Preface

Medicine is part science, part art; its history is rich in anecdotes of random discoveries, while long-pursued research trails have sometimes failed to find the right cure or therapy. Humans are the variable factors in its equations. Human errors in medical treatment of patients sometimes occur, and humans impacted by these errors sometimes die or sustain serious harm.

The societal need for a system for health-care providers to compensate patients for losses incurred by their health-care errors, is a tale with sadder anecdotes and with remarkable variations among the states and among the health-care systems. This book addresses the new landscape of compensation for the errors that can occur in health care today and tomorrow. A new era is arriving with a matrix of variable factors that lawyers must master, if they wish to be active in the new era of medical malpractice law.

In the first five chapters, Michele Young brings an overview of today’s changed medical landscape. She offers specific and practical ways to approach today’s medical malpractice case from the moment a potential plaintiff or defendant enters the door to the jury verdict. She has also compiled appendices of key medical malpractice statutes for each state in the nation to bring the law to the practitioner’s fingertips. In chapters 6 and 7, Michele Young and James O’Reilly provide the first look for legal practitioners at two new venues for medical malpractice: the remote medical advice via computer “telemedicine,” and the retail chain store.

The center of analysis in the second part of this text are the patients from lower-income families, working or unemployed, who seek affordable health services near their home or care that is readily available to them, if they are homeless. The access to health care by disadvantaged Americans typically involves services paid with heavy or total subsidies from government programs, services delivered through subsidized clinics, or by clinic referral to local hospitals for further care. Subsidies are politically controversial, and costs of health care are likely to continue to increase. In addition to studying the current forms of compensation for medical errors, O’Reilly examines the ways in which society’s less affluent can be compensated for injuries in future systems when the health-care provider makes an error that causes harm.

Errors in medical treatment, generally described as “medical malpractice,” generally involve the provision of a medical care service to patients in a manner that
harms rather than heals. This can be the action of mistakenly leaving a surgical sponge inside a surgical patient’s chest or failing to act against an infection when customary diagnostic methods would show a need for some direct action by the doctor. Many variations on the theme apply, but in general the tort of medical malpractice involves a breach of the duty of reasonable care by a health-care provider.

Within this book, the reader will note that medical malpractice issues are examined in light of state legislation, federal grant programs, and appellate precedents. The changes to the more traditional compensation systems of classic negligence tort recovery have arisen rapidly, political pressures have sharpened, subsidies are under siege by cost-cutting advocates in legislative bodies, and the “conventional wisdom” of compensation that was followed in recent decades is changing. The new medical malpractice is more likely to challenge the ability of lawyers to be flexible as they strive to provide some compensation for injured clients or for the estates of victims of malpractice.

It is said that “only the strong survive,” and the “strong” in this context of compensation will be those whose lawyers have a broad awareness of procedural constraints and an adaptability to meeting the alternative claims systems that apply to federally subsidized clinics. We hope that the lawyers who read this book will be better prepared to serve their clients’ future needs for compensation, by the name “medical malpractice” or by another channel.

We hope that this book will also be read by retail chain executives, telemedicine doctors, practical nurses, hospital administrators, community care and free clinic operators, and the many actors taking part in the care of patients in this new era.

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