



Decision-Making in Healthcare and the Law: An Introduction

Jan M. Davies, Sharon Caughey and Pat Croskerry

Decision-making is the engine of human existence, driving all behaviour in all the various domains of activity. Yet, outside the discipline of cognitive psychology and other academic disciplines, decision-making has attracted relatively little attention and application. The role of decision-making in major activities such as healthcare, commerce and the law has only recently begun to receive the attention it deserves. In particular, the impact of decision-making in healthcare safety has been under appreciated.

The first step in the process of decision-making is perception, where sensory information is initially dealt with. The processes of cognition follow, whereby the decision-maker must make sense of the initial percepts through thinking and reasoning. The final steps are judgment and decision-making. Over the past 40 years, these processes have been the focus of intense study in psychology (Baron 2000; Gilovich et al. 2002). Some of the major findings from the literature are now being considered and applied in business and marketing (Russo and Schoemaker 1989) and, more recently, in both healthcare (Croskerry 2002; Crumlish and Kelly 2009; McDonald 1996) and the law (Guthrie et al. 2001, 2007).

Decision-Making and Judgment in Healthcare and the Law was the theme of a pre-conference symposium, held as part of the Eighth Canadian Healthcare Safety Symposium (Halifax 8). Five presentations were offered by experts in their field – in healthcare, bioethics and law. These presentations are offered here as a special section of this issue of Patient Safety Papers.

The first paper, titled “Context Is Everything *or* How Could

I Have Been That Stupid?” is by Pat Croskerry, a professor in emergency medicine and in medical education at Dalhousie University in Halifax, Nova Scotia. Croskerry examines the issue of context in clinical decision-making and reviews a new approach to decision-making based on dual process theory (Evans 2008).

The second paper, “Nurses’ Decisions, Irreducible Uncertainty and Maximizing Nurses’ Contribution to Patient Safety,” is by Carl Thompson, senior lecturer, and Huiqin Yang, both of the Department of Health Sciences, University of York, York, England. They discuss how nurses use reasoning and judgment to make decisions and how they grapple with irreducible clinical uncertainty.

“Shared Decision-Making” is by Bill Godolphin, a professor of pathology at the University of British Columbia, Victoria, British Columbia. Godolphin demonstrates that shared decision-making, while at the crux of patient-centred care, rarely happens, is hard to do and is not taught effectively.

The fourth article, “Thinking about Thinking: Implications for Patient Safety,” is by Kathryn Montgomery, a professor of medical humanities and bioethics at the Northwestern University Feinberg School of Medicine, in Chicago, Illinois, and author of the recently published book *How Doctors Think* (Montgomery 2006). Montgomery points out that clinical medicine, a learned, rational, science-using practice, is labelled a science, even though physicians have the good sense not to practise it that way.

The fifth and final paper, “Healthcare and the Law: A View

from the Bar,” is by John Martland from Calgary, Alberta. In discussing the process by which courts review medical decisions and arrive at a legal judgment, he addresses the difficulties lawyers and judges, who are not medically trained, face when presenting and understanding evidence concerning a complex, circumstantial medical situation.

In these papers, we hope that readers find a universality of ideas, a convergence of domains and inspiration to question our ability to think, to judge and to decide. **HQ**

References

- Baron, J. 2000. *Thinking and Deciding* (3rd ed.). New York: Cambridge University Press.
- Croskerry, P. 2002. “Achieving Quality in Clinical Decision Making: Cognitive Strategies and Detection of Bias.” *Academic Emergency Medicine* 9: 1184–204.
- Crumlish, N. and B.D. Kelly. 2009. “How Psychiatrists Think.” *Advances in Psychiatric Treatment* 15: 72–79.
- Evans, J.St.B.T. 2008. “Dual-Processing Accounts of Reasoning, Judgment, and Social Cognition.” *Annual Review of Psychology* 59: 255–78.
- Gilovich, T., D. Griffin and D. Kahneman, eds. 2002. *Heuristics and Biases: The Psychology of Intuitive Judgment*. New York: Cambridge University Press.
- Guthrie, C., J.J. Rachlinski and A.J. Wistrich. 2001. “Inside the Judicial Mind.” *Cornell Law Review* 86(4): 777. Accessed June 27, 2009. <<http://ssrn.com/abstract=257634>>.
- Guthrie, C., J.J. Rachlinski and A.J. Wistrich. 2007. *Blinking on the Bench: How Judges Decide Cases*. Social Science Research Network. Accessed June 27, 2009. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1026414>.
- McDonald, C.J. 1996. “Medical Heuristics: The Silent Adjudicators of Clinical Practice.” *Annals of Internal Medicine* 124: 56–62.
- Montgomery, K. 2006. *How Doctors Think: Clinical Judgment and the Practice of Medicine*. Oxford, England: Oxford University Press.
- Russo, J.E. and P.J.H. Schoemaker. 1989. *Decision Traps: Ten Barriers to Brilliant Decision-Making and How to Overcome Them*. New York: Simon and Schuster.

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