

DOCTORS AND THE LAW

By Gilbert Sharpe & Glenn Sawyer

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Doctors and the Law, by Gilbert Sharpe and Glenn Sawyer, is not destined to rank among the top legal textbooks of this or any other era — but that is neither its intention nor its purpose. The object of the book is simply to explain the relevant law pertaining to practicing doctors in a concise and readable fashion. This has been done admirably. The book is the result of the collaboration of a doctor and a lawyer. The quality of the finished product is a good indication that the two professions actually *can* work together.

Doctors and the Law begins by outlining the historical development of the medical profession in Canada, including its “marriage” with the law. This background provides a useful framework for studying the topic at hand. The authors complete the framework by defining and giving examples of essential elements of tort law — especially negligence — in an easily understandable fashion. The definitions are not overly theoretical and they provide a practical “bird’s eye” view of the law in this area.

The next few Chapters discuss some aspects of tort law in greater detail. This discussion includes such topics as the standard of care owed to a patient, the requirements of consent and how these requirements can change according to the circumstances of a case (*e.g.*, minors, mental incompetents, emergencies, experimentation), and the liability of medical institutions for the negligent acts of their employees or for the negligent acts of doctors, nurses and other professionals working on the premises.

There is also a good overview of North American and European “Good Samaritan” laws. The authors come out strongly in favor of a “positive” statute (*i.e. requiring* action by a potential rescuer) tempered with a “negative” element (*i.e. reducing* the standard of care owed by a rescuer to a bare minimum, *e.g.*, gross negligence).

Several Chapters are devoted to the topic of medical records, including their contents and the ramifications of revealing the contents without the consent of the patient. The sensitive problems of revealing or failing to reveal such information while under a Court Order to do so are well canvassed. These same difficulties become even more sensitive when mental health patients are involved. The very real concerns of doctors practicing in this area, especially with regard to their legal liabilities, are also well handled. Finally, there is a call for legislation regarding the release of such records in order to clarify the duties and liabilities of those involved. Chapter 16 also includes a “Summary of Provincial Commitment Procedures” and a short discussion of Great Britain’s position.

Next, the law pertaining to organ transplants is discussed. This includes the issues relating to specific types of donors (*e.g.* live donors, retarded donors, coerced donors, etc.), along with concurrent issues such as minors and experimentation. Chapter 17 also incorporates a discussion of the legal aspects of “death,” including its definition. The problems of euthanasia,

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criminal and civil liability for withholding treatment, and respect for the patient's right to die with dignity are fully brought to the forefront by an intelligent and sensitive coverage by the authors. This Chapter also goes on to deal with the legal aspects of artificial insemination.

In the final Chapters, the authors discuss the pros and cons of alternatives to expensive and time-consuming malpractice suits and, as well, the necessity of cultivating a spirit of co-operation between the legal and medical professions. With regard to the latter, the authors advocate increased inter-disciplinary co-operation at the *university* level to facilitate greater co-operation later on. They cite with approval a 1973 Ontario experiment along these lines which apparently was considered by many to be highly successful.

Included in the book are nine Appendices, the most notable of which are:

- A — Comparative Chart of Provincial Legislation
Affecting Canadian Physicians
- D — Abortion
- H — Canadian Health Law Cases Since 1900
- and I — Recommended Material for Further Reading

In short, the book is intended to be an aid to both lawyers involved in medical suits and doctors involved in legal suits. It will very likely succeed in both these regards, although its only major drawback — a complete lack of case citations by way of footnotes — will make it somewhat less useful to a practicing lawyer than a *bona fide* legal text.