

***Doctors and the Law*, Gilbert Sharpe and Glen Sawyer, Toronto: Butterworths, 1978. Pp. viii, 448. \$25.95 (cloth).**

Canadian physicians have been subjected to ever increasing legislative and judicial regulation during the past decade. Although less than two percent of Canadian doctors are sued annually, malpractice actions have more than doubled since the early seventies. Ostensibly in response to the impending importation of the 'American experience', Canadian medico-legal treatises have recently proliferated, each new offering touted as a 'concise manual' or 'handbook' of medical jurisprudence. *Doctors and the Law* is no exception. Fortunately, for physicians and publishers, the Canadian Medical Protective Association successfully defends a large proportion of malpractice actions against Canadian doctors and so the imputed utility of volumes professing to "enable a doctor to understand and cope with his legal responsibilities by himself — instead of consulting a lawyer for every little query. . ."¹ need not be tested.

Doctors and the Law does have merit. The realistic objective presented by Sharpe and Sawyer accurately reflect their comprehension of the reality of the subject matter and of the difficulties associated with "the sorting out of the complex legal responses and restrictions on medical practice."² The authors hope to provide an overview that will inform physicians and related health care professionals of the scope and relative importance of this peripheral but essential aspect of medical practice in contemporary society. In this endeavour they succeed admirably with certain small but not insignificant exceptions.

Sharpe and Sawyer must be commended for producing a book that reflects not so much their individual interests as the needs of their physician readers. The topical emphasis of the work is directed by the results of a questionnaire, reproduced in Appendix B distributed to Ontario physicians in 1971. This survey emerges in the text, a recurrent thread accentuating identified areas of misunderstanding. Although the survey was regionally limited and is now dated, this approach should not diminish the value of the book elsewhere in Canada. The most laudable aspect of the work, however, resides, whether by design or chance, in the last chapter — Medico-Legal Education. Here the much needed perspective required to make the preceding chapters unitarily meaningful emerges from the discussion of the fundamental differences underlying medicine and law — physician and lawyer. The authors forcefully argue that the solution to interdisciplinary tension and conflict lies in collaborative university level interprofessional education. Unfortunately, the mutually interdependent developmental exposition of

¹*Doctors and the Law*, Butterworths, pre-publication pamphlet.

²Sharpe and Sawyer, at v.

the law related to medicine and the medicine related to law applauded by the authors must await their next effort. However, the zealous description of the first attempts to implement their proposals leaves the reader lamenting the fragmented historical approach adopted in the previous chapters.

Each of the nineteen chapters of *Doctors and the Law* contains a self supporting discussion of the relevant legal concepts pertaining to some aspect of medical practice. Chapter 1 and 2 present, respectively, a micro history of the gradual imposition of legal controls on medical practice and an introduction to legal terminology sufficient to familiarize the lay reader with the necessary legal jargon in ensuing chapters. References to physicians having to establish their "innocence"³ rather than having to rebut the assertion of negligence may offend the lawyer but generally the conciseness and clarity with which the conceptual basis of torts law is developed, in only four pages, must be commended. The quest for a comfortable narrative style in these chapters and indeed throughout the remainder of the book is achieved but occasionally only at the expense of legal conceptual preciseness.

The next three chapters address the standard of care required of a medical practitioner, consent to medical treatment and the physician as good samaritan. These topics occupy twenty percent of the text and the depth of discussion is sufficient to provide an understanding of the requisite concepts. A framework of statute and case law supports the discussion and the appropriate and amusing illustrations provide useful graphic reinforcement. However, few of the cases discussed are cited in the text and reference to Appendix H: "Canadian Health Law Cases Since 1900" provides little assistance in identifying the citation corresponding to a described fact situation.

The relationship between the physician and the hospital is considered in Chapters 6 and 7. The areas of hospital liability for the physician's conduct and medical staff privilege are comprehensively summarized within the scope of the stated objectives. Here the applicable law emerges from a well executed analytical discussion of cited cases and those aspects of public policy that have influenced decisions in these areas are explored.

Chapters 8 through 10 relate to the legal responsibilities of the physician for confidential information gathered in the course of practice, the necessity of maintaining adequate medical record systems and the preparation of medico-legal reports. The ever present conflict between ethical and legal duty is presented and a line of cases including *Dembie v. Dembie*⁴ and *G. v. G.*⁵ is marshalled in support of the conclusion that

³*Ibid.*, at 12.

⁴(1976), 21 R.F.L. 46 (Ont. H.C.).

⁵[1964] 1 O.R. 361 (Ont. H.C.).

a discretionary privilege may evolve in Canada at common law. The argument is far from complete, however, as *R. v. Wray*,⁶ the strongest adversary of this position and *Slavutych v. Baker et. al.*,⁷ the strongest ally are not considered even though judicial acceptance of Wigmore's criteria is posited.⁸ The practical aspects of medical records, format and content, as well as the objectives of adequate medico-legal reports, clarity and utility, provide insight into the importance of good clerical practices so essential to minimizing legal difficulties in medical practice.

At the mid-point of the book the physician is introduced to the adversarial process. Briefly Chapter 11 discusses the physician as a witness and Chapter 12 considers in more detail alternative methods for the presentation of medical evidence related to the standard of care. Buried in the latter chapter, the doctrine of *Res Ipsa Loquitur* is explained in sufficient detail to command the attention of the midnight reader and this is followed by a brief description of malpractice in relation to breach of contract. However, Chapter 13 quickly calms with its enumeration of the limitation periods affecting physicians and Chapter 14, a discussion of the Code of Ethics and peer review, enters familiar ground once more. Licensing and regulation of the medical profession follow in Chapter 15.

The major thrust of the later chapters of the book is found in Chapter 16, Law and Psychiatry and Chapter 17, Experiments, Transplants and Death, which together comprise one quarter of the text. The discussion is broad, comprehensive and detailed. The policies, issues and procedures which intertwine psychiatry and the law are clearly identified. Experiments, Transplants and Death addresses the frontiers of law and medicine, clearly demonstrating the difficulties that ensue when advances in medical technology require judicial distinction of increasingly similar 'shades of grey'. The dearth of Canadian cases concerning transplants and the associated issue of donor death justifies the extensive consideration of American case law, but the discussion of Federal and Provincial statutes provides sufficient Canadian content to demonstrate the relevance of these cases. The brief but fascinating glimpse of the future found at the end of this chapter emphasises again the elementary divergence of legal and medical responses to the needs of society. The book concludes anticlimactically with a discussion of alternate mechanisms for resolving malpractice claims and the final chapter, Medico-Legal Education brings to a close the narrative portion of the text.

Appendices occupy the remaining forty percent of the total pagination and provide information on a wide variety of topics. Notably

⁶[1971] S.C.R. 272.

⁷[1976] 1 S.C.R. 254.

⁸*Supra*, footnote 2 at 106.

absent from Appendix A, Comparative Chart of Provincial Legislation Affecting Canadian Physicians, are the appropriate New Brunswick statutes which, contrary to the authors' assertions, do exist. Similarly, Appendix I, Recommended Materials for Future Reading, omits reference to the Canadian journal, *Legal Medical Quarterly*, apparently favouring the American equivalent.

Doctors and the Law is pleasantly readable. The publishers usual high technical standards of form, orthography and consistency of style are maintained. Physicians, lawyers, hospital administrators, interns and students at law will find this volume a valuable primer.

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***Introduction to the Study of Law*, S. M. Waddams, Toronto: Carswell Co. Ltd., 1979. Pp. xv, 270. \$16.25 (cloth), \$7.95 (paperback).**

Waddams commences his Preface by stating:

This little book is written for students beginning or seriously contemplating the study of law in the common law provinces of Canada. It is neither a textbook nor a scholarly treatise. Its aim is to bring home to the reader some of the ideas about law that must be grasped by the student. It is not a book on the Canadian legal system, as such, but it attempts to give the reader enough knowledge about the structure of the legal system in Canada and enough of the ideas of law that are common currency in the professional and academic legal world to enable the student to approach his studies with greater knowledge and, it is hoped, enjoyment than he might otherwise have. For a student who is considering, but has not yet embarked on, a course of legal studies, it is hoped that the book will impart some ideas worth thinking about and something of the flavour of the law.¹

In examining this book I find the author's statement to be a frank and honest appraisal of his work. When he refers to "this little book",² he must surely confine his remark to its physical size, for it is ideal for carrying in one's suit coat pocket or purse for reading in a leisure moment, e.g. in a car pool or on public transit.

¹Waddams, at vii.

²11 x 18 cm.