



HEALTH ALERT

31 MARCH 2014

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JUDGMENTS

New South Wales

4 March 2014 - [Re JS \[2014\] NSWSC 302](#)

This was an application for declaratory relief made by the John Hunter Hospital to the New South Wales Supreme Court.

At the time of the judgment, JS was twenty-seven years old and had been a patient of the hospital for a considerable period. He had been a quadriplegic since the age of seven and received life sustaining treatment, including artificial ventilation. Without this treatment JS would certainly die. JS had decided he no longer wanted to receive life sustaining treatment and wished to die on his twenty-eighth birthday. He signed a request to that effect.

The hospital sought a declaration in order to grant this request and lawfully discontinue all life sustaining treatment and medical support measures for patient "JS" including the withdrawal of ventilation. A further declaration was sought that the medical services to be provided be limited to those ancillary to the discontinuance of all life sustaining treatment.

The Court allowed the first declaration, determining that JS had capacity and demonstrated he had made an informed and considered decision. It confirmed the principle determining that when a competent adult's right to autonomy, self determination and the right to control his or her body conflicts with the interest of the State in protecting and preserving its citizens lives, the right of the individual must prevail.

The Court declined to make the second declaration because it was of the opinion that it was inappropriate to prescribe the limits of JS' future care.

26 March 2014 - [Health Care Complaints Commission v Dr Stephen Poole \[2014\] NSWCATOD 20](#)

Dentist - Unsatisfactory professional conduct, professional misconduct, failed implants, crowns, bridges, failure to respond to complaint in reasonable time, order to repay fees, conditions placed on registration, breach of conditions.

26 March 2014 - [O'Meara v The Dental Council of New South Wales \[2014\] NSWCATOD 19](#)

Dentist - Unsatisfactory professional conduct, inadequate diagnosis, records and treatment planning for a specialist practitioner, failure to recognise and manage centreline discrepancy, incorrect classification on molar malocclusion.

Queensland

25 March 2014 - [Mules v Ferguson & Anor \[2014\] QSC 51](#)

The plaintiff contracted cryptococcal meningitis in 2008. She was diagnosed and treated, but too late to prevent irreversible neurological harm causing her to go blind and deaf. The plaintiff alleges that her doctor, the defendant, was negligent in failing to refer her to a specialist earlier and this resulted in her not receiving treatment in time to prevent the loss of her sight and hearing. The defendant denied she was negligent, relying on expert evidence to show she acted with reasonable care and skill.

The Supreme Court of Queensland found the defendant did not breach her duty. The plaintiff's symptoms and a CT scan suggested a musculo-skeletal cause was likely and the plaintiff did not have a disenable collection of symptoms which should have caused the defendant to conclude the plaintiff was developing a serious central nervous system problem or that there was reason to refer the plaintiff for urgent or specialist assessment.

Based on the expert evidence provided, the Court also determined that the defendant acted in a way that was widely accepted by peer professional opinion as competent professional practice.

Despite the plaintiff failing to establish any breach of duty of care, the Court opined that it was more likely than not that had the plaintiff been referred to a specialist she would have avoided the permanent damage to her health. The Court also found, that had the plaintiff been successful in her claim, her damages would have totalled \$6,727,776.04.

26 February 2014 (published 21 March 2014) - [Noble v Medical Board of Australia \(No 2\) \[2014\] QCAT 077](#)

Professions and trades - medical practitioners - licences and registration – other matters – application to vary a stay of a decision refusing registration – appellant passed an interview recommending she was suitable for a position of need – appellant requires registration to sit further exams – whether it is desirable to extend a stay after having regard to the interests of any person whose interests may be effected.

18 February 2014 (published 21 March 2014) - [Occupational Therapy Board of Australia v AB \[2014\] QCAT 082](#)

Professions and trades – health care professionals – applicant referred a disciplinary proceeding to the Tribunal – respondent allegedly suffered from an impairment – applicant has a duty to ensure that the Tribunal has current and reliable evidence – applicant sought further health assessment of the respondent – respondent indicated he was not willing to participate in a further health assessment – applicant made an application to the Tribunal to establish a health assessment committee – the Tribunal directed the respondent to undergo a health assessment – respondent did not attend the health assessment – whether the respondent is impaired at the time of the hearing.

Australian Capital Territory (ACT)

21 March 2014 - [Hocking v Medical Board of Australia \[2014\] ACTSC 48](#)

Civil – Administrative law – judicial review – decision of ACT Medical Board – suspension of registration - meaning of mandatory notification of complaint – actual or apprehended bias – procedural unfairness.

South Australia

20 March 2014 - [Nursing & Midwifery Board of Australia v NH \[2014\] SAHPT 2](#)

Complainant alleges that the respondent behaved in a way that constitutes professional misconduct - Respondent committed and was later convicted of aggravated assault causing harm to his daughter - Respondent initially failed to acknowledge and accept the wrongfulness of his conduct subsequent to his conviction - At the hearing of this matter the respondent admitted that the conduct which caused him to go before the Court and be subsequently convicted amounted to professional misconduct - Respondent not currently registered - Complainant submits that due to the respondent's admissions the appropriate public protection and the aims of the discipline can be achieved by a reprimand and the provision of a signed undertaking at the time the respondent makes application for registration - Held: The conduct set out in the complaint constitutes professional misconduct - The time that the respondent has been out of practice amounts to a significant detriment and is to be taken into consideration - The Tribunal is satisfied that appropriate public protection and discipline are achieved by a reprimand and a signed undertaking by the respondent to the complainant in accordance with s 178(2) of the National Law - Such undertaking to be provided by the respondent at the time he makes application for re-registration - Ss 178, 193, 196 *Health Practitioner Regulation National Law (South Australia) Act 2010*.

21 March 2014 - [Inquest into the death of Beryl Jean Morgan 16/2013 \(0915/2010\)](#)

Death from pneumonia and renal failure with hyperthermia - death in residential care centre.

Victoria

19 March 2014 - [Coronial inquest into the death of Darren Brett Kingma COR 2007 1964](#)

Death from spinal injury - death in respite facility run by the department of human services - deceased diagnosed with Coffin-Lowry syndrome.

LEGISLATION

Commonwealth

26 March 2014 - [Dental Benefits Legislation Amendment Bill 2014](#).

21 March 2014 - [National Health Determination under paragraph 98C\(1\)\(b\) Amendment 2014 \(No. 3\) \(No. PB 19 of 2014\)](#).

24 March 2014 - [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2014 \(No. 3\) \(No. PB 21 of 2014\)](#).

24 March 2014 - [National Health \(Listed drugs on F1 or F2\) Amendment Determination 2014 \(No. 2\) \(No. PB 22 of 2014\)](#).

24 March 2014 - [National Health \(Pharmaceutical Benefits - Therapeutic Groups\) Amendment Determination 2014 \(No. 1\) \(No. PB 23 of 2014\)](#).

21 March 2014 - [National Health \(Price and Special Patient Contribution\) Amendment Determination 2014 \(No. 2\) \(No. PB 18 of 2014\)](#).

21 March 2014 - [National Health \(Pharmaceutical Benefits - Early Supply\) Amendment Instrument 2014 \(No. 1\) - specification under subsection 84AAA\(2\) \(No. PB 25 of 2014\)](#).

21 March 2014 - [National Health \(Listing of Pharmaceutical Benefits\) Amendment Instrument 2014 \(No. 3\) - PB 17 of 2014](#).

25 March 2014 - [Therapeutic Goods \(Medical Devices\) Amendment \(Auditing Applications\) Regulation 2014](#).

21 March 2014 - [Amendment Statement of Principles concerning substance use disorder No. 31 of 2014](#).

21 March 2014 - [Amendment Statement of Principles concerning substance use disorder No. 32 of 2014](#).

21 March 2014 - [Amendment Statement of Principles concerning alcohol use disorder No. 29 of 2014](#).

21 March 2014 - [Amendment Statement of Principles concerning alcohol use disorder No. 30 of 2014](#).

REPORTS

Australia. Department of Health & Ageing

Media releases

26 March 2014 - [Government moves to end dentist's uncertainty](#).

Private Health insurance Circulars (PHI)

27 March 2014 - [PHI 19/14 New Private Hospital Information](#).

27 March 2014 - [PHI 18/14 Private Hospital Information - name change](#).

Australia. Health Practitioner Regulation Agency and the boards

25 March 2014 - The Advertising FAQ (March 2014) is being regularly updated with additional questions. Check back to this page to see the latest information available. [Read More](#).

25 March 2014 - The Physiotherapy Board releases its latest newsletter. [Read More](#)

25 March 2014 - The Chinese Medicine Board of Australia releases its latest communiqué. [Read More](#).

26 March 2014 - The Chiropractic Board of Australia releases its latest Newsletter. [Read More](#).

26 March 2014 - The Board has decided to change the Advertising guidelines to be clearer about the use of testimonials. [Read More](#).

26 March 2014 - Call for applications for appointment to the Osteopathy Board of Australia. [Read More](#).

Australia. National Health & Medical Research Council (NHMRC)

28 March 2014 - [Health and Medical Research – benefiting Australia](#). On 26 March 2014, NHMRC CEO Professor Warwick Anderson AM gave an update to the Western Australian health and medical

research community at the Harry Perkins Institute of Medical Research. View the presentation below. Health and Medical Research – benefiting Australia (PDF, 1.3MB). [See full article.](#)

Australia. Therapeutic Goods Administration (TGA)

28 March 2014 - [Medtronic SynchroMed II implantable infusion pump](#). It has been identified that Medtronic SynchroMed II infusion pumps have the potential for over-infusion.

27 March 2014 - [VigRX Plus tablets](#) pose a serious risk to your health and should not be taken.

27 March 2014 - [Statutory expert committee vacancies](#) added privacy information.

26 March 2014 - [Natural-Knee II System metal-backed patella - used in knee replacements](#). Zimmer has issued a hazard alert regarding its Natural-Knee II System metal-backed patella.

26 March 2014 - [Hospira infusion pumps - Plum family, GemStar and LifeCare models](#). New Hospira infusion pumps from the Plum A+ family still cannot be supplied in Australia.

26 March 2014 - [Authorised prescribers](#). Updated information and forms.

26 March 2014 - [TGA reforms: A blueprint for TGA's future: Progress report as at 31 December 2013](#)
The Australian Government has released its response to several major reviews of therapeutic goods regulation.

26 March 2014 - [Advisory Committee on Complementary Medicines \(ACCM\)](#). Updated meeting dates

26 March 2014 - [Australian Therapeutic Goods Advisory Council meeting statement, Meeting 4, 4 February 2014](#). The Australian Therapeutic Goods Advisory Council (the Council) met for the fourth time at Parliament House on Tuesday 4 February 2014.

25 March 2014 - [African Superman tablets](#). African Superman tablets pose a serious risk to your health and should not be taken.

25 March 2014 - [Statutory expert committee forms](#). Updated Declaration of interests form.

25 March 2014 - [Evidence guidelines](#). These guidelines provide information for sponsors and applicants on the type of evidence that is required to support indications for listed complementary medicines.

25 March 2014 - [Summary of submissions and TGA responses: Evidence required to support indications for listed medicines \(excluding sunscreens and disinfectants\)](#). Broad issues identified from the submissions received and the TGA's response.

25 March 2014 - [Listed medicines evidence package checklists](#). These checklists help sponsors and applicants of listed complementary medicines assess, record and present the available evidence for the indication/s for their medicine.

25 March 2014 - [Acronyms & glossary](#). The TGA acronyms and glossary list has been updated.

25 March 2014 - [Blue Fantasy capsules](#) pose a serious risk to your health and should not be taken.

25 March 2014 - [Sanovera Starter capsules](#) pose a serious risk to your health and should not be taken.

24 March 2014 - [Tiger King tablets](#) pose a serious risk to your health and should not be taken.

24 March 2014 - [MME Naturally Maxman capsules](#) pose a serious risk to your health and should not be taken.

24 March N2014 - [3X Slimming Power capsule](#) pose a serious risk to your health and should not be taken.

24 March 2014 - [Streamlining and improving therapeutic goods legislation](#). Amendments have been made to the *Therapeutic Goods Act 1989 (the Act)* by the *Therapeutic Goods Amendment (2013 Measures No. 1) Act 2014*.

24 March 2014 - [Zi Xiu Tang Pollen capsule](#) poses a serious risk to your health and should not be taken.

24 March 2014 - [Zi Xiu Tang Beauty Face and Figure capsule](#) pose a serious risk to your health and should not be taken.

18 March 2014 - [HomeChoice PRO automated peritoneal dialysis system](#). Consumers and health professionals are advised that Baxter Healthcare is undertaking a recall for product correction of its HomeChoice Pro automated peritoneal dialysis system.

Australian Commission on Safety and Quality in Health Care

Commission update e-newsletter, March 2014

24 March 2014 - On the Radar – Issue 167 ([PDF 99KB](#)) ([Word 181KB](#)).

Australia. National Mental Health Commission

24 March 2014 - [Call for Submissions - now open](#). The National Mental Health Commission today announced a Call for Submissions as an important contribution to the national review of mental health services and programmes.

Australia. Australian Health Ministers' Advisory Council

[National Code of Conduct for healthcare workers](#) - submissions sought.

Australian Capital Territory. Health Directorate

20 March 2014 - [Tuggeranong Community Health Centre Opening](#).

New South Wales. Ministry of Health

Media Releases

23 March 2014 - [It's time to be winter wise](#).

Policy Directives & Guidelines

24 March 2014 - [Pressure Injury Prevention and Management](#).

Information Bulletins

26 March 2014 - [Changes to Promotion Appeals Processes - Ambulance Officers and Managers, and Skilled Trades Staff](#).

26 March 2014 - [Notification of Obsolete Policy Directive..](#)

27 March 2014 - [Notification of Obsolete Policy Directive](#).

Northern Territory. Department of Health

27 March 2014 - [Robyn Lambley - expanding alcohol mandatory treatment for a healthier territory](#). The Northern Territory Government has released expressions of interest to expand alcohol mandatory treatment in Darwin and Tennant Creek.

26 March 2014 - [Robyn Lambley - country liberals committed to health services in Nhullunbuy](#). The Northern Territory Government is committed to improving the health services in Nhulunbuy and the East Arnhem region.

26 March 2014 - [Robyn Lambley - new breast screen service for Palmerston](#). Palmerston women will soon be able to take advantage of a permanent breast screen service at the Palmerston Community Health Precinct.

26 March 2014 - [Robyn Lambley - new scholarships for disability service workers](#). The Northern Territory Government will establish annual scholarships for people working in the disability service sector to boost their skills and career opportunities.

25 March 2014 - [Robyn Lambley - new legislation for safe and easy access to vaccines](#). Pharmacists will soon be able to provide Territorians with safe and easy access to medicines, including vaccines.

24 March 2014 - [Robyn Lambley - partnership to blitz cataracts in Katherine](#). Five hundred patients will take part in an eye intensive at the Katherine Hospital this week to tackle blinding cataract.

24 March 2014 - [Robyn Lambley - timeline to deliver bigger and better Palmerston regional hospital](#). The Northern Territory Government has today released the timeline to deliver the bigger and better Palmerston Regional Hospital.

Queensland. Department of Health

23 March 2014 - ['Do-Little' case results in state-wide search](#). The case of the so-called 'Doctor Do-little' outlined in today's Sunday Mail demonstrates serious failings with the existing structure and administration of doctors' employment arrangements.

27 March 2014 - [Senior clinicians guide change in contract discussions](#). Health Minister Lawrence Springborg has welcomed a communique from the head of the Queensland Clinical Senate, Dr David Rosengren, urging all senior doctors to properly consider the proposed individual contracts and contract addendum.

27 March 2014 - [World Health Organisation \(WHO\) declares Australia is measles free](#). Queensland-based vaccination expert Dr Stephen Lambert has welcomed the news Australia has been declared measles free, but warns against complacency.

27 March 2014 - [National Health Performance Agency \(NHPA\) releases second report into childhood immunisation rates](#). The NHPA has released its second report on child immunisation rates in Australia.

27 March 2014 - [Hervey Bay intensive care unit \(ICU\) to become level four](#). A clinician-led review into the Hervey Bay Intensive Care Unit has been completed.

South Australia. Department for Health & Ageing

24 March 2014 - [SA expertise taken to the world](#).

24 March 2014 - [Rheumatic heart disease program improving aboriginal health](#).

26 March 2014 - [SA Pathology researcher awarded major honour](#).

Victoria. Department of Health

27 March 2014 - [Hepatitis B vaccine - more at-risk groups eligible for a free course](#).

26 March 2014 - [Multi-million dollar funding package to support Victoria's new *Mental Health Act*](#).

22 March 2014 - [Ambulance referral service to go statewide](#).

Western Australia (WA). Department of Health

Media Releases

27 March 2014 - [WA catching up in immunisation rates](#).

Operational Directives

27 March 2014 - [OD 0515/14](#). Uniform Human Resource Delegations for WA Health Entities. As advised in Operational Directive 0460/13, WA Health is adopting uniform approval processes and consistent practices for FTE management across the WA Health system. As part of this strategy, uniform human resource delegations have been prepared for all WA Health entities. This Operational Directive releases the new uniform human resource delegations for WA Health Entities.

New Zealand. Ministry of Health

28 March 2014 - [Vaccination the best protection against flu](#).

28 March 2014 - [A Quality Framework and Suite of Quality Measures for the Emergency Department Phase of Acute Patient Care in New Zealand](#).

25 March 2014 - [The Children's Spectacle Subsidy Review: Summary of Reference Group findings](#).

United Kingdom. Department of Health

27 March 2014 - [Meningococcal C conjugate vaccine: advice for healthcare practitioners](#) Part of a collection: [Immunisation](#) and [Meningococcal C \(MenC\) vaccination programme](#).

27 March 2014 - [Sign up to safety- The path to saving 6,000 lives.](#)

27 March 2014 - [National Health Service \(NHS\) and social care: public perceptions 2013.](#)

27 March 2014 - [Chief Medical Officer publishes annual report on state of the public's health.](#)

27 March 2014 - [New fitness test for health and social care leaders.](#)

27 March 2014 - [Improving corporate accountability in health and social care.](#)

27 March 2014 - [Making the nursery milk scheme more cost effective.](#)

27 March 2014 - [Chief Medical Officer annual report: surveillance volume 2012.](#)

27 March 2014 - [Fit and proper person's test regulations.](#)

26 March 2014 - [Healthcare reservists in the armed forces.](#)

26 March 2014 - [Statutory duty of candour for health and adult social care providers.](#)

26 March 2014 - [Halving avoidable harm and saving up to 6,000 lives.](#)

24 March 2014 - [DH workforce information: 2013.](#)

24 March 2014 - Part of a collection: [DH monthly workforce data Generic medicine reimbursement prices: April 2014.](#)

United States of America. Department of Health & Human Services

26 March 2014 - [Observing lesbian, gay, bi-sexual, trans gender \(LGBT\) Health Awareness Week.](#)

Australian Medical Association (AuMA)

26 March 2014 - [AuMA committed to resolving Queensland Hospital Doctor Contract dispute.](#) As more doctors become concerned about their employment future, and more patients worry about the stability of the Queensland health system, AMA President, Dr Steve Hambleton, is today urging calm.

26 March 2014 - [Dr Hambleton, Launch of 2014 FARE Alcohol Poll, 26 March.](#) Speaking notes launch of 2014 foundation for alcohol research and education (fare) alcohol poll parliament house, Canberra Wednesday 26 March 2014.

British Medical Association (BMA)

26 March 2014 - [Demands to boost healthcare regulator's authority.](#) Doctors have backed calls to strengthen a health service watchdog.

24 March 2014 - [Primary care leaders praise peers.](#) GP leaders paid tribute to their peers for coping with an 18 per cent increase in consultations.

24 March 2014 - [GP morale damaged by workload, says survey.](#) The rising GP workload must be tackled after a survey reveals two-thirds of the profession are considering early retirement, the BMA says.

Canadian Medical Association (CMA)

24 March 2014 - [CMA's advance care planning efforts advance on several fronts.](#)

American Medical Association (AMA)

26 March 2014 - [AMA Statement on Pending Vote for Temporary SGR Patch.](#) "Facing another self-imposed deadline, the House of Representatives is scheduled to vote Thursday on the "Protecting Access to Medicare Act," which would enact the 17th temporary "patch" to avert a 24 percent payment cut. Today, the American Medical Association and other physician groups are calling on House members to vote no on this legislation."

27 March 2014 - [AMA Statement on House Vote to Patch SGR.](#) "The American Medical Association is extremely disappointed in today's House action to give up on SGR repeal."

27 March 2014 - **How competency-based pilots are making medical education more dynamic.** As the health care system and patient care needs continue to evolve, the amount of knowledge available to physicians increases exponentially.

27 March 2014 - **JAMA Highlights: This week's top articles from the JAMA Network.** Treatment helps reduce risk of esophagus disorder progressing to cancer Among patients with the condition known as Barrett esophagus, treatment of abnormal cells with radiofrequency ablation (use of heat applied through an endoscope to destroy cells) resulted in a reduced risk of this condition progressing to cancer.

26 March 2014 - **Duty-hour trials examine effects of dropping current standards.** Two large national, multi-institutional resident trials could address key questions concerning the effects of duty-hour standards on patient care and safety and the professional training of physicians.

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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