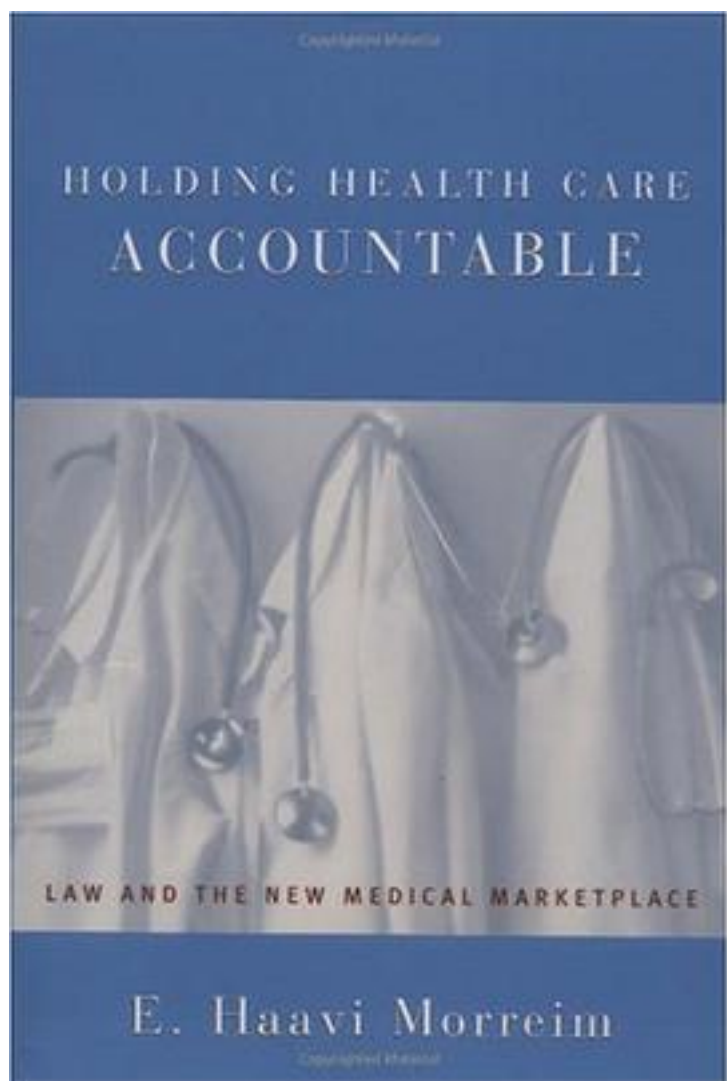


Holding Health Care Accountable



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出版者:Oxford Univ Pr

出版时间:2001-8

装帧:HRD

isbn:9780195141320

Health care in the US and elsewhere has been rocked by economic upheaval. Cost-cuts, care-cuts, and confusion abound. Traditional tort and contract law have not kept pace. Physicians are still expected to deliver the same standard of care -- including costly resources - to everyone, regardless whether it is paid for. Health plans can now face litigation for virtually any unfortunate outcome, even those stemming from society's mandate to keep costs down while improving population health. This book cuts through the chaos and offers a clear, persuasive resolution. Part I explains why new economic realities have rendered prevailing malpractice and contract law largely anachronistic. Part II argues that pointing the legal finger of blame blindly or hastily can hinder good medical care. Instead of "whom do we want to hold liable," we should focus first on "who should be doing what, for the best delivery of health care." When things go wrong, each should be liable only for those aspects of care they could and should have controlled. Once a good division of labor is identified, what kind of liability should be imposed depends on what kind of mistake was made. Failures to exercise adequate expertise (knowledge, skill, care effort) should be addressed as torts, while failures to provide promised resources should be resolved under contract. Part III shows that this approach, though novel, fits remarkably well with basic common law doctrines, and can even enlighten ERISA issues. With extensive documentation from current case law, commentary, and empirical literature, the book will also serve as a comprehensive reference for attorneys, law professors, physicians, administrators, bioethicists, and students.

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