



HEALTH ALERT

7 APRIL 2014

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JUDGMENTS

New South Wales

28 March 2014 - *Plowman v Sisters of St John of God Inc* [2014] NSWSC 333

St John of God Hospital applied to the New South Wales Supreme Court for an order requiring a plaintiff to submit to a blood test.

The hospital is the defendant in proceedings in which the plaintiff alleges she suffers from cerebral palsy and intellectual disability resulting from birth asphyxia caused by the negligence of the hospital.

The hospital sought an order requiring the plaintiff to have a blood test for the purposes of undertaking Array Comparative Genomic Hybridisation testing, which would determine if the plaintiff would have suffered intellectual deficits from genetic causes regardless of the alleged negligence. It argued that the results of this test would have a fundamental role in determining an issue of substance in the proceedings. The defendant argued that the order would be inappropriate, as the plaintiff has a number of phobias and anxieties related to seeing medical practitioners and having needles.

The Court made the requested order. It was satisfied that there is an issue of substance which will be illuminated by the results of the test. In this case, the testing has the capacity to identify underlying genetic alteration (a reasonable alternate explanation for the intellectual disability), which in turn may affect quantum. The Court was not satisfied that anxiety or phobias were a sufficient reason against making the order as they believed these could be appropriately managed.

The Court ordered the plaintiff to submit for a blood test within 28 days.

28 March 2014 - *Janet Harris v Sydney Local Health District* [2014] NSWDC 21

The plaintiff suffers on going infection of the ear, swelling, pain, dizziness and disorientation following treatment she received in the Emergency Department of the Royal Prince Alfred Hospital for preauricular cellulitis. The plaintiff alleges this was caused by the negligence of the hospital in failing to ensure that an ear wick they had inserted during treatment was removed and by failing to follow up when she failed to attend a scheduled appointment. The hospital denied they were negligent, contending they acted in a manner which was widely accepted by peer profession opinion as competent professional practice.

The District Court found the hospital breached its duty of care by failing to advise more clearly of the need for the plaintiff to return for removal of the wick and warn of the consequences if she failed to do so. Based on expert evidence, the Court considered that this deviated from what is widely accepted as competent professional practice. The Court determined the risk of ear infection was a foreseeable one and, in the circumstances, the relevant duty of care extended to taking positive steps to avoid the risk of harm because of the plaintiff's history of multiple incidents of hospitalisation for the same condition and vulnerability due to a known dependency problem with opioids and other drugs.

The Court did not accept the claim by the plaintiff that her relapse into heroin use was caused by the negligence of the hospital.

The Court assessed damages as totalling \$31,057.

28 March 2014 - *Health Care Complaints Commission v Dr Baez (No 2)* [2014] NSWCATOD 26

Sexual misconduct; professional misconduct; protective orders

Queensland

31 March 2014 - *Christopher Robert Edmund Platt - Non-inquest findings 2011/3125*

Coroners: investigation, death not reported to coroner, health care related death, referral to Australian Health Practitioner Regulation Agency, disciplinary proceedings.

Victoria

2 April 2014 - *Teresa Ann Ryan v The Grange at Wodonga Pty Ltd & Ors* [2014] VSC 135

Administrative law - Judicial review - Order 56, Supreme Court (General Civil Procedure) Rules 2005 - Medical panel - Determination of whether the plaintiff was capable of performing her pre-injury duties - Whether the medical panel exceeded its jurisdiction by failing to comply with the time limit prescribed by s 68(1) of the *Accident Compensation Act 1985* ('Act') — Whether the medical panel's opinion was perverse or illogical or vitiated by other jurisdictional error — Whether medical panel's reasons for decision were adequate — Act ss 63, 65, 68 — Application refused.

25 March 2014 - [Finding without inquest into the death of Robert Glaisher COR 2010 002621](#)

Death from hypothermia - deceased with depressive disorder - treatment at emergency department

New Zealand

24 March 2014 - [Wooton v Accident Compensation Corporation \[2014\] NZACC 77](#)

[1] This appeal concerns a treatment injury claim. The basis for the claim is a delay in correct diagnosis of cauda equina syndrome and failure to provide treatment in a timely manner. [2] The appellant had a chronic back condition. On 2 July 2010, he developed symptoms of spinal cord compression and was referred for an MRI scan by Christchurch Radiology Group (GRG). The scan was conducted on the morning of 2 July. Radiology staff did not identify symptoms of possible cauda equina syndrome, in particular symptoms of loss of bladder sensation and function that would have required further examination and diagnosis. The appellant says that he had those symptoms at the time of his MRI scan but was sent home, where he was attended by his GP but not admitted to hospital. St John Ambulance services were called in the very early hours of 4 July. Fully developed symptoms of cauda equina syndrome were diagnosed at 4.50 am and the appellant was admitted to surgery for decompression of his L3/4 disc. He did not fully recover and suffered paralysis. [3] The respondent says that a diagnosis of cauda equina syndrome was not reasonably possible in the circumstances in which the appellant presented, until the early hours of 4 July. The appellant says that he presented with the symptoms at the time of the MRI scan in the morning of 2 July, and that timely treatment would have significantly improved his outcome. [4] A central part of the evidence concerns the appellant's general practitioner. The appellant does not directly allege medical negligence on the part of his general practitioner, but says that in hindsight all the signs were there at a critical time and he should have been admitted urgently to Christchurch Hospital. As the general practitioner was not notified as a party entitled to be heard in the appeal, she will be afforded anonymity and described as Dr A, the initial A not being the true initial of her surname.

LEGISLATION

New South Wales

[Private Health Facilities Amendment \(Reportable Incidents\) Regulations 2014 no 164](#)

South Australia

[Health and community Services Complaints Variation Regulations 2014 no 37](#)

Victoria

[Health Services Amendment Act 2014 No 22](#)

REPORTS

Australia. Department of Health & Ageing

Media Releases

1 April 2014 - [Helping to Change Perceptions of Suicide and Mental Illness](#)

1 April 2014 - [Major Boost for Health Services in Regional WA](#)

31 March 2014 - [Tasmanians to Get Better Access to Palliative Care](#)

Private Health Insurance Circulars (PHI)

4 April 2014 - [PHI 20/14 Hospital Information](#)

Australia. Health Practitioner Regulation Agency and the board

3 April 2014 - The Podiatry Board of Australia releases its latest communiqué. [Read More](#)

3 April 2014 - The National Board has published its first joint communiqué with the Australian Nursing and Midwifery Accreditation Council (ANMAC). [Read More](#)

2 April 2014- Call for experienced registered midwives from South Australia for appointment to the South Australian Board of the Nursing and Midwifery Board of Australia. - [Read More](#)

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

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

Australia. Therapeutic Goods Administration (TGA)

4 April 2014: [Complementary medicines - compliance reviews 2013](#) - More than 1600 new complementary medicines are listed each year. The TGA does not review these products before listing, because they are considered to be of relatively low risk to consumers.

4 April 2014 - [Hydroxyethyl starch \(Voluven and Volulyte\)](#). Consumers and health professionals are advised that a recent safety review of hydroxyethyl starch has found an increased risk of mortality and the need for dialysis when this medicine is used to treat patients with sepsis.

3 April 2014: [Complementary medicines: Cancellations from the ARTG following compliance review](#)- Cancellation of Recovery e21 Joint Health from the ARTG.

3 April 2014: [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#). Added Aminolevulinic acid HCl (Gliolan) and Deferasirox (Exjade).

3 April 2014: [TGA presentation to clinical trial research forum, Department of Health, Victorian State Government, 28 March 2014](#). This presentation provided an overview on the regulation of complementary medicines.

3 April 2014 - [Consultation: Invitation for public comment - ACMS meeting, July 2014](#). Notice inviting public submissions under Regulation 42ZCZK of the Therapeutic Goods Regulations 1990. Closing date: 8 May 2014.

3 April 2014 - [Strontium ranelate \(Protos\) and risk of adverse events](#). Consumers and health professionals are advised that Servier Laboratories (Australia) has updated the Product Information (PI) for strontium ranelate (Protos) after the completion of a TGA review.

2 April 2014 - [Domperidone \(Motilium\) and effects on the heart](#). The TGA is reviewing new information regarding domperidone (Motilium) and its potential effects on the patient's heart, particularly with doses above 30 mg daily.

2 April 2014: [Bexsero meningococcal B vaccine](#). Consumers and health professionals are advised that the TGA is undertaking intensive monitoring of the safety and risk profile of Bexsero meningococcal B vaccine following its introduction to the Australian market.

2 April 2014 - [Transmissible Spongiform Encephalopathies \(TSE\): TGA approach to minimising the risk of exposure](#). The approach the TGA follows to assess the safety of materials derived from human and other animal species, naturally susceptible to Transmissible Spongiform Encephalopathy (TSE), used in the manufacture of therapeutic goods.

2 April 2014 - [Supplementary information on Transmissible Spongiform Encephalopathies \(TSEs\) regulation](#). Supplementary information on changes the TGA has made in updating its approach to minimising the transmission of Transmissible Spongiform Encephalopathies (TSEs).

2 April 2014 - [Meizitang Strong Version Botanical Slimming capsules](#) - Meizitang Strong Version Botanical Slimming soft gel capsules pose a serious risk to your health and should not be taken.

1 April 2014 - [Star Majestic Slimming capsules](#). Star Majestic Slimming capsules pose a serious risk to your health and should not be taken.

1 April 2014 - [Medicines Safety Update, Volume 5, Number 2, April 2014](#).

1 April 2014 - [Ya Buk capsules](#) pose a serious risk to your health and should not be taken.

Australian Institute of Health & Welfare

3 April 2014 - [Indigenous health check data tool](#).

Australia. Private Health Insurance Administration Council (PHIAC)

1 April 2014 [Circular No 14/04 Appointment of new PHIAC actuary](#).

Australian Capital Territory. Health Directorate

4 April 2014 - [Midwifery Postnatal Care Access Project](#) is looking for women who have had baby(ies) in the last 5 years to provide information about their first two weeks at home with their new baby(ies).

New South Wales (NSW). Ministry of Health

Media Releases

2 April 2014 - [NSW Liberal & Nationals Government Delivers for Armidale](#).

2 April 2014 - [Two Major Milestones Marked at \\$220 Million Tamworth Hospital Redevelopment](#).

Policy Directives & Guidelines

31 March 2014 - [Scale of Fees for Hospital and Other Services - Health Services Act 1997](#).

31 March 2014 - [Model Service Contracts - VMO and HMO](#).

Information Bulletins

3 April 2014 - [Notification of Obsolete Guideline - GL2005 024](#).

2 April 2014 - [Motor Vehicles - Award Employees - Charges for Private Use](#).

Queensland. Department of Health

3 April 2014 - [Hospital in the Home expanded in Brisbane's north](#). The Metro North Hospital and Health Service has joined forces with not-for-profit group Silver Chain to expand Hospital in the Home services.

2 April 2014 - [HIV Foundation Queensland welcomes move to add drug to PBS](#). The HIV Foundation Queensland has welcomed the move to add a valuable HIV drug to the Pharmaceutical Benefits Scheme.

South Australia. Department for Health & Ageing

4 April 2014 - [New rural mental health ward opens at Glenside](#).

Victoria. Department of Health

1 April 2014 - [Health advisory lifted on egg company](#).

Western Australia. Department of Health (DH)

Media Releases

2 April 2014 - [Warning for unregulated Botox injections](#).

New Zealand. Ministry of Health

1 April 2014 - [Psychoactive Substance Retail License Suspension Continue in Hamilton](#). The Psychoactive Substances Regulatory Authority (the Authority) has today extended suspensions on six interim psychoactive substance retail licences in Hamilton City.

2 April 2014 - [Autism Spectrum Disorder - clarification of eligibility for Disability Support](#). People with Autism Spectrum Disorder (ASD) are now eligible to access the full range of Disability Support Services.

United Kingdom. Department of Health

3 April 2014 - [Making mental health services more effective and accessible](#)

- 3 April 2014 - [Government response to tobacco standardised packaging review.](#)
 - 3 April 2014 - [New safeguards to protect patients.](#)
 - 3 April 2014 - [Chantler report on standardised packaging of tobacco products.](#)
 - 3 April 2014 - [Positive and Proactive Care: reducing restrictive interventions.](#)
 - 3 April 2014 - [National Health Service \(NHS\) optical voucher values from 1 April 2014.](#)
 - 3 April 2014 - [New drive to end deliberate face-down restraint.](#)
 - 3 April 2014 - [Pharmaceutical Price Regulation Scheme: 12th Report to Parliament.](#)
 - 2 April 2014 - [NHS Injury Costs Recovery scheme: April 2013 - March 2014.](#)
 - 2 April 2014 - [Launching Think Autism on World Autism Awareness Day.](#)
 - 2 April 2014 - ['Think Autism': an update to the government adult autism strategy.](#)
 - 2 April 2014 - [Supporting public service transformation: cost benefit analysis guidance for local partnerships.](#)
 - 2 April 2014 - [DH and NHS LA framework agreement.](#)
 - 2 April 2014 - [Deprivation of Liberty Safeguards: Supreme Court Judgments.](#)
 - 2 April 2014 - [Put patients first: government response.](#)
 - 2 April 2014 - [The time has come for mental health emergency services.](#)
 - 1 April 2014 - [DH and HFEA framework agreement.](#)
 - 1 April 2014 - [Leaflet and poster on NHS dental services.](#)
 - 1 April 2014 - [NHS Choice framework.](#)
 - 31 March 2014 - [NHS Procurement Transparency: NHS Standard Contract 2014 to 2015.](#)
 - 31 March 2014 - [Registration of pregnancy advice bureaux.](#)
 - 31 March 2014 - [Designing health and community care buildings.](#)
 - 31 March 2014 - [School nursing: public health services.](#)
 - 31 March 2014 - [Human Fertilisation and Embryology Act 2008: post-legislative assessment.](#)
- United States of America. Department of Health & Human Services (HHS)**
- 3 April 2014 - [HHS announces important Medicare information for people in same-sex marriages.](#)
 - 3 April 2014 - [Updated Action Plan to Combat Viral Hepatitis Released.](#)
 - 3 April 2014 - [National Autism Awareness Month.](#)
 - 3 April 2014 - [Proposed health IT strategy aims to promote innovation, protect patients, and avoid regulatory duplication.](#)
 - 2 April 2014 - [Statement from Acting Surgeon General Boris Lushniak about National Asbestos Week, April 1-7, 2014.](#)
 - 31 March 2014 - [New interactive video aims to better protect research subjects and reduce research misconduct in clinical research.](#)
 - 28 March 2014 - [HHS releases security risk assessment tool to help providers with HIPAA compliance.](#)
- Australian Medical Association (AuMA)**
- 3 April 2014 - [2014 AuMA National Conference in Canberra.](#) The 2014 AuMA National Conference will be held at the National Convention Centre, Canberra, from 23-25 May inclusive.

2 April 2014 - **Greater investment needed in Aboriginal community controlled health sector.** The AuMA welcomes the release of the report, Economic Value of Aboriginal Community Controlled Health Services, which makes the case for reform of the funding for key health programs and services for Aboriginal people and Torres Strait Islanders.

1 April 2014 - **Duty of care for doctors in disasters.** AuMA Position Statement on Ethical Considerations for Medical Practitioners in Disaster Response in Australia.

1 April 2014 - **Doctors share common goal of fair and balanced contracts.** AuMA President, Dr Steve Hambleton, said today that doctor groups – the Federal AuMA, AuMA Queensland, the Australian Salaried Medical Officers Federation (ASMOF), ASMOF Queensland, the Together union, and the ‘Pineapple’ group – share the common goal of fair and balanced senior doctor employment contracts with the Queensland Government.

British Medical Association (BMA)

3 April 2014 - **GP waiting time limit fears quashed.** There are no plans to introduce maximum waiting times to see GPs in Northern Ireland, according to the health, social services and public safety minister.

3 April 2014 - **Doctors highlight barriers to quality care.** Barriers exist to delivering quality care, doctors told a BMA event which will inform contract negotiations.

2 April 2014 - **GMC plans to publish revalidation figures more frequently.** The GMC will be posting medical revalidation statistics more regularly from this month.

2 April 2014 - **Assisted dying bill prompts doctors' debate.** The BMA should ask doctors and medical students about their views on physician-assisted dying, a conference has agreed.

1 April 2014 - **BMA kick-starts reform debate one year on.** Doctors and other health leaders explored how to create a better NHS without more top-down reorganisation at a BMA-organised parliamentary seminar today.

1 April 2014 - **Doctors seek cost of market reforms to NHS.** Retired doctors called on the BMA to examine how much of the NHS budget was being spent on market transaction costs.

1 April 2014 - **Revamp for GP trainee contract.** Contracts for GP trainees have been updated to reflect changes in legislation.

1 April 2014 - Call to **make BMA more eco-friendly.** Retired doctors have identified climate change as a potential catastrophe for health and called on the BMA to be more environmentally friendly.

1 April 2014 - **GPs urged to check BMA contract guidance.** GPs are being urged to check BMA guidance on changes to their contract, which come into effect today.

31 March 2014 - **BMA welcomes strengthened hospital inspection regime.** Rules that aim to identify serious concerns in the Welsh NHS, and respond to them, have been welcomed by the BMA.

28 March 2014 - **Act one: the splintering effect.** When the NHS was founded 66 years ago its objective was clear — free accessible healthcare for all.

28 March 2014 - **BMA demands health law rethink.** The BMA is demanding a rethink of controversial health legislation it fears is hampering the drive for greater NHS integration.

28 March 2014 - **Call for regulator to clarify competition rules.** Monitor must do more to explain the rules of competition and regulation, according to a new parliamentary report, which chimes with BMA views.

28 March 2014 - **No evidence of fluoridation health risks, says report.** Reassurances that water fluoridation causes no harm, and that it is linked to less tooth decay, have been welcomed by the BMA.

28 March 2014 - **Protect rural practices from funding changes, says BMA.** Small rural practices need protection from funding losses caused by government-imposed changes, MPs have heard.

27 March 2014 - **BMA launches new visa alert system.** BMA members on UK visas can benefit from a new service alerting them to immigration rule changes that affect them.

27 March 2014 - [BMA Q and A: foundation programme, GMC registration and private medical schools](#). BMA medical students committee co-chairs Harrison Carter and Andrew Wilson answer your questions.

26 March 2014 - [GMC surveys juniors' views on training](#). Junior doctors have been urged to share their views about training in a national survey.

Canadian Medical Association (CMA)

4 April 2014 - [MA throws weight behind Choosing Wisely project: "Brilliant in its simplicity"](#).

31 March 2014 - ["Operation Family Doc" brings FP care to nomadic military families](#).

26 March 2014 - [Vocal audience for CMA's second meeting on end-of-life care](#).

American Medical Association (AMA)

3 April 2014 - [JAMA Highlights: This week's top articles from the JAMA Network](#).

3 April 2014 - [New state law requires ACA grace period notification](#).

2 April 2014 - [New law buys more time for physicians to prepare for ICD-10](#).

2 April 2014 - [Free HIPAA risk assessment tool can help ensure compliance](#).

1 April 2014 - [Why permanent SGR repeal lost to another temporary payment patch](#).

31 March 2014 - [Meaningful use exemption added as HER program moves forward](#).

31 March 2014 - [Casting aside reform bill, Congress passes another Medicare patch](#).

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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