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Unaccountable: What Hospitals Won't Tell You and How Transparency Can Revolutionize Health Care

"Doctors swear to do no harm. But on the job they soon absorb another unspoken rule: to overlook malpractice in their colleagues."[1]

Unaccountable by Martin Makary is a healthcare policy book about transparency in modern medicine. *Unaccountable* addresses the use of technology in medicine and how it influences patients' prospective and outcomes. The book is intended to educate both the practitioner and the consumer of modern medicine, and motivate all parties to think about how we can make modern medicine safer, better, and more transparent. It is well known that "25 percent of all patients are harmed by medical mistakes."[2] In the last 10 years, medical errors have not declined in American hospitals. The premise of the book surrounds significant legal issues, specifically medical malpractice and liability in surgery and general practice. The book also includes a chapter on robot-assisted surgery, which is a recent trend in medical malpractice.

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[1] MARTY MAKARY, UNACCOUNTABLE: WHAT HOSPITALS WON'T TELL YOU AND HOW TRANSPARENCY CAN REVOLUTIONIZE HEALTH CARE, 4 (Bloomsbury Press United States 2012).
[2] *See* Makary, *supra* note 1, at 3.

This book review will examine the legal issues raised by *Unaccountabl*e, specifically focusing on the legal issues surrounding robot-assisted surgery, informed consent, and minimally invasive surgery. The book focuses on the distribution of information and how information asymmetry between hospital staff and patients has adverse effects on patient outcomes. Additionally, I will examine the legal and ethical quandaries raised throughout.

The author, Dr. Marty Makary, received his medical degree from Thomas Jefferson University and his Masters in Public Health from Harvard, where he concentrated in Health Policy. Dr. Makary is currently a surgeon and an associate professor of health policy at John Hopkins School of Public Health in Baltimore, Maryland. Dr. Makary works with the World Health Organization as a leader in developing ways to measure healthcare quality, and is widely published in the field of patient safety. Specifically, Dr. Makary's research has included the elderly, cancer therapy, minimally invasive surgery, operative risk assessment, health services research, diabetes and obesity, and occupational safety. His most broadly published research has revolved around quality and safety in healthcare and the future of medicine. *Unaccountable* was Dr. Makary's most successful book and a New York Times bestseller, but he is also the author of *Mama Maggie* and a widely used medical textbook on surgery.

Unaccountable is comprised of three major sections titled: "Some Random Doctor", "The Wild West", and "Transparency Time." "Some Random Doctor" challenges the patient's perception of physicians' specialty and expertise and what makes a good doctor. It sets the stage for the information asymmetry laid out throughout the main premise of the book by drawing attention to some anecdotal tales of doctors behaving poorly. The book starts with two characters referred to as Hodad and the Raptor. The Raptor was a despicable person with poor social skills, terrible bedside manner, and a reputation of mistreating hospital staff, but he was a

wildly skilled surgeon with some of the most successful patient outcomes in America. Patients

would frequently be so turned off by his abrasive manner that they would ask for a different

surgeon and they would wind up in the care of Hodad, a polite articulate and well liked man who

was so charming and charismatic that he attracted famous patients. His name in the book stands

for Hands of Death and Destruction ("Hodad"). Hodad had amazing patient reviews and

everyone loved him, but he was known by all medical staff to be one of the worst surgeons in the

region. His outcomes were subpar, his patients were sicker longer, and on many occasions he

seriously injured patients while performing surgery. However, Hodad was so charismatic and

well liked that he constantly managed to talk his way out of liability with patients. The chapter

goes on to discuss stories of famous patients requesting celebrity doctors and getting further

injured as a result of stubborn choices. The main take away being that surgeons with good social

skills get sued less even if they have less skill, and the doctor who has a great patient reputation

is likely not the doctor with the best medical reputation to which patients should be made aware

when they are researching practitioners.

"The Wild West" analyses the rapid adoption of new technology in medicine and

highlights the safety and accountability measures that many physicians operate without. There

are no clear national standards of medicine for many procedures, and physicians are free to

exercise professional judgement as to best practices. In some instances, this can mean

geographic location has a substantial effect on the success of your surgery and recovery. In one

example of geographic treatment, Dr. Makary states that chest pain may result in a bypass in

Dallas, Texas, and an aspirin in San Francisco for the same patient. Additionally, "The Wild

West" deals with doctors who have substance abuse issues and psychiatric problems that go

unaddressed by coworkers, hospitals, and medical schools. The section finishes by addressing

robot-assisted surgery and states that hospitals are integrating robotic surgical systems without any peer reviewed data that shows the machines result in better patient outcomes. Dr. Makary leaves the reader with the conclusion that the primary motive for integrating these systems is a desire to adopt new technology at any cost, and a desire to attract new patients with marketing campaigns.

Finally, "Transparency Time" plays out how the system can get better, and how patients can evaluate hospitals, surgeons, and medical personnel to make American medicine safer and better for everyone. "Transparency Time" addresses the secret code of silence that exists in American hospitals and allows physicians to essentially go unchecked by patients, administrators, and attorneys. He ends the book by concluding that systems can be put in place, and data can be made public that would put the patient in a significantly better position when choosing a hospital and physician. These systems could force bad doctors out and make good doctors more popular, benefiting everyone.

Unaccountable argues that transparency is the key to a successful medical system. Information asymmetry prevents patients from getting the best care or even being informed about the care and medical treatment they are undergoing. According to Dr. Makary, transparency would rid the world of the bad doctors, it would expose the reality of popular doctors, it would help hospital budgets, and limit medical malpractice all while benefiting patients. Transparency can and will clean up medicine. The overall conclusion is inarguable. Dr. Makary leaves his reader with plenty of real data and anecdotal evidence of the transparency crisis in modern medicine. However, the book has a hearsay problem.

The majority of Dr. Makary's stories are ones told to him by other physicians, they are unpublished and as The Health Care Blog, stated "it seems more like the product of intellectual

laziness, especially when there *are* hard data to bolster some of his points."[3] While his book has

a hearsay problem, many of the points can be verified by different more scholarly sources and

overall, it seems to not significantly distract from his point. Drawing from his background in

both medicine and public health research, the author uses a myriad of data to make his

conclusions. The book manages to achieve something very rare, it is analytical, data heavy, and

fact driven, yet the book still manages to be an engaging page turner. Everyone is impacted by

medicine and this book makes medicine a social, and legal issue that is relatable to all readers.

My argument is made in the book when Dr. Makary, referring to robot-assisted

operations says, "I set out to review all 409 research studies on the robot in medical literature. In

my opinion, none showed any convincing clinical benefit over conventional laparoscopic

surgery, except for a few studies that robot company paid for…. it's mainly a marketing hook to

attract patients."[4] This book drives home the importance of minimally invasive operations, their

advent in modern medicine, the rates at which they are performed, and the success with which

they are performed. Dr. Makary highlights the ethical quandary, a machine that costs more

money than traditional surgery is being integrated in American hospitals, the doctors are less

trained to use the machines than other methods of minimally invasive surgery, and no proven

benefit results from their use. Should doctors be using them? The conclusion is left for the

reader, but it is clear that patients adopt and seek new technology at their own peril.

I think *Unaccountable* highlights the legal issues plaguing the American medical system,

and it does this both directly and indirectly. The book is a valuable contribution to the field of

medical policy and I found it to be a good guidebook to possible legal issues that surround

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[3] *See* Robert Wachter*, "Unaccountable" An Important, Courageous and Deeply Flawed Book*, (Nov. 5, 2012) *archived at* http://thehealthcareblog.com/blog/2012/11/05/unaccountable-an-important-courageous-and-deeply-flawed-book/.

[4] *See* Makary, *supra* note 1, at 155.

American medicine. Dr. Makary clearly states that we have bad doctors and hospitals in America, and patients are at their mercy because they have no information available to them to determine who is and is not an effective physician. Other physicians and hospital staff have a duty to make medicine more transparent and be vocal about bad practitioners. If the data becomes more available patients would be safer and have better outcomes. The book's major strength is the seamless integration of hard data and creative story telling that both engages the reader and convinces them that these unthinkable scenarios are true. The only significant weakness in the book is a continued reliance on hearsay in storytelling, but in some ways this speaks to the point that practitioners are afraid to come forward and be vocal about the bad behavior of colleagues.

Personally, I found the book engaging and enjoyable. I am interested in medical malpractice and this book highlights the level of negligence that is currently prevalent in the American medical system. The book addresses policy changes that would significantly benefit patients and limit malpractice claims, and it does this an engaging and informative way. I would highly recommend this book to anyone who ever plans to be a patient in an American hospital. As a law student, I found the legal issues presented to be inherently interesting and the book to be well written. I think anyone could benefit from reading this book.