



HEALTH ALERT

25 July 2016

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JUDGMENTS

Commonwealth

21 July 2016 - *NRM Corporation Pty Ltd v Australian Competition and Consumer Commission* [2016] FCAFC 98 - In April 2015, the Federal Court of Australia (FCA) found in favour of the Australian Competition and Consumer Commission (ACCC) in proceedings against seven respondents who, in varying capacities, were associated with offering treatments for premature ejaculation and erectile dysfunction. It was advertised that the treatment would result in 'longer lasting sex'. The ACCC alleged that this, along with the high pressure sales techniques and prescription of medications, amounted to unconscionable conduct. The ACCC also contended that a term of the contract between the business and its patients in relation to refunds was unfair within the meaning of the Australian Consumer Law. The primary judge heard from 32 witnesses over a period of 33 days before finding that the claims made by the ACCC had been made out. This decision was appealed to the Full Court of the FCA.

In 2015, a Notice of Appeal was filed setting out a total of 24 grounds (a number of which were withdrawn in the Amended and Further Amended Notices of Appeal). Among other things, it was alleged that there were errors in findings regarding the efficacy of the treatments and the vulnerability of consumers. It was also contended that the trial judge erred in failing to apply the relevant legal authorities in relation to both: the determination of unconscionability; and the meaning of an unfair contract term under the Australian Consumer Law.

The Court concluded that none of the Grounds of Appeal had been made out. The appeal was dismissed.

19 July 2016 - *Steele v St Vincent's Hospital Melbourne* [2016] FWC 4569 - Application for relief from unfair dismissal.

New South Wales

15 July 2016 - *Gulab Khan v Matthew Rathjen* [2016] NSWDC 139 - On 16 October 2011, the plaintiff was the victim of an armed robbery at his place of employment. The plaintiff grabbed the knife of his attacker in an attempt to avoid being stabbed. This resulted in him sustaining lacerations to the index and middle fingers of his left hand. The plaintiff consulted the defendant, a general practitioner, on 17 October 2011 and 25 October 2011. It is alleged that, on these two occasions, the defendant failed to properly assess and diagnose the plaintiff's injuries. Further, it is alleged that defendant failed to refer the plaintiff on to either a hand surgeon or to an emergency department of a hospital for review and investigations. The plaintiff contends that the defendant's negligence has caused him to suffer a loss of function of his left third finger, a chronic pain syndrome, and an adjustment disorder with depression and anxiety.

The defendant pleaded that he acted in a manner which accorded with the standard of care accepted by peer professionals in Australia as competent professional practice. Both parties relied on the expert evidence of hand surgeons to support their case. Both parties also agreed to have three general practitioner witnesses discuss and present to the court their answers to a list of questions drafted by their legal representatives.

The Court found that the defendant was negligent in his treatment of the plaintiff on 17 October 2011. The plaintiff was awarded \$206,000 plus costs.

20 July 2016 - *Health Care Complaints Commission v Azizi* [2016] NSWCATOD 94 - Medical practitioner professional misconduct, forged prescriptions for drug of addiction, false representations to pharmacists, not using for health purposes, self-administering drug of addiction on some days before work, misleading Medical Council and HCCC during investigations.

18 July 2016 - *Health Care Complaints Commission v Smith* [2016] NSWCATOD 93 - HEALTH PRACTITIONER REGULATION NATIONAL LAW – Where applicant asserts practitioner guilty of unsatisfactory professional conduct and professional misconduct – Where practitioner admits the complaints – consideration of appropriate protective orders.

Queensland

18 July 2016 - [Gobus v State of Queensland \(Cairns and Hinterland Hospital and Health Service\) \[2016\] ICQ 015](#) - INDUSTRIAL LAW – QUEENSLAND – DISMISSALS – UNFAIR DISMISSAL – WHAT CONSTITUTES – where the appellant was dismissed from his employment – where he applied for reinstatement – where that application was dismissed by the Commission on the basis that his dismissal had not been because he made a public interest disclosure and was not harsh, unjust or unreasonable for the purposes of s 73 of the Industrial Relations Act 1999 – whether the Commission made an error of law or jurisdictional error in reaching its decision.

20 July 2016 - [Moore v Medical Board of Australia \[2016\] QCAT 186](#) - PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – LICENSES AND REGISTRATION – OTHER MATTERS – where the Medical Board of Australia cautioned and imposed conditions on the registration of the registrant – where registrant seeks review of the conditions imposed – where the registrant seeks a stay of the Medical Board of Australia's decision – where the stay does not expose the public to any particular risk – whether the stay should be granted.

Victoria

18 July 2016 - [Department of Health and Human Services and Melbourne Health v Melbourne CC \[2016\] VCAT 1194](#) - Application to quash or set aside a summons to produce documents – application refused in the interests of justice.

14 July 2016 - [Inquest into the death of Ross Albert Butler](#) - Findings into the death of Ross Albert Butler.

LEGISLATION

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

20 July 2016 - [Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1973 – QAA 6/2016](#)

19 July 2016 - [National Health \(Pharmaceutical benefits – early supply\) Amendment Instrument 2016 \(No. 6\) \(PB 66 of 2016\)](#) - F2016L01197 as made.

19 July 2016 - [National Health Determination under paragraph 98C\(1\)\(b\) Amendment 2016 \(No. 6\) \(PB 65 of 2016\)](#) - F2016L01196 as made.

19 July 2016 - [National Health \(Prescriber bag supplies\) Amendment Determination 2016 \(No. 2\) \(PB 64 of 2016\)](#) - F2016L01195 as made.

19 July 2016 - [National Health \(Price and Special Patient Contribution\) Amendment Determination 2016 \(No. 5\)\(PB 63 of 2016\)](#) - F2016L01189 as made.

19 July 2016 - [National Health \(Listing of Pharmaceutical Benefits\) Amendment Instrument 2016 \(No. 7\) \(PB 62 of 2016\)](#) - F2016L01185 as made.

18 July 2016 - [National Health \(Weighted average disclosed price – October 2016 reduction day\) Determination 2016](#) - F2016L01182 PB 39 of 2016 as made.

REPORTS

Australia. Department of Health

Media releases

18 July 2016 - [Appointment as Minister for Health, Aged Care & Sport](#) - It is an honour to be reappointed as Minister for Health, Aged Care and Sport.

Private Health Insurance Circulars

21 July 2016 - [PHI 54/16 New Private Hospital Information](#)

Australian Digital Health Agency

15 July 2016 - [National Clinical Terminology Service Connectathon: 5-6 July 2016](#) - The Australian Digital Health Agency, HL7 Australia and CSIRO, gathered more than 40 national and international software developers and implementers in Sydney for the third National Clinical Terminology Service (NCTS) Connectathon.

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

22 July 2016 - [Medical practitioner cautioned for unsatisfactory professional conduct](#) - A tribunal has found that Dr Indunil Shiranth de Silva, a physician, had behaved in a way that constituted unsatisfactory professional conduct.

22 July 2016 - [Call for applications](#) - Call for applications for appointment to the Scheduled Medicines Expert Committee

22 July 2016 - [Communiqués from the NMBA](#) - The National Nursing and Midwifery Board (NMBA) has published its May and June communiqués.

21 July 2016 - [Request for Quote](#) - The Board is looking to develop an outcome based assessment model for overseas trained dental specialists applying for specialist registration in Australia.

19 July 2016 - [Newsletter from the Board](#) - The Aboriginal and Torres Strait Islander Health Practice Board of Australia releases its latest newsletter.

18 July 2016 - [Medical practitioner's registration suspended for professional misconduct](#) - A medical practitioner who admitted to a sexual relationship with a patient has had his registration suspended for professional misconduct.

Australia National Blood Authority

15 July 2016 - [The Second Edition of the National Policy: Access to Government-Funded Immunoglobulin Products in Australia has been released](#) - The National Policy was recently revised to replace the First Edition, and is now applicable to the implementation of BloodSTAR in July.

Australia. National Health & Medical Research Council

22 July 2016 - [NHMRC Research Tracker](#)

Australia. Therapeutic Goods Administration (TGA)

21 July 2016 - [Regulatory decisions & notices \(medical devices & IVDs\)](#) - Annual charges for IVDs effective from 1 July 2017.

21 July 2016 - [Alere INRatio PT/INR monitor system](#) - Consumers and health professionals are advised that Alere will be recalling the Alere INRatio PT/INR monitor system.

21 July 2016 - [Medtronic Neuromodulation Deep Brain Stimulation system pocket adaptors](#) - Hazard alert - risk of loss of therapy due to electrical issue.

19 July 2016 - [Updates to the list of designated orphan drugs](#) - Added Regorafenib (STIVARGA).

18 July 2016 - [Cost recovery implementation statement 2016-17](#) - This CRIS provides information on how the Therapeutic Goods Administration (TGA) implements cost recovery of regulatory activities.

15 July 2016 - [Golden Ant tablets](#) - Safety advisory.

15 July 2016 - [Scheduling committees meeting dates and decisions timeframes](#) - The 2017 scheduling calendar is now available.

15 July 2016 - [TGA presentation: Australian Dental Industry Association custom-made medical devices workshop, 12-13 July 2016](#) - Information for the dental industry on the legislative framework and regulatory obligations pre and post market.

Australian Institute of Health & Welfare (AIHW)

21 July 2016 - [Indigenous health check \(MBS 715\) data tool 5th release \(SAS VA dynamic data display\)](#)

20 July 2016 - [National Bowel Cancer Screening Program: monitoring report 2016](#)

19 July 2016 - [National Core Maternity Indicators stage 3 and 4 results from 2010–2013](#)

Australian Commission on Safety and Quality in Health Care

On the Radar – 18 July 2016 – Issue 282 - ([PDF 124KB](#)) ([Word 169KB](#))

Pharmaceutical Benefits Scheme (PBS)

18 July 2016 - [Report on the Collection of Under Co-payment Data 2014-15](#) - The Report on the Collection of Under Co-payment Data 2014-15 is now available.

18 July 2016 - [Price Disclosure 2016 October Cycle Outcomes Summary](#) - The summary of price disclosure price reductions for the 2016 October Cycle (First Remove Originator cycle) has now been published on the Price Disclosure (SPD) page.

15 July 2016 - [Additional Pharmaceutical Benefits Advisory Committee \(PBAC\) Public Summary Documents - March 2016 meeting](#) - Additional Public Summary Documents from the March 2016 PBAC meeting are now available.

Australian Capital Territory (ACT). Health Directorate

18 July 2016 - [Home birth Trial](#) - Trial of publicly funded homebirth in the ACT to commence in October 2016.

New South Wales (NSW). Ministry of Health

Media Releases

21 July 2016 - [NSW Health report shows over 65s drink alcohol more than young people](#) - The 2016 Chief Health Officer's Report, *Trends in alcohol use and health-related harms in NSW*, has revealed a new picture of community drinking patterns.

21 July 2016 - [Junior Medical Officer positions now open](#) - NSW Health has announced applications are now open for around 4,000 Junior Medical Officer positions through the State's annual recruitment drive – the largest of its kind in the country.

19 July 2016 - [USA and NSW to share cancer research](#) - An historic agreement has been signed that will open the door to greater collaboration in cancer research between New South Wales and the United States. The NSW Government signed a Memorandum of Understanding with the Obama Administration during US Vice President Joe Biden's visit to Australia. The US National Cancer Institute and NSW Government formalised an agreement to work together on the Cancer Moonshot initiative, which was announced by President Obama in his State of the Union address in January 2016.

Policy Directives & Guidelines

22 July 2016 - [NSW Maternity and Neonatal Service Capability Framework](#)

15 July 2016 - [Corrupt Conduct - Reporting to the Independent Commission Against Corruption \(ICAC\)](#)

13 July 2016 - [Maternity - Maternal Group B Streptococcus \(GBS\) and minimisation of neonatal early-onset GBS Sepsis](#)

13 July 2016 - [Cabcharge FastCard and FasteTicket Policy](#)

12 July 2016 - [Public Interest Disclosures](#)

Information Bulletins

22 July 2016 - [Non-Admitted Patient Data Collection: Changes for Reporting via WebNAP effective 1 July 2016](#)

21 July 2016 - [Salary Increases for Staff in the NSW Health Service - HSU and ASMOF Awards](#)

21 July 2016 - [2016/17 Service Agreement Key Performance Indicators and Service Measures Data Dictionary](#)

18 July 2016 - [Increases to Rates of Pay and Allowances for Skilled Trades Employees](#)

18 July 2016 - [Rates of Pay and Allowances for Teachers in NSW Health Early Childhood Service Centres](#)

18 July 2016 - [Salary Increases Staff Specialists NSW Public Health System - Staff Specialists \(State\) Award](#)

15 July 2016 - [Increases in Wages and Related Allowances for Operational Ambulance Officers and Managers](#)

New South Wales Health Care Complaints Commission (HCCC)

18 July 2016 - [Mr Neil Mullen \(RN\) – Unsatisfactory professional conduct – Reprimand and conditions imposed](#) - The HCCC prosecuted Mr Neil Mullen, a registered nurse who worked at a mental health unit in Shellharbour Hospital, before a Nursing and Midwifery Professional Standards Committee.

Queensland. Department of Health

22 July 2016 - [Local cancer trials one step closer with appointment of trials nurse](#) - A clinical cancer trials unit has been established at Toowoomba Hospital's Regional Cancer Centre. Dr Khageshwar Pokharel, clinical director of cancer care services at Toowoomba Hospital, said local access to trials would provide tremendous benefits for eligible patients. The trials will be carried out with support from the Princess Alexandra Hospital, Prince Charles Hospital, and Royal Brisbane and Women's Hospital.

22 July 2016 - [Bollon nursing director advises residents to give telehealth a go](#) - Bollon Community Clinic's new Director of Nursing and Facility Manager Heather Hancock has experienced first-hand the benefits of telehealth in isolated areas. Ms Hancock, who has worked in rural and remote Queensland for more than 30 years, wants to promote the use of telehealth at Bollon for routine and follow-up consultations with specialists and GPs.

20 July 2016 - [Doomadgee dog helps with staff safety](#) - Meet Max, the treasured Blue Kelpie of owners Nurse Practitioner, Julie Kent and her husband Stephen. Max adopted the couple, who work at the Doomadgee Hospital, last year but was rescued from the Doomadgee tip prior to this and has lived in the hospital grounds ever since. Max has become a valued member of staff at the Doomadgee Hospital, and earns his keep escorting the nurses back to their quarters at night then returning home to his warm safe bed where he now actually sleeps with his eye closed. Prior to adopting the Kents, and for many months after, he slept with his eyes wide open, unable to let his guard down.

19 July 2016 - **University research project analyses South West Nurses' wellbeing** - The South West Hospital and Health Service is partnering with the University of Southern Queensland to research the wellbeing of its nurses.

18 July 2016 - **New bed-based facility confirmed for young people with severe mental illness** - The Queensland Government confirmed today it will build a new bed-based treatment and rehabilitation facility to support young people with severe and complex mental illness.

18 July 2016 - **Tick of approval for Charleville's Home Support Program** - Charleville's Commonwealth Home Support Program has received a resounding tick of approval from both quality surveyors and clients alike.

Tasmania. Department of Health & Human Services

22 July 2016 - **Greens finally acknowledge long-standing locum problem** - The Hodgman Liberal Government's One Health System reforms recognise that locum usage is too high and we are working hard to address the issue by employing more permanent medical specialists.

20 July 2016 - **Formal offer to HACSU** - The Tasmanian Government has today made a formal offer to the Health and Community Services Union to finalise the Enterprise Bargaining Agreement for Ambulance Tasmania paramedics.

Victoria. Department of Health

22 July 2016 - **Commitment To Cancer Saving Thousands Of Lives** - Victoria has set itself the ambitious target of saving 10,000 lives from cancer in the next 10 years as it launches a co-ordinated plan to tackle the insidious disease.

21 July 2016 - **Falls A Focus After Serious Injury Study** - More Victorians die from falls than from accidents on our roads, a report into major trauma has found. The Victorian State Trauma System & Registry annual report 2014/15 found that 459 people – mainly aged over 64 – died from falls from a height of less than a meter over the year, compared with 301 in transport-related accidents.

19 July 2016 - **Victorian Health Innovation To Shine On The World Stage** - The Andrews Labor Government today released a new plan to create local jobs and grow the economy by selling innovation and expertise from Victoria's world-class health system to international markets.

19 July 2016 - **Mental Health Support In Place For Victorian Farmers** - Farmers from more than 4000 Victorian farms will be able to tap into extended counselling and support services as part of the Andrews Labor Government's \$1.5 million assistance package to support dairy farmers and their families.

19 July 2016 - **Call To Share In \$60 Million Boost For Victorian Hospitals** - The Andrews Labor Government's \$60 million funding boost to fund the latest advances in medical equipment and modern engineering infrastructure for Victorian hospitals is now open for applications.

18 July 2016 - **Victoria To Lead The Way In Pursuit Of Improved Cancer Treatments** - The research capability of the Victorian Comprehensive Cancer Centre will be further enhanced with the inclusion of a number of world-class research agencies who will occupy Level 13 of the new complex.

17 July 2016 - **Over the past few decades, Victoria has become a global hub for medical research.** - Over the past few decades, Victoria has become a global hub for medical research. And today, we unveiled our centrepiece: the Victorian Comprehensive Cancer Centre.

17 July 2016 - **The VCCC is open – and we had a special guest on hand to help us launch it.** - Thanks for being here, Mr Vice President.

17 July 2016 - **United States Vice President Visits As VCCC Opens Its Doors** - Joseph R Biden Jr, Vice President of the United States of America, today toured Victoria's landmark \$1 billion Victorian Comprehensive Cancer Centre (VCCC) ahead of its official opening.

16 July 2016 - **New VCCC Chair And Deputy Chair Appointed** - Minister for Health, Jill Hennessy, today announced the appointments of the new Chair and Deputy Chair to the Victorian Comprehensive Cancer Centre Limited Board. Professor Linda Kristjanson has been appointed as the Chairperson and Professor Robert Thomas OAM as Deputy Chairperson effective from 1 July 2016 to 30 June 2020.

Western Australia (WA). Department of Health

Media Releases

22 July 2016 - **Minister for Health: New WA vaccination push for a healthier future** - A renewed focus on increasing childhood vaccination, easier access to immunisation and more support for vaccination providers are among the 10 priorities of the Liberal National Government's new plan to protect West Australians from preventable diseases.

21 July 2016 - **Measles warning following outbreak among backpackers in Northbridge area** - Western Australians are being asked to be alert to an increased risk of measles following the confirmation of four cases in backpackers staying in the Northbridge area of Perth. Two other people are also suspected of having measles.

20 July 2016 - **Minister for Health and Minister for Regional Development: Community care focus for new Newman hospital** - Pilbara residents will benefit from a \$59.75 million joint investment by the Liberal National Government and industry to redevelop the Newman Health Service.

19 July 2016 - **Broome linked to Emergency Telehealth Service** - Broome Health Campus has become the 75th site to have access to the Emergency Telehealth Service.

18 July 2016 - **Minister for Health and Minister for Regional Development: Patients to benefit from remote transport boost** - The Royal Flying Doctor Service will get two new and two replacement aircraft, and a new Broome base as part of a \$67.39 million Liberal National Government Royalties for Regions investment in the Country Patient Transport Project announced today.

18 July 2016 - **PMH celebrates its 107th birthday** - Princess Margaret Hospital celebrated its 107th birthday with a party for patients.

Publications

18 July 2016 - **Western Australian Immunisation Strategy 2016–2020** - The *WA Immunisation Strategy 2016–2020* is currently being finalised and will be published soon.

Australian Medical Association (AuMA)

21 July 2016 - **Minimising waste in the health system** - The AuMA released its new Position Statement on the Doctor's Role in Stewardship of Health Care Resources.

21 July 2016 - **Doctors must have key role in health financing and funding** - The AuMA released its new Position Statement on the Role of Doctors in Stewardship of Healthcare Financing and Funding Arrangements 2016.

18 July 2016 - **Minister Ley must set new direction for health policy in second term** - The AuMA today congratulated Sussan Ley on being re-appointed as Health Minister in the Turnbull Government. AuMA President, Dr Michael Gannon, said today that Ms Ley's experience in the portfolio, and the lessons learned from the election, will help her lead a new direction for Coalition health policy in the Government's second term.

Health Canada

6 July 2016 - **Health Canada Allowing Immediate Access to Naloxone Nasal Spray** - A new step in Health Canada's work to address opioid misuse. As an emergency public health measure in response to the current opioid crisis, the Minister of Health has signed an **Interim Order** to temporarily allow naloxone in nasal spray form to be imported from the U.S. and sold in Canada. Until now, only the injectable format of the drug has been available in Canada.

American Medical Association (AMA)

7 July 2016 - **AMA, Scripps and JAX Launch Educational Series for Physicians on Applying Precision Medicine to Practice** - The AMA, in partnership with **Scripps Translational Science Institute (Scripps)** and **The Jackson Laboratory (JAX)**, today announced a new online program aimed at educating physicians and other health care professionals on the benefits and limitations of genetic testing and when it is appropriate to incorporate it into their practices.

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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