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Book Review

LEARNING FROM MEDICAL ERRORS: LEGAL ISSUES
LEARNING FROM MEDICAL ERRORS: CLINICAL PROBLEMS
Ahn Vu T Nguyen, Dung A Nguyen
Radcliffe, 2005 ISBN 185775 767 X (Legal Issues) ISBN 185775 768 8 (Clinical Problems) £40 each

These two books are written by two brothers, both educated in Florida, where the first is an emergency physician and assistant professor at Florida State University College of Medicine and the second is in private family practice and is also a clinical instructor at the same university. The books examine malpractice lawsuits in contemporary North America and offer advice on prevention, from the perspective of emergency medicine, with numerous descriptions of clinical cases and medical and legal outcomes. Although the first author has been a medical and legal consultant for the Florida Department of Health, it is surprising to find that neither has any personal experience of acting as an expert witness in a malpractice case.

The style is conversational and easily read. The target audience is wide, but, in my opinion, the books are best suited to senior students and junior doctors. Indeed, some clinical statements are stunningly obvious to any qualified practitioner (e.g. regarding diabetic control, 'Bacteria are difficult to treat if you are trying to kill them . . . and . . . feeding them (with sugar) at the same time.').

The volume on legal issues covers largely clinical matters of record-keeping and reduction of liability, with only the last three chapters strongly orientated towards malpractice litigation. Much clinical advice is routine (e.g. write down the history in the patient's own words rather than in medical terms, use chaperones for intimate examinations), although I liked the stress on writing clinical records in the anticipation that they will undergo and withstand scrutiny (both hospital management committees and managed care companies in the US routinely review practitioners' casenotes.) Other advice points to significant areas of risk, including intoxication, difficult patients and those 'predetermined' on the investigation they think is appropriate.

The late chapters of this volume hold many surprises. Refusal of continued insurance cover is a serious problem for American doctors, and I was astonished that some hospitals have, perforce, revised their by-laws to keep practitioners on staff who are working without malpractice cover. Legal differences from the UK proved numerous and were not confined to the aggressive US medicolegal climate, jury trials and the level of damages. American attorneys use treating specialists as expert witnesses in malpractice cases, something never done in UK clinical negligence cases, and the authors actually recommend defendant doctors, when choosing an expert (as, surprisingly, they do), to consider one involved in the case itself, as first-hand participation will add credibility. This would be seen in the UK as a clear conflict of interest. The authors also recommend finding someone from the same state and in similar practice, and their only nod to conflict of interest here is to say that 'some attorneys' prefer the expert not to be known personally to the defendant.

I parted company with the writers when they observed that it made no sense to them that American experts can give opinions about practice in a US state where they are unlicensed and do not work. Since the book's premise is that uniform standards of care can be achieved, such a situation should not matter provided the expert has relevant knowledge and experience. Indeed, many of us in British clinical negligence practice become involved, with the sanction of the relevant High Court, in cases in other jurisdictions (such as Eire and Australia), where local experts are unwilling to challenge a colleague's care. The Nguyens criticize an expert appearing for a plaintiff because he had served as a witness 23 times in 15 years and testified in 18 different states. Some of their stories certainly suggest that there are expert witnesses in the US who are careless or biased towards plaintiffs, but extensive litigation experience is generally seen as a good thing on this side of the pond. In countries where the approach is less forward-looking than at home, I am often confronted by defence experts who adopt untenable positions and should know better – the other side of the coin. The Nguyens' other opinions are unexceptionable. Few would disagree, for instance, that the use of experts out of clinical practice for many years is objectionable.

The second volume deals with specific areas of practice, again richly illustrated with misleading clinical cases (some predictable, and others amounting to what the authors call 'zebras' – diagnoses so atypical that most would not consider them). Many of these would make interesting reading for any doctor. One surprise was what appeared to be a blanket recommendation for a full initial bimanual pelvic examination for all cases of vaginal bleeding, with no exception made for threatened abortion. A striking omission was any serious discussion of ENT emergencies. Under dyspnoea, the writers mention stridor and examination of the oropharynx and neck, but epiglottitis receives only a cursory word in the legal volume, and none here. Since missed diagnoses of progressive upper airway obstruction in adults with epiglottitis or goitre are not infrequent in medicolegal practice, I had expected to find them addressed here, together with the pitfall of misdiagnosis of stridor as asthma.

In fact, there is little in either book directly relevant to ENT practice, and I would not recommend

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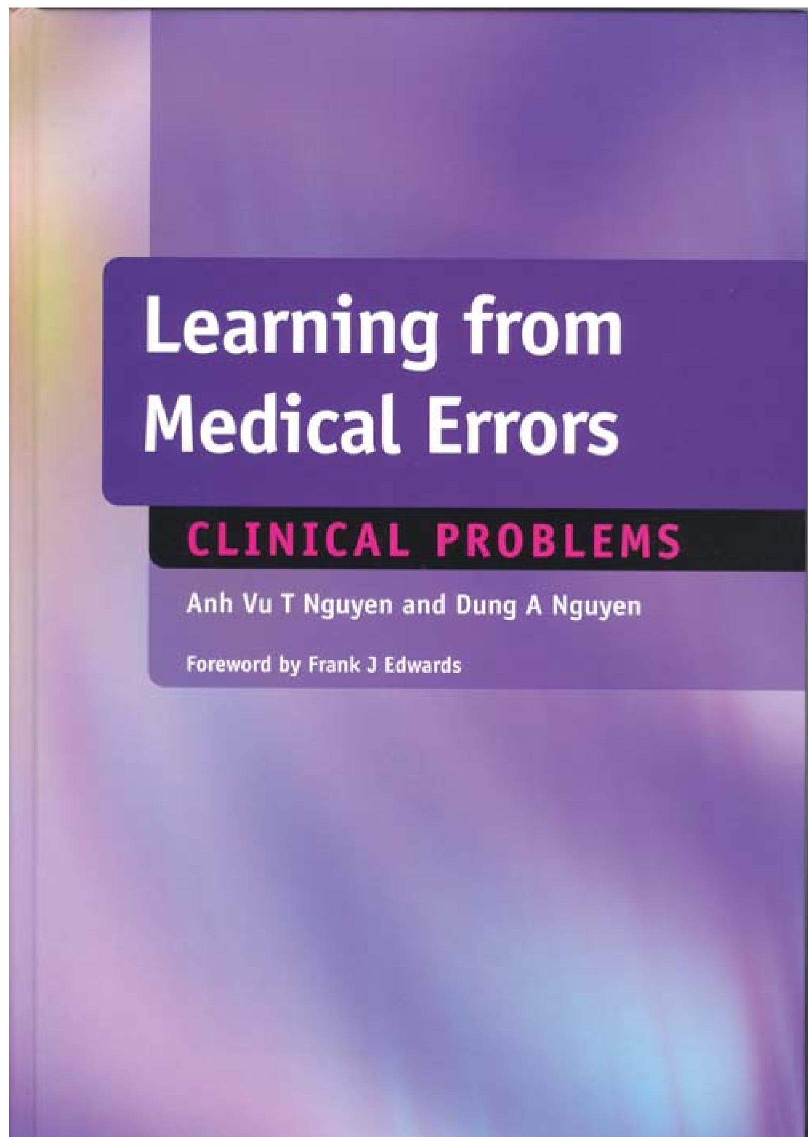

ENT surgeons to purchase these volumes unless particularly interested in clinical negligence and risk management across a broad area of medicine and surgery.

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