

Whilst it is probably the case that the major ethical dilemma in consent to medical treatment lies in the decision as to competence itself, it is also true that ethical and legal questions continue to arise after an individual is adjudged to be incompetent. This book attempts to address the legal, medical and administrative issues involved in the treatment of those considered to be incapable of consenting to treatment or participation in research because they are unconscious, or incapacitated by profound mental illness, severe mental handicap, or organic disease severely affecting reason and perception. The book is wholly made up of material from a day conference held at the Royal Society of Medicine in December 1986 concerned with this topic; eleven papers were given (of which eight appear), and the book also includes transcriptions of discussion throughout the day, in which participating doctors and lawyers, with representatives of the Mental Health Act Commission (MHAC) and of the National Schizophrenia Fellowship (NSF), explore the major issue – professional (medical) responsibility *vs* legal restraint. It can be inferred from the content of most of the contributions that the conference was organised in response to the publication of the MHAC Draft Code of Practice which appeared in 1986.

The medical contributors, particularly Professor Bryan Jennett, Professor Elaine Murphy and Dr Richard Nicholson, describe their own solutions to the ethical problems they encounter as practitioners working with incompetent patients. Dr John Harris attempts to define philosophical guiding rules which he believes should lie at the root of an ethic for medical treatment – this would make interesting reading for any practitioner trying to define or examine a personal or institutional policy. Two distinguished and able lawyers, David Sullivan QC and Henry Brooke QC, give very readable and different interpretations of the law on incapacity as it stood in 1986, with an addition for publication referring to the case of *Re B* (1987). It is still a major difficulty however, that the book is essentially an historical document: aside from the clinical and philosophical arguments, the background to this debate has changed in several important respects in the five years since the conference took place. Most significantly, the Code of Practice has now been published in a somewhat different form than the 1986 draft discussed (available from HMSO since August 1990). There have also been

developments concerning necessity of treatment and incompetency generally, including the cases of *F v West Berkshire Health Authority* (1989) and *Re T T v T and another* (1988), which might contribute to an up-to-date account of the law.

Within these significant limitations, the book is an interesting polemical work, which describes the major issues in the treatment of incompetent patients. It is perhaps regrettable that the patients' rights argument was not represented, except implicitly in the views of David Sullivan QC, and perhaps the philosophy of John Harris. A representative of MIND, or even of a self-advocate group, would have helped to dispel the air of professional 'cosiness' which so often develops in discussion of the treatment and care of people with disabilities.

I would recommend that the book be read in conjunction with a copy of the new code, and then only if a more recent multidisciplinary introduction to this field cannot be found. Perhaps such a work could be provided from the same source as this book, as these contributors' views of the new code would be of great interest.

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## Legal Aspects of Medicine

Edited by J R Vevaina, R C Bone and E Kassoff, 330 pages, New York, DM148, Springer-Verlag, 1989

This collection of essays belongs to a familiar genre. It springs from a doctor's realisation that the law impinges on medical practice and a belief that by collecting together the views of interested parties a contribution might be made to the prospects of future co-operation. Like many such volumes, this leads to a group of essays of varying originality, authority and quality. It appears that for the most part contributors have been selected for their interest in matters of law and ethics rather than their expertise and few of the essays demonstrate an awareness of the now considerable literature on the field. This results in a book which knowledgeable readers will find a long read for relatively little return. There are, nevertheless, a number of

contributions which are well worth searching out.

Among the most interesting chapters is the discussion offered by George A Kanoti of the role of 'ethics consultants'. While the use of ethics committees to provide guidelines for use in the clinical setting is now well established, the use of 'a person who has demonstrated mastery of ethical knowledge' to provide bedside consultations where required is an interesting innovation. Kanoti describes the problems presented to doctors by 'moral moments' where clinical decisions face conflicting moral positions. He sketches the indicators which allow such moments to be identified. He then suggests how the provision of an ethics consultant can reassure patients and relatives, a sort of rite of passage which helps them reconcile themselves with whatever steps are to be taken. The involvement of the ethicist also has an educative role for doctors, teaching them (by experience) the process by which ethical problems can be tackled, and increasing their confidence when faced by apparently intractable difficulties. The consultant does not remove the decision from the patient or the doctor, but can be called in to facilitate their deliberations.

A further interesting discussion is provided concerning the psychological effects of malpractice suits on defendant physicians. Usually this is left at the level of anecdote, as demonstrated by a judge's exhortation that doctors must realise that to be sued is not a disgrace (p 14) and two defence attorneys' description of the serious impact on some clients (ch 3). Robert S Kassoff seeks to provide a more considered account of the evidence, surveying both the range of responses to litigation identified by researchers and also the prevalence of these different reactions. It is a pity that he stops short of considering the implications of this evidence for legal reform, but he provides a useful introduction for those who wish to do so.

Other interesting contributions include Eugene Robin's wideranging, eclectic discussion of the scope for reform of the law governing medical practice, a summary of the range of criteria used internationally to establish brain death (ch 22) and Robert Asher's criticisms of the way in which regulatory agencies have been given wide powers to scrutinise medical practice with few safeguards.

These chapters will be of interest to informed readers but taken as a whole

the book will be of most use to those who wish to dip into the relationship between law, ethics and medicine without being overwhelmed by detail. It should not be seen as taking such a person too far as it does not provide a comprehensive study and is weighted towards the state of New York. Nevertheless, it will provide much food for thought.

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## Ethical Dilemmas In Health Promotion

Edited by Spyros Doxiadis, 234 pages, Chichester, £38.00, John Wiley and Sons, 1987

This is a book to be welcomed since it puts philosophical issues surrounding the area of health promotion firmly into the arena for discussion, alongside the more traditional areas of practice, economics, training and so on. Up to now, it has been hard for students and practitioners in the field of health to have easy access to the kinds of arguments and processes which ought to be part of their everyday questioning about their professional practice, and this book goes some way towards identifying some of the main issues and the ways in which we might begin to think about them.

Having said that, I want to qualify my comments. I believe that this book will prove to be extremely useful as an initial publication in the debate but, because it is early days, there seems to be no overall framework within which the various contributions can be placed. The general bias in the book, whether through the professional training or present perspectives of the authors is towards medicine, with a model of health which is about illness, its prevention or cure, and about a normative model of practice which postulates, overtly or covertly, an expertise whose basis – that medical knowledge equals health – is never fully examined. There are some assumptions and assertions which merit more rigorous critical treatment in a book which is likely to carry a great deal of weight. Rayner, for example, asserts that health education is about the *giving* of information and messages which may be positive or negative (my emphasis), implying a power relationship which many health educators would want to

question; whilst many of the other authors seem to use the terms 'health promotion', 'health education', 'medicine' and 'prevention' as if the concepts to which these labels are attached were interchangeable, with no difference in meaning. Conceptual woolliness of this kind is a disappointment from such an impressive array of authors.

But these criticisms are, I think, merely indicative of the 'state of the art' and further debate, likely to be stimulated by this publication, will challenge and refine the arguments. There is much here which is thought-provoking, and likely to generate feelings of dissonance in the reader – never a bad thing for those of us who claim to be working in other people's interest! In general, the style of writing is clear and easy to read – crucially important if health professionals new to philosophy are to be encouraged to 'read on'. Above all, the book embraces a range of issues which have relevance at micro and macro levels, enabling us to engage in our own problems as well as considering a world view. It thus challenges us to focus on our own work yet forces us to acknowledge our wider responsibilities. Definitely 'essential reading' for any postgraduate course for health professionals of all kinds; I just hope that the readership won't be confined to such groups, but that all those interested in improving health will read it.

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## Child Psychiatry and the Law

Edited by Dora Black, Stephen Wolkind and Jean Harris Hendriks, 178 pages, London, £10.00, Gaskell/Royal College of Psychiatrists, 1989

The Royal College of Psychiatrists has continued its excellent series of practical and important books on topics in clinical psychiatric practice, with this, the first book in its series oriented towards child psychiatrists. It is a pity that this book should be published when the legal information in it is about to be rendered obsolete by the implementation of the Children Act 1989. In spite of this, there is a fund of information clearly laid out and adequately indexed to make possession

of this publication essential to British child psychiatrists and paediatricians, and of use to others concerned in the care and rights of children.

In recent years, child psychiatrists have frequently been called on, both by the courts and local authorities, to give an expert opinion, from knowledge of clinical and research experience, about the best interests of children with whom they have been concerned. The anxiety created in the public domain by the exposure of the extent to which children are abused, both by their parents and carers, the relative neglect of their interests, and a change in the emphasis of the law from the preoccupation with the child as the property of the parent, to a person with individual rights of its own, has led to a situation where the skills of the child psychiatrist to deal with the resulting decision and anxiety, is increasingly called on.

By discussing the tasks of the child psychiatrist exposed to the demands of the legal professional discipline, and the practical aspects of the child psychiatrist's appearance in the legal system, this book provides a means whereby many of the pitfalls can be avoided. The child psychiatrist is made aware of the need to defend opinions and statements, which must enrich general clinical experience and practice.

Section two of the book, by giving examples of actual court reports, indicates the different styles of report which might be available to a practitioner, while the check-lists at the end of each chapter provide a most useful reminder when writing reports, or considering their presentation. The chapter on fees gives pointers for those whose knowledge of the private sector is very limited, but omits to mention that the BMA issues guidelines as to fees payable for Section 2 work and court appearances.

The chapters on confidentiality are concise and define the responsibility the child psychiatrist has to the child, rather than to the parents or to the agency which solicits the report. Most reports about children are necessarily reports about the family in which the care of the child has broken down, which has resulted in the child's appearance in the legal system. There is inadequate discussion of the rights of the parents in such a system.

The area which causes greatest anxiety, namely appearance in court, when an expert witness is subjected to cross-examination, is addressed. It might have been helpful if: i) further discussion of the experience of evidence-giving had been included, and