



# HEALTH ALERT

**3 NOVEMBER 2014**

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## JUDGMENTS

### Victoria

30 October 2014 – [\*Finding into Death with Inquest of Anne Christine Brain 2011 004797\*](#)

Ms Brain had a complex mental health history. She suffered from schizophrenia, anxiety and depression. She was also dependent on prescription medication. In December 2011, Ms Brain passed away from intoxication by the combined effects of Tramadol, Methadone, Diazepam, Codeine, Alprazolam, Risperidone, Doxepin and Metoclopramide. That year alone, she was repeatedly prescribed the same analgesic, anti-anxiety and antidepressant medications from seven different general practitioners.

A number of doctors who had prescribed medication to Ms Brain in the lead-up to her death suggested that a real time prescription monitoring ("**RTPM**") system – an electronic system allowing pharmacists and doctors to monitor the prescription and dispensing of medication – would have enabled them to make more informed decisions about her health care.

The Coroner noted the current absence of a Victorian RTPM system and discussed the significant potential for RTPM to prevent people from obtaining medications for non-therapeutic purposes. In view of these considerations, the Coroner strongly recommended that:

- the Victorian Department of Health urgently progress the implementation of a Victorian RTPM system;
- the scope of drugs monitored by the system be expanded beyond Schedule 8 drugs (a category of drugs prescribed by legislation); and
- the Department of Health consider meeting with private health IT developers to discuss and address any legislative and regulatory barriers that might prevent private companies providing RTPM capacity through their products and services.

These recommendations follow the recommendations of Coroners West, Jamieson, Hawkins and Heffey, who had each recommended the implementation of such a system in various findings over a number of years.

29 October 2014 – [\*Omant v Nursing and Midwifery Board of Australia & Anor \(No 2\) \[2014\] VSC 552\*](#)

Costs – Appeal from Victorian Civil and Administrative Tribunal – Whether first defendant should pay successful plaintiff's costs – Costs consequences of an offer rejected by plaintiff – Whether nature and scope of offer was unclear – First defendant to pay plaintiff's costs of and incidental to the proceeding on the usual basis – Whether first defendant entitled to indemnity certificate under s 4 of the *Appeal Costs Act 1998* (Vic) – Indemnity certificate granted.

### New South Wales

29 October 2014 – [\*New South Wales Nurses and Midwives' Association v Crown in Right of the State of New South Wales \(Director General, NSW Ministry of Health in respect of Sydney Local Health District\) \[2014\] NSWIRComm 54\*](#)

The New South Wales Nurses' and Midwives' Association brought a claim on behalf of two registered nurses who were members of the Association and were employed under the Public Health System Nurses' and Midwives' (State) Award.

The Association claimed that the two nurses, Ms Pink and Ms White, were entitled to, but were not paid the "In Charge of Shift Allowance" ("**ICS Allowance**") prescribed by the Award when they worked as team leaders on shifts in the Haematology Ambulatory Care Unit ("**HACU**") at Concord Hospital.

The issue before the NSW Industrial Relations Commission related to the interpretation of the Award. In order to determine whether the nurses were entitled to the ICS Allowance, the Commission was required to consider whether the role of HACU team leader constituted "day to day clinical management for the shift" and whether that responsibility was "delegated" or "designated" to Ms White and Ms Pink.

Considering the duties performed by the team leader (including allocation of patients, management of daily nurse to patient workload and organising the admission of HACU patients), the Commission determined that the role performed by the team leader did constitute the "day to day clinical management for the shift"

for the purposes of the Award. The Commission also found that both Ms White and Ms Pink were designated to undertake the role of team leader on nominated shifts, despite the fact that this designation was not evidenced in writing. Ms White and Ms Pink were therefore entitled to the ICS Allowance.

30 October 2014 – [Health Care Complaints Commission v Marquinez \[2014\] NSWCATOD 125](#)

Administrative law

29 October 2014 – [Health Care Complaints Commission v Street \[2014\] NSWCATOD 124](#)

Professional discipline – Complaint against former registered medical practitioner (general and specialist) – full admissions of misconduct – wrongful prescription of drugs of addiction – self-administration of drugs of addiction – falsifying prescriptions and records – failure to keep adequate records – guilty of professional misconduct – finding of impairment – offer of employment if permitted to resume practice – consideration of an order that would allow respondent to resume practice subject to strict conditions – rejected – protective purpose of disciplinary orders – orders of cancellation and disqualification for eighteen months. Health Practitioner Regulation National Law (NSW) No 86a.

28 October 2014 – [Health Care Complaints Commission v Nguyen \[2014\] NSWCATOD 123](#)

Pharmacist – unsatisfactory professional conduct – professional misconduct – Health Practitioner Regulation National Law (NSW) – supply Scheduled medications contrary to NSW *Poisons & Therapeutic Goods Act 1966*; *Poisons & Therapeutic Goods Regulation 2008* – fail record details of supply; restricted substances: pseudoephedrine-based medications; prescribed restricted substances: anabolic androgenic steroids; both medications known to be misused and abused.

28 October 2014 – [Robert Graeme West and Western Sydney Local Health District \[2014\] NSWIRComm 1027](#)

Unfair dismissal – out of time application – applicant had legal representation from the outset – pursued part 7 claim with the benefit of legal advice – respondent advised of jurisdictional hurdle – respondent offered not to raise jurisdiction argument if the applicant discontinued part 7 proceedings and lodged part 6 claim – applicant made informed decision to pursue part 7 claim to finality stating it was his preferred jurisdiction – decision in favour of the respondent – out of time claim lodged by applicant pursuant to part 6 – applicant claimed that he would have lodged a part 6 claim if the respondent had advised him of the appeal processes available to him at the time of the dismissal – applicant was not aware of the existence of a memorandum of understanding with the HSU that removed his appeal rights pursuant to part 7 – respondent obliged to advise of internal appeal processes – respondent not obliged to advise of litigation options – application was lodged out of time – delay did not result from ignorance or incapacity – no positive demonstration of hardship before the commission – no demonstration of respondent contributing to the delay in lodgement of the claim – applicant failed to discharge the onus of proof to establish a sufficient reason for the exercise of discretion.

## Western Australia

23 October 2014 – [Medical Board of Australia and Myers \[2014\] WASAT 137](#)

Medical practitioner – National Law – Indecent assault – sexual remarks – professional misconduct.

## LEGISLATION

### Commonwealth

30 October 2014 – [Health Insurance \(General Medical Services Table\) Amendment \(Chronic Disease Management\) Regulation 2014](#) F2014L01453 SLI 2014 No. 158 as made 30/10/2014.

27 October 2014 – [Health Insurance \(Gippsland, Rockhampton and Gladstone Mobile MRI Service\) Amendment Determination 2014](#) F2014L01454 as made 27/10/2014.

27 October 2014 – [Health Insurance \(MRI Crohn's disease\) Determination 2014](#) F2014L01452 as made 27/10/2014.

24 October 2014 – [Health Insurance \(Allied Health Services\) Amendment Determination 2014 \(No. 2\)](#) F2014L01447 as made 24/10/2014.

24 October 2014 – [Health Insurance \(HbA1c Test for Diagnosis of Diabetes\) Determination 2014](#) F2014L01441 as made 24/10/2014.

24 October 2014 – [Health Insurance \(RET Gene Testing\) Determination 2014](#) F2014L01443 as made 24/10/2014.

24 October 2014 – [National Health \(Listed drugs on F1 or F2\) Amendment Determination 2014 \(No. 10\) \(No. PB 85 of 2014\)](#) F2014L01440 PB 85 of 2014 as made 24/10/2014.

24 October 2014 – [Health Insurance \(Cone Beam Computed Tomography\) Revocation Determination 2014](#) F2014L01435 as made 24/10/2014.

24 October 2014 – [Health Insurance \(Pathologist-determinable Services\) Amendment Determination 2014 \(No. 2\)](#) F2014L01437 as made 24/10/2014.

24 October 2014 – [Health Insurance \(Pharmacogenetic Testing - Epidermal Growth Factor Receptor\) Revocation Determination 2014](#) F2014L01438 as made 24/10/2014.

24 October 2014 – [Health Insurance \(Pharmacogenetic Testing\) Revocation Determination 2014](#) F2014L01436 as made 24/10/2014.

24 October 2014 – [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2014 \(No. 10\) \(No. PB 86 of 2014\)](#) F2014L01439 PB 86 of 2014 as made 24/10/2014.

24 October 2014 – [National Health \(Botulinum Toxin Program\) Special Arrangement Amendment Instrument 2014 \(No. 2\) \(No. PB 87 of 2014\)](#) F2014L01429 PB 87 of 2014 as made 24/10/2014.

23 October 2014 – [Private Health Insurance \(Benefit Requirements\) Amendment Rules 2014 \(No. 5\)](#) F2014L01434 as made 23/10/2014.

[Therapeutic Goods \(Listing\) Notice 2014 \(No. 6\)](#) F2014L01421 as made 03/10/2014.

[Dental Benefits Legislation Amendment Bill 2014](#) passed both house 30 October 2014 Amends the *Dental Benefits Act 2008* and *Health Insurance Act 1973* to apply the Professional Services Review Scheme to dental services provided under the Child Dental Benefits Schedule; *Health Insurance Act 1973* to require the Chief Executive Medicare ("CEM") to waive certain debts incurred by dentists in relation to the Chronic Disease Dental Scheme ("CDDS"); and *Dental Benefits Act 2008* to: enable the CEM or their delegate to obtain certain documents from dentists to substantiate the payments of benefits under the CDBS; delegate ministerial functions and powers; amend the definition of "dental practitioner"; enable the disclosure of certain protected information; and make a technical amendment.

### New South Wales

23 October 2014 – [Biosecurity Bill 2014](#) – An Act to provide for the prevention, elimination, minimisation and management of biosecurity risks; and for other purposes.

### South Australia

29 October 2014 – [Health Care \(Administration\) Amendment Bill 2014](#) – A Bill for an Act to amend the *Health Care Act 2008*.

## REPORTS

### Australia. Department of Health & Ageing

Media releases

31 October 2014 – [Government Announces Changes to Attract More Doctors to the Bush](#)

30 October 2014 – [New National Plan to Tackle the Impact of Asthma](#)

29 October 2014 – [2014 Australian Medical Association – National Alcohol Summit](#)

29 October 2014 – [2014 National Aboriginal and Torres Strait Islander Health Worker Association Annual Conference](#)

29 October 2014 – [Review to Strengthen Independent Medical Research Institutes](#)

29 October 2014 – [A Strong Aboriginal and Torres Strait Islander Health Workforce Key to Closing the Gap](#)

29 October 2014 – [Danny Green Goes Another Round Against Alcohol-Related Violence](#)

26 October 2014 – [PBS Listing for Kalydeco and Soliris](#)

Private Health insurance Circulars

24 October 2014 – [PHI 62/14 Private Hospital Information](#)

### **Australia. Health Practitioner Regulation Agency and the boards**

30 October 2014 – Focus groups being held to review the Nursing and Midwifery Board of Australia branding and identity The Nursing and Midwifery Board of Australia ("**NMBA**") has sponsored a comprehensive review of the recognition of the NMBA brand and identity as an independent yet interrelated entity with the Australian Healthcare Practitioner Agency ("**AHPRA**"). [Read More](#)

30 October 2014 – Communiqué from the Board The Physiotherapy Board of Australia releases its latest communiqué. [Read More](#)

28 October 2014 – Newsletter from the National Board The Occupational Therapy Board of Australia releases its latest newsletter. [Read More](#)

27 October 2014 – Communiqué from the Board The Osteopathy Board of Australia publishes its latest communique. [Read More](#)

27 October 2014 – Tribunal reprimands and fines doctor for professional misconduct The South Australian Health Practitioners Tribunal has found that Dr Frederick Rhys Henning engaged in unsatisfactory professional performance and professional misconduct. [Read More](#)

24 October 2014 – Public consultation The Nursing and Midwifery Board of Australia (National Board) is releasing for public consultation papers on the review of the Endorsement as a nurse practitioner registration standard and associated Guidelines. [Read More](#)

24 October 2014 – The Medical Radiation Practice Board publishes its supervised practice presentation Information sessions and a webinar have been held to outline the main requirements for supervised practice in 2015. [Read More](#)

### **Australia. National Health & Medical Research Council**

30 October 2014 – [NHMRC website improvements](#)

### **Australia. Therapeutic Goods Administration**

30 October 2014 – [Advisory Committee on Biologicals \(ACB\)](#) – Meeting no. 6, 20 November 2014 cancelled.

30 October 2014 – [Help with searching the TGA website](#) – Two types of searches are available, content and ARTG search, with both having advanced search options.

29 October 2014 – [Annual charges for therapeutic goods](#) – Annual charges apply to all product entries on the ARTG.

29 October 2014 – [ACPM meeting statement, Meeting 300, 3 October 2014](#) – Role of the Advisory Committee on Prescription Medicines ("**ACPM**") in the TGA's regulatory decision making process.

28 October 2014 – [Reasons for scheduling delegates' final decisions, October 2014 \(Chemicals\)](#) – Reasons for decisions by the Delegate of the Secretary to the Department of Health for amendments to the Poisons Standard.

28 October 2014 – [Public submissions on scheduling matters referred to the ACCS#11 and the joint ACCS-ACMS#9](#) – Public submissions made in response to: the delegates' proposed amendments to the Poisons Standard; and the delegates' interim decision.

28 October 2014 – [Scheduling news](#) – Latest scheduling updates.

24 October 2014 – [Expert review of medicines and medical devices regulation](#) – The Australian Government announced a review of the regulation of medicines and medical devices.

24 October 2014 – [Zovirax Ophthalmic ointment](#) – Retail level recall – potential for eye damage and product shortage.

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

27 October 2014 – [Health indicators for Remote Service Delivery communities: a summary report](#)

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

27 October 2014 – On the Radar – Issue 197 ([PDF 95KB](#)) ([Word 125KB](#))

#### **Australia. Private Health Insurance Administration Council**

30 October 2014 – [2015 Premium change Applications](#)

29 October 2014 – [PHIAC Annual Report 2013-14](#)

#### **Australian Capital Territory. Health Directorate**

28 October 2014 – [New walk-in centres prove popular in first months](#)

28 October 2014 – [Buyback and demolition program announced for ACT 'Mr Fluffy' homes](#)

#### **New South Wales. Ministry of Health**

Media Releases

30 October 2014 – [\\$6 million to bring medical devices to market](#)

29 October 2014 – [Transforming NSW: Operator chosen to build and run new Northern Beaches Hospital](#)

Information Bulletins

31 October 2014 – [Information & Privacy Commission Guideline: Use & disclosure of genetic information without consent](#)

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

30 October 2014 – [Legislation passed to ban smoking in cars with children](#)

30 October 2014 – [Changes to Alcohol Mandatory Treatment](#)

24 October 2014 – [Aboriginal and Torres Strait Islander Health Practitioners Excellence Awards](#)

#### **Queensland. Department of Health**

28 October 2014 – [Hospital performance to be audited by independent Health Ombudsman](#)

27 October 2014 – [Cairns Hospital enters second stage of electronic records rollout](#)

26 October 2014 – [Paramedics, nurses keep watch at QLD watch-houses](#)

26 October 2014 – [Queensland hospital performance to be judged by the independent umpire](#)

25 October 2014 – [New genetic counsellors to improve Queensland's cancer services](#)

#### **South Australia. Department for Health & Ageing**

30 October 2014 – Ambos respond to high winter demand. SA Ambulance Service transported an additional 1,871 emergency and urgent patients to metro hospitals during the busy winter period this year. [Read more.](#)

30 October 2014 – New dental clinic open in Port Lincoln. More than 8000 eligible public dental patients in the Port Lincoln area will have greater access to public dental care with the opening of a new \$4.2 million clinic. [Read more.](#)

29 October 2014 – Increasing our Ebola preparedness. South Australia's Ebola preparedness has stepped up with SA Pathology now able to undertake the initial testing for the Ebola virus in their bio-secure laboratory in Adelaide. [Read more.](#)

29 October 2014 – New laws to better protect people with a disability. The State Government has introduced a bill into Parliament to provide people with a disability greater protection from abuse by support workers and service providers. [Read more.](#)

24 October 2014 – New guidelines for retirement villages will foster better relationships. New better practice guidelines for the retirement village industry will help to reduce contractual disputes and increase consultation with residents, Minister for Ageing Zoe Bettison said. [Read more.](#)

### **Victoria. Department of Health**

28 October 2014 – [Boost to mental health care for school-aged children](#) – A re-elected Victorian Coalition Government will invest \$16.6 million in new initiatives to support school-aged children with, or at risk of developing, a mental illness.

26 October 2014 – [Asbestos checks for sites in Sunshine North](#)

### **Western Australia. Department of Health**

Media Releases

28 October 2014 – [Nausea drug on trial](#)

[Read Healthview Spring 2014 \(PDF 3.11MB\)](#)

Operational Directives

30 October 2014 – [OD 0571/14](#) – Hospital Fees: Nursing Home Type Patient (20 September 2014 Pension Increase). This operational directive advises hospitals of increases in the Nursing Home Type Patient ("NHTP") fees, which were gazetted on 10 October 2014. In accordance with commencement instructions in the gazette, the amended NHTP fees are legally effective from the day after gazettal, which is 11 October 2014.

30 October 2014 – [OD 0570/14](#) – Access for Eligible Midwives into Public Maternity Units WA Health has agreed to implement a process to facilitate access for eligible midwives into public maternity units in accordance with Element 1.2.1 of the National Maternity Services Plan, which was endorsed by Australian Health Ministers in 2011.

### **New Zealand. Ministry of Health**

30 October 2014 – [Evaluation of the Cancer Nurse Coordinator Initiative Annual Report 2014](#)

24 October 2014 – [New Zealand Maternity Clinical Indicators 2012](#)

### **United Kingdom. Department of Health**

30 October 2014 – [Better Care Fund and improving care](#)

30 October 2014 – [Government ministers shadow young people at work](#)

30 October 2014 – [Better care plans to help elderly and reduce hospital visits](#)

### **Australian Medical Association**

31 October 2014 – [Minister delivers good news for rural doctors and rural communities](#) – AMA President, A/Prof Brian Owler, said today that the AMA warmly welcomes reforms to rural workforce incentive programs announced today by the Assistant Minister for Health, Senator Fiona Nash. [Read more](#)

30 October 2014 – [MRFF link to GP co-payment is a ‘poisoned chalice’ for medical researchers - AMA](#) – AMA President, A/Prof Brian Owler, said today that the Government has handed Australia’s medical research sector a "poisoned chalice" by making the Medical Research Future Fund ("MRFF") dependent on funding from the pockets of the poorest, sickest, and most vulnerable people in the community. [Read more](#)

29 October 2014 – [AMA Speech - AMA President A/Prof Brian Owler Closing Remarks - AMA National Alcohol Summit](#) – Closing Comments AMA National Alcohol Summit Canberra Wednesday 29 November 2014. [Read more](#)

29 October 2014 – [AMA National Alcohol Summit Communique](#) – AMA National Alcohol Summit Communiqué. [Read more](#)

28 October 2014 – [AMA Speech - AMA President A/Prof Brian Owler - Speech to AMA National Alcohol Summit](#) Speech to the AMA National Alcohol Summit Canberra Tuesday 28 October 2014. [Read more](#)

28 October 2014 – [Alcohol harms - A national problem that needs a national solution](#) – The two-day AMA National Alcohol Summit commences at the National Convention Centre in Canberra today. [Read more](#)

27 October 2014 – [AMA Media Alert - REMINDER - AMA National Alcohol Summit](#) – AMA National Alcohol Summit National Convention Centre, Canberra, 28-29 October 2014. [Read more](#)

27 October 2014 – [AMA Transcript - Urgent need for an immediate and comprehensive response to the worsening Ebola epidemic](#) – Transcript: AMA President, A/Prof Brian Owler, Radio National, 27 October 2014. [Read more](#)

24 October 2014 – [AMA Transcript - Australia’s response and preparedness to the Ebola Crisis in West Africa](#) – Transcript: AMA President, A/Prof Brian Owler, 2UE Sydney, 24 October 2014. [Read more](#)

#### **British Medical Association**

30 October 2014 – [GP recruitment crisis threatens patient care](#)

28 October 2014 – [Organ donation ‘not a decision to be taken lightly’](#) – Opt-out organ donation legislation "is not the only option" for increasing donor numbers.

24 October 2014 – [BMA elects specialty-specific consultant leads](#) – Eleven senior doctors have taken up the specialty lead posts for the 2014/15 session on the BMA consultants committee.

#### **Canadian Medical Association**

29 October 2014 – [Momentum grows for Choosing Wisely Canada campaign](#) – Twelve more medical specialty societies and six community partners have joined Choosing Wisely Canada as momentum grows to change the approach to using diagnostic tests, treatments and/or procedures and encouraging better doctor-patient communications.

24 October 2014 – [Optimal prescribing: accredited CME modules available](#) – Canadian Medical Association members can now receive continuing medical education ("CME") credits for reading [online modules](#) to help them prescribe drugs more appropriately.

#### **American Medical Association**

28 October 2014 – [AmeriCares and American Medical Association Launch Effort Aimed at Preventing Diabetes in Underserved Areas](#)

28 October 2014 – [AHA, AMA and ANA Joint Statement on CDC Interim Guidance for Monitoring and Moving Persons with Potential Ebola Virus Exposure](#)

28 October 2014 – [AMA Launches Interactive New Tool Aimed at Helping Health Care Providers Pinpoint Underserved Patient Care Areas](#)

27 October 2014 – [AMA Statement on Leadership Departures from the Office of the National Coordinator for Health Information Technology](#)



## ABOUT US

### Caroline Atkins



Caroline Atkins is the Office Managing Partner for the Canberra office of DLA Piper and has worked extensively in the health sector for Australian Government agencies.

Her experience includes the conduct of major technology projects for the health sector, such as in the e-health and aged care sectors, and in advising the Commonwealth on the implementation of policy programs in contractual arrangements (including for medical indemnity insurance and for CSO arrangements for PBS funding). She has also advised the National Blood Authority on major Commonwealth contracts for the supply of blood products including with the Red Cross and CSL.

Caroline's commercial experience extends over 30 years and also includes significant experience in ICT outsourcing, whole-of-government technology procurements, intellectual property rights licensing, contract management, procurement strategy and dispute resolution.

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