

BOOK REVIEW

Medical Law in New Zealand

Skegg and Paterson (Eds.)
Manning, Dawson, Peart and Brookbanks

CLAIRE ALLEN

Medical Law in New Zealand, published by Brookers late in 2006, covers the many developments since the introduction of the Health and Disability Commissioner Act 1994 and the corresponding Code of Patients' Rights. This is the first substantial New Zealand text on Medical Law since David Collins' book published in 1992.

There is clearly a wealth of knowledge amongst the authors. By having six authors, each has been able to write on their specialist topics within medical law, ensuring that all topics in the book contain thorough and knowledgeable commentary. The General Editors are Peter Skegg, Professor of Law at the University of Otago, and Ron Paterson, the current Health and Disability Commissioner. Other authors are Joanna Manning, Associate Professor of Law at the University of Auckland, John Dawson and Nicola Peart, both Professors of Law at the University of Otago, and Warren Brookbanks, Professor of Law at the University of Auckland.

This text is a solid 857 pages. It is divided into eight parts covering: an introduction (Paterson and Skegg); the standard of care (Manning); consent (Skegg); health information (Dawson); mental health and intellectual disability (Brookbanks); the beginning of life (Peart); the end of life (Skegg); and complaints, investigations and compensation (Paterson and Manning). There are 25 chapters in all, and the Code of Patients' Rights is included as an appendix.

As with similar Brookers texts, the layout of *Medical Law in New Zealand* is clear and easy to follow. When browsing a particular topic the various elements covered are neatly set out on the first page of each chapter. The only criticism with respect to layout is that the third level headings do not jump off the page as they are only distinguished with a slightly larger font rather than with a perhaps more noticeable bolding or underlining. Each sub-section is concise and to the point, enabling the reader to quickly find an answer to a specific issue they may be interested in.

Chapter two deals with the Code of Patients' Rights. This includes a discussion of the key expressions used in the Code and their meaning, along with a blow by blow account of most of the rights and what they stand for. There is, however, little discussion of clause 3 of the Code which allows for a provider not to be in breach of the Code if they have "taken

reasonable actions in the circumstances.” Further discussion on what may amount to “reasonable actions” could be beneficial at this point. It would also be helpful if the index referred to specific rights in the “Table of Statutes and Regulations”, found at the back of the book, rather than simply to clause 2 of the Code of Rights which is the clause under which all ten rights are to be found.

Other chapters cover the required standard of care for treatment and determining when there has been a breach of this standard. The consent section of the book addresses the need for consent in relation to criminal, tortious, Code and disciplinary liability. The limits to consent and the capacity of adults and minors to consent are examined along with the duty to inform and the requirements of a legally effective consent. A further chapter looks into justifications for treatment without consent. The health information section discusses confidentiality and privacy in terms of legislation, ethics and the common law and when there can be disclosure of patient information in legal proceedings. The section on mental health and intellectual disability closely guides the reader through the steps involved in the committal process of a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992. The subsequent chapter canvasses the law on special patients and compulsory care, including options for dealing with intellectually disabled and mentally disordered criminal offenders.

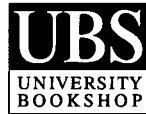
Alternative means of reproduction, the legal status of life before birth and prevention and termination of life before birth are all examined in the beginning of life section. The end of life section covers the legality of medical acts hastening death in terms of active euthanasia, actions to relieve pain which may incidentally hasten death and the omission of life-prolonging actions. The lack of a statutory definition of ‘death’ and what ‘death’ actually means in New Zealand law is then examined, as is the use of corpses for medical purposes. The final part of *Medical Law in New Zealand* looks into complaints, investigations and compensation. This includes a guide on how the investigation of a complaint is carried out and the Health and Disability Commissioner’s options in dealing with a complaint. Fittingly, this section is written by the current Commissioner, Ron Paterson. Professional discipline of health practitioners is discussed. The final two chapters are committed to an examination and discussion of Accident Care and Compensation (ACC) legislation.

One substantial omission from this first edition, which is acknowledged in the preface, is commentary on the rationing of health care. This is no doubt going to continue to be an area of interest and litigation in a society which has an increasingly consumerist focus and more demanding health care patients. This topic is an essential element for any future edition.

The barring of civil proceedings in personal injury cases due to ACC is relegated to the final chapter of the book. Given that the topic is

widely covered in general tort books and is often not the focus of a paper in medical or health care law, this may be appropriate. However, should this book be picked up for consultation by a lawyer from any other jurisdiction they may find this somewhat bemusing.

While there are six different authors who penned this book, this is only noticeable in their depth of knowledge. It is not apparent when you have stopped reading one author and begun on the chapter of another. The book is well gelled together as a whole, creating a comprehensive insight and practical guide into many of the issues arising in medical law in New Zealand today.



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