



17 MARCH 2014

| | |
|--|----------|
| Judgments..... | 2 |
| Commonwealth | 2 |
| New South Wales | 2 |
| South Australia..... | 3 |
| New Zealand | 3 |
| United Kingdom | 3 |
| Legislation..... | 3 |
| Reports | 3 |
| Australia. Department of Health & Ageing | 3 |
| Australia. Health Practitioner Regulation Agency and the boards | 3 |
| Australia. National Blood Authority | 4 |
| Australia. National Health & Medical Research Council | 4 |
| Australia. Therapeutic Goods Administration | 4 |
| Australian Commission on Safety and Quality in Health Care | 5 |
| Australia. Private Health Insurance Administration Council..... | 5 |
| Australia. National Mental Health Commission | 5 |
| Australian Capital Territory. Health Directorate | 5 |
| New South Wales. Ministry of Health..... | 5 |
| Queensland. Department of Health | 5 |
| Tasmania. Department of Health & Human Services | 5 |
| Victoria. Department of Health | 5 |
| Western Australia. Department of Health | 5 |
| New Zealand. Ministry of Health..... | 5 |
| United Kingdom. Department of Health..... | 6 |
| United States of America. Department of Health & Human Services | 6 |
| Australian Medical Association..... | 6 |
| British Medical Association | 6 |
| Canadian Medical Association | 6 |
| American Medical Association..... | 6 |

| | |
|-------------------------------|----------|
| About Us | 7 |
| More Information | 7 |

JUDGMENTS

Commonwealth

10 March 2014 - *Australian Competition and Consumer Commission v Breast Check Pty Ltd* [2014] FCA 190

Breast Check is a company who provided breast imaging service using a Multifrequency Electrical Impedance Mammograph (MEM device) and various infrared imaging devices for digital thermography. Women who utilised these services received an information packet which contained promotional pamphlets. These pamphlets were also made available to those interested in the services offered by Breast Check. The pamphlets made various claims about the benefits of breast imaging done with the above devices, including that they were able to provide a breast risk assessment and breast health profile.

The Court found this constituted misleading and deceptive conduct as the language of the pamphlets represented to a reasonable person interested in the services offered by Breast Check that there was a scientific and medical basis that the devices could predict the risk of breast cancer, that they could be used to assure a customer that they did not have breast cancer and that they could be used as a substitute for a mammography despite there being an inadequate scientific medical basis that these devices could be used for any of these purposes.

The Court further found that a Doctor employed by Breast Check was knowingly concerned or involved and therefore accessorially liable for each contravention. This was because she was aware that there was inadequate scientific medical basis for the representations and was the person who authorised the content of the promotional pamphlet.

The Court did not make a finding on the appropriate relief but is inviting submissions before its final orders.

New South Wales

Belokozovski v Magarey [2014] NSWDC 5

In 2006 the defendant performed a laparoscopic cholecystectomy to remove the plaintiff's gall bladder. The plaintiff suffered severe abdominal pain and discharge from the wound and required subsequent operations until 2010 when his physical problems ended after his umbilicus was excised. He continues to suffer depression, which he attributes to the defendant's surgery.

The plaintiff alleges the defendant was negligent in failing to perform an intra-operative cholangiogram ('IOC') during the operation, which required performing liver function tests before surgery, and using non-absorbable sutures.

The Court did not accept the surgery caused the plaintiff's depression, which was due to his marital, social and financial problems. This led the Court to conclude that the end date for compensation was when the plaintiff's physical problems ceased in 2010.

The Court concluded the defendant should have called for liver function tests before surgery, which would likely have led to the defendant arranging post-operative endoscopic removal of a gallstone. This would have prevented the plaintiff from suffering pain and avoided the need for the 2010 procedure. The Court held the plaintiff's pain and suffering associated with the failure to have had an IOC were caused by the defendant's breach of duty.

The Court did not accept that the defendant was liable for the plaintiff's subsequent problems as a consequence of the umbilical infection and discharge, accepting expert evidence that the use of the nylon suture was widely accepted competent professional practice.

The Court entered judgment for the plaintiff and awarded damages associated with the defendant's failure to perform an IOC of \$19,500 for pain and suffering and \$4,365 for past medical expenses, a total is \$23,865.

South Australia

11 March 2014 - [Nursing and Midwifery Board of Australia v Barrett \[2014\] SAHPT 1](#)

The respondent was a registered midwife until she voluntarily surrendered her registration - Complainant alleged the respondent carried out midwifery services in such a way that her conduct was substantially below the standard reasonably expected of a midwife of an equivalent level of training or experience - Tragically several infants died - Despite surrendering her registration the respondent continues to carry out midwifery services

12 March 2014 - [Coronial Inquest into the death of Michaela Jayne Mundy 25/2013 \(91094/2012\)](#)

Death by neck compression due to hanging - suicide - whether therapeutic, psychiatric and psychological services provided by the Child and Adolescent Mental Health Service were appropriate.

New Zealand

7 March 2014 - [New Health New Zealand Inc v South Taranaki District Council \[2014\] NZHC 395](#)

Whether or not the local council has the power to fluoridate water in the interests of public dental health.

United Kingdom

12 March 2014 - [Mrs G Andrews v Kings College NHS Foundation Trust and Secretary of State for Health \[2014\] UKEAT](#)

The Claimant worked as a part-time nurse from 1982 to 2010. She claimed that she was entitled to pension rights or compensation for the lack of those rights in respect of 3 periods, 1982 to 1988, 1988 to 1991 and 1991 to 2010.

12 March 2014 - [Gail Marie Duce v Worcestershire Acute Hospitals National Health Service \(NHS\) Trust \[2014\] EWCA Civ 249](#)

The appellant, Mrs Duce, is the claimant in proceedings against the respondent, Worcestershire Acute Hospitals NHS Trust. In March 2008 the claimant underwent a total abdominal hysterectomy and bilateral salpingo-oophorectomy at Worcester Royal Hospital. Her case is that she suffered neuropathic post-operative pain as a result of the surgery and she claims damages for negligence in failing to warn her of the risk of developing such pain.

LEGISLATION

4 March 2014 - [Approval of guidelines issued under Section 95AA of the Privacy Act 1988.](#)

2 March 2013 - [Approval of guidelines issued under Section 95A of the Privacy Act 1988.](#)

REPORTS

Australia. Department of Health & Ageing

Media releases

11 March 2014 - [Fight back against flu.](#)

10 March 2014 - [Australia hosts Asia-Pacific offensive on malaria..](#)

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

12 March 2014 - AHPRA responds to Parliamentary committee report. [Read media release.](#) [Download PDF.](#)

12 March 2014 - The Medical Board of Australia releases its latest newsletter. [Read Article](#)

12 March 2014 - The Nursing and Midwifery Board of Australia releases its latest newsletter. [Read Article.](#)

12 March 2014 - The Occupational Therapy Board of Australia releases its latest communiqué. [Read Article.](#)

12 March 2014 - Call for applications for health practitioners to join the Pharmacy Board of Australia's list of approved persons for appointment to panels. [Read Article](#).

11 March 2014 - Call for applications for health practitioners to join the Chiropractic Board of Australia's list of approved persons for appointment to panels. [Read Article](#).

11 March 2014 - The Medical Radiation Practice Board of Australia releases its latest communiqué. [Read Article](#).

7 March 2014 - The Podiatry Board of Australia releases its latest communiqué. [Read Article](#).

7 March 2014 - The Board confirms online comment is not always advertising. [Read Article](#).

7 March 2014 -The Psychology Board of Australia has released the February 2014 communiqué. [Read Article](#).

Australia. National Blood Authority

13 March 2014 - There has been an update to the Immunoglobulin (Ig) Governance Program page on the National Blood Authority website. [Read more](#).

13 March 2014 - Conference: Patient Blood Management as a standard of care in Australia: Past, Present and Future. [Registration](#) is now open to the upcoming Patient Blood Management (PBM). [Read more](#).

Australia. National Health & Medical Research Council (NHMRC)

12 March 2014 - [Public comment sought: NHMRC ethical guidelines on Assisted Reproductive Technology](#). The National Health and Medical Research Council has today opened public consultation on the clinical practice section (Part B) of the Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research, 2007 (ART guidelines). Assisted reproductive technology (ART) is the application of laboratory or clinical techniques to human eggs, sperm or embryos for the purposes of reproduction. [See full media release](#).

7 March 2014 - [NHMRC Research Tracker](#).

Australia. Therapeutic Goods Administration

12 March 2014 - [Application for advertising approval](#). Updated application for advertising approval form.

12 March 2014 - [Seasonal influenza vaccines for use in children](#). There are four different influenza vaccines registered for use in children from the age of 6 months.

12 March 2014 - [Seasonal influenza vaccines](#). Influenza vaccines can change from year to year as new strains of influenza virus appear.

12 March 2014 - [Submissions received: Consultation Regulation Impact Statement: Regulating the advertising of therapeutic goods to the general public](#). Submissions received for the consultation on proposals for the future regulatory framework for advertising of therapeutic goods to the general public.

11 March 2014 - [Cereform breast implants and associated sizers](#). Updated information on the recall of the implants and associated sizers.

11 March 2014 - [Documents released under Section 11C of the Freedom of Information Act 1982](#).

11 March 2014 - [National Adverse Events Following Immunisation \(AEFI\) reporting form](#). Updated form for reporting adverse events following immunisation.

7 March 2014 - [Advisory Committee on the Safety of Medical Devices \(ACSMD\)](#). Orthopaedic Subcommittee (OSC) meeting number 3 to be held on 1 April 2014.

7 March 2014 - [Advisory Committee on Biologicals \(ACB\)](#).

7 March 2014 - [Upgraded over-the-counter medicines online application system](#). From 9 April 2014 over-the-counter medicines applications will be easier to submit and process.

7 March 2014 - [Advisory Committee on Medical Devices \(ACMD\)](#).

7 March 2014 - [Advisory Committee on the Safety of Vaccines \(ACSOV\)](#).

Australian Commission on Safety and Quality in Health Care

10 March 2014 - On the Radar – [\(PDF 168KB\)](#) [\(Word 356KB\)](#).

Australia. Private Health Insurance Administration Council

13 March 2014 - [New PHIAC 2 Reporting Template](#).

Australia. National Mental Health Commission

11 March 2014 - [Find jobs for all who can work](#). Prof Allan Fels, The Australian.

Australian Capital Territory. Health Directorate

7 March 2014 - [Canberra Hospital goes completely smoke free](#).

New South Wales (NSW). Ministry of Health

Media Releases

7 March 2014 - [Ongoing measles outbreak in NSW drives push for vaccination..](#)

11 March 2014 - [Making the healthy choice the easy choice](#).

13 March 2014 - [NSW hospital performance continues to hit record highs](#).

Information Bulletins

10 March 2014 - [Notification of obsolete policy directive - PD2005_399](#).

Queensland. Department of Health

13 March 2014 - [Gold Coast residents invited to have their say](#). Gold Coast Health is inviting the community to provide feedback on their annual review of the 2013-2017 Strategic Plan.

12 March 2014 - [Health Minister joins doctor talks in Townsville](#). Health Minister Lawrence Springborg has joined Director General Ian Maynard at a meeting with Queensland Health doctors in Townsville today.

11 March 2014 - [Statement regarding piggery investigation](#). Media statement regarding investigation into Queensland piggery.

Tasmania. Department of Health & Human Services

5 March 2014 - [Free vaccinations at school to prevent serious illness](#).

Victoria. Department of Health

10 March 2014 - [Every day is Labour Day in Victorian hospitals](#).

7 March 2014 - [Victoria's first women's prevention and recovery mental health facility opens at Springvale](#).

Western Australia (WA). Department of Health

Media Releases

3 March 2014 - [State contributes to new era in medical research](#).

13 March 2014 - [Midland Public Hospital at halfway mark](#).

Operational Directives

12 March 2014 - [OD 0510/14](#). Display of External Advertising Materials in WA Health Facilities - guidelines for determining which promotional materials submitted by external organisations are suitable for display in WA health facilities.

New Zealand. Ministry of Health

13 March 2014 - [Consultation on alcohol advertising and sponsorship](#).

11 March 2014 - [Psychoactive substances regulatory authority suspends retail licences in Hamilton](#).

11 March 2014 - [Regional results from the 2011-2013 New Zealand health survey](#).

United Kingdom. Department of Health

7 March 2014 - [Jeremy Hunt: message to NHS staff on supporting compassionate care.](#)

10 March 2014 - [Hospital food standards: Sustain campaign.](#)

10 March 2014 - [Update to charging arrangements for adult social care services.](#)

11 March 2014 - [NHS charges from April 2014.](#)

12 March 2014 - [Unit costs of health and social care.](#)

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

11 March 2014 - [HHS establishes new network to perform clinical studies.](#)

11 March 2014 - [Enrollment in the Health Insurance Marketplace climbs to 4.2 million in February.](#)

7 March 2014 - [County Government settles potential HIPAA violations.](#)

Australian Medical Association

11 March 2014 - [Reminder: Survey of hospital based trainees.](#)

7 March 2014 - [Queensland SMO contracts update.](#)

British Medical Association (BMA)

12 March 2014 - [Lords back fair language checks.](#) Peers have backed BMA calls for English language checks to be fair while also protecting patient safety.

11 March 2014 - [Financial wastage plagues NHS.](#) BMA Cymru Wales says there is still enormous wastage in the Welsh NHS.

10 March 2014 - [Appeal for graduate jobs guarantee.](#) Thousands of final-year medical students were allocated a foundation school today, yet more than 200 remain without a place.

7 March 2014 - [Neurological care improvement requires more funding, says BMA.](#) Plans to improve the treatment of neurological conditions require more investment in services, doctors leaders warn.

7 March 2014 - [Help researchers understand general practice exodus.](#) The BMA is encouraging GPs to respond to a survey investigating why some doctors are leaving general practice early.

7 March 2014 - [BMA remains concerned over special measures safeguards.](#) Doctors are demanding further assurances that promised consultations over changes to failing hospitals will be 'meaningful'.

Canadian Medical Association (CMA)

11 March 2014 - [New Cochrane site a home for students interested in evidence-based medicine.](#) Medical students who have developed an interest in evidence-based medicine now have their own online network for exchanging ideas.

7 March 2014 - [British-trained MDs a disappearing breed in Canada.](#) Physicians who trained in the United Kingdom (UK) before hanging their shingle in Canada have been a prominent part of Canadian medicine since the 19th century, and their impact is still being felt. For instance, three of the CMA's last 11 presidents were trained at British medical schools.

American Medical Association (AMA)

12 March 2014 - [Participate in CMS's end-to-end ICD-10 testing: Apply by March 24.](#) Interested physicians can apply to participate in ICD-10 end-to-end testing the Centers for Medicare & Medicaid Services (CMS) is conducting this summer to get ready for the mandated code set's Oct. 1 implementation deadline.

12 March 2014 - [Virtual Mentor explores mistreatment in medical education.](#) This month's issue of Virtual Mentor, the AMA's online ethics journal, addresses the topic of mistreatment in medical education, from current problems to possible solutions.

11 March 2014 - [What's needed for practice transformation? CMS wants your input.](#) A new request for information gives physicians an opportunity to tell the Centers for Medicare & Medicaid Services (CMS) what resources physicians need to transition to value-based models of care that can better serve their patients. Comments are due April 8.

11 March 2014 - [Community partnerships reengineering diabetes prevention.](#) With type 2 diabetes reaching epidemic proportions in the United States, it's crucial for physicians to screen for prediabetes and partner with community organizations to improve health outcomes, panelists at the AMA National Advocacy Conference told doctors last week.

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.

Michael regularly presents to medical groups and hospitals on medico-legal issues.

Contact Details

T +61 3 9274 5437

michael.regos@dlapiper.com

MORE INFORMATION

Contact your nearest DLA Piper office:

BRISBANE

Level 29, Waterfront Place
1 Eagle Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne NSW 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152–158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 38, 201 Elizabeth Street
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 4144
sydney@dlapiper.com

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities.

For further information, please refer to www.dlapiper.com

Copyright © 2014 DLA Piper. All rights reserved.

If you would like to reproduce any of this publication, please contact Michael Regos on +61 3 9274 5437 or michael.regos@dlapiper.com.

[Doc ID: 1201873719]