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Shartel & Plant: *The Law of Medical Practice*

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RECENT BOOKS

THE LAW OF MEDICAL PRACTICE. By *Burke Shartel* and *Marcus L. Plant*. Springfield, Ill.: Charles C. Thomas. 1959. Pp. xxi, 445. \$12.50.

This delightful and useful book is the outgrowth of a course of lectures on "Medical Jurisprudence" which its authors have given to senior medical students at the University of Michigan during the past fourteen years, a series which has proved most helpful to young medical graduates in preventing them from becoming involved in situations which might bring them into court.

As so well stated by the authors in the preface (p. v) their aim was to prepare a book which would provide

"more than the modest minimum which the *medical student* has to have in order to pass his examinations for licensure . . . [but also one] that will meet the daily needs of the *established practitioner* as well, and which will be found useful by the *lawyer* who is called upon to advise the physician regarding legal problems presented in medical practice. . . . This does not mean, however, that we have undertaken to make every doctor his own lawyer—an undertaking which, men of medicine can well imagine, would not be any more successful than trying the reverse, to make every lawyer his own doctor. Our main purpose is more limited and at the same time more practical: it is to keep the doctor out of trouble, a prophylactic purpose in the legal sphere; to give the doctor enough of law to enable him to know when he approaches areas of legal doubt or danger; to apprise him of peculiar legal pitfalls that beset him in his work . . . [and to indicate situations] when the doctor had better seek the advice or service of a lawyer. . . ."

The result of this ambitious undertaking has been a most happy one. The book is well organized and, by means of a comprehensive index, one can readily find guidance in any specific situation. The legal principles discussed are illustrated by cases that indicate the scope and variability which one may expect to find in the varying statutes of the several states; and, for the benefit of attorneys, bibliographic notes are appended to each chapter citing sources and references which would be helpful in a more detailed investigation of principles discussed in broader outlines in the text of the book.

The first chapter, "The Physician's Professional Services," outlines the conditions under which the physician-patient relationship is established, discusses the scope of both physician's and patient's obligation in the implied terms of their contract, the matters of consent of spouse for medical or surgical procedures, and the proper authorization required for the treatment of minor, mentally deficient or incompetent patients. Legal aspects of such controversial subjects as artificial insemination, sterilization and

contraception are discussed, and the authors are not hesitant in pointing out the fallacious reasoning (p. 47) of others who have pontificated on the legality of action in these emotion-packed areas.

The second chapter, "Compensation for Medical Care," suggests the means by which the physician may obtain compensation for his services. In these days of widespread health and hospitalization insurance, this often involves dealing with insurance adjusters. Ways of advising the patient in advance of expensive procedures or heavy charges, and in forewarning him of costly surgery or hospital bills may often avoid misunderstandings. Suit for recovery for fees and services is rarely recommended, and then only as a means of last resort. Such suits often touch off counter-claims of alleged malpractice which, even though totally unfounded, may be embarrassing to defend at a public trial.

With the rapid increase in claims for malpractice and the large amount of damages which juries have been awarding, the third chapter on "Physician's Liability for Malpractice" will be of great significance to the medical practitioner. Even though the carrying of adequate professional liability insurance by doctors is as general as their carrying of liability insurance on their automobiles, no doctor appreciates being called into a public trial to account for alleged misdoings. So the prophylactic method of avoiding malpractice actions by prudent conduct of one's medical practice is advocated. Not infrequently the doctor provokes a lawsuit by loose talk and unnecessary admissions to the patient, when some therapeutic venture has gone awry. Ways and means of avoiding the common pitfalls are pointed out.

By their rigid adherence to the unwritten law that physicians do not testify against each other in matters involving the claims of patients, medical men actually provoke lawsuits, and probably are responsible for the more recent liberalization of the *res ipsa loquitur* principle in malpractice actions. The drawing of the cloak of silence around any investigation invariably creates in the public mind a feeling that skulduggery is being covered up. Perhaps this collusive action among physicians to refrain from emphasizing each other's mistakes is one of the reasons why claimants' attorneys have found it advantageous to form a national organization, the better to further their clients' positions. In any event, the rising toll of malpractice verdicts, which now is estimated at 50 million dollars per year, poses a problem of increasing insurance costs for the doctor and points to the imperative importance of cordial physician-patient relationships. Most malpractice actions originate in patients who feel that their doctor has not "done right" by them.

A short, but highly significant chapter, "Other Tort Liability Incident to Medical Practice," considers the legal aspects of matters such as responsibility for the acts of medical assistants or agents, invasion of privacy, defamation, assault, or false imprisonment. In another chapter the licensure of physicians and other practitioners of the healing arts is outlined, not

only as to the method and scope of such license, but also as to the circumstances for its revocation by the state, as a way of enforcing the generally-accepted minimum practice standards.

A brief chapter points out problems which arise from the physician's business relationships and transactions, such as medical partnership, group practice and contract practice. The mutual responsibilities which exist between physician and hospital are also discussed.

The most lengthy chapter is that dealing with the physicians' public duties and liabilities. Its extent bespeaks the degree to which the individual operator in any field of endeavor is brought under control of the state. The various reports which a physician is required to make, such as births, deaths, communicable disease, enforcement of quarantine, narcotics usage, knife or gunshot wounds, homicide, abortion, etc. are indicated. A very interesting section of this chapter discusses the physician's conduct in the courtroom when he is called to give testimony. Most physicians have a horror of being called as a witness in court. A careful reading of this section of the book will make any doctor's sojourn on the witness stand a less harrowing ordeal.

The final chapter, on the operation of our legal system, is a jewel, and should be read not only by physicians and medical personnel, but by all citizens who have not had the benefit of legal training. It could very well be incorporated into our high school courses in political science or government, for it is a thorough, but brief, statement of how our system of laws functions.

The publisher, Charles C. Thomas, has done his usual artistic and workmanlike job in the physical organization and printing of the book. The type is easy to read and the general format is pleasing to the eye.

As one sees the tremendous quantity of books on all subjects which are published each year, one is inclined to feel that, for the most part, society would be better off, if the wood pulp used to prepare the paper on which they are printed, had been left standing in our forests. It seems an international disgrace to cut down our dwindling supply of timber to provide paper for useless books which might better have remained unprinted. But every now and then, one comes upon a book in which the authors truly have something worth-while to say and who know how to say it. This is that kind of exceptional book. Professors Shartel and Plant, in more than a decade of lecturing to medical students in this field, have organized and condensed their material so as to bring the result within the bounds of a reasonable-sized, perfectly organized, easily readable volume. Doctors, and lawyers as well, will be deeply grateful to its authors.

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