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BOOK REVIEW

Essentials of Law for Health Professionals (3rd Ed).
By Kim Forrester and Debra Griffiths

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ESSENTIALS OF LAW FOR HEALTH PROFESSIONALS

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This excellent new edition updates the work of Associate Professor Forrester and Dr. Griffiths that is already very well regarded in the nursing and health care professions of Australia and New Zealand.

Each of the authors is a registered nurse who brings decades of clinical experience to their approach in the text. Each is also now an admitted lawyer and a teacher of the legal discipline, respectively at Bond University in Queensland and Monash University in Victoria. The background of the authors is plain in the presentation of their materials; the emphasis in their descriptions of the law; the thoroughness of their analysis; and the no-nonsense style of their expressed opinions.

In their preface, the authors acknowledge that the law is often imprecise. But they explain that they have attempted to describe the law in Australia as it exists in the several States and Territories of the Commonwealth. And they have sought to throw light on areas where the law lacks clarity. Whilst the book refrains from offering specific legal advice, it provides an extremely useful conspectus of applicable statute

and common law throughout Australia. It is not stated in such detail as to overwhelm and crush a lay reader. On the other hand, I suspect that, for many generalist lawyers and judges, the book would be an extremely useful starting point for discovering the entire lay of the land and deriving one's bearings.

In a federal country, like Australia, unless an area of the law is dealt with by federal legislation, it tends to be complicated by the differing enactments of the several State and Territory legislatures. Even where, as in the case of the registration of health professionals in Australia, an agreement has been reached between governments to work towards uniform State and Territory legislation, based on a model law enacted in Queensland, progress is usually slow and uneven, as the last chapter of this book explains. So complicated are the differences and so subtle the nuances of diversity, that even an expert lawyer can derive assistance from this book because of the overview it provides, in little more than 370 pages of text, of a huge jigsaw of governing law. Purely as an intellectual feat of collecting and assembling so many laws, the achievement of the authors is very considerable.

The book starts with an introductory chapter that describes our somewhat chaotic legal system, with its mixture of judge-made and parliamentary law. It then proceeds to a description of the Australian Constitution and our formal system of government. New Zealand readers can probably skip that chapter. There follow sections dealing with the ways in which health care professionals can become involved in court cases and other legal disputations involving patients. There is an important chapter on rights and privileges which patients now enjoy to have access to health care information. There then follow sections on

the law of negligence and other civil wrongs that give rise to patients' rights to a legal remedy. An entire section of the book is devoted to life and death issues, including when treatment may be refused; when decisions may be made in cases of abortion, fertility and like interventions; and when the criminal law applies including where it attracts the jurisdiction of the coroner, the most ancient office-holder of our legal system.

The authors round off the book with a useful section on industrial relations issues affecting health care professionals, as employees and independent experts, together with an analysis of legislation that governs the delivery of health care services and the registration of health professionals. It is difficult to imagine any important area of the law that impinges on the professional lives of health care practitioners that has been omitted from this admirably tight and yet comprehensive examination of the topic.

The book is up to date with appropriate references, in the industrial relations chapter, to the *Fair Work Act 2008* (Cth) that came into force in 2009. In the opening chapter, describing the curious way in which the Australian Constitution was amended by referendum in 1946 to include a federal power to enact laws on "pharmaceutical, sickness and hospital benefits", mention is made of the exclusion of laws which would "authorise any form of civil conscription". Just before I left the High Court of Australia in 2009, a case was decided in a constitutional challenge to the federal laws governing the Medicare benefits system. The challenger contended that so detailed and coercive had those laws become for medical practitioners and others governed by them, that they now amounted to a form of "civil conscription". By majority, myself

included, the High Court rejected this argument: *Wong v The Commonwealth* (2009) 236 CLR 573. However, the words of the constitutional grant remain to impose a check on excessive bureaucratic intrusions into the private professional practices of health care workers in Australia. It is interesting today to read about the introduction of the Australian benefits scheme and the way in which it was achieved and to compare it with the close-run battle recently fought by President Obama through the Senate of the United States Congress to create a national health care system belatedly for the United States.

The book accurately, and succinctly, describes many of the decisions in the High Court of Australia in recent years concerned with judge-made aspects of the relevant law. These include *Rogers v Whittaker* (1992) 175 CLR 479 (explanation of risks to patients); *Cattanach v Melchior* (2003) 215 CLR 1 (liability for 'wrongful birth') and *Harriton v Stephens* (2008) 226 CLR 52 (liability for 'wrongful life'). The authors also elucidate the risks of judge-made law. As in the *Cattanach* case, decisional law can quickly be overridden by State legislation which reverses the courts' determinations. In New South Wales, Queensland and South Australia, for example, parliament quickly enacted laws providing that damages could not be recovered in respect of costs "ordinarily associated with rearing or maintaining a child". In cases of proved serious negligence, it is still not plain to me why the economic burden should fall entirely on the patient rather than on the [insurer of] the health care professional. This, and many other cases described in the book, illustrates how contestable the law often is when it comes to dealing with the intimate issues of health care.

There is excellent treatment of the vexed problems of refusal of medical attention; euthanasia; privacy and the importance of effective and contemporaneous documentation of patient care. Such records have grown in practical importance in recent years, in part because of the insistence by appellate courts that discovering what happened in a disputed case is more likely to emerge from contemporaneous records than from a judge's impression of witness testimony in the artificial circumstances of a court room, typically provided years after the critical events happened.

There are various tiny matters that might be considered for the fourth edition. For example, the reference to "verbal orders" on p29 is possibly better described as "oral orders", given that both written and oral directions are "verbal". There is a misspelling of Justice Priestley's name on p201. The statement that "the court most commonly visited by health professionals ... appearing as witnesses" is the Coroner's Court seems doubtful, given the very large number of such professionals who must daily give evidence in civil courts concerning personal injury claims, involving no element of complaint against health care practitioners. By the next edition, it might also be hoped that the national registration of health professionals will have been achieved in Australia. Perhaps, too, the current proposals of the present federal Government will have been adopted with a much larger role for federal authorities in the delivery of health services than has hitherto been the case. Given the trans-Tasman links that are increasingly being forged in professional life, it would also be useful for the authors to consider adding more detail on the relevant New Zealand law. Perhaps this could be done by inviting a New Zealand practitioner of equal excellence to join them in the writing team. Keeping on top of such a kaleidoscope of

legal provisions is a major intellectual enterprise. The authors are to be commended for their achievement.

One interesting item of which I was unaware before reading this text is disclosed on p117. It concerns the State and Territory laws in Australia that now provide that an individual health care professional may express regret about an occurrence (and often even an apology) without that fact becoming admissible in subsequent legal proceedings to demonstrate fault or liability at law. This is a sensible provision if the experience in The Netherlands may be translated to Australasia. In that country, empirical research has showed that hospitals with a policy of direct engagement with patients having a complaint, that concentrate on the patients' grievances, provide apologies where these are professionally justified and address systemic changes, quickly witnessed a fall in claims for damages and other legal remedies. In my own case, following major surgery in 2005, a 1 in 4000 procedures risk eventuated. As I lay in the hospital wondering if I would survive, it was a nurse who first reassured me, telling me of her experiences in attending to earlier like cases. Soon after, the surgeon apologised and expressed regret. I put the event down to "celebrity patientitis". The combination of practical wisdom from the nurse and the candid disclosure by the surgeon blew all thoughts of legal process out of my mind. After all, everyone was trying to do their best. And the best, in all human endeavours, as this book shows, will inevitably sometimes include mistakes and failings.

Who will need this book? Health officials. Institutional administrators. Senior health care practitioners. Individual nurses engaged with all aspects of their profession. Trade unions and representative bodies. Libraries. And judges and lawyers whose work takes them into this field.

How can the book be improved? Perhaps the authors could survey health care professionals throughout Australasia to discover precisely the legal problems that they have encountered in their professional lives. I suspect that such investigations would reveal a comparatively narrow band of topics which actually confront busy professionals, to which the subject matter of the book could then address priority attention. The recent report on suggested nurses' errors in Australian hospitals, conducted by Professor Johanna Westbrook of the University of Sydney and colleagues (reported *Sydney Morning Herald*, 27 April 2010), might spark ideas for such a line of enquiry. One speculates that, interesting as it may be from the standpoint of legal doctrine, the liability of a practitioner or hospital for cases of so-called 'wrongful birth' or 'wrongful life' is a rare and exotic problem in practice. It seems to be one mainly for insurance claims managers and hospital administrators rather than for nurses and other health care personnel, hard at work in hospital wards.

Apart from everything else, this book is beautifully produced. Every chapter opens with "Learning Objectives" and closes with "Review Questions and Activities". The layout of the text is excellent. The headings are clear. The printing is attractive. Personally, I prefer footnotes at the bottom of the page to endnotes and also more detailed indexes. But these are minor comments. I commend this book as a thoroughly revised update of a standard work that has deservedly won high respect in the health care professions and beyond.
