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Comparative Health Law

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Although medical malpractice has been the ongoing subject of study for sometime, it remains an area fraught with uncertainty and controversy. In the current debates over federal health care reform, medical malpractice litigation is seen by some as a primary culprit in escalating medical care costs. Others have characterized medical malpractice as an area that has a limited impact on total health care costs or as an arena that must not be tampered with in the interest of consumer protection. Still others point to a lack of access to the compensation system for most injured by medical malpractice. To date, regardless of the rhetoric, federal health reform initiatives have made only very modest reform proposals, many of which have already been implemented at the state level.

The nine articles on medical malpractice in this volume are presented not only in recognition of the need for more study in this area, but in recognition of the value of exploring issues from a comparative point of view. While medical malpractice litigation rates in the United States are the highest in the world, as a result of many factors beyond the law, review of the issue from a comparative perspective reveals that we are not alone in questioning the viability and equity of dealing with medical errors.

Theodore R. LeBlang explores recent developments in American medical malpractice jurisprudence, pointing out the current public policy tension between equitable compensation for injured patients and the need to control costs to achieve universal access. Catherine S. Meschievitz reiterates the theme of systemic inadequacies from an American perspective, but through exploration of Wisconsin's Alternative Dispute Resolution experiment she illustrates how difficult change is in this area. David T. Ozar, a medical ethicist, deals with patient expectations and the impact of those expectations as a catalyst for litigation.

Jack R. London, a Canadian lawyer, places malpractice in a wider context by viewing it as a flashpoint for the medical profession that is being transformed by a host of pressures beyond its control. Gerald B. Robertson and Joan M. Gilmour, after exploring Canadian medical malpractice, both point out that the

majority of injured patients in Canada receive no compensation of any sort, in spite of increasing numbers of cases.

Stephen L. Heasell explores medical malpractice in the United Kingdom from an economic perspective, exploring changes in the system as a result of reforms in the British National Health Service. Heasell's colleague John Hodgson explores medical malpractice law from a British vantage point, focusing on physician duty, consent, and damage issues.

Ann Ulrich notes in her article on Denmark's new Patient Insurance Act that this no-fault system was implemented in 1992 because so few negligently injured patients were bringing claims.