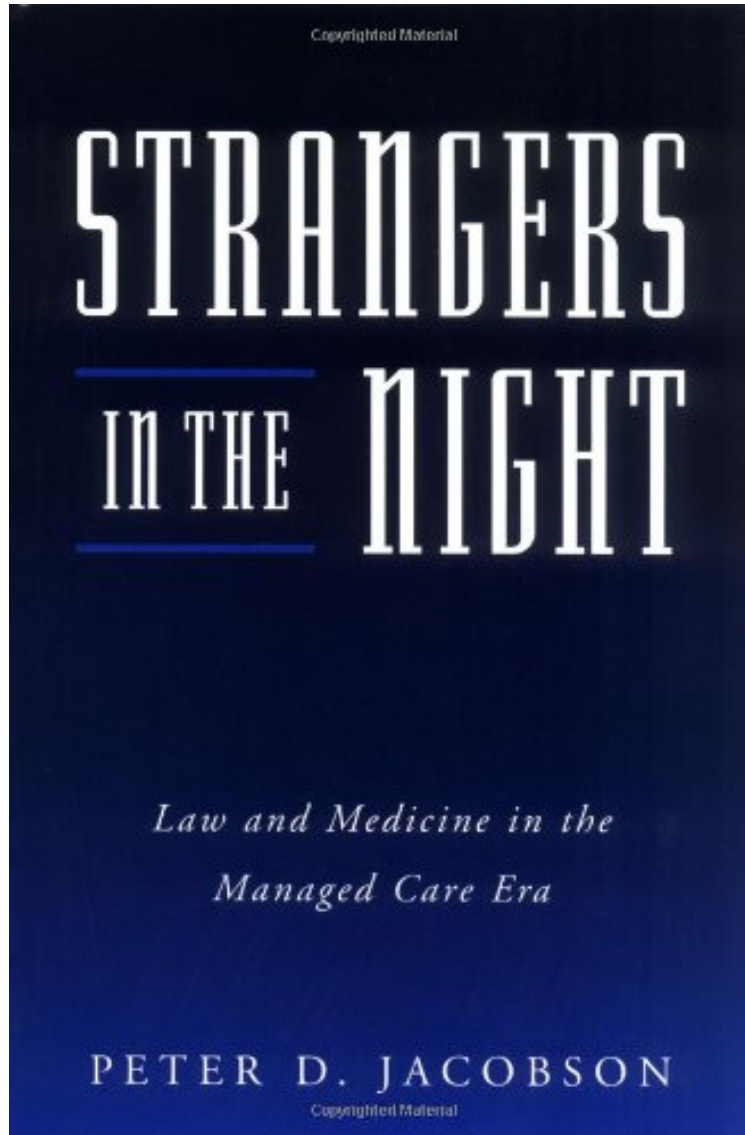


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Strangers in the Night: Law and Medicine in the Managed Care Era

Peter D. Jacobson

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Peter D. Jacobson : Strangers in the Night: Law and Medicine in the Managed Care Era before purchasing it in order to gauge whether or not it would be worth my time, and all praised Strangers in the Night: Law and Medicine in the Managed Care Era:

More than ever before, the legal system plays a vital role in virtually every aspect of the current health care system.

From the congressional debate over patients' rights legislation to judicial rulings on the denial of health care services, the legal system is integrally involved in the organization, financing, and delivery of health care. This book explains how the legal system helps shape health care delivery and policy, explores new ways of looking at the relationship between law and medicine, and reflects on why it all matters. The story focuses on the judicial response to the advent of managed care, especially challenges to cost containment initiatives, and shows how the legal system has facilitated managed care's dominance over the health care system. An equally important part of the story is the evolution of the relationship between physicians and attorneys and how their mutual antagonism affects patient care. In the end, the stories come together around a strategy for reconciling the difficult health policy choices the country faces and for restoring the physician-patient relationship to the center of health care delivery.

From *The New England Journal of Medicine* Peter Jacobson begins his book with questions about why physicians and lawyers always seem to be at odds and why physicians are resentful of the legal system. From the point of view of an economist, the answer is obvious: when physicians have much to lose from the legal system, they are on the defensive. And when they are seeking redress through the courts, they value the help they receive. This is a straightforward matter of justifiable economic self-interest. But, as the reader delves deeper, the significance of the book emerges in Jacobson's explanation of the complicated history of the role of law in health. Jacobson points out, for example, that malpractice issues emerged in the 1840s because of physicians' expanding claims of what they could do. Touting new and scientific treatments, physicians raised patients' expectations, and when they failed to deliver, patients turned to the courts for relief. This legal momentum was fed by competition among physicians willing to testify against each other. By the turn of the century, solidarity among physicians increased, and they essentially took on the responsibility of regulating themselves. Jacobson argues that because doctors failed to police themselves, they left open a role for legal remedies, again through malpractice. These actions are part of the tort system, based on establishing harm due to substandard care, after the fact. The rise of hospitals and then managed-care organizations also led to change. Jacobson emphasizes the rise of managed-care organizations as a new industry, and with examples from other industries and from managed care, he illustrates the challenges that courts face when a new industry comes on the scene. Judges initially react by favoring a nascent industry, offering it at least partial immunity from legal challenges. Such protections are often defended as a means of fostering the innovations that new undertakings require. Over time, the standards for legal action evolve and treat new industries more stringently. In the case of managed care, this means that, initially, protections for physicians and patients are reduced. Furthermore, managed-care organizations have been held accountable through contract rather than tort law. Contract law essentially looks at ex ante factors (that is, prior assumptions) about what was promised in the contract between doctors and managed-care organizations or managed-care organizations and consumers. Contract law generally results in more limited monetary damages than does tort law. Courts have not shown a tendency to treat health care as "exceptional" and instead have subjected it to the same standards established for other industries. As a result, courts have not done as much as might be expected to protect the sanctity of the physician-patient relationship, instead allowing managed-care organizations latitude in pursuing cost-containment controls, effectively giving them the power to regulate health care delivery. Jacobson argues that the roles of law and medicine through history can be explained and that strategies can be developed to improve legal protections for both patients and doctors. Unfortunately, he does not offer specific solutions and suggests only that cooperation between lawyers and doctors is necessary to hold managed-care organizations accountable for the delivery of care. This book is more satisfying as a history than as a blueprint for actually improving the lot of physicians in a managed-care environment. Marilyn Moon, Ph.D. Copyright 2003 Massachusetts Medical Society. All rights reserved. The New England Journal of Medicine is a registered trademark of the MMS. "For everyone seeking to understand how we got ourselves into our present --and seemingly endless-- difficulties with managed care, and for anyone interested in seeking a way for us to get out of them short of restructuring the whole health sector, this book can serve as a useful and important roadmap." --Michigan Law "In *Strangers in the Night*, Peter Jacobson provides a thorough, comprehensive, and thoughtful analysis of the effect of attorneys and the legal system on physicians and health care from historical, legal, and policy perspectives. This book should interest physicians, health care administrators, attorneys, health policy makers, and all who have an interest in identifying ways to make affordable, cost-effective health care available to all. Professor Jacobson has done a superb job in explicating a very complex subject in a highly readable manner." --The Journal of Legal Medicine "The virtue of Jacobson's book is that it reflects on a hidden dimension of everyone's right to health care. This makes it highly recommendable to all those who seek to understand more about the role the legal system plays in how health care is organized, financed and delivered." --Nursing Ethics "[This book] provides a thorough, comprehensive, and thoughtful analysis of the effect of attorneys and the legal system on physicians and health care from historical, legal, and policy perspectives. Professor Jacobson has done a superb job in explicating a very complex subject in a highly readable manner." -Journal of Legal Medicine About the Author Peter D. Jacobson is at University of Michigan Scholl of Public Health.