Clinal Guidelines
and the Law:
Negligence, Discretion
and Judgment

Brian Hurwitz, Oxford, Radcliffe
Medical Press, 1998, 134 pages,
£18.50 (s b).

This book could not be more timely.
The white paper,1 which will lead to
the establishment of clinical governance,
national framework standards, and
the promotion of clinical excellence
through a national institute, presents
a challenge to the clinical judgment
and clinical freedom of the doctor. Not
that the issue of the status of clinical
guidelines in relation to the clinical
judgment and freedom of the doctor
is new. As the author points out,
it was a subject of concern to
Plato, who explored with his students
the difference between skills grounded
in practical expertise and those based
merely upon instruction or obeying
rules.

The book is extensively researched
and referenced and covers in six short
chapters topics relating to: the nature
and context of clinical guidance; the
authority and validity of clinical
guidelines; the legal status of clinical
guidelines; clinical guidelines and
negligence case law; author liability and
clinical discretion, and clinical judg-
ment and clinical freedom. Append-
ces give fuller details of some of the
key cases, and there is a synopsis of
significant articles taken from the UK,
the Commonwealth and the USA. A
foreword by Sir Douglas Black
emphasises the importance of the topic.
This is a readable and enlightening
book, well illustrated by examples from
clinical practice, thought-provoking,
clear, and comprehensive. For clarity,
the main points are summarised at the
end of each chapter.

The author explains clearly and
with authority the varied ways in which
protocols, procedures, prac-
tices, and guidelines come into exist-
ence. He says 5,000 statements are
issued annually by the National
Health Service (NHS) executive and
other health service agencies, consist-
ing of guidance, executive letters and
official instructions. To these must be
added the textbooks and articles from
medical researchers on appropriate
clinical practice. Not all clinical guid-
elines should be approved and the
author lists ten key characteristics
which they should possess to be
acceptable. He could perhaps have
added ethical acceptability to these.
Appropriate examples are given of the
establishment of clinical guidelines
and their variety, and the circum-
stances in which they may be ignored.

In reviewing the legal status of clini-
cal guidelines in the UK he shows that
the Bolam test, albeit battered and
refined by the Bolitho case, ensures
that clinical judgment is still protected
if it is in accordance with reasonable
competent practice. A doctor is not
negligent just because he/she has not
followed a guideline, but conversely
he/she may be negligent if he/she has
followed a guideline without relevance
to the particular circumstances of
the patient. However, as guideline-
informe health care increasingly be-
comes customary, there will be more
pressure for the doctor who acts
outside guidelines to prove justification
from the specific circumstances of
the case.

The author also considers the liabil-
ity of the authors and propagators of
clinical guidelines, concluding that if
they suggest the advice they give
should not be adopted “without inde-
dependent inquiry” then this might act
as a sufficient disclaimer in the event
of any action for negligence.

The book should become compul-
sory reading for all those whose task it
will be, in the post-white-paper era, to
implement the effect of the results
from clinical effectiveness studies,
national framework standards and the
work of the Commission for Health
Improvements. Thus health service
managers, contractors, providers,
and professionals drawing up protocols
should be familiar with the complexity
of the subject and the dangers. The
book will not provide the answers, but
it will ensure that the draughtsmen
realise the significance in both law
and practice of the protocols and proce-
dures which they design. Expert witness-
ness in the period following the
Woolf reforms should also be familiar
with this book and be hesitant to con-
demn practice for the sole reason that
the usual guidelines were not followed.

Doctors will never become robots.
Medicine will always be both an art
and a science and clinical freedom to
ensure that the individual patient is
given the appropriate treatment for his
personal needs is essential. At the
same time, the patient must be pro-
tected from unacceptable practice,
such as that recently seen in Bristol
in the provision of paediatric cardiac sur-
gery. The dangers of health care prac-
tice being dominated by the rules and
regulations of managers, insurance
companies and other purchasers can
be seen vividly in the work of Joan
B Brady.2

The book proposes no solutions:
that is not its aim. However, it
provides a valuable, informed con-
tribution to the debate which will be
continuing for centuries to come.

References
1 Department of Health. The new NHS:
morden • dependable. London: Station-
2 Brady J. Death comes for Peter Pan.

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A Chosen Death: The
Dying Confront
Assisted Suicide

L Shavelson, Berkeley, University of
California Press, 1998, 244 pages,
US$14.95.

Throughout the 1990s euthanasia and
physician-assisted suicide have been the
subject of hot debate by the general
public as well as the profession-
al press, by the legal fraternity as
well as the medical colleges. But the
1990s have also seen a widespread
espousal of the hospice philosophy
and better palliative care. If the
management of dying is receiving so
much attention why do terminally ill
patients still end their lives with plastic
bags over their heads? Why do relat-
ives still risk imprisonment to assist
their dying at a time of their choos-
ing? The author of A Chosen Death,
Lonny Shavelson, argues that today in
the USA at least, such patients “face a
medical system filled with secrecy,
contradictions, contentious debate,
and at times outright hypocrisy. If
the public is concerned about the unfair-
ness and abuses that may occur if
assisted suicide and euthanasia were
made legal, they might well look at the
system as it is working now.” This is
precisely what he sets out to do.

This book, however, is no academic
treatise on the ethics of ending lives.
Shavelson himself is a doctor and a
journalist with excellent personal cre-
dentials for writing on this subject.
When he was just 14 years old his
mother, severely depressed and bed-
ridden with Crohn’s disease, begged
him to give her a fatal injection of
potassium chloride. And his postscript
The book under review, *The Horror That Awaits* by Hazel E. McAffee, recounts the agony and the challenge of being with his father who lay for hours "sweating, gasping for breath, gurgling - but not dying" after life-prolonging procedures were withdrawn. In between these two major events, he struggled to unravel the issues inherent in helping patients to die. To facilitate the process he entered into the lives of people who were actually confronting the question of suicide - by their own hand or with assistance - when life became intolerable. Quite deliberately he became personally engaged in their struggle, lived alongside them in their search for an answer. He shared their last hours, witnessed others assisting their deaths, was challenged to assist himself.

The resulting book does not shirk the difficult questions; it does not sanitise the pain. In short it deals with real life ethics rather than the theoretical. Indeed, the grainy photographs accompanying the text somehow underline the reality of these situations - like snaps taken to capture precious moments with a friend. It looks at the reality of such situations: the difficulty of deciding whether it is simply depression speaking when a patient asks for death; when such a request is premature. It describes at first hand the horror of failed efforts at suicide or attempts to assist a death only to have the patient fighting to live at the eleventh hour. It recognises the potential for abuse in physician-assisted suicide and the problems of building in adequate safeguards.

Shavelson concludes that the present system fails the terminally ill and the severely disabled. The very fact that so many patients are seeking suicide demonstrates its inadequacy. The lengths to which these people are prepared to go underlines the urgency of the need to provide for their end. But when provision rests with the patient or his/her family, there is a great potential for disaster, guilt and legal repercussions. And it is a disaster if a person reaches a point where he has gone through the whole process of suicide - the decision and the act - and it fails. Furthermore, suicide excludes those too weak or disabled to take matters into their own hands. The author concludes that having a professional take charge would seem so much more humane and reliable. He therefore examines a compromise course: the proposal that doctors should prescribe lethal doses of drugs like Seconal to ensure a more certain death. He ends with a consideration of a blend of "Hospice and Hemlock," a development which requires modification of the law but which offers protection for doctor and patient.

Although this is a book which will appeal to people from all walks of life, Shavelson directs certain challenges straight at his medical colleagues. The profession, he contends, "appears to turn its back on these horrible moments (during the last stages of illnesses) in order to keep its intentions pure." He forces the clinician to turn around and face the issue foursquare.

No thinking person can fail to be moved by this slim volume but some serious students might well be irritated by small deficiencies such as loose referencing, the absence of an index, the use of terms which confound rather than clarify. Others will find the text strangely jarring in places where the thought processes of the author and the reader take them in different directions. But the strengths of the book far outweigh its weaknesses, with challenges as relevant to the UK as they are in the USA.

As he sat with a dying friend over whose head he had himself slumped a black plastic bag, Shavelson admits a great sense of loneliness. But he was not really alone, he was "with hundreds of other families who have faced the anguish of similar dilemmas, isolating, inexperienced and without adequate guidance...forced to decide and to act, alone." Together they arrived at "one common thought... That this is not how it should be." For anyone who will hear this cry, anyone who will accept the inadequacy of the present system, this book makes sobering and compelling reading.

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**News and notes**

**Ethics group meetings**

The Royal Free and University College Ethics Group (London) will discuss *The psychotic patient: mad, bad or misunderstood*, on Tuesday April 27, 1999. The topic for the meeting on Tuesday May 25, 1999 will be *Female circumcision: when medical ethics confronts cultural values*. Both meetings will begin at 6.00 pm and will be held in The Atrium, Ground Floor, Royal Free Hospital, London. For further information please contact: Lesley Armstrong, Sheila Sherlock Education Centre, Royal Free Hospital, Pond Street, London NW3 2QG. Tel: 0171 794 0500 ext 6505; fax: 0171 836 2167; e-mail: medical.ethics.group@ucl.ac.uk