Gawthrop v Bendigo Health [2026] VSC 157 - What this case means for informed consent and patient rights in Victoria

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The Supreme Court of Victoria has handed down a landmark medical negligence decision concerning a patient's right to provide free and voluntary consent. The Court found in Gawthorp v Bendigo Health [2026] VSC 157, that the defendant hospital was liable in battery and negligence after a vaginal examination was performed without the patient's free and voluntary consent.

In Australia a patient must give informed consent before undergoing any medical treatment. This is a fundamental legal principle.

For consent to be valid it must be:

- Given freely and voluntarily
- Based on sufficient information about the risks and alternatives
- Provided by a person with legal capacity to decide

If consent is not properly obtained, a healthcare provider may be liable for negligence or even trespass to that person.

Gawthrop v Bendigo Health – Case summary

In the case of Gawthrop v Bendigo Health [2026] VSC 157 the plaintiff, for the management of her pregnancy, applied to join the Mamta midwifery program at Bendigo Health. She was accepted into the program and consequently wrote a birth plan, which addressed a number of topics, including vaginal examinations (VE).

Importantly, her birth plan clearly stated that she declined vaginal examinations unless there was an urgent medical reason and only with her informed consent:

“I DECLINE ALL vaginal examinations unless there is an urgent medical reason to do so. Informed verbal consent MUST be given from myself prior. If an urgent medical reason indicates an examination, I DO NOT wish to be informed of my dilation.”

The Court also found that in the period leading up to 17 November 2020, the plaintiff had been reassured, both through direct statements and by the absence of any warning to the contrary, that her birth plan would be respected. In particular, she reasonably understood that a vaginal examination would not be performed unless there was an urgent medical reason.

Although the plaintiff was aware that Mamta midwives worked on a roster, neither she nor her husband were informed, or ought reasonably to have known, that an “after-hours” requirement might be imposed. This included a requirement to undergo a vaginal examination before she could be admitted to hospital, receive pain relief, or have her preferred midwife called.

When she went into labour on 17 November 2020, she attended the hospital with her husband. Her regular Mamta midwife was unavailable, and she was treated by a hospital midwife instead.

During her admission, the plaintiff:

- consented to some aspects of care;
- refused a vaginal examination;
- declined other procedures such as CTG monitoring and an AmniSure test.

Following this, the defendant asked her to undergo a VE to determine whether she was in active labor. When the plaintiff declined, the defendant advised that the Mamta midwife could not be called without the plaintiff undergoing a VE. The defendant did not identify an urgent medical reason for the requested VE.

In the hour and half that followed this conversation, the defendant repeatedly checked in with the plaintiff as to whether she was ‘ready to’ or would ‘now’ undergo the VE. At no point, during these exchanges was an urgent medical reason identified. The defendant indicated that the plaintiff was required to undergo a VE so that:

- The MAMTA midwife might be called
- The plaintiff might have a bath
- The plaintiff could be administered pain medication for her back pain; and
- The plaintiff could be admitted to hospital

Over a period of time, while her contractions intensified and her pain increased, the midwife continued to ask whether she would now agree to the examination.

The plaintiff's husband spoke to the defendant and said; "You're not going to call our Mamta midwife, you're not going to admit us to the ward, ... and you're not going to provide any pain relief unless…the plaintiff has a VE." To which the defendant responded; "Yes, that's correct."

Eventually, after being told that she would not be admitted or receive pain relief without the VE, the plaintiff agreed however, she was crying and made a final plea to avoid the VE.

Issue of consent

The Court accepted that the plaintiff was placed in a vulnerable position and subjected to significant pressure. Her agreement was not a free and independent decision, but rather a response to the circumstances created by the hospital staff.

The court considered the distinction in which a person freely and independently appreciates and accepts what is to occur and the situation in which a person is vulnerable and subject to 'over much pressure' resulting in non-consenting mere submission [489].

Importantly the court found that;

- no urgent medical reason was identified for the examination;
- the plaintiff's clearly expressed wishes were not respected;
- she was effectively given an ultimatum linking treatment to consent.

Failure to follow hospital policy

The Court also considered whether the defendants own informed consent policy, which required that:

1. The consent be given voluntarily
2. The health professional…must not exert pressure on the patient; and
3. A genuine choice must be offered

The Court found that these standards were not met. It also noted that, had proper processes been followed:

- the plaintiff could have continued to labour without the examination;
- her Mamta midwife may have been contacted;
  pain relief could have been provided without requiring the examination.

Harm to the plaintiff

As a result of the VE, the plaintiff suffered ongoing and subsisting trauma associated with it. She would experience triggering anxiety, heart palpitations, shaking and daily flashbacks. Her relationship with her husband was impacted as well. The plaintiff was assessed as having a 10% psychiatric impairment as a consequence of her experience.

Ultimately, the court awarded the plaintiff total damages of $280,000 as she was coerced into having a VE during labour. It was found that the midwife at the defendant's hospital refused to admit the plaintiff or allow her to receive nitrous oxide to relieve her back pain, until she consented to a VE. The court found that the plaintiff relented after being advised by the hospital staff that her usual midwife would not be conducted until a VE was done.

What does this mean for medical negligence claims in Victoria and Australia?

While this decision was handed down in Victoria, the consent principles it affirms reflect broader Australian common law and are relevant to patients nationwide. The ruling of Gawthrop v Bendigo Health reaffirms that general consent to labour is not enough. For any genital or similarly invasive examination, specific consent is required – it must be explained why it is being recommended now, what information it is expected to add, how it may change medical treatment, what the alternatives are and what the consequences of declining the examination will be. In Gawthrop, the court was particularly concerned given that the plaintiff's initial refusal and distress were overridden rather than invited to a discussion.

Additionally, the court's ruling demonstrated that birth plans should be treated as clinically and legally important documents. In this particular case, negligence was also found because the plaintiff was antenatally reassured that avoiding vaginal examination was achievable, yet was not warned that out-of-hours practice might still make vaginal examination a de facto prerequisite to admission, analgesia, or calling her continuity midwife.

A failure to obtain proper consent can form the basis of a medical negligence claim and give rise to both negligence and trespass to person (battery).

In Victoria, a plaintiff would generally need to show:

- A duty of care was owed
- The duty was breached
- The breach cased injury, loss or damage

Gawthrop v Bendigo Health is a timely and important reminder that patients have the right to make informed decisions about their treatment without pressure or coercion.

How Long Do You Have to Make a Medical Negligence Claim in Victoria?

In Victoria, you generally have three years from the date you became aware of your injury to commence a medical negligence claim, under the Limitation of Actions Act 1958 (Vic). Given that psychological injuries - like those suffered in Gawthrop v Bendigo Health - can take time to fully manifest or be diagnosed, it is important to seek advice from a medical negligence lawyer in Victoria as early as possible to protect your right to claim.

Speak to a Medical Negligence Lawyer in Melbourne Today

You may have a potential medical negligence claim if:

- You felt pressure into agreeing to treatment
- You were told you would not receive care unless you consented
- You expressed wishes or treatment preferences were ignored
- You did not feel you had a real choice at the time

If you believe your consent was not properly obtained, or you were pressured into medical treatment, it is important to seek legal advice. At Guardian Injury Law, we can help you understand your rights and whether you may have a claim. Contact us today for a free initial consultation.
