

THE HEALTH CARE MANAGER'S LEGAL GUIDE

Edited by

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Acknowledgments

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To the people involved in making this book possible:

- Sincere thanks to the contributing authors who took time from their busy schedules to share their expertise: Tejal P. Banker, JD, LL.M.; Carol A. Campbell, DBA, RHIA, FAHIMA; Ashish Chandra, MMS, MBA, PhD; Sandra K. Collins, BS, MBA, PhD; Kendall H. Cortelyou-Ward, PhD; Stephen Martin Crow, BS, MS, PhD; Susie T. Harris, PhD, MBA, RHIA, CCS; Joan M. Kiel, PhD, CHPS; Clifford M. Koen, Jr., BBA, MS, JD; Robert R. Kulesher, PhD, FACHE; Aaron Liberman, PhD, LHRM; Eric P. Matthews, PhD, RT(R)(CV)(MR); Michael S. Mitchell, JD, LL.M.; Dawn M. Oetjen, PhD; Reid Oetjen, PhD; Bianca Perez, MS; Llewellyn E. Piper, PhD; Timothy Rotarius, PhD, MBA, BBA; and Andrea Velez-Vazquez, BS, MS.
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Getting the Job Done While Avoiding Legal Hassles

The above title describes the purpose of this book in a nutshell. A slightly longer statement of purpose is: *To provide guidance for the working healthcare manager who must manage day to day in an environment littered with potential legal pitfalls.* There are hazards related to recruiting, interviewing, and reference checking; wage and salary issues, including describing and grading jobs and the approval and control of overtime; maintaining patient and employee privacy and confidentiality; determining employee eligibility for various legislated benefits such as the Family and Medical Leave Act; addressing allegations of sexual harassment in particular and dealing with disciplinary matters in general; governing management behavior during union organizing; and a number of other concerns involving situations in which the manager might encounter legal issues in everyday operations.

Consider the following example: today's experienced interviewers know that it is illegal under Title VII of the Civil Rights Act of 1964 to ask a job applicant about any aspect of marital or family status. They further know that even if an applicant reveals such personal information during an interview, the interviewing manager cannot legally use this information in making a hiring decision. The case in point: a young woman applying for an entry-level technician position said directly to the interviewing manager, "I'm pregnant and if you don't hire me I'll charge discrimination." This statement was heard by no one other than the interviewer, so there were no witnesses. What was the manager to do?

The interviewing manager in question was aware that the personal information obtained could not be allowed to influence a hiring decision. The applicant's bluntly stated threat prompted the manager, following advice from knowledgeable sources in the organization, to carefully document the interview results for all candidates for the position, carefully compare the qualifications of all candidates, and prepare to defend, if necessary, the offer of the job to the apparently best-qualified applicant. The bold applicant was not hired; however, the complaint she filed with the state's Division of Human Rights was dismissed on initial investigation because the employer could demonstrate that the person hired was the best-qualified applicant.

Without solid documentation and the ability to reasonably show that the best-qualified applicant was chosen, upon turning down the threatening applicant, the manager could well have become involved in a prolonged dispute.

Legal regulation of employment essentially began in the 1930s with passage of the Fair Labor Standards Act and the National Labor Relations Act. However, it was the Civil Rights Act of 1964 that began the modern era of government regulation of employment that work organizations face today. Since 1964, there has been a series of new laws and amendments to laws, many of which have direct as well as indirect effects on managers—those employees who must oversee and guide the efforts of other employees.

Surely there are more topic areas in addition to the 15 addressed in this book that could have been included. However, for most healthcare managers, the topics covered within these pages likely address the majority of legal pitfalls they are likely to encounter. For example:

- At one time or another, nearly all managers find it necessary to select new employees, so the legal pitfalls involved in interviewing and reference checking are reviewed.
- Most managers sometimes find it necessary to discipline or even discharge an employee, so the ways to go about this less than pleasant task with minimal legal risk are offered.
- Today's focus on sexual harassment and the prevalence of charges of sexual harassment suggests the need for the manager to know what is best to do when confronted with such issues.
- Some managers direct unionized employees and many managers become exposed to union organizing, so guidance is offered for managing under such conditions while steering clear of legal obstacles.
- Managers sometimes find themselves involved in employment-related lawsuits or other legal proceedings, so guidance is presented for managers' behavior when so involved.

There is necessarily a limited amount of overlap between and among certain chapters. For example, Chapters 5 and 6 both address antidiscrimination laws to some extent, and Chapters 10, 13, and 15 all describe the legal process of *discovery*, although from somewhat differing perspectives.

The chapters in this volume have been contributed by both practitioners and educators, including several who have been or are presently both an educator and practitioner, and several who are attorneys as well.

It is essential that the reader or user of *The Health Care Manager's Legal Guide* recognize that *nothing presented in this book is intended as legal advice*. This book simply provides information and general guidance. Some of the material in these pages has been supplied by attorneys, some was supplied by knowledgeable

practitioners and educators, and most has been reviewed by attorneys. Use this book to become sufficiently knowledgeable of legal pitfalls so you can do your best to avoid them; a hazard avoided is a potential problem likewise avoided. Thus the primary theme of this book is *avoidance* of legal problems. But when an unavoidable real-world legal problem arises, rely on your organization's legal counsel.

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