



# HEALTH ALERT

**2 SEPTEMBER 2013**

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## JUDGMENTS

### New South Wales

28 August 2013 - [Health Care Complaints Commission v Dr Malcolm Hughes \[2013\] NSWMT 15](#)

Three complaints were brought by the health care complaints commission (HCCC) alleging unsatisfactory professional conduct and professional misconduct in relation to a tendon repair surgery carried out by Doctor (Dr) Hughes and his record of that surgery. An allegation of unethical conduct was made regarding the notes of the operation recorded by him.

Following surgery, the junior Dr present raised concerns, believing one end of the tendon had been attached incorrectly. The patient was sent to another hospital for further surgery. When the wound was reopened there was no evidence of sutures from the first operation. The HCCC therefore argued that a proper tendon repair was never performed.

Dr Hughes denied the complaints, adamant that he had joined the tendons correctly. He did admit that the record lacked some detail but argued this was not enough to establish the complaint, it being fair and accurate overall.

There was divergence in the evidence given as to whether the sutures could have dissolved. Therefore, given an explanation for the absence of the sutures existed, and bearing in mind the standard of proof required, "the Tribunal could not reject the possibility that there had been a repair of the tendons as described by Dr Hughes."

Conversely, the Tribunal found that the lack of detail regarding which tendons were repaired resulted in the report being manifestly inadequate and this amounted to a breach of the *Medical Practice Regulation 2008*. Dr Hughes was therefore issued a reprimand, that being the appropriate protective order in the Tribunal's view.

### Victoria

29 August 2013 - [Zhong v Royal Melbourne Hospital & Ors \[2013\] VSCA 220](#)

The applicant sought leave to appeal against orders made by a county court judge. Those orders concerned the mental health review Board who the applicant had commenced proceedings against in relation to a decision it made in the exercise of its powers under the *Mental Health Act 1986* (Vic) (the Act). The Board had upheld an involuntary treatment order made by Royal Melbourne hospital mental health service permitting the involuntarily treatment of the applicant for his mental illness.

The Board had sought an order that the proceeding be dismissed on the basis that it was covered by an immunity under the Act, which provides "a member of the Board...has in the performance of duties as a member the same protection and immunity as a judge of the Supreme Court."

The judge agreed with the Board's submission that it was not a legal entity and could not be sued and so the immunity applied to its individual members. However, he had to consider whether the immunity applied in this case, questioning the members' authority to review the involuntary treatment order enforced on the applicant or to make that order. The judge decided the individual members were covered by the immunity and dismissed the proceeding against them.

In applying to appeal the decision, the applicant submitted that the immunity did not apply because those members had committed indictable offences by intentionally causing him serious injury, damage and disabilities. The Court of Appeal found these submissions were without substance and refused the application.

29 August 2013 - [Dr Haissam Naim v Medical Board of Australia \[2013\] VSCA 205](#)

Administrative law: Victorian Civil & Administrative Tribunal (VCAT) – Appeal – Leave to appeal - Question of law – Whether findings of fact - *Victorian Civil and Administrative Tribunal Act 1998*, s 148(1)(a).

Medical practitioners: complaint – medical board – matters referred to VCAT under *Health Practitioner Regulation National Law (Victoria) Act 2009* of professional misconduct and unprofessional conduct – procedural fairness – whether findings open.

## South Australia

23 August 2013 - [Bidstrup v Cullen \[2013\] SASC 136](#)

Defamation: actions for defamation, other proceedings before trial, other matters limitation of actions, limitation of particular actions - simple contracts, quasi-contracts and torts, other matters procedure - Supreme Court procedure - South Australia - procedure under rules of court - pleadings.

27 August 2013 - [Inquest into the death of Craig Henri Balnaves 24/2011 \(0768/2009\)](#)

Death as a result of ischaemic small intestine due to incarceration of bowel in a mesenteric defect.

## United Kingdom

27 August 2013 - [LG \(AP\) v Greater Glasgow Health Board \[2013\] ScotCS CSOH\\_145](#)

Child born with serious brain damage most probably caused by acute hypoxic ischaemia sustained during birth. Development of dystonic cerebral palsy with spastic quadriplegia.

## LEGISLATION

26 August 2013 - [Statement of principles concerning guillain-barre syndrome No. 60 of 2013.](#)

26 August 2013 - [Statement of principles concerning guillain-barre syndrome No. 59 of 2013.](#)

26 August 2013 - [Statement of principles concerning sudden unexplained death No. 58 of 2013.](#)

26 August 2013 - [Statement of principles concerning sudden unexplained death No. 57 of 2013.](#)

26 August 2013 - [Statement of principles concerning asbestosis No. 56 of 2013.](#)

26 August 2013 - [Statement of principles concerning asbestosis No. 55 of 2013.](#)

26 August 2013 - [Statement of principles concerning fibrosing interstitial lung disease No. 54 of 2013.](#)

26 August 2013 - [Statement of principles concerning malignant neoplasm of the larynx No. 61 of 2013.](#)

19 August 2013 - [National health \(efficient funding of chemotherapy\) special arrangement amendment instrument 2013 \(No. 8\) \(No. PB 57 of 2013\).](#)

19 August 2013 - [National health \(highly specialised drugs program for hospitals\) special arrangement amendment instrument 2013 \(No. 5\) \(No. PB 56 of 2013\).](#)

15 August 2013 - [Private health insurance \(council administration levy\) amendment rules 2013 \(No. 3\).](#)

## REPORTS

### Australia. Department of Health & Ageing

21 August 2013 - [Pharmaceutical benefits scheme chemotherapy medicines review](#). The Minister for Health, the Hon Tanya Plibersek MP has announced that the Government will provide increased interim funding for chemotherapy.

22 August 2013 - [Quarterly Medicare statistics – March quarter 2007 to June quarter 2013.](#)

22 August 2013 - [Annual Medicare statistics – financial year 2007-08 to 2012-13.](#)

### Australia. Health Practitioner Regulation Agency and the boards

28 August 2013 - National Board publishes guideline on professional indemnity insurance (PII) arrangements for nurses the national nursing & midwifery Board has published a new guideline on PII arrangements for enrolled nurses, registered nurses and nurse practitioners. [Read more.](#)

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

### Media Releases

30 August 2013 - [New NHMRC Commissioner of complaints.](#)

### Publications

25 August 2013 - Reproduction research: why medical research matters - making babies in the 21st century public forum presentation to the making babies in the 21st century: *we need to do it better* public forum organised by the society for reproductive biology. [Read more.](#)

[Prostate-specific antigen \(PSA\) testing in asymptomatic men: Evidence evaluation report \(2013\).](#)

[Prostate-specific antigen \(PSA\) testing in asymptomatic men: technical report \(2013\).](#)

## Australia. Therapeutic Goods Administration (TGA)

29 August 2013 - [Documents released under Section 11C of the Freedom of Information Act 1982.](#)

28 August 2013 - [Australian public assessment reports for prescription medicines \(AusPARs\)](#) added Apixaban (Eliquis), Axitinib (Inlyta), Paliperidone (Invega) & Raltegravir (Isentress).

28 August 2013 - [Rotavirus vaccination and the risk of intussusception.](#) The TGA, working in collaboration with state health authorities, has completed an investigation into the association between the use of the rotavirus vaccines rotarix (GSK) and rotateq (Merck/CSL) and the occurrence of a rare form of bowel obstruction known as intussusception (IS).

27 August 2013 - [Blue Stinger capsules.](#) Blue Stinger capsules pose a serious risk to your health and should not be taken.

27 August 2013 - [Advisory committee on prescription medicines \(ACPM\) meeting statement, Meeting 293, 21 August 2013.](#)

27 August 2013 - [ACPM meeting statement, meeting 292, 1-2 August 2013.](#)

27 August 2013 - [Contacts for state/territory drugs & poisons units.](#)

26 August 2013 - [OtisMed ShapeMatch cutting guides - instrument used in knee replacement operations.](#) It has been identified that some steps were not adequately described in the instrument's surgical instructions.

26 August 2013 - [Paracetamol: changes to pack size.](#) The maximum paracetamol pack size to be sold in Australian retailers other than in pharmacies is going to change from twenty-five to twenty and will be fully implemented by 1 September 2013.

23 August 2013 - [List of evaluated registered complementary medicines](#) The list of evaluated registered complementary medicines was updated to include Elevit.

## Australian Institute of Health & Welfare

29 August 2013 - [Scoping reportable measures for the national framework for protecting Australia's children 2009-2020: supporting outcome 1.](#)

28 August 2013 - [Alcohol and other drug treatment services in Australia 2011–12. Media release.](#)

## Australian Commission on Safety and Quality in Health Care

26 August 2013 - [Issue 141.](#)

## Australia. Private Health Insurance Administration Council

26 August 2013 - [Statistical trends in membership and benefits data tables.](#)

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

28 August 2013 - [Government and industry join together to listen to local business concerns, Katy Gallagher, MLA.](#)

28 August 2013 - [Healthy Canberra grants provide 2.1million reasons to reduce obesity rates, Katy Gallagher, MLA.](#)

26 August 2013 - [The Canberra hospital to benefit from \\$84,000 donation, Katy Gallagher, MLA.](#)

26 August 2013 - [\\$26 million teaching centre to open in 2014, Katy Gallagher, MLA.](#)

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

#### Media Releases

28 August 2013 - [Helping homeless youth cook for as little as four dollars a meal.](#)

28 August 2013 - [Measles warning issued for passengers on Brisbane to Sydney flight.](#)

#### Policy Directives & Guidelines

28 August 2013 - [NSW needle and syringe program guideline 2013 GL2013\\_007.](#)

27 August 2013 - [Employment checks - criminal record checks and working with children checks.](#)

21 August 2013 - [Management of haemophilia and related bleeding disorders.](#)

20 August 2013 - [NSW hospital in the home \(HITH\) guideline GL2013\\_006.](#)

19 August 2013 - [Oral health: post-operative care for dental extractions.](#)

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

[Robyn Lambley - twenty years of strong women program.](#) A territory-developed program that provides culturally focused health care to Aboriginal women and their babies has turned 20, with a special ceremony marking the occasion at Parliament House this evening.

[Robyn Lambley - Darwin paramedic takes out top gong.](#) The 2013 NT paramedic of the year has been named during a ceremony at Parliament House this evening.

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

28 August 2013 - [Springborg defends Townsville hospital and health service \(HHS\) from more "meataxe attacks" by "Dr Death."](#)

26 August 2013 - [Mobile base for Indigenous health launched in Gladstone.](#)

23 August 2013 - [Cairns Hospital construction works peak in July.](#)

23 August 2013 - [New Gold Coast University Hospital opening one step closer!](#)

23 August 2013 - [Focus on wellness while at work.](#)

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

30 August 2013 - Review of health transport assistance scheme released for consultation. Health Minister Jack Snelling today published the findings of a review into the Patient Assistance Transport Scheme (PATS) for public consultation. [Read more.](#)

27 August 2013 - Safer care with launch of new electronic health system details Hon Jack Snelling MP. The first state-wide integrated electronic health record in Australia is being rolled out this week at Noarlunga hospital. [Read more.](#)

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

29 August 2013 - [Health advice on home-distilled spirits.](#)

29 August 2013 - [Elder abuse help.](#)

28 August 2013 - [Legislative amendments to protect patients and paramedics.](#)

26 August 2013 - [Graduate nurse recruitment begins.](#)

26 August 2013 - [Mersey community hospital delivering for community.](#)

26 August 2013 - [New car park for North West patients.](#)

#### Victoria. Department of Health

26 August 2013 - [Health alert on further measles cases.](#)

30 August 2013 - [Dental clinic delivers healthy smiles for Wangaratta.](#) Wangaratta residents now have access to the highest quality dental services under one roof with the opening of a new four-chair dental clinic at Wangaratta hospital.

26 August 2013 - [Bendigo hospital building works full steam ahead.](#) Premier of Victoria Denis Naphthine today joined Minister for Health David Davis and Minister for Mental Health Mary Wooldridge at the Bendigo community cabinet for a special celebration to mark the construction of Bendigo's new \$630 million hospital.

30 August 2013 - [Coalition unveils new package to tackle growing use of ice.](#) The Victorian coalition government is broadening the fight against the growing use of the methamphetamine "ice" in the community with a new package of targeted initiatives announced today by Minister for Mental Health Mary Wooldridge.

30 August 2013 - [Life-saving treatment to reduce overdose deaths.](#) A Victorian coalition government initiative will help reverse potentially fatal drug overdoses through the administration of a life-saving medication, Minister for Mental Health Mary Wooldridge announced today.

28 August 2013 - [New Frankston youth mental health hub opens.](#) The health and wellbeing of young people in Frankston and the Mornington Peninsula will benefit from the Victorian coalition government's \$4 million commitment to support the establishment and upgrade of headspace centres across the state.

#### Western Australia. Department of Health

Media Releases

22 August 2013 - [Boost for cancer and paediatric services.](#)

Publications

29 August 2013 - [Acute care certification \(Operational directives and information circulars 0450/13\).](#) This OD details revised processes for the certification of ongoing acute care for long-stay inpatients in WA public hospitals.

#### New Zealand. Ministry of Health

28 August 2013 - [Medical oncology national implementation plan 2013/14.](#)

30 August 2013 - [Cancer: new registrations and deaths 2010.](#)

#### United Kingdom. Department of Health (DH)

27 August 2013 - [DH's response to campaign on compulsory training for healthcare assistants.](#)

27 August 2013 - [Support for working carers needed to help businesses and boost the economy.](#)

26 August 2013 - [DH's invests additional £30 million into cancer treatment.](#)

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

29 August 2013 - [HHS announces first guidance implementing Supreme Court's decision on the defense of Marriage Act 1961.](#)

#### Australian Medical Association (AMA)

29 August 2013 - [Presentation of AMA Indigenous Peoples' Medical Scholarship.](#) AMA President, Dr Steve Hambleton, will next week present the AMA Indigenous Peoples' Medical Scholarship for 2013 to an Indigenous medical student from the University of Melbourne. [Read more.](#)

## British Medical Association (BMA)

- 29 August 2013 - [Private medical degrees could worsen employment prospects.](#)
- 29 August 2013 - [High volume of responses to consultation delays hospital reorganisation.](#)
- 28 August 2013 - [BMA Wales criticises football club's sponsorship deal with e-cigarette firm.](#)
- 28 August 2013 - [Charging migrants for healthcare too costly say doctors leaders.](#)
- 27 August 2013 - [General practitioners' views sought on contract changes.](#)
- 27 August 2013 - [BMA offers guidance on treating vulnerable patients.](#)
- 27 August 2013 - [Survey prompts call for tobacco plain packaging rethink.](#)

## Canadian Medical Association

- 21 August 2013 - [Physicians taking lead on appropriateness of care.](#)
- 29 August 2013 - [Physicians warned about attempt to steal email data.](#)

## American Medical Association (AMA)

- 28 August 2013 - [Organized medicine groups line up against proposed Stark law changes.](#)
- 28 August 2013 - [Study details how primary care diagnoses get delayed.](#)
- 28 August 2013 - [AMA President optimistic about a fix for Medicare's doctor payment formula.](#)
- 28 August 2013 - [Cholecystectomy, intraoperative cholangiography \(IOC\), and duct injury risk.](#)
- 28 August 2013 - [Bipartisan support is one key to getting sustainable growth rate \(SGR\) fixed, AMA president says.](#)

## 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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