

# Book Review

DePaul College of Law

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

---

## Recommended Citation

DePaul College of Law, *Book Review*, 21 DePaul L. Rev. 263 (1971)

Available at: <https://via.library.depaul.edu/law-review/vol21/iss1/17>

This Book Reviews is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact [wsulliv6@depaul.edu](mailto:wsulliv6@depaul.edu), [c.mcclure@depaul.edu](mailto:c.mcclure@depaul.edu).

## BOOK REVIEW

*Medical Jurisprudence.* BY JON R. WALTZ AND FRED E. INBAU. New York: Macmillan Co. 1971. Pp. 398.

In the preface to their book, the authors state that the book was "written primarily for the practitioner and the student of medicine, to answer their most significant and basic questions about the law and its workings."<sup>1</sup> Because the authors have directed their book specifically to the medical practitioner, this review is written by a medical practitioner and from his standpoint. In judging this book from the position of the medical practitioner two basic questions are asked. First, does the book answer in a clear and intelligent way the prominent questions and frequent problems that face the practitioner in his everyday professional life; and secondly, does the book call to light to the practitioner the problems of which he should be aware in regard to the medical-legal aspects of his practice.

As the authors cite and as every practitioner knows, the incidents of claims for malpractice and suits alleging malpractice are on the increase. The practitioner although aware of this increase, is often unaware of his actual legal responsibilities and duties. These legal responsibilities and duties are clearly stated by the authors: "The broad and flexible common law rule laid down by the courts is this: a physician has the obligation to his patient to possess and employ such reasonable skill and care as are commonly had and exercised by reputable, average physicians in the same general system or school of practice in the same or similar localities."<sup>2</sup> This statement by the authors, although general, is asserted as the basis of the common law duty of the physician. In this short book it is obviously impossible for the authors to delve extensively into areas of special problems. In explaining the duty of the physician, the authors clearly state that the duty of the physician is to exercise reasonable skill as that of other physicians in his community. Thus, the doctor is made aware that he must maintain at least the same familiarity with changing medical practice as his brothers do; however, the authors also point out that in areas where specialization is called for, a physician very well may have a duty to refer a patient to a specialist or be held, if he fails to so refer, to the same standard of care and knowledge as that of the expert.

Mr. Waltz and Mr. Inbau in reviewing certain areas that all physicians come in contact with, have resolved problems that are in the minds of many, many physicians. These problems arise out of the following situations: (1) The doctor's responsibility for others working with him or under him; (2) the doctor's responsibility to continue treatment or advise of

---

1. *Preface* to WALTZ & INBAU, *MEDICAL JURISPRUDENCE VII* (1971).

2. *Supra* note 1, at 42.

future treatment when it is called for; (3) the doctor's duty before undertaking certain treatment, particularly surgical treatment, to inform the patient of the risk involved; and (4) the responsibility of a doctor for volunteering his services in an emergency situation.

In discussing the first situation, *i.e.*, the liability of the doctor for others working under or with him, doctors have generally been aware of the fact that nurses directly employed by them, if negligent, would make the doctor liable; however, the book points out that a doctor, even while operating in a hospital can be held liable for the acts of hospital nurses or other physicians such as anesthesiologists, in certain given circumstances, *e.g.*, the doctor is in charge of a particular operation. This knowledge certainly should encourage all doctors to supervise persons not only working under them but along side of them as well, knowing full well that their mistakes may be attributed to the doctor himself.

In regard to the second point, most physicians are aware of the fact that they cannot abandon a patient in midcourse and expect not to be held liable for illnesses or difficulties that develop directly from this abandonment. However, the authors clearly point out that a physician although not abandoning a patient must, when seeing him at a time when other treatment is not contemplated, inform him of certain conditions which may arise which would demand his return to the physician or another physician. Thus, the physician must exercise his full duty of reasonableness and reasonable care to the extent that he must explain to the patient future difficulties which may occur in certain situations and which will require future medical care.

Their third point, informed consent, is a problem faced by both general practitioners, who are referring surgical matters, and general surgeons. Under today's law the surgeon and the referring doctor must clearly explain the risks and alternatives involved in a particular treatment or surgery and failing to do so they may be subjected to legal liability. The authors point out that the extent of information one must supply to the patient necessarily depends on the particular situation, but, in general, it should be a full and complete disclosure of the risks involved.

In discussing the fourth point namely, when a physician is liable for volunteering his services, the authors point out that even in states with good samaritan laws there is no more protection granted the physician than there is under the common law. Physicians dealing in states not having good samaritan acts should not feel that they are less protected, for the common law merely demands that in an emergency situation they act as reasonable physicians—more specifically, not the highest degree of care is required but merely reasonable care under the immediate situation. Thus, a physician need not fear to volunteer his services in an emergency even though he is practicing in a state that has not enacted a good samaritan law for, as the authors point out, there is adequate protection under the common law.

In their book the authors also deal with the particular responsibilities and duties of a physician with regard to the examination of a person at the time of death, particular criminal situations, rules governing a psycho-

therapist and his patient, rules governing autopsies and related procedures and rules governing certain types of experimental or new types of therapy or procedures. This discussion, of course, is of interest mainly to those physicians dealing in those limited fields. It is concise and well done, despite its limited application.

When one judges this work, keeping in mind its brevity and clarity with which it is written, one concludes that it does in fact answer quite understandably the questions that are in many practitioners minds today concerning medical-legal jurisprudence and particularly malpractice. Judged from the viewpoint of whether or not the authors point out certain problems of which physicians are commonly unaware, this work may be considered quite successful, particularly in the areas of emergency volunteer work, informed consent, and continuing care. Also of increasing interest to the physician is a chapter dealing with malpractice insurance, and of particular note to the physician is the case of *Orange v. The Medical Protective Company*,<sup>3</sup> which held that a doctor has a legal cause of action against an insurance company if it cancels his policy merely because he has testified in a malpractice case against another physician. The advent of this case certainly should put to rest certain fears among doctors when they feel morally obliged to testify in a malpractice case on behalf of the plaintiff in the action.

In conclusion it should be readily apparent that Messrs. Waltz and Inbau should be congratulated on this worthwhile contribution to an exceedingly complex field. While it is not a treatise on the subject or even intended to be, it goes far in offering penetrating and incisive answers to both physician and attorney.

DR. EUGENE F. LUTTERBECK\*

---

3. 394 F.2d 57 (6th Cir. 1968).

\* M.D., Chicago, Illinois.