



HEALTH ALERT

27 JULY 2015

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JUDGMENTS

Australia. Fair Work Commission

23 July 2015 - *Foley v Melbourne Health* [2015] FWC 4821

The Fair Work Commission has rejected an unfair dismissal claim brought by a former employee of Melbourne Health.

Mr Foley worked as a security officer for Melbourne Health from 2007 to 2015. On 7 December 2014, Mr Foley and his colleague saw Dr Corbin enter a building without swiping his access pass as another staff member exited the building. They stopped Dr Corbin, and requested that he swipe his pass before re-entering the building. Dr Corbin complied with the request, but became verbally aggressive and continually requested that the officers show their identification. Dr Corbin took photographs of the officers with his mobile phone.

CCTV footage showed that Mr Foley pushed Dr Corbin twice, and restrained him by physical force. The parties later met on the sixth floor of the building. Dr Corbin continued to talk to the officers as they moved down the stairs, Mr Foley again restrained Dr Corbin with physical force, and called an emergency code.

The incident was investigated internally and by an independent investigator, who found that Mr Foley had used excessive force and engaged in unprofessional conduct. Mr Foley's employment was terminated following the investigation.

The Commission found that Mr Foley had used excessive and unnecessary force, and showed no insight into his conduct, which raised serious questions about the viability of his employment. It held that Melbourne Health had a valid reason for dismissing the applicant, and that the termination of his employment was not harsh, unjust or unreasonable in the circumstances.

New South Wales (NSW)

22 July 2015 - *Kesserwani v Chiropractic Council of NSW* [2015] NSWCATOD 77

The New South Wales Civil and Administrative Tribunal has dismissed an application to stay conditions imposed on a chiropractor's practice by the Chiropractic Council of NSW (the Council).

A former patient made a complaint about the chiropractor to the Health Care Complaints Commission (HCCC), alleging that he had engaged in inappropriate conduct of a sexual nature. The HCCC referred the complaint to the Council, who decided to hold proceedings pursuant to the *Health Practitioner National Law* to determine whether any action should be taken against the chiropractor.

Days before the proceeding was to take place, the patient contacted the HCCC to withdraw her complaint. She said that she was not willing to provide a statement regarding her allegations, but that she would provide copies of text messages exchanged between her and the chiropractor.

At the proceeding, the Council imposed conditions on the chiropractor's practice requiring him to be accompanied by a chaperone when seeing patients. The chiropractor appealed this decision, and sought a stay of the conditions in the period before the appeal could be heard.

The Tribunal considered that the protection of public health and safety should be its paramount concern in deciding whether or not to grant the stay. It held that given this consideration, the application should be refused. In coming to its decision, the Tribunal considered that the appeal was to be heard in a matter of weeks, and that the chiropractor was able to continue his practice subject to the limitations imposed.

21 July 2015 - *Dean v Phung* [2015] NSWSC 816

Costs – application for costs order against insurer of insolvent defendant – plaintiff sued defendant dentist for grossly excessive dental treatment – insurer conducted defence on behalf of dentist – conceded dental treatment was excessive – plaintiff sued in negligence and assault – plaintiff alleged consent to treatment fraudulently obtained – plaintiff alleged damages not limited by Civil Liability Act because of intentional acts of defendant – defendant admitted negligence but denied assault and fraudulently obtaining consent to treatment – at first instance plaintiff obtained damages for negligence and costs order but balance of claim failed – on appeal plaintiff succeeded in establishing assault and intentional act of defendant – finding that

consent procured by fraud also made – plaintiff obtained award of exemplary damages – insurer denied indemnity including for costs at final instance – plaintiff sought costs of proceedings at first instance from insurer – contended that insurer represented that indemnity would not be denied even if fraud or similar conduct established.

20 July 2015 - *Ibrahim v Medical Board of Australia* [2015] NSWCA 207

Appeal – civil – registration as a medical practitioner under the Health Practitioner Regulation National Law – application for limited registration in an area of need – meaning of ‘practice’ in approved recency of practice registration standard – whether NCAT erroneously narrowed the ambit of ‘practice’ – no error in finding employment as medical receptionist, pathology collector and undertaking observerships did not satisfy the definition of ‘practice’ – appellant ineligible for limited registration.

20 July 2015 - *Health Care Complaints Commission v Sarfraz* [2015] NSWCATOD 75

Administrative law – Civil and Administrative Tribunal Act – whether in the interests of the public for complaint against a medical practitioner to be withdrawn.

24 July 2015 - *BNQ v South Eastern Sydney Local Health District* [2015] NSWCATAD 156

Health Records – search – destruction of records pursuant to statutory authority.

South Australia (SA)

17 July 2015 - Inquest into the death of Marjorie Irene Aston

Findings of inquest - death occurred at Royal Adelaide Hospital - death caused by subdural haematoma complicated by excessive anticoagulation - where patient prescribed warfarin for atrial fibrillation - recommendations made regarding management of warfarin therapy.

LEGISLATION

Commonwealth

23 July 2015 - **[Social Security \(Special Disability Trust - Discretionary Spending\) Determination 2015](#)**.

22 July 2015 - **[Social Security \(Special Disability Trust Beneficiary Requirements\) Nomination of Agreement Instrument 2015](#)**.

REPORTS

Australia. Department of Health

Media releases

24 July 2015 - **[Ice Taskforce interim report](#)** - The Prime Minister presented the National Ice Taskforce interim report to COAG, as part of the Australian Government’s commitment to the development of a National Ice Strategy.

24 July 2015 - **[Clearer vision for Australians with expanded listing of new drug](#)** - Patients with a range of serious eye conditions now have affordable access to life-changing medicines that normally cost up to \$10,000 for treatment.

23 July 2015 - **[Appointments to key health and medical research body](#)** - Leading medical researchers, academics, clinicians and administrators have been appointed to the Council of the National Health and Medical Research Council (NHMRC).

22 July 2015 - **[Talks to Focus on Indigenous Mental Health](#)** - Reducing mental illness among Aboriginal and Torres Strait Islander people will be the focus of high level talks between government, mental health experts and Indigenous leaders at Parliament House.

20 July 2015 - **[Sporting Schools kicks off across Australia today](#)** - The biggest change to school sport in over a decade has kicked off for hundreds of thousands of primary school students across Australia as part of a \$100 million Australian Government initiative to keep them fit, healthy and happy.

16 July 2015 - [The Australian Immunisation Handbook 10th Edition 2015 Update](#) - On 22 June 2015 the National Health and Medical Research Council approved the 2015 update to The Australian Immunisation Handbook 10th Edition (the Handbook).

Private Health Insurance Circulars

23 July 2015 - [PHI 45/15 Protheses List Management System](#).

Australia. Department of Social Services

21 July 2015 – [Message from DHS: Financial Hardship Assistance](#).

16 July 2015 – [Consumer Directed Care \(CDC\) in home care packages](#).

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

23 July 2015 - [Tribunal reprimands practitioner over unsatisfactory professional conduct](#) - The Queensland Civil and Administrative Tribunal found Ms Devorah Lindberg acted in a way that constituted unsatisfactory professional conduct, by omitting information about her work history when applying for registration as a medical radiation practitioner. [Read more](#).

21 July 2015 - [Practitioner disqualified following criminal conviction](#) - The Queensland Civil and Administrative Tribunal has reprimanded Mr Phillip Dibbs and disqualified him from applying for registration as a nurse or midwife for 10 years. [Read more](#).

21 July 2015 - [Optometrists reminded to use only protected titles](#) - The Optometry Board of Australia (the Board) is reminding optometrists to use only protected titles. [Read more](#).

Australia. National Blood Authority (NBA)

17 July 2015 - [Outcomes of the RFT for supply of imported immunoglobulin products \(NBA RFT 02/2014\)](#). The NBA has successfully concluded the tender process for the supply of imported intravenous immunoglobulin (IVIg) and subcutaneous immunoglobulin (SCIg), to replace the contracts for these products which expire on 31 December 2015.

Australia. National Health & Medical Research Council (NHMRC)

23 July 2015 - [Appointments to key health and medical research body](#).

23 July 2015 - [Feedback sought on draft revisions to ethical guidelines for assisted reproductive technology](#).

Australia. Therapeutic Goods Administration (TGA)

20 July 2015 - [ActiveSlim slimming capsules](#).

1 July 2015 - [New and updated information on ACE](#).

Australian Institute of Health & Welfare (AIHW)

23 July 2015 - [Cancer mortality trends and projections: 2013 to 2025 \(web report\)](#).

23 July 2015 - [Cancer death rate projected to decrease over next decade \(media release\)](#).

21 Jul 2015 - [Spatial variation in Aboriginal and Torres Strait Islander people's access to primary health care](#) - The report shows that overall, Australian Government funded Indigenous-specific primary health-care services appear to be well positioned relative to the geographic distribution of Aboriginal and Torres Strait Islander people and to the distribution of other GP services. However, there are a number of areas where Aboriginal and Torres Strait Islander people have very limited access to both Indigenous-specific services and GP services in general.

Australian Commission on Safety and Quality in Health Care

24 July 2015 - [Latest report shows room for improvement in antimicrobial use in Australian hospitals](#) - The latest report on antimicrobial prescribing practices provides important information about the rate and appropriateness of antimicrobial use in Australian hospitals. The report, National Antimicrobial Prescribing Practice: results of the 2014 National Antimicrobial Prescribing Survey (NAPS), was released

by the Australian Commission on Safety and Quality in Health Care (the Commission) and the National Centre for Antimicrobial Stewardship (NCAS) at the Peter Doherty Institute for Infection and Immunity.

20 July 2015 – On the Radar – Issue 232 ([PDF 91KB](#)) ([Word 126KB](#)).

Australia. Pharmaceutical Benefits Scheme (PBS)

22 July 2015 - [Updated Submission Deadlines and PBS Price Change Fact Sheet](#) - An update to the Submission Deadlines and Projected Effective Dates, which now includes the application deadlines for all six price change points, has been published.

21 July 2015 - [Indicative 1 October 2015 Prices - 2015 October Cycle](#) - Indicative 1 October 2015 prices resulting from the 2015 October Cycle of Price Disclosure have now been published on the Price Disclosure (SPD) web page.

20 July 2015 - [Originator list for PBS medicines on F2 formulary - stakeholder consultation](#) - The National Health Act 1953 has recently been amended to implement measures announced as part of the PBS Access and Sustainability package. This includes removing the originator brand from price disclosure calculations.

17 July 2015 - [PBAC Public Summary Documents - March 2015](#) - Additional Public Summary Documents from the March 2015 Pharmaceutical Benefits Advisory Committee (PBAC) meeting are now available.

17 July 2015 - [Drug Utilisation Sub Committee \(DUSC\) Outcome Statement](#) - The Outcome Statement from the June 2015 Drug Utilisation Sub Committee (DUSC) Meeting is now available.

Australian Capital Territory (ACT). Health Directorate

22 July 2015 [Electronic Cigarettes - Community Consultation](#) - ACT Health conducted a public consultation between 12 November and 24 December 2014 regarding the sale and use of personal vapourisers, also known as electronic cigarettes.

21 July 2015 - [Issues paper focussed on further reducing alcohol-related harm](#) - An issues paper on potential liquor licensing reforms such as changes to opening hours, outlet density and liquor promotion has been released for public consultation by Attorney General Simon Corbell today.

New South Wales (NSW). Ministry of Health

Media Releases

23 July 2015 - [Junior doctors to map next career phase](#).

20 July 2015 - [Healthy Towns Challenge winner announced](#).

Policy Directives & Guidelines

20 July 2015 - [Emergency Department, Nurse Delegated Emergency Care, Medication Standing Orders](#).

Northern Territory (NT). Department of Health

22 July 2015 - [Major Contractor Announced for Palmerston Regional Hospital](#) - Lend Lease, one of Australia's largest and most successful construction companies, has been selected as the managing contractor for the 116-bed \$150 million Palmerston Regional Hospital.

Queensland. Department of Health

23 July 2015 - [Health Passport for patients with intellectual or learning disabilities](#) - A genuine commitment to patient centred care is helping to drive innovation at West Moreton Hospital and Health Service. Supported by the Excellence in Care Fund the health service is developing a new Health Passport which aims to improve health outcomes for patients with intellectual or learning disabilities. The Health Passport will empower patients who may not be able to effectively communicate their health needs to document and manage their personal health information, which could be critical in emergency situations. The Health Passport will include the use of a smartphone application to ensure it meets the individual

needs of patients and their carers in a variety of healthcare settings. To maintain access for all, the passport will also be available in paper and web based alternatives.

22 July 2015 - [Mackay community meets to tackle domestic violence against seniors](#) - Seniors groups, community leaders and government representatives will meet today to discuss ways the Mackay community can help tackle domestic and family violence against older people.

South Australia (SA). Department for Health & Ageing

24 July 2015 - [Meningococcal winter reminder](#) - SA Health is urging South Australians to be aware of the signs of meningococcal, following four people being hospitalised with the disease this month. Professor Paddy Phillips, Chief Medical Officer for SA Health, said 13 cases of meningococcal disease have been recorded in South Australia since the start of 2015, with a high possibility that more will occur during the winter months. 'Meningococcal is a rare infection, but numbers do tend to be higher when there are more respiratory infections around, such as influenza,' Professor Phillips said. So far this year there have been 13 cases of meningococcal infection compared to 11 cases at the same time in 2014.

17 July 2015 - [SA Health responds to pathology review](#) - SA Health will adopt five of six recommendations of an independent review into the performance and efficiency of SA Pathology. SA Health Chief Executive David Swan, said over the next three years, current services would be streamlined and there would be an increased focus on core service. 'The Ernst and Young review, completed in December 2014, found SA Pathology services to be safe and of a high quality,' Mr Swan said. 'As we announced in December 2014, the review also highlighted that overall efficiency of SA Pathology is significantly less than interstate and relevant international peers. 'By accepting these recommendations we are ensuring SA Pathology will deliver efficient and high quality pathology services to the South Australian community.' Ernst & Young's report identified that SA Pathology's cost of providing public diagnostic services is 126 per cent of the Medicare Benefits Schedule (MBS) which is considerably higher than the industry accepted benchmark of 85 per cent or less.

Tasmania. Department of Health & Human Services

22 July 2015 - [Child and Adolescent Mental Health](#) - The Hodgman Liberal Government has provided an extra \$3.2 million for additional positions in child and adolescent mental health.

20 July 2015 - [Taking action to reduce alcohol and drug harm](#) - The Hodgman Liberal Government is committed to delivering better health outcomes for all Tasmanians and reducing the damage done by alcohol and drugs.

Victoria. Department of Health

17 July 2015 - [Terms of Reference Review of new arrangements for the delivery of Mental Health Community Support Services and Alcohol and Drug Treatment Services \(pdf\)](#) - The Victorian Government made an election commitment to address gaps that may have resulted from the recommissioning of mental health community support services and alcohol and drug treatment services.

Western Australia (WA). Department of Health

Media Releases

23 July 2015 - [New bid to tackle rheumatic heart disease](#) - Rheumatic heart disease (RHD) has joined acute rheumatic fever (ARF) in becoming a notifiable condition in Western Australia.

22 July 2015 - [Fiona Stanley Hospital to act on recommendations from independent review](#) - The Department of Health today released the Review of Operational Clinical and Patient Care at Fiona Stanley Hospital.

Operational Directives (OD)

23 July 2015 - [Memorandum of Understanding - Clinical Privileges, Conduct and Governance in Western Australian Government Hospitals and Health Services](#) - The 2015 Memorandum of Understanding on Clinical Privileges, Conduct and Governance in Western Australian Government Hospitals and Health Services came into effect from 7 July 2015.

New Zealand (NZ). Ministry of Health

22 July 2015 - **Guidance on Using Active Surveillance to Manage Men with Low-risk Prostate Cancer** - This guidance clarifies how active surveillance is used to manage prostate cancer and assist men and their health professionals make shared decisions around options for treatment and care.

20 July 2015 - **Informed Consent and Assisted Reproductive Technology: Proposed advice to the Minister of Health: Consultation document** - The Advisory Committee on Assisted Reproductive Technology (ACART) is preparing advice to the Minister of Health on requirements for informed consent for human assisted reproductive technology. ACART has prepared this consultation document as part of the process of advising the Minister and welcomes feedback on the proposed advice.

Canada. Department of Health

17 July 2015 - **Government of Canada Establishes External Panel on options for a legislative response to *Carter v. Canada*** - Today, Minister of Justice and Attorney General of Canada Peter MacKay and Minister of Health Rona Ambrose announced the establishment of an external panel that will consult with Canadians on options to respond to the Supreme Court of Canada's decision in *Carter v. Canada*.

United Kingdom. Department of Health

22 July 2015 - **Legacy records management: Department of Health Records Office.**

21 July 2015 - **Challenges to finding treatments for dementia.**

21 July 2015 - **National Institute for Health and Care Excellence (NICE): Triennial review.**

21 July 2015 - **Medicines and Healthcare Products Regulatory Agency (MHRA): Triennial review.**

21 July 2015 - **NHS Litigation Authority 2014 review.**

21 July 2015 - **NHS England: assessment of performance 2014 to 2015.**

21 July 2015 - **Department of Health annual report and accounts 2014 to 2015.**

20 July 2015 - **Assistive technology: research and development.**

17 July 2015 - **Healthcare UK overview and annual review April 2014 to March 2015.**

17 July 2015 - **Draft regulations on the sale and manufacture of tobacco products.**

17 July 2015 - **Jeremy Hunt: message to NHS staff about the future NHS.**

17 July 2015 - **Smoking in vehicles.**

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

20 July 2015 - **HHS partnership advances experimental Ebola drug.**

17 July 2015 - **Statement from Assistant Secretary for Aging Kathy Greenlee on Senate passage of Older Americans Act Reauthorization.**

Australian Medical Association (AuMA)

24 July 2015 - **Family doctors provide valuable support to victims of family violence** - AMA President, Professor Brian Owler, said today that the AMA and the medical profession are committed to supporting the victims of family violence, and will work with governments, authorities, and advocates to overcome this scourge in the Australian community.

23 July 2015 - **AMA warns against radical changes to medical intern training** - AMA President, Professor Brian Owler, said today that there is no need to radically change the Australian model of medical intern training. The AMA has lodged a submission in response to an options paper released by the Council of Australian Governments (COAG) Health Council National Review of Medical Intern Training. 'The AMA urges caution on any proposed major changes to internship training for medical graduates,' Professor Owler said. There is no evidence to show that the current model of internship in Australia is 'broken', or that radical changes to its structure are required.

23 July 2015 - **Take the time to talk about death and dying** - The AMA is using AMA Family Doctor Week to encourage everyone – old or young, sick or healthy – to talk about death and dying and to make plans for end of life care. AMA President, Professor Brian Owler, said today it was important to break the taboo around death and dying, and get people to discuss their wishes with their families. 'Discussing death and dying can often be confronting, but we encourage everyone to talk to their family about their end of life wishes,' Professor Owler said.

22 July 2015 - **Vaccination saves lives** - AMA President, Professor Brian Owler, today paid tribute to the role played by family doctors in safely and effectively immunising generations of Australians against potentially deadly diseases. Professor Owler said GPs were on the front line in protecting families against measles, whooping cough, influenza, and other infections, providing advice and administering vaccines that prevent serious illnesses and save lives. 'Many serious life-threatening diseases are now rare because of immunisation, some have been eradicated, and a great many others are under control, but we must not become complacent,' Professor Owler said.

21 July 2015 - **Family Doctors - the first port of call for better mental health** - During Family Doctor Week, the AMA is highlighting the important role played by GPs in looking after the mental health of their patients and their local communities. AMA President, Professor Brian Owler, said today that patients who have an established relationship with their GP are more at ease in discussing any mental health concerns with their family doctor, and local GPs are an easily accessible confidant for people wanting to start a confidential conversation about their mental health with a highly trained medical professional.

ABOUT US

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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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