



The Criminal Prosecution of Medical Practitioners

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Sydney ▲ Melbourne ▲ Brisbane ▲ Canberra ▲ Newcastle ▲ Perth

International Experience



- ▲ Prosecutions rare
- ▲ In Australia – 10 prosecutions since the year 2000
- ▲ However since 1990's an increase in criminal prosecutions internationally

WHY?



Queensland: Chesterman Report



‘A legal practitioner with extensive experience in criminal law...be appointed to examine...files in all cases in which, in the last five years, a disciplinary sanction of some kind has been imposed on a medical practitioner in relation to circumstances in which a patient died or suffered serious bodily harm **to determine whether in any such case criminal charges should be laid.**’

Hunter Report



- ▲ 6 medical practitioners referred for investigation of whether or not criminal offences had been committed.

‘In each case...the allegations...involve breaches of duty of such magnitude as to potentially amount to breaches of the criminal law.’

Health Care *v* Other Professions



- ▲ Criminal prosecution following aviation accidents standard practice
- ▲ The criminalisation of mistakes exists in other safety-critical professions including shipping, construction and chemical processing.

United Kingdom



- ▲ Ferner & McDowell
 - ▲ 1900-2005: 54 physicians charged with manslaughter, with a 30% conviction rate.
- ▲ There has been an increase in the rate at which charges are laid in the UK, with a substantial increase since 1990.

New Zealand



Date	Name	Profession	Outcome
1982	McDonald	Anaesthetist	Convicted
1989-1991	Yogasakaran	Anaesthetist	Convicted
1991	Arnott	Dentist	Discharged
1991	Morrison	Radiologist	Convicted
1994	Brown	Nurse	Convicted
1995	Hamilton	Anaesthetist	Acquitted
1996	Ramstead	Surgeon	Convicted
1998	Hugel	Anaesthetist	Acquitted

Canada



- ▲ 1900-2007:
 - ▲ 9 physicians charged with manslaughter, criminal negligence causing death or grievous bodily harm
 - ▲ 1 conviction
 - ▲ Conviction rate = 6.67%

United States



- ▲ 1990, American Medical Association:
 - ▲ the prosecution of physicians for clinical mistakes is 'almost unknown'.
American Medical News, June 1, 1990 at 5.
- ▲ 1999, IOM publishes '*To Err is Human*'.
- ▲ Recent increase in the criminal prosecution of physicians.

Why?



- ▲ Access to civil remedy / tort reform?
- ▲ Lack of trust in self-regulation?
- ▲ Loss of public trust / disenchantment?
- ▲ Empirical evidence about the incidence of adverse events?

Why?



- ▲ Breakdown of the personal physician-patient relationship?
- ▲ Accidents and risk management?
 - ▲ Risk management experts make accidents comprehensible
 - ▲ Accidents = the failure of individuals to manage risk
 - ▲ Society less tolerant → requirement for attribution of blame

Thoughts...



- ▲ Criminal law response = individualistic in nature
- ▲ Health care delivery is complex
- ▲ The prosecution of individuals can protect an unsafe system from scrutiny and prevent system improvement: Dekker.

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