

news THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS

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******Southwestern student's "summer project" yields book on malpractice.*

DALLAS--At the end of his first year in medical school, Alan Laufman began looking around for a project to occupy him for the summer.

What he found led to his becoming a published author on a subject near, if not dear, to the medical profession: malpractice.

Laufman's book, "The Law of Medical Malpractice in Texas," was published in April by the University of Texas Press in Austin. The 118-page volume already is being applauded within both medical and legal communities for the clarity with which it approaches this sore subject that so often puts the two professions at odds.

The work, its publishers point out, is "the only book on medical malpractice written expressly for the Texas medical community." Painstakingly researched and crisply written in non-legal language, Laufman's monograph should become a widely read reference for not only doctors but all health-care professionals in the state, UT's Press says.

The 28-year-old author, while not yet possessing full medical credentials, is well qualified to write about the law. He's a cum laude graduate (1974) of Harvard Law School and a member of the Texas Bar. Before enrolling at The University of Texas Southwestern Medical School in 1975, Laufman worked briefly for a law firm ("paper shuffling" wasn't for him) and did a turn with Boston's Roxbury Legal Aid Project.

Laufman says he originally envisioned writing a malpractice "manual," primarily for his fellow medical students, to fill a virtual vacuum in the available literature. Searching for a summer job after his freshman year, he was encouraged by Dr. Bryan Williams, Southwestern associate dean for student affairs, to pursue the project. Williams arranged for a fellowship, similar to those awarded students who take summer jobs in hospitals and laboratories.

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Laufman's "laboratory" was the law library at Southern Methodist University. For 10 weeks, he spent long days researching cases, reading up on Texas law and writing about such malpractice topics as the "informed consent" doctrine, medical negligence, the "Good Samaritan" law, treatment of minors, the giving of medical advice by telephone and legal boundaries of the patient-physician relationship.

What he came up with is a treatise that Dr. Charles Petty, Southwestern pathology professor and Dallas County chief medical examiner, says "should be fascinating to the medical students and physicians of Texas.

"He has written about Texas law as it affects the practice of medicine in Texas," Petty writes in his foreword to the book. "His point of view as a young attorney, and now a second-year medical student, is especially fresh, revealing and palatable to the student of medicine and the practitioner of medicine.

"His monograph is unique," Petty continues. "All who read it must benefit, for he reduces the area of the unknown, and the fear of the unknown."

Laufman's book fills a need not met by any other publication, adds UT Law School Dean Emeritus Page Keeton. And, he says, it should be welcomed by the legal profession, too.

"This volume would also be useful for lawyers and students of the law, not generally experienced in this area of litigation, as a means for acquiring basic and accurate information," notes Keeton, chairman of a state medical professional liability study commission.

Student-author Laufman says his goal was to explain in simplest, clearest terms possible the principal rules of law that govern the medical profession.

"From the beginning, I didn't intend to produce an encyclopedia," he said. "The challenge was to come up with something doctors would like to have, written from their perspective. My role was to explain the law as clearly as I could and interpret the jargon." Perhaps inevitably, the task proved more difficult than expected--because those rules "are easy to write, but hard to apply."

One of the most complex issues to sort out was that of "informed consent"--the well-known but sometimes hazy requirement that a patient be given all the facts and then approve before a treatment is given.

This requisite can present moral as well as medical dilemmas for the physician, Laufman observes.

"If a doctor tells a patient all conceivable consequences of a treatment such as a surgical procedure, the patient could be scared out of his mind." Such a disclosure could compound the problem by further worsening the patient's condition while causing, through fear, rejection of the needed treatment.

If the doctor feels he should withhold some information to protect an apprehensive patient, what is his recourse, while meeting his legal duty to make "reasonable disclosure" of risks involved?

"A physician's duty to make a complete disclosure of risks is considered to be subordinate to the duty to protect the health of the patient," Laufman writes in his book. "Therefore, a 'therapeutic privilege' to limit disclosure has generally been recognized where full and frank disclosure might jeopardize the patient's health."

This privilege is carefully reined, Laufman notes, and the law recognizes a patient's right to refuse treatment. A decision to withhold some information to save a patient undue anguish should be accompanied by full revelation of all the facts to other family members, he points out.

While that won't immunize the physician from lawsuit, it nevertheless establishes the doctor's legitimate desire to act in the patient's best interest--a point that should prove helpful in court.

Another problem in putting together his book, Laufman found, was the fast-changing nature of the law itself. While publication was under way, a ruling by the Texas Supreme Court in effect reversed past holdings on a key question of "vicarious liability," necessitating a quick insertion in the text.

The case involved the so-called "captain of the ship" doctrine, which generally had held that the senior physician or surgeon was responsible for actions of all members of a medical team.

In a postscript, Laufman relates the ruling early this year which in effect threw out this doctrine, the high court holding that a surgeon was not automatically responsible for the mistakes of others--in this case, a nurse who left a sponge inside a patient.

Since the nurse was a "borrowed employe," selected not by the doctor but by the hospital, the latter was held by the court to be liable for the error.

Laufman credits Drs. Williams and Petty (who teaches medical jurisprudence at Southwestern) for providing the encouragement and assistance that resulted in his work getting published. When they saw the finished product, both urged that he offer it to publishers--three of whom responded favorably.

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Fellow students also helped with comments as the book progressed. And a friend, Susan Ingram, furnished cartoon-style drawings to further enliven its pages.

The result, Laufman frankly confesses, is quite satisfying--despite "a little flak" from classmates over his newly acquired author status.

After final exams, the native Houstonian is preparing to do more research this summer to keep up with ever-changing caselaw affecting malpractice for a future update. And he's considering branching out in a couple of directions--possible new editions of the book applicable to other states, and writings on other areas of law relating to medicine besides malpractice.

There's even the possibility that the book may turn his career in a whole new direction. "Right now I'm just concentrating on learning how to become a good doctor," he says. But later--maybe a college teaching position, combining medicine and law. Meanwhile, thanks to the book, a bit of income is accruing--a rare event, Laufman says, during long years in school.

"It's a good feeling."

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