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978-0-521-18341-3 - Good Medical Practice: Professionalism, Ethics and Law

Kerry J. Breen, Stephen M. Cordner, Colin J.H. Thomson and Vernon D. Plueckhahn

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## GOOD MEDICAL PRACTICE

*Good Medical Practice: Professionalism, Ethics and Law* brings together the information central to the professional, ethical and legal requirements of being a doctor. It covers a core curriculum for medical students, doctors in training and international medical graduates preparing for the Australian Medical Council examinations. It will also be useful for busy doctors looking for answers to issues that arise in practice, and for approaches that meet professional standards.

The book's central premise is that effective and compassionate practice depends not only upon sound medical knowledge and clinical competence, but also upon good communication skills, an empathetic attitude and respect for all patients, truthfulness, self-reflection and an awareness of the responsibilities arising under the law. *Good Medical Practice* encapsulates these attributes and includes practice management, inter-professional relationships, sexual misconduct, complaints processes, the Australian health care system and doctors' health within its broad and comprehensive purview. Complex perennial topics such as the allocation of resources, abortion and mental illness are also thoroughly explored.

Written by specialist practitioners representing both the medical and legal professions, each with vast teaching experience, this is a unique, timely and accessible text that reinforces and redefines a contemporary focus on professionalism in medical practice.

**Kerry J Breen** AM, MB BS, MD (Melb), FRACP is a consultant physician and gastroenterologist. He is currently a part time member of the Federal Administrative Appeals Tribunal and Commissioner of Complaints of the National Health and Medical Research Council.

**Stephen M Cordner** AM, MA (Lond), MB BS, B Med Sc, Dip Crim, DMJ, FRCPATH, FRCPA is Professor of Forensic Medicine at Monash University and Director of the Victorian Institute of Forensic Medicine (VIFM).

**Colin JH Thomson** LLB, BA,LLM (Syd) is Professor of Law in the Faculty of Law at the University of Wollongong. He is currently Chairman of the Australian Health Ethics Committee of the National Health and Medical Research Council.

**Vernon D Plueckhahn** AM, OBE, ED, MD (Adel), Hon MD (Monash), FRACP, FRCPATH, FRCPA, FAMA, FCAP, FAACB, MIAC is a retired Consultant Forensic Pathologist and Honorary Associate Professor of Forensic Medicine at Monash University.

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KERRY J BREEN

STEPHEN M CORDNER

COLIN JH THOMSON

VERNON D PLUECKHAHN

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## PROFESSIONALISM, ETHICS AND LAW



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## FOREWORD

This imposing book has grown to full maturity, following its childhood and adolescence as two precursors published respectively in 1994 and 1997. The successive alterations in the title are a reflection of its maturation and growth. *Law and Ethics in Medicine for Doctors in Victoria*, published in 1994, grew from its conception as an innovative professional practice program, a short course to help young doctors in the transition from hospital training to independent medical practice, developed by three of the authors of the current book, Drs Breen, Cordner and Plueckhahn. It was a concise description of aspects of law and ethics that related to medical practice. They were presented as ‘add ons’ to be accessed and applied when they became necessary. *Ethics, Law and Medical Practice*, published in 1997, recognised by its title and its emphasis that ethics and law influenced many aspects of medicine and the book integrated these facets more comprehensively into the context of medical practice. The title of the current book, *Good Medical Practice: Professionalism, Ethics and Law*, gives a clue to its much more ambitious scope. It recognises that good medical practice requires the knowledge and application of law and ethics and that there is a range of additional components that have come to be depicted by the term ‘professionalism’. It is also significant that a fourth author has been added to the three well-qualified authors of the two earlier volumes. Colin Thomson brings his extensive background as an academic lawyer with a particular expertise in the legal and ethical aspects of medical practice and health research to this edition. Like Kerry Breen he has been Chair of the Australian Health Ethics Committee of the National Health and Medical Research Council.

The change in title and scope of the book reflect four complementary developments.

The first is that the authors have quite heroically expanded the content of the book to include all aspects of medical practice that are additional to the knowledge of medical science and its application to the diagnosis and treatment of patients. Some of these components, such as communication skills and dealing with distressed or dying patients, overlap with skills that are normally taught in clinical education. Others, such as the complex ethical issues that often confront medical care and the expanding legal environment that provides the boundaries within which such care must be practised, are not usually addressed in medical texts but are central to good medical practice.

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The second development is a change in medical practice itself over the last two decades, a change that has seen much greater emphasis paid to medico-legal issues, ethical judgments and respect for patient autonomy. No longer is it possible to practise medicine in a cosy, traditional, paternalistic two-way relationship between the doctor and the patient. Legal parameters set absolute boundaries, but professionalism demands a more sophisticated knowledge and practice, applying ethical principles in difficult situations calling upon wisdom and judgment. Moreover, the patient's right and frequent wish to be included in the decision-making process is now recognised and must be respected. This book deals extensively and sensitively with all these issues.

The third development is the much greater power of medicine to save or preserve life using sophisticated technology. While this has brought monumental benefits to people with acute illnesses often accompanied by multiple organ failure, it also raises ethical dilemmas in the management of people with chronic illnesses whose expectations of that technology may exceed the utility of even the most sophisticated interventions. Where does a patient's right to autonomy end and when do sound clinical judgment and common sense become more important? Is it appropriate to preserve the life of a very premature infant with a high risk of permanent disability? When does withholding or withdrawing life support differ in nature from euthanasia? Decisions like these that seek to balance the power and promise of medical technology, the heightened expectations of seriously ill patients and their families, and the ethical and legal constraints of good medical practice require an understanding of legal boundaries as well as a sound ethical framework to guide decision making.

The fourth factor is that, with the greater capability of medical technology together with the cost of that technology, the questions of distributive justice become more pressing. Who should have priority to what resources and on what grounds? How should the cost be fairly apportioned? These questions can be considered on many levels. For example, how much of our resources should be used for the acute care in hospitals of patients with low quality of life and with little prospect of real improvement, compared with preventive measures in the wider community? In an era where donor organs are becoming increasingly harder to access, what criteria do we use to decide who should receive one? What degree of 'queueing' is appropriate for chronic but not life-threatening conditions? The issue of distributive justice becomes even more troublesome when we look at the different health outcomes in different communities in our own country, especially among Aboriginal and Torres Strait Islander people. And since ethics is not confined by national boundaries, how should we respond when we see, in poor countries in our region and beyond, the terrible effects of diseases that are preventable, or easy to treat using resources we have in abundance?

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The authors, with their extensive and diverse backgrounds, are ideally equipped to deal with these complex topics. They have created an important work that provides an invaluable guide to good medical practice for new medical graduates and established practitioners alike.

RICHARD LARKINS, AO  
Vice-Chancellor and President  
Monash University

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## PREFACE

The primary purpose of this book is to provide in a single accessible format information central to the professional, ethical and legal requirements of being a doctor. It covers a core curriculum for medical students who must obtain a grounding in the elements of what constitutes being a medical professional [1–2]. The same material is essential for doctors in training and for international medical graduates coming to work in Australia. This book should be a useful and readily accessible starting point for busy doctors looking for answers to issues as they arise in practice. This edition brings together updated material generally not found in textbooks of clinical medicine. Although most doctors are now equipped to seek information electronically, this can take time as information is not accessed readily or integrated at a single source, may not be relevant to the local setting and may not be quality controlled.

Since the 1997 edition of our book [3] there have been significant developments in regard to the importance of professionalism. Medical boards here and overseas have focused attention on the breadth of professional skills needed for good medical practice; indeed the UK General Medical Council's primer for doctors is called just that, *Good Medical Practice* [4]. More recently, medical indemnity organisations and health-care institutions have been active in promoting good professional attitudes and behaviour, under the banner of 'risk management', to reduce the risk of adverse outcomes.

Australian medical colleges have agreed to have their education and training programs accredited by the Australian Medical Council (AMC) and this has resulted in a greater emphasis on professionalism and ethics for specialists in training. The AMC clinical examination for international medical graduates now specifically addresses professional attitudes.

At its core, medicine remains the delivery of care to people who are unwell and are seeking help. The effective and compassionate practice of medicine requires a combination of medical knowledge, clinical competence, and sound professional attitudes and skills. In the distant past, professional attitudes and skills were known as a 'good bedside manner' and were not taught formally. It was assumed that young doctors would somehow acquire such skills, perhaps by observation and experience. In Australia, since the 1988 *Doherty Report* [5], the medical profession, especially those sections responsible for the basic medical education, has identified professional skills as something that can and must be taught.

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‘Professionalism’ is a convenient shorthand term to describe the professional attributes required (over and beyond simply having adequate knowledge of medicine and adequate procedural ability) for effective medical practice that the community can trust. Professionalism covers a wide range of elements, including good communication skills, an empathetic attitude, the virtues of self-reflection, truthfulness and dependability, cultural awareness in our multicultural society and awareness of responsibilities arising under relevant laws pertaining to medical practice. Above all it covers an assumption that a person wishing to practice medicine effectively will bring positive attitudes to all the roles involved in being a doctor. Used in this way, the term ‘professionalism’ is consistent with the focus of the Victorian Professional Practice Program, which in 1991 and 1992 was the basis of an early version of this book [6].

Many new influences have been brought to bear on the doctor–patient relationship, including community expectation of excellent outcomes of all interventions, a changing legal interpretation of medical negligence, the conundrums of infinite need versus finite resources, awareness of preventable adverse events, commercialisation and corporatisation of medicine, a patchwork of federal and state privacy laws, additional forms of accountability for doctors with closer scrutiny of professional performance, alertness to doctors’ ill health leading to impairment, and demands for programs of maintenance of professional standards. Despite these influences, the practice of clinical medicine remains very rewarding. As this book unfolds, we hope the reader will recognise that meeting the professional, ethical and legal requirements of medical practice, while demanding, is consistent with approaches competent doctors have used to provide effective and appreciated service for patients over many years. Primary features of such practice remain respect for patients, the personal integrity of the doctor and good communication.

Our approach in this book remains essentially pragmatic. While the text necessarily explores the underpinning themes of ethical theory and medical law, and addresses topical issues such as euthanasia and abortion, it does not probe the ethical or legal detail. Our fundamental aim is to provide core information for medical students and doctors in training, and to guide medical practitioners who are faced in their daily work with practical problems in consultation with their patients. While every care has been taken to strive to be accurate and up to date, the reader should not rely on this book as a source of legal advice. There now exist in Australia several excellent texts on ethics in health care, and on medical law, which are recommended where relevant, and ample references and suggested additional reading are provided for readers who wish to explore any topic in more depth.

KJ BREEN

SM CORDNER

CJH THOMSON

VD PLUECKHAHN

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## PREFACE TO THE 1997 EDITION

A smaller version of this book was published in 1994 as *Law and Ethics in Medicine for Doctors in Victoria* and was well received in that state. It was produced to help meet the need for doctors to be more informed of the ethical and legal obligations of medical practice. Since then, national debate on topics such as consent, compensating patients for adverse events in medical practice, sexual misconduct by doctors and euthanasia has reinforced this need. In addition there are changes occurring in the delivery of health services, in education for health-care providers and in the regulation of the medical profession about which practising doctors need to be informed. Parallel with these changes is the gradual increase in interest and understanding by the community of its health-care needs and rights. Associated with this is the community's determination to have an appropriate say in matters such as the utilisation of health-care resources and the determination of medical professional standards, and its desire for individuals to be adequately informed and involved in decisions regarding their own health. This book does not directly address all these changes, but much of its content is informed by them as reflected in chapters referring to the increasing involvement of community members in the regulatory processes of the medical profession, the development of more accessible patient complaint-handling mechanisms and changes that are occurring to medical education and the selection of medical students.

Against this background, and in response to interest expressed throughout Australia for this type of resource for doctors in other states, the authors embarked on a major rewrite of their original book. The present book is updated, expanded and reorganised to reflect as fully as possible the current legal and ethical obligations of daily medical practice. This update is intended to be pragmatic, accessible and informative and primarily directed to doctors in the making and doctors in practice.

The authors' opinions are that much of the material published in recent years on medical ethics and medical law is not readily accessible to doctors because of its abstract approach and legalistic language. In addition, many modern books on medical ethics have focused on bioethics, using the narrow sense of bioethics as referring predominantly to the ethics of biotechnology. While providing valuable contributions for discussion, these materials may have deflected the average practising doctor away from an understanding of, and meaningful debate and engagement with the community on, the ethical principles that underpin everyday interactions between patient and doctor.

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The authors hope that the principles and practices described in this book will be congruent with the wider medical profession’s understanding of these issues and, if they are not, that the differences will be the subject of contemplation, study and debate inside and outside the profession. The book contains considerable material relating to state and Commonwealth laws and their interpretation. While every care has been taken to strive for accuracy, the reader should not rely upon this book as a source of legal advice.

K. J. BREEN  
V. D. PLEUCKHAHN  
S. M. CORDNER  
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Much of the essential material in this edition is based on the content of the previous 1997 edition (published under the title of *Ethics, Law and Medical Practice*) and some has its basis in our 1994 book, *Law and Ethics in Medicine for Doctors in Victoria*. Thus we must first repeat the acknowledgments made in those two books to a very wide range of medical and other health professional colleagues, lawyers, academics, administrators and regulators, and others without whose help the project would never have been undertaken, let alone completed.

In revising and updating all the chapters of this edition, we have again been very generously assisted by a large number of colleagues. The following people critically examined draft revised chapters and provided advice and direction: Chapter 1 – Professor Wendy Rogers; Chapter 2 – Professor Brendan Crotty; Chapter 3 – Dr Paul Nisselle; Chapter 4 – Dr David Hart; Chapter 5 – Dr David Hart; Chapter 6 – Dr Paul Nisselle; Chapter 7 – Dr Hugh Aders; Chapter 8 – Dr Joanna Flynn, Mr Andrew Dix; Chapter 9 – Ms Beth Wilson, Dr Joanna Flynn; Chapter 10 – Dr Carolyn Quadrio; Chapter 11 – Dr Jenni Parsons; Chapter 12 – Dr Peter Greenberg; Chapter 13 – Associate Professor Bernadette Tobin; Chapter 14 – Professor Stephen Leeder; Chapter 15 – Dr Peter Greenberg; Chapter 16 – Dr Joanna Flynn; Chapter 17 – Professor John McNeil; Chapter 18 – Professor Greg Whelan; Chapter 19 – Ms Helen McKelvie; Chapter 20 – Professor Jock Findlay, Dr David Wells, Dr James King; Chapter 21 – Professor Roger Pepperell, Dr James King; Chapter 22 – Dr John Santamaria, Dr James Tibballs; Chapter 23 – Dr John Tiller; Chapter 24 – Ms Helen McKelvie; Chapter 25 – Professor John Cade; Chapter 26 – Dr David Wells. Other colleagues, including Mr Ian Frank, Dr Sandra Hacker, Dr David Hillis, Dr Katrina Watson and Dr Leanna Darvall, provided advice, or guided us to other sources of expertise and information.

The following organisations kindly gave permission to reproduce material: Australian Medical Association, Australian Medical Students Association, County Court of Victoria, Medical Board of Queensland, Medical Practitioners Board of Victoria, National Health and Medical Research Council, Pharmaceutical Society of Australia, Royal Australian College of General Practitioners and World Medical Association.

Ms Kerry Johannes, Medical Librarian at the Victorian Institute of Forensic Medicine, once again kindly tracked down innumerable hard-to-find articles and court reports, and obtained books we needed to read.

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Professor Richard Larkins, who was the key speaker on medical ethics at our first Professional Practice Program workshop nearly two decades ago, kindly agreed to write the foreword for this edition.

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## ABOUT THE AUTHORS

**Dr Kerry J Breen AM, MB BS, MD (Melb), FRACP** is a Melbourne-based physician who has spent most of his career as a practising gastroenterologist. His interest in the professional, ethical and legal issues of everyday medical practice began when he was first appointed a member of the Medical Board of Victoria in 1981. He has served as President of the Medical Practitioners Board of Victoria (1994–2000), President of the Australian Medical Council (1997–2000) and Chairman of the Australian Health Ethics Committee of the National Health and Medical Research Council (NHMRC) (2000–06). He was a member of the joint Australian Law Reform Commission and NHMRC inquiry into the protection of human genetic information. He has published extensively in the areas of clinical medicine, clinical research, health ethics and medical professionalism. He is presently a part-time member of the federal Administrative Appeals Tribunal and Commissioner of Complaints of the NHMRC.

**Professor Stephen M Cordner AM, MA (Lond), MB BS, B Med Sc, Dip Crim, DMJ, FRCPath, FRCPA** is Professor of Forensic Medicine at Monash University and Director of the Victorian Institute of Forensic Medicine (VIFM). His department is responsible for providing the undergraduate teaching in law for medical students at Monash University, where there is an integrated tutorial-based program taught through the whole curriculum. He co-authored with Professor Plueckhahn the second edition of *Ethics, Legal Medicine and Forensic Pathology* (Melbourne University Press 1991). He has a particular interest in the interface of forensic pathology and human rights issues internationally.

**Professor Colin JH Thomson LLB, BA, LLM (Syd)** is Professor of Law at the University of Wollongong, where he is also the Academic Leader for Health Law and Ethics in the Graduate School of Medicine. He is presently Chair of the Australian Health Ethics Committee of the National Health and Medical Research Council and was a member of that committee from 1998 to 2002. Between 2002 and 2006, he was the Consultant on Health Ethics for the National Health and Medical Research Council. In 1983, he introduced the second Australian university course on law and medicine, at the Australian National University, and has published and spoken widely, nationally and internationally, on issues in health law and ethics. He has been Executive Officer and Chair of the Board of the Australian and New Zealand Institute of Health, Law and Ethics and Vice-President of the Australasian Bioethics Association and is an Associate Editor for the *Journal of Bioethical Inquiry*.

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xxx    About the authors

**Vernon D Plueckhahn AM, OBE, ED, MD (Adel) Hon MD (Monash), FRACP, FRCPath, FRCPA, FAMA, FCAP, FAACB, MIAC** is a retired Consultant Forensic Pathologist and Honorary Associate Professor in the Department of Forensic Medicine at Monash University. He was President of the AMA (Victoria) and also of the Royal College of Pathologists of Australasia. He is acknowledged internationally for his work in, and textbook on, *Ethics, Legal Medicine and Forensic Pathology* (Melbourne University Press, two editions) demonstrating an early appreciation of the importance of an understanding of medical law and ethics for good medical practice. He was the driving force in the establishment of the Victorian Institute of Forensic Medicine.

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