



# HEALTH ALERT

29 JULY 2013

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## CORRECTION NOTICE

In last week's Health Alert, the case summary of *Peters v Layani [2013] NSWSC 695* incorrectly reported that the hospital was the Defendant in the proceedings and had been found liable. The hospital where the operation was performed was not involved in the proceeding, which was brought only against Dr Layani and it was he that was found liable. We apologise for the error in reporting.

## JUDGMENTS

### New South Wales. Nursing & Midwifery Tribunal

#### *Smith v The Nursing and Midwifery Board of Australia [2013] NSWNMT 10*

The Appellant registered as a nurse in 1988 and a midwife in 1992. Her registrations lapsed after she stopped practising in 1999. In 2005, the Appellant was granted nursing and midwife registrations subject to conditions. In 2006, the Appellant commenced employment as a practice manager to her anaesthetist husband. Her registrations were renewed from 2006 to 2011, despite non-compliance with the conditions. In 2012, her application to renew her registrations was denied as she had not satisfied the Recency of Practice Registration Standard (the Standard) of completing 456 hours, or three months fulltime equivalent, of practice. She appealed the decision in relation to her nursing registration only.

The issue on appeal was the interpretation of the Standard, and whether the Appellant had satisfied the requirement of undertaking sufficient practice to demonstrate competency in her profession as a nurse in the preceding five years. In dispute was whether the factual circumstances of the Appellant's employment as practice manager of her husband's anaesthetist practice should be considered "practice" as a nurse for the purpose of the Standard.

The Tribunal did not accept the Appellant's submission that everything she did as a practice manager was a demonstration of using her skill and knowledge as a nurse because that role was managerial and administrative; it did not involve the application of nursing knowledge and skills as required by the Standard. The Tribunal affirmed the Board's decision to refuse the Appellant's registration as a nurse.

### Tasmania (TAS). Coroner

#### 18 July 2013 - *Inquest touching the death of Stanley Valentine Whiley*

The deceased received palliative care in a residential aged-care facility due to ischaemic heart disease and cerebral infarct. He was prescribed morphine at a dosage of 2.5 to 5mg.

During a difficult afternoon medication round, the inexperienced nurse on duty incorrectly saw 1mg/1ml on the morphine packaging when she drew the dose to administer to the deceased. The correct ampule strength was 10mg/1ml. The nurse had never administered morphine, had not viewed the packaging and labelling of morphine ampoules, and was not familiar with the standard dosage. She administered 25mg/2.5ml to the deceased, which was five times greater than the maximum prescribed and ten times greater than what she intended to administer. That evening the deceased died.

The focus of the inquest was whether the overdose was a factor which caused or contributed to the death. Given the deceased was receiving palliative care, the Coroner had to determine whether his life would have been extended to a material degree had the overdose not been administered.

Post-mortem examination concluded cause of death was the combined effects of ischaemic heart disease, cerebral infarct and morphine intoxication. However, the Coroner was not satisfied on the balance of probabilities that the overdose caused or contributed to the death; it was attributable to the effects of underlying disease. The Coroner stated that the facility's decision to place an inexperienced nurse on duty "unfairly exposed [her] and the residents to very real risk". The Coroner considered steps taken to amend the staff induction programme policy appropriate.

## South Australia (SA). Coroner

22 July 2013 - [Inquest into the death Trevor John Smith \(0433/2011\)](#)

Death of involuntary psychiatric patient from extensive small cell lung cancer.

## United Kingdom

[SS \(Malaysia\) v Secretary of State for the Home Department \[2013\] EWCA Civ 888](#)

This case concerns a hitherto little-explored aspect of the right to a private and family life: a parent's opportunity to teach their offspring about their own religious faith. "...closely related to the question of religious upbringing is that of circumcision. Upper Tribunal Judge Perkins accepted that Muslim boys are expected to be circumcised and assumed that the Appellant's husband would want C to undergo that procedure for religious and cultural reasons. Miss Chapman, however, submitted that the English courts would be unlikely to bow to the father's wishes in that respect unless the mother also consented. She accepted that circumcision could be carried out without violating the child's rights under the Convention, but only if it were carried out in the context of loving family relationships and was supported by both parents. Those conditions, she said, were not satisfied in the present case, since the Appellant was strongly opposed to the procedure. She submitted that in those circumstances it would not be in the child's best interests to return him to Malaysia where his father's wishes would prevail over those of his mother."

## LEGISLATION

### Commonwealth

[Health Insurance Amendment \(Midwives\) Regulation 2013.](#)

[National Health \(Residential Medication Chart\) Amendment Determination 2013 \(No. 1\) \(No. PB 52 of 2013\).](#)

[National Health \(Subsection 84C\(7\)\) Amendment Determination 2013 \(No. 1\).](#)

## REPORTS

### Australia. Department of Health & Ageing

Media releases

25 July 2013 - [New data reveals widespread improvement in public hospital performance.](#) The Federal Minister for Health, Tanya Plibersek, has welcomed new data showing widespread improvement in public hospital performance across Australia.

24 July 2013 - [All gender discrimination to be removed from Medicare.](#) The Minister for Health, Tanya Plibersek, and the Minister for Human Services, Jan McLucas, have announced that all gender discrimination will be completely removed from Medicare.

23 July 2013 - [Auburn clinical school good news for local health and jobs.](#) Residents in Sydney's west will have access to more local health services and skills, following the official opening of the new Auburn Clinical School.

23 July 2013 - [Free health screens in Western Sydney.](#) A health screening program to help prevent chronic diseases among the unemployed and socially disadvantaged people living in Western Sydney has been launched by the Federal Minister for Health, Tanya Plibersek.

23 July 2013 - [New health plan to help close the gap.](#) The Australian Government has released the National Aboriginal and Torres Strait Islander health plan; an evidence based policy framework to guide policies and programs to improve Aboriginal and Torres Strait Islander health over the next decade.

23 July 2013 - [Seven storey boost to neuroscience.](#) A new, seven storey medical research building in Randwick is expected to become a central hub linking Australia's brain research programs.

22 July 2013 - [New research shows plain packaged tobacco is helping to put people off smoking](#). The first study of the effects of the Government's plain packaged tobacco reforms show they are working to put people off smoking - increasing smokers' urgency to quit and making smoking less appealing.

22 July 2013 - [Positive signs in an independent aged care sector report](#). An independent report of finances in Australia's aged care industry shows positive signs for the sector, with most aged care providers making profits.

21 July 2013 - [\\$1 million to help end female genital mutilation \(FGM\) in Australia](#). The Minister for Health, Tanya Plibersek, today announced \$1 million for 15 new projects aimed at ending FGM in Australia.

19 July 2013 - [\\$280 million more for care in people's homes](#). More older Australians will receive care services in their own homes, like cleaning, and help with shopping and transport, with a Government boost of \$280 million to the Commonwealth Home and Community Care (HACC) program.

17 July 2013 - [Federal Government saves home care for 3500 seniors](#). The Australian Government has stepped in to save home care services for north side locals.

[Australian influenza surveillance report No.2, 2013](#).

[Australian Government response to: before it's too late: report on the inquiry into early intervention programs aimed at reducing youth suicide](#).

#### [Private Health Insurance Circulars](#)

[PHI 46/13 New private \(same day\) hospital information](#).

[PHI 45/13 Closure of private hospital information](#).

#### [Aged care](#)

24 July 2013 - [My aged care \(peak bodies\)](#).

23 July 2013 - [Update - Release of aged care financing Authority's inaugural report on the funding and financing of the aged care sector](#).

19 July 2013 - 2013 - [Commonwealth HACC funding round](#).

#### [Australian National Preventive Health Agency](#)

[State of preventive health 2013](#).

#### [Australia. National Blood Authority](#)

23 July 2013 - National blood symposiums - free one day events. Register now for limited seats at the September symposiums in Sydney, Melbourne or Adelaide. Draft program and registration details. [Read more](#).

23 July 2013 - July international trends report now available. Read about the development of clotting factors with longer half-lives as presented at the Congress of the International Society of Thrombosis and Haemostasis. [Read more](#).

#### [Australian Commission on Safety and Quality in Health Care](#)

[National safety and quality standards and accreditation \(NSQHS\) standards guide for small hospitals](#).

#### [Australian Institute of Health & Welfare](#)

24 July 2013 - [The health of Australia's prisoners 2012 - media release](#) | [Prisoner health web pages](#)

26 July 2013 - [Injury of Aboriginal and Torres Strait Islander people due to transport: 2005-06 to 2009-10](#) | [media release](#).

25 July 2013 - [Young people aged 10-14 in the youth justice system](#) | [media release](#).

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

[New edition of the Australian code for the care and use of animals for scientific purposes.](#)

[NHMRC welcomes feedback on prostate cancer resource for health practitioners.](#)

[NHMRC health tracker - July 2013.](#)

[Australian code for the care and use of animals for scientific purposes 8th edition \(2013\).](#)

## Australian Health Practitioner Regulation Agency & the boards

25 July 2013 - The medical Board releases its latest communique| [Read article.](#)

22 July 2013 - The medical Board of Australia has set 2013/14 registration fees and will launch online renewal this week.| [Read article.](#)

22 July 2013 - The nursing and midwifery Board of Australia has published a revised explanatory note and FAQ on title protection.| [Read article.](#)

19 July 2013 - Call for expressions of interest for a health practitioner to join the ACT, TAS, and VIC regional Board of the psychology Board of Australia.| [Read article.](#)

## Australia. Therapeutic Goods Administration (TGA)

25 July 2013 -[TGA Office of Complementary Medicines \(OCM\) road shows.](#) An additional road show is being conducted in Melbourne on 8 August 2013.

25 July 2013 - [Applying for low value turnover exemption from annual charges.](#) Updated information to the low value turnover (LVT) application fees and turnover thresholds for the 2013-14 financial year.

25 July 2013 - [Advisory Committee on Complementary Medicines \(ACCM\).](#) Updated committee member information.

25 July 2013 - [Xylitol and oil of wormwood.](#) From 12 July 2013 an import permit is not required for the importation of xylitol and oil of wormwood.

24 July 2013 - [Febridol paracetamol 500mg - 100 tablet bottles.](#) Consumers, health professionals and suppliers are advised that ascent pharmaceuticals, in consultation with the TGA, are recalling one batch of Febridol paracetamol 500 mg 100 tablet bottles.

23 July 2013 - [AirSep Impulse Elite oxygen conserving device.](#) Consumers and health professionals are advised that air liquid healthcare is recalling from the market certain AirSep Impulse Elite oxygen conserving devices (OCDs) manufactured before early 2006.

23 July 2013 - [2013-14 annual charges notification.](#) Annual charges invoices for 2013-14 have been issued for all products entered on the Australian Register of Therapeutic Goods (ARTG) at 1 July 2013.

23 July 2013 - [MSS maximum sexual stimulant tablets](#) pose a serious risk to your health and should not be taken.

23 July 2013 - [Reclassification of hip, knee and shoulder joint implants - emails to sponsors.](#) Added letters emailed in July 2013 - end of the first year transition period.

23 July 2013 - [UPMAX capsules](#) pose a serious risk to your health and should not be taken.

23 July 2013 - [NordiPen used with 5 mg, 10 mg and 15 mg Norditropin SimpleXx cartridges.](#) Consumers and health professionals are advised that Novo Nordisk Pharmaceuticals, in consultation with the TGA, has initiated a recall for product correction of certain lots of its NordiPen medical device.

22 July 2013 - [Oasys midline occipital plate - used in cervical spinal fusion surgery.](#) Consumers and health professionals are advised that Stryker Australia, in consultation with the TGA, has issued a hazard alert to surgeons regarding its oasys midline occipital plate.

19 July 2013 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\).](#) Added bevacizumab (recombinant humanised) (avastin), pazopanib hydrochloride (votrient) and prednisone (Iodotra).

## New South Wales (NSW). Department of Health

### Media releases

24 July 2013 - [Quality patient care continues as nurses strike.](#)

23 July 2013 - [Great day for ground breaking research into the mind and nervous system.](#)

17 July 2013 - [Better patient outcomes under historic aeromedical reforms.](#)

26 July 2013 - [Assessment and management of people with behavioural and psychological symptoms of dementia \(BPSD\): A handbook for NSW health clinicians.](#)

24 July 2013 - [NSW rural health plan: Issues paper.](#)

19 July 2013 - [2013 Medical devices fund grant recipients.](#)

18 July 2013 - [Water cooling system compliance survey report 2010/11.](#)

### Information bulletins

26 July 2013 - [Increase in rates of pay for operational ambulance officers and operational ambulance managers.](#)

23 July 2013 - [Child personal health record \(blue book\) release of revised version 2012/2013.](#)

22 July 2013 - [Notification of obsolete guideline - GL2013\\_003.](#)

## Northern Territory (NT). Department of Health

### Media release

25 July 2013 - [Robyn Lambley - Building our hospital capacity](#) - Darwin construction company Halikos has been awarded a multi-million dollar contract to expand patient and surgical capacity at Royal Darwin Hospital.

## Queensland (QLD). Department of Health

### Media releases

[Telehealth network expanded in show and tell.](#) Minister for Health, the Honourable Lawrence Springborg at 10:00am announced the expanded telehealth network promised in this year's State budget was put to the test today, with health officials in Brisbane, Alpha and Boulia meeting with media via telehealth.

[Shorter hospital stays a feature of improved performance.](#) Minister for Health, the Honourable Lawrence Springborg announced that the time Queensland patients spend in hospital has dropped by 11 per cent since 2011 under better management strategies that redirect hundreds of millions of dollars to frontline health services.

[Health dividends Deliver for local communities.](#) Minister for Health, the Honourable Lawrence Springborg on Wednesday at 4:04pm used the Health Estimates Committee hearing in Parliament to praise Hospital and Health Boards across Queensland.

[Expressions of Interest to guide service delivery at Sunshine Coast University Public Hospital \(SCUH\).](#) Minister for Health, The Honourable Lawrence Springborg on Wednesday at 2:23pm expressed interest from health service providers will be sought for the operation of the Sunshine Coast University Public Hospital (SCUH), which is now under construction and due to enter service at Kawana in 2016.

[Queensland children's hospital to retain clinical services in-house.](#) Minister for Health, the Honourable Lawrence Springborg on Wednesday at 2:12pm announced a combined team of Royal Children's and Mater Children's hospital staff will provide the majority of clinical and clinical support services in the new Queensland Children's Public Hospital (QCH) when it opens to patients at the end of 2014.

**Papua New Guinea - Queensland border unsecured.** Minister for Health, the Honourable Lawrence Springborg on Wednesday at 8:50am announced just three days after Kevin Rudd regained the position of Prime Minister, the Federal Government approved an \$18 million compensation package to Queensland in recognition that the Commonwealth Government cannot secure the Queensland-Papua New Guinea border.

**Queensland celebrates Royal birth** - Premier, the Honourable Campbell Newman on Tuesday at 3:00pm announced that all babies born in Queensland on 22 July will receive a commemorative boxed medallion struck in honour of the birth of a baby boy, the Prince of Cambridge, to the Duke and Duchess of Cambridge.

**Queensland Government funding matches Abbott plan for palliative care.** Minister for Health, the Honourable Lawrence Springborg on Saturday at 8:50am announced the Newman LNP Government has teamed up with the Federal Coalition to help establish the first Queensland-based children's respite and hospice facility, Hummingbird House at Kangaroo Point.

**Princess Alexandra hospital health symposium: Making advances matter - Research, education and treatment in partnership.**

### **South Australia. Department of Health**

#### **Media release: Berri hospital renamed Riverland general hospital**

24 July 2013 - Elective surgery waiting times continue to improve. More South Australians have been able to receive the medical treatment they need sooner according to the release of the Government's 2012-13 elective surgery performance and waiting times. [Read more.](#)

#### **Draft South Australian strategy for safeguarding older people 2014-2021.**

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

News releases

25 July 2013 - **New rehabilitation unit for Launceston general hospital.**

25 July 2013 - **MyHospitals update.**

19 July 2013 - **Hawks helping children move well, eat well.**

### **Victoria (VIC). Department of Health**

Media releases

23 July 2013 - **Coalition delivers on pledge to boost Victoria's world-leading medical research.** The Victorian Coalition Government has delivered on its election pledge to boost medical research in Victoria with two new academic health science centres.

23 July 2013 - **Coalition delivers funding boost for Aboriginal eye health.** The Victorian Coalition Government has announced a \$750,000 boost to deliver the Victorian Aboriginal Spectacle Subsidy Scheme (VASSS).

23 July 2013 - **Taxpayers and ambulance members should not fork out to union.** The ambulance union wants taxpayers and ambulance members to fork out \$2.3 million to fund its own activities – money that should go towards ambulance services, Health Minister David Davis said today.

19 July 2013 - **Supporting family doctors means a healthier community.** More investment in family doctors means a healthier community and lower healthcare costs in the long-term, Health Minister David Davis said today.

19 July 2013 - **Lifesaving development officially opens in Ballarat.** Ballarat's new \$64 million state-of-the-art Regional Integrated Cancer Centre is officially open with Premier Denis Napthine and Minister for Health David Davis attending the celebrations today.

19 July 2013 - **Minister inspect works at Ballarat district nursing and Healthcare project.** Minister for Health David Davis today toured the site of the \$4.26 million redevelopment and expansion of Ballarat District Nursing and Healthcare's (BDNH) headquarters in Sturt Street, Ballarat.

25 July 2013 - [Coalition returns Mildura hospital to public ownership](#). The Victorian Coalition Government has reached in principle agreement and exchanged letters with both the owners and operators of the Mildura based hospital to return the hospital to public ownership.

24 July 2013 - [Seasonal and pandemic influenza resources](#). Influenza resources for health professionals when dealing with seasonal or pandemic flu. Find out more about preventative measures and health management plans.

[Consulative Council on Obstetric Paediatric Mortality and Morbidity \(CCOPMM\) Stillbirth newsletter July 2013](#).

[CCOPMM Stillbirth Sub-committee recommendations](#).

#### [Western Australia \(WA\). Department of Health](#)

Media releases

22 July 2013 - [PainHEALTH website proves worldwide success: National pain week 22-28 July](#).

17 July 2013 - [Householders warned against carbon monoxide risk](#).

17 July 2013 - [Minister for Health: New State bereavement viewing facility opens](#).

25 July 2013 - [Midland public hospital rapidly taking shape](#).

24 July 2013 - [Operational directives information circulars \(OD 0445/13\)](#). Admission, readmission, discharge and transfer policy for WA health services - WA health services have an obligation to report activity in a meaningful and consistent fashion. The admission, readmission, discharge and transfer policy for WA health services is a key part of this process and its intent is to provide health services with a framework, containing detailed rules and criteria to enable this to occur. High quality robust data is an integral part of the practical application of ABF/ABM. The correct classification, counting, coding and capture of data is essential to provide information that can be used with confidence across a range of applications, including clinical services planning and funding allocation. Health services are directed to implement and ensure compliance with this policy.

18 July 2013 - [Operational directives information circulars \(OD 0444/13\)](#). Policy for intravenous potassium chloride, this policy is to enhance the safety of prescribing, administration, supply and storage of intravenous potassium chloride. It was developed by the office of safety and quality in healthcare, performance activity quality division and endorsed by the WA medication safety group and the WA therapeutic advisory group.

#### [United Kingdom. Department of Health](#)

[Launch of pioneering dementia care pilot projects](#).

[Department of Health response to the publication of the joint committee on vaccination and immunisation \(JCVI\) draft statement on the Meningitis B vaccine](#).

[Vaccination against shingles for adults: Q&As for healthcare professionals](#).

[Health report: review of the balance of competences](#).

#### [United States of America. Department of Health & Human Services \(HHS\)](#)

[Health and Human Services \(HHS\) awards \\$12 million to help teaching health centers train primary care providers](#). HHS Secretary Kathleen Sebelius today announced \$12 million in *Affordable Care Act* funding to support primary care residency programs in 32 teaching health centres across the nation. Funding will help train more than 300 residents during the 2013-2014 academic year, doubling the number of residents trained in the previous academic year.

#### [Australian Medical Association \(AMA\)](#)

[AMA rapt with coalition scrap the cap call](#).

[AMA welcomes national Aboriginal and Torres Strait Islander health plan](#).

[AMA calls for proper indexation of Medicare patient rebates](#).



**Axe the pharmaceutical benefits scheme authority system.**

**General practitioner training placements must be increased - AMA.**

**Better chronic and complex disease.**

**British Medical Association (BMA)**

24 July 2013 - **BMA Q and A: force-feeding, online toolkits and organ opt-out donation** - BMA medical ethics committee chair Tony Calland answers your questions .

## **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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