



**25 AUGUST 2014**

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## JUDGMENTS

### Queensland

30 July 2014 - *Medical Board of Australia v Andersen* [2014] QCAT 374

Dr Andersen engaged in a series of conduct in which he inappropriately prescribed products containing pseudoephedrine. He admitted that this series of conduct amounted to professional misconduct and conceded to the Tribunal that he should be the subject of a disciplinary sanction.

Andersen and the Medical Board of Australia jointly proposed orders, including the order that Dr Andersen's registration be suspended for a period of one month. The proposed orders provided for the suspension itself to be wholly suspended for a period of 12 months, during which Dr Andersen must not be the subject of any disciplinary action by the Board or the Tribunal.

The Tribunal noted it ought to only depart from a proposed sanction agreed between the parties if the proposed sanction falls outside of the permissible range of sanction for the conduct. In this case, the proposition to suspend the suspension was beyond the permissible range as it was not authorised by the Health Practitioner Regulation National Law (Queensland).

The parties did not identify any basis on which the Tribunal could suspend the suspension of a registrant's registration and so the Tribunal did not grant the twelve-month suspension proposed. However, it found that it was appropriate to give Dr Andersen a period during which to make arrangements for his practice for the period of his suspension. The suspension was therefore suspended for a period of one month.

### New South Wales (NSW)

14 August 2014 - *TB and DC v State of New South Wales & Anor* [2014] NSWSC 1145

The Supreme Court of NSW considered whether certain paragraphs of a medical report tendered by the plaintiff were admissible, following an objection by the defendants.

The Court held that paragraph 2 of the report was inadmissible because it disclosed the course of a confidential mediation. It is well established at law that the course of a confidential mediation must not be disclosed and accordingly, this was not a contentious issue in this case.

The defendants also argued that paragraphs 3 and 4 of the report were inadmissible because those paragraphs made assumptions about one of the plaintiff's (TB's) history, and those assumptions were not supported by evidence in the report. The defendants argued that where it is clear that there will be no evidence supporting the assumptions made by an expert, the recounting of those assumptions in the expert's report should be rejected. That is, the rules of evidence would not permit them to be admitted as "evidence of fact".

The Court upheld the defendants' objection to paragraphs 3 and 4 of the report. In doing so, it firstly accepted that the assumptions were not evidence of fact because they were not supported by evidence in the report. Secondly, it held that because the assumptions in paragraphs 3 and 4 were consistent with other evidence produced to the court, they were not necessary to prove the expert's opinion and were therefore also not admissible as 'opinion evidence.'

21 August 2014 - *Shah v Health Care Complaints Commission* [2014] NSWCATOD 94  
Application for reinstatement to register - onus of proof - tests to be applied.

## LEGISLATION

### Victoria

[Improving Cancer Outcomes Bill 2014.](#)

[Drugs, Poisons and Controlled Substances Further Amendment Bill 2014.](#)

## REPORTS

### Australia. Department of Health & Ageing

Media releases

20 August 2014 - [New Centre to Deliver More Health Professionals](#). A new Australian Government-funded training centre in the Melbourne suburb of Camberwell will mean a major boost to the health workforce and improved patient access to health services.

Private Health insurance (PHI) Circulars

15 August 2014 - [PHI 52/14 August 2014 prostheses list](#).

15 August 2014 - [PHI 51/14 New private same-day hospital information](#).

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

22 August 2014 -The Aboriginal & Torres Strait Islander Health Practice Board has developed a survey that aims to better understand your opinion of the usefulness, relevance and impact of the Board's registration standards. [Read more](#).

21 August 2014 - The Physiotherapy Board of Australia has prepared a presentation to assist in understanding what it means to be a registered physiotherapist in Australia. [Read more](#).

21 August 2014 - Call for applications for physiotherapists to join the Physiotherapy Board of Australia's list of approved persons for appointment to panels and/or the Physiotherapy Advisor List. [Read more](#).

21 August 2014 - Call for applications for physiotherapists to join the Physiotherapy Board of Australia's list of approved persons for appointment to panels and/or the Physiotherapy Advisor List. [Read more](#).

19 August 2014 - The Osteopathy Board of Australia releases its latest newsletter. [Read more](#).

18 August 2014 - New National Board appointments and reappointment AHPRA welcomes National Board appointments and reappointment announced by the Australian Health Workforce Ministerial Council. [Read more](#).

15 August 2014 - AHPRA and the Nursing and Midwifery Board are committed to finding a solution to help internationally qualified nurses and midwives caught by changes to registration requirements. [Read more](#).

15 August 2014 - Media release AHPRA and the Nursing and Midwifery Board are committed to finding a solution to help internationally qualified nurses and midwives caught by changes to registration requirements. [Read more](#).

### Australia. National Health & Medical Research Council (NHMRC)

[NHMRC Health Tracker August 2014](#).

### Australia. Therapeutic Goods Administration (TGA)

21 August 2014 - [TGA presentation given at ARCS Regulatory Affairs Interest Area Committee webinar meeting, 22 May 2014](#). This presentation provided an overview of TGA's communication with Industry within the prescription medicine registration process.

21 August 2014 - [TGA key performance indicators: January to June 2014](#). This Key Performance Indicator (KPI) report covers aspects of our performance between January and June 2014.

20 August 2014 - [Ellipse implantable cardioverter defibrillators](#). St Jude Medical has issued a hazard alert regarding a potential issue with its Ellipse family of implantable cardioverter defibrillators (ICDs).

20 August 2014 - [Orphan drugs](#). Added Ivacaftor (Kalydeco), Sodium phenylbutrate (Pheburane) and Siltuximab (Sylvant).

20 August 2014 - [Results of review into urogynaecological surgical mesh implants](#). The TGA has completed a review of urogynaecological surgical mesh implants and found there is little evidence to support the overall effectiveness of these surgical meshes as a class of products.

19 August 2014 - [ACPM meeting statements](#). Added February, April, June and August 2014 advisory committee on prescription medicines meeting statements.

15 August 2014 - [Increased application audit requirements for some medical devices applications](#). The TGA is conducting application audits to obtain its own evidence of the quality of certificates and reports issued by selected European notified bodies.

#### **Australian Institute of Health & Welfare**

21 August 2014 - [Mortality inequalities in Australia 2009–2011 media release](#).

20 August 2014 - more Indigenous Australians accessing health checks, but many still miss out [media release](#).

18 August 2014 - [Maternal deaths in Australia: 2006-2010 | media release](#).

18 August 2014 - [Oral health and dental care in Australia: key facts and figures trends 2014 | media release](#).

#### **Australian Commission on Safety and Quality in Health Care**

18 August 2014 - 18 August 2014 – Issue 187 ([PDF 123KB](#)) ([Word 124KB](#)).

#### **Australian Capital Territory (ACT). Health Directorate**

21 August 2014 - [Chief minister announces \\$2m in healthy Canberra grants](#).

19 August 2014 - [Tags to provide protection from Mr Fluffy asbestos](#).

18 August 2014 - [New afterhours doctors service hits the road in the ACT](#).

#### **New South Wales. Ministry of Health**

##### Media Releases

22 August 2014 - [Community to view progress on new Byron central hospital](#).

22 August 2014 - [LikeMind pilot to deliver better mental health care for Western Sydney residents](#).

22 August 2014 - [New state-of-the-art support for mothers and babies at Lismore](#).

20 August 2014 - [New health services and support for Lockhart](#).

19 August 2014 - [Wagga Wagga Base Hospital](#).

18 August 2014 - [Royal North Shore hospital clinical services building](#).

18 August 2014 - [New bid to boost organ donation](#).

##### Information Bulletins

21 August 2014 - [Public Health Service Employees Skilled Trades State Award Increases to Rates of Pay and Allowances](#).

20 August 2014 - [Pilot model annualised salary agreement for midwifery group practices](#).

#### **Northern Territory. Department of Health**

21 August 2014 - [Daffodils sent across the Territory to support cancer research](#).

#### **Queensland. Department of Health**

18 August 2014 - [Satisfaction levels up for hospital experience](#).

#### **South Australia (SA). Department for Health & Ageing**

20 August 2014 - [\\$25m to be spent on health equipment across SA](#).

18 August 2014 - [Ground-breaking aged care rehabilitation centre an Australian first](#).

#### **Tasmania. Department of Health & Human Services**

21 August 2014 - [Good health good for business](#).

### Victoria. Department of Health

- 22 August 2014 - [Bendigo Hospital cancer bunkers completed.](#)
- 21 August 2014 - [Parliament passes donor information amendments.](#)
- 20 August 2014 - [Most paramedics happy with pay offer: union official.](#)
- 20 August 2014 - [Tough new penalties for healthcare assaults.](#)
- 20 August 2014 - [More lies and manipulation from Dan\(iel\) Andrews.](#)
- 19 August 2014 - [Inept ambulance union backs down.](#)
- 18 August 2014 - [Elective surgery waiting list slashed by 11,000.](#)
- 17 August 2014 - [Graphic campaign on obesity dangers launched.](#)

### Western Australia (WA). Department of Health

Operational Directives (OD)

- 20 August 2014 - [OD 0548/14.](#) The area of need policy and guidelines have been amended to better reflect current and future medical workforce trends. The documentation complies with the legislation *Health Practitioner Regulation National Law (WA) Act 2010*, which came in to effect on 18 October 2010.
- 20 August 2014 - [IC 0195/14](#) Direct transfer of the body of a deceased person into the hands of relatives information for hospital staff involved in the direct transfer of the body of a deceased person into the hands of relatives. Legal issues are dealt with and best practice procedures are described.

### New Zealand. Ministry of Health

- 22 August 2014 - [Fluoridation review welcomed.](#)
- 19 August 2014 - [Sentence handed down after steroid ring uncovered.](#)

### United Kingdom. Department of Health

- 21 August 2014 - [Ebola: government response.](#)
- 21 August 2014 - [Heatwave plan for England.](#)
- 20 August 2014 - [Learning from the best to make the National Health Service \(NHS\) better.](#)
- 18 August 2014 - [Who to screen for MRSA.](#)
- 15 August 2014 - [SEND code of practice: 0 to 25 years.](#)
- 15 August 2014 - [Payments: NHS Commissioning Board to dental providers.](#)
- 15 August 2014 - [Input and impact indicators: 2014 to 2015.](#)

### Australian Medical Association (AuMA)

- 21 August 2014 - [AuMA President, A/Prof Brian Owler, AMA Media Conference, 21 August 2014.](#) Subject: AuMA alternative GP co-payment model [Read more.](#)
- 21 August 2014 - [AuMA model protects vulnerable patients from co-payment pain.](#) AuMA President, A/Prof Brian Owler, today called on the Government to dump its seriously flawed GP co-payments proposal and adopt the AuMA model, which exempts the most vulnerable patients from extra. [Read more.](#)

### British Medical Association (BMA)

- 20 August 2014 - [Study reinforces importance of shadowing.](#) Newly qualified doctors improve their clinical skills by undergoing inductions prior to starting.
- 20 August 2014 - [Occupational health merger plan questioned.](#) Occupational medicine doctors have voiced concerns over plans to merge their professional organisations.
- 18 August 2014 - [Safety board set up to improve training standards.](#) A new board aiming to improve the standards of education and training around patient safety.

15 August 2014 - [Standardised tobacco packaging has BMA's full support.](#)

#### Canadian Medical Association (CMA)

20 August 2014 - [Dr. Chris Simpson of Kingston New President of the Canadian Medical Association.](#)

19 August 2014 - [Dr. Cindy Forbes of Nova Scotia New President-Elect at the Canadian Medical Association Annual Meeting.](#)

19 August 2014 - [Dr. Chris Simpson of Ontario Commits to Seniors Care as the CMA's new President.](#)

18 August 2014 - [Canadians desperate for a national seniors care strategy as population ages.](#)

18 August 2014 - [End-of-life care issues in Canada Discussed at Day Two of CMA's 147th Annual Meeting in Ottawa.](#)

#### American Medical Association (AMA)

15 August 2014 - [AMA Calls on CMS to delay publication of the Sunshine Act database; more time needed for Physicians to review data.](#)

The AMA is calling on CMS to expand the timeframe for registering and using the open payments system to allow physicians adequate time to review and seek correction of inaccurate claims made by pharmaceutical companies, device manufacturers, and group purchasing organizations under the *Sunshine Act*.

## ABOUT US

### Mark Williams



Mark is a partner in the Litigation and Regulatory team at DLA Piper.

Mark's focus is on public liability and professional indemnity insurance and associated litigation. He has particular experience with medical negligence claims and the complex insurance and indemnity arrangements prevalent in the resources, mining, building and construction industries.

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