

Health Law

Cases,
Materials and
Problems

BARRY R. FURROW | THOMAS L. GREANEY | SANDRA H. JOHNSON | TIMOTHY S. JOST | ROBERT L. SCHWARTZ

ABRIDGED
SIXTH
EDITION

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HEALTH LAW:

CASES, MATERIALS AND PROBLEMS

Abridged Sixth Edition

By

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CONSUMER RECYCLED PAPER



*To Donna Jo, Elena, Michael, Nicholas, Eva,
Robert and Hayden*

B.R.F.

To Nancy, T.J. and Kati

T.L.G.

To Bob, Emily, Kathleen, Colin, Nicholas and Zachary

S.H.J.

To Ruth, Jacob, Micah, and David

T.S.J.

To Jane, Mirra and Elana

R.L.S.

This book is also dedicated to the memory of Nancy Rhoden and
Jay Healey, great teachers, wonderful colleagues and
warm friends.

*

Preface

This abridged edition of the sixth edition of our Health Law casebook is new. It recognizes the increasing complicated teaching environment for health law, particularly the need for a concise health law casebook in schools other than law. The abridged edition continues to use the broad organization that health law teachers and students found so helpful in the last five editions. We have however trimmed material in the notes substantially and we have deleted some cases and sections of the primary casebook. Our goal has been to create a book better suited for schools that have curricular space for only one course, including medical schools and schools of public health.

Since we first published the first edition of our health law casebook, no part of the American landscape has changed more than the American health care system. The system has been stressed by demographic changes, buffeted by the winds of political change, and utterly transformed by social and economic developments. The formal structure of the business of health care was a small part of the subject of health law when we published our first edition; it is now the subject of entire graduate programs. The for-profit commercial sector of the health care economy sounded like a lamb twenty years ago; now it roars like a lion. Until a few years ago virtually no one attained elective office because of her position on issues related to health care; now opinion polls peg it as one of the most important issues in the 2008 election. Economic and political fortunes have been made (and lost) predicting the reactions of Americans to changes in our system for delivering health care. While the perspective that we must bring to the legal analysis of health care is far broader now than it was twenty years ago, the fundamental concerns on which that analysis is brought to bear are surprisingly unchanged. As was the case in 1987, we want to know what role the law might play in promoting the quality of health care, in organizing the delivery of health care, in assuring adequate control of the cost of health care, in promoting access to necessary health care, and in protecting the human rights of those who are provided care within the health care system.

We continue in this abridged edition to employ materials from a variety of sources. This book continues to contain the most significant and useful judicial opinions dealing with the issues of health law, drawn from the federal and state courts. The book also contains statutes, legislative history, administrative regulations, excerpts from contracts, consent forms, and a host of other kinds of materials designed to bring the subject of health law to life in the classroom. It also contains many classroom-tested problems that should be helpful in encouraging reflections on these materials.

This casebook is divided into an introduction and four major sections. Chapters 1 through 5 address ways in which the law can contribute to the promotion of the quality of health care. This part of the casebook includes coverage of governmental efforts to assure the quality of health care services, including the

interaction between public and private quality initiatives, as well as analysis of medical malpractice law.

The second part of the text (chapters 6 through 9) addresses the issues of access to health care and control of health care costs. These chapters address both private and public financing mechanisms in the many varieties that have been formed and reformed over the past few years, including the Medicare and Medicaid and private health insurance. The continued evolution of managed care is examined, as is the emergence of the consumer-driven health care movement. This material also addresses legal obligations to provide medical services, and examines legal and policy issues in health care disparities.

The third part of the book (chapters 10 through 13) describes the role of the law in organizing the health care enterprise. This section of the casebook includes materials on different ways in which the business of health care delivery can be organized, materials describing the legal relationships among different players in the health care enterprise, including a chapter on tax and corporate law and another on health care fraud and government regulations of financial relationships among providers, and a clear, simple account of the application of antitrust law to health care.

Finally, the fourth major section of the text, (chapters 14 through 16) provides students with background on the role law plays in protecting the rights of patients in regard to reproductive decision making and decisions at the end of life. The casebook concludes with a brief introduction to the law of public health. All of these materials have been reviewed to assure that a wide range of perspectives leaven the authors' analysis of health law.

This abridged casebook, as with our large edition, is designed to be a teachable book. We are grateful for the many comments and helpful suggestions that health law teachers across the United States (and from elsewhere, too) have made to help us improve this new edition. We attempt to present all sides of policy issues, not to evangelize for any political, economic or social agenda of our own. It has been a splendid opportunity to work on this casebook, and we are especially pleased to have reached its twentieth anniversary. It has been a constant challenge to find a way to teach cutting edge issues influencing our health care system—at times before the courts or legislatures have given us much legal material for our casebook. Each time we have done a new edition, there have been developments that we find difficult to assess as to whether they will become more significant during the lifespan of the edition or are simply blips. It is always difficult to delete materials that required much labor and still remain quite relevant but that have been eclipsed in importance by others, and the length of each succeeding edition attests to our challenge. Finally, we don't write this casebook for our classes alone, but rather for yours as well. We enjoy teaching, and we hope that comes through to the students and teachers who use this book.

A large number of very well respected health law teachers have contributed a great deal to this and previous editions by making suggestions, reviewing problems, or encouraging our more thorough investigation of a wide range of health law subjects. We are especially grateful to Charles Baron, Eugene Basanta, David Bennahum, Robert Berenson, Kathleen Boozang, Arnold Celnicker,

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