

Health Care & the Law

by Janine McIlwraith and Bill Madden

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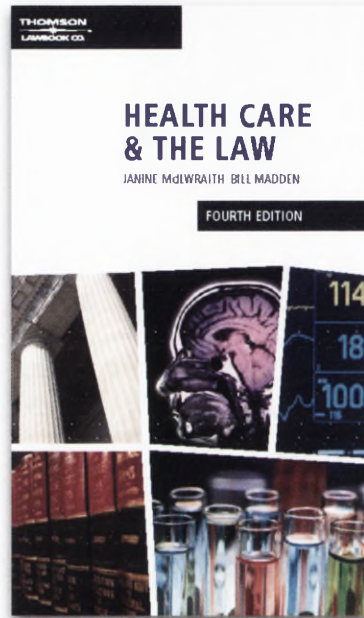
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This is the fourth edition of *Health Care and the Law*. It has been extensively rewritten, bringing it up to date as at May 2006.

The authors (in 19 chapters and over 700 pages) succeed in their daunting task of giving healthcare professionals a comprehensive overview of the many different areas of the law that affect the practice and provision of healthcare services. But it is also a useful text for the health law practitioner who needs a more extensive knowledge of the general area (including the rights of incompetent patients, reporting on infectious diseases, ethics, information issues and disciplinary matters) than is usually provided in texts on tortious liability.

From the first chapter, 'What Is Law?', the reader is invited to consider the healthcare professions in a dynamic relationship with a society in which rules necessarily govern our relationships with our fellow citizens. The depth of engagement between those providing healthcare services and the rest of society is demonstrated by the myriad of legal topics covered by the text. For example, chapter 8 discusses patient property, referring to the law about bailment and exclusion clauses.

The authors' tone and style is engaging. Members of the medical profession (not just those who are the subject of lawsuits) can often feel a sense of alienation; of being besieged by unreasonable public expectation; and of being stigmatised as incompetent by a single failure. They often distrust the role and motives of the legal profession and resent 'visible' patients who are injured and complain. Much misunderstanding about the nature of their responsibilities and rights is based on inaccurate and sometimes loaded information – such as sensationalised media reports. Texts such as this, which demystify legal principles (as much as is possible), are important and valuable, because they educate and promote understanding – particularly among students and new practitioners. For example, at the beginning of the chapter on 'negligence', the authors refer to remarks made by Justice Simpson in *Sherry v Australasian Conference Association* [2006] NSWSC 75, that her finding of negligence 'involve[d] no judgment as to the general competence or attention to



detail of any of the participants. This was a singular occurrence and should not be taken as typical of the standard of work of any of them.'

The book covers substantive legal concepts (such as the law of trespass to the person, chapter 4; negligence in chapter 6, and criminal law in chapter 14) by providing examples of how the principle operates generally, and then presenting examples of cases. Healthcare practitioners are also offered advice about how to safely and effectively discharge their duties, often with useful checklists.

A feature of the text is its discussion of cases. Summaries of some very recent cases provide extensive details about the medical facts, which are particularly relevant to the target readership.

The style of the text is that of an informed commentator engaging with a knowledgeable

and interested interlocutor asking such questions as 'when does one assume a duty of care?', or 'must a patient's consent be voluntary?' The number and detail of the case notes, as well as references to other cases and texts, displays the compendious knowledge and interest of the authors in their topic.

If I have one small complaint as a lawyer, it is that case summaries without extracts from the 'holy writ' of the judgments sometimes fail to communicate the essence of often complex legal principles as precisely as one might like. The same can be said about the exposition of those principles in the text itself. The authors are understandably constrained by their large topic (and by the needs of their primary audience), providing less detail on matters that are explained in textbooks that deal exclusively with specific topics.

The text concludes with a chapter on decision-making and ethics and offers readers examples of 'real life' situations where personal ethics and legal responsibility might conflict (such as a worker witnessing a medical accident while a patient is unconscious, and having to decide whether or not to report the accident). The discussion and advice offered is positive and practical, as are the conclusions about transparent reporting of adverse outcomes and achieving standards of clinical excellence. ■

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