

Law and Medical Practice: Rights, Duties, Claims and Defences**By Loane Skene****Butterworths, 1998, ppccc, \$54.00 (pbk)**

Loane Skene is a member of the Victorian Bar, a solicitor, and also the Associate Professor and Director of Studies of Health and Medical Law at the University of Melbourne Law School. She contributed to the Victorian Law Reform Commissioner's report on *Informed Decisions and Medical Procedures*, as well as having written numerous other journal articles regarding the relationship of law to medicine and vice-versa.

The author cites an increased level of public scrutiny of the doctor/patient relationship as the key reason for her latest text, *Law and Medical Practice: Rights, Claims and Duties*. This text is the unofficial sequel to her previous book, *You, Your Doctor and the Law*,³ a type of 'self-help' guide for patients. It set out to inform patients as to what they should expect from their medical practitioner when receiving treatment. In contrast, the format of *Law and Medical Practice* is that of a textbook. It purports to canvass the legislation and common law relating to doctors and their duties. The text does not cover areas of health care such as hospitals or the relationship between general practitioners and specialists or nurses. The deliberately narrow focus considers only the provision of medical treatment by doctors to their patients. Consequently, those most likely to be interested in reading *Law and Medical Practice* are doctors, patients, and students of either law or medicine.

The book seeks to allay some of the concerns of the medical community. Skene states that although patients' rights to better information are increasingly recognised, a vast proportion of the medical community is concerned about their work becoming the subject of a lawsuit. The format of the textbook is thus quite simple. Each chapter (following the introductory three chapters) contains coverage of a specific area of the law. The legal issue is introduced, such as the Law of Negligence, with some background information. This is followed by a thorough discussion of the legal duties imposed upon the practitioner. Skene then outlines the claims that may be made against the doctor, including the elements of the law that must be shown. Possible defences to the action are put forth, and in some instances, Skene discusses the likelihood of the claimants' success. A most interesting aspect of the book is the discussion about possible lines of argument that may be raised in the future. Skene highlights areas of legislation that have yet to be tested and where legal principle may go.

3 Oxford University Press, Melbourne, 1990.

The textbook is therefore very useful for student's preparing an essay answer, or non-legal people interested in how the law may develop.

The first chapter of the book is dedicated to putting forth reasons why there has been such proliferation of law in this area. Skene cites reasons such as scientific developments in the law, coupled with ethical debate. The increase is also attributed to the way in which modern medicine operates. There is a tendency to use specialists more often who may not know the patients' full medical history as the family doctor might once have. In summary, Skene highlights the changes in society. The chapter contains many references to sources such as The World Health Organisation's initiative, *Health for All by the Year 2000*. However, in discussing most possible explanations for the legal 'epidemic', the chapter runs the risk of being overly general. The reasons given seem quite obvious. Following her analysis of the new environment, Skene provides some counter statistics and commentary illustrating the relatively low rate of *successful* litigation against doctors in this country. It is likely to be of interest to medicos or Legal Studies students.

The next chapter outlines how each area of the law impacts upon the doctor/patient relationship, such as the Law of Tort, contract, administrative and public law, family, human rights law, criminal and 'disciplinary' law. Furthermore, the laws arising from equity are discussed. There is also reference to the ethical duties doctors impose upon themselves.

The following three chapters of the text are dedicated to the issue of consent for medical treatment which is clearly an area of interest to Skene. However, after reading Skene's text, Senior Lecturer, Faculty of Law and President of the Guardianship Board, Tasmania - John Blackwood, was most concerned with the constant omission of relevant Tasmanian legislation, as well as some South Australian statute law from the book. The *Guardianship and Administrative Act* (Tas) was enacted in 1995, yet it is not listed in Skene's table of statutes. The book claims to cover the laws of Australia yet in the section headed 'Legislation on Consent and Refusal of Treatment' the Act is not mentioned. This oversight is coupled with statements such as 'there is no equivalent legislation in other jurisdiction[s]...' ⁴ In the conclusion of the chapter, 'Consent for Mentally Incompetent Adult Patients', Skene writes that 'except in New South Wales, relatives and carers have no legal authority to consent to treatment

4 Skene further stated: 'although a similar provision has been proposed for Victoria' (p 131). This despite the fact that South Australia has had a similar provision since 1995, and Tasmania's *Guardianship and Administrative Act* came into force September 1, 1997.

for an incompetent adult patient'.⁵ However, on the issue of consent to medical procedures the Tasmanian *Guardianship and Administration Act* 1995, Part 5, s 32 expressly allows for the appointment of an 'enduring guardian'. The consequences of a textbook incorrectly claiming to be up-to-date on Australian law as at February 1998 can be severe. It misrepresents the true status of Australian statute law to academics and practitioners. Further, a Tasmanian student could seriously run the risk of failing should they omit these very relevant provisions. It is hoped that the author will correct these omissions in reprint.⁶

The latter chapters of the book relate to the doctor's duty to provide information, injuries caused by medical treatment, access to medical records and confidentiality. There are two chapters on the withdrawal of treatment from patients, followed by one chapter on the law relating to abortion.

Although the book is not so comprehensive on the law that it could be used as a text for cases and materials, it is understood that this was never the intention of the author. The book is very clearly written and is recommended particularly to medical students and doctors. Unfortunately the mid-section of the text is let down by some oversight as to relevant legislation in some jurisdictions. Overall however, Skene's text should stimulate both legal and non-legal people into thinking more deeply about medical practice and how society regulates it.

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5 Page 137.

6 Specifically at pp 85, 87, 91, 119, 131(considered perhaps the worst oversight) and 137.

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