

## Foreword

### James Badenoch QC

Alarm and concern, and even fear and loathing, have often in my long experience characterised attitudes to the law among sections of the medical and related professions. All too often this stems from a bewildered ignorance, or partial and so faulty understanding, of how the law relates to clinical practice, and of how it works when clinicians find themselves involved with it. Understandable though this may be (and obvious gaps in professional training are at least partly to blame) such attitudes can be very harmful, given their adverse effect on the confidence and the morale of clinicians in the difficult work they do in increasingly challenging conditions.

It is that ignorance and misunderstanding which this book sets out to dispel. It does so by providing in an accessible style and format a straightforward explanation of the legal principles which apply generally, and also which apply less commonly but crucially, to clinical practice and to clinicians' experience of the legal system. As examples of its scope and importance as a working text, it covers among other things: the legal versus the scientific approach to evidence and to proof; negligence and how it is defined; the components of medical crime; the principles of patient consent and confidentiality; the duty of candour; whistleblowing; record keeping and expert witness work. There is a wealth of information and wise advice within its pages.

It is Giles Eyre's direct experience in the practice of these areas of the law, and his gift for clear and uncomplicated exposition, which makes this book so useful. It will be welcomed by lawyers in the field for their own use, but above all it vitally fills a gap for clinicians. Those in established clinical practice would do well to consult it as a matter of course, and it deserves to become a basis for study for those in training. I am delighted to welcome it and to commend it.

**James Badenoch Q.C.**  
**September 2018**

### Michael Foy FRCS

#### Consultant Orthopaedic & Spinal Surgeon

As medical practitioners we are obliged to be familiar with the law as it applies to our day to day clinical practice. Many of us also have closer, more direct links to the legal profession through our work as expert witnesses in personal injury and clinical negligence claims. Less commonly, hopefully, we have to talk to solicitors because we are the subject of a complaint or litigation in our own practice.

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In our medical training, both at undergraduate and post-graduate level, our required knowledge of the law, the workings of the legal mind and the practicalities of dealing with solicitors as advocate or expert, is given very little attention. Giles Eyre seeks to address this deficiency in our education and training in this publication. Giles has extensive experience of dealing with doctors through his legal practice, his work as an educator through Professional Solutions, his lectures/seminars, his articles on medico-legal matters and his blog. He has contributed to a number of medico-legal sessions at the annual British Orthopaedic Association congress. Therefore he is ideally qualified to give advice on such matters to the medical profession.

The landscape in our own profession and the interface between the medical profession and the legal profession has moved substantially in my 30 years as a consultant in orthopaedic and spinal surgery. Thirty years ago complaints and claims against doctors were rare, now they are commonplace. National Health Service Resolution (NHSR) in their latest report show that claims against medical practitioners have increased substantially in the last thirty years (892 claims 1988/89 v 6,088 claims 2008/9 v 10,686 2017/18). NHSR estimates the money set aside for clinical negligence claims at £77 billion in 2018. This makes it the third biggest call on future Government resources after pensions and nuclear de-commissioning! Professional indemnity payments are rising exponentially for doctors. The Medical Defence Union (MDU) have stopped indemnifying spinal surgeons. The overall trends suggest that in our clinical careers we are very likely to seek advice from or give advice to solicitors.

Against this background it becomes abundantly clear that a knowledge of the law and its relationship to both clinical and expert witness practice is essential. An understanding of the way a lawyer's brain works and how he/she interprets evidence is well covered in this book. The importance of clear, concise record keeping is emphasised. The number of times that I have been asked to advise in potential negligence claims and the contemporaneous records are deficient and appalling is too many to count. It often renders a potentially defensible claim indefensible. There are useful practical guidelines on dealing with police enquiries and what to do when issues arise in one's own practice. More recent changes to the law relating to Duty of Candour and the Montgomery Ruling on consent are also discussed. Even after 30 years of involvement in medico-legal practice alongside my clinical/surgical practice I have found the book to be instructive and educational. I commend it to you.

**Michael A Foy FRCS**  
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**September 2018**

**Dr M E J Wise**

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Most of us came into medicine to heal, or at least to comfort the afflicted. Few imagined the bureaucracy that follows, or realised how high emotions run when things go wrong, and being human they will go wrong - because systems are flawed, or because disability and death are part of that, so far inevitably, terminal condition - life. Few of us expect the acrimony and hostility that can follow, particularly when disciplinary or legal procedures follow. We are poorly served at Medical School, although the defence organisations make a valiant effort subsequently to educate those more concerned with pathology finals, college exams, or debt! Mr Eyre tackles this lacuna.

In this pocket-sized guide he covers a wide range of topics from how lawyers think and the nature of evidence and 'proof' to the increasingly important and seemingly omnipresent issues of 'when things go wrong'! He explains the lawyer's approach to records and their analysis and why the schoolmaster's adage, that you get more marks for showing the (thinking) process than the actual answer, holds as true in Court as it did for Finals!

By walking the medic through a lawyer's thought processes he helps us see how we can record our observations, the history, the reasoning, and the logic, in a way that will not only lead to better care, but less litigation – or at the very least potential litigation more quickly resolved! This book will help us understand that concern about the nature of evidence we record is not philosophical navel-gazing, but of critical importance.

In today's digital world, consent and information processing are minefields. With adept dissection the different aspects of the regulatory and statutory demands are explained. Mr Eyre illustrates why recording what happened is paramount; and this provides the rationale for taking as long as it takes to carry out that task to the required standard.

This work explains how the current chilly climate around doctors' performance increases the need to deliver proper care that is neither rushed nor slap-dash, and which includes recording the evidence properly. With huge demands on practitioners with a never-ending workload, the temptation to do only the most urgent tasks will inevitably lead to problems. Understanding how the evidence is weighed helps justify why tasks must not be short-changed on time, and explains why it is better not to do a new task than leave it incompletely done or incompletely recorded.

The chapter 'When things go wrong', whilst hopefully unnecessary for most, provides a focus on why the earlier lessons should be adhered to, as well as the need to practise within available resources and competencies. The comprehensive explanation of the ways in which legal processes can interfere when things do go wrong should not induce panic attacks, but caution, not avoidance but

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engagement and further reflection on ways to ensure medical records provide adequate evidence of the thought processes and reasoning behind the decisions when viewed retrospectively.

This introductory guide provides information of importance for those anxious about the boundaries between medical practice and the law, and who wish to equip themselves better for a career in medicine in which field the law increasingly exercises oversight.

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