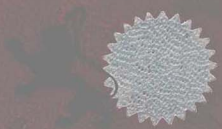
Legal Aspects of Health Care Administration

Second Edition

George D. Pozgar



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Foreword

In this text the author presents a review of the medical-legal aspects of health care. Recently we have witnessed an ever increasing number of malpractice suits, skyrocketing insurance premiums, over-regulation, and high public expectations. There is a great need to demystify the law for hospital board members, administrators, physicians, nurses, and students. This text provides an excellent foundation for understanding the rapidly expanding field of law and regulation affecting the health care industry. It serves to clarify the basic medical-legal principles as well as to encourage related educational forums.

It is incumbent upon health professionals to acquire a general knowledge of the potential legal hazards associated both with their professions when dealing with associates, and in the day-to-day delivery of health care. The many risks of liability can be greatly minimized through a better understanding of the concepts presented in this book.

Unless there is a reversion to a sensible understanding and application of the legal principles herein discussed, a complete breakdown in the health care delivery system will occur.

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January 1983

Preface

Hospitals are institutions where the sick, wounded, infirm or aged are cared for by physicians, nurses and numerous paraprofessionals. Historically, there was no scrutiny in hospitals of patients' character or ability to pay. Hospitals were small, overcrowded, and undesirable places to stay.

The Pennsylvania Hospital in Philadelphia was the first incorporated hospital in the United States. The charter for this institution was granted by England in 1751 and by 1755 the hospital was open to the public. The first insane asylum was founded in Williamsburg, Virginia, in 1773. Since that time, more than 7,000 hospitals have been established in the United States.

Hospitals were initially simple organizations. However, with technological changes and advances in medicine, they have evolved into truly complex organizations utilizing sophisticated equipment and highly trained, specialized personnel. Health care is costly and is not readily available to all classes of consumers. This is due in part to the inequitable geographical distribution of physicians. Hospitals have been inundated by a proliferation of local, county, state, federal and voluntary regulations which affect every aspect of hospital operation. Many of these regulations are conflicting with each other.

Locally, hospitals are confronted with fire department regulations, zoning laws, local health ordinances, consumer interest group demands, environmental agency actions, etc.

Hospitals in New York State deal with approximately 164 regulatory agencies, according to a study prepared by the Hospital Association of New York State (Report of the Task Force on Regulation, Hospital Association of New York State, Albany, New York, Program Materials, p. 44). The study shows that 96 of the 164 agencies are state controlled. For example, the New York State Public Health Law provides detailed minimum standards and licensing procedures for hospitals; the New York State

Education Law provides professional and licensure standards for physicians, registered nurses, practical nurses, osteopaths, nursing home administrators, x-ray technicians, etc.; the Social Service Law provides regulations covering such matters as child abuse; the Department of Mental Hygiene provides rules protecting the rights of the mentally ill. It is of interest to note that the task force identified 25 separate agencies which review hospital admitting procedures, 33 agencies which protect patient rights, and 31 agencies concerned with patient safety. The report details agency duplication at length and provides recommendations for improvement of the regulatory process, which includes reorganization and consolidation of activities.

Twenty-five percent of hospital costs are attributable to meeting regulatory requirements, according to a study released by the Hospital Association of New York State in 1978 (Report of the Task Force on Regulation). The report indicates that $38.85 is spent each day for each patient in meeting such requirements. A major objective of the Reagan administration is to cut government spending in health care by deregulation.

On the federal level, there are regulations governing the use and control of drugs (Federal Food and Drug Administration), antidiscrimination regulations (Equal Employment Opportunity Commission), health related regulations (Medicare and Medicaid), hospital planning (Public Law 93–641), construction and modernization regulations, and the list could go on ad infinitum.

There are organizations, such as the American Medical Association, which determine minimum training standards for medical students, interns and residents, and the Joint Commission on Accreditation of Hospitals (JCAH), which is an independent, voluntary, nonprofit organization founded to improve the overall quality of hospital care through the establishment of minimum standards for hospitals. This organization is sponsored by the American Hospital Association, American Medical Association, American College of Surgeons, and the American College of Physicians.

Hospitals are either publicly or privately owned. Those that are privately owned are either profit or nonprofit. Those not run for profit include church-operated and community hospitals.

Lawsuits, legal actions in a court of law, are increasing rapidly against all hospitals. Malpractice litigation has become one of the most significant constraints affecting the health care system. It has been estimated that hospitals have been named in as many as thirty-nine percent of all malpractice claims filed. This increase in litigation can be attributed to consumer awareness, the impersonal complexity of the health care system, the patient rights revolution, and high expectations in modern sophisticated equipment. The size of recent claims settlements and ever-increasing in-

surance premiums strongly suggest that health care personnel should be aware of, and have some understanding of the law as it relates to health care. The interface between law and medicine has been growing at an unprecedented rate in recent years, leaving professionals in both fields confused about their rights and responsibilities.

Despite the numerous legal citations within this text, as well as the legal assistance of the law firm of Garfunkel, Wild & Travis in this second edition, it should be remembered that this publication is not intended to be a legal treatise on the subject of hospital law and is not intended for use by attorneys. Instead, it is intended to provide a basic background to assist health care professionals in dealing with the legal and practical problems that are faced in the hospital setting on a day-to-day basis.

The basic aim of this book is to aid the health care professionals in matters where their functions and responsibilities are addressed by the law. Health care professionals entering and functioning in their respective positions should have a well-rounded, basic knowledge of the law as it applies to their areas of responsibility. This book provides such a background and serves as a text for classroom as well as individualized study. Such a course should be included in the curriculum of every health care program. Many of the most common causes of malpractice litigation, the process of lawsuits, will be discussed in the pages that follow.

References to various state codes, rules and regulations have been made throughout this text. It should be noted that a quote from a particular state's regulation should by no means be interpreted as being the model for other states to follow. All health professionals should be aware of both federal and state regulations that govern their practice.

George D. Pozgar
January 1983

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Chapter 1

Introduction to Law

This chapter provides health professionals with some basic information about the law, the workings of the legal system, and the roles of the various branches of government in creating, administering and enforcing the law.

Laws are general rules of conduct and are enforced by government. Penalties are imposed when prescribed laws are violated. There are laws regulating the activities of individuals in international situations as well as those in federal, state, local and municipal settings.

The essence of most definitions of law indicates that law is a system of principles and processes by which people in a society deal with their disputes and problems, seeking to solve or settle them without resort to force. Law governs the relationships between private individuals and organizations and between both these parties and the government. Law that deals with the relationships between private parties may be termed *private law. Public law* deals with the relationships between private parties and the government. The increasing complexity of society and life in the United States has necessitated a broadening of the scope of public law.

One important segment of public law is criminal law, which prohibits conduct deemed injurious to public order and provides for punishment of those found to have engaged in such conduct. Public law also consists of countless regulations designed to advance societal objectives by requiring private individuals and organizations to adopt specified courses of action in their activities and undertakings. The thrust of most public law is to attain what society deems valid public goals.

Private law is concerned with the recognition and enforcement of rights and duties of private individuals and organizations. Two important types of legal action that a health care professional will confront are actions in tort or contract. In a tort action, one party asserts that the wrongful conduct of the other has caused harm, and compensation for the harm suffered is sought. Generally, a contract action involves a claim by one party that the

other party has breached an agreement by failing to fulfill an obligation. Either compensation or performance of the obligation may be sought as a remedy.

As a practical matter, most disputes or controversies that are covered by legal principles or rules are resolved without resort to the courts. Each party's awareness of the law and the relative likelihood of success in court affects their willingness to modify their original position and accept a compromise settlement of the dispute without resort to the judicial forum.

SOURCES OF LAW

There are three basic sources of law: 1. common law, which is the law originating from individual case decisions in the various federal, state and local courts; 2. statutory law, which is written law originating in federal, state and local legislatures; and 3. administrative rules and regulations, which are the mandates and decisions emanating from the federal and state administrative agencies.

Common Law

The term "common law" is applied to that body of principles that evolved and continues to evolve and expand from court decisions. Many of the legal principles and rules applied by courts in the United States are products of the common law developed in England. The law in England, before the Norman Conquest in 1066 A.D., was based primarily on tradition and custom and dealt, for the most part, with violent crimes. The courts basically consisted of open air meetings where no records were maintained. Following the Norman conquest, a system of national law began to develop, based on custom, foreign literature, and the rule of strong kings. The first royal court was established in 1178 A.D. This court, enlisting the aid of a jury, heard the complaints of the kingdom's subjects from that time on. Trial by jury gradually became the accepted method of trial. As Parliament's power to legislate grew, the initiative for developing new laws passed from the king to Parliament.

During the colonial period, English common law began to be applied uniformly in the United States. However, after the Revolution each state adopted all or part of the existing English common law, then added to it as needed. As a result, there is no national system of common law in the United States. In other words, common law on specific subjects may differ from state to state. Statutory law has affirmed many legal rules and principles initially established by the court as part of the common law. None-

theless, many issues, especially in private law disputes, are still decided according to common law principles.

A decision in a case that sets forth a new legal principle establishes a *precedent.* When a common law principle has been enunciated in a state court decision, the principle must be followed by other courts within the state where the decision was rendered. Cases are tried on common law principles unless a statute governs. Common law actions are basically initiated to recover money damages and/or possession of real or personal property.

A principle established in one state does not set precedent for another state. Rather, the rulings in one jurisdiction may be used by the courts of other jurisdictions as guides to the legal analysis of a particular legal problem. Decisions found to be reasonable will be followed. Prior decisions can be overruled if there is a change in social attitudes, public needs, judicial prejudices or contemporary political thinking.

The legal principle *stare decisis* (let the decision stand) means that when a decision is rendered in a lawsuit involving a particular set of facts, another lawsuit involving an identical or substantially similar situation should be resolved in the same manner as the first lawsuit. The resolution of later lawsuits will be arrived at by referring to the previous case and applying the rules and principles of preceding cases. In this manner, the court arrives at a comparable ruling. Sometimes slight factual differences may provide a basis for recognizing distinctions between precedent and the current case. In some cases, even when such differences are absent, a court may conclude that a particular common law rule is no longer in accord with the needs of society and may depart from precedent. It should be understood that all principles of law are subject to change, whether they originate in statutory or common law. Common law principles may be modified, overturned, abrogated, or created by new court decisions in a continuing process of growth and modification.

Statutory Law

Principles and rules of statutory law emanate from legislative bodies and are set in hierarchical order. The Constitution of the United States adopted at the Constitutional Convention in 1787 and ratified by the states, with its duly ratified amendments, is highest in the hierarchy of enacted law. Article VI of the Constitution declares: "This Constitution, and the Laws of the United States which shall be made in Pursuants thereof; and all Treaties made, or which shall be made, through the Authority of the United States, shall be the Supreme Law of the Land. . . ." The clear import of

these words is that the Constitution, federal law, and federal treaties take precedence over the constitutions and laws of states and local jurisdictions.

Statutory law may be amended, repealed, or expanded by action of the legislature. States and local jurisdictions, may, however, enact and enforce laws that do not conflict with federal law. Statutory laws may be declared void by a court for a variety of reasons. For example, a statute may be unconstitutional because it does not comply with the state or federal Constitution, or because it is vague or ambiguous, or in the case of a state law, because it is in conflict with a federal law.

In many cases involving statutory law, the court is called upon to interpret how a statute applies to a given set of facts. For example, a statute may merely state that no person may discriminate against another person because of race, creed, color, or sex. The court may then be called upon to decide whether certain actions by a person are discriminating and therefore, violate the law.

The position of a court or agency, relative to other courts and agencies, determines the place assigned to its decision in the hierarchy of decisional law. The decisions of the U.S. Supreme Court are highest in the hierarchy of decisional law with respect to federal legal questions. On questions of purely state concern—such as the interpretation of a state statute that raises no issues under the federal Constitution or federal law—the highest court in the state has the final word on proper interpretation. Not all cases can go to the U.S. Supreme Court. Because of the parties or the legal question involved, most legal controversies do not fall within the scope of the Supreme Court's decision-making responsibilities.

Administrative Agencies

In addition to enacted and decisional law, an extensive body of law is issued by administrative agencies that are created by legislatures. This law takes the form of administrative rules and regulations. This body of law is particularly important to those in the health care industry.

Administrative agencies are created to assist in rule making and conflict resolution in certain defined areas of national and state concern. On the federal level, these agencies include the Federal Trade Commission (FTC), which enforces the Sherman Act forbidding combinations in restraint of trade, the National Labor Relations Board (NLRB), which was formed to prevent unfair labor practices, and the Food and Drug Administration (FDA), which supervises and controls the introduction of new drugs, foods, cosmetics, and medical devices into the marketplace. State administrative agencies include the Public Service Commission (PSC), which fixes utility rates.