



HEALTH ALERT

17 October 2016

Judgments	2
Commonwealth. Federal Court	2
Commonwealth. Fair Work Commission	2
New South Wales	2
South Australia	3
Victoria	3
Legislation	3
Commonwealth.....	3
Reports	3
Australia. Department of Health.....	3
Australia. Health Practitioner Regulation Agency and the boards.....	4
Australia. National Health & Medical Research Council.....	4
Australia. Therapeutic Goods Administration (TGA).....	4
New South Wales. Ministry of Health.....	5
Queensland. Department of Health.....	6
South Australia. Department for Health & Ageing.....	6
Tasmania. Department of Health & Human Services.....	6
Victoria. Department of Health.....	6
Western Australia (WA). Department of Health.....	7
New Zealand. Ministry of Health.....	7
Australian Medical Association (AuMA).....	7
About us	8
More information	8

JUDGMENTS

Commonwealth. Federal Court

6 October 2016 - *Sydney Medical Service Co-operative Limited v Lakemba Medical Services Pty Ltd (No 2)* [2016] FCA 1188 - PRACTICE AND PROCEDURE – manner of making application for contempt – dispensing with requirement for an endorsed copy of orders

Commonwealth. Fair Work Commission

12 October 2016 - *Loevski v Lewis Pharmacy & Lotto* [2016] FWC 7309 - Application for relief from unfair dismissal - no reasonable prospects of success - application dismissed.

7 October 2016 - *Bendigo Health Care Group v Francis Logan* [2016] FWC 7251 - Appeal against decision ([2016] FWC 6780) of Commissioner Ryan at Melbourne on 14 September 2016 in matter number U2016/7692- application under s.606 of the Fair Work Act 2009 for a stay order.

New South Wales

13 October 2016 - *Coote v Kelly; Northam v Kelly* [2016] NSWSC 1447 - On 23 May 2012, Mr Coote died from metastatic acral lentiginous melanoma. The melanoma was first diagnosed on 16 March 2011 following a biopsy taken by a Dr Hiddins. Dr Hiddins had been consulted by Mr Coote since January 2011 for what various doctors, including the defendant Dr Kelly, believed to be a plantar wart on his left foot. Prior to his death, Mr Coote commenced proceedings against Dr Kelly for failing to diagnose the melanoma during consults throughout 2009 and 2010. The court ordered judgment for Dr Kelly in that proceeding. This is an appeal of that decision brought by the wife and executor of Mr Coote's estate, Ms Coote.

The court in this appeal gave regard not only to evidence given during these proceedings, but also to the evidence at the first trial which included statements of the deceased. The evidence on breach of duty pertained to the description of the lesion. In regards to causation, the defendant submitted that, even if he breached his duty of care in not properly diagnosing the lesion, the plaintiff's loss of the chance of a better outcome was not sufficient to establish liability for negligence.

The court found that the defendant acted in a manner that was widely accepted by peer professional opinion as competent professional practice. The court ordered judgment for the defendant.

5 October 2016 - *Rothonis v Lattimore* [2016] NSWSC 1409 - In September 2006, the plaintiff was referred to the defendant, a cardiologist, for investigation of possible involvement of her heart in neurological symptoms which she had recently experienced. The plaintiff alleges that the defendant negligently failed to carry out sufficient investigations and failed to diagnose or to prescribe treatment for a patent foramen ovale (PFO). That is, an opening through the interatrial septum, being the membrane dividing the left and right upper chambers of her heart. On 7 June 2007, the plaintiff suffered a stroke which left her significantly disabled. The plaintiff claims damages for alleged negligence upon the ground that the failure to identify the PFO in September 2006 led to her having the stroke.

The court cited that an immediate difficulty with the case was that it was not known in medical science whether a PFO, either alone or in conjunction with an aneurism, is causative of a stroke. This led to a dispute between the parties over what the appropriate advice and treatment would have been had a PFO been discovered.

The court held that there had been no breach of duty by the defendant, nor had it been shown the acts and omissions complained of caused the plaintiff's stroke in June 2007. Had the defendant been found liable, the court assessed damages at \$2,490,444.

11 October 2016 - *Rice v Ghabrial (No. 2)* [2016] NSWSC 1449 - PRACTICE AND PROCEDURE – notice of motion seeking leave to administer further interrogatories – medical negligence proceedings – claim for damages arising out of bodily injury – whether it is in the interests of justice to administer further interrogatories – no need for further interrogatories – plaintiff can achieve forensic purpose by more suitable measures – motion dismissed

7 October 2016 - [Health Care Complaints Commission v Bracco \[2016\] NSWCATOD 127](#) - PROFESSIONAL DISCIPLINE – Health Practitioner Regulation National Law – Where practitioner concedes he is guilty of unsatisfactory professional conduct and professional misconduct – sexual relationship with patient and employee of the practitioner’s practice.

South Australia

10 October 2016 - [Inquest into the death of Kay Meredith MacMillan](#)

Victoria

6 October 2016 - [Inquest into the death of Martha Alice Fraser](#)

6 October 2016 - [Psychology Board of Australia v OYV \(Review and Regulation\) \[2016\] VCAT 1687](#) - Review and Regulation List – Psychologists Registration Act 1987 – Psychologists Registration Act 2000 – Health Professions Registration Act 2005 – Health Practitioner Regulation National Law Act 2009 – soon after professional relationship ends, psychologist engaged in friendship, then two-year sexual relationship, there are approximately another 7½ years friendship with the ex-client – appropriate findings and determinations

LEGISLATION

As a general rule, this bulletin tracks subsidiary legislation at Commonwealth, but not at state level

Commonwealth

14 October 2016 [Therapeutic Goods Amendment \(Advisory Committees and Other Measures\) Regulation 2016](#) - F2016L01614 as made.

12 October 2016 - [National Health Security \(National Notifiable Disease List\) Amendment Instrument 2016 \(No. 1\)](#) - F2016L01609 as made.

REPORTS

Australia. Department of Health

Media releases

13 October 2016 - [New Survey Provides Valuable Data on the Status of Eye Health Conditions](#) - The Australian Government has launched the National Eye Health Survey Report on the prevalence and causes of vision impairment and blindness around the nation

11 October 2016 - [Launch of Nursing White Paper on Health Reform](#) - The Australian Government has acknowledged an important White Paper, prepared by the Australian College of Nursing, which details the role of nurses in future health and aged care reform.

11 October 2016 - [National Day to Focus on Youth Mental Health](#) - Sometimes acknowledging that you need help and reaching out is the hardest part but on headspace Day young Australians around the country are being reminded that mental health is important and help is always available.

10 October 2016 - [Boost to mental health services underway](#) - This World Mental Health Day (10 October) the Australian Government has re-affirmed its commitment to trialling innovative approaches in delivering mental health services, in an effort to curb rates of suicide around the country.

9 October 2016 - [Mental Health Week: Everyone’s priority - 9 October 2016](#) - Minister for Health Sussan Ley has used the start of Mental Health Week (9 October – 15 October) to promote community awareness about mental health issues and remind Australians about the importance of the social and emotional wellbeing of themselves, their families, loved ones and communities.

7 October 2016 - [COAG Health Council Communique - 7 October 2016](#) - The Federal and state and territory Health Ministers met in Canberra at the COAG Health Council to discuss a range of national health issues. The meeting was chaired by the Victorian Minister for Health, Jill Hennessy.

Private Health Insurance Circulars

7 October 2016 - [PHI 77/16 Amendment to Private Health Insurance \(Prostheses\) Rules 2016 No.4 Prostheses List](#)

6 October 2016 - [PHI 76/16 Application due date - August 2017 Prostheses List](#)

5 October 2016 - [PHI 75/16 Prostheses List Management System \(PLMS\)](#)

Australia. Health Practitioner Regulation Agency and the boards

14 October 2016 - [Call for applications](#) - Call for applications for appointment to the Northern Territory Board of Registered Psychologists to the health, performance and professional standards hearing panels.

14 October 2016 - [Call for applications](#) - Call for applications for appointment to the Northern Territory Board of the Nursing and Midwifery Board of Australia

12 October 2016 - [Communiqué from the Physiotherapy Board](#)

12 October 2016 - [Quarterly registration data released](#) - The National Podiatry Board has released its quarterly registration data.

11 October 2016 - [NMBA issues position statement on nurses, midwives and vaccination](#) - A position statement on nurses, midwives and vaccination has been published today.

11 October 2016 - [Communiqué from the Osteopathy Board](#)

11 October 2016 - [Quarterly registration data released](#) - The National Chiropractic Board has released its quarterly registration data.

10 October 2016 - [More information about your advertising obligations](#) - The Occupational Therapy Board of Australia today published further information to help registered health practitioners to better understand their advertising obligations.

10 October 2016 - [Data from specialist medical colleges on the specialist pathway](#) - The Medical Board of Australia has published data from specialist medical colleges on the specialist pathway.

10 October 2016 - [Medical practitioner registration suspended for professional misconduct after repeated drug use](#) - The ACT Civil and Administrative Tribunal has reprimanded a medical practitioner, suspended and imposed conditions on her registration following repeated illicit drug use, amounting to professional misconduct.

10 October 2016 - [Tribunal reprimands practitioner and imposes conditions on his registration](#) - The Victorian Civil and Administration Tribunal has reprimanded Dr George Koniuszko, and imposed conditions on his registration after making findings that he had engaged in professional misconduct.

10 October 2016 - [Online renewal is now open for 12 health professions](#) - More than 167,000 health practitioners are due to renew registration by 30 November.

7 October 2016 - [Tribunal dismisses allegations against medical practitioner](#) - The Health Practitioners Tribunal (Tasmania) has dismissed Tasmanian Board of the Medical Board of Australia allegations of unprofessional conduct against general practitioner Dr Gregory Pitt.

Australia. National Health & Medical Research Council

7 October 2016 - [New Australian Academy of Health and Medical Sciences \(AAHMS\) Fellows inducted](#) - AAHMS inducted 50 new Fellows at their second Annual Scientific Meeting in Brisbane this week.

Australia. Therapeutic Goods Administration (TGA)

13 October 2016 - [Australian regulatory guidelines for complementary medicines \(ARGCM\)](#) - ARGCM has been revised to reflect current legislation and business practices.

13 October 2016 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - Added Lesinurad (Zurampic) / Tocilizumab (rch) (Actemra) / Sacubitril / Valsartan salt complex (Entresto / Novartis sacubitril/valsartan).

12 October 2016 - **Compliance and education for listed medicines** - Provides sponsors of listed medicines with a better understanding of common compliance issues.

12 October 2016 - **Updated list of 'permissible ingredients' for use in listed medicines** - An amendment to the Therapeutic Goods (Permissible Ingredients) Determination No. 2 was registered on the Federal Register in October 2016.

12 October 2016 - **Updated list of 'permissible ingredients' for use in listed medicines - list of affected ingredients** - Updated list showing the changes to ingredient availability in the Therapeutic Goods (Permissible Ingredients) Determination No. 2 of 2016.

12 October 2016 - **Reporting problems** - Report a problem with a therapeutic good or make a complaint to the TGA.

12 October 2016 - **Public submissions on scheduling matters referred to the Joint ACCS/ACMS#13, July 2016** - Public submissions made in response to the delegates' proposed amendments to the Poisons Standard and the delegates' interim decision.

12 October 2016 - **Public submissions on scheduling matters referred to the ACCS#17, July 2016** - Public submissions made in response to the delegates' proposed amendments to the Poisons Standard and the delegates' interim decision.

11 October 2016 - **Bee Sexy Slimming capsules** - Bee Sexy Slimming capsules pose a serious risk to your health and should not be taken.

11 October 2016 - **Vigour 300 tablets** - Vigour 300 tablets pose a serious risk to your health and should not be taken.

11 October 2016 - **TGA presentation: RMIT, Biomedical Engineering, 16 August 2016** - This presentation gives an introduction to the regulation of medical devices, biologicals, and the manufacture of therapeutic goods in Australia.

11 October 2016 - **Safety review: Nonsteroidal anti-inflammatory drugs (NSAIDs) and spontaneous abortion** - A review of the Product Information documents and package warnings for all NSAIDs in relation to information provided about the potential increased risk of miscarriage due to exposure in early pregnancy

11 October 2016 - **NSAIDs review** - Safety advisory - inconsistent information about the known risk of miscarriage.

11 October 2016 - **Advisory Committee on the Safety of Medicines (ACSOM) meeting statement, Meeting 30, 20 November 2015** - statement now available

11 October 2016 - **Consultation: paracetamol and ibuprofen: advisory statements for medicines** - The TGA is seeking comments from interested parties on the following advisory statements for non-prescription medicines containing a combination of paracetamol and ibuprofen. Closing date: 22 November 2016.

11 October 2016 - **Consultation: diclofenac, flurbiprofen, ibuprofen, ketoprofen, mefenamic acid and naproxen for oral use: proposed additional advisory statement for medicines** - The TGA is seeking comments from interested parties on the wording of an additional advisory statement for the NSAID medicines: proposed advisory statement. Closing date: 22 November 2016.

10 October 2016 - **Conference participation by the TGA** - The TGA is participating in the listed events and conferences.

10 October 2016 - **Invacare Birdie Lifter series of hoists** - Recall for product correction - risk of injury due to D-clip becoming damaged.

10 October 2016 - **Biolo World Slimming capsules** - Biolo World Slimming capsules pose a serious risk to your health and should not be taken.

New South Wales. Ministry of Health

Media Releases

12 October 2016 - [New videos to support better cardiac health for Aboriginal people](#) - NSW Health today launched a series of short videos to help raise awareness of cardiovascular disease and the importance of early diagnosis and treatment for Aboriginal people.

11 October 2016 - [\\$8.6 million for innovative medical devices](#) - Four companies have been granted \$8.6 million through the NSW Government's Medical Devices Fund to bring their innovative medical technologies to market.

Policy Directives & Guidelines

11 October 2016 - [NSW Government Resource Efficiency Policy \(GREP\)](#) - GL2016_025

Publications

11 October 2016 - [HealthStats NSW: Population Health Data at your Fingertips](#)

11 October 2016 - [Prevention Research Support Program: Information Kit for Funding](#)

Queensland. Department of Health

13 October 2016 - [New adolescent mental health facility for Queensland to be built at Prince Charles Hospital](#) - Premier Anastacia Palaszczuk today announced that a new bed-based extended treatment and rehabilitation facility for young people, recommended by the Commission of Inquiry into the Barrett Adolescent Centre, will be built at The Prince Charles Hospital campus in Brisbane.

12 October 2016 - [Queensland leading the way on medicinal cannabis](#) - Queensland has the most progressive medicinal cannabis laws in Australia after the Palaszczuk Government's legislation was unanimously passed by Parliament tonight.

12 October 2016 - [Green light for genomics](#) - Genomics research in Queensland is about to kick up a gear with the first call for applications for genomic project funding being announced today.

10 October 2016 - [New \\$350 million mental health plan to connect care with recovery](#) - The Palaszczuk Government has today unveiled a new \$350 million plan to further strengthen its commitment to supporting Queenslanders living with mental health, alcohol and drug issues.

South Australia. Department for Health & Ageing

12 October 2016 - [Boost to lifesaving treatment at Maitland Hospital](#) - Maitland Hospital's newly expanded haemodialysis unit officially opened today, allowing more people to receive lifesaving treatment closer to home.

Tasmania. Department of Health & Human Services

12 October 2016 - [Early intervention suicide prevention referral service](#) - The Hodgman Government is committed to taking action to reduce suicide and improve the mental health and wellbeing of all Tasmanians, having provided an additional \$11.7 million for key mental health and related services since 2014. Today a further significant step has been taken to improve mental health outcomes for Tasmanians, with a Request for Proposal advertised to deliver a Suicide Prevention Early Intervention Referral Service.

9 October 2016 - [Patients and nurses ring in new call system at LGH](#) - A new nurse call system that will improve the level of care offered to patients is being installed at the Launceston General Hospital. As part of the Hodgman Government's \$950,000 call system upgrade across a number of surgical wards, work is already complete on Ward 5A and Ward 5B is set to begin on Monday, October 10.

Victoria. Department of Health

13 October 2016 - [Ambulance response times best in five years](#) - State-wide ambulance response times are the best they have been in five years thanks to the Andrews Labor Government's investment and reform, the *Ambulance Victoria 2015-16 Annual Report* showed today. Under the Labor Government, Victorians experiencing life threatening conditions receive faster ambulance responses today than they did under the previous Liberal Government – despite record demand for ambulances and in our emergency departments.

11 October 2016 - **More funding to support our mental health facilities** - Applications are now open for the Andrews Labor Government \$10 million Mental Health Facilities Renewal Fund to ensure facilities can provide the best possible care. Facilities Renewal Grants will help existing mental health and alcohol and other drug services provide better facilities for staff, consumers, carers and visitors.

9 October 2016 - **A bigger Casey Hospital to meet soaring demand** - The Andrews Labor Government will inject an extra \$28.61 million into the Casey Hospital expansion to deliver a bigger and better hospital with more beds than first promised. Premier Daniel Andrews today joined Minister for Health Jill Hennessy at the Hospital to announce the funding boost to meet soaring growth in demand for acute health care in Melbourne's booming south east suburbs.

Western Australia (WA). Department of Health

Media Releases

13 October 2016 - **Minister for Health and Minister for Finance: Video call healthcare to benefit Perth patients** - Innovative new video call services currently being trialled at Princess Margaret Hospital for Children and Royal Perth Hospital promise more convenience for patients and lower travel costs.

12 October 2016 - **Safety first trial for baby's first peanuts** - Perth researchers are to trial medically-supervised 'peanut clinics' in an attempt to cut rising rates of peanut allergy.

9 October 2016 - **Minister for Health: Heart surgery returns for WA newborns in need** - Health Minister John Day today announced the successful resumption of complex neonatal cardiac surgery at Princess Margaret Hospital for Children.

7 October 2016 - **Research to teach babies night from day** - WA researchers hope to be able to improve health outcomes for pre-term babies by restoring the infants' natural sleep-wake cycle. The cycle, commonly known as the circadian rhythm, is vital to healthy growth and development. Led by University of Western Australia reproductive biologist Peter Mark – and with the help of a Telethon-Perth Children's Hospital Research Fund grant – the team is embarking on an inspired new study that will determine whether the provision of regular light and dark periods can improve growth, enable earlier hospital discharge and enhance brain development in these newborns.

7 October 2016 - **New meningococcal notification** - The Department of Health today reported that a young adult is currently recovering in hospital from meningococcal disease.

New Zealand. Ministry of Health

14 October 2016 - **The benefits and costs of water fluoridation- a summary for District Health Boards (DHBs)** - This document provides a DHB-level analysis of the results of the earlier report -Review of the Benefits and Costs of Water Fluoridation in New Zealand.

Australian Medical Association (AuMA)

13 October 2016 - **Information for GPs on Mefloquine (Lariam)** - Department of Veterans' Affairs Principal Medical Adviser, Dr Ian Gardner, has provided the AuMA with an open letter to GPs giving information that may assist in managing patients who took the antimalarial drug Mefloquine (trade name Lariam) while serving in the Australian Defence Force and are concerned that it has affected their long term health.

10 October 2016 - **New booklet debunks anti-vaxx myths** - The AuMA and the Academy of Science have launched a revised and updated guide to the facts, evidence, and benefits of immunisation.

13 October 2016 - **Mental Health Care Plans Clarified** - In response to a query raised earlier this year, the Department of Human Services' has issued advice to clarify the period of time MBS mental health care treatment plans cover and the number of services patients can access per year. Patients being managed under a mental health treatment plan are eligible for Medicare benefits for up to a maximum of ten individual and ten group allied mental health services in a calendar year (1 January to 31 December).

13 October 2016 - **AuMA backs fluoridation** - The AuMA and other health bodies have criticised the decision by many Queensland local councils to stop fluoridating their water supplies.

13 October 2016 - **GPs urged to look out for sarcopenia: MJA** - Australian experts, featured in *MJA InSight* recently, have urged GPs to look out for sarcopenia (the loss of muscle mass and muscle strength) more often, saying it is greatly under-recognised despite its 'huge influence and importance' for a range of diseases, including type 2 diabetes.

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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