

## Book Review

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## Book Review

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**LAW IN MEDICAL AND DENTAL PRACTICE.** By Jack Neal Lott, Jr., and Robert Hanes Gray. Chicago. The Foundation Press, Inc., 1942. Pp. vi, 499. \$4.75.

The appearance of this excellent book on the legal aspects of the practice of medicine and dentistry should be of more than passing interest to professional persons in the vicinity of Baltimore, the locale of two prominent medical schools and of the world's oldest dental school.

The authors are teachers at the University of Louisville School of Law. The book is the outgrowth of their experiences in teaching the law courses in that University's medical and dental schools. The book purports to deal with the legal phenomena common to the two professions of medicine and dentistry, and it finds the meeting ground to be the group of rules applicable to the practice of those professions. It thus treats all the topics usually covered in courses in dental law, although, because of the broader scope, it does not cover all that have to be treated in the usual course in medical law, medical jurisprudence, or forensic medicine, as it is variously called.

This example of a single treatment of matters common to the medical and dental professions relates, of course, to the broader problem of the greater integration of education for those two callings, signs of which have already appeared in the authors' institution and elsewhere. In fact, the traditional separateness of medical and dental education may have resulted more from an historical accident than otherwise.<sup>1</sup>

Despite the relation between the two professions, there are nevertheless legal topics only of interest to the medical branch, which do not concern the dental one at all. These, save for autopsies, are omitted from the book under review. The medical function in aiding the solution of legal problems of cause of death, birth of issue, paternity, and rape, will have to be presented to medical classes by materials extrinsic to this book.

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<sup>1</sup> See page 9, 1942-1943 Catalogue, Baltimore College of Dental Surgery, Dental School, University of Maryland, to the effect that internal strife in the Medical School around 1825 put an end to the attempt to engraft dental education upon medical education and led later to the separate foundation of the Baltimore College of Dental Surgery, the first school for dental instruction ever established, which has had a continuous existence since 1840.

The book under review is not a text book, in the sense that it consists of the authors' own language expressing the legal detail. Rather, it more closely approaches a law school casebook, as the material (except for the first chapter) principally consists of reprinted court opinions. It differs from a casebook, however, in that the interspersed material consists of reprinted law review casenotes and the like, rather than the usual footnotes, problems, or abstracts. The opinion material is printed in larger type, the law review material in smaller. Allowing for the difference in size of type, quite a considerable proportion of the contained material is from the law reviews. The appendix contains the ethics codes of the two professions, and should be of interest to those legal readers who wish to compare legal ethics with those of other established professions.

While the authors visualize that the book is suitable for a course of sixteen lectures, yet its length would indicate that it could not properly be covered in that time by usual "case method" technique, particularly with students not indoctrinated in that method of instruction. The reviewer expects to base his own eight lecture course on "Dental Jurisprudence" in the Dental School on this book in the future, but it is planned principally to lecture on the materials, rather than to attempt routine "case method" recitation and discussion.<sup>2</sup> Time will not permit of the latter.

The first chapter, in the authors' own words, is an interesting "Introduction" giving a bird's-eye view of the court system and of the nature of legal materials, presenting these matters in a way that the dentist or physician or any interested layman-citizen can have a better understanding of the way our law functions.

The next chapter, "Physician and Patient," while it has two incidental topics, is principally devoted to the major one of malpractice, under fourteen sub-divisions. That topic, which many mistakenly think of as the principal one of courses on medical or dental law, is extensively developed herein. The respective standards of care as between general practitioner and specialist, or as between civil and criminal rules, are contrasted. Proximate cause and *res ipsa loquitur* are treated, to mystify the non-legal (if not the legal) reader. Consent and contributory negligence

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<sup>2</sup> An advance pamphlet of the first part of the book was made available in time to use it as the basis of lecturing on that part of the most recent presentation of the reviewer's course, and that experience indicated that the whole book will prove adequate for similar use in the future.

are also discussed, as are limitations and charitable institutions.

The following chapter is on "Evidence," first about confidential communications, and then about expert testimony, the latter with numerous sub-divisions. The fourth chapter, "Compensation," reflects a topic dear to the heart of any professional man, be he physician, dentist, or lawyer. The sub-division is into express contracts, implied contracts, quasi-contracts, and liens. One of the cases<sup>3</sup> is the appellate version of litigation receiving considerable newspaper publicity when the physician of the motion-picture comedian W. C. Fields sued him for a fee the size of which made even the more successful lawyers gasp in admiration.

As noted above, the fifth chapter on "Autopsies" relates mostly to the medical side of the picture, although dentists, no doubt, figure in such performances when called on to identify bodies through the peculiarities of the teeth. Chapter Six, "The Regulation of the Practice of Medicine and Dentistry," covers admission to practice, unlicensed practice, and regulation, including suspension and dismissal. It is interesting to a lawyer to compare the problems of those two professions with those of the law, and to note the parallels.

The legal profession's recent trouble with trespassing on the practice of law by peripheral functionaries, such as trust companies, title companies, notaries public, and collection agencies, is paralleled by the dental profession's similar difficulties with dental laboratories,<sup>4</sup> dental "parlors," department stores, and the like, and by the medical profession's troubles with their competitors among the quasi-medical callings, and their internal difficulties concerning group health projects, recently litigated up to the Supreme Court of the United States.<sup>5</sup>

One gathers from the litigation about group health projects on the part of the medical brethren, and from the considerable ethical detail written out in both the dental ethics code and the more stringent state regulatory statutes, including the Maryland dental one,<sup>6</sup> that those professions,

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<sup>3</sup> Citron v. Fields, 30 Cal. App. (2d) 51, 85 P. (2d) 534 (1938).

<sup>4</sup> A case now pending in the Criminal Court of Appeals of Oklahoma, Curtis v. State, Docket No. A-10,238, involves the question whether dental laboratories violate the Oklahoma dental law by advertising to furnish false teeth.

<sup>5</sup> The latest phase of this case is American Medical Association v. U. S., 63 S. Ct. 326. (U. S., 1943) affirming a conviction for conspiracy.

<sup>6</sup> Md. Code (1939) Art. 32.

particularly the dental one, have more difficulty than the legal one with reference to the internal problem of ethical conduct.

While we lawyers are not supposed to advertise (other than by teaching Sunday School or running for the Legislature or the like) yet our rules about that aspect of ethical conduct are not set out in as much detail as is found in the dental ethics code and in the Maryland statute on the subject. For these sources specify in great detail the size and number of signs, cards, announcements, radio broadcasts, and similar media which the ethical dentist may indulge in without going too far. It is a fascinating intellectual exercise to make a comparative study of the legal and the dental ethics rules. The lesser detail to be found about medical ethics may indicate that the medical profession has been more unanimous on the subject than the dental one, although the recent litigation under the anti-trust laws would indicate that complete unanimity on all subjects has not been achieved therein.

The publishing of this book raises anew the question whether it is desirable and possible to teach law to others than professional law students. It is mildly fashionable among both practicing lawyers and professional law teachers to decry the desirability and possibility of doing that, although there is, perhaps, no organized branch of learning or other human activity, which does not have a course and/or a book devoted to the legal aspects of the particular topic. Schools of commerce and of accountancy have their "business law;" medicine, dentistry,<sup>7</sup> and pharmacy are similarly blessed; bank clerks are exposed to two separate courses, Negotiable Instruments, and Commercial Law, by the American Institute of Banking; and so it goes.

While it is obvious that students in such courses cannot hope to learn as much law as professional law students should, yet these courses seem justified, if for no other reason than that it is desirable for members of prominent professions and callings to have a smattering of legal information useful to them as intelligent citizens. A little information about law is helpful if one is to be a well educated citizen, hence it is a desirable item in those callings which purport to educate their practitioners. It can best

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<sup>7</sup> See HOLLAND, JURISPRUDENCE (11th Ed., 1910) 4-5, n. 4, where the author makes the following scornful reference to what he considered an abuse of the word "jurisprudence": "There is a chair of 'Dental Jurisprudence' in the Dental School of Chicago."

be presented against the background of problems involving contact between the particular calling and the law.

There is, nevertheless, considerable of a feeling of futility that results from attempting to present the usual topics in a dental law course. For it is rare that the practitioner will vary his method of comporting himself in the practice because of anything he learns in the course. So many of the rules are uncertain and vague and unpredictable, that they only serve as yardsticks for the tribunal which has to resolve a problem after it has arisen. Malpractice goes off on vague concepts of negligence, skill, care, judgment, *res ipsa loquitur*, and proximate cause, a veritable arsenal of uncertainties. A dentist could probably just as well testify as an expert without being exposed to classroom treatment of that topic. He will as soon demand, or refrain from demanding a written promise to pay, or an express promise from another than the patient, whatsoever be the local rule as to their necessity. These matters depend upon the tactics of his practice more than the local state of the law. With reference to the detail of the regulation of the practice, his local state board can better inform him than the instructor in the course. But it is probably well that all these problems be discussed as a unit, at least that he may know what to expect if he does run afoul of the law, certainly not that he shall be able to be his own lawyer.<sup>8</sup>

Thinking particularly with reference to the dental law side of the picture, it is the reviewer's opinion that the book under review is the best medium of presentation of the course which is available, particularly if a professional law teacher accustomed to the case method is to offer the course. Whether he attempts to follow the case method in the classroom, or merely lectures, he will be dealing with familiar materials.

The lack of continuous text treatment is in the book's favor, for such a treatment might give the non-legal student an erroneous idea of the simplicity or certainty of the law, when it is not there. It is better that he see how specific fact problems have been resolved by courts or discussed by law review casenote writers, to the end that he may know how the law really functions in terms of the continuous adjustment of actual problems as they arise.

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<sup>8</sup> In this connection the reviewer customarily calls the attention of dental students to the two well-worn phrases known to all lawyers: "Bless the testator who writes his own will;" and "He who is his own lawyer has a fool for a client."

The book bids fair to be an excellent one for classroom presentation; a reading of it should furnish useful information to the mature dentist or physician; and lawyers who have problems within its purview will find it a valuable source book of the principal judicial and periodical materials, chosen by authors who are competent to make proper selections.

—JOHN S. STRAHORN, JR.\*

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