



# HEALTH ALERT

15 August 2016

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## JUDGMENTS

### New South Wales

11 August 2016 - *Health Care Complaints Commission v Sheldrick [2016] NSWCATOD 105* - Ms Sheldrick has been a privately practising midwife since 2007. Two separate birthing incidents since 2012 have led to Ms Sheldrick being the subject of three complaints made to the Commission. Complaints 1 and 2 are of unsatisfactory professional conduct. Complaint 3 is that the matters in 1 and 2 both individually and cumulatively amount to professional misconduct.

The first incident occurred in October 2012. Ms Sheldrick attended the patient's home where she determined that the foetal presentation was breech. She assisted the patient through a slow labour characterised by irregular contractions. The following morning, the patient requested to go to hospital. The baby was born later that night but passed away shortly after from meconium aspiration. The second incident occurred in July 2014. The patient commenced labour at 4:30am. Ms Sheldrick assisted the patient until 9:20am when she realised that the foetal presentation was again in breech. The baby was stillborn at approximately 10:02am. After birth, the baby was diagnosed as having hydrocephalus secondary to holoprosencephaly.

The Tribunal found that Ms Sheldrick did not have a proper appreciation of how unsafe each situation was, nor did she ensure that the risks were clearly and effectively communicated to the patients. She also failed to make appropriate efforts to transfer care to a hospital setting where the required specialist medical assistance was available. Ms Sheldrick was found to have engaged in both unsatisfactory professional conduct and professional misconduct. She has not practised as a midwife since August 2014.

11 August 2016 - *Morocz v Marshman [2016] NSWCA 202* - On 3 August 2006, Ms Morocz consulted Dr Marshman about a condition she suffered from known as hyperhidrosis. At this consultation, Ms Morocz was given a brochure which described the risks of the surgical procedure that she would later undergo. She also discussed these risks with Dr Marshman. Dr Marshman performed this procedure on Ms Morocz in February 2007. Following the surgery, Ms Morocz suffered a number of health problems and side effects which did not improve over time. She commenced proceedings against Dr Marshman in 2010, in which she claimed damages for the allegedly negligent failure to warn her of the material risks of the procedure. In April 2015, the primary judge dismissed her case. This is an appeal of that decision.

At first instance, the primary judge found that Dr Marshman warned Ms Morocz of all matters that the expert witnesses indicated that she should have been warned about. Any other matters that Dr Marshman failed to warn her about, were not in the court's option matters that he was required to mention. Ms Morocz contended that the primary judge erred in making this finding. She also alleged that the primary judge erred in ruling certain expert reports to be inadmissible.

The Court considered these, among other, grounds of appeal and concluded that the appeal should be dismissed.

11 August 2016 - *CNK v University of Newcastle [2016] NSWCATAD 177* - Disability discrimination – higher research degree student with a mental illness - allegations of direct discrimination - that the University treated the applicant less favourably than it treated or would have treated students without mental illness – allegation of indirect discrimination, that in imposing a minimum requirement of 75% exam results, the University required the applicant to comply with a condition which a substantially higher proportion of persons without his disability comply or are able to comply.

11 August 2016 - *MKH v JBH (No 2) [2016] NSWSC 1103* - MENTAL HEALTH - Guardians, committees, administrators, managers and receivers – Appointment - Application for appointment of a protected estate manager - Application made in anticipation of personal injury compensation – Protected person without other property - Application adjourned until after resolution of compensation litigation.

10 August 2016 - *Jiang v Psychology Council of NSW [2016] NSWCATOD 104* - Health Practitioner Regulation National Law - Suspension of health practitioner pursuant to s 150 of the National Law – Appeal pursuant to s 159 of the National Law PSYCHOLOGIST – appeal against decision of Psychology Council suspending registration – impairment.

## Queensland

5 August 2016 - [Psychology Board of Australia v Shahinper \[2016\] QCAT 259](#) - PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT AND UNPROFESSIONAL CONDUCT – DEPARTURE FROM ACCEPTED STANDARDS – where psychologist engaged in a sexual relationship with a patient before adequately terminating the therapeutic relationship – where psychologist repeatedly denied conduct and misled the Psychology Board of Australia and its investigators – where conduct ultimately conceded – where psychologist had faced prior disciplinary proceedings for the same type of conduct – whether psychologist has engaged in professional misconduct – whether psychologist's registration should be cancelled – whether psychologist should be prevented from re-applying for registration – whether psychologist should pay the costs of the proceedings.

5 August 2016 - [Ofili v Medical Board of Australia \[2016\] QCAT 258](#) - PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – LICENCES AND REGISTRATION – APPEALS AND APPLICATIONS FOR ORDER DIRECTING REGISTRATION – where an international medical graduate held limited registration in an area of need – where the practitioner applied for general registration under the Australian Medical Council's Competent Authority Pathway for international medical graduates – where the Medical Board of Australia considered the practitioner did not meet the requirements for progression to general registration – where the Medical Board of Australia granted provisional registration subject to conditions – where practitioner appealed – whether conditions should have been imposed on the practitioner's registration – whether the practitioner was eligible for general registration.

## LEGISLATION

*As a general rule, this bulletin tracks subsidiary legislation at Commonwealth, but not at state level*

### Commonwealth

12 August 2016 - [Medical Research Future Fund \(Crediting of Amounts\) Determination 2016 \(No.1\)](#)

### New South Wales

11 August 2016 - [Abortion Law Reform \(Miscellaneous Acts Amendment\) Bill 2015](#) - (Private Member's Bill) Second Reading Speech.

11 August 2016 - [Poppy Industry Bill 2016](#) - Introduced and Second Reading Speech.

## REPORTS

### Australia. Department of Health

Private Health Insurance Circulars.

10 August 2016 - [PHI 58/16 - Declaration Private Same-Day Hospital Information](#)

### Australia. Health Practitioner Regulation Agency and the boards (AHPRA)

10 August 2016 - [Independent review on chaperoning](#) - The Medical Board of Australia and AHPRA have patient and public safety as their number one objective.

12 August 2016 - [VOTE Trust grant applications open](#) - Applications for funding are now open under the Victorian Optometrists Training and Education (VOTE) Trust.

9 August 2016 - [Communiqué from the Board](#) - The Optometry Board of Australia releases its latest communiqué.

9 August 2016 - [Communiqué from the Board](#) - The Podiatry Board of Australia releases its latest communiqué.

8 August 2016 - [Communiqué from the Board](#) - The Osteopathy Board releases its latest communiqué.

8 August 2016 - [Newsletter from the Board](#) - The Podiatry Board of Australia releases its latest newsletter.

### **Australia. National Health & Medical Research Council (NHMRC)**

[NHMRC Research Tracker – 5 August 2016](#)

[NHMRC Health Tracker – August 2016](#)

### **Australia. Pharmaceuticals Benefits Scheme (PBS)**

11 August 2016 - [September 2016 Changes to PBS Efficient Funding of Chemotherapy](#) - From 1 September 2016, approved suppliers will need to provide additional information when claiming eligible Efficient Funding of Chemotherapy (EFC) items through the PBS. Chemotherapy compounders will need to apply to the Chemotherapy Compounding Payment Scheme (CCPS) Administration Agency to obtain a compounder ID for each compounding site, and provide this information to approved suppliers in respect of each eligible PBS EFC item provided. For further information see the [CCPS page](#).

11 August 2016 - [Public Release of Linkable 10% sample of Medicare Benefits Scheme \(Medicare\) and Pharmaceutical Benefits Scheme \(PBS\) Data](#) - On 1 August 2016, the Department of Health released approximately 1 billion lines of de-identified historical health data relating to approximately 3 million Australians on data.gov.au.

10 August 2016 - [Drug Utilisation Sub Committee \(DUSC\) Outcome Statement](#) - The Outcome Statement from the [June 2016 Drug Utilisation Sub Committee \(DUSC\) Meeting](#) is now available.

### **Australian Therapeutic Goods Administration (TGA)**

11 August 2016 - [MRA GMP clearance application processing timelines](#) - Updates to MRA clearance application processing timelines.

9 August 2016 - [Medical device quality management systems: transition to new standard](#) - Revised medical device quality management system standard - TGA transition guidance for ISO 13485:2016.

8 August 2016 - [Updates to the list of designated orphan drugs](#) - Added Avelumab and Telotristat etiprate.

5 August 2016 - [Alere INRatio PT/INR monitor system](#) - Update 2 - Recall details.

### **Australian Digital Health Agency**

29 July 2016 - [Royal College of Pathologists Australasia \(RCPA\) Terminology and Information Model v1.0 Release](#) - The Royal College of Pathologists of Australasia (RCPA) Pathology Terminology and Information Models v1.0 has now been published on the Australian Digital Health Agency website.

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

5 August 2016 - [Australian Burden of Disease Study: impact and causes of illness and death in Australia 2011—summary report](#)

5 August 2016 - Australian Burden of Disease Study: supplementary data tables

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

On the Radar – 8 August 2016 – Issue 285 ([PDF 99KB](#)) ([Word 142KB](#))

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

11 August 2016 - [Review of suicide prevention services for defence force members and veterans](#) - Prime Minister Malcolm Turnbull, announced today the National Mental Health Commission will undertake a review of suicide and self-harm prevention services available to Australian Defence Force Personnel members and veterans. The Commission will examine the effectiveness of these services in supporting mental wellbeing and preventing self-harm and suicide. It will be supported by an expert panel of current and former members of Defence.

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

11 August 2016 - **ACT budget invests in health services for Canberra** - The ACT Government has kept the health of Canberrans as the top priority, with record investment in our health system passed in the ACT Legislative Assembly today. **\$1.6 billion** is now committed to provide better health services for Canberra, with this record investment in better health services for Canberra making up almost one third of the entire ACT Budget.

## **New South Wales (NSW). Ministry of Health**

### Media Releases

5 August 2016 - **NSW leading the nation in suicide prevention trial** - In an Australia-first, four NSW communities will take part in trialling a new evidence-based systems approach to suicide prevention.

### Policy Directives & Guidelines

10 August 2016 - **Approval Process of Medicines for Use in NSW Public Hospitals**

9 August 2016 - **Statewide Standing Orders for the Supply or Administration of Medication for Public Health Response**

### Information Bulletins

11 August 2016 - **Non-Admitted Patient Data Collection: Changes for Reporting via WebNAP effective 1 July 2016**

### Publications

10 August 2016 - **NSW Register of Congenital Conditions record linkage study**

## **Northern Territory. Department of Health**

11 August 2016 - **Start of biting midge season...**- Biting midges will be out in high numbers from 15 to 21 August coinciding with the full moon.

## **Queensland. Department of Health**

12 August 2016 - **School leaver finds health job on Mornington Island** - When school leaver Tyra Petersen went from Croydon to Mornington Island to live, she had no idea she would end up employed as a Trainee Health Worker with the North West Hospital and Health Service (NWHHS) at Mornington Island Hospital.

12 August 2016 - **Community nurse treks off to help community at the foot of Mt Everest** - South West Hospital and Health Service's Community nurse Debbie Wells will exchange her Roma office for a tiny medical tent when she volunteers in the foothills of Mt Everest in Nepal.

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

11 August 2016 - **Medical specialties on the move up** - As part of the \$689 million Royal Hobart Hospital Redevelopment, the medical specialties ward has moved to new accommodation on level 7, A-Block today. The Hodgman Liberal Government has supported this redevelopment since we came to office, so it is great to see real progress made and patients move into contemporary facilities.

9 August 2016 - **More investment in front line health professionals** - The Hodgman Liberal Government's One Health System reforms are delivering record funding to health and most importantly more front line health professionals. An RTI released this week, and publicly available on the DHHS website, shows an increase of 43 Salaried Medical Practitioners (SMP's) during the past 16 months with the number of Visiting Medical Practitioners (VMP's) remaining broadly stable during that period.

7 August 2016 - **Health Forums hit the road** - Tasmanians will have an opportunity to participate in a discussion about the state's ongoing health reforms at a series of public forums being held around the State this week.

## Victoria. Department of Health

9 August 2016 - **Work Starts On Angliss Hospital Redevelopment** - Construction of the Andrews Labor Government's \$20 million expansion of Eastern Health's Angliss Hospital is now underway. Minister for Health, Jill Hennessy, today joined Member for Monbulk, James Merlino, to announce Kane Constructions has started building a fourth level on top of the main Angliss Hospital building to increase the capacity of the hospital's critical care services.

8 August 2016 - **Preparing For Proton Beam Therapy Cancer Boost** - Victoria has provided \$50 million in funding towards establishing a National Proton Beam Therapy Centre for the treatment of cancer in Melbourne. Minister for Health, Jill Hennessy, made the announcement while touring the construction of University College London Hospital's Proton Beam Therapy Centre. Minister for Health, Jill Hennessy, made the announcement while touring the construction of University College London Hospital's Proton Beam Therapy Centre. Proton Beam Therapy offers a clinical advantage for many paediatric and adult cancers thanks to its precision, reduced toxicity and reduced risk in causing cancers later in life.

## Western Australia (WA). Department of Health

### Media Releases

11 August 2016 - **Shellfish health warning** - The Department of Health is asking people not to eat shellfish collected from the lower part of the Swan and Canning Rivers, following the recent widespread detection of potentially harmful microscopic algae.

10 August 2016 - **Minister for Health and Minister for Regional Development: \$8.1 million Exmouth Health Service officially opened** - Residents and visitors to Exmouth Health Service now have access to improved facilities following an \$8.1 million upgrade made possible by the Liberal National Government's Royalties for Regions Gascoyne Revitalisation Plan.

10 August 2016 - **Minister for Health and Minister for Regional Development: Gascoyne benefits from health care upgrade** - Residents of Carnarvon and surrounding areas have access to a modern, purpose-built health care hub following the transformation of the Carnarvon Health Campus.

8 August 2016 - **Minister for Health: Nominations called for top nurses and midwives** - West Australians are being asked to put forward their nominations for the 2017 WA Nursing and Midwifery Excellence Awards.

10 August 2016 - **Health Matters – Multisystemic Therapy** - Noongar Radio hosts a fortnightly program called 'Health Matters' where Aboriginal and other health experts discuss health issues

10 August 2016 - **Phone numbers have changed at Charlies and QEII** - The phone system has been replaced at Sir Charles Gairdner Hospital (SCGH) and Queen Elizabeth II Medical Centre (QEII MC).

### Management Policy

10 August 2016 - **Performance Management Policy** MP 0037/16

The Performance Management Policy is a mandatory policy within the Performance Policy Framework. Publications.

## New Zealand. Ministry of Health

12 August 2016 - **Funding to Māori health providers by District Health Boards (DHBs), 2010/11 to 2014/15** - This publication summarises funding to Māori health providers by DHBs and information on Māori health providers from 2010/11 to 2014/15. DHBs are the primary funders of Māori health providers.

12 August 2016 - **Secure Dementia Care Home Design: Information Resource** - This resource supports people involved with the development or major reconfiguration of secure dementia care homes. It aims to enhance the quality of life of people with dementia living in secure care homes by focusing on their experiences and perspectives.

## Health Canada.

11 August 2016 - **Statement from Health Canada concerning access to cannabis for medical purposes** - OTTAWA - In response to the Federal Court of Canada's decision in Allard v. Canada, Health

Canada today announced the Access to Cannabis for Medical Purposes Regulations (ACMPR). The ACMPR will replace the Marihuana for Medical Purposes Regulations (MMPR) as the regulations governing Canada's medical cannabis program, and will come into force on August 24, 2016.

### **Australian Medical Association (AuMA)**

11 August 2016 - [International Day of the World's Indigenous Peoples](#) - On International Day of the World's Indigenous Peoples, the AuMA called for a whole-of-Government approach to close the health inequalities that exist for Aboriginal and Torres Strait Islander peoples. This year's International Day of the World's Indigenous Peoples was dedicated to supporting the right to education.

11 August 2016 - GP Network News [AuMA President meets with Shadow Health Minister](#) - Dr Gannon had a constructive meeting with the recently reappointed Shadow Health Minister, Catherine King, at St John of God Hospital in Perth last week. Over 90 minutes, the pair covered a wide range of issues including the Medicare patient rebate freeze and the future sustainability of general practice. They also discussed public hospital funding, and private health insurance, before Dr Gannon showed Ms King around the hospital.

11 August 2016 - GP Network News [AuMA President to deliver National Press Club Address](#) - Secure your tickets now to hear AuMA President, Dr Michael Gannon, give the [annual AuMA address to the National Press Club of Australia](#) in Canberra on Wednesday 17 August 2016.

11 August 2016 - GP Network News [AuMA works to improve GP referrals to My Aged Care](#) - The AuMA is continuing to push for improvements to the referral process through the My Aged Care gateway and met with Department of Health representatives last week to discuss this. In particular, the AuMA stressed that the referral form needs to be integrated into practice software in order to streamline the process.

11 August 2016 - GP Network News [GPs asked to ensure safe administration of flu vaccines to children](#) - Following continued reports of cases of Seqirus (formerly bioCSL) Fluvax and GSK Fluarix Tetra being incorrectly administered to children under five and three years of age respectively, the Department of Health is urging all GPs to carefully check that they are immunising children with the correct influenza vaccine according to their age.

11 August 2016 - GP Network News [Medicare services for Indigenous health](#) - To assist GPs when providing health services to their Aboriginal and Torres Strait Islander patients, the Department of Human Services has provided an online eLearning program and education guides. The eLearning program, Indigenous Health Services, provides a comprehensive overview of Medicare services for Aboriginal and Torres Strait Islander patients, including the health items available and subsequent requirements.

11 August 2016 - GP Network News [Consultation for the 2016-17 Aged Care Approvals Round](#) - GPs are invited to participate in the Department of Health's consultation to help identify community needs and inform the distribution and targeting of new [residential aged care](#) and [Short-Term Restorative Care](#) places to be made available in the 2016-17 Aged Care Approvals Round (ACAR).

10 August 2016 - Media release ['Nauru Files' expose need for independent assessment of health of asylum seekers](#) - Following damning reports of abuse, trauma, and self-harm among detainees on Nauru, the AuMA wants independent investigation and assessment of health and living conditions for asylum seekers in offshore detention.

9 August 2016 - Media release [International Day of the World's Indigenous Peoples](#) - On International Day of the World's Indigenous Peoples, the AuMA is calling for a whole-of-Government approach to close the health inequalities that exist for Aboriginal and Torres Strait Islander peoples.

### **American Medical Association (AMA)**

10 August 2016 - AMA Statement [AMA and CDC Update Nation's Physicians on Latest Zika Virus Guidance](#) - The AMA and the Centers for Disease Control and Prevention (CDC) issued the following statements today regarding the Zika virus as they hosted a webinar for American's physicians and clinicians on the current status of the outbreak.

10 Aug 2016 - AMA Press Release [American Medical Association Partners with Rhode Island Medical Society and State Officials to Combat Opioid Epidemic](#) - Pilot program designed to reduce prescription opioid misuse and heroin use.

## 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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