The Law of Healthcare Administration

J. Stuart Showalter

The Law of Healthcare Administration

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NINTH EDITION

The Law of Healthcare Administration

J. Stuart Showalter

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PREFACE

Overview

The ninth edition of *The Law of Healthcare Administration* continues to offer a thorough treatment of health law in the United States, doing so in plain language for nonlawyers. It begins with a history of law and medicine, moves to a description of how—despite various reform efforts—the US healthcare "system" came to be so fragmented, and then presents specific issues that affect healthcare leaders on a daily basis (e.g., contracts, torts, taxation, antitrust law, regulatory compliance) and—a major addition to the book—human resources (HR) law.

An Entire Chapter on Human Resources

Numerous instructors have asked for a chapter on human resource issues; thus, a new chapter responds to this request. It discusses the distinction between "employee" and "independent contractor," defines other categories of workers, and goes to considerable length to present civil rights law and various nondiscrimination issues. The chapter also includes a section on labor law—the National Labor Relations Act and the Taft-Harley Act, union organizing, collective bargaining, fair and unfair labor practices, and more. Three judicial decisions with HR-related implications are found in The Court Decides.

The chapter is described more fully under the chapter contents heading on page xvi.

Other Highlights of the Ninth Edition

Discussions of the history of law and the history of medicine have been pared down and combined; they now constitute chapter 1. This is followed by a century's worth of attempted healthcare reform efforts culminating with passage of the Affordable Care Act (ACA) in 2010 and subsequent (unsuccessful) attempts to "repeal and replace" it.

End-of-life topics have been updated to include new "death with dignity" laws in some states, one state's adoption of "physician aid in dying" through judicial decision, and the latest on the Physician Orders for Life-Sustaining Treatment (POLST) paradigm.

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Throughout the book I have updated citations, added current web addresses, and made editorial changes to minimize (or at least clarify) legal jargon. Like the editions before it, the ninth edition is a practical text for students and educators in health administration, public health, nursing, and similar programs or disciplines.

Chapter Contents

Chapter 1: A Brief History of Law and Medicine

"A page of history is worth a volume of logic," so this chapter compares the histories of the two disciplines. In part 1, it presents 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. In part 2, we read about the history of medicine through the ages and the advent of "modern medicine" a mere century or so ago. Viewed in this light, we see that twenty-first-century healthcare is a newborn.

Chapter 2: Access to Healthcare: Rights and Responsibilities

This chapter discusses the structure of the US healthcare "system" and points out that it is not a *system* at all in the true sense of the word. Instead, it is a conglomeration of different types of providers and payers resulting in serious inequalities of coverage.

In response to numerous requests, the chapter outlines the various US government healthcare systems and agencies (e.g., Public Health Service, Indian Health Service, Veterans Administration healthcare), and describes their relationship with the state and private sectors. It describes numerous health policy efforts from the Vaccine Act of 1813, to Medicare and Medicaid, to President Clinton's reform proposal, to the ACA. The legal challenges to the ACA are discussed in detail, including the landmark cases of *NFIB v. Sibelius* and *King v. Burwell.*

A presentation of traditional principles of access to care follows the section on healthcare reform efforts. These principles include the right to care, rules regarding admission and discharge, the government's duty to pay in some cases, involuntary commitment of the mentally ill, and utilization review. Appendices show the various federal health insurance programs, the history of health reform efforts, and details on implementation of the ACA.

Chapter 3: 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

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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 as a result of the effects of the ACA and other factors in the healthcare environment.

Chapter 4: Human Resources Law

As mentioned earlier, this chapter is brand-new to the text. It describes how employment law affects the healthcare organization, identifies the major employment statutes and case law principles, points out the most significant areas of contention, and enables students to know when to consult employment law experts. Major topics include categories of workers in the workplace, antidiscrimination statutes, and labor law issues.

Chapter 5: 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 6: 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 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 preemption providing immunity for some managed care organizations.

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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 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 the rule's numerous exceptions, both judicial and statutory. It provides considerable detail on the federal Emergency Medical Treatment and Labor Act, 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

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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 help certain terminal patients to end their own lives. The landmark Montana case permitting physician aid in dying in the absence of statute is presented in The Court Decides. The appendix compares advance directives to Physician Order for Life-Sustaining Treatment forms.

Chapter 12: Taxation of Healthcare Institutions

This chapter addresses the taxation of healthcare organizations, which are 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 not-for-profit hospitals' property tax exemptions, especially if the ACA continues to decrease the number of uninsured Americans.

Chapter 13: Competition and Antitrust Law

This 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 the hospital can be required to provide such services and whether government programs will pay for the procedures if the hospital does provide

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them. The chapter also points out that stem cell research will continue to be an issue, and it points out that it may only be a matter of time before abortion shows up again on the Supreme Court's docket.

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; 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.

Instructor Resources

This book's Instructor Resources include a test bank; 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, author name, or order code (2403I).

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

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ACKNOWLEDGMENTS

Rare are the authors who are not beholden to others for the success of their work. In my case, gratitude extends back more than two decades to the late professor Arthur F. Southwick of the University of Michigan. It was he who authored *The Law of Hospital and Health Care Administration* (1978), the landmark text, published by Health Administration Press (HAP), from which this book descends.

I used the second edition of the book while teaching at Washington University School of Medicine, and I collected a set of companion cases that HAP published as a supplement. Upon Professor Southwick's death in 1997, the editors approached me to update the text. Thus my name first appears on the third edition, known then as *Southwick's The Law of Healthcare Administration* (1999).

In addition to Professor Southwick—whom I never met, unfortunately—I am grateful to the many staff and editors of HAP who have assisted me for nearly 25 years. The list includes Andrew Baumann, Helen-Joy Bechtle, Jane Cayalag, Janet Davis, Cepheus Edmondson, Rob Fromberg, Marisa Jackson, Scott Miller, Betsy Perez, Theresa Rothschadl, Jennifer Seibert, James Slate, and Chris Underdown. These dedicated individuals have reconfirmed the old adage, "There is no such thing as good writing; there is only good rewriting [and proofreading, layout, cover design, marketing, etc.]."

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CHAPTER

1

A BRIEF HISTORY OF LAW AND MEDICINE

> *A page of history is worth a volume of logic.*
>
> —Justice Oliver Wendell Holmes Jr.
> (*New York Trust Co. v. Eisner*, 256 U.S. 345, 349 [1921])

Law is ancient; medicine is a newborn. A bit of history will help put these two disciplines in perspective.

What follows in this first chapter is historical synthesis, neither the product of primary research nor drawn from any one or even a few secondary sources. It is, instead, a collection of harmonious facts, opinions, and sentiments drawn from varied perspectives, review of the literature, and the author's personal experience. It is intended to give the reader a feel for what some might call the "crossroads" of law and medicine and to set the stage for a thoughtful overview of the law and healthcare administration.

PART 1: THE HISTORY OF LAW

After reading part 1 of this chapter, you will

- understand that law comes from four basic sources,
- know that no one branch of government is meant to be more powerful than another,
- understand the legal citation system and certain key terms, and
- be familiar with basic aspects of legal procedure.

It is reasonable to assume that laws—rules for human interaction—have existed in some form since the first sentient beings roamed the earth. The oldest known *written* laws were proclaimed nearly four millennia ago by King Hammurabi of Babylon. They were inscribed on an eight-foot-tall black stela (stone pillar), lost for centuries but rediscovered in 1901 (see exhibit 1.1). Dubbed the "Code of Hammurabi," it is an example of lex talionis (the "law of retaliation"), under

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EXHIBIT 1.1
Code of Hammurabi

which a person who injures another is to be given a specific punishment appropriate for the crime.

For example, in Hammurabi's realm, adultery and theft were punishable by death, a slave who disobeyed his master lost an ear (the ear being an ancient symbol of obedience), and a surgeon who caused injury had his hand amputated. This latter provision may have been the first version of malpractice law known to humankind.

In addition to these harsh "eye for an eye, tooth for a tooth" standards, the code contained rules for everyday social and commercial affairs—sale and lease of property, maintenance of lands, commercial transactions (contracts, credit, debt, banking), marriage and divorce, estates and inheritance, and criminal procedure. As a result of Hammurabi's reputation as a lawgiver, depictions of him can be found in several US government buildings, including the US Capitol and the Supreme Court.

In later centuries, other concepts helped law to evolve. Aristotle spoke of *natural law*—the idea that there exists a body of moral principles common to all persons and recognizable by reason alone—as distinct from *positive law* (formal legal enactments).[1] In *Leviathan*, an important work of seventeenth-century thought, Thomas Hobbes described law as a "social contract" between the individual and the state in which people agree to obey certain standards in return for peace and security. Without that implicit agreement and adherence to law, Hobbes famously wrote, mankind would be in a constant state of war and life would be "solitary, poor, nasty, brutish, and short."

These and other schools of thought—including utilitarianism, strict constructionism, and libertarianism—have influenced the US legal system over the centuries. One can of course study law by merely reading statutes and judicial decisions, but it helps to be aware of some of these philosophies because they lie at the root of American **common law**.

common law
The body of law based on custom and judicial precedents, as distinct from statutory law; its historical roots are the traditional laws of England that developed over many centuries and were carried over to the American colonies and thus the United States.

Anglo-American Common Law

Anglo-American law can be traced back more than a millennium to when the Anglo-Saxon inhabitants of what was to become England tried to centralize their various kingships to ward off enemies and maintain peace. In the

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process, they started a legal system that would eventually prevail throughout England, hence the name *the common law*. That system included certain concepts that are familiar today: writs (court orders); the offices of sheriff, bailiff, and mayor; taxation; complex legal record keeping; the use of sworn testimony; and stare decisis (respect for legal precedent).

The common law grew with the further cohesion of the country following the conquest of England by Duke William of Normandy ("William the Conqueror," 1028–1087) in 1066. Under King Henry II (1133–1189), tribunals such as the King's Court and circuit courts were added, and the decisions of those bodies became part of the common law. Also part of the common law are the Magna Carta (1215), the Habeas Corpus Act (1679), the Petition of Right (1628), and the English Bill of Rights (1689). These instruments describe certain basic concepts—the authority of the sovereign (monarch or state), freedom of speech, limitations on the use of martial law, the separation of judicial and legislative powers, and recognition that statutes are not the sole basis of law—that applied to colonial America and remain woven through the fabric of US law to this day.

At its most basic level, the purpose of any legal system is to prevent anarchy and provide an alternative to personal revenge as a method of resolving disputes, as Hobbes feared. Considering the size and complexity of the United States, the litigious temperament of our people, and the wide range of possible disputes, our legal system is remarkably successful in achieving its purpose. It has its shortcomings, to be sure, but at least it stands as a bulwark against vigilante justice and blood feuds.

The law permeates today's healthcare field because the US medical system is perhaps the most heavily regulated enterprise in the world. It is subject not only to the legal principles that affect all businesses (everything from antitrust to zoning) but also to myriad provisions peculiar to healthcare. For these reasons, students of healthcare administration need to become familiar with the law and legal system. Almost every decision and action taken by healthcare personnel has legal implications, and all such decisions and actions are explicitly or implicitly based on some legal standard. Furthermore, students must understand basic legal principles well enough to recognize when professional legal advice is needed. The main purpose of this book is to help you and your organization stay out of trouble.

Definition of *Law*

In its broadest sense, **law** is a system of principles and rules devised by organized society or groups in society to set norms for human conduct. Societies and groups must have standards of behavior and means to enforce those

law
A system of standards to govern the conduct of people in an organization, community, society, or nation.

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standards; otherwise, they devolve into vigilantism. The purpose of law, therefore, is to prevent conflict among individuals and between government and its subjects. When conflicts occur, legal institutions and doctrines supply the means of resolving the disputes.

Because law is concerned with human behavior, it is not an exact science. Indeed, "it depends" is a law instructor's most frequent answer to students' questions. This response is frustrating for both the students and the instructor, but it is honest. The law provides only general guidance; it is not an exact blueprint for living. Its application varies according to the circumstances of the case. However, this inherent ambiguity is actually a strength, because it allows for adaptation to new circumstances. Legal rigidity would inhibit initiative, stunt the growth of social institutions, and ultimately result in decay.

Viewed in proper light, law is a landscape painting that captures the beliefs of a society at a certain moment in time. However, it is not static; it is a work in progress, a constantly changing piece of art—a hologram, perhaps—that moves with society. Most often it moves at a glacial pace—slowly and quietly, the land shifting slightly beneath it. At other times, it moves seismically, as was the case in 2010 with the passage of a legislative temblor known as the **Affordable Care Act (ACA)**, or "Obamacare."[2] Despite outcries from some segments of the political spectrum and many attempts to repeal it, the US Supreme Court has held provisions of the ACA to be constitutional. Most of the ACA's reforms took effect in 2014, and the aftershocks will be felt for years. Until the dust settles completely, we will not know how much the act has altered the legal topography.

Affordable Care Act (ACA)
The health reform law enacted by Congress in 2010; full name: Patient Protection and Affordable Care Act, Pub. L. No. 111-148. The ACA will be discussed more fully in chapter 2.

Types and Sources of Law

Law can be classified in various ways. One of the most common is to distinguish between public law and private law. *Public law* concerns the government and its relations with individuals and businesses. *Private law* refers to the rules and principles that define and regulate rights and duties among persons. These categories overlap, but they are useful in illustrating Anglo-American legal doctrine.

Private law comprises the law of contracts, property, and tort, all of which usually concern relationships between private parties. It also includes, for example, such social contracts as canon law in the Catholic Church and the regulations of a homeowners' association. Public law, on the other hand, regulates and enforces rights in which the government has an interest (e.g., labor relations, taxation, antitrust, environmental regulation, criminal prosecution). The principal sources of public law are as follows:

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- Written constitutions (both state and federal)
- Statutes enacted by a legislative body (federal, state, local)
- Administrative law
- Judicial decisions

Constitutions

The US Constitution is aptly called the "supreme law of the land" because it sets standards against which all other laws are judged. Other sources of law must be consistent with the Constitution.

The Constitution is a grant of power from the states to the federal government (see Legal Brief). All powers not granted to the federal government in the Constitution are reserved by the individual states. This grant of power to the federal government is both express and implied. For example, the Constitution expressly authorizes the US Congress to levy and collect taxes, borrow and coin money, declare war, raise and support armies, and regulate interstate commerce. Congress may also enact laws that are "necessary and proper" to carry out these express powers. Thus, the power to coin money includes the implied power to design US currency, and the power to regulate interstate commerce embraces the power to pass antidiscrimination legislation, such as the Civil Rights Act of 1964.

The main body of the Constitution establishes, defines, and limits the power of the three branches of the federal government:

1. The legislature (Congress) has the power to enact statutes.
2. The executive branch has the power to enforce the laws.
3. The judiciary has the power to interpret the laws.

Each branch plays a different role, and their interaction is governed by a system of "checks and balances" designed to maintain a measure of parity among them (see exhibit 1.2). Specifically, the president can nominate federal judges and high-ranking government officials, but the Senate must confirm those nominations. Congress can remove high-ranking federal personnel (including judges and the president) through the impeachment and trial process. The president can veto a congressional bill, but Congress can override a veto by a two-thirds vote of each chamber. The judiciary can declare a law or

Legal Brief

The United States is not a union; it is a federation (from the Latin word *foedus*, meaning "covenant") of 50 self-governing states that have ceded some of their sovereignty to the central (federal) government to promote the welfare of all.

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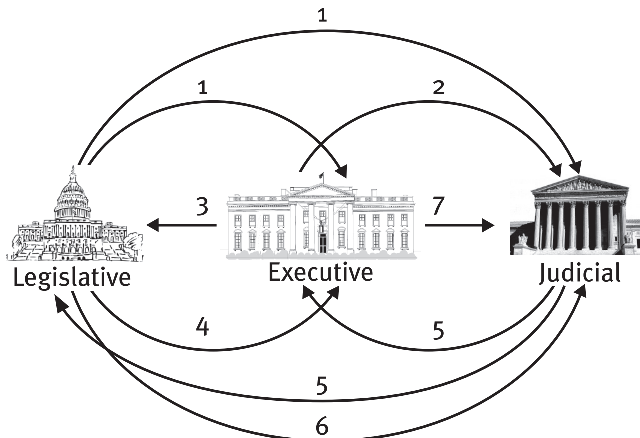
EXHIBIT 1.2
Checks and Balances

1. Impeach and convict; confirm or block permanent appointments
2. Appoint judges
3. Approve or veto legislation
4. Draft legislation; override vetoes
5. Interpret laws and regulations
6. Establish court system; amend laws to cure defects
7. Appoint judges; change regulations to cure defects



regulation invalid, at which point Congress can amend the law or the executive branch can change the regulation to cure the defect.

Twenty-seven amendments follow the main body of the Constitution. The first ten are known as the Bill of Rights, and they were ratified in 1791, just two years after the Constitution took effect (see Legal Brief). Among the rights secured by the Bill of Rights are

- freedom of religion, speech, and press;
- the rights of assembly and petition;
- the right to bear arms;
- protection against unreasonable searches and seizures;
- rights in criminal and civil cases (e.g., jury trial, self-incrimination); and
- the right to substantive and procedural **due process of law**.

due process of law
Fair treatment through the normal judicial system.

Of the 17 other amendments, two cancelled each other: the Eighteenth, which established Prohibition, and the Twenty-First, which repealed the Eighteenth. Thus, as of this writing, only 15 substantive changes have been made to the basic structure of US government since 1791.

In addition to the US Constitution, each state has its own constitution. A state's constitution is the supreme law of the particular state, but it is subordinate to the federal Constitution. State and federal constitutions

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are similar, although state constitutions are more detailed and cover such matters as the financing of public works and the organization of local governments.

Statutes

Statutes are positive law enacted by a legislative body. Because our federal system is imbricate with national, state, and local jurisdictions, the legislative body may be the US Congress, a state legislature, or a deliberative assembly of local government such as a county or city council (in which case the law is known as an "ordinance"). Enactments by any of these bodies can apply to healthcare organizations. For example, hospitals must comply with federal statutes such as the Civil Rights Act of 1964 and the Hill-Burton Act, which prohibit discrimination at patient admission. Most states and a number of large cities have also enacted antidiscrimination statutes.

Judges face the task of interpreting statutes. Interpretation is especially difficult when the wording of a statute is ambiguous, as it usually is. To clarify statutes, the courts have developed several *rules of construction*, which in some states are themselves the subject of a separate statute. Regardless of their source, the rules are designed to help judges ascertain the intent of the legislature. Common rules of construction include the following:

- Interpretation of a statute's meaning must be consistent with the intent of the legislature.
- Interpretation of a statute's meaning must give effect to all its provisions.
- If a statute's meaning is unclear, its purpose, the result to be attained, legislative history, and the consequences of one interpretation over another must all be considered.

Legal Brief

Read literally, the Bill of Rights applies only to the federal government. However, the Supreme Court has held that most of the rights set forth in those ten amendments also apply to the states because of the Fourteenth Amendment, Section 1 of which reads in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person . . . the equal protection of the laws.

Because the Bill of Rights and the Fourteenth Amendment apply only to the federal and state governments, purely private discrimination is not a constitutional violation. Plaintiffs in civil rights cases, therefore, need to prove that "state action" was a factor. *Simkins v. Moses H. Cone Mem. Hosp.* is an example.[3] Decided in 1963, it involved racial discrimination against African American physicians by two private hospitals. The hospitals justified their actions because of "separate but equal" language in the Hill-Burton Act (a 1946 law that provided federal financial assistance to improve the nation's healthcare facilities). However, a federal appeals court struck down the discriminatory provisions and found that state and federal involvement through Hill-Burton amounted to "state action" and was thus illegal.

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Judicial interpretation, whether it involves constitutions or statutes, is the pulse of the law. A prominent example appears later in this chapter in the discussion of *Erie R. R. Co. v. Tompkins*, a case in which the meaning of a venerable federal statute was at issue. In chapter 12, the section on taxation of real estate discusses numerous cases concerning the meaning of "exclusive use" of a piece of property for charitable purposes. These cases are just a few of the many examples of judicial interpretation that permeate this text. Readers should be alert for others, and try to discern the different philosophies of judicial interpretation that the cases' outcomes represent.

Administrative Law

Administrative law is the type of public law that deals with the rules of government agencies. According to one scholar, "Administrative law . . . determines the organization, powers, and duties of administrative authorities."[4] Administrative law has greater scope and significance than is sometimes realized. In fact, administrative law is the source of much of the substantive law that directly affects the rights and duties of individuals and businesses and their relation to governmental authority (see the discussion of federal healthcare privacy regulations in chapter 9).

The executive branch of government carries out (administers, implements) the law as enacted by the legislature and interpreted by the courts. However, the executive branch also makes law (through administrative regulations) and exercises a considerable amount of quasi-judicial (court-like) power. The term *administrative government* means all departments of the executive branch and all governmental agencies created for specific public purposes.

Administrative agencies exist at all levels of government: local, state, and federal. Well-known federal agencies that affect healthcare are the National Labor Relations Board, Federal Trade Commission, Centers for Medicare & Medicaid Services, and Food and Drug Administration. At the state level, there are boards of professional licensure, Medicaid agencies, workers' compensation commissions, zoning boards, and numerous other agencies whose rules affect healthcare organizations.

Legislative bodies delegate lawmaking and judicial powers to administrative government as necessary to implement statutory requirements; the resulting rules and regulations have the force of law, subject to the provisions of the Constitution and statutes. The Food and Drug Administration, for example, has the power to make rules controlling the manufacturing, marketing, and advertising of foods, drugs, cosmetics, and medical devices. Similarly, state Medicaid agencies make rules governing eligibility for Medicaid benefits and receipt of funds by participating providers.

The amount of delegated legislation increased tremendously during the twentieth century, especially after World War II. The reason for this

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increase is clear: Economic and social conditions inevitably change as societies become more complicated. Legislatures cannot directly provide the detailed rules necessary to govern every particular subject. Delegation of rulemaking authority puts this responsibility in the hands of experts, but the enabling legislation will stipulate the standards to be followed by an administrative agency when it writes the regulations. Such rules must be consistent with their underlying legislation and the Constitution.

Judicial Decisions

The third major source of law is the judicial decision. All legislation, whether federal or state, must be consistent with the US Constitution. The power to legislate is, therefore, limited by constitutional doctrines, and the federal courts have the power to declare an act of Congress or of a state legislature unconstitutional.[5] Judicial decisions are subordinate to the Constitution and to statutes as long as the statutes are constitutional. Despite this subordinate role, however, judicial decisions are the primary domain of private law, and private law—especially the law of contracts and torts—traditionally has had the most influence on healthcare and thus is of particular interest to healthcare administrators.

Common law—judicial decisions based on tradition, custom, and precedent—produced at least two important concepts that endure today: *writ* and *stare decisis*. A writ is a court order directing the recipient to appear before the court or to perform, or cease performing, a certain act.

The doctrine of **stare decisis**—the concept of precedent—requires that courts look to past disputes involving similar facts and principles and determine the outcome of the current case on the basis of the earlier precedents as much as possible. This practice engenders a general stability in the Anglo-American legal system (see Legal Brief).

stare decisis
Latin for "to stand by a decision." It is the principle that a court must respect precedents (decisions of higher courts) in legal decision-making on cases with similar facts.

Consider, for example, the opening sentence of the 1992 abortion decision, *Planned Parenthood of S.E. Pennsylvania v. Casey*. The case involved the question of whether to uphold or overturn the precedent set in *Roe v. Wade*, the landmark abortion decision of 1973. Justice Sandra Day O'Connor's opinion in the *Casey* case sums up stare decisis in nine words: "Liberty finds no refuge in a jurisprudence of doubt" (see The Court Decides at the end of this chapter).

Stare decisis applies downward, but not horizontally. An Ohio trial court, for example, is bound by the decisions of Ohio's Supreme Court and the US Supreme Court but not by the decisions of other Ohio trial courts or out-of-state

Legal Brief

Use of precedent distinguishes common-law jurisdictions from code-based civil law systems, which traditionally rely on comprehensive collections of rules. The civil law system is the basis for the law in Europe, Central and South America, Japan, Quebec, and (because of its French heritage) the state of Louisiana.

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