



# HEALTH ALERT

30 SEPTEMBER 2013

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## JUDGMENTS

### New South Wales

24 September 2013 - [AQB v St Vincent's Hospital Sydney Limited \[2013\] NSWADT 210](#)

The applicant was a patient at the respondent hospital in 2012 and then discharged into the care of her general practitioner (GP). She complained to the health care complaints commission (HCCC) about the respondent's treatment and lodged an application for review of the respondent's conduct under the *Health Reports and Information Privacy Act 2002* (NSW) (HRIPA) and *Privacy and Personal Information Protection Act 1998* (NSW) (PPIPA). She alleged breaches of both acts by the respondent's disclosure of her discharge summary to her GP and medical records to HCCC.

The discharge summary contained information about the applicant's physical or mental health, medication, diagnoses, admission and discharge. Naida Isenberg found that the whole of the document fell within the definition of "health information" under the HRIPA. She determined the disclosure was within the limits of disclosure of health information in the HRIPA's Health Privacy Principles, having been made with the consent of the applicant and for her ongoing care. The respondent therefore did not breach the HRIPA. There was also no breach of the PPIPA as it excludes "health information" from the definition of "personal information".

Regarding the medical records, the applicant consented to HCCC accessing them in handling the complaint. HCCC also has powers under the *Health Care Complaints Act 1993* (NSW) to request the production of documents and there are penalties for non-compliance. Ms Isenberg concluded that the respondent acted in accordance with its responsibilities under this Act, which overrode its general responsibilities under the HRIPA. She dismissed the application.

24 September 2013 - [Barker \(Thomas\) v Hodgkinson \[2013\] NSWSC 1404](#)

The plaintiff sued the defendant for professional negligence. The claim concerned the defendant's diagnosis of the plaintiff as having multiple sclerosis. Ten years later the plaintiff discovered that she had never had multiple sclerosis. She therefore claimed that the misdiagnoses was a breach of the defendant's duty of care.

The plaintiff was self-represented. Her statement of claim was not in compliance with the Uniform Civil Procedure Rules (NSW). Rule 31.36(1) requires that expert reports supporting, among other things, the breach of duty of care be filed and served with the statement of claim in professional negligence claims. The plaintiff did not do this. As the Court had not relieved her of this obligation, the defendant sought an order dismissing the proceedings under R31.36(3).

The plaintiff eventually served two reports from a neurologist and sought to rely on them for the purposes of R31.36. However, in Barr AJ's opinion, the reports did not satisfy R31.36's requirements, as they actually supported the defendant on the issue of duty of care. Therefore, if the case went to a hearing the defendant would succeed.

The plaintiff requested the opportunity to obtain a further report however Barr AJ determined that it was unsatisfactory that the defendant had already waited twenty two months to find out how the plaintiff planned to prove her case and so dismissed the statement of claim.

Although other Australian jurisdictions may not have such a specific rule, the case reinforces the proper basis requirement in filing a statement of claim or defence.

20 September 2013 - [Health Care Complaints Commission v Dr Hampshire \[2013\] NSWMT 17](#)

Failure to insure, breach of conditions, whether professional misconduct.

24 September 2013 - [AQB v Health Care Complaints Commission \(HCCC\) \[2013\] NSWADT 209](#)

Complaint to HCCC - disclosure of complaint to subject of complaint.

23 September 2013 - [McLean by her tutor Nicole Shuttleworth v Marshall \[2013\] NSWSC 1400](#)

Practice and procedure, negligence claim, separation of issues of whether liability should be determined separately from damages.

19 September 2013 - [Health Care Complaints Commission \(HCCC\) v Davis \(No. 1\) \[2013\] NSWNMT 17](#)

Complaint against a nurse – conduct towards residents of an aged care facility - unsatisfactory professional conduct – professional misconduct – non-publication order – stage one findings and reasons for findings.

### South Australia (SA)

30 September 2013 - [Inquest into the death of Pasquale Giannini](#)

Death as a result of as a result of infarction of the small and large bowel due to superior mesenteric artery thrombosis. Key words: mesenteric ischaemia; hospital treatment.

### Victoria

26 September 2013 - [Bupa Australia Pty Ltd v Shaw \(as joint executor of the estate of Norman Shaw\) & Anor \[2013\] VSC 507](#)

Insurance – subrogation – interpretation of insurance policy – policy to be viewed as a whole – whether the insurer's right of subrogation was excluded, modified or expanded by terms of the policy – whether payments by insurer were made by way of indemnification under policy – construction of "benefits are not payable" – whether payments by insurer were made in error – benefits prima facie payable – payments made by way of indemnification but not strictly within terms of policy – *King v Victorian Insurance Company* [1986] AC 250 applied – whether right of subrogation prejudiced by terms upon which negligence claim settled – whether insurer is prevented from exercising right of subrogation due to its own conduct – insured liable to repay payments made by insurer.

## LEGISLATION

### Commonwealth

16 September 2013 - [Health insurance \(botulinum toxin for urinary incontinence due to neurogenic detrusor overactivity\) determination 2013](#).

12 September 2013 - [Health Insurance Act 1973 - Amendment declaration of quality assurance activity \(QAA\) 4/2011 under section 124X \(QAA 2/2013\)](#).

20 September 2013 - [Financial Management and Accountability Act 1997 determination 2013/07 – section 32 \(transfer of functions from Department of regional Australia, local government, arts and sport \(DRALGAS\) to attorney general's department \(AGD\), Department of health and Department of infrastructure and regional development \(DIRD\)](#).

23 September 2013 - [National health \(botulinum toxin program\) special arrangement amendment instrument 2013 \(No. 1\) \(No. PB 67 of 2013\)](#).

23 September 2013 - [National health \(paraplegic and quadriplegic program\) special arrangement amendment instrument 2013 \(No. 2\) \(No. PB 66 of 2013\)](#).

23 September 2013 - [National health \(efficient funding of chemotherapy\) special arrangement amendment instrument 2013 \(No. 9\) \(No. PB 64 of 2013\)](#).

23 September 2013 - [National health \(highly specialised drugs program for hospitals\) special arrangement amendment instrument 2013 \(No. 6\) \(No. PB 63 of 2013\)](#).

25 September 2013 - [Private health insurance \(complying product\) amendment rules 2013 \(No. 4\)](#).

### South Australia

25 September 2013 - [Controlled substances \(offences\) Amendment Bill 2013](#).

25 September 2013 - [Health practitioner regulation national law \(South Australia\) \(restricted birthing practices\) Amendment Bill 2013](#).

#### Western Australia

25 September 2013 - [Medicines, poisons and therapeutic goods Bill 2013](#).

#### Tasmania

24 September 2013 - [Mental health \(transitional and consequential provisions\) Bill 2013](#).

#### Victoria

17 September 2013 - [Tobacco amendment Bill 2013](#).

### REPORTS

#### Australia. Department of Health & Ageing

Private health insurance (PHI) Circulars

20 September 2013 - [PHI 57/13 nursing home type patient contribution rates and minimum benefits](#).

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

27 September 2013 - AHPRA Australian Capital Territory (ACT) and Western Australia (WA) offices closed on 30 September 2013. The ACT AHPRA office will be closed on Monday 30 September 2013 for family and community day and the WA AHPRA office will be closed on Monday 30 September 2013 for the Queen's birthday. [Read more](#).

26 September 2013 - Media release online renewal is now open for 12 regulated health professions. [Read more](#).

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

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

23 September 2013 - Media release AHPRA and the national Boards will publish health profession agreements over the coming weeks. [Read more](#).

23 September 2013 - Third edition of the national internship framework newsletter released the medical Board of Australia and Australian medical council have released a third newsletter regarding the development of the national intern training framework. [Read more](#).

23 September 2013 - Media release Board and AHPRA publish health profession agreement. [Read more](#).

23 September 2013 - The nursing and midwifery Board of Australia releases its latest newsletter. [Read more](#).

20 September 2013 - The Aboriginal & Torres Strait Islander (ATSI) health practice Board of Australia releases its latest communiqué. [Read more](#).

20 September 2013 - The National Board has released the September 2013 figures on Board-approved supervisors. [Read more](#).

#### Australia. National Health & Medical Research Council

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

20 September 2013 - [Community and consumer advisory group established](#).

#### Australia. Therapeutic Goods Administration (TGA)

26 September 2013 - [Reasons for scheduling delegate's interim decision and invitation for further comment, July 2013](#). Interim decisions and reasons for scheduling decisions and invitation for further submissions. Closing date: 14 October 2013.

26 September 2013 - [Public submissions on scheduling matters referred to the advisory committee on chemical scheduling \(ACCS\) #8, advisory committee on medicines scheduling \(ACMS\) #9 and the joint ACCS-ACMS #6 \(July 2013\)](#). Public submissions made in response to the invitation for public submission on the proposed amendments to the poisons standard.

24 September 2013 - [Apixaban \(eliquis\), dabigatran \(pradaxa\) and rivaroxaban \(xarelto\): information for health professionals](#). Following the recent changes to their pharmaceutical benefits scheme (PBS) listing, it is timely to remind health professionals of the need to carefully consider each patient's risk factors for bleeding and observe the dosage recommendations, contraindications and precautions for use outlined in the respective product information (PI) when prescribing these oral anticoagulants.

24 September 2013 - [Apixaban \(eliquis\), dabigatran \(pradaxa\) and rivaroxaban \(xarelto\): information for consumers](#). Apixaban (eliquis), dabigatran (pradaxa) and rivaroxaban (xarelto) are oral anticoagulants approved by the TGA and are all now funded by the PBS.

23 September 2013 - [Advisory committee on non-prescription medicines \(ACNM\) meeting statement, 5 September 2013](#).

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

25 September 2013 - [Health expenditure Australia 2011-12](#).

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

23 September 2013 - [On the Radar](#).

23 September 2013 [Advisory No. A13/04](#). Collection and reporting of accreditation evidence by accrediting agencies.

19 September 2013 - [Advisory A13/06](#). Risk-based workforce immunisation program for dental practices.

#### **Australia. Private Health Insurance Administration Council (PHIAC)**

20 September 2013 - [Circular No 13/23](#). Changes to solvency and capital adequacy made by PHIAC.

#### **Australian Capital Territory. Health Directorate**

26 September 2013 - [More education department \(ED\) and intensive care unit \(ICU\) beds provide greater capacity at Canberra Hospital](#).

26 September 2013 - [Annual report 2012-2013](#).

24 September 2013 - [Looking back at 100 years of Australian Capital Territory \(ACT\) healthcare](#).

23 September 2013 - [ACT government communications survey](#). The ACT government wants to improve the way it consults with Canberra residents.

#### **New South Wales (NSW). Ministry of Health**

26 September 2013 - [NSW health alert: health concern for Australian pilgrims to the Hajj](#).

24 September 2013 - [NSW health alert - watch out for measles](#).

19 September 2013 - [Graythwaite rehabilitation centre officially opens at Ryde hospital](#).

#### **Northern Territory (NT). Department of Health**

26 September 2013 - [Review of NT Carers Recognition Act 2009 - closing 1 November 2013](#).

24 September 2013 - [Robyn Lambley - nominations open for disability services awards](#). The search is now on for the Northern Territory's greatest supporters of people with a disability.

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

20 September 2013 - [Parents have new weapon in war against childhood obesity](#). A new \$5 million program is now being rolled out across Queensland to arm parents with skills to combat modern pressures around food and to encourage families to become more active.

20 September 2013 - [Queensland health to partner with information and communications technology \(ICT\) industry](#). The Department of health has taken a significant step away from being a manager and owner of ICT assets, following the announcement at today's partners in technology industry briefing.

23 September 2013 - [Queensland's Chief Nurse challenges traditional customs of nursing](#). Forums challenging the "myths" of what registered nurses should and shouldn't do are being held around Queensland.

23 September 2013 - [Queensland puts out the call for health Ombudsman applicants](#). A new Queensland health Ombudsman is expected to be appointed by the end of the year.

#### **South Australia. Department for Health & Ageing**

22 September 2013 - [da Vinci robot \(DVR\) agreement reached](#) A new ground-breaking three year partnership between the public Royal Adelaide Hospital and the private St Andrew's hospital has been signed, paving the way for public patients' continued access to the da Vinci Robot surgical machine. [Read more](#).

#### **Victoria. Department of Health**

23 September 2013 - [Major expansion for Healesville hospital](#). Minister for health David Davis today announced a \$7.8 million expansion for Healesville hospital.

24 September 2013 - [Bendigo firm wins major contract for hospital work](#). The next major step in the Bendigo Hospital project will be taken this week when excavation of the site commences, Minister for Health David Davis announced today.

24 September 2013 - [Applications open for Victorian translational cancer research projects](#). Minister for health David Davis today announced that applications for funding for translational cancer research projects are now open through the Victorian cancer agency.

24 September 2013 - [Boost to eating disorders treatment at the Royal children's hospital](#). Young people and families will get enhanced support through an eating disorders program that was officially launched today by Minister for mental health Mary Wooldridge at the Royal children's hospital.

25 September 2013 - [Next step for new Monash children's hospital](#). The Victorian Coalition Government is putting the final pieces in place as it gets set to build another world class children's hospital in Melbourne.

26 September 2013 - [Hundreds of new paramedics graduate](#). Minister for health David Davis has congratulated 274 newly graduated paramedics at the first of two graduation ceremonies to be held in 2013.

26 September 2013 - [Seventy mental health beds opened at Dandenong](#). Mental health treatment and recovery in the South East has been given a boost with Minister for mental health Mary Wooldridge today officially opening the second stage of the Dandenong Hospital's mental health services redevelopment.

26 September 2013 - [Mother baby unit boost at Monash health](#). Monash Health's refurbished mother-baby unit was officially opened today by Minister for mental health Mary Wooldridge.

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

Media Releases

20 September 2013 - [New video provides vital medication safety information](#).

20 August 2013 - [WA health performance report – April to June 2013 quarter](#).

25 September 2013 - [World class testing at new State path lab](#).

Operational directives (OD)

26 September 2013 - [OD 0457/13](#). National women held pregnancy record WA health has agreed to implement the national women held pregnancy record that was endorsed by Australian health Ministers in January 2013.

### **New Zealand. Ministry of Health**

20 September 2013 - [Pathway to smoke free New Zealand 2025 Innovation Fund – Round two now open](#). The Ministry is now accepting registrations of interest from Non-government organisations (NGOs) and community organisations wanting to access the pathway to smoke free New Zealand 2025 innovation fund. [Read more](#).

### **United Kingdom. Department of Health**

20 September 2013 - [Vulnerable older people's plan: 1 week left to comment on proposals](#).

23 September 2013 - [Shaping a healthier future: hammersmith, charing cross and ealing hospitals](#).

25 September 2013 - [Payments to general practitioners GPs suspended from medical performers list](#).

25 September 2013 - [Flu vaccination: increasing uptake by health and social care workers](#).

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

20 September 2013 - [Rural areas gain assistance for enrollment in health insurance marketplaces](#).

25 September 2013 - [Significant choice and lower than expected premiums available in the new health insurance market place](#).

26 September 2013 - [Launching the small business health option program market place: HHS ramps up outreach and education efforts to small employers](#).

26 September 2013 - [HHS boosts stockpile of products to treat acute radiation syndrome](#).

### **Australian Medical Association (AMA)**

24 September 2013 - [Dr Hambleton, 891 ABC Adelaide](#). AMA President Dr Steve Hambleton discusses the Coalition's plans to transfer asylum seekers offshore within forty eight hours of arrival. Dr Hambleton says the time may be insufficient.

### **British Medical Association (BMA)**

20 September 2013 - [General practitioners \(GPs\) seek freedom from red tape](#). GPs need to be freed from increased bureaucracy, box ticking and administration to allow them more time for patient care, a major BMA survey of GPs in England has revealed.

20 September 2013 - [General Medical Council \(GMC\) gauges opinion on language skills checks](#). The GMC is seeking views on English language skills checks for doctors from other European countries.

20 September 2013 - [Consultants raise concerns with "misleading" endorsement for restructure](#). Consultants from Mid Staffordshire national health service (NHS) foundation trust have asked to meet the team advising on proposed clinical changes at the trust.

20 September 2013 - [NHS employees proposal rejected by GPs](#). GPs leaders have rejected a suggestion that family doctors should lose their independent contractor status.

23 September 2013 - [Salary figures contradict out-of-control pay claims](#). Government claims that NHS pay is out of control have been disputed by independent statistics.

23 September 2013 - [GPs gain dispensing practices assurances](#). GP leaders say an action plan and review of pharmacy applications legislation shows the Scottish government has recognised the essential role of dispensing GP practices.

24 September 2013 - [Quality and outcomes framework \(QOF\) changes threaten patient care, GPs believe](#). The majority of GPs in Leeds believe government-imposed changes to their contracts have not improved patient care and could lead to harm.

25 September 2013 - [GP income falls again as practice costs rise](#). Commenting on these figures, Dr Chaand Nagpaul, Chair of the BMA's GP committee said: "GPs are already demoralised by ever increasing and unmanageable workloads. This further pay cut for GPs while running costs increase, and the failure of the government to ensure that pay is frozen as it is with other NHS staff, will only add to this."

## Canadian Medical Association

20 September 2013 - ["Good bedside manner" leads to better online ratings for doctors of medicine \(MDs\): study.](#)

23 September [Second Canadian MD to head Médecins Sans Frontières \(MSF\): "I refuse to get used to death".](#)

26 September 2013 - [Canada's general surgeons hoping to enhance their image.](#)

## American Medical Association (AMA)

23 September 2013 - [Congress can spur team-based approach to health care.](#) Dr Hoven and the president of the Pennsylvania Medical Society speak out on unsustainable Medicare cuts.

24 September 2013 - [On the road with AMA President, Ardis Dee Hoven, MD.](#) Dr Hoven writes that physician leadership in organized medicine is hard work, but worth the effort.

24 September 2013 - [AMA applauds Senators' efforts to fix electronic health records \(EHR\) meaningful use.](#) Physicians are eager to implement EHRs, but overly aggressive timeline could have harmful, unintended consequences.

25 September 2013 - [Repeat bone mineral density \(BMD\) Screening and Prediction of Fracture.](#) Berry and co-authors determine whether changes in BMD after 4 years provide additional information on fracture risk beyond baseline BMD in 802 participants from Massachusetts.

## ABOUT US

### Andrew Forbes



Andrew practices in litigation and administrative law with a particular focus on health. He is recognised for his expertise in health regulation.

Andrew has acted in Commissions of Inquiry and led investigations into health-related incidents, such as the Hendra virus outbreak. He has acted as "counsel assisting" in internal disciplinary hearings and inquiries.

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