Informed Consent and Clinician Accountability
The Ethics of Report Cards on Surgeon Performance

This timely collection analyses and evaluates ethical and social implications of recent developments in reporting surgeon performance. It contains chapters by leading international specialists in philosophy, bioethics, epidemiology, medical administration, surgery and law, demonstrating the diversity and complexity of debates about this topic, raising considerations of patient autonomy, accountability, justice and the quality and safety of medical services. Performance information on individual cardiac surgeons has been publicly available in parts of the US for over a decade. Survival rates for individual cardiac surgeons in the UK have recently been released to the public. This trend is being driven by various factors, including concerns about accountability, patients’ rights, quality and safety of medical care and the need to avoid scandals in medical care. This trend is likely to extend to other countries, to other clinicians, and to professions beyond health care, making this text an essential addition to the literature available.

Dr Steve Clarke is a Senior Research Fellow at the Centre for Applied Philosophy and Public Ethics, Charles Sturt University, Australia, and a Research Fellow with the Programme on the Ethics of the New Biosciences, James Martin 21st Century School, University of Oxford.

Associate Professor Justin Oakley is Director of the Centre for Human Bioethics at Monash University, Victoria, Australia.
Informed Consent and Clinician Accountability

The Ethics of Report Cards on Surgeon Performance

Edited by

Steve Clarke
University of Oxford, UK, and Charles Sturt University, New South Wales, Australia

Justin Oakley
Monash University, Victoria, Australia
# Contents

<table>
<thead>
<tr>
<th>List of contributors</th>
<th>page viii</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgements</td>
<td>xi</td>
</tr>
</tbody>
</table>

Introduction: Accountability, informed consent and clinician performance information  
Justin Oakley and Steve Clarke  
1

## Part I Accountability

<table>
<thead>
<tr>
<th>Part introduction</th>
<th>23</th>
</tr>
</thead>
</table>

1 Clinician report cards and the limits of evidence-based patient choice  
Michael Parker  
27

2 Report cards for institutions, not individuals  
Neil Levy  
41

3 Safety, accountability, and ‘choice’ after the Bristol Inquiry  
Tom Sorell  
52

4 Public reports: putting patients in the picture requires a new relationship between doctors and patients  
Merrilyn Walton  
65

5 Adverse event disclosure: benefits and drawbacks for patients and clinicians  
Paul Barach and Michael D. Cantor  
76

6 Report cards and performance monitoring  
Stephen Bolsin and Liadain Freestone  
91
Part II Informed consent

107

7 Informed consent and surgeons’ performance
Steve Clarke and Justin Oakley

8 The value and practical limits of informed consent
Merle Spriggs

9 Against the informed consent argument for surgeon report cards
David Neil

10 Trust and the limits of knowledge
David Macintosh

11 Surgeons’ report cards, heuristics, biases and informed consent
Steve Clarke

12 Report cards, informed consent and market forces
Adrian J. Walsh

Part III Reporting performance information

193

13 Is the reporting of an individual surgeon’s clinical performance doing more harm than good for patient care?
Silvana F. Marasco and Joseph E. Ibrahim

14 Examining the link between publicly reporting healthcare quality and quality improvement
Rachel M. Werner and David A. Asch

15 Hospital and clinician performance data: what it can and cannot tell us
Paul Aylin
16 An ethical analysis of the defensive surgery objection to individual surgeon report cards
Justin Oakley
243
17 Surgeon report cards and the concept of defensive medicine
Yujin Nagasawa
255
18 Training, innovation and surgeons’ report cards
Tony Eyers
266
19 Doctors’ report cards: a legal perspective
Ian Freckelton
279

Index
294
Contributors

David A. Asch is Executive Director of the Leonard Davis Institute of Health Economics at the University of Pennsylvania and Director of the Center for Health Equity Research and Promotion at the Philadelphia Veterans Affairs Medical Center.

Paul Aylin is Senior Clinical Lecturer in the Division of Epidemiology, Public Health and Primary Care, and Assistant Director of the Dr Foster Unit, at Imperial College London.

Paul Barach is Professor at the Colleges of Medicine and Public Health, at the University of South Florida. He has written extensively on patient safety and event reporting.

Stephen Bolsin, Melbourne University academic and anaesthetist, exposed the Bristol Royal Infirmary paediatric cardiac surgeons’ poor performance and is developing new technologies to enhance clinical performance monitoring and incident reporting.

Michael D. Cantor is a geriatrician and attorney whose scholarly work focuses on ethics, ageing and technology. He is an Assistant Professor of Medicine at Harvard Medical School.

Steve Clarke is Senior Research Fellow in the Centre for Applied Philosophy and Public Ethics, Charles Sturt University, and Research Fellow in the Program on the Ethics of the New Biosciences, James Martin 21st Century School, University of Oxford.

Tony Eyers is a colo-rectal surgeon, and Chair of the clinical ethics advisory committee, at the Royal Prince Alfred Hospital, Sydney.
Ian Freckelton is a barrister in Melbourne, Australia. He is also Professor, Law Faculty, University of Sydney, and Honorary Professor of Law, Psychological Medicine and Forensic Medicine at Monash University.

Liadain Freestone is a specialist anaesthetist at the Royal Hobart Hospital, Tasmania, Australia.

Joseph Ibrahim is a practising consultant physician and professor of geriatric medicine at Monash University. He also works at the State Coroner’s Office and the Victorian Institute of Forensic Medicine investigating system failures associated with healthcare deaths.

Neil Levy is Senior Research Fellow in the Centre for Applied Philosophy and Public Ethics, University of Melbourne, and a Researcher at the Program on the Ethics of the New Biosciences, James Martin 21st Century School, University of Oxford.

David Macintosh is Associate Professor, Ethics and Professional Development, at the Medical School, James Cook University, North Queensland. He has a particular interest in trust and professional integrity.

Silvana Marasco is a cardiothoracic surgeon at The Alfred Hospital, Melbourne. She is Head of the Lung Transplant Surgery Service and has research interests in thoracic organ transplantation and bioethics.

Yujin Nagasawa is Lecturer in the Department of Philosophy at the University of Birmingham and Honorary Research Fellow at the Centre for Applied Philosophy and Public Ethics at the Australian National University.

David Neil is a lecturer in philosophy at the University of Wollongong, NSW, Australia.

Justin Oakley is Director of Monash University Centre for Human Bioethics. His books include Virtue Ethics and Professional Roles (with Dean Cocking)(Cambridge, 2001), and Morality and the Emotions (Routledge, 1993).

Michael Parker is Professor of Bioethics at the University of Oxford and Director of the Ethox Centre. His research interests include multidisciplinarity in bioethics, ethics in clinical genetics, and international genomics.
List of contributors

Tom Sorell is John Ferguson Professor of Global Ethics in the Department of Philosophy at the University of Birmingham. He has published widely in moral theory and applied ethics.

Merle Spriggs is a Bioethicist at the Murdoch Childrens Research Institute, Melbourne, Australia. She is author of Autonomy and patients’ decisions (Lexington Books, 2005).

Adrian J. Walsh is a Senior Lecturer at the University of New England and a Research Associate with the Centre for Applied Philosophy and Public Ethics. His research is in political philosophy with a particular interest in debates about markets and commodification.

Merrilyn Walton is Associate Professor of Medical Education at the University of Sydney. She was the founding Commissioner for the NSW Health Care Complaints Commission (1993–2000). She teaches students and clinicians about ethical practice and patient safety.

Rachel M. Werner is a general interest and health economist at the University of Pennsylvania. She is also an investigator at the Center for Health Equity Research and Promotion at the Philadelphia Veterans Affairs Medical Center.
Acknowledgements

A proper assessment of the issues raised in this volume requires drawing on expertise in philosophy and bioethics, along with expert knowledge of factors influencing surgical performance, clinical practice, the measurement and reporting of healthcare outcomes, relevant studies in healthcare quality and safety, professional regulation, and practitioner and consumer views on report cards. Accordingly, we have gathered contributions from philosophers and bioethicists, along with surgeons and other health professionals, epidemiologists, regulators and lawyers.

This collection had its origins in a workshop, organized by the editors, entitled ‘Publicizing performance data on individual surgeons: the ethical issues’. The workshop was held at the University of Melbourne in November 2004. A report on the workshop appears in the Academy of the Social Sciences in Australia’s on-line journal Dialogue (Clarke and Oakley, 2005). The chapters contained in this volume authored by Silvana Marasco and Joe Ibrahim, Tony Eyers, Yujin Nagasawa, Justin Oakley, Stephe Bolsin and Liadain Freestone, Steve Clarke, Adrian Walsh, Neil Levy, Merrilyn Walton and David Macintosh are all descendants of papers first presented at this workshop. Also present at the workshop, and heavily involved in discussions, were David Neil, Merle Spriggs, Ian Freckelton and Mike Parker, who have contributed chapters. Funding for the initial workshop from which this book developed was generously provided by the Academy of the Social Sciences in Australia and by the Centre for Applied Philosophy and Public Ethics. Thanks to all who participated in the workshop and to Richelle Maclean, Seumas Miller and Mark Pinoli for their help and encouragement. The workshop arose from a 3-year research project funded by National Health and Medical Research Council project grant # 236877, led by Oakley and Clarke, entitled An ethical analysis of the disclosure of surgeons’ performance data to patients within the informed consent process.

To produce a balanced volume that better reflects the international nature of research on healthcare performance assessment, particularly in relation to
issues of accountability, we invited contributions by Tom Sorell, Paul Aylin, Paul Barach and Michael Cantor. Also reproduced here, and the subject of much discussion in this volume, is 'Informed consent and surgeons’ performance’, by the editors of this volume, Steve Clarke and Justin Oakley, *The Journal of Medicine and Philosophy*, 29(1) (2005), pp. 11–35. Copyright © *The Journal of Medicine and Philosophy*, Inc., reprinted with permission. Thanks to the editors of this journal for permitting reproduction of this article. The contribution by Rachel Werner and David Asch is a slightly revised version of a recent article, ‘The unintended consequences of publicly reporting quality information’, which first appeared in the *Journal of the American Medical Association*, 293(10) (2005), pp. 1239–1244. Copyright © 2005, American Medical Association. All rights reserved. Thanks to the editors of this journal for permission to reproduce this article.

All the chapters in the collection, with the exception of the two that were previously published as journal articles, have been anonymously refereed. We wish to thank Richard Barling, who was Executive Director, Science, Technology and Medicine at Cambridge University Press, for his expert guidance, and several anonymous readers for the Press, for their excellent suggestions. We are grateful to Rachael Lazenby and Jeanette Alfoldi for their help with coordinating proofreading and their work on the production side of things, and to Mary Sanders, for her diligent copy-editing. Thanks also to Steve Matthews, Steven Coleman, Jeanette Kennett, Ian Olver, David Benatar, Andrew Alexandra, Lewis Wall, Don Ross, Graeme Maclean, Robert Young, Tom Campbell, Daniel Star and Steven Tudor for their assistance in producing this volume. Justin also wishes to acknowledge Toni Hoffman, whistleblower at Bundaberg Base Hospital and Monash Master of Bioethics graduate, for her inspirational efforts, and for her insight into the difficulties that may be encountered in publicizing problems with surgeon performance. Justin would like to give special thanks to his partner Kathryn Bailey, and son, Jordan Oakley, for their support and encouragement with this book.

*Steve Clarke*  
*Justin Oakley*

---

**Reference**