers access critical health information when they are unable to visit their regular doctors or hospitals.

Australian Medical Association (AMA)

GP training placements must be increased - AMA.

Treasury must take the rap for the cap.

Axe the pharmaceutical benefits scheme authority system.

AMA releases health policy platform.

AMA calls for proper indexation of Medicare patient rebates.

AMA urges Government to scrap the cap.

Family doctors are highly trained and highly skilled.

British Medical Association (BMA)

17 July 2013 - **Medical students complete national prescribing test pilot.** A national test of prescribing skills has moved a step closer with the completion of an online pilot.

16 July 2013 - **Clinical supervision failure prompts transfer of paediatric trainees.** Junior doctors leaders have praised trainees who raised concerns about their clinical supervision.

16 July 2013 - **Decision date set for opt-out organ donation.** A decision on organ donation in Northern Ireland is set to be made next year. Health, social service.

15 July 2013 - **Personalised care to replace controversial end-of-life pathway.** Doctors will be expected to sign off personalised end-of-life care plans under an overhaul of care.

12 July 2013 - **NHS indemnity for doctors during shadowing.** The BMA has welcomed confirmation that newly qualified doctors will be covered by NHS indemnity.

ABOUT US

Mark Williams



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Mark's focus is on public liability and professional indemnity insurance and associated litigation. He has particular experience with medical negligence claims and the complex insurance and indemnity arrangements prevalent in the resources, mining, building and construction industries.

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