

# PREFACE

## Overview

This is the tenth edition of *The Law of Healthcare Administration (LOHA)*, a work that was begun nearly 50 years ago by Professor Arthur F. Southwick of the University of Michigan. After Professor Southwick's sudden death in 1997, the staff of Health Administration Press (HAP) needed someone to write the third edition. They eventually approached Stuart Showalter, who was then a vice president of the Catholic Health Association of the United States and an adjunct instructor in the master of health administration (MHA) program at the Washington University School of Medicine, St. Louis, Missouri. HAP had published Showalter's study guide and set of case excerpts for the second edition of *LOHA*, and he had been using the book in his classes for several years.

In the words of Robert Fromberg, then associate director and acquisitions editor at HAP, two assumptions argued against asking Showalter to take on the project: (1) that a textbook needed a full-time academic as its author, and (2) that an executive would not have the time to do a creditable job. "On the other hand, having an author who worked full time for a health system had a huge potential advantage—a practical bent," Fromberg said. Subsequent history has proven the wisdom of HAP's decision. Since 1999—from the third through the ninth edition—Showalter has offered a thorough *and practical* treatment of healthcare law in plain language for nonlawyer students of the field.

We are excited to introduce Sallie Thieme Sanford, associate professor of law and adjunct associate professor of health systems and population health at the University of Washington in Seattle, as coauthor of this and future editions of *LOHA*. As a practicing attorney, Sanford represented the University of Washington's medical centers and health sciences schools. Since entering academia nearly two decades ago, she has had the pleasure of teaching health law courses to MHA, executive MHA, and law students, as well as regularly presenting to student, professional, and academic audiences.

Drawing on their practice and teaching backgrounds, Showalter and Sanford aim to provide an accurate, accessible, and engaging textbook that helps students understand the law's evolving, multifaceted role in the administration of healthcare entities. Like its predecessors, this edition provides a comprehensive overview of healthcare law, and its 15 chapters include substantial revisions and new material, including discussions of *Dobbs v. Jackson Women's Health* (the US Supreme Court's June 2022 decision that overturned the constitutional right to abortion), Biden-era Affordable Care Act (ACA) litigation and regulation, evolving antidiscrimination standards, the federal No Surprises Act, new fraud and abuse regulations, crisis standards of care, Good Samaritan overdose statutes, apology laws, and much more.

This edition also features greater attention to issues of healthcare justice, raising questions about how the law might help or hinder efforts to create a better healthcare system for all. It employs inclusive language and highlights examples that involve nonhospital institutional providers (e.g., community health centers, nursing homes), and nonphysician individual providers (e.g., pharmacists, nurse practitioners). Each chapter incorporates thought-provoking discussion questions, captivating sidebars, practical advice, regulatory or case law excerpts, and "COVID Connections" that highlight the pandemic's continuing influence on legal standards.

Fundamentally, this textbook aims to help healthcare leaders succeed, whether they work at the smallest rural clinic or the largest multistate system. In any healthcare setting, they will need to navigate a complex, changing legal environment. While doing so, they will have opportunities to work with legal and policy tools to promote a more just, accessible, affordable, and quality care healthcare system. Inspired by their prior students, Showalter and Sanford offer this tenth edition to those aspiring to be the thoughtful, nimble, and transformative healthcare leaders of the future.

## Chapter Contents

### Chapter 1: A Brief History of Law and Medicine

The chapter's discussion of precedent, constitutional law, and federalism includes reference to the US Supreme Court's 2022 *Dobbs* decision, which will have repercussions for law, medicine, and politics for years to come. Different types of legal authorities are highlighted in a new section that examines the law's role in maintaining and then dismantling formal racial segregation in hospitals. Noting issues raised by COVID-19, there is an expanded discussion of public health law. In addition, the chapter provides more detail about the history of the nursing profession and the history of educational and practice opportunities for persons of color in health professions and administration.

## **Chapter 2: Access to Healthcare Insurance and Treatment**

With the increasing solidity of the ACA and the growth of Medicare and Medicaid, federal law is now the driving force behind access to healthcare insurance. Thus, federal programs are increasingly influential in shaping payment and delivery systems. This chapter includes clear details about Medicare, Medicaid, the Children's Health Insurance Program, accountable care organizations, and the ACA's "four M's of access." The US Supreme Court's 2021 individual mandate decision in *California v. Texas* is explained and excerpted. The chapter also includes a section on the evolving standards for the applicability of antidiscrimination laws to the provision of healthcare. Finally, appendices detail health reform efforts over the years and compare the primary federal healthcare insurance programs.

## **Chapter 3: The Organization and Management of a Corporate Healthcare Institution**

New to this chapter are details about Federally Qualified Health Centers and their board structure requirements, as well as discussion of board members' duty of obedience. It also features an expanded discussion of professional limited liability corporations and joint venture arrangements. The potential implications of the corporate practice of medicine doctrine and state open meetings laws are noted.

## **Chapter 4: Human Resources Law**

Incorporated into an expanded antidiscrimination section is discussion of the US Supreme Court's 2020 decision in *Bostock v. Clayton County*, which held that the statutory prohibition on sex discrimination includes discrimination based on sexual orientation or gender identity. Also included are the evolving legal standards around COVID-19 vaccine mandates for healthcare workers and increasingly prominent conscience protections. Finally, the chapter includes a list of key federal labor statutes and practical tips for conducting legally appropriate job interviews.

## **Chapter 5: Contracts and Intentional Torts**

This chapter now includes information about "noncompete" provisions in physician contracts and updated examples of explicit warranties for treatment results. It also raises questions about termination of treatment and its possible connection to healthcare inequities. Also discussed are the types of damages generally available under different causes of action.

## **Chapter 6: Negligence**

Medical malpractice cases arising during the COVID-19 pandemic are likely to be affected, implicitly or explicitly, by "crisis standards of care," which are explained in this chapter. Also new to the chapter are discussions of state laws

regarding apologies for medical errors and an expanded section on settlement negotiations and mandatory arbitration clauses.

### **Chapter 7: Liability of the Healthcare Institution**

This chapter includes more details about liability issues involving managed care organizations, as well as a revised explanation of the multifaceted impacts of the federal Employee Retirement Income Security Act of 1974. It also reviews the No Surprises Act, which went into effect in 2022, protecting patients from many out-of-network charges and creating potential conflicts between insurers and providers.

### **Chapter 8: Medical Staff Privileges and Peer Review**

This chapter recognizes the increased focus on population health with an expanded discussion of ACOs and quality metrics. It also adds details about credentialing issues related to complementary and alternative medicine and integrative healthcare.

### **Chapter 9: Fraud and Abuse Laws and Corporate Compliance**

The federal False Claims Act, Anti-Kickback Statute, and Stark law present huge liability risks and significantly affect provider contracting; they also are notoriously difficult to understand. Thus, with this edition, we moved the topic earlier in the book and simplified its organizational structure. We have included discussion of new safe harbors and exceptions that are aimed at supporting population health and value-based payment arrangements. The appendices contain an excerpt of a recent advisory opinion and a summary of the major federal fraud and abuse laws.

### **Chapter 10: Health Information Management**

Reflecting the importance of federal law in this area, this chapter centers on the Health Insurance Portability and Accountability Act (HIPAA), with expanded details on breach notification, the 21st Century Cures Act, and telemedicine. State-law causes of action, and their intersection with HIPAA, are highlighted by inclusion of a case in which a pharmacy and pharmacist were found liable for improper disclosure of protected healthcare information.

### **Chapter 11: Emergency Care**

This chapter focuses on the Emergency Medical Treatment and Labor Act (EMTALA), with an expanded discussion of practical issues that arise when attempting to ensure compliance with its requirements. It also highlights some of the legal issues that emergency providers will face in providing medically appropriate treatment to pregnant patients in light of new state abortion restrictions enacted post-*Dobbs*. Newer emergency-related laws are

also discussed, including the federal No Surprises Act, as well as state Good Samaritan overdose laws and emergency preparedness requirements.

### **Chapter 12: Consent for Treatment**

This chapter includes discussion of the emerging idea of shared decision-making and its linkages to patient knowledge, payment conditions, and malpractice protections. It also explains state law changes related to surrogate decision makers. It also broadens the discussion of circumstances in which minors have the authority to consent to their own treatment.

### **Chapter 13: Tax-Exempt Healthcare Organizations**

The ACA's enhancements to the 501(c)(3) standards for tax exemption drive much of the activity in this area. This chapter now includes an appendix that excerpts Internal Revenue Service compliance guidance with respect to these standards. It also features more details about tax implications of joint ventures between for-profit and not-for-profit healthcare entities and explains the uses of unrelated business income taxation and intermediate sanctions for excess benefit transactions.

### **Chapter 14: Competition and Antitrust Law**

The healthcare sector has seen a spate of mergers, acquisitions, and alliances in recent years, drawing the attention of antitrust enforcers, whether federal, state, or private. This consolidation activity is reflected in the chapter's updated analyses and caselaw. It notes that possibly anticompetitive activity might involve not only hospitals and physician groups, but also insurers, pharmacies, and newer entrants into the healthcare arena.

### **Chapter 15: Issues of Reproduction and Birth**

In June 2022, the US Supreme Court overruled nearly 50 years of precedent and held that there is no federal constitutional right to abortion. This chapter explains the ruling and includes excerpts from the majority, concurring, and dissenting opinions. It also flags potential challenges for institutional and individual providers as they navigate new laws that restrict abortion and create criminal, civil, or licensure risk. The chapter includes a new section on access to insurance coverage for birth control and abortion, features a recent state case grounded in theories of wrongful birth and wrongful life, and discusses newer state laws that provide a legal framework for compensated surrogacy.

**Instructor Resources**

This book's Instructor Resources include a test bank; PowerPoint presentations; an updated instructor's manual with chapter overviews, answers to end-of-chapter discussion questions, answers to end-of-case discussion questions; and a transition guide to the new edition.

For the most up-to-date information about this book and its Instructor Resources, visit [ache.org/HAP](http://ache.org/HAP) and search for the book's order code 24811).

This book's Instructor Resources are available to instructors who adopt this book for use in their course. For access information, please email [hapbooks@ache.org](mailto:hapbooks@ache.org).