

Legal Aspects of Health Care Administration

Eleventh Edition

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(Legal-Ethical Healthcare Issues)

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How far you go in life depends on your being tender with the young,
compassionate with the aged,
sympathetic with the striving,
and tolerant of the weak and the strong
—because someday you will have been all of these.

—**George Washington Carver**

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Preface

The eleventh edition of *Legal Aspects of Health Care Administration* is the most comprehensive book encompassing both legal and ethical healthcare issues. Ethics and the law are not mutually exclusive—they are intertwined. Without the two, we would become a lawless land.

This book provides the reader with a solid foundation in health law, as well as an overview of practical ways to improve the quality and safe delivery of health care. It examines a wide range of healthcare topics in a comprehensive and engaging manner that carefully guides the reader through the complex maze of the legal system as it impacts healthcare organizations. Actual court cases are presented throughout the book to bring the law to life and assist the reader in applying the information learned to his or her professional career.

Further, this book describes how common medical errors continue to have a negative impact on the reputations and financial well-being of healthcare professionals, their employers, and more importantly, the health and lives of their patients. More than 30 years separate the first edition of this book from the current edition. However, the same medical errors are still occurring, only the names are changing. That sad fact makes this book a timeless and valuable resource for healthcare organizations, professionals, patients, and laypersons.

The news media continues to paint a grim picture of the healthcare industry by featuring distressing headlines that describe a continuing pattern of greed and often disregard for patient safety. The following are some of the more recent examples of headlines in the news media:



Nurses Call Level of Staffing Unsafe

The largest nurses union in the United States asked the D.C. Health Department on Monday to investigate nurse understaffing at Washington Hospital

Center that the union says is jeopardizing patient care.

In a 19-page report filed with the department, National Nurses United documented 50 instances of what is described as unsafe patient care this year in all departments of the hospital. No deaths were reported.

—The *Washington Post*, November 2, 2010



Malpractice Suits Drop When Doctors Admit Mistakes, Apologize

When doctors make mistakes, admitting the error, saying “I’m sorry” and offering compensation may go a long way toward preventing malpractice lawsuits, new research shows.

—*USA Today*, August 20, 2010



Grand Jury Indicts Dr. Earl Bradley in Sexual Abuse of 103 Child Patients

For nearly two months prosecutors have suggested Dr. Earl B. Bradley, the alleged pedophile pediatrician from Lewes, had molested an unknown number of girls, far more than the nine patients he was charged in December with raping.

On Monday, the Attorney General’s office made its suspicions official, with a grand jury indictment accusing Bradley of sexually assaulting 102 girls and one boy he treated—a more than tenfold increase in the number of victims originally alleged. . . .

The case against Bradley could be the worst child sexual abuse by a pediatrician in American history, some abuse experts have said. Biden called it “unique” in Delaware history. Nationally, he said, “I know of no other [case] that has this many victims.”

—*The News Journal*, February 23, 2010



VA Hospital May Have Infected 1,800 Veterans with HIV

A Missouri VA hospital is under fire because it may have exposed more than 1,800 veterans to life-threatening diseases such as hepatitis and HIV. . . .

The issue stems from a failure to clean dental instruments properly, the hospital told CNN affiliate KSDK. Dr. Gina Michael, the association chief of staff at the hospital, told the affiliate that some dental technicians broke protocol by handwashing tools before putting them in cleaning machines. . . .

In June, Palomar Hospital in San Diego, California, has sent certified letters to 3,400 patients who underwent colonoscopy and other similar procedures, informing the patients that there may be a potential of infection from items used and reused in the procedures.

—*CNN U.S.*, June 30, 2010, 10:57



She Changed Medicine, but Her Family Can’t Afford Care

“The Immortal Life of Henrietta Lacks” is a biography of the eponymous heroine and her offspring. There are her children, and their children, all reared in poverty and too often without insurance. . . . The story raises questions about bioethics and leaves a reader wondering who should benefit from scientific research and how it should be conducted. In the words of Lacks’s youngest daughter, Deborah: “If our mother’s cells done so much for medicine, how come her family can’t afford to see no doctors?” . . .

Henrietta’s first cousin Cootie . . . “Nobody round here never understood how she dead and that thing still livin. That’s where the mystery’s at.”

It’s a deftly crafted investigation of a social wrong committed by the medical establishment, as well as the scientific and medical miracles to which it led.

—“Book Review: ‘The Immortal Life of Henrietta Lacks’ by Rebecca Skloot,” *The Washington Post*, January 31, 2010



Patients Learn They May Have Unneeded Stents

“You go to a doctor thinking he’s going to take care of you and make you better, and now I have this thing that I don’t even need and that can’t be removed,” she said, “I trusted him.”

Doctors and hospitals in other parts of the country who placed stents when that blockage threshold wasn’t met have faced lawsuits, fines and even prison time.

—*Baltimore Sun*, January 15, 2010



Malpractice System Turmoil

Since 2002, the average payout for medical liability claims has increased from \$382,000 to \$505,000 in 2008, according to the Medical Society of the State of New York. . . .

“Seven percent of physicians are responsible for 68 percent of medical malpractice payments” in New York, said John K. Powers, an Albany malpractice attorney who represents the New York State Academy of Trial Lawyers.

Those doctors should not be eligible for liability insurance and should be denied the privilege of practicing medicine, Powers said.

—*Times Union*, December 2, 2009

Because the law is continually evolving, it is important that the reader possess a basic understanding of how and when the law relates to the healthcare field in general and the reader’s specific area of responsibility in particular. This book answers that need by serving as both a text in the

classroom and as a reference for the practitioner. To assist the reader in applying the substantive material in this book, actual court cases are presented. The decisions in cases discussed are generally governed both by applicable state and federal statutes and common law principles. When reviewing a case, the reader must keep in mind that the case law and statutes of one state are not binding in another state.

This edition begins with a chapter that provides some historical perspective on the development of hospitals, illustrating both their progress and failures through the centuries. There is broad discussion of the legal system, including the sources of law. The text continues with a basic review of tort law, criminal issues, contracts, antitrust, civil procedure, and a wide range of real-life legal and ethical dilemmas that caregivers have faced as they wound their way through the courts. The final chapters provide an overview of various ways to improve the quality and delivery of health care.

Although the court cases relating examples of malpractice are often mirror images of the failures of medicine, this eleventh edition presents a book of lessons from which the reader can understand where the medical and legal worlds collide. Taken as a whole, the content of this book serves as a reminder to its readers that they must learn from the mistakes and tragedies experienced by others to avoid repeating them. The legal cases and resulting headlines should stand as a reminder of the responsibility the caregiver has to the profession he or she has chosen, and the caregiver should use the knowledge gained from studying this book to help prevent himself or herself from becoming the next headline.



IT'S YOUR GAVEL

“It’s Your Gavel” boxes offer the reader an opportunity to make decisions about actual court cases. Many chapters begin with a case that has been reviewed by the courts in state or federal jurisdictions. After reviewing each case and subsequent relevant material, readers can take on the role of the fact finder and render a decision. Then, at the end of the respective chapters, the actual court findings and reasoning for each case are given in “The Court’s Decision” box.

CASE PRESENTATION FORMAT

When reviewing the various cases in this book, the reader should consider what happened, why things went wrong, what the relevant legal issues are, and how the event could

have been prevented. The reader should also consider how, if one fact in a particular case changed, the outcome might have been different. What would that fact be? The cases presented in the text have been chosen because of the frequency of their occurrence.

The general format for each boxed case review is as follows:

Title: Each case has a title that signals the type of case to be reviewed.

Case Citation: The case citation describes where a court’s opinion in a particular case can be located. It identifies the parties in the case, the text in which the case can be found, the court writing the opinion, and the year in which the case was decided. For example, the case citation of *Bouvia v. Superior Court (Glenchur)*, 225 Cal. Rptr. 297 (Ct. App. 1986) is described as follows:

- *Bouvia v. Superior Court (Glenchur)*: Identifies the basic parties involved in the lawsuit
- 225 Cal. Rptr. 297: Identifies the case as being reported in volume 225 of the California Reporter on page 297
- Cal. Ct. App. 1986: Identifies the case as being decided in the California Court of Appeals in 1986

Students who wish to research a specific case should visit a law school library, which provides access to various state and regional reporters.

Facts: A review of the material facts of the case is presented.

Issues: This is the disputed point or question the judge or jury must decide. The issues discussed in any given case are selected for review based on medical and legal pertinence to the healthcare professional. Although any one case in this text may have multiple issues, emphasis is placed on those issues considered to be more relevant for the reader in the context of the topic being discussed.

Holding: The court’s ruling based on the facts, issues, and applicable laws pertaining to a case is summarized.

Reason: The rationale for the court’s decision based on the facts, issues, and relevant laws surrounding a case is presented.

Discussion: Discussion questions, although prompted by a particular case, may not necessarily be germane to the facts of the case. The questions are merely presented as opportunities for discussion and in no way add to the facts of a specific case decision.

Author’s Note: This text is educational in nature and should not be considered a substitute for legal advice on any particular issue. Moreover, each chapter presents an overview, rather than an exhaustive treatment, of the various topics.

The author, legal reviewers, and/or publisher cannot be responsible for any errors or omissions, including additions to, interpretations of, and/or changes in the regulations presented in this book.

Acknowledgments

I am grateful to the very special people with whom I have consulted, surveyed, and provided education over the decades. Their shared experiences have served to remind me of the importance of making this book more valuable in the classroom and as a reference for practicing healthcare professionals.

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