

HEALTH ALERT

29 SEPTEMBER 2014

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JUDGMENTS

Western Australia

25 September 2014 - [*Goh v Murdoch Eye Pty Ltd* \[2014\] WASC 344](#)

The plaintiff, Dr Goh, carried on his ophthalmology practice at the Murdoch Eye Centre (MEC). Following Dr Goh's departure from MEC in July 2014, issues arose in relation to his access to files of patients whom he had treated whilst with MEC.

Dr Goh sought an interlocutory order from the Supreme Court of Western Australia that MEC deliver to him, within five business days, the complete files of patients treated and seen by him within the last two years, and electronic records relating to those patients. In order for this application to succeed, Dr Goh needed to establish, among other things, that he had an arguable case and that he would suffer irreparable damage if he was not granted access to the files.

While the court accepted that Dr Goh may have had property in the files, it was not convinced that his claim was sufficiently clear nor one which ought to be decided immediately. The court also considered that it would be a significant imposition to require MEC to provide 30,000 to 40,000 medical records within five business days. Further, the plaintiff failed to establish his argument that the current arrangement (by which he could pay a fee to receive his patients' records) was not adequate to substantially reduce any risks to patient welfare.

The court held that the balance of convenience did not favour making the orders sought.

Europe

23 September 2014 - [*Case of S.B. v Romania* \[2014\] ECHR 991](#)

A Romanian national, SB, made an application against Romania under the Convention for the Protection of Human Rights and Fundamental Freedoms.

SB received dental treatment that she believed was performed negligently. She complained to the Ministry of Health and was asked to undergo a medical expert examination to determine the extent to which the allegedly negligent treatment affected her health. Through a series of referrals, she was examined by a number of doctors. She made requests to the Bucharest College of Doctors and the National Institute of Forensic Medicine to gain access to those reports. She was ultimately informed that she could only obtain those expert reports in the context of judicial proceedings.

SB's complaint related to various aspects of the rules governing medical expert reports, including:

- Lack of access to the findings of the medical examination carried out by the College;
- Unreasonable delay in obtaining a medical expert report from the Institute; and
- Lack of opportunity to obtain such a report without having lodged a civil or criminal complaint.

Under domestic law, SB was not eligible to request an expert report because she is a 'private person'. However, the European Court of Human Rights held that under Article 8 of the Convention, SB was entitled to access a medical expert report that could have determined whether SB had a case of medical negligence in respect of the dental treatment she received.

Accordingly, the Court held that Romania had denied SB her right under Article 8 of the Convention.

New South Wales

25 September 2014 - [*State of New South Wales v Talovic* \[2014\] NSWCA 333](#) Mental health - confinement and restraint of mentally ill persons and similar orders - detention by police under s 22 of the *Mental Health Act 2007* (NSW) - whether the prerequisites of that section were satisfied - construction of the undefined phrase "mentally disturbed" - whether a subjective test applies to the first prerequisite of s 22(1).

26 September 2014 - [*Health Care Complaints Commission v Goh* \[2014\] NSWCATOD 106](#) Unsatisfactory professional conduct - contravention of conditions to which registration subject - self-

prescription of medication - addiction to and abuse of Benzodiazepine and Zolpidem - competency to practice medicine - mental capacity - physical capacity.

United Kingdom

19 September 2014 - [*Christine Reaney v University Hospital of North Staffordshire NHS Trust and MD Staffordshire NHS Foundation Trust* \[2014\] EWHC 3016](#) Medical negligence - transverse myelitis - T7 paraplegia - patient developed deep pressure sores and flexion contractures of legs and hip dislocation - extent to which pressure sores and their sequelae made her condition worse than it would have been but for their development - damages - causation.

LEGISLATION

Commonwealth

29 August 2014 - [National Health \(Immunisation Program — Designated Vaccines\) Determination 2014 \(No. 1\)](#).

3 September 2014 - [Therapeutic Goods \(Listing\) Notice 2014 \(No. 4\)](#).

3 September 2014 - [Therapeutic Goods \(Listing\) Notice 2014 \(No. 5\)](#).

[Aged Care and Other Legislation Amendment Bill 2014](#).

[Health and Other Services \(Compensation\) Care Charges \(Amendment\) Bill 2014](#).

Repatriation Medical Authority - [New Statements of Principles](#).

REPORTS

Australia. Department of Health & Ageing

Media releases

24 September 2014 - [New study highlights positive outcomes for donor families](#). Organ and tissue donation can bring comfort to donor family members in their loss of a loved one and enable something positive to come out of tragedy.

22 September 2014 - [DonateLife community awareness grants](#). Community groups and local organisations throughout Australia are invited to apply for awareness grants to promote organ and tissue donation.

22 September 2014 - [Research to help save PNG mothers and babies](#) A new Australian health research initiative will help to lower mortality rates and improve health outcomes for mothers and babies in Papua New Guinea.

Private Health insurance (PHI) Circulars

19 September 2014 - [PHI 60/14 changes to second-tier eligible hospitals](#).

19 September 2014 - [PHI 59/14 Nursing-home type patient contribution rates and minimum benefits as at 20 September 2014](#).

19 September 2014 - [PHI 58/14 New day hospital information](#).

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

24 September 2014 - Online renewal of registration is now open Online renewal of registration to practise in Australia is now open for Chinese medicine practitioners. [Read more](#).

24 September 2014 - The Board and AHPRA publish the Health Profession Agreement for 2014/2015. [Read more](#).

23 September 2014 - [Online renewal of registration is now open](#).

23 September 2014 - Online renewal of registration to practise in Australia is now open for Aboriginal and Torres Strait Islander health practitioners. [Read more](#).

22 September 2014 - A Queensland woman has pleaded guilty in the Brisbane Magistrates Court of pretending to be a registered nurse and using health practitioner titles protected under the National Law. [Read more.](#)

Australia. National Health & Medical Research Council (NHMRC)

25 September 2014 - [NHMRC the principal funder of Australian cancer research.](#)

Australia. Therapeutic Goods Administration (TGA)

25 September 2014 - [TGA reforms: A blueprint for TGA's future: Progress report as at 30 June 2014.](#) The fourth six monthly progress report on reforms to the TGA to ensure that it remains adaptable to community and industry expectations.

25 September 2014 - [Consultation: Invitation for public comment - ACCS, ACMS and joint ACCS/ACMS meetings, November 2014.](#) Notice inviting public submissions under subsection 42ZCZK of the Therapeutic Goods Regulations 1990. Closing date: 23 October 2014.

25 September 2014 - [Orphan drugs](#) Added Susoctocog alfa and Ivacaftor (VX-770).

25 September 2014 - [Consultations on adoption of European Union guidelines in Australia.](#) Added guidelines proposed for adoption by TGA. Closing date: 6 November 2014.

24 September 2014 - [Pre-submission Planning Form \(PPF\)](#) updated forms to the correct date, April 2014.

24 September 2014 - [New web service helps consumer reporting of 'side effects.'](#) The TGA has launched a new web-based service to make it easier for consumers to report side effects.

24 September 2014 - [Cognis cardiac resynchronisation therapy defibrillator and teligen implantable cardioverter defibrillator - update.](#) Update to the hazard alert - potential battery issue, additional models affected.

24 September 2014 - [AcrySof Cachet phakic lens - update.](#) Hazard alert and withdrawal from market.

23 September 2014 - [Compositional guideline: Hydroxycitrate complex.](#) Amended to include a note about availability of Garcinia gummi-gutta (G. cambogia) as a source of hydroxycitrate complex.

22 September 2014 - [Request to transfer the sponsorship of an ARTG entry.](#) Updated Notification of transfer of sponsorship forms.

22 September 2014 - [Serotonin-blocking medicines used to treat nausea and vomiting.](#) Consumers and health professionals are advised that serotonin syndrome is a newly identified issue associated with products containing the serotonin-blocking medicines classed as 5-HT3 receptor antagonists.

Australian Institute of Health & Welfare

26 September 2014 - [New report looks at Australia's growing private hospital admissions.](#)

24 September 2014 - [More patients who die in hospital receive palliative care.](#)

23 September 2014 - [Health spending growth slowest since the 1980s.](#)

Australian Commission on Safety and Quality in Health Care

22 September 2014 - On the Radar – Issue 192 ([PDF 107KB](#)) ([Word 129KB](#)).

Australian Capital Territory. Health Directorate

22 September 2014 - [Aboriginal and Torres Strait Islander immunisation rates continue to increase.](#)

New South Wales (NSW). Ministry of Health

Media Releases

25 September 2014 - [Health enhancements for the Hunter.](#)

25 September 2014 - [Early works begin for new Byron central hospital.](#)

Policy Directives & Guidelines

24 September 2014 - [Maternity - Rh \(D\) Immunoglobulin \(Anti D\)](#).

23 September 2014 - [Maternity-pregnancy and birthing care for women affected by female genital mutilation / cutting](#).

22 September 2014 - [Prevention of Venous Thromboembolism](#).

Northern Territory (NT). Department of Health

26 September 2014 - [MRI service now available at Alice Springs hospital](#). Patients in Central Australia can now receive MRI scans for the first time, with the installation of a new Magnetic Resonance Imaging machine at Alice Springs Hospital.

25 September 2014 - [Early success for Telehealth project across the regions](#). The Minister for Health Robyn Lambley says a Telehealth pilot project run through the Tennant Creek hospital is allowing more remote Territorians to access specialist services.

25 September 2014 - [NDIS update for NT disability service providers](#). The Minister for Disability Services Robyn Lambley has today opened a national briefing for Darwin disability service providers on the National Disability Insurance Scheme.

24 September 2014 - [Renal unit creating better health access in Katherine](#). A new renal dialysis unit now operating in Katherine has doubled the number of renal dialysis chairs in the town.

Queensland. Department of Health

26 September 2014 - [Fourth nurses' pay boost delivers 12 per cent more in pay packets under LNP](#). Queensland nurses and midwives have been granted their fourth pay-rise since the election of the Newman LNP Government, making them overall about 12 percent better off than they were under Labor.

22 September 2014 - [New Biloela emergency department opens](#).

South Australia (SA). Department for Health & Ageing

26 September 2014 - BreastScreen SA launches in David Jones South Australian women will have greater access to breast cancer screening services with the opening of the David Jones Rose Clinic in Adelaide's CBD. [Read more](#).

26 September 2014 - Marshall needs to apologise for his role in funeral bungle Health Minister Jack Snelling has called on Opposition Leader Stephen Marshall to immediately apologise to the family of an elderly lady for airing false campaigns in Parliament about the circumstances of her death. [Read more](#).

Victoria. Department of Health

26 September [Ambulance union puts patients last](#) The ambulance union has been caught out putting politics and pay packets before patients, Minister for Health David Davis said today.

24 September [New mental health and police response kicks off](#) Twelve mental health services across the state have been selected as part of the first tranche of the Victorian Coalition Government's new \$15.1 million Mental Health and Police Response (MHaP Response).

Western Australia. Department of Health

Media Releases

25 September 2014 - [Study to explore benefits of cognitive training in psychosis](#).

Operational Directives (OD)

25 September 2014 - [IC 0199/14](#) Annual leave travel concession: Registered nurses, midwives and enrolled mental health nurses – Australian nursing federation – *WA Health Industrial Agreement 2010* Advice of updated rates for registered nurses, midwives and enrolled mental health nurses – Australian Nursing Federation – *WA Health Industrial Agreement 2010*.

25 September 2014 - [IC 0198/14](#) Annual leave travel concession: WA health – health services union – PACTS – *Industrial Agreement 2011* Advice of updated rates for annual leave travel concessions in accordance with WA Health - Health Services Union – PACTS – *Industrial Agreement 2011*.

New Zealand. Ministry of Health

25 September 2014 - [Awarding of major contract marks start of Christchurch Hospital Redevelopment.](#)

United Kingdom. Department of Health

23 September 2014 - [Elderly care sector in China offers opportunities for UK companies.](#)

22 September 2014 - [Healthcare UK leads delegates on digital health mission to China.](#)

19 September 2014 - [A&Es and police will share information to help tackle violence.](#)

United States of America. Department of Health & Human Services

25 September 2014 - [The Affordable care Act is working.](#)

Australian Medical Association (AuMA)

26 September 2014 - [AuMA President, A/Prof Brian Owler, ABC News Radio, 26 September 2014](#)
Transcript: AuMA President, A/Prof Brian Owler, ABC News Radio, 26 September 2014. [Read more.](#)

23 September 2014 - [AuMA President, A/Prof Brian Owler, Sydney Adventist Hospital Doorstop, 23 September 2014.](#) Transcript: AuMA President, A/Prof Brian Owler, Sydney Adventist Hospital Doorstop, 23 September 2014 [Read more.](#)

23 September 2014 - [Record spending slowdown shows health not budget problem.](#) [Read more.](#)

British Medical Association (BMA)

23 September 2014 - [Call to scrap Turkish lawsuit against protest-help doctors.](#)

23 September 2014 - [Labour has no plans to restructure NHS.](#)

18 September 2014 - [GP income continues to fall, finds report.](#)

Canadian Medical Association

23 September 2014 - [Medical students urged to be strong advocates.](#) Canada's medical students need to be strong advocates for a better health care system.

American Medical Association (AMA)

22 September 2014 - [AMA marks major milestone in reshaping medical education nationwide.](#) Leaders from eleven top medical schools convene at Vanderbilt University to discuss next steps in preparing medical students for changing health care landscape, as part of AMA's accelerating change in medical education initiative.

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.

Michael regularly presents to medical groups and hospitals on medico-legal issues.

Contact Details

T +61 3 9274 5437

michael.regos@dlapiper.com

MORE INFORMATION

Contact your nearest DLA Piper office:

BRISBANE

Level 29, Waterfront Place
1 Eagle Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne NSW 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152–158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 22, No.1 Martin Place
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 8007
sydney@dlapiper.com

www.dlapiper.com

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