



# HEALTH ALERT

14 March 2016

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## JUDGMENTS

### New South Wales

10 March 2016 - *Jener Daluz v John McMahon [2016] NSWSC 2021* - The second defendant, South Western Sydney Local Health District (SWSLHD), sought to have medical negligence proceedings brought by the plaintiff, Mr Daluz, dismissed on the basis that an earlier consent judgment amounted to *res judicata* or, at least, gave rise to an issue estoppel. In the earlier proceeding, Mr Daluz was awarded \$350 000 in damages against the driver and the owner, the Health Administration Corporation (HAD), of the vehicle that crashed into him. It was submitted that there was privity between the HAD in the first proceeding and SWSLHD, in the second proceeding because both were agents for the crown.

The negligence relates to the misdiagnosis of the plaintiff's left leg condition 18 months after the crash. There was much contention in earlier proceedings over whether the injury to the left leg was caused by the accident. The Court in this proceeding found that even if the earlier judgment found a link between the accident and the left leg condition, it did not determine the extent to which the negligence of the defendants in the present proceedings contributed to that condition. Further, there was nothing in the earlier settlement agreement to prevent the plaintiff from pursuing the present defendants. It was held that the extent to which the plaintiff had already been compensated for the left leg condition, either wholly or partly, would be an issue at trial. The motion was dismissed.

### Northern Territory

9 March 2016 - *Inquest into the death of Ronald Alexander Donaldson [2016] NTMC 001* - Mr Donaldson was killed in a random, unprovoked attack by a man named Justin Osborne. Mr Osborne was subsequently diagnosed with Schizophrenia and found not guilty of murder by reason of mental illness. The inquest focussed on whether the significance of the mental illness should have been realised and attended to during his admission to Katherine Hospital (KH) less than 24 hours before the incident.

On the eve of the incident, Mr Osborne was involved in an altercation which led to police escorting him to KH. He presented with minor injuries and chest pain. During his admission, he told a nurse he had drug induced psychosis. Medical staff described Mr Osborne as dishevelled, strange, detached and only speaking when spoken to. Despite this, he was never considered a threat. He appeared coherent and rational in all of his responses and did not appear to be experiencing any delusions or hallucinations. KH maintained during the inquiry that they had no grounds to keep Mr Osborne any longer under the *Mental Health and Related Services Act* (MHRSA). He was discharged that same night.

The Coroner agreed with evidence that the assessment, treatment and discharge of Mr Osborne was appropriate in all of the circumstances. While it is a terrible tragedy that the extent of Mr Osborne's mental illness was not noticed earlier, the Coroner explained that there was nothing significant in Mr Osborne's presentation that would have given any indication of the florid state of psychosis that was to follow.

### Commonwealth

8 March 2016 - *Les Laboratoires Servier v Apotex Pty Ltd [2016] FCAFC 27* - INTELLECTUAL PROPERTY – PATENTS – best method requirement – construction of Patents Act 1990 (Cth), s 40(2)(a) – whether requirements of s 40(2)(a) met when sufficiency of description satisfied

### Queensland

5 November 2015 - *Medical Board of Australia v Vucak (No 2) [2015] QCAT 567* - PROFESSIONS AND TRADES –HEALTH CARE PROFESSIONALS –MEDICAL PRACTITIONERS –COSTS

### Victoria

4 March 2016 - *Inquest into the death of Susan Ruth Lovell* - Findings into the death of Susan Ruth Lovell - Violent death - mentally ill offender - indicators of threat - institutional response

### United Kingdom

3 March 2016 - *Reid & Anor v Health Service Executive [2016] IESC 8*

## LEGISLATION

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

### Commonwealth

11 March 2016 - [Health Insurance \(Eligible Pathology Laboratories\) Determination 2015 F2016L00299](#) as made

7 March 2016 - [National Health \(Epworth and Cabrini Private Hospitals Paperless Prescribing and Claiming Trial\) Special Arrangement Amendment Instrument 2016 \(PB 10 of 2016\)](#) F2016L00235 as made

### Queensland

4 March 2016 - [Mental Health Act 2016](#) (Act 5/2016) assented and commenced

### New South Wales

9 March 2016 - [Health Practitioner Regulation National Law \(NSW\) Amendment \(Review\) Bill 2016](#) - Passed by Council. Awaiting Assent.

9 March 2016 - [Assisted Reproductive Technology Amendment Bill 2016](#) introduced

## REPORTS

### Australia. Department of Health

Media releases

06 March 2016 - [Greater transparency needed to help consumers debunk junk policies](#) - Minister for Health Sussan Ley's statement regarding private health insurance policies.

Private Health Insurance Circulars

3 March 2016 - [PHI 16/16 - February 2016 Protheses List](#)

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

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

10 March 2016 - [Revised guidelines on infection prevention and control obligations for podiatrists published today](#) - The Podiatry Board of Australia (Board) has today published revised guidelines on infection prevention and control.

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

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

8 March 2016 - [Call for applications](#) - Call for applications for appointment to the Registration and Notifications Committee of the Optometry Board of Australia.

8 March 2016 - [AHPRA responds to critique of the national registration scheme for health professionals](#) - AHPRA CEO Martin Fletcher has written an opinion piece for Croakey, outlining the benefits of the National Scheme.

8 March 2016 - [Call for applications](#) - Call for applications for appointment to the Podiatry Board of Australia's list of approved persons for appointment to panels.

8 March 2016 - [Communiqué](#) - The Dental Board of Australia releases its latest communiqué.

7 March 2016 - [Communiqué from the Board](#) - The Occupational Therapy Board of Australia releases its latest communiqué.

7 March 2016 - **Communiqué from the Board** - The Physiotherapy Board of Australia releases its latest communiqué.

7 March 2016 - **Chiropractors must ensure their advertising is within the law** - The Chiropractic Board of Australia, which regulates Australia's 5,000 chiropractors, has today released a statement reinforcing that practitioners need to ensure their advertising complies with the requirements of the National Law, or they risk prosecution and disciplinary action.

4 March 2016 - **Communiqué from the Board** - The Aboriginal and Torres Strait Islander Health Practice Board of Australia releases its latest communiqué.

4 March 2016 - **Melbourne forum invitation for practitioners, students and stakeholders of Chinese Medicine** - The Chinese Medicine Board of Australia invites practitioners, students and stakeholders of Chinese medicine to attend an information forum being held at Citadines on Bourke Melbourne on Monday 21 March 2016.

4 March 2016 - **Tribunal hears appeal against Immediate Action – grants stay** - The Victorian Civil and Administrative Tribunal (VCAT) has given a medical practitioner six weeks to find a supervisor and a group practice to work in, while other restrictions on his registration imposed by the Medical Board of Australia remain in place.

4 March 2016 - **Tribunal reprimands doctor for failure to report sexual misconduct, imposes conditions** - A tribunal has reprimanded a doctor and imposed conditions on his registration, for his failure to report another doctor's conduct at his practice.

2 March 2016 - **Tribunal reprimands medical practitioner** - The Northern Territory Health Professional Review Tribunal (the Tribunal) has imposed conditions on a specialist general practitioner's registration.

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

4 March 2016 - **NHMRC Research Tracker**

**Australia. Therapeutic Goods Administration (TGA)**

10 March 2016 - **Mums The One one step hCG urine pregnancy test** - Recall - potential decreased sensitivity and risk of false negative results.

10 March 2016 - **Ampicillin injection and Amoxicillin injection - medicine shortages** - Medicine shortage update - return of supply of Ibimicycyn ampicillin injections.

9 March 2016 - **TGA issues safety alert about EpiPen Adrenaline Auto-injector** - Check that the expiry date on each EpiPen device is the same as that on the carton.

9 March 2016 - **Updates to the Prescribing Medicines in Pregnancy database** - The database has been updated.

9 March 2016 - **Dexcom continuous glucose monitor receivers** - Recall for product correction - potential for audible alarms not sounding.

9 March 2016 - **Medical Devices: how to stay included** - Invitation to attend a medical device post-market workshop hosted by the TGA.

11 March 2016 - **EpiPen 300 Microgram Adrenaline Injection Syringe Auto Injectors** - Alert - reports of expired EpiPen devices supplied in cartons within expiry.

8 March 2016 - **Australian Public Assessment Reports for prescription medicines (AusPARs)** - Added Lipegfilgrastim (rbe) (Lonquex) and Bortezomib (Velcade).

6 March 2016 - **IRIS inSite** - The IRIS inSite program works closely with health facilities to improve awareness about medical device adverse event reporting.

4 March 2016 - **Medtronic Reveal LINQ insertable cardiac monitor** - Hazard alert - potential for premature replacement alert.

## Australian Commission on Safety and Quality in Health Care

On the Radar – 7 March 2016 – Issue 263 ([PDF 115KB](#)) ([Word 145KB](#))

### Australia. National E-Health Transition Authority (NEHTA)

9 March 2016 - [NEHTA's Clinical Knowledge Manager \(CKM\) featured in "Health IT - to lead or be led" seminars](#) - There is increasing awareness of the use of clinical data to support high quality healthcare delivery. Yet it has traditionally been difficult for clinicians to engage and participate in influencing the quality of the data they need to support patient care, for research and analysis, to underpin clinical decision support and exchange with other healthcare providers.

4 March 2016 - [Minister for Health Sussan Ley launches new My Health Record](#) - The number of Australians with a digital health record will jump by more than a million, as part of the Australian Government's commitment to improving health outcomes and saving lives through digital innovation and information sharing. Read the full [media release](#) on the Department of Health website. The Commonwealth Department of Health have updated <https://myhealthrecord.gov.au> with information about the My Health Record system (previously known as Personally Controlled Electronic Health Record).

26 February 2016 - [The Clinical Terminology February v20160229](#) - The Clinical Terminology February v20160229 Release is now available for download from the NEHTA [website](#).

19 February 2016 - [My Health Record News - a digital bulletin for providers](#) - The Commonwealth Department of Health have published their first digital bulletin for My Health Record, bringing you the latest news on the relaunch of My Health Record (originally called the Personally Controlled Electronic Health Record).

17 February 2016 - [The value of trusted product data: perspectives shared by hospitals and government agencies](#) - To better understand the impact of trusted product data, GS1 talked with healthcare providers and government agencies from different parts of the world (including the National E-Health Transition Authority).

10 February 2016 - [Australian Medicines Terminology \(AMT\) Support Group Meeting](#) - The Australian Medicines Terminology (AMT) is produced by NEHTA to standardise identification of medicines for use within Australian electronic medicine management systems. A Support Group consisting of clinicians, jurisdiction representatives and computer system vendors meets regularly to provide expert guidance on relevant terminology issues.

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

9 March 2016 - [Reports of expired EpiPen® devices](#) - ACT Chief Health Officer is alerting the Canberra community to a discrepancy that has been found between the batch number and expiry date on EpiPen®

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

#### Media Releases

09 March 2016 - [NSW Health investigates CBD Legionnaires' link](#) - NSW Health and the City of Sydney are investigating after four people infected with Legionnaires' disease all spent time in Sydney's CBD. Legionnaires' disease, a bacterial infection of the lungs, can develop after a person breathes in contaminated water vapour or dust.

#### Publications

4 March 2016 - [NSW Immunisation Schedule](#)

#### Policy Directives & Guidelines

7 March 2016 - [Infants and Children: Management of Acute and Procedural Pain in the Emergency Department](#) GL2016\_009

#### Information Bulletins

9 March 2016 - [NSW Nurses and Midwives' Association Annual Conference and Professional Day 2016](#) IB2016\_009

7 March 2016 - [Chaplain's Subsidy](#) IB2016\_008

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

9 March 2016 - [Royal Darwin Hospital entrance to undergo make over](#) - The most recent tender as part of the total redevelopment works underway at Royal Darwin Hospital has been awarded.

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

11 March 2016 - [Teddy Bears, a child's best friend at Wallumbilla Community Clinic](#)

10 March 2016 - [Zika virus - what's all the hype about?](#)

10 March 2016 - [Queensland Rural Generalist Pathway the only way for these bush...](#)

9 March 2016 - [Predicting the 2016 influenza season and why it's not that easy](#)

8 March 2016 - [Ravenshoe Review - lessons learned from tragedy](#)

8 March 2016 - [Darling Downs HHS celebrates International Women's Day](#)

8 March 2016 - [Townsville Pledge for Parity](#)

7 March 2016 - [Plan aims to boost recovery](#)

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

11 March 2016 - [Health alert: Temporary cessation of BCG vaccination due to unavailability](#)

11 March 2016 - [Media release: Health issues bat warning](#)

9 March 2016 - [Media release: Reducing childhood obesity - It's child's play](#)

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

10 March 2016 - [Hospital waiting lists to blow out due to Turnbull cuts](#)

9 March 2016 - [Taking a stand against bullying and harassment in the health system](#)

7 March 2016 - [Supporting vulnerable children in the education state](#)

7 March 2016 - [Better care Victoria: delivering the care Victorians need, when they need it](#)

4 March 2016 - [China visit cements Victoria's position as an Asia-pacific health leader](#)

3 March 2016 - [Labor government nabs the global nephrology congress](#)

2 March 2016 - [More help for people at risk of long-term homelessness](#)

#### **Western Australia (WA). Department of Health**

##### Media Releases

10 March 2016 - [Minister for Mental Health: Sector support for first-of-its-kind WA conference](#) - Mental Health Minister Helen Morton today opened Western Australia's inaugural mental health sector co-ordinated conference.

10 March 2016 - [Minister for Health: Midland hospital treats more than 40,000 patients](#) - More than 40,000 patients have been treated by St John of God Midland Public Hospital since it opened its doors to the public on November 24, 2015.

9 March 2016 - [Study confirms bleeding obvious](#) - Patients with bleeding of the upper gastrointestinal tract (UGIT) due to ulcers or inflammation are set for improved outcomes thanks to recently completed WA Health research.

10 March 2016 - [Midland Hospital hits 40,000](#) - More than 40,000 patients have been treated by St John of God Midland Public Hospital since it opened its doors to the public on November 24, 2015.

10 March 2016 - [WA Health Supports World Kidney Day](#) - In support of World Kidney Day, (Thursday 10, March), which aims to raise awareness of the importance of kidneys to overall population health.

9 March 2016 - [Funding opportunity for clinician researchers](#) - Clinician researchers have until the end of the month if they want to apply for funding in the latest round of the Clinician Research Fellowship (CRF) program.

## ABOUT US

### Mark Williams



Mark is a partner in the Litigation and Regulatory team at DLA Piper.

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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