



HEALTH ALERT

28 JULY 2014

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JUDGMENTS

New South Wales (NSW)

22 July 2014 - [Lane v Northern NSW Local Health District \(No 3\) \[2014\] NSWCA 233](#)

This was an appeal to the NSW Court of Appeal from a judgment of the District Court. The appellants are sisters whose mother passed away after having a seizure and receiving treatment at two hospitals for which the respondent is responsible. The appellants alleged that the negligent mistreatment of their mother at the hospitals caused her death and as a result, they suffer from psychiatric injuries. The primary judge dismissed the claim, finding no negligence on the part of the hospital.

On appeal, the appellants alleged that the trial judge was biased and argued that the procedures adopted at trial were unfair. The appellants had been self-represented at trial. Their arguments included that they had not been allowed to recall their father to give further evidence, that they had been prevented by the trial judge from re-examining one of the witnesses and that questions were disallowed during evidence.

The Court of Appeal dismissed the appeal. It was of the opinion that no error had been demonstrated in the course the trial judge had taken and that an allegation of bias was utterly without justification. The Court noted that the trial had been run in a way which was manifestly disorderly in an attempt to satisfy the appellants' perceived interests. They concluded that there was not only a failure to demonstrate an error, but it was not established that, if there was an error, it would have had any material effect on the outcome.

Queensland

13 May 2014 (published 18 July 2014) - [Psychology Board of Australia v Tubara \[2014\] QCAT 303](#)

This was a complaint referred to the Queensland Civil and Administrative Tribunal by the Psychology Board of Australia, alleging that the conduct of a psychologist whilst giving expert evidence in a Family Court proceeding amounted to unsatisfactory professional conduct. The psychologist denied the allegations.

The psychologist had prepared an expert report for the Family Court proceeding. The father objected to the report and had made a complaint to the Board that it was of a poor professional standard and displayed bias. In response, the Board conducted an investigation which concluded there were a number of concerns about the standard of the report and recommended that the Board establish a disciplinary committee to commence disciplinary proceedings by way of a hearing. The psychologist was notified of this by letter.

During the Family Court proceeding, the psychologist was cross-examined in relation to the complaint by the father. During this evidence, the psychologist testified that the complaint was still under investigation and that the hearing would mostly be for punctuation and grammar. The Board alleged these claims were untrue and therefore amounted to unsatisfactory professional conduct.

The Tribunal found that this did not amount to unsatisfactory professional conduct because, while the responses may have been somewhat disingenuous, the process was confusing and the letter from the Board did not convey clearly to her that the investigation had been completed. The Tribunal found that the psychologist was answering particular questions put to her and this did not give a basis for a finding of unsatisfactory professional conduct.

25 June 2014 (published 22 July 2014) - [Sharma v Medical Board of Australia \[2014\] QCAT 305](#)

Professions and trades - health care professionals - medical practitioners - licences and registration - other – where a performance and professional standards panel placed conditions on the applicant's registration – where the applicant applied for a stay of the panel's decision – where the applicant states the conditions will adversely impact her professional and private life – where the respondent submits that the applicant has not demonstrated a cogent reason for granting of the stay, but does not oppose the stay – whether a stay is desirable after having regard of the interests of anyone affected by the decision, the submission of the respondent and the public interest.

22 May 2014 (published 18 July 2014) - [Medical Board of Australia v Martin \[2014\] QCAT 304](#)

Professions and trades - health care professionals - medical Practitioners - disciplinary proceedings - professional misconduct and unprofessional conduct - other particular cases – where the respondent

admitted to performing a surgery resulting in a keloid scar and asymmetrical incisions on a patient's eyelids – where the respondent admitted to making clinical notes claiming the procedure was supervised when it was not supervised – where performing unsupervised surgery of this nature was in breach of conditions imposed on the respondent's registration – whether the respondent engaged in conduct that amounted to professional misconduct - where the parties had indicated to the Tribunal, prior to the hearing, that a joint sanction would be sought which included a suspended suspension – whether the Tribunal can make such an order - where the respondent had already served an actual period of suspension by way of an immediate action decision of the applicant – where the applicant proposed further conditions to be placed on the respondent's registration – whether a suspension is appropriate – whether proposed conditions are appropriate.

18 July 2014 - [Inquest into the death of Dianne Judith Bowling 2011/3711](#)

Death from intentionally ingesting various prescribed medications and in particular a toxic level of antihypertensive medication metoprolol. The deceased had been suffering from a long-term debilitating mental illness and in the month prior to her death was experiencing a relapse and deterioration in her mental well-being.

Commonwealth

18 July 2014 - [Wodonga Pharmacy Pty Ltd v Australian Community Pharmacy Authority \[2014\] AATA 496](#)

Pharmacies – recommendation of Australian community pharmacy authority – approval to supply pharmaceutical benefits – new pharmacy in a small shopping centre – legal right to occupy the proposed premises – information to be considered by the authority – single management – commercial establishment – gross leasable area of at least 5000 m² – at least 15 other commercial establishments – temporary selling points – occupied by or likely to be occupied by one business – separate commercial establishments. Practice and procedure – statutory interpretation – onus of proof – Inferences.

South Australia

17 July 2014 - [Crowe v Medical Board of Australia \[2014\] SAHPT 8](#)

Appeal - medical practitioner - appeal against decision of respondent to impose conditions upon the registration of the appellant - appellant failed to advance any cogent evidence at the hearing - appeal dismissed - decision of respondent confirmed - appellant ordered to pay costs of the appeal - Ss 19, 201, 202 *National Health Practitioner Regulation Law (South Australia) Act 2010*.

Victoria

17 July 2014 - [Finding into death with Inquest of Luong Quang Nguyen COR 2013 4159](#)

Death from complications of diabetic nephropathy while an involuntary patient.

United Kingdom

23 July 2014 - [Symes v St George's Healthcare National Health Service \(NHS\) Trust \[2014\] EWHC 2505 \(QB\)](#)

These are clinical negligence proceedings in which the Claimant, Timothy Symes, alleges negligence on the part of the Defendant, St George's Healthcare NHS Trust, arising out of his treatment by the Defendant. Specifically, on 29 January 2009, the Claimant was seen by an ENT consultant working for the Defendant, a Mr Williamson, having originally, in October 2008, been the subject of a referral by his GP because of a lump on his face. That lump has, most sadly, turned out to be a malignant tumour, and the Claimant complains of two things: first, a failure to advise him that his lump was "suspicious of malignancy"; and secondly, a failure to arrange for an urgent superficial parotidectomy to be carried out within two weeks. The Claimant says that these failures have resulted in metastasis of the tumour to the lungs and invasion of the facial nerve, as diagnosed in May 2009. The Claimant has developed inoperable lung cancer, and has only a short time to live.

LEGISLATION

Commonwealth

22 July 2014 - [Private Health Insurance \(Benefit Requirements\) Amendment Rules 2014 \(No. 3\)](#)

20 June 2014 - [Therapeutic Goods \(Listing\) Notice 2014 \(No. 2\)](#)

24 June 2014 - [Therapeutic Goods \(Listing\) Notice 2014 \(No. 3\)](#)

REPORTS

Australia. Department of Health & Ageing

Media releases

20 July 2014 - [Health Ministers sign on to end HIV transmissions by 2020](#). All Australian Health Ministers have committed to working towards the virtual elimination of new Australian HIV transmissions by the end of 2020.

Private Health insurance Circulars (PHI)

24 July 2014 - [PHI 45/14 Private health insurance \(benefit requirements\) amendment rules 2014 \(No. 3\)](#).

23 July 2014 - [PHI 44/14 Prostheses list - critical dates for August 2014 prostheses list](#).

Australia. Health Practitioner Regulation Agency and the boards

24 Jul 2014 - The National Boards are calling for feedback on guidelines on the regulatory management of health practitioners with blood borne infectious diseases. [Read more](#).

24 July 2014 - The Chiropractic Board of Australia invites you to provide an expression of interest in being one of the Chiropractic Board of Australia's (National Board) two nominees to the Council on Chiropractic Education Australasia (CCEA). [Read more](#).

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

24 July 2014 - The Medical Board has made a decision to suspend the registration of Dr Nitschke. [Read more](#).

23 July 2014 - The Nursing and Midwifery Board of Australia releases its latest newsletter. [Read more](#).

21 July 2014 - The Optometry Board of Australia releases its latest communiqué. [Read more](#).

18 July 2014 - Call for applications for appointment to the Northern Territory Board of the Nursing and Midwifery Board of Australia. [Read more](#).

Australia. National Health & Medical Research Council (NHMRC)

21 July 2014 - [Public consultation on new principles for the application of 'omics'-based tests](#). The NHMRC has released Principles for the translation of 'omics'-based tests from discovery to health care for public consultation. The document offers a new framework to guide the development and application of 'omics'-based tests, focusing on genomic testing. 'Omics' is a general term that covers transcriptomics, metabolomics, epigenomics and proteomics. [See full media release](#).

Australia. Therapeutic Goods Administration

24 July 2014 - [Listing notices](#) - Added link to Therapeutic Goods (Listing) Notice 2014 (No. 2) and Therapeutic Goods (Listing) Notice 2014 (No. 3).

24 July 2014 - [Garcinia gummi-gutta: ingredient suitable for use in lower risk medicines](#). The TGA has determined that Garcinia gummi-gutta, also commonly known as Garcinia cambogia, is safe and of appropriate quality to be used as an ingredient in lower risk (listed) medicines.

23 July 2014 - [Low value turnover application forms](#) - Added Statement of actual turnover for existing products.

22 July 2014 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - Added Lurasidone hydrochloride (Latuda), Thyroxine sodium (Eltroxin, Aspen Thyroxine, Thyroxine Aspen) and Trametinib (as dimethyl sulfoxide) (Mekinist).

Orphan drugs 21 July 2014: Added Denosumab (XGEVA) and Natalizumab (TYSABRI)

Australian Institute of Health & Welfare

25 July 2014 - [Child protection Australia 2012-13 | Child protection web subject | media release.](#)

22 July 2014 - [Cultural and linguistic diversity measures in aged care.](#)

21 July 2014 - [Towards a performance measurement framework for equity in higher education.](#)

Australian Commission on Safety and Quality in Health Care

21 July 2014 - On the Radar – Issue 183 ([PDF 106KB](#)) ([Word 127KB](#)).

Australian Capital Territory. Health Directorate

22 July 2014 - [New health care service opens at civic early morning centre.](#)

New South Wales. Ministry of Health

Media Releases

24 July 2014 - [Excitement builds as Dubbo Hospital redevelopment takes shape.](#)

21 July 2014 - [New front opens in fight against chronic pain.](#)

Policy Directives & Guidelines

23 July 2014 - [Maternity - management of pregnancy beyond 41 weeks gestation.](#)

21 July 2014 - [management of infants and children with congenital talipes equinovarus.](#)

Information Bulletins

24 July 2014 - [Notification of obsolete policy directive..](#)

Northern Territory (NT). Department of Health

23 July 2014 - [First remote breast screening service hits the road in the NT.](#)

21 July 2014 - [More accommodation to support mental health care.](#)

Queensland. Department of Health

23 July 2014 - [Landmark premature baby study underway.](#)

Tasmania. Department of Health & Human Services

23 July 2014 - [early access to defibrillation program launched.](#)

Victoria. Department of Health

23 July 2014 - [Ballarat to benefit from mental health reforms from 1 August.](#)

23 July 2014 - [tender awarded to build mother-baby unit in Ballarat.](#)

22 July 2014 - [relocation of life-saving cancer screening service.](#)

Western Australia. Department of Health

Media Releases

[Read Healthview Winter 2014 \(PDF 6.37MB\)](#)

United Kingdom. Department of Health

24 July 2014 - [Commissioning of hearing aids: response to Hearing Link's campaign.](#)

24 July 2014 - [Improving the NHS: response to Unite's campaign.](#)

23 July 2014 - [Meningococcal C conjugate vaccine schedule training slideset](#). Part of a collection: [Meningococcal C \(MenC\) vaccination programme](#).

23 July 2014 - [Meningococcal C conjugate vaccine: advice for healthcare practitioners](#). Part of a collection: [Meningococcal C \(MenC\) vaccination programme](#).

23 July 2014 - [The Olympic and Paralympic legacy: Inspired by 2012 – second annual report](#).

22 July 2014 - [New Female Genital Mutilation \(FGM\) measures launched to ‘care, protect, prevent.’](#)

22 July 2014 - [Health and social care volunteering grants awarded](#).

22 July 2014 - [NHS England, NHS mandate and outcomes framework](#).

22 July 2014 - [Department of Health annual report and accounts 2013 to 2014](#).

22 July 2014 - [Health Act 2009: post-legislative assessment](#).

22 July 2014 - [Health and Social Care Act 2012: post-legislative assessment](#).

22 July 2014 - [Mitochondrial donation plans progress following consultation](#).

22 July 2014 - [Serious mitochondrial disease: new techniques to prevent transmission](#).

22 July 2014 - [NHS England: assessment of performance](#).

22 July 2014 - [Atlas shows variations in NHS purchasing](#). Part of a collection: [NHS procurement](#).

22 July 2014 - [More flexibility for NHS doctors under European working time directive](#).

18 July 2014 - [Jeremy Hunt: message to NHS staff about changing culture in NHS](#).

18 July 2014 - [Clinics authorised to carry out abortions](#).

18 July 2014 - [Health visitors and school nurses: factsheet for parents](#). Part of a collection: [Public health contribution of nurses and midwives: guidance](#).

18 July 2014 - [Supporting adult carers through community nursing](#). Part of a collection: [Public health contribution of nurses and midwives: guidance](#).

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

24 July 2014 - [Consumers have saved a total of \\$9 billion on premiums](#).

23 July 2014 - [Secretary Burwell announces steps to further strengthen HHS management team](#).

23 July 2014 - [New study: 10.3 million gained health coverage during the marketplace’s first annual open enrollment period](#).

Australian Medical Association (AuMA)

25 July 2014 - [Australians weighed down by obesity](#).

25 July 2014 - [AuMA and GP Registrars working to overcome setbacks to GP training](#).

24 July 2014 - [AuMA plan to make primary health networks more effective than medicare locals](#).

23 July 2014 - [AuMA President, A/Prof Brian Owler, National Press Club Q & A, 23 July 2014 \(Ensuring the sustainability of the health system\)](#).

23 July 2014 - [Proposed GP co-payment would deter patients from seeing their family doctor](#).

22 July 2014 - [More support needed for teaching in general practice](#).

22 July 2014 - [Pharmacists working within general practice - the way ahead](#).

21 July 2014 - [Family doctors play a vital role in screening for bowel cancer](#).

20 July 2014 - [Family doctors must be supported to serve their communities](#).

British Medical Association (BMA)

23 July 2014 - [Respect medical neutrality, demands BMA](#).

22 July 2014 - [Government pledges to end FGM within a generation.](#)

21 July 2014 - [Assisted dying 'loaded gun' warning.](#)

Canadian Medical Association (CMA)

24 July 2014 - [Member participation options growing at CMA meeting.](#) Unprecedented opportunities for member engagement and participation will exist at this year's annual General Council meeting of the Canadian Medical Association.

21 July 2014 - [CMA redesigns cma.ca with physicians' needs in mind.](#) The Canadian Medical Association has launched a completely rebuilt cma.ca website to better serve the needs of Canadian physicians.

American Medical Association (AMA)

24 July 2014 - [JAMA \(Journal of the American Medical Association\) Highlights: This week's top articles from the JAMA Network.](#) Overall HIV diagnosis rate decreases significantly in U.S., although increase seen for certain groups. The annual HIV diagnosis rate in the United States decreased more than 30 percent from 2002 to 2011, with declines observed in several key populations. [Read more.](#)

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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