MEDICAL NEGLIGENCE LAW
IN TRANSITIONAL CHINA

Ding Chunyan
Medical Negligence Law in Transitional China
Ding Chunyan

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Artwork on the cover: “A Picture of Abundance” 豐足圖, the publishers would like to thank Lian Choo Liang 梁鍾蓮珠 for allowing the use of her artwork on the cover of this book

NUR 820

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Medical negligence disputes have become a major social concern in transitional China. Victims of medical negligence and their families often resort to violence when bringing claims against health care providers. The current Chinese medical negligence law regime does not adequately compensate victims of medical negligence, nor does it effectively deter preventable medical errors. This well explains why I decided to systematically investigate the problems in the Chinese medical negligence law and seek suggestions for reform in my four-year PhD study and my research in the subsequent years. This book represents the outcome of my intellectual discoveries about the Chinese medical negligence law in years past.

This book is the first book in English on medical negligence law in China. Relying on the methodologies of statutory interpretation, case study, and socio-legal analysis, it systematically investigates and comprehensively analyses four major problems in Chinese medical negligence law that result in widespread unfairness and uncertainty: the unreasonable distinction between medical malpractice and ordinary medical negligence; the ambiguous standard of care for medical negligence liability; the problematic medical malpractice technical authentication system; and the excessive restrictions on compensation for medical negligence. Changes to both substantive and procedural rules of medical negligence law are recommended and suggestions for a possible reform outlined in order to establish a fairer and more certain system of medical negligence law in China.

This book contributes to a better understanding of past developments and current problems in Chinese medical negligence law and is a useful source to understand the topics of professional negligence and personal injury in Chinese law and in the Chinese society. It will be useful to students and researchers in medical law, comparative legal study, medical ethics, and Asian sociology and social policy. It is also intended to be accessible to legal advisers, judges, legislators, health care professionals and members of the public with an interest in medical law in China.

I am very grateful to my supervisor Professor Rick Glofcheski at the University of Hong Kong for his meticulous guidance and critical but useful comments. I also would like to thank Professor Ge Yunsong at Peking University, Professor
Medical Negligence Law in Transitional China

Athena Liu at the University of Hong Kong, Professor Robyn Martin at University of Hertfordshire, Professor David Rosenberg at Harvard Law School, and Mr. Carsey Yee for providing their comments and thoughts for this research. Their valuable help is also gratefully acknowledged.

Finally, I wish to acknowledge the high standard cooperation and assistance given by Intersentia Publishing.

Ding Chunyan
Hong Kong, 14 February 2012
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### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAIE</td>
<td>Average Annual Income of Employees</td>
</tr>
<tr>
<td>AALER</td>
<td>Average Annual Living Expenses of Residents</td>
</tr>
<tr>
<td>ASBT</td>
<td>Accommodation Subsidies for Business Trips</td>
</tr>
<tr>
<td>LHA</td>
<td>Local Health Administration</td>
</tr>
<tr>
<td>LMA</td>
<td>Local Medical Association</td>
</tr>
<tr>
<td>LSD</td>
<td>Living Subsidies for Disability</td>
</tr>
<tr>
<td>MMTA</td>
<td>Medical Malpractice Technical Authentication</td>
</tr>
<tr>
<td>MM-OMN Distinction</td>
<td>Distinction between Medical Malpractice and Ordinary Medical Negligence</td>
</tr>
<tr>
<td>MSBT</td>
<td>Meal Subsidies for Business Trips</td>
</tr>
<tr>
<td>NRCMS</td>
<td>New Rural Cooperative Medical System</td>
</tr>
<tr>
<td>OFMA</td>
<td>Ordinary Forensic Medical Authentication</td>
</tr>
<tr>
<td>PCALE</td>
<td>Per Capita Annual Living Expenses of Urban or Rural Residents</td>
</tr>
</tbody>
</table>
PCI Per Capita Disposable Income of Urban Residents or Per Capita Net Income of Rural Residents

RCMS Rural Cooperative Medical System


Shanghai-RHMMC (1985) Shanghai Interim Regulations for Handling Medical Malpractice Cases (1985)

Shanxi-MAHMMC (1985) Shanxi Province Trial Measures for Authentication and Handling of Medical Malpractice Cases (1985)


SPC-CMS (2001) Supreme People's Court Interpretation regarding Problems in Determining Tortious Liability for Compensation for Mental Suffering (2001)


SPC-Response (1992) Explanatory Response on How to Apply the Law in the Medical Malpractice Case of Li Xinrong v. Affiliated Hospital of Tianjin Number Two Medical College (1992)


UEBMIS Urban Employees Basic Medical Insurance System
LIST OF LEGISLATION*

CHINA

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Criminal Law (刑法) (1997)
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People's Mediation Law (人民调解法) (2011)
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State Compensation Law (国家赔偿法) (1994)
Tort Law (侵权责任法) (2010)

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