

*Twelfth Edition*

# LEGAL ASPECTS

OF HEALTH CARE ADMINISTRATION

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*Legal Review*

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# Contents

<b>Epigraph</b> .....	<b>xiii</b>
<b>Preface</b> .....	<b>xv</b>
<b>About the Book</b> .....	<b>xvii</b>
<b>Acknowledgments</b> .....	<b>xix</b>
<b>Chapter 1 Reflections on the Past</b> .....	<b>1</b>
Learning Objectives .....	1
Early Hindu and Egyptian Hospitals .....	2
Greek and Roman Hospitals .....	2
Hospitals of the Early Christian Era .....	3
Islamic Hospitals .....	3
Early Military Hospitals .....	3
Medieval Hospitals .....	4
Hospitals of the Renaissance .....	5
Hospitals of the 18th Century .....	5
Early Hospitals in the United States .....	6
Late 19th Century Renaissance .....	7
20th Century Progress .....	9
Health Care and Hospitals in the 21st Century .....	10
History's Common Theme: Recurring Infections .....	11
History Challenges Us to Do Better .....	12
Chapter Review .....	13
Review Questions .....	13
<b>Chapter 2 Government, Law, and Ethics</b> .....	<b>15</b>
Learning Objectives .....	15
Development of Law .....	16
Sources of Law .....	16
Government Organization .....	22
Department of Health and Human Services .....	25
Government Ethics .....	28
Political Malpractice .....	29
Chapter Review .....	31
Review Questions .....	32

<b>Chapter 3</b>	<b>Healthcare Ethics</b> .....	<b>35</b>
	Learning Objectives .....	35
	Ethics .....	36
	Morality .....	36
	Ethical Theories .....	37
	Principles of Healthcare Ethics .....	39
	Virtue Ethics and Values .....	42
	Religious Ethics and Spirituality .....	48
	Secular Ethics .....	51
	Professional Ethics .....	51
	Ethics Committee .....	52
	Reasoning and Decision Making .....	57
	Moral Compass Gone Astray .....	58
	Summary Thought .....	58
	Chapter Review .....	59
	Review Questions .....	61
<b>Chapter 4</b>	<b>Tort Law—Negligence</b> .....	<b>63</b>
	Learning Objectives .....	64
	Objectives of Tort Law .....	65
	Negligence .....	65
	Forms of Negligence .....	65
	Degrees of Negligence .....	65
	Elements of Negligence .....	66
	Summary Case .....	76
	Chapter Review .....	78
	Review Questions .....	78
<b>Chapter 5</b>	<b>Intentional Torts</b> .....	<b>81</b>
	Learning Objectives .....	82
	Assault and Battery .....	82
	False Imprisonment .....	84
	Defamation of Character .....	85
	Fraud .....	90
	Invasion of Privacy .....	90
	Infliction of Mental Distress .....	91
	Products Liability .....	92
	Chapter Review .....	96
	Review Questions .....	97
<b>Chapter 6</b>	<b>Criminal Aspects of Health Care</b> .....	<b>99</b>
	Learning Objectives .....	100
	Criminal Procedure .....	100
	Healthcare Fraud .....	103
	Kickbacks .....	108
	Tampering With Drugs .....	109
	Internet Pharmacy and Sale of Drugs .....	109
	Falsification of Records .....	111
	Patient Abuse .....	111

	Criminal Negligence . . . . .	115
	Manslaughter . . . . .	116
	Murder . . . . .	117
	Rape and Sexual Assault . . . . .	120
	Theft . . . . .	121
	Chapter Review . . . . .	123
	Review Questions . . . . .	123
<b>Chapter 7</b>	<b>Contracts and Antitrust . . . . .</b>	<b>125</b>
	Learning Objectives . . . . .	126
	What is a Contract? . . . . .	126
	Types of Contracts . . . . .	126
	Elements of a Contract . . . . .	127
	Breach of Contract . . . . .	128
	Corporate Contracts . . . . .	128
	Partnerships . . . . .	128
	Independent Contractor . . . . .	129
	Legality of Object . . . . .	129
	Conditions . . . . .	130
	Performance . . . . .	130
	Nonperformance Defenses . . . . .	130
	Remedies . . . . .	130
	Employment Contracts . . . . .	131
	Medical Staff Bylaws: A Contract . . . . .	135
	Exclusive Contracts . . . . .	136
	Restraint of Trade . . . . .	138
	Hospital Staff Privileges . . . . .	139
	Transfer Agreements . . . . .	141
	Insurance Contract . . . . .	142
	Chapter Review . . . . .	144
	Review Questions . . . . .	145
<b>Chapter 8</b>	<b>Civil Procedure and Trial Practice . . . . .</b>	<b>147</b>
	Learning Objectives . . . . .	148
	Pleadings . . . . .	148
	Discovery . . . . .	152
	Motions . . . . .	153
	Pretrial Conference . . . . .	154
	Notice of Trial . . . . .	155
	Memorandum of Law . . . . .	155
	The Courtroom and the Judge . . . . .	155
	The Jury . . . . .	155
	Subpoenas . . . . .	156
	Burden of Proof . . . . .	156
	Res Ipsa Loquitur . . . . .	156
	Opening Statements . . . . .	159
	Examination of Witnesses . . . . .	159
	Judicial Notice Rule . . . . .	160
	Evidence . . . . .	160

	Defenses Against Plaintiff's Allegations . . . . .	164
	Closing Statements . . . . .	174
	Judge's Charge to the Jury . . . . .	174
	Jury Deliberation and Determination . . . . .	175
	Awarding Damages . . . . .	175
	Joint and Several Liability . . . . .	178
	Appeals . . . . .	178
	Execution of Judgments . . . . .	179
	Chapter Review . . . . .	179
	Review Questions . . . . .	180
<b>Chapter 9</b>	<b>Corporate Structure and Legal Issues . . . . .</b>	<b>183</b>
	Learning Objectives . . . . .	183
	Authority of Corporations . . . . .	184
	Corporate Committee Structure . . . . .	185
	Corporate Ethics . . . . .	187
	Corporate Negligence . . . . .	190
	Doctrine of Respondeat Superior . . . . .	192
	Governing Body Responsibilities . . . . .	193
	Corporate Reorganization . . . . .	213
	Chapter Review . . . . .	219
	Review Questions . . . . .	220
<b>Chapter 10</b>	<b>Medical Staff Organization and Physician Liability . . . . .</b>	<b>221</b>
	Learning Objectives . . . . .	222
	Principles of Medical Ethics . . . . .	222
	Medical Staff Organization . . . . .	222
	Medical Director . . . . .	224
	Medical Staff Privileges . . . . .	224
	Common Medical Errors . . . . .	227
	Patient Assessments . . . . .	228
	Diagnosis . . . . .	230
	Treatment . . . . .	240
	Discharge and Follow-Up Care . . . . .	248
	Infections . . . . .	249
	Psychiatry . . . . .	250
	Physician–Patient Relationship . . . . .	254
	Chapter Review . . . . .	255
	Review Questions . . . . .	256
<b>Chapter 11</b>	<b>Nursing and the Law . . . . .</b>	<b>259</b>
	Learning Objectives . . . . .	260
	Scope of Practice . . . . .	260
	Nurse Licensure . . . . .	262
	Nursing Careers . . . . .	263
	Advanced Practice Nurses . . . . .	266
	Legal Risks of Nurses . . . . .	270
	Duty to Question Discharge . . . . .	285
	Duty to Report Physician Negligence . . . . .	285

Chapter Review . . . . .	287
Review Questions . . . . .	288
<b>Chapter 12 Hospital Departments and Allied Professionals . . . . .</b>	<b>291</b>
Learning Objectives . . . . .	292
Emergency Department . . . . .	292
Chiropractor . . . . .	301
Dentistry . . . . .	301
Laboratory . . . . .	303
Medical Assistant . . . . .	307
Medical Imaging . . . . .	308
Nutritional Services . . . . .	309
Paramedic . . . . .	309
Pharmacy . . . . .	311
Physical Therapy . . . . .	316
Physician’s Assistant . . . . .	318
Podiatrist . . . . .	318
Respiratory Therapist . . . . .	318
Security . . . . .	319
Certification of Healthcare Professionals . . . . .	320
Licensing Healthcare Professionals . . . . .	320
Helpful Advice for Caregivers . . . . .	321
Chapter Review . . . . .	322
Review Questions . . . . .	322
<b>Chapter 13 Patient Consent . . . . .</b>	<b>325</b>
Learning Objectives . . . . .	325
Introduction . . . . .	325
Informed Consent . . . . .	326
Physicians and Informed Consent . . . . .	328
Hospitals and Informed Consent . . . . .	331
Nurses and Informed Consent . . . . .	332
Validity of Consent . . . . .	333
Assessing Decision-Making Capacity . . . . .	335
Admission Consent Forms . . . . .	335
Consent for Specific Procedures . . . . .	335
Limited Power of Attorney . . . . .	336
Who May Consent . . . . .	336
Incompetent Patients . . . . .	337
Right to Refuse Treatment . . . . .	339
Exculpatory Agreements . . . . .	340
Proving Lack of Consent . . . . .	342
Informed Consent Claims and Defenses . . . . .	342
Chapter Review . . . . .	343
Review Questions . . . . .	343
<b>Chapter 14 Legal Reporting Requirements . . . . .</b>	<b>345</b>
Learning Objectives . . . . .	346
Abuse . . . . .	346

Child Abuse . . . . .	346
Senior Abuse . . . . .	349
Communicable Diseases . . . . .	350
Hospital-Acquired Infections. . . . .	351
Births and Deaths. . . . .	351
Adverse Drug Reactions . . . . .	351
Physician Competency. . . . .	352
Incident Reporting. . . . .	353
Sentinel Events . . . . .	355
Look Closer, See Me . . . . .	356
Chapter Review . . . . .	356
Review Questions . . . . .	357
<b>Chapter 15 Medical Records. . . . .</b>	<b>359</b>
Learning Objectives. . . . .	359
Information Management . . . . .	360
Medical Record Contents . . . . .	360
Documentation of Care . . . . .	360
Privacy Act of 1974 . . . . .	362
Health Insurance Portability and Accountability Act . . . . .	363
Ownership and Release of Medical Records. . . . .	364
Failure to Use Patient Data Gathered. . . . .	366
Retention of Records . . . . .	367
Electronic Medical Records. . . . .	367
Legal Proceedings and the Medical Record . . . . .	368
Falsification of Records . . . . .	369
Illegible Handwriting. . . . .	373
Timely Completion of Medical Records . . . . .	373
Confidential and Privileged Communications . . . . .	374
Charting: Some Helpful Advice . . . . .	378
Chapter Review . . . . .	379
Review Questions . . . . .	380
<b>Chapter 16 Procreation and Ethical Dilemmas. . . . .</b>	<b>381</b>
Learning Objectives. . . . .	381
Abortion. . . . .	382
Sterilization . . . . .	391
Artificial Insemination. . . . .	393
Surrogacy . . . . .	393
Wrongful Birth, Life, and Conception. . . . .	394
Chapter Review . . . . .	398
Review Questions . . . . .	399
<b>Chapter 17 Acquired Immune Deficiency Syndrome. . . . .</b>	<b>401</b>
Learning Objectives. . . . .	402
Spread of AIDS . . . . .	402
Healthcare Workers Transmission . . . . .	403
Confidentiality . . . . .	404
Discrimination . . . . .	406



	AIDS-Related Lawsuits . . . . .	407
	AIDS Treatment . . . . .	409
	AIDS Education . . . . .	409
	Chapter Review . . . . .	410
	Review Questions . . . . .	410
<b>Chapter 18</b>	<b>End-of-Life Issues . . . . .</b>	<b>413</b>
	Learning Objectives . . . . .	413
	Patient Autonomy and Case Law . . . . .	414
	Constitutional Right to Refuse Care . . . . .	416
	Legislative Response . . . . .	417
	Defining Death . . . . .	419
	Futility of Treatment . . . . .	419
	Do-Not-Resuscitate Orders . . . . .	420
	Withholding and Withdrawal of Treatment . . . . .	420
	Euthanasia . . . . .	423
	Physician-Assisted Suicide . . . . .	426
	Advance Directives . . . . .	430
	Autopsy . . . . .	438
	Organ Donations . . . . .	441
	Research, Experimentation, and Clinical Trials . . . . .	444
	Human Genetics . . . . .	448
	Stem Cell Research . . . . .	449
	Chapter Review . . . . .	449
	Review Questions . . . . .	451
<b>Chapter 19</b>	<b>Patient Rights and Responsibilities . . . . .</b>	<b>453</b>
	Learning Objectives . . . . .	454
	Patient Rights . . . . .	454
	Patient Responsibilities . . . . .	464
	Chapter Review . . . . .	469
	Review Questions . . . . .	469
<b>Chapter 20</b>	<b>Labor Relations . . . . .</b>	<b>471</b>
	Learning Objectives . . . . .	472
	U.S. Department of Labor . . . . .	472
	Unions and Healthcare Organizations . . . . .	472
	National Labor Relations Act . . . . .	473
	Norris–LaGuardia Act . . . . .	475
	Labor–Management Reporting and Disclosure Act . . . . .	476
	Fair Labor Standards Act . . . . .	476
	Civil Rights Act . . . . .	476
	Occupational Safety and Health Act . . . . .	477
	Rehabilitation Act . . . . .	478
	Family and Medical Leave Act . . . . .	479
	State Labor Laws . . . . .	479
	Workers’ Compensation . . . . .	480
	Labor Rights . . . . .	481
	Management Rights . . . . .	481

	Affirmative Action Plan . . . . .	483
	Patient Rights During Labor Disputes . . . . .	483
	Injunctions . . . . .	483
	Administering Collective Bargaining Agreement . . . . .	483
	Discrimination in the Workplace . . . . .	484
	Chapter Review . . . . .	487
	Review Questions . . . . .	488
<b>Chapter 21</b>	<b>Employment at Will and Discharge . . . . .</b>	<b>491</b>
	Learning Objectives . . . . .	491
	Employment at Will . . . . .	492
	Public Policy Issues and Termination . . . . .	492
	Termination . . . . .	494
	Unemployment Compensation Denials . . . . .	496
	Wrongful Discharge . . . . .	497
	Defending a Claim for Unfair Discharge . . . . .	500
	Fairness: The Ultimate Test . . . . .	501
	Effective Hiring Practices . . . . .	502
	Chapter Review . . . . .	503
	Review Questions . . . . .	503
<b>Chapter 22</b>	<b>Employee Rights and Responsibilities . . . . .</b>	<b>505</b>
	Learning Objectives . . . . .	505
	Employee Rights . . . . .	505
	Employee Responsibilities . . . . .	510
	The Caregiver's Pledge . . . . .	514
	Chapter Review . . . . .	514
	Review Questions . . . . .	515
<b>Chapter 23</b>	<b>Professional Liability Insurance . . . . .</b>	<b>517</b>
	Learning Objectives . . . . .	518
	Insurance Policies . . . . .	518
	Liability of the Professional . . . . .	518
	The Insurance Agreement . . . . .	520
	Intentional Torts: Coverage Denied . . . . .	521
	Conditions of Insurance Policies . . . . .	522
	Medical Liability Insurance . . . . .	522
	Self-Insurance . . . . .	523
	Trustee Coverage . . . . .	523
	Mandated Medical Staff Insurance Coverage . . . . .	524
	Investigation and Settlement of Claims . . . . .	524
	Chapter Review . . . . .	525
	Review Questions . . . . .	526
<b>Chapter 24</b>	<b>National Health Insurance Managed Care . . . . .</b>	<b>527</b>
	Learning Objectives . . . . .	528
	National Health Insurance . . . . .	528
	Veteran Care . . . . .	531
	Managed Care . . . . .	532

Models of Managed Care Organizations . . . . .	533
Federally Qualified HMO . . . . .	534
State Laws . . . . .	535
Case Management Firms . . . . .	535
Third-Party Administrators . . . . .	535
Utilization Review . . . . .	535
Liability for Nonparticipating Physicians . . . . .	536
Employee Retirement Income Security Act. . . . .	536
Reducing Exposure to Liability . . . . .	537
Health Care Quality Improvement Act of 1986. . . . .	537
Ethics in Patient Referral Act (1989). . . . .	537
Managed Care and Legal Actions . . . . .	538
Price Fixing . . . . .	539
Market Power . . . . .	540
Chapter Review . . . . .	541
Review Questions . . . . .	542
<b>Chapter 25 Tort Reform and Risk Reduction . . . . .</b>	<b>543</b>
Learning Objectives . . . . .	543
Mediation and Arbitration . . . . .	544
Structured Awards . . . . .	544
Pretrial Screening Panels . . . . .	544
Collateral Source Rule . . . . .	545
Contingency Fee Limitations. . . . .	545
Countersuits: Frivolous Claims . . . . .	545
Joint and Several Liability . . . . .	546
Malpractice Caps . . . . .	546
No-Fault System . . . . .	548
Regulation of Insurance Practices . . . . .	548
Statutes of Limitations. . . . .	548
Reducing the Risks of Malpractice . . . . .	548
Physician Participation in Tort Reform . . . . .	549
Chapter Review . . . . .	549
Review Questions . . . . .	550
<b>Author’s Afterword: Journey to Excellence . . . . .</b>	<b>551</b>
<b>Glossary . . . . .</b>	<b>557</b>
<b>Index . . . . .</b>	<b>564</b>



# Epigraph

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*I consider ethics, as well as religion, as supplements to law in the government of man.*

—Thomas Jefferson, President of the United States (1743–1826)



*In law a man is guilty when he violates the rights of others. In ethics he is guilty if he only thinks of doing so.*

—Immanuel Kant, Philosopher (1724–1804)



*Books are the carriers of civilization. Without books, history is silent, literature dumb, science crippled, thought and speculation at a standstill. I think that there is nothing, not even crime, more opposed to poetry, to philosophy, ay, to life itself than this incessant business.*

—Henry David Thoreau, Author, Poet, Philosopher (1817–1862)



*It is curious—curious that physical courage should be so common in the world, and moral courage so rare.*

—Mark Twain, American Author, Humorist (1835–1910)



*In civilized life, law floats in a sea of ethics.*

—Earl Warren, Chief Justice of the United States (1891–1974)



*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, American Inventor (1864–1943)



# Preface



*He has achieved success who has lived well, laughed often and loved much; who has gained the respect of intelligent men and the love of little children; who has filled his niche and accomplished his task; who has left the world better than he found it, whether by an improved poppy, a perfect poem, or a rescued soul; who has never lacked appreciation of earth's beauty or failed to express it; who has always looked for the best in others and given them the best he had; whose life was an inspiration; whose memory a benediction.*

—Bessie Stanley

*Legal Aspects of Health Care Administration, Twelfth Edition*, which has evolved from its previous 11 editions, continues to be the most comprehensive and engaging book encompassing both the legal and ethical issues of healthcare administration. The *Twelfth Edition* continues its tradition of providing a solid foundation in a wide range of current healthcare topics in an understandable format that carefully guides the reader through the complex maze of law and ethics, as well as an overview of practical ways to improve the quality and safety in the delivery of patient care. As in previous editions, the *Twelfth Edition* serves as a valuable tool for both undergraduate and graduate programs. Additionally, as has been well recognized by practicing healthcare professionals, *Legal Aspects of Health Care Administration* continues to be a valuable reference tool in their day-to-day work activities.

The author infuses life into the book through legal case studies that have been litigated in the courtroom or reported in the press, as well as real-world events through reality checks that have been experienced by healthcare professionals. The author's approach inspires dynamic discussion and excitement in the learning process, thus creating an atmosphere of interest and participation, which is conducive to learning.

Although the court cases relating examples of malpractice are often mirror images of the failures of medicine, this *Twelfth Edition* is a comprehensive resource from which the reader will learn how the law, ethics, and medicine intersect. 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 caregivers have to the profession they have chosen. With new estimates that as many as 400,000 patients are dying annually as a result of medical errors, according to a September 2013 study reported in the *Journal of Patient Safety*, it is mandatory that caregivers be ever mindful of the nature of the life and death settings within which they work. At the time of this writing the headlines seem to keep repeating themselves. For example, on December 4, 2014, an Oregon hospital's medication error led to the death of a 65-year-old patient. This error resulted in three employees being placed on administrative leave. The knowledge gained here will help prevent the caregiver from becoming the next headline.

Although there will always be a next time for human error, the reader who grasps the contents in this book and understands its lessons will better understand how failures can turn to success and the pain of past mistakes can turn to hope.





# About the Book

*Legal Aspects of Health Care Administration, Twelfth Edition*, lays a strong foundation in both health law and ethics. Chapter 1 provides an overview of the historical development of hospitals as influenced by medical progress, allowing the reader to look at their successes and failures through the centuries and then drawing conclusions about what can be done to avoid repeating the failures of the past. Chapter 2 begins with an introduction to government organization, sources of law, and government ethics, and Chapter 3 progresses to a discussion of ethical theories, principles, virtues and values, and related topics. Chapters 4 and 5 introduce the reader to negligent and intentional torts, progressing to criminal aspects of health care in Chapter 6 and contract law in Chapter 7 as they relate to health care. The reader is then introduced to civil procedure and trial practice in Chapter 8. The journey continues with a discussion of legal issues involving corporations in Chapter 9, medical staff organization and physician liability in Chapter 10, nursing and the law in Chapter 11, and a discussion of various hospital departments and allied professionals in Chapter 12.

The first 12 chapters provide a solid basis for a more complete understanding of the following remaining chapters: Chapter 13, patient consent; Chapter 14, legal reporting requirements; Chapter 15, medical records; Chapter 16, procreation and ethical issues; Chapter 17, AIDS; Chapter 18, end-of-life issues; Chapter 19, patient rights and responsibilities; Chapter 20, labor relations; Chapter 21, employment-at-will and discharge; Chapter 22, employee rights and responsibilities; Chapter 23, professional liability insurance; Chapter 24, national health insurance and managed care; Chapter 25, tort reform; and a glossary of common legal and ethics vocabulary.

The practical application of ethics in the healthcare setting is accomplished by interspersing the thoughts of great minds through Quotes, applicable Newspaper Clippings, provider and organizational experiences through Reality Checks

designated by a symbol, and patient experiences through legal rulings and summaries through Case Law. When reviewing the various cases in this book, the reader should consider both the ethical and legal implications of a dilemma and how they intertwine with one another. It is important to recognize that the decisions in the cases described 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.

There is no one magic legal or ethics book that can possibly compress the plethora of issues that have bombarded the healthcare industry into one book. This book is merely a beginning of the study of legal and ethical issues and is an adventure that all caregivers should take. Although there is always much more that could be discussed on any one topic, the reader will understand that this book provides a solid foundation for practical everyday use as well as further study.




*Each life is like a novel. Filled with moments of happiness, sadness, crisis, defeat, and triumph. When the last page has been written, will you be happy or saddened by what you read?*

—Author Unknown

The reader is presented in the *Twelfth Edition* with real-world life experiences that bring the reader through a journey of learning that provides an effective transitional stage from the classroom to the reality of the everyday work environment.

When people consider matters of law and ethics, they are usually considering matters of freedom in regard to personal choices, one's obligations to other sentient beings, or

judgments about human character and the right to choose. The author’s objective is to equip the reader with the background knowledge necessary to understand that legal and ethical behavior begins with recognizing that we have alternatives and choices in our behavior. To make good decisions, we must first understand that they will be only as good as our knowledge of what is right and what is wrong. This book is not an indictment of any profession or organization. There is a deluge of ethical issues in every aspect of human existence. Although cultural differences, politics, and religion influence who we are, it is all of life’s experiences that affect who we will become.



### 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 (Cal. 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 book is not a definitive treatise, but rather a portrait of the ever-evolving story of health care through the study of law and ethics. It 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 discussed.

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.

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