

HEALTH ALERT

16 SEPTEMBER 2013

JUDGMENTS	2
Commonwealth	2
New South Wales	3
Queensland	3
Western Australia	2
Victoria	2
Legislation	3
Commonwealth	3
New South Wales	3
Reports	3
Australia. Department of Health & Ageing	3
Australia. Health Practitioner Regulation Agency and the boards	3
Australia. National Health & Medical Research Council	4
Australia. Therapeutic Goods Administration	4
Australian Institute of Health & Welfare	4
Australian Commission on Safety and Quality in Health Care	4
Australia. Private Health Insurance Administration Council	5
Australian Capital Territory. Health Directorate	5
New South Wales. Ministry of Health	5
New South Wales. Bureau of Health Information	5
Northern Territory. Department of Health	5
Queensland. Department of Health	5
South Australia. Department for Health & Ageing	5
Victoria. Department of Health	6
Western Australia. Department of Health	6
New Zealand. Ministry of Health	6
United Kingdom. Department of Health	7
United States of America. Department of Health & Human Services	7
Australian Medical Association	7
British Medical Association	7
Canadian Medical Association	8
American Medical Association	8

JUDGMENTS

Commonwealth

12 September 2013 - [Aspen Pharmacare Australia Pty Ltd v Minister for Health and Ageing \[2013\] AATA 649](#)

Health: therapeutic goods – cancellation of registration of products containing dextropropoxyphene (DPP), whether quality, safety or efficacy is unacceptable within meaning of the *Therapeutic Goods Act*. Previous decision of Tribunal that imposition of conditions would provide acceptable safety. Conditions determined by Tribunal after parties unable to reach agreement.

Victoria

6 September 2013 - [Mitchell v Malios & Ors \[2013\] VSC 480](#)

Doctor (Dr) Mitchell is the respondent to a claim alleging negligence in the diagnosis and treatment of a right knee injury. He brought proceedings against the convenor and deputy convenor of medical panels, arguing that the convenor had exceeded the jurisdictional power provided by the *Wrongs Act 1958* (Vic).

The Act prevents damages being awarded for non-economic loss unless the person injured has suffered a "significant injury." An injury is considered significant if a certificate of assessment is issued concluding that the degree of impairment meets the threshold level of five percent for physical injuries or ten percent for psychiatric injuries. The plaintiff obtained such a certificate for physical injuries.

A medical panel becomes involved when the parties in a civil proceeding cannot agree about the plaintiff's significant injury, with the Act providing that the respondent can then refer a medical question to a medical panel for determination. Dr Mitchell's solicitors did this, requesting determination on whether the threshold level was indeed satisfied but stating that an assessment of the plaintiff's psychiatric impairment was not needed.

Dr Mitchell submitted that the convenor was only empowered to convene a medical panel in regards to the physical injury referred to in the certificate and that jurisdictional error was committed in convening the panel to also assess the degree of impairment for psychiatric injury. Beach J agreed, explaining the extra step was not warranted as no certificate was produced regarding that injury. Nevertheless, he decided as a matter of discretion not to quash the panel's determination.

Western Australia

10 September 2013 - [Barr v Farrell \[2013\] WASCA 211](#)

The appellant appealed a District Court judge's dismissal of her application for an extension of time to sue a medical practitioner and hospital group over alleged injuries suffered during her delivery. The appellant's father, as guardian, had been given incorrect legal advice regarding the expiry of the limitation period for bringing an action and so did not sue within the statutory limitation period.

The appeal turned on the meaning of s 41(3) of the *Limitation Act 2005* (WA), which states that "a court is not to extend time...unless [it] is satisfied that in the circumstances it was unreasonable for a guardian...not to commence the action within the limitation period." The District Court judge had determined that the appellant's father acted reasonably in relying on the negligent advice.

The Court, by a 2:1 majority, granted an extension. They determined that s 41(3) required an objective assessment of the circumstances in deciding whether a guardian had acted unreasonably. In not commencing the action within the limitation period. As the limitation period is a matter of law, the lawyers' incorrect advice, which produced a subjective belief in the guardian that the limitation period would not expire, was irrelevant. The relevant circumstances were all circumstances relating to whether there was a cause of action worth pursuing. In this case there was medical opinion suggesting negligence had caused severe injury and resulted in specialist care and surgery. This all indicated an arguable claim worthy of pursuit. The guardian therefore acted unreasonably in not commencing the action within the limitation period and thus the legislative prerequisites were satisfied and the court allowed an extension.

3 September 2013 - [Nursing and midwifery Board of Australia and Jackson \[2013\] WASAT 140](#)

Vocational regulation: nurse - professional misconduct, failure to maintain proper professional boundaries with patient. Providing financial assistance to patient and entering into residential lease with patient, sexual relationship with patient, failure to provide adequate documentation of consultations with patient, mental health patient, penalty, remorse, insight.

New South Wales

6 September 2013 - [Health Care Complaints Commission v Kahli Michelle Bard \[2013\] NSWNMT 15](#)

Where complaint asserts the practitioner has engaged in unsatisfactory professional conduct and professional misconduct, where asserted that conduct is of a sufficiently serious nature to justify cancellation or suspension of practitioner's registration. Where practitioner has pleaded guilty to fifteen charges of stealing pethidine from the hospital where she was employed. Complaints proved to requisite civil standard. Whether practitioner suffers an impairment, evidence insufficient to prove practitioner is impaired at date of hearing. Where practitioner fails to comply with directions orders or to appear at hearing, matter should proceed as undefended.

2 September 2013 [Smith v The nursing and midwifery Board of Australia \(No. 2\) \[2013\] NSWNMT 14](#)

Costs usual order as to costs - principles.

Queensland

10 September 2013 - [Nursing and midwifery Board of Australia v Fankhauser \[2013\] QCAT 395 \(OCR215-12\) 16/07/2013](#).

6 September 2013 - [Pearse v Medical Board of Australia \[2013\] QCAT 392 \(OCR190-13\) 16/08/2013](#).

LEGISLATION

Commonwealth

6 September 2013 - [National health \(price and special patient contribution\) Amendment Determination 2013 \(No. 6\)](#).

6 September 2013 - [National health \(listing of pharmaceutical benefits\) Amendment Instrument 2013 \(No. 11\) \(No. PB 61 of 2013\)](#).

6 September 2013 - [Private health insurance \(insurer obligations\) Amendment Rule 2013 \(No. 1\)](#).

6 September 2013 - [Private health insurance \(health benefits fund administration\) Amendment Rule 2013 \(No. 1\)](#).

New South Wales

10 September 2013 - [Drugs and poisons legislation Amendment \(new psychoactive and other substances\) Bill 2013](#).

REPORTS

Australia. Department of Health & Ageing

7 September 2013 - [Request for expression of interest for a clinical quality register for high risk cardiac devices](#).

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

6 September 2013 - Board member vacancy - medical radiation practice Board of Australia call for expressions of interest for a community member to join the medical radiation practice Board of Australia. [Read more](#).

6 September 2013 - AHPRA releases report on practitioner audits. The report on the second phase of the audit pilot that was run earlier this year is now available. Read the reports on the audit page. [Read more](#).

6 September 2013 - Nursing and midwifery Board - media release registration standard for scheduled medicine endorsement for public consultation. [Read more.](#)

9 September 2013 - Medical radiation practice Board media release The Board has reviewed its interim policy for English language skills. All graduates must meet the English language skills registration standard prior to being registered. [Read more.](#)

10 September 2013 - The dental Board of Australia releases its latest communique. [Read More](#)

10 September 2013 - The Psychology Board of Australia releases its latest communiqué. [Read more.](#)

11 September 2013 - The osteopathy Board releases its latest communiqué. [Read more.](#)

11 September 2013 - The osteopathy Board has announced a new competent authority pathway. [Read more.](#)

11 September 2013 - The pharmacy Board of Australia releases its latest communiqué. [Read more.](#)

11 September 2013 - Upcoming information sessions in Melbourne, Sydney and Brisbane. Ask the medical radiation practice Board: What has changed one year on after national registration? [Read more.](#)

11 September 2013 - The occupational therapy Board of Australia releases its latest communiqué . [Read more.](#)

12 September 2013 - The chiropractic Board of Australia releases its latest communiqué. [Read more.](#)

Australia. National Health & Medical Research Council

9 September 2013 - [Outcomes of funding rounds.](#)

Australia. Therapeutic Goods Administration (TGA)

13 September 2013 - [Regulation of medical software and mobile medical "apps."](#) Software is becoming increasingly important in medical devices; however, its rapid evolution, particularly in relation to mobile technology, presents new and complex challenges for the TGA and regulatory agencies internationally.

11 September 2013 - [Documents released under Section 11C of the *Freedom of Information Act 1982*.](#)

9 September 2013 - [Australian public assessment reports for prescription medicines \(AusPARs\).](#) Added clobetasol propionate (clobex), crizotinib (xalkori), doxycycline monohydrate (oracea), maraviroc (celsentri) and teriflunomide (aubagio/teriflunomide winthrop/teriflunomide sanofi).

6 September 2013 - [Easypod auto injector used with saizen \(growth hormone\).](#) Consumers and health professionals are advised that Merck Serono Australia Pty Ltd is recalling the 5.1 model of easypod auto injectors and replacing it with a newer model.

6 September 2013 - [Orphan drugs](#) - added mifamurtide (mepact).

Australian Institute of Health & Welfare

13 September 2013 - [Adult oral health and dental visiting in Australia: results from the national dental telephone interview survey 2010.](#)

12 September 2013 - [Monitoring asthma in pregnancy: a discussion paper.](#)

10 September 2013 - [Allied health workforce 2012 media release.](#)

11 September 2013 - [Asthma hospitalisations in Australia 2010-11 media release.](#)

Australian Commission on Safety and Quality in Health Care

9 September 2013 - [On the Radar - issue 143.](#)

Australia. Private Health Insurance Administration Council (PHIAC)

10 September 2013 - [Changes to solvency and capital adequacy standards made by PHIAC](#). On 6 September 2013 PHIAC made changes to the solvency and capital adequacy standards, completing its review of minimum capital requirements for private health insurers.

Australian Capital Territory (ACT). Health Directorate

6 September 2013 - [ACT Population Health Bulletin](#) - Volume 2, issue 3 of the ACT population health bulletin is now available as a download from this website.

New South Wales (NSW). Ministry of Health

6 September 2013 - [Air pollution health warning - particles](#).

6 September 2013 - [Survey shows workplace culture improvement at NSW Health](#).

8 September 2013 - [No alcohol equals no risk for pregnant women](#).

10 September 2013 - [Time to stop the stigma around suicide](#).

12 September 2013 - [Record improvements continue at NSW hospitals](#).

New South Wales. Bureau of Health Information

12 September 2013 - [Hospital quarterly: performance of NSW public hospitals](#).

Northern Territory. Department of Health

12 September 2013 - [Robyn Lambley - territorians urged to get behind "R U OK?" day](#). Minister for Health Robyn Lambley has encouraged territorians to join in the national suicide awareness campaign "R U OK?" day and take the opportunity to check on the wellbeing of those around them.

11 September 2013 - [Robyn Lambley - eyeing off better vision for territorians](#). The Northern Territory Government and the Fred Hollows foundation are teaming up to deliver eye services in the Territory with consultations and treatments being offered at Katherine hospital this week.

10 September 2013 - [Robyn Lambley - minister recognises outstanding work in field of chronic disease](#). Minister for Health Robyn Lambley has congratulated the winners of the 2013 chronic diseases network recognition awards that were announced at the Darwin convention centre.

Queensland. Department of Health

5 September 2013 - [Human immunodeficiency virus \(HIV\) strategy launched](#).

5 September 2013 - [Ministerial advisory committee \(MAC\) on HIV/acquired immunodeficiency syndrome \(AIDS\) achievements](#).

6 September 2013 - [Desperation drives false Labor claims about Qld Health](#).

9 September 2013 - [Queensland HIV strategy 2013-2015](#).

10 September 2013 - [Shiga toxin-producing escherichia coli outbreak 2013](#).

10 September 2013 - [Queensland ambulance service joins Queensland health](#).

13 September 2013 - [Funding for new hear and say centre](#).

South Australia (SA). Department for Health & Ageing

9 September 2013 - [Response to women's and children's hospital review](#). News released by Hon Jack Snelling MP

10 September 2013 - [SA perinatal practice guidelines](#).

12 September 2013 - [New laws to ban unregistered practitioners providing birthing services](#). News released by Hon Jack Snelling MP.

12 September 2013 - [Agreement reached to secure future of Keith hospital](#). News released by Hon Jack Snelling MP

Victoria. Department of Health

12 September 2013 - **First commissioner for senior Victorians on the job**. Esteemed seniors advocate Gerard Mansour has today been appointed as Victoria's first ever Commissioner for Senior Victorians.

9 September 2013 - **Bendigo hospital work under way**. Premier Denis Naphthine joined Minister for Health David Davis and Minister for mental health Mary Wooldridge to mark the construction of Bendigo's new \$630 million hospital.

9 September 2013 - **Aboriginal health boost for the west**. Western health has welcomed three new members to its Aboriginal health team.

9 September 2013 - **Austin unit expands**. More patients will receive medical attention sooner with an \$11 million expansion of the Austin Hospital's short stay unit, Minister for Health David Davis says.

9 September 2013 - **Wonthaggi hospital expands to meet community needs**. The Wonthaggi community will benefit from even better access to high-quality health services with major building projects underway at Bass Coast regional health.

9 September 2013 - **Croatian journey comes full circle**. In 2003, Western health's Professor Anne-Maree Kelly led a training program in Croatia.

9 September 2013 - **Project targets low levels of understanding**. Minister for Health David Davis officially launched the ophelia Victoria (optimising health literacy) study at Wantirna health.

9 September 2013 - **Study links epilepsy drug dosage to birth defects**. Pregnant women with epilepsy have been given new hope of reducing the chance of having a baby with physical defects.

9 September 2013 - **Department addresses hoarding and squalor**. The Department of Health is supporting service providers responding to hoarding and squalor by publishing "Responding to hoarding and squalor – key messages and hoarding and squalor – a practical resource for service providers."

Western Australia (WA). Department of Health

Media releases

6 September 2013 - **State of the art emergency care at Fiona Stanley hospital**.

Operational Directives (OD)

12 September 2013 - **OD 0454/13**. WA health working with children check policy. The working with children (WWC) check policy and procedure provides for a number of new elements including:

- the establishment of a five step process for all persons requiring a WWC check in WA Health;
- improvements to the WWC position flagging process for WA health employees; and
- development of a WWC process flowchart for employees.

In addition, guidance material has been updated to:

- assist WA health staff identify if a WWC check is required
- clarify WA health staff responsibilities to ensure compliance with the *Working with children Act 2005*.

11 September 2013 - **OD 0453/13**. Radiation safety - The aim of this OD is to ensure that all medical personnel employed by the department of health, metropolitan health services, WA country health service & peel health service have completed the radiation safety module and test.

New Zealand. Ministry of Health

10 September 2013 - **Community water fluoridation**.

12 September 2013 - **Emergency department use 2011/12**. Key findings of the New Zealand health survey.

12 September 2013 - **Patient experience 2011/12**. Key findings of the New Zealand health survey.

United Kingdom (UK). Department of Health (DoH)

- 12 September 2013 - [Caldicott information governance review: DoH response.](#)
- 12 September 2013 - [Jeremy Hunt confirms commitment to balance patient safety and privacy.](#)
- 11 September 2013 - [DoH freedom of information \(FOI\) releases: March 2013.](#)
- 11 September 2013 - [Appointments to pay review bodies.](#)
- 11 September 2013 - [General practitioners \(GPs\) likely to become named clinician for vulnerable older people.](#)
- 10 September 2013 - [Hunt - national health service must fundamentally change to solve accident and emergency problems.](#)
- 10 September 2013 - [UK antimicrobial resistance strategy published.](#)
- 10 September 2013 - [Department of health prompt payment of suppliers data 2013.](#)
- 10 September 2013 - [UK five year antimicrobial resistance strategy 2013 to 2018.](#)
- 9 September 2013 - [Changes proposed to pharmacy regulation.](#)
- 9 September 2013 - [Regulator responsible for pharmacy inspections.](#)
- 7 September 2013 - [Ensuring doctors have sufficient English language capability.](#)
- 6 September 2013 - [Ten million pound cash boost to improve the health of homeless people.](#)
- 6 September 2013 - [DoH exceptions to spending moratoria: quarter 1 of 2013 to 2014.](#)

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

- 12 September 2013 - [Health care law saves consumers \\$1.2 billion nationwide.](#)
- 6 September 2013 - [HHS announces expansion of maternal, infant, and early childhood home visiting.](#)

Australian Medical Association (AMA)

- 8 September 2013 - [AMA congratulates Coalition on election win.](#) AMA President, Dr Steve Hambleton, today congratulated the Coalition on its election win and said that the AMA looks forward to working with the new Government to provide better health services.
- 6 September 2013 - [Doctors and other health workers must be protected in times of armed conflict and violence.](#) World medical association (WMA) regulations in times of armed conflict and other situations of violence.
- 6 September 2013 - [Plan needed to ensure strong future clinical academic workforce.](#) AMA position statement on clinical academic pathways in medicine.

British Medical Association (BMA)

- 12 September 2013 - [Specialist care "should come to patients."](#) Hospitals should radically restructure so doctors from different specialties go to treat acutely ill.
- 11 September 2013 - [Extra revalidation evidence alarms occupational health doctors.](#) Occupational health doctors have outlined concerns about "onerous" additions to their appraisal processes, implemented without consultation.
- 11 September 2013 - [Cervical screening invitation age rises.](#) The age at which women are invited for screening has risen from 20 to 25 while the frequency of screening for the over 50s has decreased from three to five years.
- 10 September 2013 - [Release GPs from admin to tackle emergency care, say doctors leaders.](#) GPs must be released from the "bureaucratic nightmare."

10 September 2013 - **Organ donation opt-out system receives royal assent**. Doctors leaders have described the formal adoption of new organ donation laws as historic.

10 September 2013 - **International drive to reduce mental health stigma**. The stigma surrounding mental health problems must be broken down, psychiatrist leaders have emphasised.

9 September 2013 - **Call to improve job planning for consultants**. Politicians have backed the BMA's view that consultant job planning is a tick-box.

9 September 2013 - **Medical practitioners (MPs) accept invitations to witness GPs at work**. One hundred MPs across England have accepted an invitation from the BMA to witness the day to day workings of a GP practice.

6 September 2013 - **No evidence to support working until 68, says BMA**. No doctor should be forced to work until the age of 68 to receive their accrued national health service (NHS) pension when new.

Canadian Medical Association

9 September 2013 - **Country's first accredited continuing medical education (CME) course on chronic kidney disease launched**.

American Medical Association

9 September 2013 -The Kasier health news (KHN) blog - **Rx for docs: AMA answers obamacare questions**. As we get closer to 2014, consumers are being surrounded by news coverage, ads and opinions about the health law. And many of them are turning to their doctors for advice. The AMA wants to help doctors with answers.

9 September 2013 - Journal of the AMA (JAMA) - **Incentives in small practices with electronic health records (EHR)**. Bardach and co-authors assess the effect of a pay for performance (P4P) incentives on quality in 84 EHR enabled small practices in New York City in the context of an established quality improvement initiative.

9 September 2013 - Baltimore Sun, opinions. **A chance to fix Medicare**. Presidents of AMA and MedChi urge Congress to eliminate uncertainty about physician payments.

9 September 2013 - **AMA Offers Physicians help complying with revised *Health Insurance Portability and Accountability Act (HIPAA)* regulations**. The AMA today announced a new toolkit to help physicians navigate the sweeping new revisions to the federal privacy and security rules for health information that go into effect on 23 September 2013.

9 September 2013 - National public radio (NPR) morning edition. **After a decade, Congress moves to fix doctors' medicare pay**. "Over the last 10 years we've spent about \$146 billion on patches and patches and patches," says Ardis Hoven, president of the AMA. "We lived through 2010," she said, when Congress had to avert cuts on a monthly basis for part of the year. "People can't run practices like that. They can't budget; they can't plan; they can't do anything and it was very destabilizing."

9 September 2013 - Virtual mentor: **Motherhood and medical ethics: looking beyond conception and pregnancy**. In the last half-century, numerous technological advances, including oral contraceptives, in vitro fertilization, and prenatal testing, have drastically altered the nature of human reproduction.

ABOUT US

Mark Williams



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1201619813/JPS/0913