



HEALTH ALERT

24 MARCH 2014

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JUDGMENTS

Commonwealth

18 March 2014 - *Australian Competition and Consumer Commission (ACCC) v Safe Breast Imaging Pty Ltd* [2014] FCA 238

This is the second case brought by the ACCC against a breast imaging company determined by the Federal Court in the last two weeks.

Safe Breast Imaging provided breast imaging services using a Multifrequency Electrical Impedance Mammograph device. The benefits of these were advertised to the public in various locations online and in a pamphlet which made claims about the benefits of breast imaging, including that the scans would put the customer's mind at ease, they measure breast health, detect signs of abnormal pathology and that it was a safe option to mammograms.

The Court found this constituted misleading and deceptive conduct as it represented that there was a scientific and medical basis on which the device could predict the risk of breast cancer, it could be used to assure a customer that they did not have breast cancer and that it could be used as a substitute for a mammography despite there being inadequate scientific medical basis to support these representations. The Court also found that the advertising made the representation that a doctor would be involved in the preparation of the breast report when this wasn't the case.

The Court further found that the sole director, shareholder and business manager of Safe Breast Imaging was accessorially liable for each contravention. This was because she was responsible for the promotion and management of the company and the distribution of advertising material.

The Court did not make a finding on the appropriate relief but is inviting submissions before final orders.

19 March 2014 - *Safwat Joseph v Secretary Department of Social Services* [2014] AATA 149

Social security - disability support pension - applicant seeks indefinite portability of disability support pension - whether applicant has a severe impairment - decision under review affirmed.

18 March 2014 - *Warner-Lambert Company LLC v Apotex Pty Ltd* [2014] FCA 241

Patents – application by patentee for interlocutory injunction restraining generic supplier from selling, supplying, soliciting or advertising its generic version of drug – patentee seeking interlocutory injunction pending final hearing – whether prima facie case – balance of convenience. Interlocutory injunction – whether prima facie case – balance of convenience.

New South Wales (NSW)

19 March 2014 - *AYT v Sydney Local Health District* [2014] NSW CATAD 29

The applicant sought review by the New South Wales Civil and Administrative Tribunal of conduct by the Royal Prince Alfred Hospital (RPAH) which she asserts breached health privacy principles (HPP). The applicant contends that in response to a subpoena issued by the District Court, the RPAH produced documents containing her health information which were irrelevant, or did not fall within the terms of the subpoena. Of concern was production of the applicant's records from Camperdown Aged Chronic Care and Rehabilitation Service (AC&R). The applicant contends that as a result of the production of those records, she settled her occupier's liability claim in the District Court for considerably less than what she would otherwise have been entitled to.

The Tribunal found that as the records were produced in compliance with a subpoena, the respondent was not required to comply with HPP 11 (disclosure of health information) so long as the health information fell within the terms of the subpoena and was "held" by the respondent.

The Tribunal found that the AC&R records were documents within the possession, custody and control of the RPAH because they were accessible on the RPAH's electronic patient administration system and

identifiable through the applicant's medical record number. The documents were therefore "held" by RPAH.

The Tribunal also found that the AC&R records fell within the terms of the subpoena, as it expressly requested "all records relating" to the applicant.

Based on these findings, the Tribunal also found that production of the AC&R records did not breach HPP 5 (retention and security), noting there was no evidence the respondent failed to protect the applicant's health information against loss, or unauthorised access or disclosure.

The Tribunal ordered no further action on the application.

19 March 2014 - [Health Care Complaints Commission v Lopez \(No 2\) \[2014\] NSWCATOD 15](#)

Complaint against unregistered nurse - breach of condition - unsatisfactory professional conduct and professional misconduct - fact that registration would have been cancelled if nurse were registered ordered to be placed on National Register - nurse disqualified from being registered for two years - costs.

Victoria

17 March 2014 - [Gayle Maree Moore v David Barton and ors \[2014\] VSC 78](#)

Administrative law – judicial review – procedural fairness – workers' compensation – medical panel – surveillance video used by panel – worker not afforded an adequate opportunity to explain what the video apparently showed – finding of strong tendency to somatisation based on no clinical evidence of relationship between allergic reactions and accepted back injury– no evidence supporting finding of that tendency – further finding that Panel had made no finding about that relationship – finding unreasonable or irrational - panel's opinions quashed – medical questions remitted for reconsideration by fresh panel – *Accident Compensation Act 1985 s 68*.

United Kingdom

13 March 2014 - [Mr John Lu v Nottingham University Hospitals National Health Service \(NHS\) Trust \[2014\] EWHC 690 \(QB\)](#). The Claimant, Mr John Lu, is a consultant cardiac surgeon employed by the Defendant, the Nottingham University Hospitals NHS Trust ("the Trust") at a specialist unit for the treatment of heart disorders at the Trent Cardiac Centre ("the Centre"). In July 2009, a cluster of cases of infection, known as prosthetic valve endocarditis or PVE, was identified. The source of the infection was ultimately identified as being Mr Lu. A strain of antibiotic-resistant bacteria had, unknowingly and without any negligence on Mr Lu's part, embedded itself in Mr Lu's skin. That bacteria was transferred to patients undergoing surgery to replace a heart valve. Tragically, 11 patients became infected. Five died and others required further operations or medical treatment. Mr Lu ceased practising heart valve surgery immediately and, in October 2009, ceased all surgery. There have been investigations into the outbreak. The Trust decided in August 2012 that Mr Lu could return to surgical practice subject to certain conditions. Mr Lu has not yet been able to return to surgical practice.

LEGISLATION

Commonwealth

6 March 2014 - [Specification of Prohibited Drugs No. 1 of 2014](#).

13 March 2014 - [Health Insurance Amendment \(Specialist Trainee Program\) Regulation 2014](#).

13 March 2014 - [Veterans' Entitlements Income \(Exempt Lump Sum – Thalidomide Class Action Payment\) Determination No. R19 of 2014](#).

13 March 2014 - [Health \(Spent and Redundant Instruments\) Repeal Regulation 2014](#).

12 March 2014 - [Aged Care \(Residential Care Subsidy — Amount of Transitional Supplement\) Determination 2014 \(No. 1\)](#).

12 March 2014 - [Aged Care \(Residential Care Subsidy — Amount of Transitional Accommodation Supplement\) Determination 2014 \(No. 1\)](#).

- 12 March 2014 - [Aged Care \(Residential Care Subsidy — Amount of Respite Supplement\) Determination 2014 \(No. 1\)](#).
- 12 March 2014 - [Aged Care \(Residential Care Subsidy — Amount of Pensioner Supplement\) Determination 2014 \(No. 1\)](#).
- 12 March 2014 - [Aged Care \(Residential Care Subsidy — Amount of Concessional Resident Supplement\) Determination 2014 \(No. 1\)](#).
- 12 March 2014 - [Aged Care \(Residential Care Subsidy — Amount of Accommodation Supplement\) Determination 2014 \(No. 1\)](#).
- 14 March 2014 - [Statement of Principles concerning periodic limb movement disorder No. 27 of 2014](#).
- 14 March 2014 - [Statement of Principles concerning periodic limb movement disorder No. 26 of 2014](#).
- 14 March 2014 - [Statement of Principles concerning somatic symptom disorder No. 25 of 2014](#).
- 14 March 2014 - [Statement of Principles concerning somatic symptom disorder No. 24 of 2014](#).
- 14 March 2014 - [Statement of Principles concerning allergic rhinitis No. 23 of 2014](#).
- 14 March 2014 - [Statement of Principles concerning allergic rhinitis No. 22 of 2014](#).
- 14 March 2014 - [Statement of Principles concerning restless legs syndrome No. 21 of 2014](#).
- 14 March 2014 - [Statement of Principles concerning restless legs syndrome No. 20 of 2014](#).
- 18 March 2014 - [Private Health Insurance \(Complying Product\) Amendment Rules 2014 \(No. 2\)](#).
- 18 March 2014 - [Private Health Insurance \(Benefit Requirements\) Amendment Rules 2014 \(No. 1\)](#).
- 14 March 2014 - [Amendment Statement of Principles concerning ischaemic heart disease No. 34 of 2014](#).
- 14 March 2014 - [Amendment Statement of Principles concerning ischaemic heart disease No. 33 of 2014](#).
- 14 March 2014 - [Amendment Statement of Principles concerning chronic lymphoid leukaemia No. 28 of 2014](#).

Queensland

Child Protection Reform Amendment Bill 2014 [Bill - EN](#)

Family and Child Commission Bill 2014 [Bill - EN](#)

New South Wales

18 March 2014 - [Drug Legislation Amendment \(Use of Cannabis for Medical Purposes\) Bill 2014](#).
Introduced by Kaye, John Private Member's Public Bill.

REPORTS

Australia. Department of Health & Ageing

Media releases

18 March 2014 - [Latest PBS listings include medicines for children](#).

21 March 2014 - [New mobile app an e-Health world first for people with bleeding disorders](#).

20 March 2014 - [Partnering to close the gap in indigenous health](#).

Private Health insurance Circulars (PHI)

20 March 2014 - [PHI 17/14 Change To Paying Application Fees For The Protheses List](#)

19 March 2014 -- [PHI 16/14 Changes to second-tier eligible hospitals.](#)

19 March 2014 - [PHI 15/14 Nursing-home type patient contribution rates and minimum benefits as at 20 March 2014.](#)

13 March 2014 - [PHI 14/14 Private hospital information.](#)

Australia. Health Practitioner Regulation Agency and the boards

21 March 2014 - Call for applications for appointment to the Chiropractic Board of Australia. [Read More.](#)

21 March 2014 - Call for applications for appointment to the Osteopathy Board of Australia. [Read More.](#)

20 March 2014 - The National Board has published a new FAQ and fact sheet for internationally qualified nurses and midwives. [Read More.](#)

19 March 2014 - The National Board has published its February communiqué. [Read More.](#)

18 March 2014 - The Pharmacy Board releases its latest newsletter. [Read More.](#)

17 March 2014 - National Boards' revised guidelines and codes of conduct, and a new social media policy, come into effect today. [Read More.](#)

17 March 2014 - The Nursing and Midwifery Board of Australia (National Board) has launched its 2014 online renewal of registration campaign. [Read More.](#)

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

Australia. National Health & Medical Research Council (NHMRC)

21 March 2014 - [NHMRC Research Tracker.](#)

NHMRC Health Tracker March 2014

Australia. Therapeutic Goods Administration (TGA)

21 March 2014 - [Molybdenum trioxide: Proposed revision of the draft compositional guideline.](#) The TGA has revised a number of parameters included in the draft compositional guideline for molybdenum trioxide and now seeks comments on the proposed revision.

20 March 2014 - [Complementary medicines: Cancellations from the ARTG following compliance review 2013.](#) Added comments to cancellations that took effect on 18 November 2013.

18 March 2014 - [Natalizumab and melanoma.](#) The TGA is monitoring reports of melanoma in patients being treated with natalizumab.

18 March 2014 - [HomeChoice PRO automated peritoneal dialysis system.](#) Consumers and health professionals are advised that Baxter Healthcare is undertaking a recall for product correction of its HomeChoice Pro automated peritoneal dialysis system.

17 March 2014 - [Toxicity of tartrazine.](#) Scientific review report on the toxicity of tartrazine.

17 March 2014 - [Request to cancel an entry/entries from the Australia Register of Therapeutic Goods \(ARTG\).](#)

17 March 2014 - [Review of the colouring substance tartrazine.](#) Tartrazine now allowed for both oral and topical use.

17 March 2014 - [Medtronic spinal cord stimulation devices - multiple models.](#) Consumers and health professionals are advised that Medtronic Australasia has issued a hazard alert regarding multiple models of its spinal cord stimulation devices.

17 March 2014 - [Medtronic neurostimulation devices used for deep brain, spinal cord and peripheral nerve stimulation therapies - multiple models.](#) Consumers and health professionals are advised that Medtronic Australasia has issued a hazard alert regarding multiple models of its neurostimulation devices.

17 March 2014 - [Common list of colouring substances published](#). Harmonisation provides manufacturers with expanded range of permitted colours.

14 March 2014 - [Medical devices and IVDs compliance actions](#). Details of products cancelled from the ARTG.

14 March 2014 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) Added Tocilizumab (Actemra).

12 March 2014 - [2014 seasonal influenza vaccines](#). Influenza vaccines can change from year to year as new strains of influenza virus appear.

Australian Institute of Health & Welfare

14 March 2014 - [Creating nationally-consistent health information:: engaging with the national health information committees](#).

21 March 2014 - [Health expenditure Australia 2011-12: analysis by sector](#).

Australian Commission on Safety and Quality in Health Care

17 March 2014 - On the Radar – Issue 166 ([PDF 132KB](#)) ([Word 185KB](#)).

Australia. National Mental Health Commission

14 March 2014 - [Review of Existing Mental Health Services and Programmes: Call for Submissions coming soon! Read more](#).

New South Wales (NSW). Ministry of Health

Media Releases

20 March 2014 - [NSW Government commits \\$120 million to integrated health care](#).

20 March 2014 - [Main Works Contract Awarded for Peak Hill MPs Project](#).

Policy Directives & Guidelines

20 March 2014 - [Goods and services procurement policy](#).

20 March 2014 - [Non-Standard Remuneration or Conditions of Employment](#).

17 March 2014 - [Snakebite and spiderbite clinical management guidelines 2013 - Third Edition](#).

Information Bulletins

18 March 2014 - [Notification of Obsolete Policy Directive - PD2012_027](#).

19 March 2014 - [Chaplains Subsidy](#).

20 March 2014 - [Pension Based Scale of Fees - Health Services Act 1997](#).

Northern Territory. Department of Health

20 March 2014 - [Robyn Lambley - choice for territory mothers under private midwives legislation](#). Private midwives will once again assist Northern Territory mothers through their pregnancy, whether at home, or in a public or private hospital.

Queensland. Department of Health

20 March 2014 - [Update on medical contracts](#). Director-General will continue to meet with doctors regarding medical contracts.

20 March 2014 - [Mackay performs first angiogram](#). Mackay Base Hospital recently performed its first angiogram, or cardiac catheterisation.

20 March 2014 - [Gold Coast Health helping to create healthier workforce](#). Range of health and wellbeing initiatives are helping to make Gold Coast Health staff healthier - and you can do it too at your workplace.

19 March 2014 - [Hendra virus case in Wide Bay](#). Public health officials and Biosecurity Queensland investigating first Hendra virus incident in Queensland this year.

19 March 2014 - [Sleep Disorders Centre earns accreditation](#). The Princess Alexandra Hospital's Sleep Disorders Centre is the first centre in Queensland to receive accreditation.

Victoria. Department of Health

20 March 2014 - [Statewide oral health survey in schools](#). Thousands of school students will take part in Victoria's first statewide survey of child dental health, Minister for Health David Davis announced today.

16 March 2014 - [First strategy to help discuss advance care planning](#). In a Victorian first, hospitals and health care providers will be supported to help staff, patients and families discuss the difficult and emotional health care choices that arise when facing a serious illness.

14 March 2014 - [Community mental health services receive \\$2.5 million to improve facilities](#). Twelve organisations will receive capital grants to improve facilities at community mental health services, Minister for Mental Health Mary Wooldridge announced today.

Western Australia (WA). Department of Health

Operational Directives (OD)

20 March 2014 - [OD 0514/14](#). Representation on District and Local Emergency Management Committees Hospitals and health services have significant roles to play in an emergency or disaster and are key stakeholders in their community's emergency management planning process. This operational directive outlines the requirements for involvement by hospitals and health services to participate in community disaster and emergency preparatory activities.

19 March 2014 - [OD 0513/14](#). Communication protocols for major incidents in WA Health. The Operational Directive describes communication protocols for major incidents impacting WA Health including incident activation, broadcast notification and ongoing incident communication.

18 March 2014 - [OD 0512/14](#). Use of the State Government badge policy guidelines of the State Government Badge of WA Health publications and communication materials.

13 March 2014 - [OD 0511/14](#). WA Clinical Alert (Med Alert) Policy. This policy aims to ensure a standardised process for identifying, documenting and communicating clinical alerts occurs within WA public health services.

13 March 2014 - [IC 0181/14](#). Resources to support Health Services facilitate access and credentialing for eligible midwives. Resources have been developed to support the implementation of access and credentialing for eligible midwives in WA Health maternity units. The resources are intended to complement the Statewide Access Agreement for Eligible Midwives and the Credentialing and Defining Scope of Clinical Practice for Health Professionals (Nursing and Midwifery) – A policy handbook.

New Zealand. Ministry of Health

21 March 2014 - [Taeao o Tautai: Pacific public health workforce development implementation plan 2012–2017](#).

18 March 2014 - [New breast screening provider announced for Southern district](#).

18 March 2014 - [Organisation wanted to run Local Area Coordination in Bay of Plenty/Lakes regions](#).

17 March 2014 - [Calling all health volunteers](#).

United Kingdom. Department of Health

20 March 2014 - [Women to benefit from £10 million for better maternity environments](#).

14 March 2014 - [Cutting-edge drugs to be fast-tracked to patients](#).

13 March 2014 - [Landmark Children and Families Act 2014 gains royal assent](#).

18 March 2014 - [DH non-executive appointments](#).

17 March 2014 - [Amending the National Health Service Act 2006](#).

United States of America. Department of Health & Human Services

18 March 2014 - [Eight out of 10 uninsured Asian Americans, Native Hawaiians, and Pacific Islanders may be eligible for Medicaid, CHIP or tax credits in the Health Insurance Marketplace](#).

Australian Medical Association (AuMA)

20 March 2014 - [Every day must be Close the Gap day - AuMA](#). On close the gap day, the AuMA calls on all Australian governments to increase the momentum to close the gap in health and life expectancy between Aboriginal and Torres Strait Islander peoples. [Read more](#)

20 March 2014 - [AuMA to continue negotiating better conditions for rural doctors](#). The AuMA has welcomed the renewal of the AuMA's existing authorisation from the ACCC, which allows the AuMA to collectively bargain with State Health Departments in setting the terms and conditions. [Read more](#).

20 March 2014 - [Private health role in General Practice must be targeted and limited](#). *AuMA position statement on private health insurance and primary care services 2014*. [Read more](#).

19 March 2014 - [AuMA Speech - AuMA President Dr Steve Hambleton, International Primary Health Care Reform Conference](#). Speech to international primary health care reform conference Brisbane 19 March 2014. [Read more](#).

18 March 2014 - [Junior doctors call for resolution to Queensland hospital doctor contract dispute](#). Junior doctors from around Australia have called for a quick resolution to the Queensland public hospital doctor contract dispute. [Read more](#).

17 March 2014 - [No evidence that wind farms harm health - AuMA](#). *AuMA position statement on wind farms and health 2014*. The AuMA today released the *AuMA position statement on wind farms and health 2014*. [Read more](#).

British Medical Association (BMA)

19 March 2014 - [Disheartened public health doctors tempted to leave](#).

19 March 2014 - [Public-awareness drive boosts organ register sign-ups](#).

19 March 2014 - [Care Bill clause a cause for concern](#). The BMA remains concerned about the impact of a controversial clause giving ministers greater powers.

14 March 2014 - [Call to place GPs at centre of health and social care integration](#).

Canadian Medical Association (CMA)

19 March 2014 - [Short of recruits, not patients: geriatric medicine strives for "critical mass"](#). As Canada deals with a sharp increase in the number of frail, elderly patients.

14 March 2014 - [As new marijuana rules take effect, CMA preaches caution](#).

American Medical Association (AMA)

14 March 2014 - [Time to Move Forward](#). Just last month, both parties worked in a bicameral process to develop good-faith consensus and were historically close to repealing the dysfunctional payment system and improving healthcare for America's senior citizens.

19 March 2014 - [AMA issues grace period guide to assist physicians](#). The AMA announced new resources to guide physicians on navigating a little known rule in the *Affordable Care Act* (ACA) that could pose a significant financial risk for medical practices.

19 March 2014 - [Lifecycle of a code: How the CPT and RUC process works](#). Clinicians should have a say in how medical nomenclature is created and how services are valued - after all, physicians and other qualified health care professionals are the ones directly responsible for providing patient care.

20 March 2014 - [Critical illness increases patients' risk of developing psychiatric illness](#). A new study in the *Journal of the American Medical Association* examined how critical illness might contribute to psychiatric illness and the need for psychiatric medications after being admitted to the intensive care unit.

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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