



HEALTH ALERT

9 MARCH 2015

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JUDGMENTS

Australia. Federal Court

5 March 2015 - [Australian Nursing and Midwifery Federation v Kaizen Hospitals \(Essendon\) Pty Ltd \[2015\] FCAFC 23](#)

The Full Court of the Federal Court has upheld the validity of enterprise agreements made between the Australian Nursing and Midwifery Federation (ANF) and three hospitals, in circumstances where the hospitals had not authorised the purported 'employer bargaining representative' to act on their behalf.

Enterprise agreements ostensibly made between ANF and each hospital were approved by the Fair Work Commission (FWC) in 2012. Mr Subramanian, the corporate manager of the hospitals, signed each agreement and corresponding forms which asserted that he was authorised to act on behalf of the hospitals. The hospitals challenged the agreements on the basis that Mr Subramanian had no authority to negotiate or execute enterprise agreements. Each hospital argued that it had been unaware of any negotiations relating to making the agreements.

The ANF contended that the agreements were valid on the basis that Mr Subramanian was an agent of the hospital, and had 'apparent authority' to negotiate and execute the agreements within the meaning of section 793 of the *Fair Work Act*, which provides that conduct engaged in by an agent of a body corporate within the scope of the agent's actual or apparent authority, is taken to have been engaged in by that body corporate.

The Full Court upheld the appeal, and held that it was open to the FWC Deputy President and Full Bench to find that each enterprise agreement was validly made on the basis that Mr Subramanian had sufficient apparent authority for section 793 to apply.

Queensland

9 February 2015 (published 27 February 2015) - [Jamieson v Australian Therapeutic Skin Care Institute & Anor \[2015\] QCAT 41](#)

The Queensland Civil and Administrative Tribunal has held that a course offered by the Australian Therapeutic Skin Care Institute provided adequate training in cosmetic tattooing.

The applicant attended a week long course in cosmetic tattooing offered by the respondent in 2014. She alleged that the training she received was inadequate on a number of grounds, including that the procedure room at the clinic was unhygienic; the instructor left the room while the applicant performed procedures during practical sessions; the course had been cut short by one day; and that the tattoo kit provided at the completion of the course was missing required items. The applicant also alleged that she was issued a certificate attesting to her competency for a procedure which she had not performed during the course.

The Tribunal dismissed the applicant's allegations that she received inadequate training with regard to knowledge, professionalism and basic infection control. The Tribunal held that the applicant had received sufficient practical and theoretical training for all procedures studied during the course, and that the level of sanitation in the clinic was in line with legal requirements. The Tribunal found that while the training may have fallen short of the applicant's standards or expectations, the delivery of the training was adequate in terms of representations that had been made to her regarding the course.

The Tribunal dismissed the applicant's claim for a refund of the tuition fee and for her travel expenses in relation to attending the course.

New South Wales

24 February 2015 - [Portia Gatti bhnf Rebecca Gatti v Calvary Health Care Riverina Limited \[2015\] NSWSC 101](#)

Medical negligence – where infant plaintiff suffering from viral sepsis – where she alleges defendants failed to treat the condition appropriately or in a timely way – where plaintiff seeks leave to discontinue against first defendant – where second defendant does not consent unless conditional costs orders made – leave granted.

5 March 2015 - [Smythe v Burgman \[2015\] NSWSC 150](#)

Practice and procedure – application to vacate hearing date – complex medical negligence matter – application to vacate brought 2 ½ weeks before hearing date – change of solicitor with new solicitors wishing to re-instate a claim previously abandoned – ss 56-58 of *Civil Procedure Act 2005* – application to vacate hearing date refused.

Australia. High Court

4 March 2015 - [Australian Communications and Media Authority v Today FM \(Sydney\) Pty Ltd \[2015\] HCA 7](#)

Statutes – statutory construction – clause 8(1)(g) of Sched 2 to *Broadcasting Services Act 1992* (Cth) (BSA) conditioned commercial radio broadcasting licence on licensee not using broadcasting service in commission of offence against another Commonwealth Act or a law of a State or Territory – Authority's functions included suspension and cancellation of licences and taking enforcement action under BSA – Authority authorised to conduct investigations for purposes of its functions – Where, as part of investigation, Authority made finding that licensee used broadcasting service to commit offence against State law and thereby breached cl 8(1)(g) licence condition – Whether Authority had power to do so in absence of criminal court finding offence proven. Constitutional law (Cth) – Judicial power – Where ss 10 and 12 of Australian Communications and Media Authority Act 2005 (Cth), ss 5, 170 and 178 of BSA and cl 8(1)(g) of Sched 2 to BSA authorised Authority to find licensee of commercial radio broadcasting licence breached cl 8(1)(g) licence condition and to take enforcement action under ss 141 and 143 of BSA prior to criminal court finding offence proven – Whether provisions thereby impermissibly confer judicial power on Authority. Words and phrases – 'adjudging and punishing criminal guilt', 'administrative enforcement action', 'judicial power', 'used in the commission of an offence'.

LEGISLATION

Commonwealth

6 March 2015 - [National Health \(Epworth and Cabrini Private Hospitals Paperless Prescribing and Claiming Trial\) Special Arrangement 2015 \(PB 18 of 2015\)](#).

2 March 2015 - [Imported Food Warning Labels Bill 2015](#).

2 March 2015 - [National Health \(Weighted average disclosed price – April 2015 reduction day\) Amendment Determination 2015 \(No. 1\) \(PB 9 of 2015\)](#).

2 March 2015 - [National Health \(Weighted average disclosed price – April 2015 reduction day\) Amendment Determination 2015 \(No. 1\) \(PB 9 of 2015\)](#).

South Australia

27 February 2015 - [Family Relationships \(Surrogacy\) Amendment Bill 2014—introduced by Hon John Dawkins MLC](#)

Tasmania

6 March 2015 - [Public Health \(Tobacco Seller's Licence\) Amendment Regulations 2015 \(S.R. 2015, No. 5\)](#) - Commenced 1 March 2015.

Western Australia

[Alcohol and Drug Authority Amendment Bill 2014](#).

[Declared Places \(Mentally Impaired Accused\) Bill 2013](#).

REPORTS

Australia. Australian Competition and Consumer Commission (ACCC)

The Australian Competition and Consumer Commission (ACCC) has released its enforcement priorities for 2015 including 'assessing the adequacy and transparency of information about private health insurance and the impact it may have on consumers and competition more broadly.' Please [click here](#) to view the article.

Australia. Department of Health

Media releases

5 March 2015 - [\\$1.4 billion boost in primary care for Indigenous communities](#) - Indigenous communities across Australia will benefit from a \$1.4 billion investment in primary and preventable health care as part of the Australian Government's ongoing commitment to closing the gap.

4 March 2015 - [Media Update - Hepatitis A linked to Frozen Berries](#) - This page provides a Media Update - Hepatitis A in Frozen Berries as at 4 March 2015.

3 March 2015 - [Government continues Medicare consultation](#) - The Australian Government is committed to protecting Medicare for the long-term.

27 February 2015 - [Private Health Insurance Premiums](#) - Private health insurance premiums will increase by a weighted industry average of 6.18 per cent from April 1 2015.

Private Health insurance (PHI) circulars

4 March 2015 - [PHI 14/15 February 2015 Protheses List.](#)

2 March 2015 - [PHI 13/15 New Private Same-Day Hospital Information.](#)

2 March 2015 - [PHI 12/15 Private Health Insurance Rebate – Rebate Adjustment Factor Effective 1 April 2015.](#)

27 February 2015 - [PHI 11/15 2015 Private Health Insurance Premium Round Announcement.](#)

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

4 March 2015 - [Board and AHPRA take action against 'fake' doctor](#) - The Medical Board of Australia and the AHPRA have taken legal action against a man they allege is pretending to be a registered medical practitioner. The Board and AHPRA have filed charges in the Magistrates' Court at Melbourne, alleging that Mr Raffaele Di Paolo (and/or his company, Artemedica) was 'holding himself out' as an obstetrician and /or gynaecologist, with expertise in IVF. After receiving a complaint, the Board and AHPRA are taking action against Mr Di Paolo to protect the public.

3 March 2015 - [Practitioner ordered not to reapply for registration](#) - The Queensland Civil and Administrative Tribunal has found that Dr Patrick O'Brien behaved in a way that constituted unsatisfactory professional conduct, and ordered him to not reapply for registration as a health practitioner. Concerns about Dr O'Brien's conduct date back to March 2009, when the former Dental Board of Queensland, which had registered Mr O'Brien, received a notification alleging Dr O'Brien was performing oral sedation without the required endorsement to do so.

Australia. National Health & Medical Research Council (NHMRC)

[NHMRC Research Tracker: Special Edition - 27 February 2015.](#)

[NHMRC RAO Alert Friday 27 February 2015.](#)

Australia. Therapeutic Goods Administration (TGA)

5 March 2015 - [ACSOM meeting statement, Meeting 23, 11 July 2014](#) - Advisory Committee on the Safety of Medicines meeting statement.

5 March 2015 - [Updates to the list of designated orphan drugs](#) - Added Amikacin Sulfate.

5 March 2015 - [Advertising of vaccines](#)

4 March 2015 - [Seasonal flu vaccine: 2015 seasonal influenza vaccines for use in children](#) - For the 2015 influenza season, the following trivalent and quadrivalent influenza vaccines will be registered and available for use.

4 March 2015 - [2015 seasonal influenza vaccines](#) - Influenza vaccines can change from year to year as new strains of influenza virus appear.

3 March 2015 - [Medical Officer Class 2 and 3](#) - The TGA is looking for Medical Officers (MOs) to work in pre-market assessment or a post-market monitoring role.

2 March 2015 - [Advisory Committee on the Safety of Vaccines \(ACSOV\)](#) - Cancelled 6 March 2015 meeting.

2 March 2015 - [Advisory Committee on Prescription Medicines \(ACPM\)](#) - Updated ACPM meeting date to 20 March 2015 and the Pharmaceutical Subcommittee meeting date to 24 March 2015.

2 March 2015 - [Advisory Committee on Non-prescription Medicines \(ACNM\)](#) - Cancelled 2 April 2015 meeting.

2 March 2015 - [Advisory Committee on Complementary Medicines \(ACCM\)](#) - Cancelled 12 March 2015 meeting.

2 March 2015 - [Advisory Committee on Biologicals \(ACB\)](#) - Updated meeting date information and contact telephone number.

2 March 2015 - [The Poisons Standard \(the SUSMP\)](#) - Added SUSMP 6 information and link to the electronic version.

2 March 2015 - [Medical Devices Safety Update, Volume 3, Number 2, March 2015](#) - Caution advised in choosing intravenous catheters if power injection may be required; Acanthamoeba keratitis risk for contact lens users; The TGA thanks you for your medical device adverse event reports; recent safety alerts.

[Australian Commission on Safety and Quality in Health Care](#)

2 March 2015 - On the Radar – Issue 212 ([PDF 149KB](#)) ([Word 135KB](#))

[Australia. Private Health Insurance Administration Council](#)

4 March 2015 - [Statistical Release – December quarter 2014](#) - quarterly statistics released.

[New South Wales \(NSW\). Ministry of Health](#)

Media Releases

5 March 2015 - [New web tool to help junior doctors map career](#) - Health Minister Jillian Skinner today launched a new website designed to help junior doctors carve out their medical career. Mrs Skinner said the Map My Health Career website gives junior doctors a thorough insight into all 53 medical specialties, from surgery to general practice, paediatrics to psychiatry, anaesthesia to infectious diseases.

2 March 2015 - [Innovative new resource provides expectant mothers with vital dental health information](#). Assistant Minister for Health Jai Rowell recently launched a new video resource aimed at providing women with practical advice on maintaining good dental health during pregnancy. Mr Rowell said the video was funded by a \$32,904 grant from NSW Kids and Families and is an initiative of the South West Sydney Local Health District based Midwifery Initiated Oral Health Dental Service. 'The 10 minute video *'Keep Smiling While You are Pregnant'* makes women aware of the importance of good dental health during pregnancy and is available on YouTube,' Mr Rowell said.

2 March 2015 - [NSW Government provides welcome boost to Aboriginal dental services in south western Sydney](#) - Minister for Mental Health and Assistant Minister for Health Jai Rowell recently highlighted the NSW Government's commitment to improving dental health outcomes for Aboriginal people with the opening of a new dental clinic at Tharawal Aboriginal Medical Service in Airids. Visiting the facility with Liberal candidate for Macquarie Fields Pat Farmer, Mr Rowell said \$302,300 in NSW Government funding provided to the clinic this financial year had helped ensure local Aboriginal people receive vital dental health services.

Policy Directives & Guidelines

5 March 2015 - [Maternity - Fetal Heart Rate Monitoring](#).

Information Bulletins

4 March 2015 - [Serious Injury or Hospitalisation of a Foreign National in Australia](#).

Northern Territory (NT). Department of Health

5 March 2015 - [Defending hardworking hospital staff from Labor attacks](#) - Health Minister John Elferink says he's disgusted by comments by Labor Senator Nova Peris about Royal Darwin Hospital operations.

4 March 2015 - [NT Government tackles aquatic threat](#) - The Northern Territory Government is winning the war against Cabomba, an extremely aggressive weed that has the potential to threaten Darwin's fresh water drinking supply and impact our fishing industry.

2 March 2015 - [RFDS invests in aeromedical jet for Northern Territory](#) - Central Australians will soon be cared for 24/7 by a permanently configured aeromedical jet following the purchase of a state-of-the-art Pilatus PC-24 aircraft by the Royal Flying Doctor Service (RFDS).

27 February 2015 - [New remote health centres to provide better outcomes for communities](#) - Two remote communities are next in line to receive new health centres as part of a \$50 million Territory-wide bush infrastructure package.

Queensland. Department of Health

5 March 2015 - [Measles alert for Cairns](#) - Tropical Public Health Services (Cairns) has issued a measles alert after a confirmed case of the illness in Cairns. Infectious Diseases Physician, Dr Trent Yarwood, said the case presented to two local general practices on Sunday 1 March and Monday 2 March, displaying symptoms consistent with measles. 'The case also attended the Stocklands Earlville Shopping Centre on 1 and 2 March, as well as the Cairns Hospital Emergency Department on 2 March,' Dr Yarwood said.

4 March 2015 - [Electronic medical records for the North West HHS](#) - Training for the Communicare software system rollout is being delivered. A new shared electronic medical records system is being rolled out across all facilities within the North West Hospital and Health Service. North West Hospital and Health Board Chair Paul Woodhouse said the health service had adopted the Communicare patient information software system to provide a comprehensive electronic record for all North West patients. 'We will be the first and largest public health service in Queensland to introduce the Communicare software system,' Mr Woodhouse said.

4 March 2015 - [Memorable first year for Children's Critical Care at Gold Coast](#) - When the Children's Critical Care Unit opened at Gold Coast University Hospital a year ago, it was estimated 200 young patients would pass through its doors during its first 12 months. The final figure? An incredible 441. Deputy Director Dr Phil Sargent said the increased demand for the unit had been driven by a high number of referrals from neighbouring regions, an increase in surgical activity at GCUH and the implementation of an early intervention approach.

3 March 2015 - [Celebrating 23 years of saving women's lives in Central Queensland](#) - BreastScreen Rockhampton is this week celebrating 23 years of saving thousands of women's lives by detecting cancers early and improving their treatment outcomes. Health Promotion Officer Roxanne Hodda said that, since opening in 1992, BreastScreen Rockhampton had gone from strength to strength with a record number of women screened in 2014. 'Nearly 12,000 women participated in the program last year improving their chances of early detection and successful treatment,' she said.

South Australia (SA). Department for Health & Ageing

5 March 2015 - [Measles](#) - SA Health has been notified of a case of measles in 54 year old male who had recently returned from the Philippines. He is currently recovering at home, but had travelled to many locations around Adelaide while infectious. 'Measles is highly contagious among people who are not fully immunised, and can be caught by other people up to 30 minutes after the infected person has left the area,' Dr Christley said.

Western Australia (WA). Department of Health

Media Releases

4 March 2015 - [Premier, Minister for Health and Minister for Regional Development; Lands; Minister Assisting the Minister for State Development: Busselton celebrates brand new hospital](#) - Busselton marked the start of a new era in healthcare today, as Premier Colin Barnett and Health Minister Kim Hames joined community members at the opening of the city's comprehensive health campus.

27 February 2015 - [Caution advised after sewage overflow in the Canning River](#) - WA Health is advising people to avoid contact with a section of the Canning River following a sewage overflow near Astley Street in Gosnells.

Operational Directives (OD)

4 March 2015 - [OD 0592/15](#) - WA Open Disclosure Policy - WA Health is dedicated and committed to providing safe and high quality health care to all patients. However, despite the best intentions of our highly skilled and committed health professionals occasionally things go wrong. When a patient is harmed in a WA hospital, there is a professional and ethical responsibility on the part of health practitioners to communicate with the patient about the clinical incident that has occurred. Open disclosure describes the way clinicians communicate with and support patients, and their family and carers, who have experienced harm during health care. Open disclosure is a patient right which is anchored in professional ethics, considered good clinical practice, and is part of the care continuum.

4 March 2015 - [IC 0217/15](#) - Dental Officers Continuing Professional Development Leave and Expenses Continuing professional development entitlements for Dental Officers employed in Dental Health Services.

New Zealand. Ministry of Health

5 March 2015 - [Nominations open for Health Volunteer Awards](#) - Nominations are open for the 2015 Minister of Health Volunteer Awards.

2 March 2015 - [Pathway to Smokefree New Zealand 2025 Innovation Fund Summary of Quarter Two Reports](#).

United Kingdom. Department of Health (DH)

5 March 2015 - [Health services that should be commissioned as specialised services](#).

5 March 2015 - [Advisory Committee on Clinical Excellence Awards: triennial review](#).

4 March 2015 - [Rare diseases](#).

4 March 2015 - [Release of the National Health Service \(NHS\) owned land for development](#).

4 March 2015 - [DH non-executive appointments](#).

3 March 2015 - [The Morecambe Bay Investigation](#).

3 March 2015 - [Health visitor and 0-5 commissioning transfer](#).

3 March 2015 - [Operation Bullfinch serious case review: letter to Maggie Blyth](#).

3 March 2015 - [Helping school nurses to tackle child sexual exploitation](#).

3 March 2015 - [PM unveils tough new measures to tackle child sexual exploitation](#).

27 February 2015 - [Children, Families and Maternity e-bulletin](#).

Australian Medical Association (AuMA)

27 February 2015 - [Charges against Turkish doctors dropped](#) - The AuMA has welcomed the news that charges against Turkish doctors who assisted people injured in the Gezi Park protests in Istanbul in 2013 have been dropped. AuMA President, A/Prof Brian Owler, said today that the court case brought by the Turkish Ministry of Health against the Turkish Medical Association's Ankara Chamber of Medicine (ATO) for providing medical assistance to people injured during the protests was dismissed last week. 'The AMA Federal Council last year passed a formal resolution calling on the Turkish Government to drop legal action

against the Turkish Medical Association, whose members provided the emergency medical care to the injured demonstrators,' A/Prof Owler said. 'We followed that up with a letter to Prime Minister Abbott urging the Australian Government to call on Turkish authorities to drop legal action against the doctors.'

British Medical Association (BMA)

5 March 2015 - [Demand to resolve foundation programme oversubscription](#).

4 March 2015 - [End flawed hospital franchise model, say doctors](#) - Politicians need to stop 'flogging the dead horse' of using private companies in the NHS.

4 March 2015 - [Bed shortage sparks safety alarm](#) - Urgent investment is needed for new psychiatric inpatient wards, consultants have demanded.

4 March 2015 - ['Good ship NHS' needs support to avoid meltdown](#) - The NHS's ability to provide safe and effective services is under threat from a financial crisis.

4 March 2015 - [Unity key to strong contract, says consultant leader](#) - Consultants have been urged to stay united and focus against the 'very real' threat of negative change.

2 March 2015 - [Stand by me: surviving a GMC investigation](#) - An investigation by the GMC is stressful.

27 February 2015 - ['Hard-hitting' call for action on childhood mental health](#) - Early preventative action is needed on childhood mental health and maltreatment.

Canadian Medical Association (CMA)

3 March 2015 - ['Our work is far from finished': CMA to continue leadership role on end-of-life care](#)

American Medical Association (AMA)

4 March 2015 - [100 Physician Groups Call For Contingency Plans For ICD-10 Transition](#) - The AMA and 99 state and specialty societies urged the Centers for Medicare and Medicaid Services (CMS) today to address several of their concerns about the potential impact of the transition to the ICD-10 code set.

2 March 2015 - [AMA Still Concerned About Value-Based Modifier Program](#) - 'The American Medical Association is concerned following Friday's announcement by the Centers for Medicare and Medicaid Services (CMS) that a third of physician groups of 100 practitioners or more will face a penalty under the Value-based Modifier program (VBM) in 2015.'

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.

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