

More information

Index

Adams, Dr John Bodkin 35-6, 304-5 continued concern over anaesthetic Adams, M. 318 mortality deaths 56 Adomako [1995] 4, 43 Dr William Gray's case 54-5 facts and trial 57-8, 185 Dr Chander Notaney's case 55, 60 'gross negligence' 44, 122-5, 129, 144-5, media attention to medical error/ 198, 204 declining public trust in doctors expansion of four-part test 149-50 56-7 relevance of context 104, 109, 116, history, anaesthesia and death 47-54 154-5, 185 Commissions to examine safety of adversary system 81-3, 86 anaesthetics 50 Alghrani, A. 149-50 concerns over deaths associated with Allain, Dr Jean-Pierre 267, 269, 271-4 chloroform 50, 63 Allen, Neil 7, 10, 123, 153, 185 concerns over increasing number of Allitt, Beverly 27 deaths under anaesthesia 52-4 Alpers, Professor Ann 292-3 first inquest into possible chloroformrelated death 49-50 anaesthesia, mortality and the courts from ether to Adomako 4, 43-64 first inquest into possible ether-related Adomako 57-8, 63-4 death 48-9 Adomako and luck 59-62 Hewitt's reform proposals and Adomako's case compared to others proposed legislation 51-2 Andrews [1937] 253, 254 59-60 Annual Report of the Serious Hazards of Adomako's qualifications 62 effect of allegation of leaving the Blood Transfusion (2001-2002) 179 patient 61 Ashworth, A. 2, 130, 132, 149 hostility of expert medical witnesses assisted dying see physician-assisted dying 58,60 and palliative medicine; see under victims' voices, interests and anaesthesia, errors and death 44-7 blameworthy violations 45-6, 128 criminal justice in the healthcare setting errors having substantial chance of causing significant harm 45 Association of Anaesthetists 54, 56 manslaughter investigations after Australia - doctors who kill and harm their medication errors/mechanical patients 3-4, 9, 248-64 problems 46-7 an Australian perspective 261-4 appropriateness of current test for Dr Yogasakaran's case 46-7, 63 anaesthetists more likely to be negligent manslaughter 262-3 investigated and convicted 44 criminal prosecutions rare 249, 255, conclusion – lessons from history 261-2 62 - 4increase in prosecutions 264 proposed special medical homicide voluntary disclosure of information offence 263-4 declining 63 the first conviction 54-62 basis for criminal liability 249-55 Adomako 57-62 the cases 255

320



More information

Index 321

Dr Bailey and Dr Gill 255-6 Dr Jayant Patel 248, 259, 262 Dr George Pegios 254, 257-8, 264 Graeme Reeves 248, 258-9, 262 Dr Gerrit Reimers 256, 263 Dr Suman Sood 256-7, 264 Dr William Valentine 255 28 - 30Dr Bruce Ward 257, 264 legal obstacles to conviction 252-5 meaning 19 causation 254-5 consent 252-3 gross negligence 253-4 offences 250-2 causing bodily harm 251-2 manslaughter 250-1 publicity orders 207 Baker, R. 41 Barshi, L. 178 Bateman [1925] 60-1, 123, 254 Battin, Margaret 308 Beecher, H. K. 54 Belgium 306 Berger, John 37 Biggs, H. 313 Bismark, Marie 240 Blair, Ross 231 blood transfusions 283 - 6HIV contamination see France - role of the criminal law in healthcare malpractice involuntary automaticity 178-9, 181-2 243 Bolam test 109 Boldt, Dr H. J. 51, 62 Bonython [1984] 102-3 Brahams, D. 62 Brazier, M. 2, 123, 149-50 Brearey-Horne, Penelope J. 8, 10 121 Bronitt, S. 252 Brown [1993] 252 Bunkle, Phillida 235 Burke [2005] 311-12, 318 Callaghan [1952] (Australia) 250-1, 253, 254

Callaghan [1952] (Australia) 250–1, 253, 254
Callahan, R. 263
Canada 207
Canter, David 24
Care Quality Commission 182–3, 213
Cartwright Report (New Zealand) 235
Casteret, Anne-Marie 270
Cellarius, V. 312
Chabot, B. 315–16
Chalmers, James 5, 8
Clarkson, C. 128

clinicide 19-20 contemporary cases 27-30 healthcare serial killings in different healthcare systems 27-9, 42 patterned by routine activities of offenders' non-criminal activities fictional accounts of clinicide 32-5 number of healthcare professionals committing clinicide 19-20 scale of suspicious deaths compared to proven murders 19 as serial killing 20 Code of Patients' Rights (New Zealand) 229-30, 232, 234, 237, 247 Coggon, J. 312 Cole, G. F. 290-1 Coney, Sandra 235 Confidential Enquiries 213-15, 225 criticisms in Reports 214-15 definitions of maternal death and substandard care 213-14 confidentiality see doctors, disease transmission, confidentiality and criminal process Controlled Substances Act 1970 (US) 'controlling mind' 144-5, 167, 224 Cook, Robert 94, 98 Coroners Act 1988 (New Zealand) 236, coroners and inquests 88 anaesthesia, errors and death 44-5, 47-9, 52-4, 55, 58-60 ECHR Article 2 making coronial investigations more extensive 87-8, families of victims increasingly engaged in coroners' work 89, 99 increase in complaints/inquests into medical deaths 118, 135, 146 medical deaths before the 1990s rarely extensively investigated 1 New Zealand 242-3 Shipman case 16-17, 22, 24-6 corporate liability see maternal death and Corporate Manslaughter and Corporate Homicide Act 2007; medical manslaughter organisational liability Cotswold Geotechnical Holdings [2011] 193-5, 199, 218-22, 224-5 Coull, R. 190 criminal law and healthcare 2-3, 5, 10



More information

322 Index

Crown Prosecution Service (CPS) 7, 57, disease transmission see doctors, disease 82-3, 118 transmission, confidentiality and Code for Crown Prosecutors 118-19, criminal process diversion see under use and impact of the 133 evidential test 89-92, 118-19, 133, criminal process on treatment of 144-5, 199 pain in the USA public interest test 90-2, 118-19, 133, Dobinson, Ian 9, 262 Doctor Glas (Soderberg) 33 144-5 corporate manslaughter guidance Doctor's Dilemma, The (Shaw) 18, 32-3 207 - 8doctors, disease transmission, corporate manslaughter protocol with confidentiality and criminal process HSE and regulatory agencies 193, 5, 78 207 - 8breaching confidentiality to prevent the DPP's consent required for corporate onward transmission of HIV manslaughter offence 193 68 - 70DPP's guidance on homicide distinction between a duty and a power 124-5 to warn 69-70 DPP's guidelines on public interest duty of care 69 in assisted suicides 93-4, 109, confidentiality and the investigation of accusations of crime 70-5 150, 301 possible further guidance on factors communicating confidentiality for/against prosecution 109, 116, guarantees 73-5 medical records 71-3, 75 ECHR Article 2 making investigations nature of what is recorded 75 more extensive 87-8, 94, 120-1, record-keeping in anonymous form 139, 155-6 73 - 4research records 72, 74 investigations influenced by victims' families 89, 156 solicitor-client privilege and medical deaths and near-deaths 90-2, 95, doctor-patient communications 72 - 3102 Special Crime Division 119-20, 139 criminalisation of HIV transmission and victim involvement in prosecution debates on intervention 66 decision-making 89-92 medical advice and criminal culpability see also prosecution decision-making in 75 - 8medical manslaughter cases medical advice as determinative of Cullen, Charles 29 culpability 76-8 nature of medical confidentiality Davie v. Edinburgh Magistrates [1953] 102 67-8, 73 defensive medicine 5, 154-7 justifications 67, 78 'ripple effect' of manslaughter Donaldson, Sir Liam 18 prosecutions 244 Dr No (Fleming) 36 Drug Enforcement Administration (USA) voluntary disclosure of information declining 63 284-5, 295-6, 298 deference see under healthcare Duff, R. 127, 129 professionals Dufoix, Georgina 267, 275-6 Dekker, S. 47, 61 Dunn [2010], 164-5 Detection of Secret Homicide, The (Havard) Duthie Report on the Safe and Secure 35 Handling of Medicines 221 Devlin, Lord 35-6 Director of Public Prosecutions (DPP) see Eagleton, T. 24 under Crown Prosecution Service Easing the Passing (Devlin) 35-6 emergencies 167, 202-3 (CPS) disclosure 63, 241 as exculpatory factor 106-7 see also doctors, disease transmission, failure to deal with 214 confidentiality and criminal process Erin, C. A. 1



More information

Index 323

European Convention on Human Rights (ECHR) Article 2 311 duty on public bodies to conduct extensive investigations 87-9, 94 effects of interpretation 96-7, 100, 120-1, 135, 139 Article 3 311 Article 7 164, 172 Article 8 311 Evans [2009] 124 evidence, need to retain and disclose 188, 191 experts/expert evidence 119-20 see also medical manslaughter and expert evidence: the role of context and character Fabius, Laurent 275-6 Farrell, Anne-Maree 9-10 Ferner, R. 92, 131-4, 155-6 Filkins, J. A. 297 Fortunate Man, A (Berger) 37 Forty Years of Murder (Simpson) 35 France - role of the criminal law in healthcare malpractice 3-4, 9, 131, 265 - 79analysing the use of criminal law in cases of healthcare malpractice 276-8 claims for financial compensation joined to criminal complaints 276 institutional and regulatory reform 278 involuntary offences on grounds of social utility 276, 279 potential for criminal liability leading to precautionary approach 277-9 conclusion 278-9 appropriateness of criminal law for addressing collective failure 278-9 French approach as an alternative to the English approach 279 HIV blood contamination episode 265 - 70blood service and manufacture of plasma-derived products 266 - 7extent of blood donations infected with HIV 269-70 ministries responsible for national blood system 268 risk contaminated blood posed to PWH 269-70 testing and licensing of drugs/medical devices 268-9 use of the criminal law 270-6

exposure of high rate of HIV infection among haemophiliacs 270 first set of proceedings 271–3 Lucas Report 270-1, 275 second set of proceedings 274 third set of proceedings 275-6 Frank, Arthur 30 Friedman, L. 195 Garetta, Dr Michel 266-7, 269-74 Garland, D. 85-6, 97 General Medical Council 115, 156-7 advance care planning guidance 310 confidentiality guidance 69-70 educational standards 52 failure to protect public in drug conviction cases 15-16 Fitness to Practise jurisdiction 40 regulating the medical profession 1, 24-5 response to Shipman's drug convictions 15 unsafe working practices guidance 181-2 withdrawal of artificial hydration/ nutrition guidance 311 Gill [1992] (Australia) 255-6 Goldenbaum, D. M. 294-6 Goldsworthy, Peter 31 Gooderham, Peter 7-8 Gordijn, B. 316-17 Great Western Hospitals NHS Trust 211-13, 217-23, 225 Green, R. G. 178-9 Griffiths, Danielle 6-7, 9-10, 88-9, 91 Griffiths, J. 318 gross negligence manslaughter see under prosecution decision-making in medical manslaughter cases Guy's & St Thomas' NHS Trust [2008] 186 Hall [2007] 159 Hart, H. 130 Hart, Dr Julian Tudor 32 Havard, John 35 Healey, A. 178 Health and Disability Commissioner (New Zealand) see under New Zealand's response to health



More information

324 Index

health and safety (cont.) liability to prosecution under 192-3, 196-7 Health and Safety Executive (HSE) 119, 193, 197, 220 and CPS guidance on corporate manslaughter 207-8 liaison protocol between CPS, HSE and regulatory agencies 193, 207-8 'name and shame' database 207 Sentencing Guidelines 193, 197-8, 206 - 7Health Practitioners Competence Assurance Act 2003 (New Zealand) 232-3, 240 Healthcare Commission, 185, 225 maternity service provision survey 216 Mid Stafford Hospital report 182-3 Northwick Park Hospital report 216 healthcare professionals anaesthetists' errors see anaesthesia, mortality and the courts from ether to Adomako criminal liability as strongest formal condemnation 2 deference criminal justice agencies and judges becoming less deferential 1-2 declining levels of public trust and deference 2-4, 132, 134-5, 262 deference previously shown to medical profession 1, 55, 87 healthcare management accountability 2, 7, 200-1, 205-6, 217-18 see also medical manslaughter organisational liability increased vulnerability to criminal charges/investigations 1-2 misuse of drugs 16 see also use and impact of the criminal process on treatment of pain in the USA unsafe working practices, what should clinical staff do about 181-4, 191 doctors' professional duty stipulated by GMC 181-2 failure by management to take reasonable action 182-4 reasonable action by employer/ contracting body 182 reporting systems and whistleblowing policies 182 Hervé, Edmond 267, 275-6 Hewitt, Dr F. W. 51-2, 62

HIV blood contamination see France - role of the criminal law in healthcare malpractice HIV transmission see doctors, disease transmission, confidentiality and criminal process Holm, S. 319 homicide law in England and Wales 121-2, 184 Horder, J. 128 Human Fertilisation and Embryology Act 1990 (as amended by HFE 2008) 1 Human Rights Review Tribunal (New Zealand) 239, 247 Human Tissue Act 2004 1 Hunt, Dr John 31-2, 38 Hurwitz, Brian 4, 41 Hurwitz [2006] (USA) 297-9 Inglehart, R. 318 Inglis, Francis 94, 98 inquests see coroners and inquests involuntary automaticity and medical manslaughter 7-8, 177 causative factors of involuntary automaticity 180 clinical staff actions on unsafe working practices see under healthcare professionals gross negligence manslaughter: its use in the medical setting 184-6 Adomako and Misra and responsibility of their employers 185-6 fines on public bodies 186, 206-7, 223 homicide offences 184 individual liability or corporate liability for manslaughter? 186-8 unheeded warnings 187-8 involuntary automaticity 177-9 aviation and healthcare comparison in context of safety 178-9 leading to errors 178 nature of involuntary automaticity 177 - 8verbal double-checking safety checklist procedures to reduce errors 178, 181 involuntary automaticity: what can be done about it? 181 medical mistakes and involuntary automaticity 179-80 blood transfusions 178-9 radiotherapy 179-80 need to retain and disclose evidence 188, 191



More information

Index 325

true mens rea? 190 'whistleblowers', treatment of 183, 190-1 James, Daniel 92-3 Janssens, R. 316-17 Jernigan, J. C. 292 Jones, R. 166 juries 91 convincing the jury 135-6, 145 corporate manslaughter health and safety regulations relevant in considering culpability 196 issues for consideration 217-23 verdicts on more than one charge 208 ill-suited to determining mental disorders 162-3, 172 more willing to convict where restorative justice used 155 subjective recklessness test, applying 147 sympathy for healthcare professionals 91, 144-5

reluctance to convict in small towns

unheeded warnings, effect on jury's

decision 187-8, 190

role of criminal liability 188-9

Kaplan, H. S. 180 Kazarian, Melinee 9–10 Keating, H. 129 Kelly, HM Advocate v. [2001] 72, 74 Keown, J. 305 King's Fund 216 Kollas, C. D. 292, 294 Kramer, J. 272

291

Lacey, Nicola 110 Lancet, The 31, 49-51, 59, 63 Lancet Commission 50 Laurie, G. T. 302 Law Commission 101, 160, 201, 203-4 Lawrence [1982] 58 Le Médicin malgré lui / A Doctor and No Doctor (Molière) 32 Leader, Darian 22-3 Levinas, E. 24 Libby, R. T. 296 Linden, J. V. 180 Linsell [1997] 310-11 Loder, Caroline 94-5 Long [1995] 231 Lovrich, N. P. 292-4 Lucas, Michel 270-1, 275 Lund, Frank 94, 98

Lyons, Barry 4, 97-8

MacIntosh, Sir Robert 52-4, 63 Mahendra, Dr B. 24 Majors, Orville Lynn 28 Malèvre, Christine 28 Malice Aforethought (Iles) 33-4 Manning, Joanna 246-7 Mascie-Taylor, H. 177-8, 180-1 Mason, J. K. 302 maternal death and Corporate Manslaughter and Corporate Homicide Act 2007 (CMCH Act) 16, 122, 144-5, 210-26 case study: the 'needless' death of Mayra Cabrera 211-13 Care Quality Commission review 213 deaths of Sereena Ali and Violet Stephens 212-13 systemic organisational failings 211-13 CMCH Act and Great Western Hospitals NHS Trust 211-13, 217-23, 225 Cotswold Geotechnical Holdings 193-5, 199, 218-22, 224-5 concerns about poor systems, practices and procedures in maternity services 210-11 conclusion 223-6 systemic deficiencies as more than an insignificant cause of death 225 - 6tentative approach taken to prosecutions under CMCH Act 223-5 statistics on maternal deaths 210 systemic organisational deficiencies as contributory cause of maternal death 213-17 Confidential Enquiries see Confidential Enquiries Healthcare Commission report on Northwick Park Hospital 216 Healthcare Commission survey into maternity service provision 216 King's Fund study 216 NHS Litigation Authority/Clinical Negligence Scheme for Trusts 217, 223 McCall Smith, A. 46-7, 128, 246 McDowell, S. 92, 131-4, 155-6 McSherry, B. 252 Medical Council of New Zealand 232-4, 240 - 2Medical Defence Union 133

Medical Error Action Group

(Australia) 249



More information

326 Index

medical manslaughter and expert evidence: first prosecution under CMCH Act 193-5, 199, 218-22, 224-5 the roles of context and character 6, 101-16 liaison protocol between CPS, HSE character of defendants 110-16 and regulatory agencies 193, 207-8 characters 'not fitting in', racism and corporate manslaughter and CMCH Act expert assessment 89, 192, 200 causing death 203-4 114 - 16experts' evaluations about character as culpability element 204-5 well as conduct 111-13 exemptions 202-3 legitimacy of attention to behaviour fines on public bodies 186, 206-7, 223 and attitude 113 offence 201 relevance of character to criminal penalties 206-7 liability 110-11 publicity orders 207, 225-6 risks of using character perceptions for relevant duty of care 201 gross negligence assessments 113-14 remedial orders 207, 225-6 conclusion 115-16 senior management 205-6 experts 102-3 Sentencing Guidelines 193, 197-8, evaluating the admissibility and 206 - 7reliability of expert evidence 102-3 threshold question 201 identifying experts for interview 103 gross negligence (common law) scope of scientific evidence 102 manslaughter 198-9 relevance of context 104-9, 115 health and safety 196-8 'bad apples' approach 104-5 involuntary automaticity 179-80 being overworked as exculpatory factor medical manslaughter often a chain of 105 relatively small mistakes 146 bias, hindsight and outcome 105 prosecution policy 207-8 Bolam test and gross negligence 109 role of criminal liability 188-9 broad test/flexible approach to serious systemic failures 142, 151-2, 154 - 5investigating/interpreting context Special Crime Division's role 120 104 emergencies as exculpatory factor warnings see warnings 106 - 7whistleblowing, retribution experts dependent on quality of for 190 evidence presented to them 108-9, medical psayslaughter: see also maternal death and Corporate Manslaughter and Corporate organisational context as exculpatory Homicide Act 2007 factor 105-8 Medical Practitioners Act 1995 (New organisational Zealand) 232-3 liability 8, 122, 192-209 Meisel, A. 292 brief conceptual and legal history 194-6 Mental Capacity Act 2005 s. 44 of the Act 7, 153, 160-1 corporations as legal persons 194-5 defendant having 'care of' the historical development of corporate liability 195-6 victim 166 clinical staff actions on unsafe working incapacitated decision-making 163 practices see under healthcare lack of legal certainty surrounding professionals statutory offences 164-5 conclusion 208-9 prohibition of ill-treatment and wilful controlling mind' 144-5, 167, 224 neglect 160-1, 172 Corporate Manslaughter and Corporate Mental Health Act 1983 Homicide Act 2007 (CMCH Act) s. 127 of the Act 7, 153, 160 broader legal landscape 192-3 fortifying common law duty of and corporate manslaughter 200-7 care 166 difficulty in securing convictions for lack of legal certainty surrounding statutory offences 164-5 corporate manslaughter as driver 198-9 meaning of 'mental disorder' 162-3



More information

Index 327

mental disorder and a caring obligation	liability only where health practitioner
164	kills by reckless acts/omissions 245
prohibition of ill-treatment and wilful	manslaughter conviction an unhelpful
neglect 160, 172	form of accountability 246
receiving psychiatric treatment 163	Code of Patients' Rights 229–30, 232,
mercy killings 94, 98	234, 237, 247
Merrett, Jamie 126, 152	conclusion 247
Merry, A. 46–7, 128, 130, 231,	gross negligence manslaughter 243–5
235, 246	inconsistency in approach 243-4
Mid Staffordshire Hospital 7	invoking criminal law for negligence
accountability of healthcare management	frustrates accountability channels
2, 162	244
'directing and controlling mind' 167	'ripple effect' of manslaughter
reporting of concerns not acted upon	prosecutions 244
182–3	Health and Disability Commissioner
Milford Haven Port Authority [2000] 186	(HDC), 9, 229–30, 240–1
Misra [2004] 109, 116, 122, 124–5, 129,	greater flexibility in handling
148, 185–6	complaints 239–40
Misuse of Drugs Act (1971) 16	naming policy 241–2
Mitterrand, President François 272	reduction in investigations 233–5
Mola [2007] 75–8	statutory complaints regime 232,
Montgomery, J. 129	237–9, 246–7
Morrell [2002] 172 Mullock, Alexandra 10	impact of law changes 233–5 competence reviews 233–4
ividiock, Alexandra 10	reduction in criminal and disciplinary
National Patient Safety Agency 3	proceedings 233
Netherlands 3–4	reduction in HDC investigations
palliative care/CDS 10, 313–17, 319	233–5
development of 316–17	increased complaints/publicity in
importance of 313–16	healthcare events and rehabilitation
and PAD 302–3, 317	229
physician-assisted dying (PAD) on	July 1996 – a turning point 231–3
request 302–3, 318	introduction of Code of Patients'
legalisation 304, 306, 314	Rights 232
majority of requests rejected/subject to	new regulatory system for medical
delaying tactics 315	practitioners 232–3
stopping eating and drinking as an	reduction in manslaughter threshold/
alternative 315–16	gross negligence introduced 231–2
Netter, Dr Robert 268, 271	new forms of accountability 235-7
New Zealand Medical Law Reform Group	accident compensation scheme/barring
(NZMLRG) 229, 231	damages claims 235-7
New Zealand Quality of Healthcare Study	focus on competence assurance 237
238	impact of introduction of Coroners Act
New Zealand's response to health	236
practitioner negligence 3–4, 8–10,	outdated professional regulation/
154, 229–47	concern about self-regulation 236
accountability in 2012 246-7	underdevelopment of patients' rights
whether pendulum has swung too far	235
246–7	other developments 241–3
background 230–1	coroners' inquests 242–3
NZMLRG's campaign for reform 229,	HDC naming policy 241–2
231	Medical Council's rehabilitative
prosecutions for medical manslaughter	approach 242
under Crimes Act 230–1	voluntary disclosure 241

a changed perspective 245-6

voluntary public disclosure 241



More information

328 Index

New Zealand's response to health human dignity, respect for 313, 318 practitioner negligence (cont.) legal distinction between causing death patient safety movement 238-40 and allowing patient to die 309 competence assurance 232-3, 240 nature of palliative sedation 302, 308 extended right of proceedings before use of CDS 307 Human Rights Review Tribunal 239 and withdrawing artificial hydration greater flexibility for HDC in handling and nutrition 307-9, 311 complaints 239-40 Netherlands see Netherlands high prevalence of preventable harm to perilous palliation: the boundary between patients 238 caring and killing 301-2, 304-6 reformed coverage of medical double effect doctrine 301-2, 304-6, accidents under compensation 309, 312, 318 legislation 240 tension between palliative care and rehabilitative focus in interests of the physician-assisted dying (PAD) in public 238 UK 304, 317 'systems thinking' 238 arguments against legalising any form Nicklinson, Tony 94 of PAD 303-4 Norris, Lisa 179-80 arguments in favour of legalising PAD Northwick Park Hospital 216 304 Norwood, Frances 317 what the patient wants? 311-13 Nydam [1977] (Australia) 253-4 early terminal sedation 312-13 Pickles, Dr William 31 O'Doherty, S. 136 police 82-3 OLL Ltd [1996] 224 actions and investigations/discharge of On Murder Considered as One of the Fine Arts duties as matters for the police 88 (De Quincey) 20 deaths/near-deaths from medical care O'Neill, Onora 36-7 investigations 88-9 organisational liability see medical referral of cases to CPS 118 manslaughter: organisational liability ECHR Article 2 and more extensive Ost, S. 1, 315-16 investigations 87-9, 94, 139, 141, 155-6 families' concerns, responding to 89, 156 pain treatment see physician-assisted dying and palliative medicine; use and more investigations about medical impact of the criminal process on treatment standards 118, 135, 146, treatment of pain in the USA 155-6 palliative treatment see physician-assisted liaison protocol between CPS, HSE, and dying and palliative medicine regulatory agencies 193, 207-8 Paper Mask, A (Collee) 36 Operation Orcadian 47 victim involvement in police decision-Patel [2011] (Australia) 248, 259, 262 Paterson, Ron 8-10 making 86-9 Pegios [2008] 254, 257-8, 264 Police and Criminal Evidence Act (1984) Perfect English Murder, The (Orwell) 35 71 Petiot, Dr Marcel 29 Porter, Roy 31 Powers, M. 43 Petrov, Dr Maxim 29 physician-assisted dying and palliative Prentice and Sullman [1994] 104, 123, 131, medicine 10, 301-19 conclusion 318-19 prescription drugs see use and impact of the continuous deep sedation (CDS) 306-10 criminal process on treatment of consent 310, 313 pain in the USA ethical concerns over use of CDS Pritchard [1865] 65 307-8 prosecution decision-making in medical manslaughter cases 6-7, factors cited for instigating CDS 117-58 309-10 alternatives to medical manslaughter by hastening death and CDS 305-9, 312, gross negligence 145-55 318



More information

Index 329

a context-specific offence of 'medical neglect endangering life' 150-6 a context-specific revised version of gross negligence manslaughter 149-50 reckless manslaughter/raising the bar of liability 114, 117, 146-9 background to medical manslaughter cases Code for Crown Prosecutors see under Crown Prosecution Service (CPS) CPS Special Crime Division role 119-20, 139 ECHR Article 2, effects of interpretation of 87-8, 94, 120-1, 139, 155-6 increased complaints/investigations relating to medical deaths 118, 155 - 6instructing appropriate experts 119-20 referral of case by police to CPS 118 conclusion 155-7 gross negligence manslaughter alternatives to medical manslaughter by gross negligence 145-55 corporate liability and health and safety offences 198-9 trends in prosecutions for medical manslaughter by gross negligence 131 - 6uncertainty of gross negligence manslaughter 121-31, 133, 145 use in the medical setting 184-6 methodology 157-8 prosecution decision-making in relation to healthcare deaths in England/ Wales 136-45 no breach of the duty of care 122, 138 - 40no decision 136-7 failure to establish causation 122, 140-2, 146, 150, 156 failure to reach 'gross' threshold 142-5, 147-8 prosecution - all tests met 137-8 prosecution policy on corporate manslaughter 207-8 trends in prosecutions for medical manslaughter by gross negligence 131-6convincing the jury 91, 135-6, 144-5 no evidence of an increase in prosecutions 117, 131-4, 145-6 increase in prosecutions but no lowering of threshold 132-3, 135

uncertainty of gross negligence manslaughter/medical manslaughter 121-31, 133, 145 can negligent behaviour be deterred? 130 - 1criminality or 'badness' 123-6 elements to be proved for gross negligence manslaughter 122 'gross negligence', meaning of 122-6 homicide law in England and Wales 121-2, 184 is negligence culpable? 127-9 medical manslaughter, meaning of 122 moral luck 126-7, 148, 152 objective nature of test for gross negligence manslaughter 117, 123, 125 psychiatric care and criminal prosecution 7, 159 - 73conclusions 172-3 failing to care 159 ill-treatment and wilful neglect 160-2 a new welfare offence? 165-73 deliberating recklessness 171-2 no duty, no crime 166-7 possible new offence 165 unnecessary suffering' 169-71 problems with prosecuting 162-5, 172 diagnostic gateways troublesome 162 - 3first limb of s. 127 Mental Health Act redundant 164 lack of legal certainty surrounding statutory offences 164-5 requirement of medical treatment for mental disorder confusing 163-4 a question of causation 167-9 public demands for medical accountability 2-3, 145-6, 235 Purdy [2009] 92-3 neglect endangering life' 152-3, 151 against doctors 89, 132-3, 135, 262

Quick, Oliver 6, 44-5, 90-1 context-specific offence of 'medical increased prosecutions/complaints reckless manslaughter 146-7, 149-50, vagueness of 'gross negligence' test and reliance on instinct 126 Quill, T. E. 313

radiotherapy 179-80 recklessness 58 deliberating recklessness 171-2



More information

330 Index

recklessness (cont.) as running an unjustified or unreasonable risk 171-2, 76 subjective recklessness 126 and determining gross negligence 90-1, 124-5, 138, 142-3, 184 as test for medical manslaughter 6, 76, 109, 114, 116–17, 146–9, 152 Reeves, Graeme 248, 258-9, 262 restorative justice 6, 10, 97-9, 131 for assisted dying cases 98-9 for medical deaths and near-deaths 98-9, 155 Roux, Professor Jacques 267-8, 271-2 Rowley [2003] 123-5, 148 Royal College of General Practitioners 38 Royal College of Obstetricians and Gynaecologists 216

Salisu [2009] 159, 168-9 Sanders, Andrew 5-7, 9-10, 91 Sargent, Dr Norman 44 Seale, C. 304, 306-10, 313-14 Seddon, M. 235 serial killings - case of Dr Shipman see Shipman, Dr Harold Seymour, J. E. 314 Sharpe, Lisa 129, 154-5 Shipman, Dr Harold 4, 13-42 background 14-15, 18, 22-3 psychological make-up 15, 22-4 career 14-18 drug addiction and offences 15 GMC response to convictions and resumption of practice 15 powers under s. 12 Misuse of Drugs Act 1971 not exercised 16 suspicions/concerns raised by Dr Linda Reynolds 16-17 clinicide see clinicide crimes shifting public levels of trust and deference 4 health services providing supportive context for serial killers 1, 14, 17 - 18pattern of Shipman's deaths 21-6 crimes committed 13-16, 25-6

context for serial killers 1, 14, 17–18

pattern of Shipman's deaths 21–6 crimes committed 13–16, 25–6 method of killings 21–2 timings of killings 21 victim groups 22

Shipman Inquiry chaired by Dame Janet Smith 13–14, 18, 24–6, 40

Dr Banks criticised 17 flawed nature of first police investigation 17

GMC failure to protect public in drug conviction cases 15-16 suspicious deaths 19 trust in healthcare 36-42 perceptions of Shipman as a good doctor 37-8, 40-1 primitive forging of Kathleen Grundy's will 17, 41-2 recognition of Shipman's bizarre attitudes and practices 38-40 standing and trust in which profession held 36-7 trust and pretending to qualifications 36 type and antitype 30-6 dangers of doctors providing medical care and certifying cause of death 35-6 fictional accounts of clinicide and medical incompetence 32-5 nature of UK general practice and GPs 30 - 2Shone [2005] 170-1 Sigler, K. A. 295 Simpson, Keith 35 Sinclair, Douglas 95 Skegg, Peter 245-6 Smith, Rt Hon Justice Smith 38 chairing the Shipman Inquiry see under Shipman, Dr Harold Snow, John 50 Soderberg, Hjalmar 33 Sood [2006] (Australia) 256-7, 264 Strid, Judi 235 Suicide Act (1961) 10, 301 Sullman see Prentice and Sullman Swango, Michael 27-9 Sykes, N. 305–9 Sykes, W. S. 52, 63 Thirty-Seven Little Things Which Have All

Tadros, V. 129 Taktak [1988] (Australia) 254 Taylor, Kelly 311–12, 316 Thorns, A. 305–9 Toft, Brian 7–8, 177–8, 180–1 Turner, C. L. 181

Caused Death 63

United States of America (USA)
anaesthetic mortality deaths, concern
over 56
Drug Enforcement Administration
284–5, 295–6, 298
healthcare fraud 20



More information

Index 331

healthcare professionals committing clinicide 19-20 pain treating see use and impact of the criminal process on treatment of pain in the USA physician-assisted suicide 294, 316 publicity orders 207 use and impact of the criminal process on treatment of pain in the USA 3-4, 9-10, 280-300 case of William Hurwitz 297-9 conclusion 299-300 diversion of pharmaceuticals 280-1 extent of pharmaceutical diversion 284 increase in pharmaceutical diversion meaning of diversion 283-4 numbers of prescriptions as indication

283–4 impact of criminal process on pain treatment 295–7

of possible diversion 295-6

sources of diverted pharmaceuticals

efforts to control harm caused by opioids focused on prescribers 297 fear of investigation as significant barrier to pain treatment 295–6

prescription drug abuse, death and diversion 280–4

misuse of prescription drugs prevalent 282–3

prosecution of physicians in the USA 285, 287–90

reported white-collar crime involving physicians 289–90

white-collar crime and prosecutorial discretion 288–9 prosecution of physicians in the USA,

factors associated with 290–2 community context 291–2 factors influencing charging decisions 290–1

prosecution of physicians for treating pain and prescribing opioids 292–5 charges against physicians rare in context of prescribing opioids 294–5

divergent views on standard of care in palliative medicine 294 intercollegial discord/disagreements

between providers and families 293 lack of prosecutors' knowledge on role of opioids in pain treatment 293–4 reluctance to prosecute in relation to treating dying patients 292

regulation of medical practice in the USA 286

regulation of medicine by state boards of medicine and osteopathy 286–7 regulation of prescription drugs 284–5

Controlled Substances Act 1970 (CSA) 283–6

penalties 284–5

state laws can be more restrictive than the federal CSA 285

under-treated pain 280–2

fear of investigation as significant barrier to pain treatment 295–6 under-prescribing to avoid costs

associated with an investigation 296 when should the criminal process be used against physicians? 297

Valentine [1842] (Australia) 255 victims' voices, interests and criminal justice in the healthcare setting 5–6, 81–100, 111

assisted dying 92-5, 120 restorative justice for assisted dying

cases 98–9 victims' views 92, 95–6, 99 Code of Practice for Victims of Crime 84,

95 conclusion 99–100

EU Framework Decision on treatment of victims 84

punitive segregation and penal policies 85–6, 99–100

victim involvement in police decisionmaking 86–9

victim involvement in prosecution decision-making 89–92, 132, 135, 146

victims and criminal justice 81–6 victims forgotten 81–3 victims rediscovered 83–6

victims' voices and victims' interest: punitive or 'restorative' 84–5, 95–9 restorative justice 6, 10, 97–9

restorative justice for medical deaths and near-deaths 98–9

warnings

distinction between a duty and a power to warn 69–70

ignoring warnings and gross negligence 125, 137–8, 147, 151

official warnings in restorative justice process 97

reporting systems, need for 182, 189



332 Index

warnings (cont.)
requirement of reasonable action in
response to warnings 182–5, 191
corporate liability for failure to respond
182–4, 189–91
effect on jury's decision of unheeded
warnings 7–8, 187–8, 190
HSE warnings 220
need to retain and disclose evidence
188, 191
whistleblowing 182
corporate liability 190
treatment of 'whistleblowers' 190–1
Wells, Celia 8, 10, 217
Westbrook, J. I. 181

Weyers, H. 318
whistleblowing see under warnings
Wilks, Michael 305
Williams, Glenys 309
Williams, Lynda 235
Woollin [1999] 305
Women's Health Action (New Zealand)
235
Yeo, S. 263–4
Yogasakaran [1990] (New Zealand) 231
Yorker, P. 19–20

Ziegler, Stephen J. 9-10, 292-4

Youngner, S. J. 292