SOURCEBOOK ON

MEDICAL JURISPRUDENCE

Professor B.M. Dickens

1997-98

FACULTY OF LAW

UNIVERSITY OF TORONTO
# TABLE OF CONTENTS

**PART I**
- COURSE OUTLINE

**PART II**
- REFERENCES
  - Bib 1-210

**PART III**
- TEXTS

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canadian Medical Protective Association: Revenue Statement and Statistical Summary</td>
<td>1</td>
</tr>
<tr>
<td>Fee Schedule for 1996, The Canadian Medical Protective Association</td>
<td>3</td>
</tr>
<tr>
<td>Code of Ethics of the Canadian Medical Association</td>
<td>4</td>
</tr>
<tr>
<td>The Medical Malpractice Problem in the United States and Canada</td>
<td>6</td>
</tr>
<tr>
<td>Patients' Interests and Clients' Wishes: Physicians and Lawyers in Discord</td>
<td>11</td>
</tr>
<tr>
<td>Understanding Variations in What Doctors Do: Globe &amp; Mail, November 22, 1993</td>
<td>19</td>
</tr>
<tr>
<td>Legal and Medical Professional Orientations</td>
<td>20</td>
</tr>
<tr>
<td>Can Doctors Serve as Double Agents?</td>
<td>26</td>
</tr>
<tr>
<td>Implications of Health Professionals' Legal Liability</td>
<td>28</td>
</tr>
<tr>
<td>The Choice of Contrast Media: Medical, Ethical and Legal Considerations</td>
<td>34</td>
</tr>
<tr>
<td>The Doctrine of &quot;Informed Consent&quot;: Informed Choice in Medical Care</td>
<td>38</td>
</tr>
<tr>
<td>Liability Concerns about the Implementation of Advance Directives</td>
<td>49</td>
</tr>
<tr>
<td>Adolescents and Medical Care Decisions</td>
<td>54</td>
</tr>
<tr>
<td>Legal Limits of AIDS Confidentiality</td>
<td>58</td>
</tr>
<tr>
<td>Confidentiality and the Duty to Warn</td>
<td>61</td>
</tr>
<tr>
<td>From Letting Die to Inducing Death-The Legal Transition</td>
<td>70</td>
</tr>
<tr>
<td>Case Comments: Medically Assisted Death: Nancy B v. Hôtel-Dieu de Québec</td>
<td>77</td>
</tr>
</tbody>
</table>
When Terminally Ill Patients Request Death: Assisted Suicide before Canadian Courts

Research on Human Subjects

Abortion and Distortion of Justice in the Law

Legal Evolution of the Concept of Brain Death

Legal and Ethical Issues in Buying and Selling Organs

Morals and Markets in Transplantable Organs

Who Legally Owns and Controls Human Organs after Procurement

Living Tissue and Organ Donors and Property Law: More on Moore

Reproduction Law and Medical Consent

Case Comment: Eve v. E.

Legal Aspects of the Beginning of Human Life

Legal Issues in Embryo and Fetal Tissue Research and Therapy

The Ethics of Fetal-tissue Donation: Consensus and Contradiction

Proceed with Care: Final Report of the Royal Commission on New Reproductive Technologies—Executive Summary

Proceed with Care: Media Summary

Maternal-Fetal Conflict

Legal Rights and Duties in the AIDS Epidemic

CPSO Reviews Policy on HIV Infected Physicians

Managing AIDS Patients

Some Legal and Ethical Implications of Genetic Predictability

Legal Issues in Predictive Genetic Testing Programs
PART IV  LEGISLATION

Canada Health Act, Chapter C-6.................................................................313

Ontario Human Tissue Gift Act, R.S.O. 1990, c. H20 ................................320

Health Disciplines Act, R.S.O. 1980, c. 196 (excerpt) ............................323

Hospital Management, Regulation 965 of the Public Hospitals Act ..........326

Health Care Consent Act 1996......................................................................334

Regulated Health Professions Act (1991) (excerpt) .................................361

Health Professions Procedural Code...........................................................365
PART I

COURSE OUTLINE

Medical Jurisprudence is offered as a lecture course, but its structure is kept loose in order to accommodate class discussion and/or seminar presentations from interested students. Students are encouraged, but not required, to give seminars; those writing term papers may find it useful to present their work in progress to the rest of the class for comment, perspective and provisional assessment. Evaluation in the course will be based on the term paper (which satisfies the law school's writing requirement), on a final examination or on a take-home assignment, at the student's option. In exceptional circumstances a longer term paper, for three hours' credit, can be arranged.

Students are advised to pay careful initial attention to the lists of recent articles that follow (Part II, infra.). They indicate significant topics addressed in the literature and the thematic dimensions of medical jurisprudence itself, disclosing well-trodden paths still worthy of pursuit, new matters coming to attention and points of interest available for further exploration. The whole list should be read soon after acquisition. It is divided into subject areas, but they are only general and provisional. Most articles affect a number of issues and may be of use in a number of differently directed studies.

A firm sequence of topics to be addressed in class cannot be predetermined; much will depend on the interests of class members and on the subjects chosen for any seminar presentations. The sequence below may, however, serve as a loose model.

- medical negligence and malpractice -- background issues
- malpractice litigation and the law
- informed patient decision-making
- medical treatment of minors
- confidentiality
- the right to die: natural death, non-treatment decisions (defective newborns, severely injured patients, etc.)
- legally protected life, wrongful birth and wrongful life
- criteria for the determination of death: brain death
- medical experimentation
- transplantation law and the control of body materials
- reproduction control, including contraception, sterilization and abortion
- reproduction promotion, including artificial insemination, "test tube" fertilization, surrogate motherhood and embryo transplantation
- acquired immunodeficiency syndrome (AIDS) and HIV infection.
- genetic knowledge: developments, applications and implications
REFERENCES

ARTICLES

For convenience, articles are grouped under nine topic headings, but most articles are relevant to two or more headings. A brief definition of the types of articles under each topic heading is provided below. However, reference to a specific subject should not be confined only to one topic heading. Articles preceded by the notation [incl.] are included in these materials.

Topics

1. **Standard of Care and Malpractice**: general articles on medicine and the law; types of liability and duty; who may be liable for malpractice.
2. **Consent**: the modern law of "informed consent; substitute consent; right to refuse treatment (excluding life-saving treatment); rights of minors; experimentation.
3. **Confidentiality**: access to medical records, immunity and privilege.
4. **Right to Die**: right to refuse life-saving treatment; euthanasia.
5. **Mental Health**: rights of the mentally incompetent; substitute consent; involuntary committal and sterilization; behaviour modification; psychiatric damage.
6. **Genetics and Eugenics**: policy proposals and legislation; population policy; "wrongful life" and "wrongful birth" actions.
7. **Time Factors**: Brain death; rights of the unborn; limitation periods; evidence.
8. **Biotechnology**: New reproductive technology; organ transplants; transsexual surgery; new micro-organisms.
9. **Acquired Immunodeficiency Syndrome (AIDS)**