



HEALTH ALERT

30 May 2016

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JUDGMENTS

New South Wales

20 May 2016 - [Buksh by his next friend Buksh v South Western Sydney Local Health Network \[2016\] NSWSC 649](#) - The Supreme Court of New South Wales heard an application for approval of a settlement of personal injury proceedings in which medical negligence was alleged. The approval was necessary as the plaintiff is a severely intellectually disabled minor, aged 7 years. His mother, Ms Buksh, was his tutor in the proceedings.

Negotiations between the parties came to fruition recently by way of settlement in a particular sum. The solicitor for the plaintiff adduced evidence of her experience in matters such as these, as well as her professional contentment with the settlement. In evidence, the court was also provided with a detailed advice of senior and junior counsel for the plaintiff. The contents of the advice were confidential, however the court considered it to be a cogent, considered, and persuasive explanation as to why counsel advised Ms Buksh to accept the settlement sum. Ms Buksh herself told the court that she had been kept well informed of the negotiations as they developed, and at one stage was sufficiently involved to instruct her son's lawyers to reject a particular offer.

The appropriate test in this type of application is whether the court is satisfied that the settlement is beneficial to the interests of the plaintiff under incapacity. In applying this test, the court accepted that there are real risks if the matter went to a full hearing. The court concluded that the proposed settlement was uncontroversial and appropriate. The settlement was approved and the consent orders sought by the parties were made.

26 May 2016 - [Health Care Complaints Commission v Watson \[2016\] NSWCATOD 67](#) - HEALTH PRACTITIONER REGULATION NATIONAL LAW – Application to amend disciplinary orders. Where it is asserted orders inappropriate to effect cancellation of the practitioner's registration on the Register of Health Practitioners maintained by the Australian Health Practitioner Agency. Consideration of s 53, 61 and 63 of the Civil and Administrative Tribunal Act 2013 (NSW) and Civil and Administrative Tribunal Regulation 2013.

25 May 2016 - [Health Care Complaints Commission v Mitchell \[2016\] NSWCATOD 66](#) - HEALTH PRACTITIONER REGULATION NATIONAL LAW – Where error in Tribunal's decision – whether amenable to correction under any provision of the Civil and Administrative Tribunal Act 2013 (NSW). Consideration of the principles enunciated in *Minister for Immigration and Multicultural Affairs v Bhardwaj* [2002] HCA 11; 209 CLR 597; 187 ALR 117, 76 ALJR 598.

23 May 2016 - [Health Care Complaints Commission v Flekser \(No 2\) \[2016\] NSWCATOD 65](#) - Health Practitioner National Law (NSW) - s149C and s163B – professional misconduct – consideration of protective orders – practitioner 's registration cancelled – costs

Queensland

20 May 2016 - [Medical Board of Australia v Ong \[2016\] QCAT 54](#) - The Medical Board referred a disciplinary proceeding against practitioner, Dr Michelle Ong, in late 2014. The referral was made on the basis that Dr Ong had behaved in a way that constituted professional misconduct. The grounds set out in the referral relate to Dr Ong's inappropriate prescribing of pseudoephedrine (PSE) and unsatisfactory record keeping between the period from 2005 to 2016.

The Board obtained expert reports for the purposes of this hearing. One expert commented "it is common knowledge in general practice that PSE is highly valued in the illicit drug trade, and if the registrant is treating a large number of drug dependent patients, I feel she should be especially suspicious of requests for the drug". The same report stated that "there are few current indications for PSE, and alternative drugs are available in most cases". In regards to Dr Ong's record keeping, another expert stated that her notes provided "little clinical information and clues as to why things have been prescribed".

Dr Ong accepted the opinions of the experts in relation to both her prescribing practices and clinical record keeping. She admitted to prescribing some patients five or more packets of PSE at one time. The Tribunal held this to be "excessive, unnecessary or otherwise not reasonably required" for the patients wellbeing. By agreement, the parties proposed a sanction comprising of a one month suspension and the imposition of conditions requiring continuing mentoring and auditing of Dr Ong's records. The Tribunal agreed to make these orders.

24 May 2016 - [Zahedpur v Idameneo \(No 123\) Pty Ltd \[2016\] QCA 134](#) - CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – DISCHARGE, BREACH AND DEFENCES TO ACTION FOR BREACH – where the appellant medical practitioner contracted with the respondent in December 2009 to provide services from the respondent's medical centre for a period of five years – where the relationship between the parties broke down and the appellant left the respondent's medical centre in February 2012 alleging that the respondent had failed to remedy numerous complaints – where the respondent sued the appellant in the Trial Division for breach of contract – where the learned trial judge found the appellant was in breach of contract – where the appellant contends that the learned trial judge erred because the respondent was in fact in breach of contract by failing to remedy the complaints raised – whether the trial judge erred

18 March 2016 - [De Lacy v Medical Board of Australia \[2016\] QCAT 53](#) - PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – LICENCES AND REGISTRATION – OTHER MATTERS – where the Board imposed conditions on the registration of the practitioner – where practitioner applied for removal and/or variation of conditions

Australian Capital Territory

25 May 2016 - [Eastwood v Psychology Board of Australia \(Occupational Discipline\) \[2016\] ACAT 52](#) - OCCUPATIONAL DISCIPLINE – psychologist – provision of inadequate, inaccurate or misleading information by the applicant in a health record of a client – conditions imposed

Western Australia

25 May 2016 - [Medical Board of Australia v Paterson \[2016\] WASAT 60](#) - Vocational regulation - Medical practitioner - Disciplinary action - Diagnosis of Attention Deficit Hyperactivity Disorder - Treatment of ADHD using stimulant medication - Whether adequate clinical records maintained - Whether conduct on a scale of gravity sufficiently serious to warrant punishment and disciplinary action for the protection of the public.

United Kingdom

23 May 2016 - [Apotex Pty Ltd v Warner Chilcott Company, LLC \[2016\] APO 29](#) - PATENTS – Opposition unsuccessful—claims are novel and inventive because the cited prior art teaches away from the opposed claims—Costs awarded against the opponent.

LEGISLATION

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

Victoria

24 May 2016 - [Tobacco Amendment Bill 2016](#) - introduced

REPORTS

Australia. Department of Health

Media releases

26 May 2016 - [National Cancer Screening Register](#) - Following a competitive tender process that commenced on 10 August last year, the Federal Department of Health has appointed Telstra Health to develop and operate the new National Cancer Screening Register.

Private Health insurance Circulars

23 May 2016 - [PHI 39/16 - Amendments to February 2016 Protheses List](#)

20 May 2016 - [PHI 38/16 - Revoke Private Hospital Information](#)

Australia. Health Practitioner Regulation Agency and the boards

26 May 2015 - [Doctor found to have engaged in professional misconduct by Tribunal](#) - The tribunal found that General Practitioner Dr Ajay Naidu has engaged in professional misconduct and unprofessional conduct.

23 May 2016 - [Communiqué from the Board](#) - The Chinese Medicine Board of Australia releases its communiqués for February, March and April.

20 May 2015 - [Call for applications](#) - Call for applications for appointment to National Boards regulating health professions across Australia.

Australian Institute of Health & Welfare

26 May 2016 - [Eye health workforce in Australia](#) - This report presents the latest available data on the eye health workforce in Australia. It also provides a baseline for reporting against workforce capacity indicators. In 2011, the latest year for which data were available for most professions, there were over 800 ophthalmologists, around 4,000 optometrists and over 6,000 allied ophthalmic personnel (orthoptists, optical dispensers, optical mechanics, orientation and mobility specialists and occupational therapists specialising in eye health) in the eye health workforce.

25 May 2016 - [Palliative care \(tranche 1 2016 update\) media release: Use of palliative care medicine services increasing; expenditure up by 80%](#) - Over the past 5 years, Medicare Benefits Schedule (MBS) payments for all palliative medicine specialist services increased by almost 80%.

In 2014-15, 13,000 patients received an MBS-subsidised palliative medicine specialist service, with around 71,500 of these services provided nationally at a cost of \$5.3 million paid in benefits, according to a report released today by the Australian Institute of Health and Welfare.

The report, *Palliative care services in Australia 2016*, shows that palliative care hospitalisations increased by 11% from 55,983 in 2009-10 to 62,164 in 2013-14, but accounted for less than 1 in 100 of all hospitalisations for both public and private hospitals in 2013-14.

24 May 2016 - [Primary health care \(new subject web pages\) | Mortality Over Regions and Time \(MORT\) books](#) - MORT books are Excel workbooks that house recent deaths data for specific geographic areas in a readily accessible and easy to use format. The workbooks present summary deaths statistics by sex for each geographic area, including counts, rates, median age at death, premature deaths, potential years of life lost and potentially avoidable deaths. The workbooks also present leading causes of death by sex for each geographic area.

Australian Commission on Safety and Quality in Health Care

On the Radar – 23 May 2016 – Issue 274 ([PDF 156KB](#)) ([Word 216KB](#))

Australia. Pharmaceutical Benefits Scheme (PBS)

25 May 2016 - [PBS Software Developers website redesign](#) - The design of the PBS Software Developers website has been updated. The new design creates a consistent look between the PBS, Health and PBAC Guidelines websites.

New South Wales (NSW). Ministry of Health

Media Releases

23 May 2016 - [Burwood Legionnaires' disease update](#) - NSW Health has confirmed a fifth person has been diagnosed with Legionnaires' in Sydney's inner west. The man, in his 80s, is in a stable condition in hospital.

20 May 2016 - **NSW Health advice on bushfire smoke** - With smoke pollution levels from hazard reduction burns still expected to affect Sydney this weekend, NSW Health is advising people to take precautions. Hazard reduction burns will be conducted in the coming week across NSW, including locations like the Blue Mountains, Hawkesbury, Hornsby, Central Coast, Hunter Valley, Wollondilly and Queanbeyan.

20 May 2016 - **NSW a world leader in fight against HIV** - NSW is set to lead the world in the fight against HIV after the launch today of the first clinical trial ever conducted with the aim of rapidly reducing the spread of HIV through the widespread use of pre-exposure prophylaxis (PrEP) medication.

20 May 2016 - **Burwood Legionnaires' disease update** - NSW Health has confirmed that as at 3.00pm today no new cases of Legionnaires' disease have been notified in Burwood. Environmental health officers have completed the assessments and testing of potential sources of the outbreak in the Burwood Local Government Area (LGA), the common area where all four Legionnaires' cases had visited before the onset of the disease. Final results of this testing will be available early next week

Policy Directives & Guidelines

25 May 2016 - **Maternity - Timing of Planned or Pre-labour Caesarean Section at Term** - GL2016_015

New South Wales. Health Care Complaints Commission (HCCC)

25 May 2016 - **Ms Michele Selby and Ms Jane Phillips - Unsatisfactory Professional Conduct** - The Health Care Complaints Commission prosecuted two registered nurses, Ms Michele Selby and Ms Jane Phillips before a Nursing and Midwifery Professional Standards Committee. The Committee heard the complaints against RN Selby and RN Phillips together in a joint inquiry. The Commission's complaints concerned their care of a six month old infant, Patient A, on 19 and 20 October 2013 at Shoalhaven Memorial Hospital.

24 May 2016 - **Mr Kieran Fisher - professional misconduct, impairment and lack of competence – registration cancelled** - The NSW Health Care Complaints Commission prosecuted Dr Rahul Suri, a registered medical practitioner, before the New South Wales Civil and Administrative Tribunal. At the time of the conduct alleged in the complaint, Dr Suri was a general practitioner in sole practice in Toukley. The complaint concerned prescribing Schedule 8 drugs to a number of patients and a failure to properly secure prescription pads.

16 May 2016 - **Dr Rahul Suri – finding of unsatisfactory professional conduct and professional misconduct** - The NSW Health Care Complaints Commission prosecuted Dr Rahul Suri, a registered medical practitioner, before the New South Wales Civil and Administrative Tribunal. At the time of the conduct alleged in the complaint, Dr Suri was a general practitioner in sole practice in Toukley. The complaint concerned prescribing Schedule 8 drugs to a number of patients and a failure to properly secure prescription pads.

16 May 2016 - **Mr Stephen Woods – disqualified from being registered as an enrolled nurse for a period of 12 months** - The NSW Health Care Complaints Commission prosecuted Mr Stephen Woods, an enrolled nurse, before the NSW Civil and Administrative Tribunal. It was alleged that he engaged in unsatisfactory professional conduct and professional misconduct because of a physical and verbal attack of a patient in the Mental Health Intensive Care Unit at Hornsby Hospital on 9 April 2014. At the time of the hearing, Mr Woods had surrendered his registration.

16 May 2016 - **Dr Michael Beilby – unsatisfactory professional conduct** - The NSW Health Care Complaints Commission prosecuted Dr Michael Beilby, a registered medical practitioner, before the Medical Professional Standards Committee. At the time of the conduct alleged in the complaint, Dr Beilby practised integrative medicine (specialising in bio-energetic medicine) at the Your Health Medical practice in Manly.

16 May 2016 - **Dr Gary Branch – cautioned by the Professional Standards Committee** - The Health Care Complaints Commission prosecuted Dr Gary Branch, a specialist anaesthetist (the practitioner), before a Professional Standards Committee (the Committee) inquiry held by the Medical Council of NSW. On 28 March 2012, the practitioner was absent from the operating theatre at Prince of Wales Hospital

during surgery on a patient for about ten minutes without delegating anaesthetic care for the patient to another appropriately qualified person

Northern Territory. Department of Health

25 May 2016 - **Palliative Care Week raises awareness of Living Well with Chronic Illness** - The Central Australia Health Service supports National Palliative Care Week and this year's theme of helping people with chronic illness to have a better quality of life.

24 May 2016 - **Funding boost for health research** - Menzies School of Health Research will receive an additional \$5 million in Budget 2016 to increase support to fund research that is delivering strong economic and health returns for the Territory.

24 May 2016 - **Country Liberals commit to revolutionise health service delivery** - Budget 2016 will implement an Australian first in health initiatives with the allocation of \$186 million, over five years, to further bolster the Core Clinical Systems Renewal Program (CCSRP).

24 May 2016 - **Health is a priority on Budget agenda** - The health of Territorians is a major priority for the Country Liberals Government and Budget 2016 will continue to invest in health care to improve health outcomes for Territorians and provide access to quality health treatment and facilities.

23 May 2016 - **Cardio-thoracic and Neuro Surgery Services to commence at RDH** - The Northern Territory Government will invest \$8.3 million in the 2016 Budget towards the establishment of cardio-thoracic and neurosurgical services at the Royal Darwin Hospital campus.

20 May 2016 - **Extensive upgrades for Papunya and Titjikala Health Clinics** - Staff and community members were joined by Health Minister John Elferink as they welcomed the official opening of the newly refurbished and upgraded Papunya and Titjikala Health Clinic.

Queensland. Department of Health

25 May 2016 - **Preparation the key to a good death** - Queensland Health has created a new web page to ensure that the information about care at the end of life is in line with what the community needs. We will also be creating a suite of resources people can use when they do begin putting plans in place.

24 May 2016 - **Local chair of global epidemic shines light on World Fistula Day** - Yesterday was the International Day to End Obstetric Fistula and the United Nations (UN) is calling for the global spotlight to be focused on the estimated two million women in sub-Saharan Africa, Asia, the Arab region, and Latin America and the Caribbean living with this injury.

23 May 2016 - **Queensland doctors participate in Australian-first roundtable** - Two Queensland Health doctors were recently selected to participate in an Australian-first patient safety conference in Sydney from 22 to 26 April. Dr Michael Tresillian and Dr Anna Singleton, both registrar doctors at the Royal Brisbane and Women's Hospital, were part of a group of 30 emerging leaders carefully chosen to participate in the Roundtable for Emerging Leaders in Patient Safety Summit.

South Australia (SA). Department for Health & Ageing

25 May 2016 - **Hospital bed cap removed** - Private hospitals will have greater freedom to decide how many beds they need after the State Government passed laws removing the cap on the number of hospital beds that may be provided across metropolitan Adelaide.

24 May 2016 - **New medical device to lower death rate linked to deep vein thrombosis** - South Australian industry and Flinders University researchers have developed a new medical device aimed at saving people from a disease linked to deep vein thrombosis.

23 May 2016 - **Cerebrospinal Shunt Surgery** - A recent review by clinicians at the Women's and Children's Hospital has identified an isolated lapse in infection control practice related to a surgical procedure introduced in 2013. Sterile antibiotics delivered to the surgical theatre in a sealed bag were contained in a clean, but not sterile syringe. The syringe is used to deliver antibiotics into the shunt during the child's surgery.

20 May 2016 - **Measles Case** - SA Health is encouraging people travelling overseas to make sure they have had two measles vaccinations before they travel, following notification of a new measles case. SA Health Communicable Disease Control Branch Director, Dr Ann Koehler, said the four year old male, who recently returned from Bali, is in a stable condition in hospital.

Victoria. Department of Health

25 May 2016 - **Survey To Shine A Light On Bullying In Victorian Hospitals** - Victorian public hospital workers are being urged to complete the People Matters Survey as part of the Andrews Labor Government's new plan to address bullying and harassment in the health system.

21 May 2016 - **Tough New Regulations To Protect Kids From E-Cigarettes** - Children under 18 will no longer be able to buy e-cigarettes under tough new laws to be introduced into Parliament this week by the Andrews Labor Government.

Western Australia (WA). Department of Health

Media Releases

26 May 2016 - **Householders warned of heater gas risk** - The Department of Health is warning Western Australian householders not to leave fires or heaters burning overnight.

25 May 2016 - **Governor gets first-hand look at telehealth** - The Western Australian Governor, Her Excellency Hon Kerry Sanderson AO, visited the Kalgoorlie Health Campus recently and saw first-hand how telehealth was being used to bring the State's best specialists to the virtual bedside of local patients.

24 May 2016 - **It's Palliative Care Week – let's talk** - "Living Well with Chronic Disease" is the theme for National Palliative Care Week (22-28 May).

23 May 2016 - **Breakthrough in sight** - A WA Health researcher is working on a bold new procedure for treating one of the most common causes of vision loss.

New Zealand. Ministry of Health

23 May 2016 - **Standards of Service Provision for Lung Cancer Patients in New Zealand** - The Standards of Service Provision for Lung Cancer Patients in New Zealand have been developed to ensure that people with lung cancer receive the best possible care, regardless of where they live. The standards include requirements for investigation, diagnosis, treatment and supportive care. They also specify waiting times for lung cancer treatment, and promote a multidisciplinary approach to treatment planning.

United Kingdom. Department of Health

25 May 2016 - **Designing sanitary spaces like bathrooms (HBN 00-02) Guidance Updated**

Australian Medical Association (AuMA)

26 May 2016 - **Time for a better health deal for rural Australians** - The AuMA released its Plan for Better Health Care for Regional, Rural, and Remote Australia, and urged the major parties to adopt its recommendations as part of their rural health policies for the election and beyond. AuMA President, Professor Brian Owler, said that the AuMA firmly believes that the standard of health care and access to health care can be lifted in regional, rural, and remote Australia, but it needs significant real funding increases.

20 May 2016 - **National Palliative Care Week 2016** - AuMA Vice President, Dr Stephen Parnis, today encouraged people living with chronic illness to consider seeking access to palliative care services for pain relief and symptom management. Next week, 22-28 May, is National Palliative Care Week 2016, which carries the theme, Living Well with Chronic Illness, and the objective is promoting broader access to palliative care.

American Medical Association (AMA)

20 May 2016 - [AMA Applauds Administration's New Modernized Nutrition Label Highlighting Sugar Levels](#) - The AMA today applauded the U.S. Food and Drug Administration (FDA) for releasing its modernized Nutrition Facts Label to reflect the latest in scientific research to help consumers maintain healthy dietary practices.

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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