

TABLE OF CONTENTS

Foreword by Associate Professor Paul Babie	i
Preface	vii
Acknowledgments	xix
CHAPTER 1 What's Wrong With Torts? The Case for No-Fault Compensation Schemes	1
The Medical Malpractice Litigation System	1
Non-Negligence-Based Reform: No-Fault Compensation Schemes	6
Conclusion: An Incremental Road to No-Fault	11
CHAPTER 2 The Negligent Failure to Disclose Medical Risks: The Limits of the Common Law	13
Introduction	13
<i>Rogers v Whitaker</i> : The "Legal Non-Sense" Begins	14
<i>Chappel v Hart</i> and its Limits	18
Conclusion	21
CHAPTER 3 Medically Adverse Events, Errors and Risk Management	23
Medically Adverse Events and Errors	23
Dealing with Medically Adverse Events and Errors	25
Conclusion	34

CHAPTER 4	Apologies and Open Disclosure in Medicine	37
	Apologies and Open Disclosure in Medicine	37
	The Law of Apologies and Open Disclosure	41
	Problems with Apologies and Open Disclosure	46
	Conclusion	49
CHAPTER 5	Expert Evidence and Medical Malpractice	
	Litigation	51
	The Nature of Expert Evidence	51
	The Problem of Expert Evidence	55
	The Medical Malpractice Crisis and the Standard of Evidence	59
	Conclusion	61
CHAPTER 6	Surgical Scandals, Health System Failures and	
	Surveillance: The Mandatory Reporting of Health	
	Professionals	63
	Introduction	63
	The Natural of Mandatory Reporting Law	65
	Further Difficulties with Mandatory Reporting Law	81
	A Jurisprudential Critique of the Mandatory Reporting Law	84
	Conclusion: Beyond Mandatory Reporting	92
CHAPTER 7	Critical Perspectives on the Mandatory Reporting of	
	Health Professionals: Medicine, Ethics and Law	95
	Introduction: Australian Health Systems Failures	96
	Dr. Death: Jayant Patel	99
	After Dr. Death	113
	Conclusion: Mandatory Reporting and the Limits of Law	121

CHAPTER 8	Law's Quandary: The Illusions of Law	125
Requiem for Reason: Law and the Disenchantment of Philosophical Discourse		126
Skepticism and the Failure of Philosophy		132
Law, Skepticism and the Strike of Systems		140
Conclusion: Taking Stock of Legal Skepticism		151
CHAPTER 9	Proof, Probability and Paradox: Law and the Limits of Logic	153
Evidence, Logic and Legal Reasoning		154
Bayesianism: The Problem of Probability		157
The Limits of Probability Theory		176
Law, Logic and Paradox		180
Vagueness and Legal Skepticism		197
Conclusion: Legal Skepticism		202
CHAPTER 10	Conclusion: Living With Less Law	205
Endnotes		213
Bibliography		325
Index		425