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## JUDGMENTS

### New South Wales (NSW)

30 July 2014 - [ARC v Northern NSW Local Health District \[2014\] NSWCATAD 109](#)

The applicant applied to the NSW Civil and Administrative Tribunal seeking removal of a Mental Health Access Line Handover Report from the applicant's mental health file. The Report was made when the applicant contacted the Mental Health Access Line. The applicant argued that the Report contained information about her that was false, misleading, exaggerated and/or out of date and therefore claimed that the Report breached the accuracy health privacy principles under the *Health Records Information Privacy Act*.

The respondent refused to destroy or remove the Report from the applicant's mental health record. It contended that it did not breach the health privacy principles as the information was in fact an accurate record at the time it was made.

On the facts, the Tribunal found that the Report accurately reflected the record at the time the applicant contacted the Access Line. The Tribunal nevertheless confirmed that even if this was not the case, health records could not be amended so as to 'rewrite history.' As such, the Tribunal held that the respondent had not breached the accuracy health privacy principles by refusing to destroy or remove the Report from the applicant's mental health file.

30 July 2014 - [Health Services Union NSW v Peter Mylan \[2014\] NSWSC 1026](#)

Evidence- self-incrimination - *Evidence Act 1995* (NSW) s 128 - where plaintiff seeks the grant of a certificate in respect of evidence to be given by a witness who has agreed to provide an affidavit but only on condition that such a certificate is granted - held requirements of s 128 not met and certificate cannot be granted because the witness has not objected to giving particular evidence under compulsion - Certificate refused - procedure - advance rulings and findings - s192A of the *Evidence Act 1995* (NSW).

30 July 2014 - [Holbrook v Health Care Complaints Commission \(HCCC\) \[2014\] NSWCATOD 86](#)

Registration previously cancelled; boundary violations; not of good character; impairment; criminal conviction; application to be re-registered; onus of proof; failure to discharge onus.

30 July 2014 - [Deano v Health Care Complaints Commission \[2014\] NSWCATOD 85](#)

Health practitioner regulation - nurse - cancellation of registration following finding of professional misconduct - Application under s 163 A of the *Health Practitioner Regulation National Law* (NSW) 2009 (National Law) for review of order cancelling registration - where HCCC opposes application - whether deficits identified had been remedied - whether risk to the public if former Registered Nurse is re-instated to register - whether former nurse has insight into her past inappropriate conduct - whether former nurse has demonstrated by her actions that it is appropriate she be restored to the register - where former nurse has undertaken and completed further education - where nurse's written material in support of application and her oral evidence demonstrates conflicting attitude about her insight - failure to pay costs as ordered by previous tribunal and court.

30 July 2014 - [Health Care Complaints Commission v Fraser \(No 2\) \[2014\] NSWCATOD 84](#)

Administrative law - Civil and Administrative Tribunal (NSW) - occupational division - health practitioners list - unsatisfactory professional conduct and professional misconduct - where HCCC assert conduct of sufficiently serious nature to warrant cancellation of the practitioner's registration - where practitioner conceded some particulars of the complaint. Where practitioner asserts no risk to health or safety of public - whether de-registration required or reprimand and/or conditions are adequate protective orders - practitioner's registration should be cancelled.

22 July 2014 - [Health Care Complaints Commission v Khan \[2014\] NSWCATOD 83](#)

Complaint - where complaint asserts unsatisfactory professional conduct and professional misconduct - where Health Care Complaints Commission seek to withdraw the complaint. Whether it is not in the public interest for inquiry to be heard. Whether single member of Tribunal has jurisdiction to dismiss the complaint

## Queensland

27 June 2014 (published 30 July 2014) - [Vega Vega v Medical Board of Australia \[2014\] QCAT 328](#)

This was an appeal by a doctor to the Queensland Civil and Administrative Tribunal of decisions made by the Medical Board of Australia to take immediate action against him and suspend, or alternatively impose conditions on, his registration.

The doctor had removed the wrong kidney during a nephrectomy procedure because the kidney had become so displaced it had moved across the midline. The patient had a complicated medical history including spina bifida, paraplegia and numerous other chronic conditions. The doctor had commenced the nephrectomy as laparoscopic surgery but because of significant bleeding from the renal vein, had converted to an open procedure. The nephrectomy took seven hours when it usually only takes between two and four hours.

The Board considered it was inappropriate for the procedure to have been undertaken at the hospital (which was not a major tertiary teaching hospital) in the absence of another specialist urologist and had taken immediate action on this basis. The doctor appealed arguing he acted reasonably.

The Tribunal overturned the decision of the Board as it did not think the doctor posed a serious risk to persons. It said that while surgery inherently entails serious risks, these are a matter for the judgment of a practitioner. The Tribunal determined that the doctor was capable of exercising that judgment. Moreover, it determined that the decision not to refer the patient for the surgery at a major hospital was reasonable as it would not have led to the procedure being performed any differently.

## LEGISLATION

### Commonwealth

21 August 2014 - [Exposure draft of the Medical Services \(Dying with Dignity\) Bill 2014](#). The closing date for submissions is 21 August 2014. The reporting date is 27 October 2014.

14 July 2014 - [National Health \(Listing of Pharmaceutical Benefits\) Amendment Instrument 2014 \(No. 8\) \(PB 52 of 2014\)](#).

14 July 2014 - [National Health \(Price and Special Patient Contribution\) Amendment Determination 2014 \(No. 5\) \(PB 53 of 2014\)](#).

24 July 2014 - [National Health \(Highly specialised drugs program for hospitals\) Special Arrangement Amendment Instrument 2014 \(No. 7\) \(PB 55 of 2014\)](#).

22 July 2014 - [National Health \(IVF/GIFT Program\) Special Arrangement Amendment Instrument 2014 \(No. 1\) \(No. PB 58 of 2014\)](#).

14 July 2014 - [National Health \(Pharmaceutical Benefits – Early Supply\) Amendment Instrument 2014 \(No. 4\) – specification under subsection 84AAA\(2\) \(No. PB 60 of 2014\)](#).

17 July 2014 - [National Health \(Listed drugs on F1 or F2\) Amendment Determination 2014 \(No. 6\) \(PB 54 of 2014\)](#).

22 July 2014 - [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2014 \(No. 7\) \(PB 56 of 2014\)](#).

14 July 2014 - [National Health Determination under paragraph 98C\(1\)\(b\) Amendment 2014 \(No. 7\) \(PB 57 of 2014\)](#).

25 July 2014 - [Food Standards \(Proposal P1014 – Primary Production & Processing Standard for Meat & Meat Products\) Variation](#).

25 July 2014 - [Food Standards \(Proposal P1017 – Criteria for Listeria monocytogenes – Microbiological Limits for Foods\) Variation](#).

24 July 2014 - [Australia New Zealand Food Standards Code — Standard 1.4.2 — Maximum Residue Limits Amendment Instrument No. APVMA 7, 2014](#).

## REPORTS

### Australia. Department of Health & Ageing

Media releases

30 July 2014 - [Eminent doctor and leader in the medical profession, Dr Mukesh Haikerwal, will be the new Chairperson of the Australian Institute of Health and Welfare \(AIHW\).](#)

Private Health insurance (PHI) Circulars

31 July 2014 - [PHI 46/14 New Private Hospital Information.](#)

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

1 August 2014 - The Medical Board of Australia has announced the registration fees for medical practitioners for 2014/15. [Read Article.](#)

31 July 2014 - The National Chinese Medicine Board has released its quarterly registration data. [Read Article.](#)

31 July 2014 - The National Chiropractic Board has released its quarterly registration data. [Read Article.](#)

31 July 2014 - The Medical Board of Australia releases its latest newsletter. [Read Article.](#)

31 July 2014 - The National Occupational Therapy Board has released its quarterly registration data. [Read Article.](#)

31 July 2014 - The National Medical Radiation Practice Board has released its quarterly registration data. [Read Article.](#)

31 July 2014 - The Pharmacy Board of Australia releases its latest communiqué. [Read Article.](#)

31 July 2014 - The National Psychology Board has released its quarterly registration data. [Read Article.](#)

31 July 2014 - The Medical Board of Australia releases its latest newsletter. [Read more.](#)

30 July 2014 - Watch a presentation on Staying up to standard, featuring tips for keeping CPD records and preparing for audit. [Read Article.](#)

29 July 2014 - Call for applications for medical radiation practitioners to join the Medical Radiation Practice Board of Australia's list of approved persons for appointment to panels. [Read Article.](#)

29 July 2014 - The Dental Board of Australia releases its latest communiqué. [Read Article.](#)

28 July 2014 - AHPRA is running a Twitter chat to discuss practitioners and students with a blood-borne virus. [Read Article.](#)

30 July 2014 - The Aboriginal and Torres Strait Islander Health Practice Board of Australia releases its latest communiqué. [Read Article.](#)

30 July 2014 - The Chinese Medicine Board of Australia releases its latest communiqué. [Read Article.](#)

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

29 July 2014 - [Call for evidence on the health effects of water fluoridation.](#) The National Health and Medical Research Council has called for submissions from the Australian public on evidence regarding the health effects of water fluoridation. Water fluoridation is a public health initiative used by governments to help reduce tooth decay. Current NHMRC advice recommends that water be fluoridated at the level of 0.6 to 1.1 mg/L, which balances the benefits of reduced tooth decay with the occurrence of dental mottling (fluorosis). [See full media release.](#)

25 July 2014 - [NHMRC Research Tracker.](#)

### Australia. Therapeutic Goods Administration (TGA)

1 August 2014 - [Medicines Safety Update, Volume 5, Number 4, August 2014.](#) August 2014 edition of the Medicines Safety Update.

1 August 2014 - [Consultations on adoption of European Union guidelines in Australia](#). Added guidelines proposed for adoption by TGA. Closing date: 12 September 2014.

31 July 2014 - [New tool helps work out whether a product is a therapeutic good or food](#). An interactive Food-Medicine Interface Guidance Tool and related explanatory material is available on the website to help work out whether or not a product is a therapeutic good (and thus a medicine).

31 July 2014 - [Documents released under Section 11C of the Freedom of Information Act 1982](#).

29 July 2014 - [Improved TGA website search engine](#). We have upgraded our search engine to include Product Information (PI) and Consumer Medicines Information (CMI).

29 July 2014 - [Codman Certas Programmable Valves](#). Consumers and health professionals are advised that Johnson & Johnson Medical has issued a hazard alert for two Codman Certas Programmable Valve products.

29 July 2014 - [Compositional guideline: Hydroxycitrate complex](#). Amended to include statement about availability of G. gummi-gutta as a source of hydroxycitrate complex.

28 July 2014 - [Approval under section 23 of the Therapeutic Goods Act 1989 in relation to an application for registration for over the counter medicines](#). Approval under subsection 23(1) of the *Therapeutic Goods Act 1989* - forms for over the counter medicines applications.

28 July 2014 - [Consultations on adoption of European Union guidelines in Australia: Outcome of previous consultation](#) EU/ICH guidelines adopted by the TGA, effective 21 July 2014.

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

30 July 2014 - [Pathways through youth justice supervision](#) | [media release](#).

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

28 July 2014 – Issue 184 ([PDF 134KB](#)) ([Word 166KB](#)).

[Recognising and responding to deterioration in mental state A scoping review](#).

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

##### Media Releases

31 July 2014 - [Minister pays tribute to state's 48,000 nurses and midwives](#).

30 July 2014 - [Top day for Hornsby Ku-ring-gai Hospital](#).

29 July 2014 - [Beds go electric at Westmead Hospital](#).

28 July 2014 - [Public Health Warning about Traditional Indian Medicine](#).

25 July 2014 - [Minister Views Progress on Peak Hill MPS](#).

##### Information Bulletins

29 July 2014 - [Implementation of Barcode Scanning in NSW Public Hospital Pharmacy Departments](#).

#### **Northern Territory (NT). Department of Health**

30 July 2014 - [Action plan to get the NT's Indigenous health workforce back on track](#).

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

31 July 2014 - [Historic agreement for primary health care delivery](#).

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

31 July 2014 - New community mental health centre for Noarlunga A new \$2.5 million community mental health centre, providing an integrated mental health service for the southern suburbs, is scheduled to be completed by mid-2015. [Read more](#).

#### **Tasmania. Department of Health & Human Services**

31 July 2014 - [One State, One Health System; Better Outcomes](#).

### Victoria. Department of Health

31 July 2014 - [Ebola virus disease \(EVD\) in West Africa.](#)

31 July 2014 - [Dental services enlisted to tackle smoking.](#) A new initiative aims to boost quitting rates in Victoria by training oral health professionals to provide smoking cessation advice to their patients.

30 July 2014 - [Mental health legal aid services expanded.](#) Minister for Mental Health Mary Wooldridge today launched Victorian Legal Aid's (VLA) expanded mental health services across Victoria.

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

Media Releases

30 July 2014 - [\\$207m Karratha Health Campus under way.](#)

29 July 20-14 - [WA signs up to trachoma screening agreement.](#)

Operational Directives (OD)

31 July 2014 - [OD 0543/14](#) Guidelines for the Public Health Management of Rabies and Other Lyssavirus (including Australian Bat Lyssavirus) Exposures and Infections This Operational Directive outlines the recommendations for the public health management of cases of rabies and other Lyssavirus exposure and infections in Western Australia.

31 July 2014 - [OD 0542/14](#) Cancellation of the Operational Directive 0427/13 HA215B Reporting Rules and Guidelines for Non-Admitted Patient Services Due to National Reporting Changes Decommissioning of the HA215B database will be as at 1 July 2014. The Operational Directive 0427/13 HA215B Reporting Rules and Guidelines for Non-Admitted Patient Services will no longer be valid from this date.

31 July 2014 - [OD 0541/14](#) Introduction of High-Cost Health Technologies The purpose of this Operational Directive is to provide a statewide framework for the evaluation of high-cost health technologies and their introduction into clinical practice.

### New Zealand. Ministry of Health

1 August 2014 - [Ministry of Health seeks world-class contractor for one of New Zealand's largest-ever hospital projects.](#)

### United Kingdom. Department of Health

31 July 2014 - [Ebola: government response.](#)

31 July 2014 - [National Health Service \(NHS\) performers list: changes to suspension regulations.](#)

31 July 2014 - [Changing how the GMC decides on doctors' fitness to practise.](#)

31 July 2014 - [Care Act 2014: funding allocations for new adult social care duties.](#)

30 July 2014 - [Antimicrobial Resistance \(AMR\): information and resources.](#)

30 July 2014 - [Medical innovation: proposals to make clinical negligence law clearer.](#)

30 July 2014 - [Supporting international volunteering in the health and care sector.](#)

30 July 2014 - [Autism Innovation Fund: apply for grants to improve local services.](#)

29 July 2014 - [Assistive technology: research and development.](#)

28 July 2014 - [Child flu vaccine pilots announced for second year.](#)

28 July 2014 - [New regulations for how NHS auditor panels work.](#)

25 July 2014 - [Care Act 2014: supporting people at risk of abuse or neglect.](#)

### United States of America. Department of Health & Human Services (HHS)

31 July 2014 - [HHS awards \\$54.6 million in Affordable Care Act mental health services funding.](#)

29 July 2014 - [Over 8.2 million seniors have saved more than \\$11.5 billion on prescription drugs since 2010.](#)

29 July 2014 - [Surgeon General issues call to action to prevent skin cancer.](#)

### Australian Medical Association (AuMA)

1 August 2014 - [AuMA President A/Prof Brian Owler, Radio 4BC Brisbane, 1 August 2014.](#) Transcript: AuMA President A/Prof Brian Owler, Radio 4BC Brisbane, 1 August 2014 **Subject:** GP co-payment. [Read more.](#)

29 July 2014 - [AuMA President, A/Prof Brian Owler, Parliament House Doorstop, 29 July 2014 29/07/2014 - 2:39pm](#) Transcript: AuMA President, A/Prof Brian Owler, Parliament House Doorstop, 29 July 2014 **Subject:** Out-of-pocket costs for healthcare. [Read more.](#)

### British Medical Association (BMA)

31 July 2014 - [Call for 'massive' critical care beds increase.](#) Almost 300 extra critical care beds are needed in Welsh hospitals over the next decade.

31 July 2014 - [NHS equal opportunities pledge welcomed by the BMA.](#) Doctors have welcomed a pledge to tackle race inequality across the NHS,

30 July 2014 - [BMA warns against doctor presenteeism.](#) The BMA Doctors for Doctors unit head has warned against the dangers of 'presenteeism.'

28 July 2014 - [Emergency care crisis undermines training.](#) Waiting-time targets and poorly designed rotas are having an impact on the training of emergency medicine doctors.

25 July 2014 - [Information gathering system raises confidentiality fears](#) Doctors have warned of the need to maintain patient confidentiality as health bosses propose bringing in a new information gathering system.

### American Medical Association (AMA)

31 July 2014 - [As Sunshine Registration Deadline Approaches, AMA Continues Push to Help Physicians Register, Review and Dispute Inaccurate Data.](#) With just 27 days before the deadline for physicians to dispute inaccurate reports from pharmaceutical companies and GPOs about their interactions before their publication under the *Sunshine Act*, the AMA is taking several steps to help physicians overcome the many issues they are having with the electronic system to register, review and dispute inaccurate information.

31 July 2014 - [AMA Offers New Resource to Help Physicians with Group Practice Employment Negotiations.](#) As part of its commitment to help physicians navigate evolving issues in medicine, the American Medical Association (AMA) today released a new resource to help physicians negotiate business and legal issues common to group practice employment contracts.

## 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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