PREFACE

Overview

As in prior editions, this newest The Law of Healthcare Administration attempts to offer a thorough treatment of health law in the United States in plain language for ease of use. The eight edition moves from broad-brush treatments of the US legal system and the history of medicine to specific issues that affect healthcare leaders on a daily basis: contracts, torts, taxation, antitrust law, regulatory compliance, and of course health insurance reform. For this latter topic, the Affordable Care Act (ACA) takes center stage.

The ACA is Prominent

We have seen important changes in the more than six years since the ACA became law. It has survived despite political opposition, constitutional challenges, and threats of defunding and repeal, and it is the most significant development in healthcare since Medicare and Medicaid half a century ago.

Government figures show that by early 2016 an estimated 20 million people had gained insurance coverage under the ACA—the uninsured rate declined from 16.0 percent (49 million people) in 2010 to 9.1 percent (29 million) in 2015. The reasons for these improved numbers include Medicaid expansion, creation of the health insurance exchanges, and requirements that private insurance plans cover preexisting conditions and allow young adults to stay on their parent’s plans to age 26.

Because of the ACA’s landmark status, it is a prominent feature of this new edition. Chapter 3, titled “Health Reform, Access to Care, and Admission and Discharge,” reviews the history of reform efforts, discusses the implications of Medicaid expansion, and goes to considerable length to present NFIB v. Sibelius and King v. Burwell, the two most serious legal challenges. Taken together, those decisions seem to have settled the most significant constitutional issues, although political resistance remains and some litigants continue trying to chip away pieces of the law’s framework.

Other Highlights of the Eighth Edition

This edition also contains new material on:
• The history of nursing, which has been added to chapter 2
• The status of Medicare’s inpatient admission standards and the “two-midnight rule”
• The “dual-capacity” doctrine in worker’s compensation
• End-of-life topics including the Physician Orders for Life Sustaining Treatment (POLST) paradigm and “death with dignity” laws in some states, which allow physicians to aid terminally ill patients in ending their own lives
• Prominent antitrust cases from Ohio, Idaho, and North Carolina
• The Whole Women’s Health case, in which the Supreme Court again reaffirmed the essential holdings of Roe v. Wade and related cases
• The Supreme Court’s decision on “implied certification,” plus other false claims and fraud-related issues

In Addition
Throughout the book I have updated citations, added current URLs, and made editorial changes to minimize (or at least clarify) legal jargon and make the text as accessible to nonlawyers as possible.

Like the editions before it, the eighth edition of The Law of Healthcare Administration is a practical text for students and educators in health administration, public health, nursing, and similar programs or disciplines.

Chapter Contents

Chapter 1: The Anglo-American Legal System
This chapter discusses the history of law, its sources, the relationships among the three branches of government, the basic structure of the federal and state court systems, and some basics of legal procedure in civil cases.

Chapter 2: A Brief History of Medicine
Because “a page of history is worth a volume of logic,” chapter 2 adds to the foundational concepts of chapter 1 and sets the stage for material explored in the remaining 13 chapters.

Chapter 3: Health Reform, Access to Care, and Admission and Discharge
As noted earlier, this chapter discusses the major changes wrought by the ACA, the various constitutional challenges, and the ultimate decisions of the US Supreme Court. The chapter also presents traditional rules about hospital admission and discharge, law relating to emergency services, and the conflict between managed care organizations’ desire to limit healthcare expenditures and providers’ moral and legal duties to give quality patient care.
Chapter 4: Contracts and Intentional Torts
This chapter addresses the essential elements of a valid contract (competent parties, “meeting of the minds,” consideration, and legality of purpose) and the importance of contract law in the relationships between patients and their physicians and between patients and hospitals. The chapter also briefly discusses issues related to workers’ compensation and intentional tort, pointing out that both can affect physician–patient and hospital–patient relationships.

Chapter 5: Negligence
This chapter outlines the four basic elements of proof in a tort case, the ways the standard of care can be proven, and the concept of causation. It addresses respondeat superior (vicarious liability), the “school rule,” res ipsa loquitur, defenses to malpractice suits, and alternatives to the tort system.

Chapter 6: The Organization and Management of a Corporate Healthcare Institution
This chapter reviews some basic concepts of corporation law, including a corporation’s “personhood,” its ability to shield owners from personal liability, the foundations and limitations of corporate power, and the duties of a corporation’s governing board. The concept of piercing the corporate veil and the various reasons for and methods of restructuring a healthcare corporation are also explored. Attention is also given to hospital–physician joint ventures and their potential for renewal due to the effects of the ACA and other factors in the healthcare environment.

Chapter 7: Liability of the Healthcare Institution
This chapter shows that the law has come a long way in recent years as it relates to healthcare organizations: the shift from charitable immunity to application of respondeat superior in the healthcare setting is one example. The demise of the “captain-of-the-ship” and “borrowed-servant” doctrines is another. These notions have now expanded to the point that the independent contractor defense seems no longer viable in the healthcare field. The chapter also addresses the rise of managed care in the 1980s and 1990s, the conflicts that sometimes arise between advancing patient welfare and reducing healthcare costs, and the phenomenon of Employee Retirement Income Security Act (ERISA) preemption providing immunity for some managed care organizations.

Chapter 8: Medical Staff Privileges and Peer Review
This chapter focuses on decisions about medical staff privileges. It points out that management and the medical staff are responsible for the credentialing process and may recommend physician applicants (including doctors of osteopathy, dentistry, podiatry, and chiropractic, as well as other physicians,
depending on state law). The ultimate responsibility for appointing a competent medical staff lies with the hospital governing board, however. The chapter also addresses issues related to the peer review and quality assurance functions, both of which are efforts to monitor the quality of care. It concludes with some thoughts about accountable care organizations, complementary and alternative medicine practices, and “integrative healthcare.”

Chapter 9: Health Information Management

The title of this chapter reflects a belief that the term medical records is passé because information about a person’s health (or payment for health-related services) can be maintained in many types of media other than paper. Regardless of the form in which it is maintained, health information must be accurate and its confidentiality must be ensured. This chapter reviews the various ways in which health information is properly used, such as for documentation of treatment, for accurate billing, and as evidence in legal forums. It also discusses the Health Insurance Portability and Accountability Act (HIPAA) and other state and federal laws that govern the protection of health information. It outlines circumstances in which third parties may legitimately access individuals’ health information with and without patient consent, and it points out the pitfalls that one can encounter when that information is improperly disclosed inadvertently or through “hacking” by cyberthieves.

Chapter 10: Emergency Care

This chapter reviews the common-law rule that individuals have no duty to provide emergency care and its numerous exceptions, both judicial and statutory. It provides considerable detail on the federal Emergency Medical Treatment and Labor Act (EMTALA), which currently sets the standard for emergency department personnel’s review of patients’ conditions, and presents examples of liability for failure to meet those standards. The chapter concludes with a brief discussion of Good Samaritan statutes, which are probably unnecessary but have afforded some medical personnel a measure of emotional comfort.

Chapter 11: Consent for Treatment and Withholding Consent

This chapter explores the difference between consent and informed consent and outlines the minimum requirements for the latter. It also considers consent issues in emergency situations and such thorny issues as the right to die (i.e., refusal to consent to life-sustaining treatment), consent for patients who are not competent to make choices for themselves, and physicians’ role in helping terminally ill patients end their lives legally. The chapter ends with discussion of various methods of documenting and enforcing patients’ end-of-life preferences—including living wills and durable powers of attorney—and discusses “death with dignity” laws that allow physicians to aid certain
terminal patients to end their own lives. Appendixes present examples of an advance directive form and a physician order for life-sustaining treatment form.

**Chapter 12: Taxation of Healthcare Institutions**

This chapter addresses the taxation of healthcare organizations, primarily not-for-profit corporations. All tax-exempt organizations are not-for-profit, but not all not-for-profits are tax exempt. The standards for income and property tax exemption are also discussed, as are the occasions in which some income of a tax-exempt organization may be taxable. The chapter raises the question of what it means to be a charity and what implications that designation may have under federal and state law. It closes with a review of a 2010 decision that, if followed by other states, augurs rough sailing ahead for nonprofit hospitals’ property tax exemptions, especially if the Affordable Care Act continues to decrease the number of uninsured Americans.

**Chapter 13: Competition and Antitrust Law**

The chapter reviews the basic concepts of antitrust law, including laws against restraints of trade, monopolization, and price discrimination. It distinguishes among the various per se violations and shows how cases that do not fit one of those categories are decided on the basis of a “rule-of-reason analysis.” Exemptions from the antitrust laws include implied repeal, state action, Noerr-Pennington, and the business of insurance doctrines. This chapter reviews the factors used in defining the appropriate market for individual cases, and it concludes with a discussion of what to expect in the coming years, especially now that the ACA is being implemented. A significant US Supreme Court decision from North Carolina has been added to The Court Decides, and other cases (from Ohio and Idaho) are also discussed.

**Chapter 14: Issues of Reproduction and Birth**

This chapter reviews many of the sensitive and contentious legal questions surrounding reproduction. These include sterilization, wrongful life, wrongful birth, surrogate parenting, in vitro fertilization (IVF), stem cell research, and abortion. The hospital’s role in reproduction issues is discussed, including whether it can be required to provide such services and whether government programs will pay for the procedures if the hospital does provide them. The chapter also points out that stem cell research will continue to be an issue, but in light of the *Whole Woman’s Health* case it may be some time before abortion again comes before the Supreme Court.

**Chapter 15: Fraud Laws and Corporate Compliance**

This chapter addresses one of the most salient issues in healthcare today: the prevention of fraud and abuse in governmental healthcare programs. The
major fraud laws are reviewed, as are the aggressive enforcement activities of federal and state regulators, and the severe monetary and criminal penalties that can be imposed for violations of these laws are emphasized. The chapter also discusses some of the changes to the fraud laws occasioned by the passage of the ACA, and it reviews the basics of a proper corporate compliance program, an essential preventive measure and a valuable resource for a wide range of legal and ethical issues.

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Instructor Resources
This book’s Instructor Resources include a test bank; two versions of a PowerPoint presentation; and an updated instructor’s manual with chapter overviews, answers to end-of-chapter discussion questions, and answers to end-of-case discussion questions.

For the most up-to-date information about this book and its Instructor Resources, go to ache.org/HAP and browse for the book’s title or author name.

This book’s Instructor Resources are available to instructors who adopt this book for use in their course. For access information, please e-mail hap-books@ache.org.