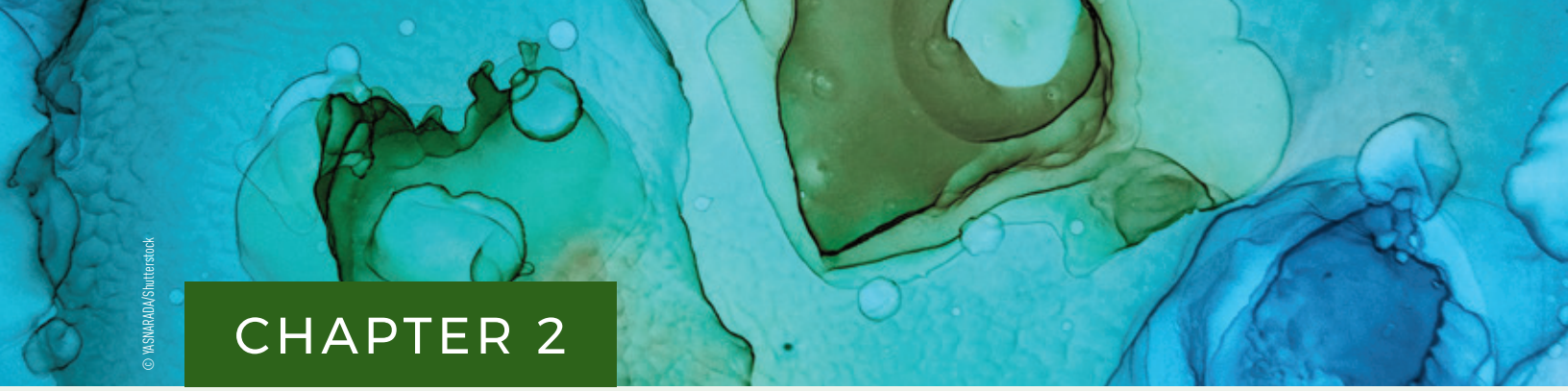


CHAPTER 2

Law and Ethics

OUTLINE

Governmental and Legislative Regulation
The American Legal System
- Sources of Law
- Branches of the Law

The Rise in Medicolegal Cases
Physician–Patient Relationship
- Rights and Responsibilities of the Physician
- Patient's Bill of Rights
- Contracts
- Consent
- Releasing Medical Information
- Legally Required Disclosures

Specific Laws and Statutes That Apply to Health Professionals
- Medical Practice Acts
- Licensure, Certification, and Registration
- Controlled Substances Act
- Good Samaritan Act

Basis of Medical Law
- Tort Law
- Negligence and Malpractice (Unintentional Torts)
- Intentional Torts
- The Litigation Process
- Defenses to Professional Liability Suits

Defense for the Medical Assistant
- Respondeat Superior or Law of Agency

Employment and Safety Laws
- Civil Rights Act of 1964, Title VII
- Occupational Safety and Health Act
- Other Legal Considerations

Medical Ethics
- American Medical Association Principles of Medical Ethics
- Medical Assistant's Role in Ethics
- American Association of Medical Assistants Code of Ethics

Bioethics
- American Medical Association Council on Ethical and Judicial Affairs
- Social Policy Issues
- Obstetric Dilemmas

Professional and Ethical Conduct and Behavior

LEARNING OUTCOMES

Cognitive Domain*

1. Spell and define the key terms
2. Discuss all levels of governmental legislation and regulation as they apply to medical assisting practice, including FDA and DEA
3. *Identify licensure and certification as they apply to health care providers*
4. *Identify the standard outlined in The Patient Care Partnership*
5. *Identify criminal and civil law as they apply to the practicing medical assistant*
6. *Identify the purpose of medical malpractice insurance*
7. List the elements and types of contractual agreements and describe the difference in implied and express contracts
8. List four items that must be included in a contract termination or withdrawal letter
9. List six items that must be included in an informed consent form and explain who may sign consent forms
10. List five legally required disclosures that must be reported to specified authorities
11. Describe the four elements that must be proven in a medicolegal suit

12. Describe four possible defenses against litigation for the medical professional
13. Explain the theory of respondeat superior, or law of agency, and how it applies to the medical assistant
14. Outline the laws regarding employment and safety issues in the medical office
15. *Identify:*
    a. *Genetic Information Nondiscrimination Act of 2008 (GINA)*
    b. *Americans with Disabilities Act Amendments Act (ADAAA)*
16. *Define ethics and morals*
17. *Identify personal and professional ethics*
18. Differentiate between legal, ethical, and moral issues affecting health care
19. *Define:*
    a. *Negligence*
    b. *Malpractice*
    c. *Statute of limitations*
    d. *Good Samaritan Act*
    e. *Uniform Anatomical Gift Act*
    f. *Living will/advanced directives*
    g. *Medical durable power of attorney*
    h. *Patient Self-Determination Act (PSDA)*
20. *Identify compliance with public health statutes related to:*
    a. *Communicable diseases*
    b. *Abuse, neglect, and exploitation*
    c. *Wounds of violence*
21. *Define the following medical legal terms:*
    a. *Informed consent*
    b. *Implied consent*
    c. *Expressed consent*
    d. *Patient incompetence*
    e. *Emancipated minor*
    f. *Mature minor*
    g. *Subpoena duces tecum*
    h. *Respondeat superior*
    i. *Res ipsa loquitor*
    j. *Locum tenens*
    k. *Defendant-plaintiff*
    l. *Deposition*
    m. *Arbitration-mediation*
22. List the nine American Medical Association principles of ethics
23. List the five ethical principles of ethical and moral conduct outlined by the American Association of Medical Assistants
24. *Identify the role of the medical assistant as the patient navigator*
25. Describe the implications of HIPAA for the medical assistant in various medical settings

Psychomotor Domain*

1. Monitor federal and state health care legislation (Procedure 2-1)
2. *Apply HIPAA rules in regard to:*
    a. *Privacy (Procedure 2-2)*
3. Apply local, state, and federal health care legislation and regulations appropriate to the medical assisting practice setting (Procedure 2-3)
4. *Complete compliance reporting based on public health statutes (Procedure 2-4)*
5. *Report an illegal activity following the protocol established by the healthcare setting (Procedure 2-5)*

Affective Domain*

1. Demonstrate sensitivity to patient rights
2. Recognize the importance of local, state, and federal legislation and regulations in the practice setting
3. Protect the integrity of the medical record

MAERB Standards are italicized.

ABHES Competencies

1. Comply with federal, state, and local health laws and regulations as they relate to health care settings
2. Institute federal and state guidelines when releasing medical records or information
3. Follow established policies when initiating or terminating medical treatment
4. Distinguish between employer and personal liability coverage
5. Display compliance with the Code of Ethics of the profession
6. Demonstrate compliance with HIPAA guidelines and the ADA Amendments Act
7. Demonstrate an understanding of the core competencies for interprofessional collaborative practice (i.e., values/ethics; roles/responsibilities; interprofessional communication; and teamwork)

KEY TERMS

abandonment
advance directive
Americans with Disabilities Act Amendments Act (ADAAA)
appeal
assault
battery
bench trial
bioethics
blood-borne pathogens
breach
certification
civil laws
common law
comparative negligence
confidentiality
consent
contract
contributory negligence
damages
defamation of character
defendant
deposition
durable power of attorney
duress
emancipated minor
ethics
expert witness
express consent
express contracts
fee splitting
fraud
Genetic Information Nondiscrimination Act (GINA)
implied consent
implied contracts

informed consent
intentional tort
legally required disclosure
libel
licensure
litigation
locum tenens
malfeasance
malpractice
mature minors
misfeasance
negligence
nonfeasance
Patient Care Partnership
patient navigators
Patient Self-Determination Act (PSDA)
plaintiff
precedents
protocols
registered
res ipsa loquitur
res judicata
respondeat superior
slander
stare decisis
statute of limitations
subpoena
subpoena duces tecum
tort

During your career as a medical assistant, you will be involved in many medical situations with potential legal implications. You must uphold ethical standards to ensure the patient's well-being. Ethics deals with individual values and the concept of right and wrong. Laws are written to carry out these concepts. Physicians may be sued for a variety of reasons, including significant clinical errors (e.g., removing the wrong limb, ordering a toxic dose of medication), claims of improperly touching a patient without consent, or failure to properly diagnose or treat a disease. Medicare **fraud** (either knowingly or unknowingly concealing the truth) and falsifying medical records can also result in a lawsuit. Medical assistants and other health care workers are included in many of the suits brought to court. You may help to prevent many of these claims against your physician and protect yourself by complying with medical laws, keeping abreast of medical trends, and acting in an ethical manner by maintaining a high level of professionalism at all times.

Governmental and Legislative Regulation

There are many local, state, and federal laws that regulate health care in America, so it is essential to understand the components of our government. The U.S. constitution provides for three branches of the federal government. The executive branch is headed by the President of the United States. The legislative branch comprises the Senate and the House of Representatives and is made up of representatives from each state who are elected by U.S. citizens. This branch of government passes laws known as statutes through a series of steps beginning with an introduction of a bill in Congress to its evolvement to an act. After an act is passed by congress, it becomes a statute when signed and approved by the President. The judicial branch is the court system, which includes the U.S. Supreme Court, courts of appeals, and district courts. This branch of the government provides for laws known as case (or common) laws that are

Case Study

As Derrick Moore, RMA, was gathering information for an established patient's visit at Great Falls Health System, he noted that the female patient had a large bruise on her cheek and appeared to be very anxious. Derrick also noted that there were several small cuts on the backs of her hands. The patient stated that her visit today was for birth control pills. When asked about the bruise on her face, she commented that she was "clumsy" and "fell into a wall yesterday." Later, she further confides in Derrick that she is having marital problems but said she is working on them with her husband. Should Derrick note any of this information in the patient's medical record or just mention the reason for the patient's visit today? If information is documented about the noted injuries, what should be included? What is considered intimate partner abuse, and is anyone in the practice responsible for reporting suspected abuse? If so, when and who would be contacted, and would you need signed authorization from the patient to release this information?

As health care workers, patients trust us to help them during their most vulnerable times, and we must be their advocates in many situations. This chapter covers the medicolegal responsibilities of working in health care and the significance of laws and regulations in the health care environment.

determined by the interpretation of judges on decisions made in previous cases (see "Sources of Law").

The federal government also establishes executive departments to regulate such areas as agriculture, commerce, defense, education, energy, transportation, homeland security, labor, etc. The executive department that regulates health care is the Department of Health and Human Services (DHHS). Within the DHHS is the Food and Drug Administration (FDA). The FDA regulates the manufacture and distribution of drugs, including drug quality and safety. The Drug Enforcement Agency (DEA) is a branch of the Department of Justice (DOJ) and regulates the sale and use of drugs. Providers who prescribe and/or dispense drugs are required to register with the DEA and are assigned a DEA number.

Of course, each state also has a government hierarchy that is similar to the federal government's legislative, judicial, and executive branches, with the state governor as the head and state legislators that are elected by its citizens. Each state has laws and regulations that must be followed as well, so it is important to understand both the federal and the state laws that govern your actions as a medical assistant. The various federal and state regulations associated with the practice of medical assisting are discussed throughout this text.

The American Legal System

Our legal system is in place to ensure the rights of all citizens, and we depend on the legal system to protect us from the wrongdoings of others. Many potential medical suits prove to be unwarranted and never make it into the court system, but even in the best physician–patient relationships, **litigation** (lawsuits) between patients and physicians may occur. It is essential that you have a basic understanding of the American legal system to protect yourself, your patients, and your physician–employer by following the legal guidelines. You must know your legal duties and understand the legal nature of the physician–patient relationship and your role and responsibilities as the physician's agent.

Sources of Law

Laws are rules of conduct that are enforced by appointed authorities. The foundation of our legal system is our rights outlined in the Constitution and the laws established by our Founding Fathers. These traditional laws are known as **common law**.

Common law is based on the theory of **stare decisis**. This term means "the previous decision stands." Judges usually follow these **precedents** (previous court decisions) but sometimes overrule a previous decision, establishing new precedent.

Statutory laws are passed through legislation that is introduced as a "bill" and goes through a series of steps to become a law. Federal, state, or local legislators make laws or statutes, the police enforce them, and the court system interprets and administers justice. Administrative laws are created by executive departments, or governmental agencies as authorized by legislature, and are called regulations. Regulations pertaining to Medicare, Medicaid, and the FDA are common examples of rules that must be followed in the medical profession.

Branches of the Law

The two main branches that categorize laws are public laws and private or **civil laws**.

Public Law

Public law is the branch of law that focuses on issues between the government and its citizens. It can be divided into four subgroups:

1. Criminal law is concerned with issues of citizen welfare and safety. Examples include arson, burglary, murder, and rape. A medical assistant must stay within the boundaries of the profession. Treating patients without the physician's orders could result in a charge of practicing medicine without a license—an act covered under criminal law.
2. Constitutional law is commonly called the law of the land. The U.S. government has a Constitution, and each state has a constitution with its own laws and regulations. State laws may be more restrictive than federal laws, but they may not be more lenient. Two examples of constitutional law are laws on abortion and civil rights.
3. Administrative law is the regulations set forth by governmental agencies. This category includes laws pertaining to, among others, the FDA, the Internal Revenue Service, and the Board of Medical Examiners.
4. International law pertains to treaties between countries. Related issues include trade agreements, extradition, boundaries, and international waters.

Private or Civil Law

Private or civil law is the branch of the law that focuses on issues between private citizens. The medical profession is primarily concerned with private law. The subcategories that pertain to the medical profession are contract, commercial, and tort law. Contract and commercial laws concern the rights and obligations of those who enter into contracts, as in a physician–patient relationship. **Tort** law governs the righting of wrongs or injuries suffered by someone because of another person's wrongdoing or misdeeds resulting from a **breach** of legal duty. Tort law is the basis of most lawsuits against physicians and health care workers and does not require that the action resulting in the lawsuit be intentional. Other civil law branches include property, inheritance, and corporation law.

CHECKPOINT QUESTION

1. Which branch of law covers a medical assistant charged with practicing medicine without a license?

The Rise in Medicolegal Cases

Malpractice refers to an action by a professional health care worker that harms a patient. A rise in the amounts of settlement awards has had a negative impact on the cost and coverage of malpractice insurance. With this rise, some physicians have changed the scope of their practice to reduce their costs. For example, an obstetrician may choose to limit practice to the care of nonpregnant women to avoid the high cost of malpractice insurance for physicians who deliver babies. In an attempt to protect professionals, legislation designed to limit the amount a jury can award has been introduced in Congress. Legal issues involving the medical field are referred to as medicolegal issues, which combines the words *medical* and *legal*.

A government task force found four primary reasons for the rise in malpractice claims:

1. *Scientific advances*. As new and improved medical technology becomes available, the risks and potential for complications of these procedures escalate, making physicians more vulnerable to litigation.
2. *Unrealistic expectations*. Some patients expect miracle cures and file lawsuits because recovery was not as they hoped or expected, even if the physician is not at fault.
3. *Economic factors*. Some patients view lawsuits as a means to obtain quick cash. (In fact, the number of lawsuits filed increased during economic recessions.)
4. *Poor communication*. Studies show that when patients do not feel a bond with their physician, they are more likely to sue. Attention to customer service helps develop a good rapport among the patients, the provider, and the staff.

Physician–Patient Relationship

Rights and Responsibilities of the Physician

In any contractual relationship, both parties have certain rights and responsibilities. Physicians have the right to limit their practice to a certain specialty or a certain location. For example, patients may not expect a physician to treat them at home. Physicians also have the right to refuse service to new patients or existing patients with new problems unless they are on emergency room call, in which case they must continue to treat patients seen during this time. The subject of abandonment is discussed later. Doctors have the right to change their policies or availability as long as they give patients reasonable notice of the change. This can be done through a local newspaper advertisement and/or a letter to each patient. **Box 2-1** lists the physician's responsibilities, along with those of the patient.

Patient's Bill of Rights

In 1998, the U.S. Advisory Commission on Consumer Protection and Quality in the Health Care Industry adopted the Consumer Bill of Rights and Responsibilities, also known as the Patient's Bill of Rights. This Bill of Rights was based on the American Hospital Association's (AHA) Bill of Rights created in 1973. Although attempts to enact a federal law was never passed, many health care systems used the Patient Bill of Rights as a guideline for providing quality health care to meet the needs of patients. In 2003, the AHA replaced the Bill of Rights with the "Patient Care Partnership: Understanding Expectations, Rights, and Responsibilities" to encourage a partnership between patients and their health care

Box 2-1 Responsibilities of the Patient and the Physician

Responsibilities of the Patient

- Provide the physician with accurate data about the duration and nature of symptoms.
- Provide a complete and accurate medical history to the physician.
- Follow the physician's instructions for diet, exercise, medications, and appointments.
- Compensate the physician for services rendered.

Responsibilities of the Physician

- Respect the patient's confidential information.
- Provide reasonable skill, experience, and knowledge in treating the patient.
- Continue treating the patient until the contract has been withdrawn or as long as the condition requires treatment.
- Inform patients of their condition, treatments, and prognosis.
- Give complete and accurate information.
- Provide competent coverage during time away from practice.
- Obtain informed consent before performing procedures (informed consent is a statement of approval from the patient for the physician to perform a given procedure after the patient has been educated about the risks and benefits of the procedure).
- Caution against unneeded or undesirable treatment or surgery.

providers. Legislation was subsequently passed with the Patient Protection and Affordable Care Act (ACA) in 2010 to create new patient rights that primarily involve matters dealing with insurance companies. The **Patient Care Partnership** encourages increased patient awareness of their rights and responsibilities as well as participation in their own health care decisions. The primary goals of the Patient Care Partnership are as follows:

1. To help patients feel more confident in the U.S. health care system
2. To stress the importance of a strong relationship between patients and their health care providers
3. To stress the key role patients play in staying healthy by laying out rights and responsibilities for all patients and health care providers

The rights of the patient include the ability to choose a physician; however, this right may be limited to a list of participating providers under a patient's insurance plan. Patients have the right to determine whether to begin medical treatment and to set limits on that treatment, including the right to know in advance what the treatment will consist of as well as the benefits and risks. The concept of informed consent is discussed later in the chapter. Patients have the right to privacy. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) outlines specific policies for protecting the privacy of electronic submissions of medical information. **Box 2-2** outlines the original AHA Patient's Bill of Rights, which are still relevant in today's health care environment, so it is important that you keep these rights in mind in each of your patient and physician encounters. Policies and procedures must incorporate these rights as well. HIPAA is discussed at length in Chapter 8.

Some of the additional rights resulting from the ACA include requirements for insurance coverage for certain preventive screenings without charge to the patient, permitting young adults to stay on a parent's policy until 26 years of age if certain requirements are met, and banning lifetime limits on most new plan benefits. These are discussed in Chapter 13.

Contracts

A **contract** is an agreement between two or more parties with certain factors agreed on among all parties. The physician–patient relationship constitutes a contractual arrangement in which the patient seeks the expertise and care of a physician and the physician agrees to treat or determine the best course of action for the patient. All contractual agreements have three components:

1. Offer (contract initiation)
2. Acceptance (both parties agree to the terms)
3. Consideration (the exchange of fees for service)

A contract is not valid unless all three elements are present. A contract offer is made when a patient calls the office to request an appointment. The offer is accepted when you make an appointment for the patient. You have formed a contract that implies that for a fee, the physician will do all in their power to address your health concerns.

Certain individuals, such as children and those who are mentally incompetent or temporarily incapacitated, are not legally able to enter contracts. Patients in this category do not have the capacity to enter into a contract, and therefore decisions about health care should be made by a competent party

Box 2-2 Patient's Bill of Rights

The bill covers eight key areas:

1. Information
   You have the right to accurate and easily understood information about your health plan, health care professionals, and health care facilities. If you speak another language, have a physical or mental disability, or just do not understand something, help should be given so that you can make informed health care decisions.
2. Choice of Providers and Plans
   You have the right to choose health care providers who can give you high-quality health care when you need it.
3. Access to Emergency Services
   If you have severe pain, an injury, or a sudden illness that makes you believe that your health is in danger, you have the right to be screened and stabilized using emergency services. You should be able to use these services whenever and wherever you need them, without needing to wait for authorization and without any financial penalty.
4. Taking Part in Treatment Decisions
   You have the right to know your treatment options and to take part in decisions about your care. Parents, guardians, family members, or others who you choose can speak for you if you cannot make your own decisions.
5. Respect and Nondiscrimination
   You have a right to considerate, respectful care from your doctors, health plan representatives, and other health care providers that does not discriminate against you.
6. Confidentiality of Private Health Information
   You have the right to talk privately with health care providers and to have your health care information protected. You also have the right to read and copy your own medical record. You have the right to ask that your doctor change your record if it is not correct, relevant, or complete.
7. Complaints and Appeals
   In a health care system that protects consumer or patients' rights, patients should expect to take on some responsibilities to get well and/or stay well (for instance, exercising and not using tobacco). Patients are expected to do things like treat health care workers and other patients with respect, pay their medical bills, and follow the rules and benefits of their health plan coverage. You have the right to a fair, fast, and objective review of any complaint you have against your health plan, doctors, hospitals, or other health care personnel. This includes complaints about waiting times, operating hours, the actions of health care personnel, and the adequacy of health care facilities.
8. Consumer Responsibilities
   Having patients involved in their care increases the chance of the best possible outcomes and helps support a high-quality, cost-conscious health care system.

This Bill of Rights also applies to the insurance plans offered to federal employees. Many other health insurance plans and facilities have also adopted these values. Even Medicare and Medicaid stand by many of them.

Reproduced from Centers for Medicare & Medicaid Services. 2010. Patient's Bill of Rights. https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Patients-Bill-of-Rights

acting as a health care decision maker for the minor or incompetent person.

The two types of contracts between physicians and patients are implied and express.

Implied Contracts

Implied contracts, the most common kind of contract between physicians and patients, are not written but are assumed by the actions of the parties. For example, a patient calls the office and requests to see Dr. Smith for an earache. The patient arrives for the appointment, is seen by the physician, and receives a prescription. It is *implied* that because the patient came on his own and requested care, he wants this physician to care for him. The physician's action of accepting the patient for care *implies* that she acknowledges responsibility for her part of the contract. The patient *implies* by accepting the services that he will render payment even if the price was not discussed.

Express Contracts

Express contracts, either written or oral, consist of specified details. A mutual sharing of responsibilities is always stated in an express contract. The agreement you have with your creditors is an express contract. These kinds of contracts are not used as often in the medical setting as implied contracts.

CHECKPOINT QUESTION

2. What action should be taken when a physician makes a change in their services?

PATIENT EDUCATION

Legally Required Disclosures

Inform patients who have conditions that require legal disclosure about the applicable law. Assure them that you will protect their confidentiality, if possible, but educate them about why the disclosure is necessary, who receives the information, what forms will be completed, and any anticipated follow-up from the organization. For example, you are required to give the local health department the name, address, and condition of a patient with a sexually transmitted disease. The health department then contacts the patient to acquire the names of the patient's sexual contacts. These contacts are notified and counseled by the health department official. Patients who are educated about these legally required disclosures will better understand and accept the need to file official reports.

Termination or Withdrawal of the Contract

A contract is ideally resolved when the patient is satisfactorily treated for the illness and the physician has been paid for the services. The patient may end the contract at any time, but physicians are obligated to assist with continuity of care for patients when termination of the physician–patient relationship is necessary. Specific legal **protocols** must be followed to dissolve the contract if the patient still seeks treatment but the physician wishes to end the relationship.

Patient-Initiated Termination. A patient who chooses to terminate the relationship should notify the physician and give the reasons. You must keep this letter in the medical record. After the receipt of this letter, the physician should then send a letter to the patient stating the following:

- The physician accepts the termination.
- Medical records are available on written request.
- Medical referrals are available if needed.

If the patient verbally asks to end this relationship, the physician should send a letter to the patient documenting the conversation and, again, offering referrals and access to the medical records. Clear documentation is essential.

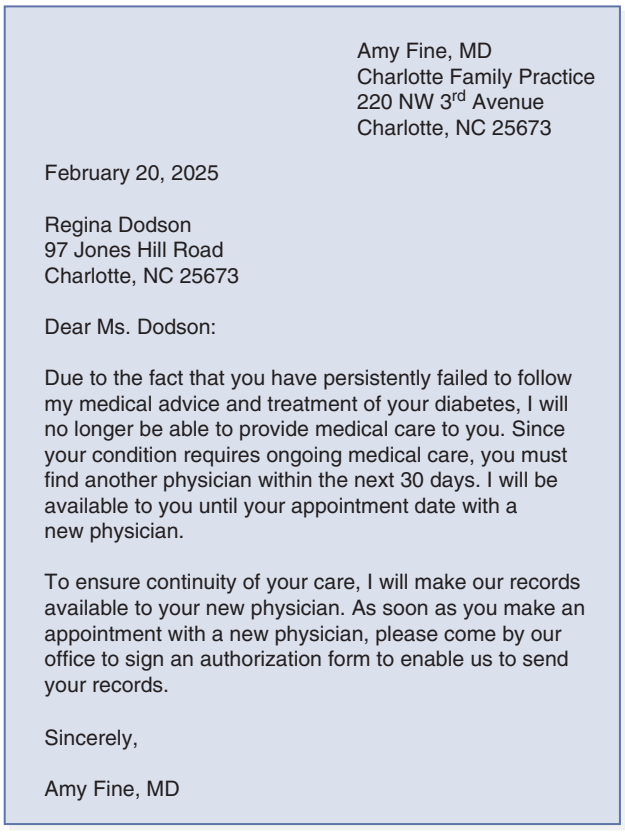
Physician-Initiated Termination. The physician may find it necessary to end the relationship. A physician may terminate the contract if the patient is noncompliant with treatment, does not keep appointments, has a delinquent account balance, or if the physician can no longer meet the needs or expectations of the patient. The physician must send a letter of withdrawal that includes the following:

- A statement of intent to terminate the relationship
- The reasons for this action
- The termination date at least 30 days from the date of receipt of the letter
- A statement that the medical records will be transferred to another physician at the patient's request
- A strong recommendation that the patient seek additional medical care as warranted

The letter must be sent by certified mail with a return receipt requested. A copy of the termination letter and the return receipt are placed in the patient's record. **Figure 2-1** shows a sample letter of intent to terminate a physician–patient relationship.

Abandonment

Once a patient has established a relationship with the physician, the physician is contractually obligated to care for the patient until treatment is no longer needed or the patient meets one of the conditions necessary for termination of the relationship as



Amy Fine, MD
Charlotte Family Practice
220 NW 3rd Avenue
Charlotte, NC 25673

February 20, 2025

Regina Dodson
97 Jones Hill Road
Charlotte, NC 25673

Dear Ms. Dodson:

Due to the fact that you have persistently failed to follow my medical advice and treatment of your diabetes, I will no longer be able to provide medical care to you. Since your condition requires ongoing medical care, you must find another physician within the next 30 days. I will be available to you until your appointment date with a new physician.

To ensure continuity of your care, I will make our records available to your new physician. As soon as you make an appointment with a new physician, please come by our office to sign an authorization form to enable us to send your records.

Sincerely,

Amy Fine, MD

Figure 2-1 Letter of intent to terminate a physician–patient relationship.

mentioned previously. If a contract is not properly terminated, the physician can be sued for a type of medical malpractice known as **abandonment**. Abandonment may be charged if the physician withdraws from the contractual relationship without proper notification while the patient still needs treatment. Physicians must always arrange coverage when absent from the office for vacations, conferences, and so on. Patients may sue for abandonment in any instance that a suitable substitute is not available for care. Coverage may be provided by a **locum tenens**, a substitute physician.

Other examples of abandonment include the following:

- The physician abruptly and without reasonable notice stops treating a patient whose condition requires additional or continued care.
- The physician fails to see a patient as often as the condition requires or incorrectly advises the patient that further treatment is not needed.

CHECKPOINT QUESTION

3. What five elements must be included in a physician's termination intent letter?

Consent

The law requires that patients must **consent** or agree to being touched, examined, or treated by the physician or agents of the physician involved in the contractual agreement. No treatment may be made without a consent given orally, nonverbally by behavior, or clearly in writing. Patients have the right to appoint a health care surrogate or health care power of attorney who may make health care decisions when the patient is unable to do so. A health care surrogate may be a spouse, a friend or other family member, a pastor, or an attorney. A **durable power of attorney** for health care gives the patient's representative the ability to make health care decisions as the health care surrogate. A patient's physician should be aware of the power of attorney agreement, and a copy of the legal documentation should be kept in the office medical record.

Implied Consent

In the typical visit to the physician's office, the patient's actions represent an informal agreement for care to be given. A patient who raises a sleeve to receive an injection implies agreement to the treatment. **Implied consent** also occurs in an emergency. If a patient is in a life-threatening situation and is unable to give verbal permission for treatment, it is implied that the patient would consent to treatment if possible. As soon as possible, informed consent should be signed by either the patient or a family member in this type of situation. When there is no emergency, implied consent should be used only if the procedure poses no significant risk to the patient.

Informed or Express Consent

The physician is responsible for obtaining the patient's **informed consent** whenever the treatment involves an invasive procedure such as surgery, use of experimental drugs, potentially dangerous procedures such as stress tests, or any treatment that poses a significant risk to the patient. A federal law discussed later requires that health care providers who administer certain vaccines give the patient a current Vaccine Information Statement (VIS). A VIS provides a standardized way to give objective information about vaccine benefits and adverse events (side effects) to patients. The VIS is available online through the Centers for Disease Control and Prevention (CDC) in 26 languages. The internet address can be found at the end of the chapter.

Informed consent is also referred to as **express consent**. Informed consent is based on the patient's right to know every possible benefit, risk, or alternative to the suggested treatment and the possible outcome if no treatment is initiated. The patient must voluntarily give permission and must understand the implications of consenting to the treatment. This requires that the physician and patient communicate in a manner understandable to the patient. Patients can be more active in personal health care decisions when they are educated about and understand their treatment and care.

A consent form must include the following information:

1. Name of the procedure to be performed
2. Name of the physician who will perform the procedure
3. Name of the person administering the anesthesia (if applicable)
4. Any potential risks from the procedure
5. Anticipated result or benefit from the procedure
6. Alternatives to the procedure and their risks
7. Probable effect on the patient's condition if the procedure is not performed
8. Any exclusions that the patient requests

I hereby authorize Dr. _____ , and such assistants as may be designated, to perform:

_____
(Name of treatment/procedure)

and any other related procedures or forms of treatment, including appropriate anesthesia, transfusions that they deem necessary for the welfare of:

_____
(Name of patient)

I consent to the administration of anesthesia and/or such drugs as may be necessary. I understand that all anesthetics involve risks of complications, serious injury, or rarely death from both known and unknown causes.

I consent to the examination and retention for educational, scientific, and research purposes by the medical staff of

_____

of all body fluids, tissues, and organs removed during the course of the above treatment/procedure with privilege of ultimate use and disposal resting with said medical staff.

The following has been explained to me and I understand:

A. The nature and character of the proposed treatment/procedure.
B. The anticipated results of the proposed treatment/procedure.
C. The recognized alternative forms of treatment/procedure.
D. The recognized serious possible risks and complications of treatment/procedure and of the recognized alternative forms of treatment/procedure, including nontreatment.
E. The possible consequences of no treatment.
F. The anticipated date and time of the proposed treatment/procedure.

Additional MD comments: _____

My physician has offered to answer all inquiries concerning the proposed treatment/procedure. I understand that I am free to withhold or withdraw consent to the proposed treatment/procedure at any time.

Witness		Signature of Person Giving Consent
Date Signed	Time ❑ A.M. ❑ P.M.	Relationship to Patient (if applicable)

❑ Please check if this is a telephone monitored consent.
No treatment will be performed until this consent has been executed. This consent will be permanently filed in the patient's medical record.

Pt. No. _____ Name _____ D.O.B. _____	**Gastroenterology Associates** Anytown, PA _____ **Special Consent to Treatment** (Diagnostic & Surgical Procedures, Anesthesia, Medical Treatment, & Other Procedures)

Figure 2-2 Sample consent form.

9. Statement indicating that all the patient's questions or concerns regarding the procedure have been answered
10. Patient's and witnesses' signatures and the date

As the medical assistant, you will frequently be required to witness consent signatures. A sample consent form is seen in **Figure 2-2**.

The informed consent form supplied for the patient's signature must be in the language that the patient speaks. Most physicians who treat multicultural patients have consent forms available in a variety of languages. Never ask a patient to sign a consent form if they meet one of the following conditions:

- Do not understand the procedure
- Have unanswered questions regarding the procedure
- Are unable to read the consent form

Never coerce (force or compel against their wishes) a patient into signing a consent form. **Figure 2-3** shows a certified medical assistant (CMA) obtaining consent from a hearing-impaired patient. The signing interpreter is assisting. Every patient has the right to be informed, and the medical assistant must be sure the patient understands. The steps to obtain an informed consent are described in **Procedure 2-1**.

Figure 2-3 Using an interpreter, the CMA helps this patient understand the procedure.

Who May Sign a Consent Form. An adult (usually someone older than 18 years) who is mentally competent and not under the influence of medication or other substances may sign a consent form. Depending on state law, a minor may sign a consent form under the following circumstances:

- They are in the armed services.
- They are requesting treatment for communicable diseases (including sexually transmitted diseases).
- They are pregnant.
- They are requesting information regarding birth control, abortion, or drug or alcohol abuse counseling.
- They are emancipated.

An **emancipated minor** is under the age of majority but is either married or self-supporting and is responsible for their own debts. The age of majority varies from state to state and ranges from 18 to 21 years. **Mature minors** are adolescents, usually older than 14 years of age, who demonstrate signs of maturity. While not legally emancipated, mature minors may give consent for medical treatment if any one of the above-listed criteria is present, depending on state laws.

Legal guardians may also sign consent forms. A legal guardian is appointed by a judge when the court has ruled an individual to be mentally incompetent. Health care surrogates may also sign consent forms. Health care surrogates are discussed later in the chapter.

CHECKPOINT QUESTION

4. Under what circumstances should a patient never be asked to sign a consent form?

Refusal of Consent

Patients may refuse treatment for any reason. Sometimes patients make treatment choices based on religious or personal beliefs and preferences. For instance, a Jehovah's Witness may refuse a blood transfusion on religious grounds, or an elderly person may not want to undergo serious surgery because the potential complications may limit future lifestyle options. In this situation, the patient must sign a refusal of consent form indicating that the patient was instructed regarding the potential risks and benefits of the procedure as well as the risks if the procedure is not allowed. If the patient is a minor, the courts may become involved at the request of the physician or hospital and may award consent for the child. In this situation, the physician should follow legal counsel and document the incident carefully. In any instance that the patient refuses treatment, it should be documented in the patient's medical record to protect the physician. The physician has a legal right to refuse to perform elective surgery on a patient who declines to receive blood if needed.

Releasing Medical Information

The medical record is a legal document. Although the medical record itself belongs to the physician, the information belongs to the patient. Patients have a right to their medical information, and they have the right to deny the sharing of this information.

Requests for medical records are common. Other health care facilities, insurance companies, and patients themselves may need information from the medical chart. **Procedure 2-2** outlines the steps for creating an office policy to protect patient information. Staying within the law when releasing medical information is covered in Chapter 8.

Legally Required Disclosures

Even though patients have the right to limit access to their medical records, health care facilities have a responsibility to report certain events to governmental agencies without the patient's consent, which is referred to as a **legally required disclosure**. You and other health care providers must report to the department of public health the situations described in the following sections.

Vital Statistics

All states maintain records of births, deaths, marriages, and divorces. These records include the following:

- Birth certificates
- Stillbirth reports. Some states have separate stillbirth forms; other states use a regular death certificate.
- Death certificates. These must be signed by a physician. The cause and time of death must be included.

You may assist the physician in completing a death certificate and filing the finished report in the patient's chart.

Medical Examiner's Reports

Each state has laws pertaining to which deaths must be reported to the medical examiner's office. Generally, these include the following:

- Death from an unknown cause
- Death from a suspected criminal or violent act
- Death of a person not attended by a physician at the time of death or for a reasonable period preceding the death
- Death within 24 hours of hospital admission

Infectious or Communicable Diseases

These reports are made to the local health department. The information is used for statistical purposes and for preventing or tracking the spread of these diseases. Although state guidelines vary, there are usually three categories of reports:

- Telephone reports are required for diphtheria, cholera, meningococcal meningitis, and plague, usually within 24 hours of the diagnosis. Telephone reports must always be followed by written reports, and forms are located on the health department's website for each state.
- Written reports are required for hepatitis, leprosy, malaria, rubeola, polio, rheumatic fever, tetanus, and tuberculosis. Sexually transmitted diseases must also be reported. Notification is usually required within 7 days of the date of discovery.
- Trend reports are made when your office notes an unusually high occurrence of influenza,

Box 2-3 Reportable Conditions

Ohio Revised Code Rule 3701-3—Communicable Diseases
Subchapter 3701-3-02—Diseases to be reported
The diseases listed in this rule are declared to be dangerous to the public health and are reportable.
(3701-3-02 A) Due to the severity of disease or the potential for epidemic spread—report immediately via telephone upon recognition that a case, suspected case, or a positive laboratory result exists:

- anthrax
- botulism—immediately
- cholera
- measles
- smallpox

(3701-3-03) Due to the potential for epidemic spread, diseases of significant public health concern—report by the end of the next business day after the existence of a case, a suspected case, or a positive laboratory result is known:

- brucellosis
- *Campylobacter* infection
- chancroid
- chlamydial infection
- diphtheria
- *Escherichia coli* infection
- gonorrhea

(3701-3-05) This rule applies to an outbreak, unusual incidence, or epidemic of other infectious diseases—report by the end of the next business day:

- food-borne
- health care–associated
- zoonotic

streptococcal infections, or any other infectious diseases. **Box 2-3** provides a sample of reportable diseases and their time frames.

The CDC keeps a watchful eye on the public health. When necessary, the CDC establishes directives for the protection of the public, as was the case for the coronavirus disease 2019 (COVID-19) pandemic in 2020. Guidelines such as the use of masks and social distancing were issued by the CDC to reduce the number of cases and deaths associated with COVID-19. In 2001, the CDC mandated that documented anthrax cases be reported immediately when the public appeared to be at risk for contracting anthrax. Online reporting, fax machines, and emails help facilitate such urgent public health communication. **Procedure 2-3** describes the process for keeping abreast of healthcare regulations and **Procedure 2-4** lists the steps to reporting an infectious disease.

National Childhood Vaccine Injury Act of 1986

The National Childhood Vaccine Injury Act (NCVIA) was signed into law in 1986 as a result of increased concern by patients for vaccine safety. Several lawsuits against vaccine manufacturers were filed by individuals who believed they had been injured after receiving a vaccine and damages were awarded without sufficient evidence supporting the relationship of the injuries to the vaccines. Several manufacturers ceased production of vaccines, resulting in a vaccine shortage and an increased risk of the return of certain diseases within the United States.

The NCVIA requires that health care providers who administer certain vaccines and toxoids must report to the DHHS the occurrence of any side effects listed in the manufacturer's package insert. In addition, health care providers must give a CDC VIS to patients that describes the disease and the benefits and risks in receiving the vaccine. This law further requires providers to document in the patient's medical record that the VIS was given, the official date on the VIS, and the following information:

1. Date the vaccine was administered
2. Lot number and manufacturer of vaccine
3. Any adverse reactions to the vaccine
4. Name, title, and address of the person who administered the vaccine

Box 2-4 lists the vaccines and toxoids covered by the NCVIA.

Abuse, Neglect, or Maltreatment

Abuse, neglect, or maltreatment of any person who is incapable of self-protection is usually considered reportable and may include the elderly or the mentally incompetent. Each state has its own regulations regarding what must be reported. Patient confidentiality rights are waived when the law requires you to report certain conditions.

Abuse is thought to be the second most common cause of death in children younger than 5 years. The federal Child Abuse Prevention and Treatment Act mandates that threats to a child's physical and mental welfare be reported. Health care workers, teachers, and social workers who report suspected abuse are not identified to the parents and are protected against liability. State laws vary regarding the procedure for reporting abuse. Local regulations should be outlined in the policies and procedures manuals at any outpatient facility. If you suspect a child is being abused, relay your suspicions to the physician. The physician

Box 2-4 Vaccinations Requiring Vaccine Information Statements

Anthrax
Chickenpox
Diphtheria, tetanus, and pertussis
Haemophilus influenzae type b (Hib)
Hepatitis A
Hepatitis B
Influenza
Lyme disease
Measles, mumps, and rubella
Meningococcal
Pneumococcal polysaccharide
Pneumococcal conjugate
Polio
Lymphogranuloma venereum—7 days
Malaria—7 days
Measles (rubeola)—24 hours
Meningitis, pneumococcal—7 days
Meningitis, viral (aseptic)—7 days
Meningococcal disease—24 hours
Mucocutaneous lymph node syndrome (Kawasaki syndrome)—7 days
Mumps—7 days

Data from North Carolina Administrative Code Regarding Reporting of Communicable Disease. https://casetext.com/regulation/north-carolina-administrative-code/title-10a-department-of-health-and-human-services/chapter-41-epidemiology-health/subchapter-a-communicable-disease-control/section-41a-0101-reportable-diseases-and-conditions

will make the formal report. When authorities receive a report from a health care provider, they follow up by investigating the situation. For assistance in reporting suspected child abuse, you may call the national 24-hour hotline at 800-4-A-CHILD (800-422-4453).

Domestic violence is a significant problem in this country. Data from the CDC on intimate partner violence (IPV) show that the majority of victims are women, and often many women and children are trapped in a cycle of abuse. Mothers who are financially dependent on their abusers may see no way out. You should record any information gathered in the patient interview or anything observed in the course of dealing with the patient that may indicate abuse. Report these observations to the physician. Most communities have anonymous safe places for victims of domestic abuse, and you should be familiar with these services. With proper referrals, you may be able to help break the cycle of domestic abuse.

This country is also undergoing a rise in elderly parents being cared for by their adult children, who may also have the responsibility of raising young children. This phenomenon can cause great stress among caregivers. Abuse of the elderly can be in the form of mistreatment (physical, emotional, or financial) or neglect (not providing appropriate care). You should pay attention to observations and information provided by your elderly patients. If mistreatment is suspected, alert the physician. Each state has Adult Protective Services laws to ensure the well-being of the elderly population and local numbers to contact caseworkers when necessary. Support groups for those caring for the elderly are useful in dealing with the challenges of caring for others.

Violent Injuries

Health care providers have the legal duty to report suspected criminal acts. Injuries resulting from weapons, assault, attempted suicide, and rape must be reported to local authorities. **Procedure 2-5** outlines the procedure for reporting an illegal activity.

Other Reports

A diagnosis of cancer must be reported to assist in tracking malignancies and identifying environmental carcinogens. Just as the CDC keeps track of all communicable diseases reported, a database of treated tumors is kept in hospitals through a tumor registry. Some states also require that epilepsy (a seizure condition) be reported to local motor vehicle departments. The testing of newborns for phenylketonuria (PKU), which can cause mental disability, is required in all states. Some states require positive PKU results to be reported to the health department so that close observation and follow-up care are ensured to prevent serious complications for the infant. Infantile hypothyroidism is also a reportable condition in some states.

CHECKPOINT QUESTION

5. List six situations and conditions you are legally required to report.

Specific Laws and Statutes That Apply to Health Professionals

Medical Practice Acts

Although each state has its own medical practice act, the following elements are usually included:

- Definition of the practice of medicine
- Requirements that the physician must have graduated from an accredited medical school and

residency program and have passed the state medical examination
- Description of the procedure for **licensure**
- Description of the conditions for which a license can be suspended or revoked
- Description of the renewal process for licensure. Most states require the physician to have attended a certain number of continuing education hours.
- Personal requirements necessary to become a licensed physician. Generally, a licensed physician must be a state resident, of good moral character, a U.S. citizen, and 21 years of age or older.

Medical practice acts are designed to protect the public by requiring licensure and standards of care for many health care professionals. A physician may have their license revoked or suspended by the Board of Medical Examiners in most states for a variety of reasons, including certain criminal offenses, unprofessional conduct, fraud, or professional or personal incompetence. Criminal offenses include but are not limited to murder, manslaughter, robbery, and rape. Examples of unprofessional conduct may include invasion of a patient's privacy, excessive use of alcohol or use of illegal drugs, and **fee splitting** (sharing fees for the referral of patients to certain colleagues). Fraud is a common reason for revoking a license. Fraud may include filing false Medicare or Medicaid claims, falsifying medical records, or professional misrepresentation. Examples of misrepresentation or fraud include advertising a medical cure that does not exist, guaranteeing 100% success of a treatment, or falsifying medical credentials. Incompetence is often a hard charge to prove. The three most common examples are insanity, senility, and other documented mental incompetence.

As a medical assistant, it is your responsibility to report illegal or unethical behavior or signs of incompetence in the medical office.

Licensure, Certification, and Registration

Medical professionals can be licensed, certified, or **registered**. Licensure is regulated by laws, such as medical practice acts and nursing practice acts. If a particular profession is a licensed one, it is mandatory that one maintain a license in each state where one works. Each state determines the qualifications and requirements for licensure of a particular profession. A state agency will be responsible for issuing and renewing licenses. Most professionals are licensed to practice their profession according to certain guidelines and are limited to specific duties. For example, nurses are licensed. As mentioned earlier, in North Carolina, the Nursing Practice Act specifically prohibits a nurse from delegating professional authority to unlicensed personnel.

The term *registered* indicates that a professional has met basic requirements, usually for education; has passed standard testing; and has been approved by a governing body to perform given tasks within a state. For example, X-ray technologists are registered as registered radiologic technologists. A national registry is available to verify a potential employee's status.

Certification is a voluntary process regulated through a professional organization. Standards for certification are set by the organization issuing the certificate. The CMA and RMA credentials are nationally recognized and do not require any action when moving from one state to another. Remember, you must adhere to the laws regarding the CMA or RMA in the state where you work.

As a medical assistant, you are working under the license of a physician who delegates certain duties to you to assist with caring for their patients in the outpatient setting. The physician–employer has the sole responsibility of setting any limits on the duties of a medical assistant. A medical assistant's scope of practice is determined by their training and is at the provider's discretion. Although most states do not require certification for employment, employers seek medical assistants with the CMA or RMA credential because certification indicates the achievement of certain standards of competence. Credentialed medical assistants are also very valuable to employers participating with Medicare and Medicaid's Merit-based Incentive Payment System (MIPS) because, as part of that payment incentive, only licensed health care providers (i.e., nurses) or credentialed medical assistants may enter computerized provider order entries (CPOE) into electronic health records. A few states require that you take a test or short course before performing certain clinical duties. See Chapter 1 for more information on licensure, certification, and registration. See Chapter 8 for more on MIPS.

Controlled Substances Act

The Controlled Substances Act of 1970 is a federal law enforced by the DEA. The act regulates the manufacture, distribution, and dispensing of narcotics and nonnarcotic drugs considered to have a high potential for abuse. This act categorizes drugs in five schedules (classifications) from those that are highly dangerous and addictive to drugs having

a low potential for abuse. By placing drugs in one of the schedules, laws are created and enforced for each classification instead of having laws for specific drugs. These laws prohibit unauthorized possession and the illegal use of controlled substances to prevent substance abuse. The law also requires that any physician who dispenses, administers, or prescribes narcotics or other controlled substances be registered with the DEA.

Physicians who maintain a stock of controlled substances in the office for dispensing or administration must use a special triplicate order form available through the DEA. A record of each transaction must be kept and retained for 2 to 3 years and an inventory of drugs maintained must be available for inspection by the DEA at any time. The act requires that all controlled substances be kept in a locked cabinet out of patients' view and that the keys be kept secure. Theft should be reported immediately to the local police and the nearest DEA office. Prescription pads used for prescribing controlled substances must remain in a safe place at all times. The Legal Tip box lists steps you can take to keep these prescription pads safe.

This act also requires a physician to return all registration certificates and any unused order forms to the DEA if the practice is closed or sold. Violation of this act is a criminal offense. Penalties range from fines to imprisonment.

LEGAL TIP

Prescription Pad Safety Tips

- Keep only one prescription pad in a locked cabinet in the examining room. All other pads should be locked away elsewhere. Do not leave prescription pads unattended.
- Keep a limited supply of pads. It is better to reorder on a regular basis than to overstock.
- Keep track of the number of pads in the office. If a burglary occurs, you will be able to advise the police regarding the number of missing pads.
- Report any prescription pad theft to the police and alert local pharmacies of the theft. If the theft involves the loss of narcotic pads, the DEA must be notified.

Good Samaritan Act

As the number of lawsuits against physicians began to rise, physicians feared that giving emergency care to strangers outside the office could lead to malpractice suits. To combat that fear, all states now have Good Samaritan acts. Good Samaritan acts ensure that first responders in emergency situations are immune from liability suits as long as they give care in good faith and in a manner that a reasonable and prudent person would in a similar situation. Each state has specific guidelines. Some even set standards for various professional levels, such as one set of standards for a physician and another set of standards for emergency medical technicians. Your state's Good Samaritan Act will not protect you if you are grossly negligent or willfully perform negligent acts.

You are not covered by the Good Samaritan Act while you are working as a medical assistant, nor does it cover physicians in the performance of their duties. Liability and malpractice insurance policies are available to protect you in those situations. If you render emergency care and accept compensation for that care, the act does not apply.

The provisions only cover acts outside of the formal practice of the profession.

Basis of Medical Law

Tort Law

A tort is a wrongful act that results in harm for which monetary restitution is sought by the injured party. The two forms of torts are intentional and unintentional. An allegation of an unintentional tort means that the accuser (the **plaintiff**) believes a mistake has been made; however, the plaintiff believes the caregiver or accused party (the **defendant**) was operating in good faith and did not intend the mistake to occur. Consider the following scenario as an example of an unintentional tort: A medical assistant giving a patient a heat treatment for muscle aches inadvertently burns the patient's arm because the equipment is faulty. This act was not intentional or malicious, but it caused damage to the patient. A large majority of suits against physicians fall into this category.

Negligence and Malpractice (Unintentional Torts)

Most unintentional torts involve negligence. These are the most common forms of medical malpractice suits.

Negligence is performing an act that a reasonable health care worker or provider would not have done or the omission of an act that a reasonable professional or provider would have done. Failure to take reasonable precautions to prevent harm to a patient is termed **negligence**. If a physician is involved, the

term usually used is *malpractice*. Malpractice is said to have occurred when the patient is harmed by the professional's actions. There are three types of malpractice negligence:

- **Malfeasance**—treatment performed in an unlawful manner
- **Misfeasance**—treatment performed incorrectly
- **Nonfeasance**—treatment delayed or not attempted

In a legal situation, the standard of care determines what a reasonable professional would have done. Standards of care are written by various professional agencies to clarify what the reasonable and prudent physician or health care worker would do in a given situation. For example, a patient comes to an orthopedist's office after falling from a horse and complains of arm pain. The standard of care for orthopedists would require an X-ray of the injured extremity after trauma. Standards of care vary with the level of training and expertise of the professional. Every health care professional, including medical assistants, must practice within the scope of their training. The representing attorney may seek an **expert witness** to state under oath the standards of care for a specific situation. Expert witnesses may be used when parties involved in the court case, such as the court or jury, may not have knowledge about the subject matter. Expert witnesses may include physicians, nurses, physical therapists, or other specialized practitioners who have excellent reputations in their field.

Expert witnesses are always used in malpractice cases, except when the doctrine of **res ipsa loquitur** is tried. This doctrine means "the thing speaks for itself." In other words, it is obvious that the physician's actions or negligence caused the injury. A judge must preapprove the use of this theory in pretrial hearings. An example of a case tried under this doctrine might be a fracture that occurred when the patient fell from an examining table.

For negligence to be proven, the plaintiff's attorney must prove that the following four elements were present: duty, dereliction of duty, direct cause, and damage. The courts place the burden of proof on the plaintiff; the physician is assumed to have given proper care until proven otherwise.

Duty

Duty is present when the patient and the physician have formed a contract. This is usually straightforward and the easiest of the elements to prove. If the patient presented to the physician's office and the physician sees the patient, there is duty.

Dereliction of Duty

The patient must prove that the physician did not meet the standard of care guidelines, either by performing an act inappropriately or by omitting an act.

Direct Cause

The plaintiff must prove that the derelict act directly caused the patient's injury. This can be difficult to prove if the patient has an extensive medical history that may have contributed to the injury.

Damage

The plaintiff must prove that an injury or **damages** occurred. Documentation must be available to prove a diagnosis of an injury or illness.

Jury Awards

There are three types of awards for damages:

1. *Nominal*. Minimal injuries or damages occurred, and compensation is small.
2. *Actual (compensatory)*. Money is awarded for the injury, disability, mental suffering, loss of income, or the anticipated future earning loss. This payment is moderate to significant.
3. *Punitive*. Money is awarded to punish the practitioner for reckless or malicious wrongdoing. Punitive damages are the most expensive. (Note: A physician may have committed a medical error, but if the patient suffered no injuries or damages, they cannot win the suit. Also, if the outcome was not as expected but the physician cannot be shown to be at fault, the patient will not be compensated.)

CHECKPOINT QUESTION

6. What four elements must be proved in a negligence suit?

Intentional Torts

An **intentional tort** is an act that takes place with malice and with the intent of causing harm. Intentional torts are the deliberate violation of another person's legal rights. Examples of intentional torts are

assault and battery, use of duress, invasion of privacy, defamation of character, fraud, tort of outrage, and undue influence. These are described next.

Assault and Battery

Assault is the unauthorized attempt or threat to touch another person without consent. **Battery** is the actual physical touching of a patient without consent; this includes beating and physical abuse. By law, a conscious adult has the right to refuse medical care. Care given without the patient's consent constitutes assault. An example of battery might be suturing a laceration against the patient's wishes.

Duress

If a patient is coerced into an act, the patient can possibly sue for the tort of **duress**. Following is an example in which a patient may be able to sue successfully for assault, battery, and duress:

A 22-year-old woman arrives at a pregnancy center. She is receiving public assistance and has five children. Her pregnancy test is positive. The staff persuades her to have an abortion. She signs the consent form, and the abortion is performed. Later, she sues, stating that she was verbally coerced into signing the consent form (duress) and that the abortion was performed against her wishes (assault and battery).

Invasion of Privacy

Patients have the right to privacy. Remember, as part of the Privacy Rule, HIPAA regulates the sharing of information and requires that patients sign an acknowledgment of the Notice of Privacy Practices (NPP) on their first visit. Patients are often asked to sign a release indicating how they may be contacted by the practice as well as authorization for others to receive their private health information (such as a spouse) if desired. It is the responsibility of the medical assistant to maintain patients' privacy at all times. This includes never leaving the medical record unattended where others may see the name of the patient or peruse the information in the chart. When using electronic health records, it is important to always lock the screen when finished making entries in a patient's record. Written permission must be obtained from the patient to do any of the following:

- Release medical records or personal data
- Publish case histories in medical journals
- Take photographs of the patient (exception: suspected cases of abuse or maltreatment)
- Allow observers in examination rooms

For example, a 57-year-old woman is seen in your office for a skin biopsy. Her husband calls asking for information regarding the bill and asks for the biopsy report. You give the requested information and then find that the patient never signed a release form. She has a valid case for invasion of privacy. NPPs and other issues relating to HIPAA requirements for privacy are discussed in Chapter 8.

Defamation of Character

Making malicious or false statements about a person's character or reputation is **defamation of character**. **Libel** refers to written statements, and **slander** refers to oral statements. For example, a patient asks for a referral to another physician. She states that she has heard, "Dr. Rogers is a good surgeon." You have heard that he has a history of alcoholism. You tell the patient that he is probably not a good choice because of his drinking. That is defamation of his character, and you could be sued for saying it.

Fraud

Fraud is any deceitful act with the intention to conceal the truth, including the following:

- Intentionally raising false expectations regarding recovery
- Not properly instructing the patient regarding possible side effects of a procedure
- Filing false insurance claims

Tort of Outrage

Tort of outrage is the intentional infliction of emotional distress. For this tort to be proved, the plaintiff's attorney must show the following:

- The physician intended to inflict emotional distress.
- The physician acted in a manner that is not morally or ethically acceptable.
- The physician caused severe emotional distress.

Undue Influence

Improperly persuading another to act in a way contrary to that person's free will is termed *undue influence*. For instance, preying on the elderly or the mentally incompetent is a common type of undue influence.

Unethical practitioners who gain the trust of these persons and persuade them to submit to expensive and unnecessary medical procedures are practicing undue influence.

CHECKPOINT QUESTION

7. What is the difference between assault and battery?

The Litigation Process

The litigation process begins when a patient consults an attorney because they believe a health care provider has done wrong or becomes aware of a possible prior injury. The patient's attorney obtains the medical records, which are reviewed by medicolegal consultants. (Such consultants may be credentialed medical assistants, nurses, or physicians who are considered experts in their field.) Then the plaintiff's attorney files a complaint, a written statement that lists the claim against the physician and the remedy desired, usually monetary compensation.

The defendant and their attorney answer the complaint. The discovery phase begins with interrogatories and **depositions**. During this phase, attorneys for both parties gather relevant information by formally documenting responses to questions from both parties involved (depositions) and through a **subpoena** (court order) for the patient's medical record. Another type of court order is a **subpoena duces tecum**, in which medical records are required to be presented and entered into the court proceedings by a witness.

Next, the trial phase begins. A jury is selected unless the parties agree to a **bench trial**. In a bench trial, the judge hears the case without a jury and renders a verdict (decision or judgment). Opening statements are given, first by the plaintiff's attorney and then by the defendant's attorney. The plaintiff's attorney presents the case. Expert witnesses are called, and the evidence is shown. Examination of the witnesses begins. Direct examination involves questioning by one's own attorney; cross-examination is questioning by the opposing attorney. When the plaintiff's attorney is finished, the defense presents the opposing arguments and evidence. The plaintiff's attorney may cross-examine the defendant's witnesses. Closing arguments are heard. Finally, a verdict is made.

If the defendant is found guilty, damages are awarded. If the defendant is found not guilty, the charges are dismissed. The decision may be appealed to a higher court. An **appeal** is a process by which the higher court reviews the decision of the lower court.

Defenses to Professional Liability Suits

The objective of all court proceedings is to uncover the truth. Many defenses are available to a health care worker who is being sued. These include the medical record, statute of limitations, assumption of risk, res judicata, contributory negligence, and comparative negligence, discussed next.

Medical Records

The best and most solid defense the caregiver has is the medical record. Every item in the record is considered part of a legal document. Juries may believe a medical record regardless of testimony because they are tangible items from the actual time the injury occurred. There is a common saying in the medicolegal world: "If it is not in the chart, it did not happen." This means that even negative findings should be listed. For example, instead of saying that the patient's neurologic history is negative, the documentation might say the patient reports no headaches, seizures, one-sided weakness, and so on. Entries in the medical record refresh the memory of the defendant and provide documentation of care. As a medical assistant, you must make sure that all your documentation is timely, accurate, and legible. (See Chapter 8 for specific information regarding charting practices.)

Statute of Limitations

Each state has a statute that defines the length of time during which a patient may file a suit against a caregiver. When the **statute of limitations** expires, the patient loses the right to file a claim. Generally, the limits vary from 1 to 3 years following the alleged occurrence. Some states use a combination rule. Some states allow 1 to 3 years following the patient's discovery of the occurrence. States vary greatly when an alleged injury involves a minor. The statute may not take effect until the minor reaches the age of majority and then may extend 2 to 3 years past this time. Some states have longer claim periods in wrongful death suits.

Assumption of Risk

In the assumption of risk defense, the physician will claim that the patient was aware of the risks involved before the procedure and fully accepted the potential for damages. For example, a patient is instructed regarding the adverse effects of chemotherapy. The patient fully understands these risks, receives the

chemotherapy, and then wants to sue for alopecia (hair loss). Alopecia is a given risk with certain forms of chemotherapy. A signed consent form indicating that the patient was informed of all the risks of a procedure proves this point.

Res Judicata

The doctrine of **res judicata** means "the thing has been decided." Once the suit has been brought against the physician or patient and a settlement has been reached, the losing party may not countersue. If, for instance, the physician sues a patient for not paying bills and the court orders the patient to pay, the patient cannot sue the physician for malpractice. The opposite may occur as well. If the physician is sued for malpractice and loses, they cannot countersue for defamation of character.

Contributory Negligence

With the **contributory negligence** defense, the physician usually admits that negligence has occurred; they will claim, however, that the patient aggravated the injury or assisted in making the injury worse. For example, the patient's laceration is stitched with only three sutures when 10 were needed. The physician instructs the patient to limit movement of the arm. The patient plays baseball; the laceration reopens, causing infection; and, subsequently, extensive scar tissue forms. Both the patient and the physician contributed to the postoperative damages. Most states do not grant damage awards for contributory negligence. If an award is granted, the courts assess **comparative negligence**.

Comparative Negligence

In comparative negligence, the award of damages is based on a percentage of the contribution to the negligence. If the patient contributed 30% to the damage, the damage award is 30% less than what was granted. In the example in the previous paragraph, the courts may decide that the negligence is shared at 50%. Therefore, if the court assessed damages of $20,000, the physician would be responsible for $10,000.

In the past, contributory negligence, such as a patient not returning for appointments, was seen as absolute defense for the physician. This has changed over the years, however, and many defendants use the defense of comparative negligence, with the responsibility shared between the physician and the patient.

Defense for the Medical Assistant

Respondeat Superior or Law of Agency

The doctrine of **respondeat superior** literally means "let the master answer." This may also be called law of agency. This doctrine implies that physicians are liable for the actions of their employees, as discussed earlier. The physician is responsible for your actions as a medical assistant as long as your actions are within your scope of practice. If your actions exceed your abilities or training, the physician is not generally responsible for any error that you make. You must understand that you can be sued in this instance and that respondeat superior does not guarantee immunity for your actions.

For example, Mrs. Smith is a chronic complainer, calling your office frequently with minor concerns. Today, she calls complaining of tingling in her arms. The physician has left for the day, so you tell Mrs. Smith, "Don't worry about this; take your medication, and call us tomorrow." During the night, a blood vessel in Mrs. Smith's brain bursts. She has a cerebral hemorrhage (bleeding inside the brain) and dies. The family sues. The physician claims that you were instructed not to give advice over the telephone. You are not covered by respondeat superior because you acted outside of your scope of practice.

To protect yourself from situations such as this, have your job description in written form and always practice within its guidelines. Do not perform tasks that you have not been trained to do. Never hesitate to seek clarification from a physician. If you are not sure about something, such as a medication order, ask!

Malpractice insurance is available to allied health care professionals for further protection. Malpractice premiums are inexpensive and afford protection against losing any personal assets if sued. The insurance company would pay damages as assessed by a jury. Of course, as with any insurance policy, there will be conditions of coverage and maximum amounts the company will pay. The Legal Tip provides some additional advice for preventing lawsuits.

CHECKPOINT QUESTION

8. What is the law of agency, and how does it apply to the medical assistant?

LEGAL TIP

You Can Avoid Litigation

- Keep medical records neat and organized. Always document and sign legibly.
- Stay abreast of new laws and medical technology.
- Become a certified or registered medical assistant (CMA or RMA, respectively).
- Keep both your cardiopulmonary resuscitation (CPR) and your first aid certification current.
- Never give any information over the telephone unless you are sure of the caller's identity and you have patient consent.
- Keep the office neat and clean. Make sure that children's toys are clean and in good condition to avoid injuries. Perform safety checks frequently.
- Limit waiting time for patients. If an emergency arises that causes a long wait, explain the situation to waiting patients in a timely and professional manner.
- Practice good public relations. Always be polite, smile, and show genuine concern for your patients and their families.

Employment and Safety Laws

Civil Rights Act of 1964, Title VII

Title VII of the Civil Rights Act of 1964 protects employees from discrimination in the workplace. The Equal Employment Opportunity Commission (EEOC) enforces the provisions of the act and investigates any possible infractions. Employers may not refuse to hire, limit, segregate or classify, fire, compensate, or provide working conditions and privileges on the basis of race, color, sex, religion, or national origin. This act determines the questions that may be asked in a job interview. For example, a potential employee cannot be asked questions that would reveal age, marital status, religious affiliation, height, weight, or arrest record. It is acceptable, however, to ask if an applicant has ever been convicted of a crime. In the health care setting, employers can require a criminal records check and even drug screening to ensure patient safety. The American Association of Medical Assistants (AAMA) has made recent changes to prohibit convicted felons from taking the CMA examination.

Sexual Harassment

In recent years, Title VII has been expanded to include sexual harassment. Sexual harassment is defined by the EEOC as unwelcome sexual advances or requests for sexual favors in the workplace. The definition includes other verbal or physical conduct of a sexual nature when such conduct is made a condition of an individual's employment, is used as a basis for hiring or promotion, or has the purpose or effect of unreasonably interfering with an individual's work performance. If such behavior creates an intimidating, hostile, or offensive working environment, it is considered sexual harassment. In the past two decades, court decisions have confirmed that this form of harassment is a cause for both criminal prosecution and civil litigation.

In the medical office setting, the office manager must be alert for signs of harassment and should have in place a policy for handling complaints.

Americans with Disabilities Act

Title VII also includes the Americans with Disabilities Act (ADA), passed in 1990, which prohibits discrimination against people with substantial disabilities in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, benefits, and all other privileges of employment. The ADA applies to schools, testing agencies, and all employers with 15 or more employees; however, some states have laws requiring small employers to provide reasonable accommodations. The law covers those with impairments that limit their major life activities. The statute also protects those with acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)–positive status and individuals with a history of mental illness or cancer. The ADA also requires that employers provide basic accommodations for disabled employees. Those basic accommodations include extra-wide parking spaces close to the door, ramps or elevators, electric or easily opened doors, bathroom facilities designed for the disabled, an accessible break room, and a work area with counters low enough for a person in a wheelchair.

The ADA also takes safety into consideration. Employers are permitted to establish qualification standards that will exclude individuals who pose a direct threat to others if that risk cannot be lowered to an acceptable level by reasonable accommodations. In the medical field, technical standards are established that outline physical requirements of a certain job. For example, if a particular job requires adequate vision to see the dials on a piece of laboratory equipment, it is unreasonable to expect an employer to hire a person who is sight impaired. The law is designed to protect employees, not to require unreasonable accommodations.

The ADA also requires that all public buildings be accessible to physically challenged people. Following is a partial list of ways the medical office can comply with this act:

- Entrance ramps
- Widened restrooms to be wheelchair accessible
- Elevated toilet bowls for easier transferring from wheelchairs
- Easy-to-reach elevator buttons
- Braille signs
- Access to special telephone services to communicate with hearing-impaired patients

The definition of disabled was further delineated in the **Americans with Disabilities Act Amendments Act (ADAAA)** of 2008 to recognize and clarify impairments that may have been excluded under the ADA, such as individuals seeking employment who have recovered from a mental illness or cancer. The ADAAA further required the EEOC to amend its policies to reflect these changes.

The Genetic Information Nondiscrimination Act

Some diseases have a genetic (hereditary) component, and genetic testing is available that may determine an individual's risk of contracting certain diseases. For example, there is a genetic component to some cancers, such as breast and colon. The **Genetic Information Nondiscrimination Act (GINA)** is a federal law that was passed in 2008 to protect against employment discrimination based on a person's or their family's genetic information. It also prohibits health insurance plans from requiring genetic information in order to make decisions regarding health insurance coverage.

Occupational Safety and Health Act

Employers must provide safe environments for their employees. In accordance with the Occupational Safety and Health Act of 1970, the Occupational Safety and Health Administration (OSHA) controls and monitors safety for workers. Specific OSHA rules and regulations are designed to protect the clinical worker from exposure to **blood-borne pathogens**. Blood-borne pathogens are microorganisms that can be spread through direct contact with blood or body fluids from an infected person. Universal or standard precautions are designed to protect health care workers from blood and body fluids contaminated with HIV, hepatitis, or any contagious "bugs" by requiring that those in direct contact with patients use protective equipment (e.g., gloves, gowns, face mask). In the past, health care workers felt that they needed protection only from patients with known risk factors (sharing needles, having unprotected sexual intercourse). OSHA's regulations help to ensure protection from contracting a contagious disease from *any* body fluids handled.

Your medical assisting training will include an extensive study of safety issues and protection against accidental exposure to blood-borne pathogens. **Box 2-5** outlines OSHA rules governing all

Box 2-5 Occupational Safety and Health Act of 1970 Rules Governing Health Care Providers

OSHA defines body fluids as semen, blood, amniotic fluids, vaginal secretions, synovial fluid (from joint spaces), pleural fluid (from the lungs), pericardial fluid (from the heart), cerebrospinal fluid (from the spinal cord), and saliva. OSHA employs inspectors who may conduct inspections and issue citations for violations and recommend penalties. Under specific rules, OSHA requires that health care facilities provide the following:

- A list of all employees who might be exposed to blood-borne diseases on either a regular or an occasional basis
- A written exposure control plan that outlines steps to be taken in the event of an employee's accidental exposure to blood-borne pathogens
- One employee who is responsible for OSHA compliance
- Availability of protective clothing that fits properly
- An employee training program in writing and records of sessions and participants
- Warning labels and signs denoting biohazards (potentially dangerous materials)
- Written guidelines for identifying, containing, and disposing of medical waste, including housecleaning and laundry decontamination
- Written guidelines and procedures to follow if any employee is exposed to blood or other potentially infectious materials as well as a policy for reporting incidents of exposure and maintaining records
- Postexposure evaluation procedures, including follow-up testing of the exposed employee
- Material safety data sheets (MSDS) listing each ingredient in a product used in the office. Manufacturers provide an MSDS for every product they sell. Information provided in the sheets includes any hazards involved or the necessary precautions that must be taken when handling materials.
- Hepatitis B vaccine free of charge to employees working with body fluids

Box 2-6 Laws Governing Employer and Employment Rights and Responsibilities

Fair Labor Standards Act of 1938

- Regulates wages and working conditions including:
  - Federal minimum wage, overtime compensation, equal pay requirements, child labor, hours, and requirements for record keeping

Civil Rights Act of 1964, Title VII

- Applies to employers with 15 or more employees for at least 20 weeks of the year
- Federal regulation forbids discrimination on the basis of race, color, sex, religion, or national origin. Some state laws also prohibit discrimination for sexual orientation, personal appearance, mental health, mental disability, marital status, parenthood, and political affiliation.

Americans with Disabilities Act of 1990

- Applies to employers with 15 or more employees
- Prohibits discrimination against individuals with substantial impairments in all employment practices

Age Discrimination in Employment Act of 1967

- Applies to employers with 15 or more employees
- Regulates discrimination against workers on the basis of age; protects those who are 40 to 65 years of age

Family and Medical Leave Act of 1993

- Employees are covered after 1 year or 1,250 hours of employment over the past 12 months.
- Provides up to 12 weeks per year of unpaid, job-protected leave to eligible employees for certain family and medical reasons

Immigration Reform and Control Act of 1986

- Applies to employers with four or more employees
- Prohibits employment of illegal aliens and protects legal aliens from discrimination based on national origin or citizenship

freestanding health care providers. **Box 2-6** outlines the laws governing employer and employee rights and responsibilities.

Other Legal Considerations

The Clinical Laboratory Improvement Amendments (CLIA) of 1988 contain specific rules and regulations regarding laboratory safety. Laboratory procedures performed on patient specimens obtained in medical offices are typically waived CLIA tests because of their simplicity and low risk of error. A CLIA certificate of waiver, however, is required to be obtained by practices performing CLIA-waived tests through the Centers for Medicare and Medicaid Services (CMS).

Medical offices can be accredited by the Joint Commission (formerly known as the Joint Commission on Accreditation of Healthcare Organizations [JCAHO]). The Joint Commission is a private organization that sets standards for health care settings. Accreditation is voluntary but requires standards to be maintained once accreditation is achieved. Each state also has specific laws regarding patient care, insurance billing, collections, and other such matters. See Chapter 10 for additional information.

CHECKPOINT QUESTION

9. What are blood-borne pathogens? Which government agency oversees their control in the medical office?

Medical Ethics

Medical **ethics** are principles of ethical and moral conduct that govern the behavior and conduct of health professionals. These principles define proper medical etiquette, customs, and professional courtesy. Ethics are guidelines specifying right or wrong and are enforced by peer review and professional organizations. Laws are regulations and rules that are enforced by the government. **Bioethics** involves issues and dilemmas that result from emerging medical technology and advancements. Many bioethical issues have arisen from the advances of modern medicine.

American Medical Association Principles of Medical Ethics

A code of ethics is a "collective statement from a professional organization that depicts the behavioral expectations for its members. Additionally, a code of ethics allows the organization to set standards by which it may discipline its members." According to the American Medical Association (AMA), "The Code of Medical Ethics is a living document, evolving as changes in medicine and the delivery of health care raise new questions about how the profession's core values apply in physicians' day-to-day practice.

Box 2-7 AMA Principles of Medical Ethics

I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.
III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements that are contrary to the best interests of the patient.
IV. A physician shall respect the rights of patients, colleagues, and other health professionals and shall safeguard patient confidences and privacy within the constraints of the law.
V. A physician shall continue to study, apply, and advance scientific knowledge; maintain a commitment to medical education; make relevant information available to patients, colleagues, and the public; obtain consultation; and use the talents of other health professionals when indicated.
VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.
VII. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.
VIII. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.
IX. A physician shall support access to medical care for all people.

The Code links theory and practice." **Box 2-7** outlines the AMA Principles of Medical Ethics.

Violations of these AMA principles may result in censure, suspension, or expulsion by the state medical board. Censure, the least punitive action, is a verbal or written reprimand from the association indicating negative findings regarding a specific incident. Suspension is the temporary removal of privileges and association with the organization. Expulsion is a formal discharge from the professional organization and is the maximum punishment. Many of these issues, however, deal with laws and the patient's rights as established by law. When violations of laws are involved, physicians may lose their license to practice, may be fined, or may be imprisoned. Serious consequences can arise from a breach of this code of ethics.

Medical Assistant's Role in Ethics

As an agent of the physician in the medical office, you are also governed by ethical standards and are responsible for the following:

- Protecting patient confidentiality
- Following all state and federal laws
- Being honest in all your actions

As a medical assistant, you must apply ethical standards as you perform your duties. You must realize that your personal feelings of right and wrong should be kept separate if they differ from the ethics of your profession. For example, a medical assistant who has a strong opinion against abortion would not be happy working in a medical facility that performs abortions. The care you give patients must be objective, and personal opinions about options must not be shared.

Patient Advocacy

Your primary responsibility as a medical assistant is to be a patient advocate at all times. Advocacy requires that you consider the best interests of the patient above all other concerns. For example, medical assistants are often responsible for coordinating care for patients by scheduling appointments for ordered tests and referrals and seeking insurance authorization as necessary. Medical assistants must also be familiar with local social service agencies in order to provide contacts for patients needing assistance, such as basic housing and food. As part of the ACA, patient navigators are being used to help patients get the care they need (**Box 2-8**).

Patient Confidentiality

Confidentiality of patient information is one of the most important ethical principles to be observed by the medical assistant. As discussed earlier, information obtained in the care of the patient may not be revealed without the permission of the patient unless required by law. Whatever you say to, hear from, or do for a patient is confidential. Patients will reveal some of their innermost thoughts, feelings, and fears. This information is not for public knowledge. Family members, friends, pastors, or others may call the physician's office to inquire about a patient's condition. Many of these calls are

Box 2-8 Patient Navigators

The abundance of information that patients receive concerning their health care and health insurance may seem overwhelming to many people. **Patient navigators** are trained individuals who assist patients as they work through the health care system and receive the care they need. These patient advocates are in response to four provisions of the ACA:

1. Prevention of disease: Navigators may help by encouraging patients to have routine screening tests by providing them available resources and education.
2. Health care access and coordination: To prevent delays in receiving health care services, navigators help patients with obtaining appointments and assist with transportation issues, if necessary. They may also be available to go to physician visits with them and provide patient education and cooperation for recommended therapies.
3. Health insurance coverage: The ACA's health insurance provision requires all Americans to have health insurance coverage. The role of patient navigators includes helping patients find affordable health insurance coverage and may involve helping with completion of paperwork so that coverage can begin. It is also important for navigators to help patients remain insured.
4. Diversity and cultural competency: Navigators may help with communication barriers between patients and their providers.

made with good intentions; *no information*, however, should be released to anyone—friends, family, media, or insurance companies—without prior written approval from the patient. See Chapter 8 for further discussion.

Honesty

One of the most important character traits for medical assistants is honesty. We all make mistakes at times; how we handle our mistakes is the indication of our ethical standards. If you make a mistake (e.g., giving the wrong medication), you must immediately report the error to your supervisor and the attending physician. The mark of a true professional is the ability to admit mistakes and take full responsibility for all actions. When speaking to patients concerning medical issues, be honest; give the facts in a straightforward manner. Never offer false expectations or hope. Never minimize or exaggerate the risks or benefits of a procedure. If you do not know the answer to a question, say, "I don't know, but I will find out for you," or refer the question to the physician. Treating the patient with dignity, respect, and honesty in all interactions will build trust in you and your professional abilities.

CHECKPOINT QUESTION

10. What are the three ethical standards a CMA, as an agent of the physician, should follow?

ETHICAL TIP

An Ethical Dilemma

How would you handle the following hypothetical ethical dilemma?

You are the office manager for a well-respected family physician in a small town. He is 70 years old and is starting to show signs of senile dementia. He is forgetful and has even been disoriented and confused a few times. No one else seems to have noticed. Should you report your concerns? If so, to whom?

The AMA Principles of Medical Ethics require that physicians, and medical assistants through the law of agency, report unethical behavior among colleagues. The medical profession is also governed by the patient's right to safety and quality care. It is your ethical responsibility to report the doctor's condition to the administration of the hospital where the physician has privileges or to the state board of medicine. The physician's family should be involved in the situation.

American Association of Medical Assistants Code of Ethics

Principles

The AAMA has published a set of five principles of ethical and moral conduct that all medical assistants must follow in the practice of the profession. They state that the medical assistant must always strive to do the following:

1. Render services with respect for human dignity.
2. Respect patient confidentiality, except when information is required by the law.
3. Uphold the honor and high principles set forth by the AAMA.
4. Continually improve knowledge and skills for the benefit of patients and the health care team.
5. Participate in community services that promote good health and welfare to the general public.

Box 2-9 Medical Assistants' Creed

The AAMA also has a written creed for medical assistants. The creed of the AAMA is as follows:

I believe in the principles and purposes of the profession.
I endeavor to be more effective.
I aspire to render greater service.
I protect the confidence entrusted to me.
I am dedicated to the care and well-being of all patients.
I am loyal to my physician–employer.
I am true to the ethics of my profession.
I am strengthened by compassion, courage, and faith.

These principles are outlined in the AAMA creed seen in the Medical Assistants' Creed (**Box 2-9**).

According to the *AAMA's Disciplinary Standards and Procedures for CMAs*, CMAs who violate the disciplinary standards may face possible sanctions, including denial of eligibility for the certification examination, probation, reprimand, temporary revocation of the CMA credential, and permanent revocation of the CMA credential. For more information, see the AAMA website.

Bioethics

Bioethics deals specifically with the moral issues and problems that affect human life. As a result of advances in medicine and research, many situations require moral decisions for which there are no clear answers. Abortion and genetic engineering are examples. The goal is to make the right decision in each specific instance as it applies to an individual's specific circumstances. What may be right for one patient may be wrong for another; that is the foundation of bioethics.

American Medical Association Council on Ethical and Judicial Affairs

Because of the broad scope of medical ethics and bioethical issues, the AMA formed a subcommittee to review AMA principles and to interpret them as they apply to everyday clinical situations. This subcommittee is called the Council on Ethical and Judicial Affairs. The council has formulated a series of opinions on various medical and bioethical issues that are intended to provide the physician with guidelines for professional conduct and responsibilities. New ethical opinions are initiated through a series of discussions and research by the members of the council, and existing opinions are revised as needed for new technology and advances in medicine. These opinions are divided into four general categories:

- Social policy issues
- Relations with colleagues and hospitals
- Administrative office procedures
- Professional rights and responsibilities

The following discussion provides a summary of these opinions, along with questions designed to promote your ability to use reasoning to examine difficult ethical issues. These issues are not within the scope of decisions for medical assistants, but you will be faced with their consequences at some time in your career.

Social Policy Issues

The social policy section deals with various issues of societal importance and provides guidelines to aid the physician in making ethical choices. Five common societal topics and the opinion statements from the AMA Council on Ethical and Judicial Affairs follow.

Allocation of Resources

The term *allocate* means to set aside or designate for a purpose. Allocation of resources in the medical profession may refer to many health needs:

- *Organs for transplantation*. Who gets the heart, the college professor or the young recovering addict whose heart was damaged by his lifestyle? Should lifestyle or perceived worth be considered in the decision?
- *Funds for research*. Which disease should receive more funding for research, cancer or AIDS?
- *Funds for health care*. For what should the money be spent, for keeping alive extremely premature infants or making preventive health care available for a greater number of poor children?
- *Hospital beds and professional care*. With hospital care at a premium, who will pay for the indigent? How is it decided which patient is entitled to the last bed in the intensive care unit?

Box 2-10 outlines the judicial council's viewpoints on allocation of limited resources.

Clinical Investigations and Research

Physicians are frequently involved in studying the effectiveness of new procedures and medications, often called clinical investigations or research.

Box 2-10 AMA Council on Ethical and Judicial Affairs Viewpoint

- When resources are limited, decisions for allocating health care materials should be based on fair and socially acceptable criteria. Economic or social position should not be a factor in the decision.
- Priority care is given to the person or persons who are more likely to receive the greatest long-term benefit from the treatment. Patients with other disease processes or who are not good candidates for treatment for whatever reason will be less likely to receive treatment than otherwise healthy patients. For instance, a patient with cancer in other sites would not be considered for a liver transplant, whereas a patient whose liver was damaged by trauma but who has no other involvement would probably be a good candidate.
- An individual's societal worth must not be a deciding factor during the decision process. A socially or politically prominent patient should not be considered a better recipient of treatment options than a young mother on welfare.
- Age must not be considered in the decision process. If the age of the patient is not a contraindication for the treatment, all ages should be considered on an even basis for most medical resources.

New drugs and treatments are tested on animals first and then considered safe for human testing. The council's viewpoint on research investigation of new drugs and procedures states the following:

- *A physician may participate in clinical research as long as the project is part of a systematic program with controls for patient evaluation during all phases of the research. At all stages of the testing and at the completion of the study, a protocol must be in place to evaluate the immediate and the long-term effects of the study.*
- *The goal of the research must be to obtain scientifically valid data. The objectives of the study must be available to the physician and the patient, results must be provided to all participants on request, and the testing must serve a medically sound purpose to provide better patient care.*
- *Utmost care and respect must be given to patients involved in clinical research. They are entitled to be treated just as any other patient receiving health care.*
- *Physicians must obtain the patient's permission or consent before enrolling the patient in a research project.*
- *The patient's decision to participate in the program must be completely voluntary.*
- *The patient must be advised of any potential risks, side effects, and benefits of participating in the project.*
- *The patient must be advised that this procedure or drug is experimental. Patients must be made aware that research is not complete, that this is the purpose of the trials, and that the risks and benefits are not fully known at this time.*
- *The physician and the institution must have a checks and balances system in place to ensure that quality care is always given and that ethical standards are followed. Documentation of patient education and instruction for following testing guidelines and patient response to the treatment must be ongoing and thorough.*

Obstetric Dilemmas

Advances in technology have created legal and ethical situations that have polarized opinions and are difficult to bring to consensus. Issues such as the beginning of life, genetic testing and engineering, sex determination, the rights of the fetus, ownership of the fertilized egg, and so forth will not be easily answered. The council formulated an opinion regarding obstetric issues as fairly as possible that states the following:

Abortion. As the law now stands, a physician may perform an abortion as long as state and federal laws are followed regarding the trimester in which it is performed. A physician who does not want to perform abortions cannot be forced to perform the procedure; that physician, however, should refer the patient to other health care professionals who can assist the patient.

Genetic Testing. If amniocentesis is performed on a mother and a genetic defect is found, both parents must be told. The parents may request or refuse to have the pregnancy terminated. (Amniocentesis is a procedure in which a needle is inserted in a pregnant woman's abdomen to remove and test amniotic fluid. Many abnormalities and disorders can be diagnosed early in pregnancy by this procedure.)

Artificial Insemination. Artificial insemination involves the insertion of sperm into a woman's vagina for the purpose of conception. The donor may be the husband (artificial insemination by husband [AIH]) or an anonymous donor (artificial insemination by donor [AID]). The council states that both the husband and the wife must consent to this

procedure. If a donor is used, the sperm must be tested for infectious and genetic disorders. Complete confidentiality for the donor and recipient must be maintained.

CHECKPOINT QUESTION

11. What is the opinion of the AMA's Council on Ethical and Judicial Affairs regarding abortion?

Stem Cell Research

As we continue to develop new technologies, ethical dilemmas continue to emerge. Stem cell research is an ethical issue resulting from our ability to program the immature and undifferentiated cells of a fetus to be muscle, liver, or cardiac cells. The implications of this ability have become a political issue in the last several years. Researchers have found that stem cells taken from the umbilical cord of a newborn are also useful. It is even possible for parents to have the umbilical cord of their infant frozen and stored for use in later years to cure any diseases encountered. Some people believe that the potential to cure such illnesses as Parkinson disease and cystic fibrosis is worth using embryonic stem cells. Others believe that using fetal cells and tissue is immoral. The political debate about government funding of stem cell research continues. Today's research has made it possible to use a patient's own stems cells to regenerate cells, tissue, and even organs. This makes the use of stem cells for treatment a less sensitive issue.

Organ Transplantation

Organ transplantation became a medical option in the mid-1950s, although at that time, there were many problems with rejection of the organs by the recipient's immune system. When this postoperative complication was corrected by antirejection drugs, the practice became more common. Organs are viable (able to support life) for varying lengths of time, but most can be used successfully if transplanted within 24 to 48 hours. An organization in Richmond, Virginia, the United Network for Organ Sharing, coordinates local organ procurement teams that will fly to areas where organs are to be harvested to assist with the surgery if needed and to ensure the integrity of the organ. There are far fewer organs available than are needed, and every year, thousands of patients die who could have lived if an organ had been available.

The use of organs from a baby born without a brain (anencephaly) raises serious ethical issues. The council states that everything must be done for the infant until the determination of death can be made. For infant organs to be transplanted, both parents must consent.

The council's views on transplantation state the following:

- *The rights of the donor and organ recipient must be treated equally. The imminent death of the donor does not release the medical personnel from observing all rights that every patient is due.*
- *Organ donors must be given every medical opportunity for life. Life support is not removed until the patient is determined to have no brain activity and could not live without artificial support.*
- *Death of the donor must be determined by a physician who is not on the transplant team to avoid a charge of conflict of interest.*
- *Consent (permission) must be received from both the donor, if possible, and the recipient before the transplant. Family members may give consent if the donor is unable to do so.*
- *Transplants can be performed only by surgeons who are qualified to perform this complex surgery and who are affiliated with institutions that have adequate facilities for the surgery and postoperative care.*

Box 2-11 highlights the Uniform Anatomical Gift Act.

Withholding or Withdrawing Treatment

Physicians have a professional and ethical obligation to promote quality of life, which means sustaining life and relieving suffering. Sometimes these obligations conflict with a patient's wishes. Patients have the right to refuse medical treatment and to request that life support or life-sustaining treatments be withheld or withdrawn. Withholding treatment means that certain medical treatments may not be initiated. Withdrawing treatment is terminating a treatment that has already begun. In 1991, congress passed the **Patient Self-Determination Act (PSDA)**, which gave all hospitalized patients or patients going into long-term care facilities the right to make health care decisions on admission. The PSDA requires all health care facilities to provide information to patients about their rights under their state's laws in the event they become unable to make medical decisions for themselves. These decisions may be referred to as advance directives. An **advance directive** is a statement of a person's wishes for medical decisions prior to a critical event

Box 2-11 Uniform Anatomical Gift Act

Many organs can be transplanted, including the liver, kidney, cornea, heart, lung, and skin. To meet the growing need for organs and to allay the concern over donor standards, the National Conference of Commissioners on Uniform State Laws passed legislation known as the Uniform Anatomical Gift Act.

All acts include the following clauses:

- Any mentally competent person over age 18 may donate all or part of their body for transplantation or research.
- The donor's wishes supersede any other wishes except when state laws require an autopsy.
- Physicians accepting donor organs in good faith are immune from lawsuits against harvesting organs.
- Death of the donor must be determined by a physician not involved with the transplant team.
- Financial compensation may not be given to the donor or survivors.
- Persons wishing to donate organs can revoke permission or change their minds at any time.

In most states, the Department of Motor Vehicles asks applicants for a driver's license about organ donation and indicates their wishes on their license. In addition, an individual may declare the wish to donate all or parts of the body in a will or any legal document, including a uniform donor card. Organ donors should make their families aware of their wishes to ensure that they will be carried out.

and includes living wills and health care powers of attorney. Living wills indicate the types of medical treatment desired, such as whether a ventilator can be used, whether CPR should be initiated, and whether a feeding tube should be inserted. The purpose of a health care power of attorney is to name someone to give them authorization to make health care decisions in the event the patient becomes unable to do so. Just completing an advance directive does not ensure that the patient's wishes will be carried out. It is important to make family members aware of these wishes. The patient's next of kin should keep a copy of the advance directive, and one should be placed in the medical office chart with special notation. **Figure 2-4** is a sample of an advance directive.

CHECKPOINT QUESTION

12. What is an advance directive? How can a patient be sure their wishes will be followed?

WHAT IF?

A well-meaning family member asks for information about her mother's condition. What should you say?

Tell the family member that HIPAA's Privacy Rule does not allow you to discuss the patient without their permission. No information can be released to anyone—friends, family, media, or insurance companies—without prior written approval from the patient. See Chapter 8 for more information.

HIPAA also requires that each patient complete a form that establishes their wishes about giving information to family members and friends. If there is a particular family member who brings the patient to the office, the patient may sign a release form giving that person the right to receive information. Many physicians provide the patient with a short progress report, including the patient's test results, diagnosis, treatment, and next appointment. A form could be designed for this purpose. This gives the patient the opportunity to share complete and accurate information if they so choose.

Professional and Ethical Conduct and Behavior

The AMA Council on Ethical and Judicial Affairs states that all health care professionals are responsible for reporting unethical practices to the appropriate agencies. No health care professional should engage in any act that they feel is ethically or morally wrong.

Additionally, the council states the following:

- A physician must never assist or allow an unlicensed person to practice medicine.
- Hospitals and physicians must work together for the best care for patients. Hospitals should allow physicians staff privileges based on the ability of the physician, their educational background, and the needs of the community. (Staff privileges allow physicians to admit their patients to a given hospital.) Issues of a personal nature must never be considered when accepting or declining a physician's application for privileges.
- It is unethical for physicians to admit patients to the hospital or to order excessive treatments for the sole purpose of financial rewards.

CHECKPOINT QUESTION

13. What steps should be taken when a physician closes their practice?

ADVANCE DIRECTIVE

UNIFORM ADVANCE DIRECTIVE OF [list name of declarant]

To my family, physician, attorney, and anyone else who may become responsible for my health, welfare, or affairs, I make this declaration while I am of sound mind.

If I should ever become in a terminal state and there is no reasonable expectation of my recovery, I direct that I be allowed to die a natural death and that my life not be prolonged by extraordinary measures. I do, however, ask that medication be mercifully administered to me to alleviate suffering, even though this may shorten my remaining life.

This statement is made after full reflection and is in accordance with my full desires. I want the above provisions carried out to the extent permitted by law. Insofar as they are not legally enforceable, I wish that those to whom this will is addressed will regard themselves as morally bound by this instrument.

If permissible in the jurisdiction in which I may be hospitalized, I direct that in the event of a terminal diagnosis, the physicians supervising my care discontinue feeding should the continuation of feeding be judged to result in unduly prolonging a natural death.

If permissible in the jurisdiction in which I may be hospitalized, I direct that in the event of a terminal diagnosis, the physicians supervising my care discontinue hydration (water) should the continuation of hydration be judged to result in unduly prolonging a natural death.

I herewith authorize my spouse, if any, or any relative who is related to me within the third degree to effectuate my transfer from any hospital or other health care facility in which I may be receiving care should that facility decline or refuse to effectuate the instructions given herein.

I herewith release any and all hospitals, physicians, and others for myself and for my estate from any liability for complying with this instrument.

Signed:

_____
[list name of declarant]

City of residence: _____
[city of residence]

County of residence: _____
[county of residence]

State of residence: _____
[state of residence]

Social Security Number: _____
[social security number]

Date: _____

_____
Witness

_____
Witness

STATE OF _____

COUNTY OF _____

This day personally appeared before me, the undersigned authority, a Notary Public in and for _____County, _____State,

_____ _____ (Witnesses)

who, being first duly sworn, say that they are the subscribing witnesses to the declaration of [list name of declarant], the declarant, signed, sealed, and published and declared the same as and for his declaration, in the presence of both these affiants; and that these affiants, at the request of said declarant, in the presence of each other, and in the presence of said declarant, all present at the same time, signed their names as attesting witnesses to said declaration.

Affiants further say that this affidavit is made at the request of [list name of declarant], declarant, and in his presence, and that [list name of declarant] at the time the declaration was executed, in the opinion of the affiants, of sound mind and memory, and over the age of eighteen years.

Taken, subscribed, and sworn to before me by_____(witness) and

_____ (witness) this _____ day of_____, 20_____.

My commission expires: _____

_____ Notary Public

Figure 2-4 Sample advance directive.

END OF CHAPTER ACTIVITIES

Role-Playing Activity

The electronic health records system at Great Falls Health System has safeguards to ensure that only the minimum necessary information is available for the staff to perform their jobs effectively. For example, receptionists and schedulers do not have access to information in the clinical portion of patients' health records. Derrick Moore, RMA, assisted one of the physicians yesterday with a new patient and several tests were ordered, including blood work and a cervical magnetic resonance imaging (MRI) scan. Today, Derrick was approached by the receptionist requesting information about the patient's visit because she said that patient was her sister. Is it appropriate to share this information with the patient's sister because she works at the practice? How should Derrick respond to the receptionist? Is this an ethical or a legal dilemma? Role-play this activity as the medical assistant responding to the receptionist in a professional manner. Consider factors that determine whether or not the patient's privacy would be violated. If you are playing the role of the receptionist, consider your emotions involved in wanting this information about your loved one. Your instructor will give you additional information about this activity.

Spanish Terminology

¿Usted entiende la información que acaba de recibir?
Do you understand the information I have given?
¿Para estar seguro de que entendió la información que le acabo de dar, me podría repetir lo que le he dicho?
To be sure that you understood the information given to you, can you repeat this to me?
¿Nos autoriza usted a llevar a cabo este procedimiento médico?
Do you give us permission to perform this procedure?
¿Por favor, podría firmar aquí?
Please, can you sign here?
¿No sé exactamente cuáles son mis derechos como paciente, me podría imprimir un resumén?
I don't know exactly what my rights are as a patient; can you please print out a summary for me?
Necesitamos que firme este documento como testigo.
We need you to sign this document as a witness.

Media Menu

Student Resources on the text's online site

- **CMA/RMA Certification Exam Review**

Internet Resources

Websites to keep abreast of changes in the medical field:
Go to your state's homepage and click on the link to the state legislature to view pending state legislation.
Go to the Library of Congress to view federal legislation to be considered in the coming week.
https://loc.gov
Equal Employment Opportunity Commission
www.eeoc.gov
U.S. Bureau of Labor Statistics
http://stats.bls.gov
To complete an advance directive
www.legalzoom.com
To download and print a Vaccine Information Statement
www.cdc.gov/vaccines/pubs/vis/default.htm
American Hospital Association
www.aha.org
AHA's Patient Care Partnership
www.aha.org/aha/issues/Communicating-With-Patients/pt-care-partnership.html
Reporting Child Abuse
www.childwelfare.gov
CLIA website to access certificate application
www.cms.hhs.gov/cmsforms/downloads/cms116.pdf
Controlled Substances
www.deadiversion.usdoj.gov
Intimate Partner Violence
www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html
National Center on Elder Abuse
https://ncea.acl.gov

Chapter Summary

- The fields of medicine and law are linked in common concern for the patient's health and rights. Increasingly, health care professionals are the object of malpractice lawsuits.
- You can help prevent medical malpractice by acting professionally, maintaining clinical competency, and properly documenting in the medical record. Promoting good public relations between the patient and the health care team can avoid frivolous or unfounded suits and direct attention and energy toward optimum health care.
- Medical ethics and bioethics involve complex issues and controversial topics. There will be no easy or clear-cut answers to questions raised by these issues. As a medical assistant, your first priority must be to act as your patients' advocate, with their best interests and concerns foremost in your actions and interactions. You must always maintain ethical standards and report the unethical behaviors of others.
- Many acts and regulations affect health care organizations and their operations. A medical office must keep current on all legal updates.
- Most states publish a monthly bulletin that reports on new legislation. Every state has a website that will link you to legislative action. Read these on a regular basis.
- Each office should have legal counsel who can assist in interpreting legal issues.

Warm-Ups for Critical Thinking

1. An acquaintance who knows you work in the medical field asks you to diagnose her rash. What do you say?
2. A patient owes a big bill at your office. She requests copies of her records. What do you do?
3. You suspect that a new employee in the office is misusing narcotics. What do you do?
4. Mrs. Rodriguez has bone cancer. Her doctor has estimated that she has 6 months to live. Mrs. Rodriguez wants the physician to withhold all medical treatments. She does not want chemotherapy or any life-sustaining measures. Her family disagrees. Should her family have any input into her health care decisions?
5. You are on your lunch hour from your job at a Planned Parenthood clinic. You run into the mother of a friend who happened to be seen earlier that day in your clinic. You say, "Hi, I just saw Heather this morning." Heather's mother says, "Oh yes? And where did you see her?" What now? Discuss the need to think before you speak where confidentiality is concerned.

Procedure 2-1

Obtaining an Informed Consent for Treatment

Apply the Patient's Bill of Rights as it relates to:

a. Choice of treatment
b. Consent for treatment
c. Refusal of treatment

Purpose: To obtain written permission from a patient for a recommended treatment, including the risks and benefits, and giving an opportunity for questions to be answered and subsequent consent or refusal for the treatment
Equipment: Computer with word processing software, internet connection, consent form, Vaccine Information Statement for Influenza from the CDC's website, 8-1/2 × 11 white paper
Scenario: Complete an informed consent for an adult patient receiving an inactivated (injectable) influenza vaccine.

Steps	Reasons
1. Upon receipt of the physician's order that a patient will receive an inactivated influenza vaccine, download and print the most recent Vaccine Information Statement from the CDC's website to give to the patient.	Information about the vaccine is necessary to make the patient aware of the risks and benefits of receiving the vaccine in order to make an informed decision. The most recent VIS form must be provided regardless of the age of the patient pursuant to the National Childhood Vaccine Injury Act.

(continues)

Steps	Reasons *(continued)*
2. Complete an informed consent form for the inactivated influenza vaccine, including the date of the VIS and the date it was given to the patient.	Providers are required by federal law to document VIS information about the vaccine being administered.
3. Secure the patient's signature and date on the completed informed consent form.	The patient's signature is necessary to give the patient an opportunity to have any questions answered and for permission to receive or refuse the vaccine.
4. File the informed consent in the patient's medical record.	Consents become part of the patient's medical record as evidence that the patient received information about the treatment, had an opportunity to ask questions, and gave permission for the vaccine to be administered.
5. Advise the patient on any follow-up procedures as instructed by the physician.	The patient must be made aware of potential reactions and follow-up if necessary.

Procedure 2-2

Creating an Office Policy to Protect Patients' Private Health Information

Apply HIPAA rules in regard to:

Privacy

Release of information

Purpose: Recognize HIPAA requirements for protecting PHI.
Scenario: Create an office policy to protect PHI and in compliance with HIPAA.
Equipment: Computer with word processing software, internet connection, 8-1/2 × 11 white paper

Steps	Reasons
1. Identify HIPAA's definition of *private health information (PHI)*.	The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that protects PHI.
2. Research HIPAA privacy laws and patient rights regarding PHI in the medical record.	HIPAA laws require providers to have policies to protect patients' private health information.
3. Identify the title of the employee who will be the HIPAA privacy officer.	The HIPAA Privacy Rule requires medical offices to have at least one person to manage compliance and train staff in compliance.
4. Address how the Notice of Privacy Practices will be distributed and how refusal of acknowledgments will be handled.	Providers are required to distribute a Notice of Privacy Practices (NPP) to all patients at their first visit and to obtain a signature to acknowledge receipt of the practice's NPP. The NPP must contain the following elements: a. How their PHI will be used and disclosed b. The provider's responsibilities to protect the PHI c. Patients' privacy rights, including the right to file a complaint in the event they believe there has been a breach of privacy d. How patients should contact the office to report and/or file a complaint for breach of privacy matters Signatures should also be obtained as an acknowledgment of receipt.
5. Determine how the paper medical record will be protected and the responsibilities of the employees.	Confidentiality and the integrity of the medical record must be maintained at all times.

Steps	Reasons
6. Determine how the electronic health record will be protected and the responsibilities of the employees.	Confidentiality and the integrity of the medical record must be maintained at all times.
7. Identify (by titles) employees who will have access to the various portions of the medical record.	HIPAA requires providers to develop and implement "minimum necessary" standards based on employees' roles within the practice.
8. List the requirements for releasing medical records upon a patient's request, including fees (research your state's statutes for permissible charges for copies of medical records).	Release of medical records by patients for any reason should be in writing, with a second piece of identifying information noted and with specific documents requested to be released. State statutes may determine fees that may be charged for medical records.
9. List the requirements for handling requests for medical records by individuals other than the patient.	Under the HIPAA Privacy Rule, health care providers may disclose PHI for a variety of reasons without written authorization from the patient.
10. Indicate the title of the person responsible for updating and revising this policy as necessary.	Policy will be kept current.
11. Provide the policy to all employees with an acknowledgment of receipt and their understanding of the policy and/or revisions.	To make sure all employees are aware of the policy and/or revisions that have been approved by the physician(s)

Procedure 2-3

Monitoring Federal and State Regulations, Changes, and Updates

Monitor federal and state health care legislation.
Purpose: To ensure compliance with regulations by keeping abreast of changes and actions affecting medical assisting issues and health care legislation
Equipment: Computer, internet connection, search engine, and website list

Steps	Reasons
1. Using a search engine, input the keywords for your state legislature OR go to the homepage for your state government. Example: www.nc.gov	The best source for legislative changes is a state's legislative website.
2. Follow links to the legislative branch of your state.	The homepage will give you the appropriate links.
3. Search for such issues as health care finances, allied health professionals, outpatient medical care, Medicare, etc.	These general search words will lead you to information about current or pending legislation.
4. Read and share information from the CDC, OSHA, your state medical society, and the AMA.	Information you receive from outside sources will keep you abreast of changes and trends. For example, OSHA informed providers about changes in the regulations for needle disposal.
5. Create and enforce a policy for timely dissemination of information received by fax or email from outside agencies.	OSHA and the CDC alert providers of vital information via fax or email.

(continues)

Steps	Reasons *(continued)*
6. Circulate information gathered to all appropriate employees with an avenue for sharing information.	Any information obtained should be shared.
7. Post changes in a designated area of the office.	A break room or time clock area is a good place to display important information.
8. Explain what you would say to a fellow employee who responds to a change in a current law with: "I will just keep doing it the old way. Who is going to care?"	Health care professionals must stay current and abreast of any changes in the law. As the saying goes, ignorance is no excuse, especially when it comes to changes in statutes and laws. You are legally obligated to obey the new law after the effective date.

Procedure 2-4

Reporting an Infectious Disease

Perform compliance reporting based on public health statutes.
Purpose: Recognize a reportable infectious disease and report it to the proper authority.
Scenario: Search for your state's reporting requirements for a hepatitis B infection.
Equipment: Computer with internet connection, search engine, website list

Steps	Reasons
1. Using a search engine, go to the Department of Health for your state.	State Departments of Health have information available to the public as well as physicians regarding health and safety matters.
2. Access your state's list of reportable diseases.	It is the physician's responsibility to know and report infectious diseases.
3. Search for your state's reporting requirements for hepatitis B.	Determine how, when, and to whom hepatitis B must be reported in your state.
4. Interpret your state's requirement for reporting hepatitis B to the CDC.	Some infectious diseases must also be reported to the CDC.
5. How can you protect the patient's private health information in the medical record from being accessed by others?	The integrity of the medical record must be protected at all times.

Procedure 2-5

Creating an Office Policy to Report an Illegal Activity

Report an illegal activity in the health care setting following proper protocol.
Purpose: To recognize an illegal activity and follow office policies to report to the proper authorities
Scenario: Create an office policy to report a suspected case of child abuse according to local authorities when directed to do so by a physician.
Equipment: Computer with word processing software, internet connection, 8-1/2 × 11 white paper

Steps	Reasons
1. Determine your state's statute that defines reportable child abuse.	All states have legal definitions and laws that require health care professionals to report suspected cases of child abuse and/or neglect.
2. Identify the name and phone number of the Department of Health and Human Services to contact for cases of suspected child abuse and/or neglect.	State agencies have local child protective services available with direct numbers to contact child welfare or law enforcement personnel.
3. Identify the employee who will be responsible for contacting the child welfare or law enforcement number when directed by a physician in cases of suspected child abuse and/or neglect.	Only one person, such as the office manager, is necessary to contact the agency and communicate instructions to the physician.
4. List the steps for documenting the action taken and follow up as directed by the child welfare agency.	Accurate documentation is necessary because it is necessary for future health care encounters and is a legal document.
5. Indicate the title of the employee responsible for regularly updating and revising the policy as necessary.	Policy will be kept current.
6. Provide the policy to every employee with signatures on an acknowledgment of receipt and of their understanding of the policy and/or revisions.	To make sure all employees are aware of the policy and/or revisions that have been approved by the physician(s)