

CHAPTER 1

Introduction to the U.S. Legal System

"It is emphatically the province and duty of the Judicial Department to say what the law is."

—**John Marshall** (1755–1835), Chief Justice of the U.S. Supreme Court

KEY TERMS

"The people"	Intermediate appellate court
Abstention	Intermediate scrutiny
Administrative procedure acts	Legitimacy
Bill of Rights	Obligation
Body of law	Patient data
Charitable immunity	Preemption
Committee system	Privacy
Common law	Private law
Confidentiality	Property rights
Contract	Public law
Criminal law	Public policy
Delegation	Quasi-judicial power
Diversity jurisdiction	Quasi-legislative power
Doctrine of <i>res judicata</i>	Rational reason
Doctrine of <i>stare decisis</i>	Right of privacy
Due Process Clause	Rules of interpretation
Employee Retirement Income Security Act	Separation of powers
Equal protection	State supreme court
Equal Protection Clause	Statutory law
Express powers	Strict scrutiny
<i>Federal Register</i>	Suspect classifications
Federal trial courts	Tort
Health Insurance Portability and Accountability Act	Trial courts
Home rule	U.S. Constitution
Implied powers	U.S. Department of Health and Human Services (HHS)
	<i>Writ of certiorari</i>

LEARNING OBJECTIVES

- Distinguish between public and private law, civil and criminal law, and tort and contract actions.
- Discuss how the federal constitution defines government authority.
- Identify the procedural protections that the Due Process Clause requires and explain when they are required.
- Discuss the concept of equal protection.
- Define the rights encompassed by the constitutional right to privacy.
- Explain what happens when local, state, and federal laws overlap.
- Describe the source of authority of administrative agencies and how they regulate the public.
- Discuss how courts make laws, defining the principles of *stare decisis* and *res judicata*.
- Name the three branches of U.S. government and outline the responsibilities of each.
- Distinguish among trial courts, appeals courts, and supreme courts.
- Explain the relationship between state and federal courts.

► Principles and Applications

The law affects many of the judgments that health record administrators, health providers, and technical staff members must make each day. Their decisions may have significant potential legal consequences. However, it is impractical to obtain legal advice before making every decision. Thus, all health providers who collect **patient data** must develop a general understanding of health records law so that they can exercise judgment consistent with applicable law and identify problems that require legal counsel.

► The Nature of Law

This chapter sets forth general information about the law, with a particular emphasis on the U.S. legal system and the roles of the various branches of government in creating, administering, and enforcing the law of the federal and state governments. According to most definitions, *law* is a system of principles and processes by which people who live in a society use to create stability and deal with their disputes and problems, seeking to solve or settle them without resort to force. Law governs the relationships among private individuals, organizations, and their government. Through law, society establishes standards of behavior and the means to enforce those standards. Law that deals with the relationships between private parties is called **private law**; **public law** deals with the relationships between private parties and government. As society has become more complex, the scope of public law has broadened, and the regulation of individuals and organizations has become more pervasive.

Private law recognizes and enforces the rights and duties of private individuals and organizations. Legal actions between private parties are of two types: **tort** and **contract**. In a tort action, one party asserts that wrongful conduct on the part of the other party has caused harm, and the injured party seeks compensation for the

harm suffered. In a contract action, one party asserts that, in failing to fulfill an **obligation**, the other party has breached a contract, and the injured party seeks either compensation or performance of the obligations as a remedy.

Criminal law is part of public law, which proscribes conduct considered injurious to the public order and provides for punishment of those found to have engaged in such conduct. Public law consists also of an enormous variety of administrative regulations designed to advance societal objectives by requiring private individuals and organizations to follow specified courses of action. Although there are criminal penalties for those who do not abide by regulations, the primary purpose of public law is to secure compliance with and attain the goals of the law.

The formulation of **public policy** concerning health care has put hospitals and other health providers into the arena of legislative debate about containment of health care costs, quality of care, medical device safety, research involving human subjects, confidentiality of patient data, e-commerce, labor relations, employment policies, and facility safety. Public law at both the federal and the state levels deals with societal problems of a broad nature. Law serves as a guide to conduct. Most disputes or controversies that are covered by legal principles or rules are resolved without resort to the courts. Thus, each party's awareness of the law and of the relative likelihood of success in court affects its willingness to modify its original position and to reach a compromise acceptable to both sides.

► Sources of Law

The four primary sources of law in the U.S. legal system are federal and state constitutions, federal and state laws, the decisions and rules of administrative agencies, and the decisions of the courts. No one can exercise any power in the United States unless it has been delegated to them through one of these primary sources of law. Political authority can only spring from the law, as **"the people"** have delegated their power through the **U.S. Constitution**.

The U.S. Constitution

The U.S. Constitution is the supreme law of the United States. It establishes the general organization of the federal government, grants powers to the federal government, and places limits on what the federal and state governments may do. The Constitution establishes and grants powers to the three branches of the federal government—legislative, executive, and judicial. The Constitution also grants power from the states to the federal government. The federal government has only the powers granted to it by the Constitution. These powers are both express and implied. The **express powers** include the power to collect taxes, declare war, and regulate interstate commerce. The Constitution also grants the federal government broad **implied powers** to enact laws *necessary and proper* for exercising its other powers. When the federal government establishes law, within the scope of its powers, that law is supreme; all conflicting state and local laws are invalid.

The Constitution also places limits on what the federal and state governments may do. The most famous limits on federal power are the first 10 amendments to the Constitution—the **Bill of Rights**. The basic rights protected by the Bill of Rights

include the right to free speech; free exercise of religion; freedom from unreasonable searches and seizures; trial by jury; and the right not to be deprived of life, liberty, or property without due process of law. State powers limit the Fourteenth Amendment as follows: “. . . nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹ These clauses of the Fourteenth Amendment are referred to as the **Due Process Clause** and the **Equal Protection Clause**. As another constitutional limitation on both state and federal government power, courts also recognize an individual right to **privacy**. This right to privacy affects hospitals and health providers.

Due Process of Law

The Due Process Clause imposes restrictions and duties on state action, not on private action. Actions by state and local government agencies are state actions and must comply with due process requirements. Actions by private individuals at the behest of the state also can be subject to the due process requirements. The Due Process Clause applies to state actions that deprive a person of life, liberty, or property. In that context, a position or a particular status can be considered property. For instance, a physician’s appointment to the medical staff of a hospital and a hospital’s organizational licensure by the state are considered **property rights**. Thus, a hospital must provide due process to the medical staff applicant, while government agencies must provide due process to the hospital applying for licensure.

The process that is due varies. Due process consists of two elements: the rules must be reasonable and not vague or arbitrary, and fair procedures must be followed in enforcing the rules. In general, two procedural protections must be offered: notice of the proposed action and an opportunity to present evidence as to why the disputed action should not be taken. The phrase *due process* in the Fourteenth Amendment, which applies to the states, includes all the rights in the Bill of Rights. Thus, state governments may not infringe on those rights.

Equal Protection of the Laws

The Equal Protection Clause also restricts state action. The concept of **equal protection** ensures that similarly situated individuals are treated in like fashion. As a result, the Equal Protection Clause concerns the **legitimacy** of the classification used to distinguish individuals. Deciding whether a particular difference between individuals can justify a difference in rules or procedures can be difficult. In general, courts require that the government agency justify the difference with a **rational reason**. The major exceptions to this standard are the **strict scrutiny** that courts apply to distinctions based on particular **suspect classifications**, such as race or ethnic origin, and the **intermediate scrutiny** afforded to classifications based on gender.

Right of Privacy

The U.S. Supreme Court has recognized a constitutional **right of privacy**.² For instance, although individual patient prescription information may be collected

from pharmacies, the duty to avoid unwarranted disclosure of patient data has its roots in the U.S. Constitution and the right to privacy.³ Privacy in this context involves two types of interest: an individual interest in avoiding disclosure of personal matters and an interest in protecting one's independence in making important decisions. The Court has ruled that the constitutional right to privacy is qualified and is not absolute, as it exists relative to a specific context.⁴ The Court has ruled, however, that the right of privacy limits government authority to regulate contraception; abortion; other decisions affecting reproduction; private sexual behavior; marriage; family autonomy; and the right to choose, withhold, or withdraw treatment.⁵ Thus, in the area of patient data, the unauthorized disclosure of confidential patient data can give rise to a claim for invasion of privacy based on the federal constitutional right of privacy, the **common law**, or **statutory law**.

State Constitutions

Each state also has its own constitution. A state constitution establishes the organization of the relevant state government, grants powers to that government, and places limits on what that government may do. Usually, they are longer than the U.S. Constitution and more detailed regarding the relationships between government and the people.

Statutes

Another major source of law is statutory law enacted by a legislature. Legislative bodies include Congress, state legislatures, and local legislative entities, such as city councils and boards of supervisors. Congress has only the powers delegated to it by the Constitution. State legislatures have all powers not denied them by the Constitution, by federal laws enacted under the authority of the federal government, or by their state constitutions. Local legislative bodies have only those powers granted by the state. Through laws or state constitutions, some states have granted local governments broad powers authorizing **home rule**.

When federal and state laws conflict, valid federal law supersedes. Federal law may preempt an entire area of law so that state law is superseded, even if it is not in direct conflict. In bankruptcy law, for instance, Congress preempts dual state regulation. In other areas of the law, **preemption** is implied from the pervasiveness of the federal statutory scheme, the need for uniformity, and the likelihood that state regulation would obstruct the goals of the federal law. In the area of health care law, one of the most applied preemption provisions can be found in the **Employee Retirement Income Security Act** (ERISA). Designed to achieve uniformity in the regulation of health care benefits, ERISA's preemption provisions determine whether state law claims will be heard in state or federal court and what damages are available.

Congress passed the **Health Insurance Portability and Accountability Act** (HIPAA), which created a comprehensive federal scheme for the protection of identifiable patient data.⁶ Until the passage of HIPAA, state legislation and regulation governed health records. Now HIPAA governs the use and disclosure of most patient data. The law contains a complex formula for determining whether HIPAA will preempt a state law relating to **confidentiality** of patient data. Thus, provisions relating to patient data can be found in federal and state confidentiality laws, provider

licensure laws, communicable diseases legislation, child and elder abuse legislation, peer review legislation, and in laws governing women's reproductive rights (primarily contraceptive and abortion legislation) and the dying process (assisted dying).

Conflicting state and local laws further complicate the law. When state law and local government rules conflict, valid state law supersedes. In some cases, state law may preempt an entire area of law so that local law is superseded, even if it is not in direct conflict.

Decisions and Rules of Administrative Agencies

The decisions and rules of administrative agencies are other sources of law. Legislatures have delegated to numerous administrative agencies the responsibility and power to implement various laws. The delegated powers include the **quasi-legislative power** to adopt regulations and the **quasi-judicial power** to decide how laws and regulations apply. The legislative branch has delegated this authority because it does not have the time or expertise to address everything that is being regulated today. In volume and complexity, edicts from administrative agencies exceed the laws passed by Congress and state legislatures by orders of magnitude.

Administrative agencies invested with these powers include the **U.S. Department of Health and Human Services (HHS)**, the Food and Drug Administration, the Federal Trade Commission, the National Labor Relations Board, and the Internal Revenue Service. The HHS regulates a broad spectrum of health care and issues detailed regulations governing the privacy⁷ and security⁸ of patient data. The Federal Trade Commission mandates that health providers cannot mislead patients about what is happening with their health information.⁹ The Food and Drug Administration also promulgates regulations and applies them to individual decisions involving the manufacture, marketing, and advertising of foods, drugs, cosmetics, and medical devices. The National Labor Relations Board decides how national labor law applies to individual disputes, while the Internal Revenue Service regulates individual federal tax disputes.

Many administrative agencies achieve consistency in their decisions by following the position they adopted in similar matters. An administrative process is similar to how courts develop the common law. When dealing with these administrative agencies, it is important to review the **body of law** that has evolved from their previous decisions.

Administrative rules and regulations must be within the scope of the authority granted by legislation to the agency. Constitutions also limit **delegation** by the legislative branch. The legislature must retain ultimate responsibility and authority by specifying what regulations the administrative agency may make. In the past, courts often declared nonspecific delegations unconstitutional. Today, the courts interpret constitutions as permitting much broader delegation, but the general area of law to be regulated still must be specified.

Congress and many state legislatures have passed **administrative procedure acts**. These specify the procedures that administrative agencies must follow in promulgating rules or reaching decisions in contested cases, unless an overriding law specifies different procedures. These laws provide that most proposed rules be published to allow individuals an opportunity to comment before the rules are finalized. Many federal agencies must publish rules in the *Federal Register*. Many states have

comparable publications of the rules of state agencies. Those involved with hospitals should monitor proposed and final rules through these publications, other publications, or their professional or hospital associations. Administrative agencies often rely on this comment process to learn from the public and from the affected industries of the potential implications of agency proposals.

Court Decisions

Court decisions are the fourth source of law. In the process of deciding individual cases, courts interpret laws and regulations, determine whether specific laws and regulations are permitted by the relevant state or federal constitution, and create the *common law* when deciding cases not controlled by laws, regulations, or a constitution. Disagreements over the application of laws or regulations arise frequently. In some situations, the legislature has granted an administrative agency the initial authority to decide how a law should be applied. That agency's decision usually can be appealed to the courts. However, courts defer to the decisions of administrative agencies in discretionary matters and limit their review to constitutional issues and whether the agency acted within its authority, followed proper procedures, had a substantial basis for its decision, and acted without arbitrariness or discrimination.

Whether or not an administrative agency is involved, the court still may have to interpret a law or regulation or decide which of two or more conflicting laws or regulations apply. Courts have developed several rules for statutory interpretation. In addition, in some states, a law specifies **rules of interpretation**. These rules or laws help determine the intent of the legislature in passing the law. The courts also determine whether specific laws or regulations violate the U.S. Constitution. All legislation and regulations must be consistent with the Constitution. Courts have the power to declare legislation invalid when it is unconstitutional.⁹

Many of the legal principles and rules applied by U.S. courts are the product of the common law developed in England and, subsequently, in the United States. The term *common law* applies to the body of principles that evolves from court decisions resolving controversies. Common law continually adapts and expands. During the colonial period, English common law was applied uniformly. After the American Revolution, each state adopted part or all of the then existing English common law. All subsequent common law in the United States developed on a state basis, so common law may differ from state to state.

Statutory law restates many legal rules and principles established by the courts as part of the common law. However, many disputes in private law still are decided according to common law. Common law in a state may be changed by enactment of legislation modifying it or by later court decisions that establish new and different law.

In deciding specific controversies, courts adhere to precedent or to the **doctrine of stare decisis**. By referring to similar decisions and applying the same rules and principles, a court arrives at the same ruling in the current case as in the preceding one. However, slight differences may provide a basis for recognizing distinctions between precedent and the current case. Even when such differences are absent, a court may conclude that a particular common law no longer meets the needs of society, and thus the court may depart from precedent.

One example of this departure from precedent is the principle of **charitable immunity**. Charitable immunity provided tax-exempt hospitals with virtual freedom from liability for harm to patients resulting from wrongful conduct. In state after state, courts found justification to overrule precedents that had provided immunity, thereby allowing suits against tax-exempt hospitals.

Another doctrine that courts follow to avoid duplicative litigation and conflicting decisions is *res judicata*, which means a thing or matter settled by judgment. When a legal controversy has been decided and no more judicial appeals are available, those involved in the suit may not take the same matters to court again. This is different from *stare decisis* in that *res judicata* applies to the parties involved in the prior suit and the issues decided in that suit. The application of the **doctrine of res judicata** can be complicated by disagreements over whether specific matters were already decided.

► Government Organization and Function

The three branches of U.S. government—the legislative, executive, and judicial branches—interrelate. In a simplified summary of the functions of the three branches, the legislature makes the laws, the executive branch enforces the laws, and the judiciary interprets the laws. Congress cannot delegate the legislative powers to federal agencies, just as judges cannot delegate their power to an agency. The three branches of government exist under a constitutional framework of the federal government and various state governments—the **separation of powers**. Essentially, separation of powers means that no one of the three branches of government dominates the other two; however, in the exercise of its functions, each branch may affect the powers of the others.

The concept of separation of powers, which may be referred to as a system of checks and balances, is illustrated by the involvement of the three branches in the federal legislative process. When a bill to create a law is enacted by Congress, representing the legislative branch, and signed by the president, representing the executive branch, the bill becomes law. If the president should veto the bill, a two-thirds vote of each house of Congress can override the veto. Thus, by the president's veto, the executive branch can prevent a bill from becoming law. If later sessions of Congress do not act on the bill, it will not become law at all. In addition, the president can prevent a bill from becoming law by not taking any action on the bill while Congress is in session. Finally, a bill that has become law may be declared invalid by the U.S. Supreme Court, if the law violates the U.S. Constitution.

Another example of the relationship among the branches of government involves the selection of federal court judges. The Senate must approve individuals nominated by the president for appointment to the federal judiciary. Thus, over time, both the executive and the legislative branches can affect the composition of the judicial branch of government.

In addition, although a U.S. Supreme Court decision may be final, Congress and the president may generate revised legislation to replace a law held unconstitutional. The processes for amending the U.S. Constitution, although complex and often time consuming, also can serve as a method for offsetting or overriding a Supreme Court decision.

Each of the three branches of government has a different primary function. The legislative branch enacts laws—a process that may involve creating new legislation or amending or repealing existing legislation. Legislatures determine the need for new laws and for changes in existing laws. By means of a **committee system**, legislative proposals are assigned for study to committees with specific areas of interest. The committees conduct investigations and hold hearings, at which interested individuals may present their views to assist the committee members in consideration of the bills. Some bills eventually reach the full legislative body where, after consideration and debate, they may be either approved or rejected. Congress and state legislatures consist of two houses; the one exception is Nebraska, which has one nonpartisan house. Both houses must pass identical versions of a legislative proposal before it can be presented to the chief executive.

The executive branch enforces and administers the law. However, the chief executive—either the governor of a state or the president of the United States—has a role in the creation of law through the power either to approve or to veto a legislative proposal. If the chief executive accepts the bill through the established process, the bill becomes a law, a part of the enacted law. If the chief executive vetoes the bill, it can become law if the legislature overrides the veto.

The executive branch of government is organized into departments. The departments have responsibilities for different areas of public affairs, and each enforces the law within its assigned area of responsibility. The HHS administers much of the federal law affecting hospitals and other health providers. Most states have separate departments with responsibility over health and welfare matters, and those departments administer and enforce state laws pertaining to hospitals and other health providers. Other departments and government agencies also affect the affairs of hospitals and other health providers, however. On the federal level, laws relating to wages and hours of employment are enforced by the Department of Labor, while the Department of Justice enforces health care fraud and prohibitions against abuse.

The judicial branch of government adjudicates and resolves disputes in accordance with the law. Many types of disputes involving hospitals go before the courts. For instance, hospitals resort to the courts to challenge exercises of authority by government agencies and departments, to have legislation concerning hospitals declared invalid, to collect unpaid hospital bills, and to enforce contracts. Although many disputes and controversies resolve without resort to the courts, in many situations a controversy cannot end without submitting to the adjudicatory process of the courts.

► Organization of the Court System

To understand the judicial branch of government and the effect of court decisions as precedents, the structure of the court system must be understood. There are more than 50 state court systems in the United States, including the federal court system, each state's court system, the District of Columbia court system, and those of Puerto Rico and other U.S. territories. These courts do not all reach the same decisions. Frequently, a majority approach and several minority approaches exist. Thus, careful review determines which court's decisions apply to a controversy and, if no decisions

apply, to predict which approach the courts are likely to adopt. In addition, the federal court system and many state court systems have three levels of courts—trial courts, intermediate courts of appeal, and a supreme court. Some states have no intermediate courts of appeal.

State Court System

Adding to the judicial complexity is the state court system. **Trial courts** are often divided into special courts that deal with specific issues, such as family courts, juvenile courts, and probate courts. Limited courts deal with lesser crimes, such as misdemeanors, or with civil cases involving limited amounts of money. Each state has trial courts of general jurisdiction that may decide all disputes not assigned to other courts or disputes barred from the courts by federal or state law.

At the trial court level, the applicable law is determined, and the evidence is assessed to determine the facts. The applicable law then is applied to those facts. It is the judge's role to determine what the law is. If there is a jury, the judge instructs the jury as to the law, and the jury determines the facts and applies the law. If there is no jury, the judge determines the law and the facts and applies the law. In either case, the determination of the facts must be based on the evidence admitted during the trial, so the facts as heard by the decision maker may not be what happened.

In some cases, everyone agrees on the facts, and the issues presented to the court concern what the law is. In other cases, everyone agrees what the law is, but there is disagreement over the facts. To determine the facts, the credibility of any witnesses and the weight to be given to other evidence must be determined. Many cases involve both questions of law and questions of fact. The judge has significant control over trials. If the judge finds that the evidence fails to establish a factual issue, the judge can dismiss the case or, in civil cases, direct the jury to decide the case in a specific way. In civil cases, even after the jury has decided, the judge can rule in favor of the other side.

Most state court systems have an **intermediate appellate court** that decides appeals from trial court decisions. In some states, issues can be taken to the intermediate appellate court. When an appellate court decides an appeal, it does not accept additional evidence. It uses the evidence presented in the record from the trial court. Appellate courts almost always accept the factual determinations of the trial court because the trial court saw the witnesses and therefore can judge their credibility. Usually, the appellate court bases its decision on whether the trial court followed proper procedures and properly interpreted the law. However, an appellate court may find that a jury verdict is so contrary to the evidence that the appellate court will reverse the decision or order a new trial.

Each state has a single court at the highest level called the **state supreme court**. In some states, the name is different. For instance, in New York, the highest court is the New York Court of Appeals, while trial courts in New York are called supreme courts. The highest level court in each state decides appeals from the intermediate appellate courts or, in states without such courts, from trial courts. The highest level court also has other duties, including adopting rules of procedure for the state court system and determining who may practice law in the state, which includes disciplining lawyers for improper conduct.

Federal Court System

The federal court system has a structure similar to that of state court systems. The **federal trial courts** are the U.S. district courts and special purpose courts, such as the U.S. Court of Federal Claims, which hears claims against the United States. Federal trial courts differ from state trial courts because the federal courts have limited jurisdiction. A federal lawsuit must involve either a question of federal law or a dispute between citizens of different states in which the dispute involves an amount of at least \$75,000. Federal questions involve possible violations of federal law or of rights under the U.S. Constitution. When a federal trial court decides a controversy between citizens of different states, the court acts under **diversity jurisdiction**, using federal court procedures but applying the law of the applicable state.

Sometimes federal trial courts will abstain and decline to decide state law questions. **Abstention** leaves states' issues for state courts and minimizes the role of federal courts. Federal courts will not abstain when a federal question is not affected by state law. Some states have procedures by which the federal courts can ask a state court to decide a particular question of state law.

Appeals from the federal trial courts go to a U.S. court of appeals. The United States is divided into 12 geographic areas, called circuits. The circuits are numbered 1 through 11, plus the District of Columbia circuit court, which is called the Court of Appeals for the Federal Circuit. The nation's highest court is the U.S. Supreme Court, which decides appeals from the U.S. courts of appeals. Decisions of the highest state courts also may be appealed to the U.S. Supreme Court if they involve federal laws or the U.S. Constitution. When the U.S. courts of appeals or the highest state courts decline to review a lower court decision, the decision sometimes can be appealed to the U.S. Supreme Court.

The U.S. Supreme Court has the authority to decline to review most cases. Filing a **writ of certiorari** generally makes a request for review. If the Supreme Court grants *certiorari*, the record for the lower court decision is transmitted to the Court for review. The Supreme Court generally denies the *writ of certiorari* and hears only about 80 cases of the 7,000 to 8,000 petitions that are received. Such a denial does not indicate approval of the lower court decision; it means that the Court has declined to review the decision.

Stare Decisis

The court systems in the United States are complex. Courts are bound by the doctrine of *stare decisis* to follow the precedents of higher courts in the same court system that has jurisdiction over the geographic area in which the court is located. Each appellate court, including the highest court, is bound also to follow the precedents of its own decisions, unless it decides to overrule the precedent due to changing conditions.

Thus, decisions from equal or lower courts or from courts in other court systems do not have to be followed. One exception occurs when a federal court decides a controversy between citizens of different states and must follow the relevant state law as determined by the highest court of the relevant state. Another exception is when a state court decides a controversy involving a federal law or federal constitutional questions and must follow the decisions of the

U.S. Supreme Court. Another situation that may force a court to alter its prior position is a change in the applicable laws or regulations by the legislature or an administrative agency.

When a court confronts a question not answered by applicable laws or regulations and the question has not been addressed by its court system, the court will examine the judicial solutions reached in the other systems. When a court decides to reexamine its position on an issue that it has previously addressed, it often will examine the court decisions of the other systems to decide whether to overrule its position. A clear trend in decisions across the country can form a basis for a reasonable legal assessment of how to act, even when the courts in a particular area have not decided the issue. However, a court is not bound by decisions in other systems, and it may reach a different conclusion.

Thus, there can be a majority approach that many state court systems follow as well as several minority approaches that other states follow. State courts show more consistency on some issues than on others. For instance, state courts have eliminated charitable immunity. However, although all states require informed consent, many states determine the information that must be provided to a reasonable patient, while several states make the determination by reference to what other physicians would disclose. A few states have not yet decided what reference to use.

Differences in applicable laws and regulations between states may force courts in different states to reach different conclusions. For instance, numerous states have enacted legislation that protects from discovery the records of hospital and medical staff review committees, although the extent of protection varies.¹¹ Some laws provide that such records are subject to subpoena, discovery, or **disclosure**;¹² other laws state that committee records, proceedings, and reports are not discoverable, or the laws describe such material as confidential or privileged. There also are common exceptions to the nondiscovery laws, allowing physicians to discover records of staff privilege committees when contesting the termination, suspension, or limitation of their staff privileges. As a result of these variations, courts have construed nondiscovery laws with varying results. In summary, although it is important to be aware of trends in court decisions across the country, legal advice should be sought before taking actions based on decisions from court systems that have no jurisdiction over the geographic area in which the health provider is located.

Chapter Summary

- Law is a system of principles and processes that a society uses to create stability, deal with its people's disputes and problems, govern relationships, and establish standards of behavior, all of which are aimed at preventing and resolving conflicts without the use of force or the court system.
- There are many different kinds of law, some of which are public, private, tort, contract, criminal, and administrative law.
- The four primary sources of law in the U.S. legal system are federal and state constitutions, federal and state laws, the decisions and rules of administrative agencies, and the decisions of the courts.
- The first primary source is the U.S. Constitution, and it is the supreme law of the United States; it grants and limits powers of the federal and state governments

- and sets forth fundamental rights of the people of the United States, which include due process and equal protection rights.
- One particularly important constitutional right in the context of health records law is the right of privacy, which is an implied right that is derived from the text of the Constitution and is the basis of patient data protection rules and regulations.
 - The second primary source is statutory laws, which are the laws enacted by federal, state, and local governments; federal law trumps conflicting state law, and state law trumps conflicting local law.
 - The third primary source is decisions and rules of administrative agencies that have been granted the power to effectuate statutory laws by their respective legislatures.
 - The fourth primary source is court decisions, which interpret the other three sources, determine whether laws are constitutional, and/or determine which law or laws apply if there are conflicting laws or regulations; courts rely upon precedent in order to make the interpretation of the law as consistent as possible, but there is sometimes good reason to deviate from previous interpretations.
 - There are three branches of government designed to check and balance one another: the legislature makes the laws through its committees, the executive branch enforces the laws through its departments, and the judiciary interprets the laws through the court system.
 - Most court systems at both the state and the federal levels comprise a lower level trial court, an intermediate appellate court, and a high court that has the final say in a dispute, although it is not required to review every case.

Chapter Endnotes

1. U.S. Constitution, amendment XIV, § 1.
2. *E.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (U.S. Supreme Court 1965).
3. *E.g.*, *Whalen v. Roe*, 429 U.S. 589 (U.S. Supreme Court 1977).
4. *Whalen v. Roe*, 429 U.S. 589 (U.S. Supreme Court 1977) (upholding the right to keep patient data private unless there is harmless and compelling state interest to access individual patient data, in this case, copies of individual prescriptions so as to oversee prescription use in New York State); *Planned Parenthood v. Casey*, 505 U.S. 833 (U.S. Supreme Court 1992) (addressing the limits of privacy and autonomy with regard to abortion); *Washington v. Glucksberg*, 521 U.S. 702 (U.S. Supreme Court 1997), followed by *Marshall v. Eyecare Specialties*, 876 N.W.2d 372 (Supreme Court of Nebraska 2016) and *Vacco v. Quill*, 521 U.S. 793 (U.S. Supreme Court 1997) (addressing the limits of privacy and autonomy with respect to assisted dying).
5. For several of the above propositions in order, *see, e.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (U.S. Supreme Court 1965); *Roe v. Wade*, 410 U.S. 113 (U.S. Supreme Court 1973), *rehearing denied*, 410 U.S. 959 (U.S. Supreme Court 1973); *Stenberg v. Carhart*, 530 U.S. 914 (U.S. Supreme Court 2000); *Lawrence v. Texas*, 539 U.S. 558 (U.S. Supreme Court 2003); *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (U.S. Supreme Court 1990).
6. 42 U.S.C. § 1320d *et seq.*
7. 45 C.F.R. Parts 160 and 164.
8. 45 C.F.R. Parts 160, 162, and 164.
9. 15 U.S.C. §§ 41–58. *See*, Federal Trade Commission (FTC). (2016). *Sharing consumer health information? Look to HIPAA and the FTC Act*. Washington, DC: FTC; FTC & U.S. Department of Health and Human Services (HHS). (2016). *HIPAA compliance guide*. Washington, DC: FTC and HHS, Office for Civil Rights.
10. *E.g.*, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (U.S. Supreme Court 1803).

11. Discovery is the formal process in court proceedings by which parties disclose information that is relevant to the parties' legal dispute.
12. A subpoena is a written court order requiring the attendance of the person named in the subpoena at a specified time and place for questioning under oath concerning a matter that is the subject of an investigation, proceeding, or lawsuit. In addition, a subpoena may require that an individual produce specified documents or pieces of evidence.