

Book Reviews

Medical Negligence Law in Transitional China

Ding Chunyan

Cambridge: Intersentia, 2012, pp 284, ISBN 9781780680729, \$97.00

Medical Negligence Law in Transitional China offers a fascinating, detailed and sometimes disturbing insight into the current Chinese medical negligence system. This book is the first English-language book written on the topic of medical negligence law in China. As it is written for the English speaker, it assumes that its readers are likely to have little knowledge about the specifics of medical negligence law in the Chinese context. Given this, the author has found an excellent balance between assuming too much or too little knowledge. The book adopts a 'plain-English' approach, explaining the position of the law in China in clear and concise terms, making it easy to follow without compromising the complexity of the legal and social issues. Appropriate explanation is devoted to the different tiers of government in China and the way that the courts operate, so that readers from a common law background will have no difficulty understanding China's largely civil law system.

Medical negligence law in China has undergone a number of reforms in the post-Mao era. As demonstrated by Ding, the impact of these reforms was to reduce access to medical negligence compensation in China and to greatly increase the cost of health care. Different laws enacted by different tiers of government have also resulted in a distinction being drawn between 'ordinary medical negligence' and 'medical malpractice', leading to confusion.

Ding is clearly of the opinion that changes must be made to China's medical negligence law in order to eliminate the confusion caused by the current system. While not everybody will agree with Ding on all of her points of criticism, Ding's views are well justified throughout the text. The thoughtful analysis and inclusion of counter-arguments allows the reader to acknowledge Ding's views while coming to their own balanced, well-informed assessment of China's medical negligence laws.

This book contains a great deal of statutory analysis, which, while necessary, runs the risk of causing the text to be too 'dry'. This is however well countered by the inclusion of the social context surrounding the legislation as well as interesting case examples. The book opens with a rather troubling description of the violence which is resorted to by many patients who feel they won't be able to recover compensation for medical negligence through legal channels. Ding describes the fear in which some

doctors and nurses live in of being threatened or harmed by thugs hired by patients who believe they have been the subject of medical negligence and wish to recover compensation. This is an excellent illustration of the fact that the current medical negligence system simply doesn't deliver the results that it should, as well as highlighting the attitude of scepticism in Chinese society towards the likelihood of achieving success through legal channels.

After setting the scene through an overview of China's medical system and its history, Ding identifies four key problems with China's medical negligence laws:

1. an unfair distinction between medical malpractice and ordinary medical negligence;
2. an ambiguous standard of care;
3. a problematic medical malpractice technical authentication system; and
4. excessive restrictions on compensation for medical negligence.

Ding also provides realistic suggestions for ways in which these problems might be addressed, considering both what the ideal outcome would be and what the most achievable solutions might be.

A good example of this is the chapter dealing with the standard of care for medical negligence. After demonstrating that the standard of care applicable in medical negligence law in China is vague and uncertain, Ding evaluates multiple alternative rules and sources from which a standard of care may be derived. These include rules applied in common law systems, as well as rules developed in Chinese law. Ding demonstrates a desire to influence academic thought in regards to medical negligence in China and to bring about constructive reform. In this chapter she explains that academic study of the applicable standard of care for medical negligence in China is very underdeveloped. She expresses the hope that the arguments raised will contribute to a greater understanding of the standard of care in medical negligence liability. While she draws no conclusions about what exactly the standard of care should be - leaving this up to legislators and judges - she advocates a more consistent application of a standard of care across medical negligence cases.

A drawback in terms of the readability of the book is the excessive use of acronyms. However, given the lengthy titles of the different pieces of legislation and statutory bodies this is clearly something that is unavoidable. The inclusion of an abbreviation glossary is certainly helpful, although flipping back and forth to this page every time a forgotten acronym is encountered does disrupt the flow of the book.

Medical Negligence Law in Transitional China is the first book to seek to enlighten English-speaking readers as to the problems with Chinese medical negligence law. The book serves many purposes. It provides a point of comparison with Western medical negligence law for the Western legal or medical practitioner, as well as providing a wealth of information and suggestions for any potential medical negligence reform in China. The book would no doubt appeal to people from non-legal backgrounds, including sociology and cultural studies. This book is very thorough, interesting and, in some parts, stirring, and offers a valuable insight into medical negligence law in China.

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