

Patient Safety, Law Policy and Practice

Edited by

John Tingle and Pippa Bark



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Patient Safety, Law Policy and Practice

Patient safety is an issue which in recent years has grown to prominence in a number of countries' political and health service agendas. The World Health Organization has launched the World Alliance for Patient Safety. Millions of patients, according to the Alliance, endure prolonged ill-health, disability and death caused by unreliable practices, services, and poor health care environments. At any given time 1.4 million people worldwide are suffering from an infection acquired in a health facility.

Patient Safety, Law Policy and Practice explores the impact of legal systems on patient safety initiatives. It asks whether legal systems are being used in appropriate ways to support state and local managerial systems in developing patient safety procedures, and what alternative approaches can and should be utilized. The chapters in this collection explore the patient safety managerial structures that exist in countries where there is a developed patient safety infrastructure and culture. The legal structures of these countries are explored and related to major in-country patient safety issues such as consent to treatment protocols and guidelines, complaint handling, adverse incident reporting systems, and civil litigation systems, in order to draw comparisons and conclusions on patient safety.

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Preface

As a mixture of law, policy and practice, we hope this book provides the reader with a unique perspective on the international problems, solutions and challenges in patient safety. It is designed to provide the context that is currently missing from legal discussions of clinical negligence and other related areas of tort law. Our aim is to introduce the reader to 'behind the scenes', the numerous patient safety organisations, policies, tensions that exist and the general field of literature. It is clear that many avoidable clinical errors are being made and that the legal infrastructure for resolving disputes is unsatisfactory in many respects.

We have cast our net widely and have invited international academic colleagues in other jurisdictions to contribute to the text so that a comparative perspective can be drawn. Health as a concept is a generic one and the problems cross international boundaries. The book is going to press at a time when the new coalition government has announced sweeping cuts in public expenditure. Bureaucracy is being cut in the NHS and the functions of a number of organisations will be streamlined. At the time of writing, The Department of Health's Review of Arm's Length Bodies has proposed to abolish the National Patient Safety Agency (NPSA), which has, up until now, served a useful function in focusing attention on patient safety issues. Some of the NPSA functions will become part of the remit of the new NHS Commissioning Board and other functions will be supported to continue in other ways. The review also proposes that the National Health Service Litigation Authority (NHSLA) be subject to an industry review in order to identify potential opportunities for greater commercial involvement, with a view to its likely removal from the arm's length bodies sector as soon as possible. With the changes and possible fragmentation we may face, learning from other countries' experience is ever more relevant.

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John Tingle, Nottingham
Pippa Bark, London
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Introduction

The development of a patient safety policy agenda

John Tingle

The purpose of this book is to explore the impact of legal systems on patient safety initiatives. We ask fundamental questions such as whether legal systems are used in appropriate ways to support state and local managerial systems developing patient safety procedures. What alternative approaches can and should be utilised? Chapters in this book explore the patient safety managerial and legal structures that exist in countries where there is a developed patient safety infrastructure and culture.

In the UK the Bristol Inquiry report, chaired by Professor Sir Ian Kennedy, stated well the tension that exists between English tort law and the patient safety agenda. The report states:

33 It is our view, therefore, that the culture and the practice of clinical negligence litigation work against the interests of patients' safety. The system is positively counter-productive, in that it provides a clear incentive not to report, or to cover up, an error or incident. And, once covered up, no one can learn from it and the next patient is exposed to the same or a similar risk.¹

The report goes on to state;

35 The system of clinical negligence litigation is now ripe for review. It is over 20 years since it was last considered as part of the review carried out by a Royal commission under Lord Pearson. Much has changed in the NHS and in the practice of medicine since then. The system is now out of alignment with other policy initiatives on quality and safety: in fact it serves to undermine those policies and inhibits improvements in the safety of the care received by patients. Ultimately, we take the view that it will not be possible to achieve an environment of full, open reporting within the NHS when, outside it, there exists a litigation system the incentives of which press in the opposite direction. We believe that the way forward lies in the abolition of clinical negligence litigation, taking clinical error out of the courts and the tort system.²