

Thomson Reuters Law for the Layperson

HOSPITAL LIABILITY LAW

Second Edition

Margaret C. Jasper

Legal Almanac Series

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by
Margaret C. Jasper

Legal Almanac Series:
Thomson Reuters' Law for the Layperson

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Adoption Law

AIDS Law

The Americans with Disabilities Act

Animal Rights Law

Auto Leasing

Bankruptcy Law for the Individual Debtor

Banks and their Customers
Becoming a Citizen
Buying and Selling Your Home
Commercial Law
Consumer Rights and the Law
Co-ops and Condominiums: Your Rights and Obligations As Owner
Copyright Law
Credit Cards and the Law
Custodial Rights
Dealing with Debt
Dictionary of Selected Legal Terms
Drunk Driving Law
DWI, DUI and the Law
Education Law
Elder Law
Employee Rights in the Workplace
Employment Discrimination Under Title VII
Environmental Law
Estate Planning
Everyday Legal Forms
Executors and Personal Representatives: Rights and Responsibilities
Guardianship and the Law
Harassment in the Workplace
Health Care and Your Rights
Health Care Directives
Hiring Household Help and Contractors: Your Rights and Obligations Under the Law
Home Mortgage Law Primer
Hospital Liability Law
How To Change Your Name
How To Form an LLC

How To Protect Your Challenged Child
How To Start Your Own Business
Identity Theft and How To Protect Yourself
Individual Bankruptcy and Restructuring
Injured on the Job: Employee Rights, Worker's Compensation and Disability Insurance Law
International Adoption
Juvenile Justice and Children's Law
Labor Law
Landlord-Tenant Law
Law for the Small Business Owner
The Law of Attachment and Garnishment
The Law of Buying and Selling
The Law of Capital Punishment
The Law of Child Custody
The Law of Contracts
The Law of Debt Collection
The Law of Dispute Resolution
The Law of Immigration
The Law of Libel and Slander
The Law of Medical Malpractice
The Law of No-Fault Insurance
The Law of Obscenity and Pornography
The Law of Personal Injury
The Law of Premises Liability
The Law of Product Liability
The Law of Speech and the First Amendment
Lemon Laws
Living Together: Practical Legal Issues
Marriage and Divorce
Missing and Exploited Children: How to Protect Your Child

Motor Vehicle Law
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Religion and the Law
Retirement Planning
The Right to Die
Rights of Single Parents
Small Claims Court
Social Security Law
Special Education Law
Teenagers and Substance Abuse
Trademark Law
Trouble Next Door: What to do With Your Neighbor
Victim's Rights Law
Violence Against Women
Welfare: Your Rights and the Law
What if It Happened to You: Violent Crimes and Victims' Rights
What if the Product Doesn't Work: Warranties & Guarantees
Workers' Compensation Law
Your Child's Legal Rights: An Overview
Your Rights in a Class Action Suit
Your Rights as a Tenant
Your Rights Under the Family and Medical Leave Act
You've Been Fired: Your Rights and Remedies

INTRODUCTION

This legal Almanac explores the area of law known generally as “hospital liability.” Historically, hospitals enjoyed limited liability under malpractice law insofar as they were not liable for the acts of the physicians who used their facilities to treat patients.

Over the years, this area of law has evolved, and hospitals have been subject to malpractice actions for their own independent negligence as well as the negligence of staff physicians, residents, interns, nurses, and other hospital health care providers and employees under the theory of *respondeat superior*. In addition, in jurisdictions that subscribe to the corporate negligence doctrine, hospitals may also be liable for the negligence of attending private physicians, for example, if they failed to properly investigate their credentials before granting them privileges to practice in the hospital.

Hospitals are now routinely named as defendants in medical malpractice actions under a variety of theories of liability. In general, medical malpractice involves the commission of a tort—a wrongful act—as do all personal injury actions. A medical malpractice action generally carries a shortened statute of limitations, a limit on damage awards and a cap on legal fees. In addition, many states require that a physician find that the case has some merit before it can be filed.

Negligence is the predominant theory of medical malpractice litigation. Other theories of liability include lack of informed consent and/or informed refusal; unauthorized treatment that may lead to a cause of action for battery; breach of privacy for the unauthorized release of a patient’s medical record; and breach of contract. Responsible parties may include physicians, residents, interns, nurses, hospitals, mental health professionals, anesthesiologists, and other persons who provide medical care.

This Almanac sets forth the duties and responsibilities a hospital owes to its patients, and its liability for breaching those duties. In addition, the elements necessary to prove the various theories of liability that support a *prima facie* medical negligence claim, the defenses to such claims, the litigation procedures unique to medical malpractice, the responsible parties and apportionment of liability, and the damages recoverable are also discussed.

This Almanac also discusses the topic of health care directives and the patient's right to participate in their own health care decisions. A living will and a durable power of attorney for health care are examples of important health care directives. The patient's right to refuse medical treatment is examined, including advance medical directives, health care proxies, do not resuscitate orders, and the patient's right to pain management. Legal issues concerning a medical provider's failure to carry out a patient's wishes are also discussed. Additional topics include religious objections to executing a living will, capacity issues such as age and mental competence, and informed consent.

In addition, this Almanac explores the problem of nursing home negligence and abuse, the types of neglect and abuse, and the ways to recognize and address these problems. The legislation developed to prevent nursing home neglect and abuse is also discussed, including the legal rights of the nursing home resident, and the remedies available under the law.

Readers are cautioned, however, when researching a particular problem, not to rely on a general discussion of the law, but to always check the law of their own jurisdictions.

The Appendices provide sample documents, applicable statutes, resource directories, medical terminology and other pertinent information and data. The Glossary contains definitions of many of the terms used throughout the Almanac.

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CHAPTER 1:

HOSPITAL ORGANIZATION

IN GENERAL

Hospitals are corporations that are generally organized as either public or private entities. A public hospital is created by the act of a governmental authority and controlled under the auspices of that government unit by the governing body of the hospital. A private hospital is either (i) voluntary—i.e., a charitable not-for-profit corporation; (ii) investor-owned—operating for profit on behalf of shareholders; or a (iii) member of a multi-unit system which consists of multiple facilities sharing management and services under a single ownership.

A directory of state licensing agencies for medical facilities is set forth in Appendix 1.

THE JOINT COMMISSION

The Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations, is an independent, not-for-profit organization governed by a 29-member Board of Commissioners that includes physicians, administrators, nurses, employers, a labor representative, health plan leaders, quality experts, ethicists, a consumer advocate and educators. The Joint Commission's stated mission is to improve the safety and quality of care provided to the public through the provision of health care accreditation and related services that support performance improvement in health care organizations.

To carry out its mission, the Joint Commission evaluates and accredits more than 15,000 health care organizations and programs in the United States, and promulgates state-of-the-art standards that focus on improving the quality and safety of care provided by health care organizations. Joint Commission standards address the organization's