



HEALTH ALERT

2 October 2017

Key Decisions	2
Judgments.....	2
Commonwealth. Fair Work Commission	2
New South Wales (NSW)	3
Queensland.....	3
Victoria	3
Western Australia	3
Legislation.....	3
Commonwealth	3
New South Wales	4
Tasmania.....	4
Reports	4
Australia. Department of Health	4
Australia. Immunise Australia Program	5
Australia. Health Practitioner Regulation Agency and the boards	5
National Health and Medical Research Council (NHMRC).....	5
Australia. The Pharmaceutical Benefits Scheme	5
Australia. Therapeutic Goods Administration (TGA)	5
Australian Institute of Health and Welfare (AIHW)	6
National Blood Authority.....	6
Australian Commission on Safety and Quality in Health Care	6
Australian Capital Territory. Health Directorate (ACT)	6
New South Wales. Ministry of Health.....	6
New South Wales Health Care Complaints Commission	7
Northern Territory. Department of Health	7
Queensland. Department of Health	7
South Australia. Department for Health & Ageing.....	7
Tasmania. Department of Health & Human Services	8
Victoria. Department of Health	8
Western Australia. Department of Health	8
New Zealand. Ministry of Health.....	8
Australian Medical Association (AuMA).....	9
About us	9
More information	9

KEY DECISIONS

21 September 2017 - *Pierides v Monash Health (No 2)* [2017] VSC 564 - PRACTICE AND PROCEDURE – Medical negligence claim – Duties of legal practitioners to court – Failure to disclose existence of expert evidence in a timely manner – Leave sought by defendant to adduce additional expert evidence – Leave should be granted – Civil Procedure Act 2010, ss 7-9 – Supreme Court (General Civil Procedure) Rules 2015, Order 44.

The plaintiff, a minor, sought damages for negligence in the management of his mother's labour and delivery which left him with a permanent disability. An expert opinion from Professor Welsh, obstetrician, was served on the plaintiff's solicitors. A teleconference was then held with Counsel for the defendant and Professor Welsh to clarify aspects of his report. Counsel prepared a note of conference in relation to this teleconference. Professor Welsh later made amendments to the note and returned a final version to the defendant's solicitors. At a hearing on 20 July 2017 no mention was made of the note of conference. About a month later, the note of conference was served on the plaintiff's solicitors who objected to both it and the original report on the basis of Order 44.03(3) of the Supreme Court (General Civil Procedure Rules 2015) and orders of the trial judge. The defendant sought leave to adduce additional expert evidence. Counsel for the defendant submitted that the note of conference was not raised with the judge because, at the time of the hearing, they had not received it. Counsel admitted that his decision not to inform the court of the draft note was an oversight. The Court held that the note did not contain new material, and even where there was new material, the issues were raised in reports of other experts. Accordingly, the plaintiff was not taken by surprise by any aspect of the note of conference, so the application was allowed.

22 September 2017 - *Sarvestani v State of Queensland (Metro South Hospital and Health Service)* [2017] QIRC 085 - INDUSTRIAL LAW - APPLICATION FOR REINSTATEMENT - Termination of employment - Dismissal - Witness evidence - Serious assault of a patient - Disciplinary process - Mitigation - Were the mitigating factors significant - Was the termination harsh - Termination not harsh, unjust or unreasonable - Application dismissed.

This case relates to the termination of a nurse, Mr Sarvestani, by the State of Queensland (Metro South Hospital and Health Service) (Metro South). Whilst Mr Sarvestani was employed as a registered nurse in the ICU at the Princess Alexandra Hospital, he committed a serious assault upon a 63 year old obese patient with life-threatening injuries who at the time was on life support. The patient had become agitated when coming out of sedation, attempting to remove his tracheostomy tube. The patient struck Mr Sarvestani with force in or around the solar plexus. Mr Sarvestani responded by punching the patient in the left side of the face. He subsequently had his employment terminated, and applied for reinstatement. Mr Sarvestani acknowledged that what he did was inexcusable and that his conduct was out of character and a result of a number of stressors in his personal life. There were a number mitigating factors and evidence that Mr Sarvestani had sought rehabilitation. Medical specialists also gave evidence that there was a limited likelihood of Mr Sarvestani re-offending. The Commission found that, notwithstanding these mitigating factors, Mr Sarvestani's conduct warranted 'in its own right' the termination of his employment and that such a penalty would not be disproportionate based on the gravity of the conduct. Not detracting from the seriousness of the assault was the fact that the assault occurred in a public hospital. As such, Mr Sarvestani's application for reinstatement was dismissed.

JUDGMENTS

Commonwealth. Fair Work Commission

20 September 2017 - *Healthscope Operations Pty Ltd T/A Healthscope* [2017] FWCA 4919 - Application for approval of the Healthscope - Queensland - Allied Health Employees - Enterprise Agreement - 2017-2020.

21 September 2017 - *Huntingdon Nursing Home Pty Ltd* [2017] FWCA 4936 - Application for approval of the Huntingdon Nursing Home Pty Ltd, NSWNMA, ANMF NSW Branch and HSU New South Wales Branch Enterprise Agreement 2017.

22 September 2017 - *Mater Misericordiae Limited T/A Mater Group* [2017] FWCA 4957 - Application for approval of the Mater Health Practitioners' Enterprise Agreement 2016-2019.

22 September 2017 - [Specialist Diagnostic Services Pty Ltd T/A QML Pathology \[2017\] FWCA 4962](#) - Application for approval of the QML Pathology Enterprise Agreement 2017.

25 September 2017 - [Ambulance Victoria \[2017\] FWCA 4978](#) - Application for approval of the Ambulance Victoria (Management and Administrative Staff) Enterprise Agreement 2017.

26 September 2017 - [Ballarat Day Procedure Centre Pty Ltd T/A Ballarat Day Procedure Centre \[2017\] FWCA 5015](#) - Application for approval of the Ballarat Day Procedure Enterprise Agreement 2017-2020.

New South Wales (NSW)

21 September 2017 - [Eastbury v Genea Limited \(Formerly Sydney IVF Limited\) \[2017\] NSWSC 1289](#) - EVIDENCE – Application for ruling on admissibility in advance of trial – expert’s report – whether appropriate to make ruling – application dismissed.

25 September 2017 - [Knowles v Pharmacy Council of NSW \[2017\] NSWCATOD 138](#) - CIVIL AND ADMINISTRATIVE TRIBUNAL – Occupational Division – Stay – additional principle in NSW – protection of health and safety of the public the paramount consideration.

Queensland

22 September 2017 - [Sarvestani v State of Queensland \(Metro South Hospital and Health Service\) \[2017\] QIRC 085](#) - INDUSTRIAL LAW - APPLICATION FOR REINSTATEMENT - Termination of employment - Dismissal - Witness evidence - Serious assault of a patient - Disciplinary process - Mitigation - Were the mitigating factors significant - Was the termination harsh - Termination not harsh, unjust or unreasonable - Application dismissed.

Victoria

21 September 2017 - [Pierides v Monash Health \(No 2\) \[2017\] VSC 564](#) - PRACTICE AND PROCEDURE – Medical negligence claim – Duties of legal practitioners to court – Failure to disclose existence of expert evidence in a timely manner – Leave sought by defendant to adduce additional expert evidence – Leave should be granted – Civil Procedure Act 2010, ss 7-9 – Supreme Court (General Civil Procedure) Rules 2015, Order 44.

Western Australia

22 September 2017 - [Stobart v Al-Hakeem \[2017\] WADC 127](#) - Torts - Negligence - Medical procedure - Duty of care - Whether medical practitioner failed to follow correct procedures in inserting contraceptive device - Unplanned birth - Whether plaintiff lost opportunity to terminate foetus - Turns on own facts.

LEGISLATION

Commonwealth

19 September 2017 - [Research Involving Human Embryos Regulations 2017](#) F2017L01213 - as made.

26 September 2017 - [National Health \(Price and Special Patient Contribution\) Amendment Determination 2017 \(No. 7\)](#) (PB 72 of 2017) F2017L01251 - as made.

26 September 2017 - [National Health \(Pharmaceutical Benefits Scheme- class of pharmaceutical items – Subsection 99ACA\(3\) Determination 2017](#) (PB 82 of 2017) F2017L01259 - as made.

26 September 2017 - [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2017 \(No. 9\)](#) (PB 76 of 2017) F2017L01261 - as made.

26 September 2017 - [National Health \(Growth Hormone Program\) Special Arrangement Amendment Instrument 2017 \(No. 1\)](#) (PB 78 of 2017) F2017L01263 - as made.

26 September 2017 - [National Health \(Listing of Pharmaceutical Benefits\) Amendment Instrument 2017 \(No. 8\)](#) (PB 71 of 2017) F2017L01264 - as made.

26 September 2017 - [National Health \(Pharmaceutical Benefits Scheme- Exempt items - Section 84AH\) Determination 2017](#) (PB 81 of 2017) F2017L01265 - as made.

26 September 2017 - [National Health \(Highly specialised drugs program\) Special Arrangement Amendment Instrument 2017 \(No. 8\)](#) (PB 75 of 2017) F2017L01271 - as made.

27 September 2017 - [National Health Determination under paragraph 98C\(1\)\(b\) Amendment 2017 \(No. 6\)](#) (PB 73 of 2017) F2017L01277 - as made.

27 September 2017 - [National Health \(Pharmaceutical benefits – early supply\) Amendment Instrument 2017 \(No. 7\)](#) (PB 74 of 2017) F2017L01278 - as made.

27 September 2017 - [National Health \(IVF Program\) Special Arrangement Amendment Instrument 2017 \(No. 2\)](#) (PB 77 of 2017) F2017L01282 - as made.

28 September 2017 - [Therapeutic Goods Order No. 94 \(Standard for Haematopoietic Progenitor Cells derived from Cord Blood\) 2017](#) F2017L01288 - as made.

28 September 2017 - [Therapeutic Goods \(Manufacturing Principles\) Amendment Determination 2017 \(No. 2\)](#) F2017L01289 - as made.

28 September 2017 - [Health Insurance \(Accredited Pathology Laboratories—Approval\) Principles 2017](#) F2017L01291 - as made.

28 September 2017 - [Health Insurance \(Approved Pathology Undertakings\) Approval 2017](#) F2017L01293 - as made.

New South Wales

21 September 2017 - [Voluntary Assisted Dying Bill 2017](#) - Second Reading Speech.

Tasmania

20 September 2017 - [Health and Related Legislation \(Miscellaneous Amendments\) Bill 2017](#) - Introduced Assembly.

20 September 2017 - [Public Health Amendment \(Healthy Tasmania\) Bill 2017](#) - Passed Council.

REPORTS

Australia. Department of Health

Media releases

22 September 2017 - [Grass roots response to win ice war](#) - The Australian Government is teaming up with key community groups across the country to tackle the scourge of ice at a grass-roots level, with the next 40 Local Drug Action Teams rolling out.

22 September 2017 - [Australia to host region’s key health decision makers](#) - Australia will host the 68th session of the World Health Organization’s Regional Committee for the Western Pacific (RCM68) in October.

24 September 2017 - [Helping Australians take their lives back from drugs](#) - The Turnbull Government is today launching the next phase of our National Drugs Campaign to help tackle the use of illicit drugs, particularly ice, among young Australians.

Private Health Insurance Circulars

[PHI 45/17 Private Health Insurance \(Benefit Requirements\) Amendment Rules 2017 \(No.7\)](#) [Private Health Insurance \(Complying Product\) Amendment Rules 2017 \(No.3\)](#)

[PHI 46/17 Change to the Second-Tier Eligible Facilities](#)

Australia. Immunise Australia Program

27 September 2017 - **Statement from the Chief Medical Officer on seasonal influenza vaccines** - The Australian Government is committed to immunisation and to ensuring Australia has the best possible vaccination program underpinned by sound evidence and effective vaccines.

Australia. Health Practitioner Regulation Agency and the boards

22 September 2017 - **Quarterly registration data released** - The National Board has released its quarterly registration data.

22 September 2017 - **National Board recognises the various roles of pharmacists on special day** - The Pharmacy Board of Australia is recognising the varied contributions of pharmacists, from research to providing direct patient healthcare, as part of World Pharmacists' Day.

25 September 2017 - **Medical practitioner reprimanded for breaching prescription conditions** - A tribunal has reprimanded and ordered a medical practitioner to pay a fine after finding he breached conditions on his registration.

25 September 2017 - **Newsletter from the National Board** - The Optometry Board of Australia releases its latest newsletter.

28 September 2017 - **New codes of conduct for nurses and midwives published** - The Nursing and Midwifery Board of Australia has published the new Code of conduct for nurses and Code of conduct for midwives (the codes). The codes will take effect for all nurses and midwives in Australia on 1 March 2018.

28 September 2017 - **Newsletter from the National Board** - The Nursing and Midwifery Board of Australia releases its latest newsletter.

28 September 2017 - **Graduating soon? Physio Board get animated for students with new video** - Are you a physiotherapy student and graduating soon? Are you grappling with assignments, exams and starting to apply for your first job in the profession? Today the Physiotherapy Board of Australia has launched a short animation just for you.

National Health and Medical Research Council (NHMRC)

22 September 2017 - **NHMRC Research Tracker**

Australia. The Pharmaceutical Benefits Scheme

26 September 2017 - **TGA and PBAC parallel process now available for vaccines** - Vaccines that meet certain requirements are now eligible to be submitted under the TGA and PBAC parallel process arrangements. This arrangement will be available for major submissions to the March 2018 PBAC meeting (November 2017 major submission deadline) onwards.

Australia. Therapeutic Goods Administration (TGA)

22 September 2017 - **Freedom Healthcare Quad Walkers Recall** – Potential for injury as a result of breakage.

26 September 2017 - **TGA presentation: RACI and CAPSIG societies, 16 August 2017** - The presentation was an overview of the GMP regulations for medicine manufacturers.

26 September 2017 - **Updated GMP Clearance application forms** - GMP Clearance application forms now available.

26 September 2017 - **Consultation: Business process improvements supporting complementary medicines assessment pathways** - Consultation is now open regarding the business process improvements that will support the complementary medicines assessment pathways.

27 September 2017 - **Updates to the Permissible Ingredients Determination for listed medicines** - An update of the Permissible Ingredients Determination has been published.

Australian Institute of Health and Welfare (AIHW)

28 September 2017 - **Mental illness rising among meth/amphetamine and ecstasy users** - Mental illnesses are becoming more common among meth/amphetamine and ecstasy users, according to a report released today by the AIHW. The report, National Drug Strategy Household Survey: detailed findings 2016, builds on preliminary results released in June, and gives further insight into Australians' use of, and attitudes to, drugs and alcohol in 2016.

National Blood Authority

26 September 2017 - **Potential Future Arrangements for Imported Plasma and Recombinant Products** - Summary of Consultation Outcomes.

Australian Commission on Safety and Quality in Health Care

On the Radar – 25 September 2017 – Issue 340 (**PDF 231KB**) (**Word 154KB**)

Australian Capital Territory. Health Directorate (ACT)

22 September 2017 - **Pill Testing in the ACT** - ACT Minister for Health and Wellbeing, Meegan Fitzharris announced a pill testing service will be available during the Spilt Milk festival on 25 November 2017.

27 September 2017 - **New Calvary Private Hospital Bruce opens** - Canberra's health care system now provides even greater choice for patients, with the opening of the new Calvary Private Hospital in Bruce today.

New South Wales. Ministry of Health

Media Releases

23 September 2017 - **Scalpel games showcases future surgeons** - The surgical skills of 100 of the brightest medical students and trainees in the state will be on show today at the annual Golden Scalpel Games® in Sydney.

26 September 2017 - **Deniliquin's new \$961,000 renal dialysis unit** - Work has begun on the new \$961,000 nine-chair renal dialysis unit at the Deniliquin Health Service. Minister for Health Brad Hazzard said the satellite service – due to open in January next year – will more than double the capacity of the existing four-chair unit.

28 September 2017 - **Nowra women win statewide weight loss challenge** - An all-women's team from Nowra has been named the 2017 winners of a statewide weight loss and healthy lifestyle program after collectively losing more than 77 kilograms – more than the weight of the average woman.

Publications

22 September 2017 - **NSW Zoonoses Annual Report**

22 September 2017 - **Notification of obsolete Policy Directive PD2008_067 - Multicultural Mental Health Plan**

22 September 2017 - **Clinical Procedure Safety**

22 September 2017 - **Pension Based Scale of Fees - Charging Arrangements and Scale of Fees**

22 September 2017 - **Active Information Bulletin Notification of obsolete Policy Directives PD2008_015 and GL2008_006 - Amputee Care Standards in NSW**

26 September 2017 - **Increased Rates of Pay and Allowances for Broken Hill Health Services Employees**

26 September 2017 - **Communicable Diseases Weekly Report (CDWR)**

26 September 2017 - **Physical Health Care of Mental Health Consumers**

26 September 2017 - **Physical Health Care within Mental Health Services**

New South Wales Health Care Complaints Commission

25 September 2017 - **Dr Michel Ward – Unsatisfactory professional conduct** - The Commission prosecuted a complaint against Dr Michael Ward, a medical practitioner, before a Medical Council Professional Standards Committee. The Complaint related to treatment received by Patient A during his third presentation in several days to the Emergency Department of Mudgee Hospital in January 2015.

Northern Territory. Department of Health

26 September 2017 - **Health Alert: Meningococcal outbreak in Central Australia** - Meningococcal disease is an uncommon, life-threatening illness due to a bacterial infection of the blood and/or the membranes that line the spinal cord and brain and occasionally infect other sites, such as large joints.

26 September 2017 - **Palmerston Regional Hospital – Preparing for Services** - The Territory Labor Government has announced the services that will be on offer at Palmerston Regional Hospital (PRH) next year. The Minister for Health Natasha Fyles said PRH is on track to open mid 2018 with furnishings, fittings and equipment already being procured.

27 September 2017 - **Updated Statement - Alice Springs Hospital Pathology Building** - Following further air sampling undertaken in the Pathology Building at Alice Springs Hospital, a report has been provided by Site Environmental and Remediation Services, licensed asbestos hygienists stating:

'Based on anecdotal evidence it is not probable that the level of asbestos contained within settled dust represented by the sampling undertaken would procure any disturbance or exceedance of the Occupational Exposure Level (OEL) as defined within the Workplace Exposure Standards for Airborne Contaminates Date of Effect 18th April 2013 for Asbestos of 0.1f/mL.'

27 September 2017 - **\$3 Million to Improve Mental Health Services** - The Territory Labor Government has announced a new \$3 million housing initiative to support Territorians with ongoing mental illness. The Minister for Health Natasha Fyles said this is an important step in insuring that Territorians can live in the safe, vibrant and inclusive communities that they are entitled to.

28 September 2017 - **\$2 million NDIS Grants for Innovative Projects** - The Territory Labor Government is accepting applications for the \$2 million National Disability Insurance Scheme (NDIS) Innovation Grant Project. Minister for Health Natasha Fyles said the Office of Disability secured the funding from the Australian Government, Sector Development Fund to help support the transition to the NDIS across the Territory.

Queensland. Department of Health

28 September 2017 - **Building a healthy specialist workforce tops summit agenda** - Minister for Health and Ambulance Services Cameron Dick has this week convened a summit with clinical and health leaders to progress strategies to improve access to specialist medical services throughout the state.

South Australia. Department for Health & Ageing

22 September 2017 - **Oakden decommissioning to begin next week** - The final residents at the Oakden Older Person's Mental Health Service will be transitioned to Northgate House today, with the process of decommissioning the site to begin next week.

27 September 2017 - **Media release: Meningococcal case September** - A case of invasive meningococcal disease has been notified in a 52-year-old woman from metropolitan Adelaide. The woman has been admitted to hospital and is in a critical condition. The strain has been identified as serogroup B. SA Health has identified numerous people who had contact with the patient, of whom four have been directed to receive clearance antibiotics.

28 September 2017 - **'No jab, no play' legislation to be introduced to Parliament** - Law reforms to introduce 'no jab, no play' rules for early childhood will be introduced to State Parliament today.

Tasmania. Department of Health & Human Services

26 September 2017 - **White's Medihotel Madness # 1 - Permanent leasing of existing hotel beds** - The more Rebecca White tries to explain her Medihotels blunder the more questions emerge. On Tasmania Talks today Ms White indicated Labor will not build additional hotel beds for their disastrous 'Medihotel', instead, Labor would lease existing hotel beds in hotels.

27 September 2017 - **White's Medihotel madness #2 - Contradictions emerge over care** - The more Rebecca White tries to explain her Medihotels disaster the more questions emerge. Ms White confirmed on radio yesterday that Medihotels would be for patients that are ready to go home, saying: 'they don't need to be there in the hospital.....those are the patients who would be eligible....it is not for acute sick patients.'

28 September 2017 - **White's Medihotel Madness #3 - Can't say how much it will cost** - The more Rebecca White tries to explain her Medihotels madness the more questions emerge. When asked recently by media how much it would cost to lease out hotel beds for patients Ms White had no idea. Instead she tried to talk in broad terms about an 'allocation of funding' that would be set aside.

Victoria. Department of Health

22 September 2017 - **More Supercare Pharmacies To Give Round-The-Clock Care** - The Andrews Labor Government has unveiled the final eight locations of its 20 Supercare Pharmacies to help thousands more people get the healthcare and advice they need, round-the-clock and close to home. Visiting Carnovale Pharmacy in Yarraville today, Minister for Health Jill Hennessy announced the next eight 24-hour Supercare Pharmacies to open by 30 June 2018.

22 September 2017 - **LGBTI services receive funding boost** - Due to increased demand, LGBTI services will receive extra funding from the Victorian Government to increase mental health counselling, resources and peer support activities.

25 September 2017 - **Next steps for new Disability workforce registration scheme** - The Victorian Government is seeking community views on an independent, legislated registration and accreditation scheme for Victoria's disability workforce.

27 September 2017 - **Australian First Policy To Prevent Violence In Hospitals** - Victorian health workers will be safer at work with the Andrews Labor Government launching a new Australian first emergency response policy to better protect workers, patients and visitors from violence in hospitals.

Western Australia. Department of Health

22 September 2017 - **Teenagers can now access meningococcal vaccine at GPs** - Western Australian teenagers can now receive the free meningococcal ACWY vaccine at their local GP clinic, making it more convenient and readily accessible during school holidays.

28 September 2017 - **Meningococcal disease in three adults** - The Department of Health today reported that three adults (one young and two elderly adults) are currently recovering in hospital after being diagnosed with meningococcal disease. Two cases had serogroup B disease and one case had serogroup W.

New Zealand. Ministry of Health

25 September 2017 - **The Economic Costs of the Havelock North August 2016 Waterborne Disease Outbreak** - The Ministry of Health asked Sapere Research Group Ltd to determine the economic costs of the waterborne disease outbreak in Havelock North, the largest outbreak of its kind in New Zealand.

Australian Medical Association (AuMA)

22 September 2017 - [AuMA rejects proposals to limit patients' ability to use private cover in public hospitals](#) - The AuMA has made a submission on the Federal Government's options paper on reducing pressure on private health insurance premiums by addressing the growth in private patients in public hospitals.

ABOUT US

Nicholas Tyacke



Nicholas is the Head of DLA Piper's Life Sciences practice across the Asia-Pacific and leads DLA Piper's Life Sciences Intellectual Property and Regulatory practices in Australia.

Nicholas offers a level of experience unique to the Australian market, being both a US attorney and an Australian solicitor, and having spent his career advising and acting for many of the world's leading life sciences companies in those jurisdictions. Nicholas' experience includes acting in Hatch-Waxman patent disputes in the United States and in the Australian component of equivalent complex multi-jurisdictional patent disputes, including in patent disputes before trial courts, intermediate appeal courts (the United States Court of Appeals for the Federal Circuit and the Full Federal Court of Australia) and final appeal courts (the Supreme Court of the United States and the High Court of Australia) in both jurisdictions. Nicholas' experience also includes advising life sciences companies in relation to regulatory issues in Australia, including in relation to clinical trials, and managing and coordinating work for DLA Piper's life sciences clients across the Asia-Pacific.

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