

Researching Medical Law and Malpractice : Some Practical Hints

Dianne Thompson

Librarian, Legal Services Commission of South Australia

Researching in the medical arena can be challenging and frustrating! Unfamiliar terminology, variations in English and American spellings, and the fact that a large proportion of matters are settled out of court are just some of the problems facing researchers. Add to these the fact that until recently most of the reported case law was American, and you are often guaranteed an interesting journey in search of the proverbial needle in a haystack! But it's not all bad news - there are now available a number of good resources to assist! Please note that my list of materials is nowhere near comprehensive, but merely some items I have found helpful over the years

The specific nature of your request for information will determine the best resources to consult. Australian books which may be of use include *Public health law in Australia* by Christopher Reynolds (Federation Press, 1995) and *Health law: commentary and materials* by Peter MacFarlane (Federation Press, 1993). CCH's looseleaf Australian health and medical law reporter contains legislation, commentary and case references on a wide range of topics from patient's rights and medical ethics, to clinical practice and public health services. The Australian product liability reporter often reports on significant cases and issues in the medical sphere such as passive smoking and asbestosis.

English books which contain useful references to medical case law on a variety of subjects include *Kennedy & Grubb's Medical law: text with materials*, 2nd ed (Butterworths, 1994), *Medical negligence* by Powers and Harris (Butterworths, 1990) and Nelson-Jones and Burton's *Medical negligence case law*, 2nd ed (Butterworths, 1995).

Of more limited use are *Medical negligence: a plaintiff's guide* by Charles Lewis (Frank Cass, 1988) and *Medical negligence litigation: medical assessment of claims* by Arnold Mann (Legal Books, 1989). Most of the 443 cases outlined in Mann's text have been derived from the UK Medical Defence Union's annual reports and include actions which were ultimately settled and claims which were struck out.

The publication of Butterworths Medico-Legal Reports has made medical negligence cases more accessible, but it must be kept in mind that the reports contain much material specific to the UK such as National Health Service cases. Access to these reports in some jurisdictions may be difficult, eg in South Australia only one law library subscribes to the series.

In many situations reference to US (or Canadian) resources is essential, particularly when researching matters such as breast implants or IUD actions which originated in the United States. There is a plethora of American publications on medical malpractice, and what you use will depend upon what resources are available in your library or local area.

I find the *Medical malpractice* series of books published by McGraw-Hill useful, as these cover specialist areas of practice such as obstetrics, orthopedics, dentistry, plastic surgery, urology, psychiatry, pharmacy and general surgery. Numerous references to US cases are provided in appendices at the end of each chapter in these works, however they are now a little dated, so hopefully new editions will appear soon.

Journal articles are often good sources of information on recent developments in medical law and also provide reviews of case law in particular areas. Two periodicals I refer to frequently are *Professional negligence* and *The journal of law and medicine*, but there are many others too numerous to name. Keep track of these through Australian Current Law, ALLI, SCALE, Index to Legal Periodicals or AUSTROM.

Do not overlook the importance of newspapers when researching this area of law. As previously mentioned, many cases are settled before they go to trial, and important matters always get a mention in the press. Whether you access newspaper clippings via databases such as PRESSCOM or through in-house or commercial clippings services or some other means will depend on what is available in your jurisdiction.

Using the Internet to locate medical information can be a blessing or a curse, and your degree of success will vary upon your specific request. The number of sites containing medical materials is too large to elaborate on in this article. Numerous CD-ROM services are also available and Ann Fricker's article in this ALL describes some of these in detail. Her survey of medical resources is also a good starting point for finding general background information which solicitors need when investigating the validity of medical negligence claims.

I hope this brief guide to some of the practicalities of researching medical negligence law has been of interest.