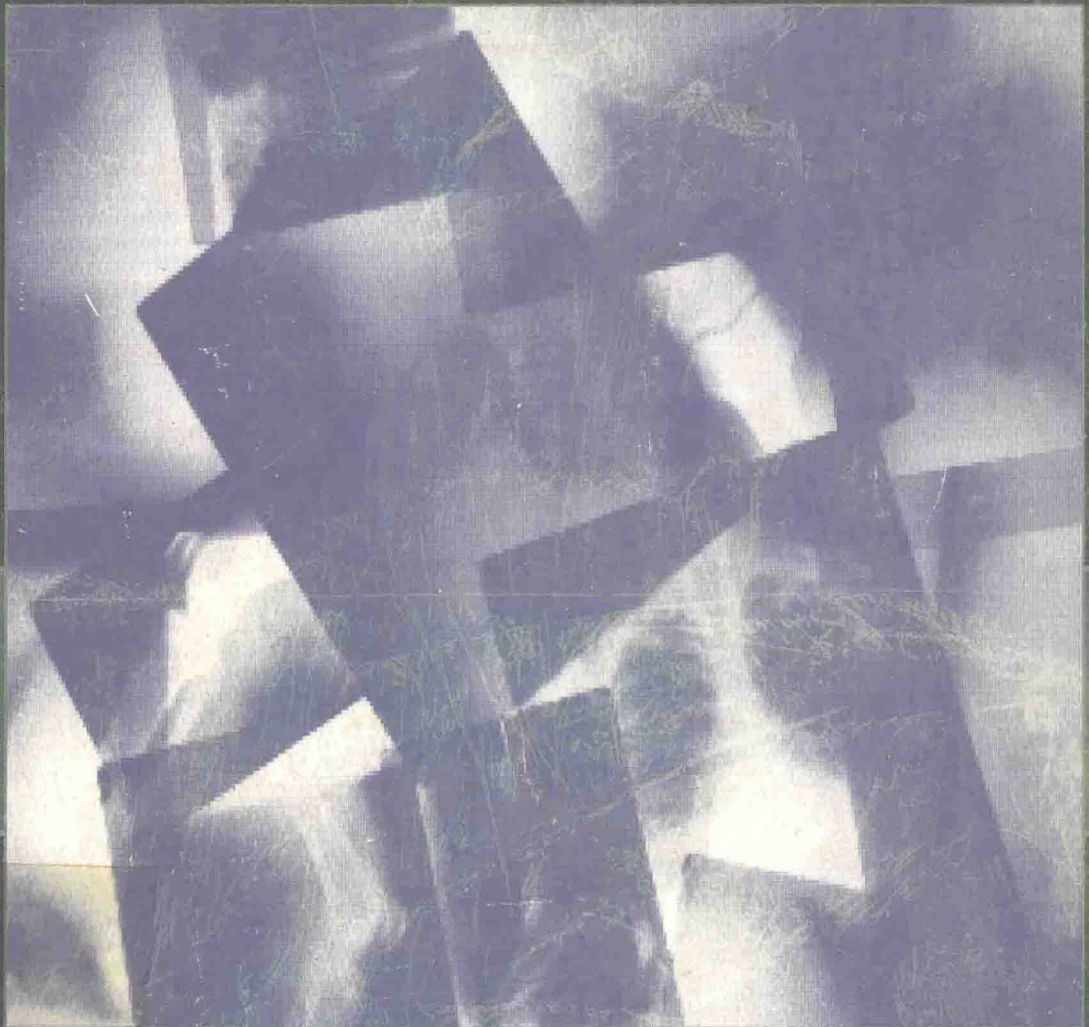


MEDICOLEGAL ISSUES FOR RADIOGRAPHERS



ROBERT J. PARELLI

Medicolegal Issues for Radiographers

Second Edition

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Medicolegal Issues for Radiographers

This book is dedicated to my children,

Dawne' and Joe

**Their love and devotion has been a
guiding force to my professional endeavors.
Their interest and involvement with helping
others will be my legacy.**

FOREWORD

As a community college professor for the last fifteen years, I have taught medical law in the health sciences for seven of those years. I have reviewed many books in this discipline.

Professor Parelli's *Medicolegal Issues for the Radiographer* is one of the better texts that I have read. It is focused on the field of radiologic technology. However, it can be useful to any person working in the area of imaging. The book is extremely relevant to the actual applications of law from the radiologic technologist's perspective. Professor Parelli has integrated tort law, labor law, legal doctrines, ethics, patient rights, risk management, and forensic radiology and centered the vignettes around the radiographer and the radiology department.

Medicolegal Issues for the Radiographer is clear, concise, and informative. Medical law is a course every health care professional should take and to have a text centered on radiologic technology will be helpful to the student and the profession. The book is well written and I would recommend it as a required text for any radiologic technology or imaging program.

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PREFACE

Since the first edition of this textbook was published, there has been a striking concern on the part of radiographers to understand and to resolve medicolegal and ethical problems that may be encountered daily.

Malpractice litigation has renewed and increased concerns for self protection as well as patient care. The constant advances in technology have had an impact on the practice, attitudes, and moral values of all who participate in health care. The second edition has been developed to update the first edition of *Medicolegal Issues for Radiographers*.

Society, as well as the radiology science professional, faces unprecedented ethical, legal, and moral dilemmas. Therefore, chapters on licensure, certification, and credentialing as well as health care reform in mammography were developed to address these controversial issues. Concepts on euthanasia and humanistic health care were added to the ethics section.

The vignettes presented in the first edition were exceptionally well received. Readers indicated that this was both an outstanding and unique feature of the textbook. Therefore, 18 more vignettes have been developed to address the radiographer's daily problems in their professional lives.

Information on specific areas of interest have been added to the second edition, including the Equal Employment and Opportunity Act, sexual harassment, Occupational Safety and Health Act, the doctrine of foreseeability, risk management, and liability.

It is hoped that the second edition will serve readers and colleagues in their endeavor to understand medicolegal issues and to reduce any potential legal liability in the practice of radiology science.

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Radiographers complete the work assigned each day without thinking about situations that could result in legal actions against them or against the health facility where they work. As consumers become more aware of the standards of care that they should receive and become cognizant about seeking legal compensation when they do not receive an acceptable standard of care, radiographers must become knowledgeable about the legal definitions of the standard of care.

The law that governs the relationships between individuals is known as the civil law. The type of law that governs the rights between individuals in noncriminal actions are called torts. Torts are not easy to define, but a basic distinction is that they are violations of civil, as opposed to criminal, law. Tort law is personal injury law. The act may be malicious and intentional or it may be the result of negligence and disregard for the rights of others. Torts include those conditions whereby the law allows for compensation to be paid an individual when that individual is damaged or injured by another. There are two types of torts, those resulting from intentional action and those resulting from unintentional action.

Intentional Torts

There are several situations in which a tort action can be taken against the health professional because of some action that was deliberately taken. Intentional tort includes:

- ▼ civil assault
- ▼ civil battery

- ▼ false imprisonment
- ▼ libel and slander
- ▼ invasion of privacy.

Assault

Performing or threatening to perform intentional injury or bodily harm to another by administration of:

- ▼ poison
- ▼ anesthetics
- ▼ narcotics
- ▼ willful and wrongful blows with weapons or other instruments.¹

Assault is defined as the threat of touching in an injurious way. If the patient feels threatened and is caused to believe that he or she will be touched in a harmful manner there may be justification for a charge of assault. To avoid this it is absolutely essential that the radiographer explains what is going to happen and reassures the patient in any situation where the threat of harm may be an issue. Never use threats in an effort to gain the patient's cooperation. This statement applies when working with children as well as with adults.² A tort of civil assault can be filed if a patient is apprehensive of injury by the imprudent conduct of the radiographer. If found guilty, the radiographer could be held liable or responsible to provide financial compensation to the patient for damages that may have resulted from any apprehension.³

Battery

Battery consists of touching a person without permission. Again, a clear explanation of what is to be done is essential. If the patient refuses to be touched, that wish must be respected. Actually, battery implies that the touch is a willful act to harm or provoke, but even the most well-intentioned touch may fall into this category if it has been expressly forbidden by the patient. This should not prevent the radiographer from placing a reassuring hand on the patient's shoulder, as long as the

patient has not forbidden it, when there is no intent to harm or to invade the patient's privacy. On the other hand, a radiograph taken against the patient's will, or on the wrong patient, could be construed as battery. This emphasizes the need for consistently double checking patient identification.⁴ If a patient has refused a particular hypodermic injection and the nurse approaches the patient and attempts to administer the medication, it would be an assault. If the nurse administers the hypodermic injection, it would be a battery. The battery is the assault carried out or completed. Therefore, the patient must be conscious for an assault to occur. An unconscious patient may be the victim of a battery.

There are certain circumstances where an individual committing battery will not be liable for the battery. These are situations in which the conduct is said to be privileged. (For example, a radiographer restraining a patient who is obviously about to strike or injure other patients and/or himself/herself.) The action of the radiographer to protect other patients and their interests outweighs the damage that may be sustained by restraining the patient and his interest.⁵

False Imprisonment

False imprisonment is the intentional confinement without authorization by one who physically constricts a person using force, threat of force, or confining clothing or structures.⁶ This becomes an issue when the patient wishes to leave and is not allowed to do so. Inappropriate use of physical restraints may also constitute false imprisonment. The confinement must be intentional and without legal justification. Freedom from unlawful restraint is a right protected by law. If the patient is improperly restrained the law allows redress in the form of damages for this tort. The proof of all the elements of false imprisonment must be established in order to support that an illegal act was done. In situations where patients are a danger to themselves or to others, the patient may be restrained. A situation where false imprisonment may arise is when a radiographer uses a brat-board to restrain a child, and does not tell the parents the reason for the restraints.⁷

Vignette 1

Assault and Battery

A student and a staff radiographer were asked to perform an intravenous pyelogram on a 58-year-old woman with hypertension. The staff radiographer, who was the department clown, ordered the student technologist to load two 50 cc syringes, one with contrast media, the other syringe with isopropyl alcohol. The staff radiographer left the x-ray suite, leaving the student with the patient. The radiologist came into the room and grabbed one of the syringes without checking the empty contrast media vial. The radiologist injected the patient. Upon completion of the injection, the patient immediately became comatose. The patient was sent to the Intensive Care Unit. Blood chemistry, which was later ordered, indicated that the patient had a high concentration of alcohol in her blood. The radiologist was notified of the blood chemistry report by the patient's attending physician. The radiologist questioned both the staff radiographer and the student. The student told the radiologist that he was ordered to load two syringes, one with contrast media and the other with isopropyl alcohol.

Who would be held liable for assault and/or battery?

Answer

In any radiologic technology program the student is under the guidance and direction of the radiology department personnel. The staff radiographer could be held liable for assault on the patient and the radiologist could be held liable for battery. The radiologist failed to check the contents of the syringe by asking the student which had contrast media or by checking the empty vial for the type of contrast and amount of concentration. The student would not be held liable because he was directed by the staff radiographer to load the two syringes with two different types of liquid. However, it is important to note that students

should not be naive with regard to the types of contrast media used for certain radiographic procedures. The student should have told the radiologist the contents of both syringes prior to injection.

Libel and Slander

Libel is written defamation of character. Oral defamation is termed slander. These are torts that affect the reputation and good name of another. The basic element of the tort of defamation is that the oral or written communication is made to a person other than the one defamed. The law does recognize certain relationships that require an individual to be allowed to speak without fear of being sued for defamation of character. For example, radiology department supervisors who must evaluate employees or give references regarding an employee's work have a qualified privilege.⁸

Radiographers can protect themselves from this civil tort by using caution when conversing within the hearing distance of patients.⁹

Invasion of Privacy

Invasion of privacy charges may result when confidentiality of information has not been maintained or when the patient's body has been improperly and unnecessarily exposed or touched. Protection of the patient's modesty is vitally important when performing radiographic procedures.

Unintentional Misconduct (Negligence)

Whenever a radiographer unintentionally causes injury to a patient it may be determined that a negligent act has been committed. Negligence refers to the neglect or omission of reasonable care or caution. The standard of reasonable care is based upon the "doctrine of the reasonably prudent man." This standard requires that a person perform as any reason-