

CHAPTER 1

Introduction to the American Legal System

Chapter Objectives

- Distinguish between public and private law, civil and criminal law, and tort and contract actions.
- Discuss how the federal constitution delineates governmental authority.
- Identify the two specific procedural protections that the due process clause generally requires and when they are required.
- Discuss the concept of equal protection.
- Give examples of the rights encompassed by the constitutional right to privacy.
- Explain what happens when local, state, and federal law overlap.
- Give examples of administrative agencies, describing their source of authority and how they regulate the public.
- Discuss how courts make law, defining the principles of stare decisis and res judicata.
- Name the three branches of government and outline the responsibilities of each.
- Distinguish among trial courts, appeals courts, and supreme courts.
- Explain the relationship between state and federal courts.

Introduction

The law affects many of the judgments that health record administrators, health professionals, and technical staff members must make each day. Their decisions may have significant potential legal consequences.

However, it is impractical, if not impossible, to obtain professional legal advice before making every decision. Accordingly, health information administrators and technicians—and, indeed, all healthcare providers who collect patient-related data—must develop a general understanding of health information law so they will be able to exercise judgment consistent with applicable law and identify problems that require expert legal counsel.

This chapter sets forth general information about the law, with a particular emphasis on the mechanics of the American legal system and the roles of the various branches of government in creating, administering, and enforcing the law of the federal and state governments.

The Nature of Law

According to most definitions, law is, in essence, a system of principles and processes by which people who live in a society create stability and deal with their disputes and problems, seeking to solve or settle them without resort to force. Law governs the relationships among private individuals, organizations, and government. Through law, society establishes standards of behavior and the means to enforce those standards. Law that deals with the relationships between private parties is called private law; public law deals with the relationships between private parties and government. As society has become more complex, the scope of public law has broadened, and the regulation of private persons and institutions has become more pervasive.

Private law is concerned with the recognition and enforcement of the rights and duties of private individuals and organizations. Legal actions between private parties are of two types: tort and contract. In a tort action, one party asserts that wrongful conduct on the part of the other party has caused harm, and the injured party seeks compensation for the harm suffered. In a contract action, one party asserts that, in failing to fulfill an obligation, the other party has breached a contract, and the injured party seeks either compensation or performance of the obligations as a remedy.

An important part of public law is criminal law, which proscribes conduct considered injurious to the public order and provides for punishment of those found to have engaged in such conduct. Public law consists also of an enormous variety of regulations designed to advance

societal objectives by requiring private individuals and organizations to follow specified courses of action in connection with their activities. Although there are criminal penalties for those who do not abide by the regulations, the primary purpose of public law is to secure compliance with, and attain the goals of, the law—not to punish offenders.

The formulation of public policy concerning health care has thrust hospitals and other healthcare providers into the arena of legislative debate about containment of healthcare costs, quality of care, medical device safety, research involving human subjects, confidentiality of patient information, e-commerce, labor relations, employment policies, facility safety, and other important issues. The object of public law at both the federal and state level is to deal with societal problems of a broad nature. Law serves as a guide to conduct. Most disputes or controversies that are covered by legal principles or rules are resolved without resort to the courts. Thus, each party's awareness of the law and of the relative likelihood of success in court affects its willingness to modify its original position and reach a compromise acceptable to both sides.

Sources of Law

The four primary sources of law in the American legal system are federal and state constitutions, federal and state statutes, the decisions and rules of administrative agencies, and the decisions of the courts.

The Constitution

The U.S. Constitution is the supreme law of the United States. It establishes the general organization of the federal government, grants certain powers to the federal government, and places certain limits on what the federal and state governments may do.

The Constitution establishes and grants certain powers to the three branches of the federal government—legislative, executive, and judicial. The Constitution also is a grant of power from the states to the federal government. The federal government has only the powers granted to it by the Constitution. These powers are both express and implied. The express powers include, for example, the power to collect taxes, declare war, and regulate interstate commerce. The Constitution also grants the federal government broad implied powers to enact laws “necessary and proper” for exercising its other powers. When the

federal government establishes law, within the scope of its powers, that law is supreme. All conflicting state and local laws are invalid.

The Constitution also places certain limits on what the federal and state governments may do. The most famous limits on federal power are the first 10 amendments to the Constitution—the Bill of Rights. The basic rights protected by the Bill of Rights include the right to free speech; free exercise of religion; freedom from unreasonable searches and seizures; trial by jury; and the right not to be deprived of life, liberty, or property without due process of law. State powers are limited by the 14th Amendment as follows: “. . . nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” These clauses of the 14th Amendment frequently are referred to as the due process clause and the equal protection clause. As another constitutional limitation on both state and federal governmental power, courts have also recognized an individual right to privacy. This right frequently affects hospitals and healthcare professionals.

Due Process of Law

The due process clause imposes restrictions and duties only on state action, not on private action. Actions by state and local governmental agencies, including public hospitals, are considered to be state actions and must comply with due process requirements. Actions by private individuals at the behest of the state also can be subject to the due process requirements. In the past, private hospitals were considered to be engaged in state action when they were regulated or partly funded by governmental agencies. Today, it is rare for private hospitals to be considered engaged in state action on that basis.

The due process clause applies to state actions that deprive a person of “life, liberty, or property.” In that context, a position or a particular status can be considered property. For example, a physician’s appointment to the medical staff of a public hospital and a hospital’s institutional licensure by the state are considered property rights. Thus, in the first example, the public hospital must provide due process to the medical staff applicant, while in the second, the state and local governmental agencies must provide due process to the hospital applying for licensure.

The process that is due varies somewhat depending on the situation. Due process consists primarily of two elements: the rules being applied

must be reasonable and not vague or arbitrary, and fair procedures must be followed in enforcing the rules. In general, two fundamental procedural protections must be offered: notice of the proposed action, and an opportunity to present evidence as to why the disputed action should not be taken. The phrase “due process” in the 14th Amendment, which applies to the states, also has been interpreted by the Supreme Court of the United States to include nearly all of the rights in the Bill of Rights. Thus, state governments may not infringe on those rights.

Equal Protection of the Laws

The equal protection clause also restricts state action. The concept of equal protection is intended to ensure that similarly situated persons are treated in like fashion. As a result, the equal protection clause is concerned with the legitimacy of the classification used to distinguish persons for various legal purposes. The determination of whether a particular difference between persons can justify a particular difference in rules or procedures can be difficult. In general, courts require that the government agency justify the difference with a rational reason. The major exceptions to this standard are the strict scrutiny that courts apply to distinctions based on particular “suspect classifications,” such as race or ethnic origin, and the intermediate scrutiny afforded to classifications based on gender.

Right of Privacy

In *Griswold v. Connecticut*, the United States Supreme Court recognized a constitutional right of privacy.¹ In *Whalen v. Roe*, while upholding a New York law to collect individual patient prescription information in triplicate from pharmacies, the Court nonetheless validated that the duty to avoid unwarranted disclosure of personal information has its roots in the Constitution and the right to privacy.² Privacy in this context involves two types of interest: an individual interest in avoiding disclosure of personal matters, and an interest in protecting one’s independence in making certain important decisions. The Court subsequently has ruled that the constitutional right to privacy is qualified

¹ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

² *Whalen v. Roe*, 429 U.S. 589 (1977).

and is not fundamental or absolute, as it exists relative to a specific context.³ The Court has ruled, however, that the right of privacy limits governmental authority to regulate contraception; abortion; other decisions affecting reproduction; private sexual behavior; marriage; family autonomy; and the right to choose, withhold, or withdraw medical treatment.⁴ Thus, in the area of health information, the unauthorized disclosure of confidential patient information can give rise to a claim for invasion of privacy based on the federal constitutional right of privacy, the common law, or, more recently, statutory law. (For a more detailed discussion of invasion of privacy claims for the improper disclosure of medical records, see Chapter 11.)

State Constitutions

Each state also has its own constitution. A state constitution establishes the organization of the relevant state government, grants certain powers to that government, and places certain limits on what that government may do.

Statutes

Another major source of law is statutory law, which is the law enacted by a legislature. Legislative bodies include the United States Congress, state legislatures, and local legislative entities, such as city councils and county boards of supervisors. Congress has only the powers delegated to it by the Constitution, but those powers have been interpreted broadly. State legislatures have all powers not denied them by the United States Constitution, by federal laws enacted under the authority of the federal government, or by their state constitutions. Local

³ *Whalen v. Roe*, 429 U.S. 589 (1977) (upholding the right to keep personal information private unless there is harmless and compelling state interest to access individual health information, in this case copies of individual prescriptions filled for patients for the purposes of overseeing prescription use in New York State); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (addressing the limits of privacy and autonomy with respect to abortion); *Washington v. Glucksberg*, 521 U.S. 702 (1997); and *Vacco v. Quill*, 521 U.S. 793 (1997) (addressing the limits of privacy and autonomy with respect to assisted suicide).

⁴ For several of the above propositions in order, see, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade*, 410 U.S. 113 (1973); *Stenberg v. Carhart*, 120 S. Ct. 2597 (2000); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990).

legislative bodies have only those powers granted by the state. Through statutes or constitutional amendments, some states have granted local governments broad powers authorizing home rule.

When federal and state law conflict, valid federal law supersedes. In certain cases, federal law may preempt an entire area of law, so that state law is superseded even if it is not in direct conflict. In some law, such as bankruptcy law, Congress explicitly preempts dual state regulation. In other areas of the law, the courts find that preemption is implied from the aim and pervasiveness of the federal statutory scheme, the need for uniformity, and the likelihood that state regulation would obstruct the full goals of the federal law. In the area of healthcare law, one of the most frequently applied preemption provisions can be found in the Employee Retirement Income Security Act of 1974 (ERISA). Designed to achieve uniformity in the regulation of healthcare benefits, ERISA's preemption provisions determine whether state law claims will be heard in state or federal court and what damages are available.

When state law and local government rules conflict, valid state law supersedes. In some cases, state law may preempt an entire area of law, so that local law is superseded even if it is not in direct conflict. For example, in *Robin v. Incorporated Village of Hempstead*, the court ruled that New York had preempted the regulation of abortions.⁵ Therefore, additional regulation by local authorities was prohibited.

In 1996, Congress passed the Health Insurance Portability and Accountability Act (HIPAA), which created a comprehensive federal scheme for the protection of individually identifiable health information.⁶ Until the passage of HIPAA, medical records law was governed largely by state legislation and regulation. Now HIPAA governs the use and disclosure of most health information. The act contains a complex formula for determining whether HIPAA will preempt a state law relating to health information confidentiality. Thus, provisions relating to healthcare information can be found in federal and state healthcare information confidentiality statutes, healthcare provider licensure laws, communicable diseases legislation, child and elder abuse legislation, peer review legislation, and in statutes governing the dying process.

⁵ *Robin v. Incorporated Village of Hempstead*, 285 N.E. 2d 285 (N.Y. 1972).

⁶ 42 U.S.C. § 1320d et seq.

Decisions and Rules of Administrative Agencies

The decisions and rules of administrative agencies are other sources of law. Legislatures have delegated to numerous administrative agencies the responsibility and power to implement various laws. The delegated powers include the quasi-legislative power to adopt regulations and the quasi-judicial power to decide how the statutes and regulations apply to individual situations. The legislative branch has delegated this authority because it does not have the time or expertise to address the complex issues involved in many areas that it believes need to be regulated.

Administrative agencies that have been invested with these powers include the Department of Health and Human Services (DHHS), the Food and Drug Administration (FDA), the National Labor Relations Board (NLRB), and the Internal Revenue Service (IRS). DHHS promulgates regulations governing a broad spectrum of activities related to health care. In 2000 and 2003, DHHS issued detailed regulations pursuant to HIPAA governing the privacy⁷ and security⁸ of all health information used by healthcare providers, healthcare clearinghouses, and health plans. The FDA promulgates regulations and applies them to individual determinations involving the manufacture, marketing, and advertising of foods, drugs, cosmetics, and medical devices. The NLRB decides how national labor law applies to individual disputes. The IRS promulgates and applies regulations to individual disputes concerning federal taxation.

Many administrative agencies, such as the NLRB, seek to achieve some consistency in their decisions by following the position they adopted in previous cases involving similar matters. That is similar to the way the courts develop the common law, discussed later in this chapter. When dealing with these agencies, it is important to review the body of law that has evolved from their previous decisions.

Administrative rules and regulations are valid only to the extent that they are within the scope of the authority granted by legislation to the agency that has issued them. The Constitution also limits delegation by the legislative branch. The legislature must retain ultimate responsibility and authority by specifying what regulations the administrative

⁷ 65 Fed. Reg. 82462 (Dec. 28, 2000) (codified at 45 C.F.R. Parts 160 and 164).

⁸ 68 Fed. Reg. 8334 (Feb. 20, 2003) (codified at 45 C.F.R. Parts 160, 162, and 164).

body may make. In the past, courts often declared delegations to be unconstitutional unless there was considerable specificity. Today, the courts interpret the Constitution as permitting much broader delegation, but the general area of law to be regulated still must be specified.

Congress and many state legislatures have passed administrative procedure acts. These specify the procedures that administrative agencies must follow in promulgating rules or reaching decisions in contested cases, unless an overriding law specifies different procedures. Generally, these laws provide that most proposed rules be published to allow individuals an opportunity to comment before the rules are finalized. Many federal agencies must publish both proposed and final rules in the *Federal Register*. Many states have comparable publications of the proposed and final rules of state agencies. Those involved with hospitals should monitor proposed and final rules through these publications, other publications, or their professional or hospital associations. Administrative agencies often rely on this comment process to learn from the public and from the affected industries of the potential implications of agency proposals.

Court Decisions

The body of judicial decisions is the fourth source of law. In the process of deciding individual cases, the courts interpret statutes and regulations, determine whether specific statutes and regulations are permitted by the relevant state or federal constitution, and create the “common law” when deciding cases not controlled by statutes, regulations, or a constitution.

Disagreements over the application of statutes or regulations to specific situations arise frequently. In some situations, the legislature has granted an administrative agency the initial authority—or discretion—to decide how a law shall be applied. That agency’s decision usually can be appealed to the courts. However, courts generally defer to the decisions of administrative agencies in discretionary matters, and limit their review to whether the delegation to the agency was constitutional and whether the agency acted within its authority, followed proper procedures, had a substantial basis for its decision, and acted without arbitrariness or discrimination.

Whether or not an administrative agency is involved, the court still may have to interpret a statute or regulation or decide which of two or more conflicting statutes or regulations apply. Courts have developed

several rules for statutory interpretation. In addition, in some states, a statute specifies rules of interpretation. These rules or statutes are designed to help determine the intent of the legislature in passing the law.

The courts also determine whether specific statutes or regulations violate the Constitution. All legislation and regulations must be consistent with the Constitution. The case of *Marbury v. Madison* established the power of the courts to declare legislation invalid when it is unconstitutional.⁹

Many of the legal principles and rules applied by the courts in the United States are the product of the common law developed in England and, subsequently, in the United States. The term “common law” is applied to the body of principles that evolves from court decisions resolving controversies. Common law is continually being adapted and expanded. During the colonial period, English common law applied uniformly. After the American Revolution, each state provided for the adoption of part or all of the then existing English common law. All subsequent common law in the United States has been developed on a state basis, so common law may differ from state to state.

Statutory law has been enacted to restate many legal rules and principles that initially were established by the courts as part of the common law. However, many issues, especially those pertaining to disputes in private law, still are decided according to common law. Common law in a state may be changed by enactment of legislation modifying it or by later court decisions that establish new and different common law.

In deciding specific controversies, courts for the most part adhere to the doctrine of *stare decisis*, which frequently is described as following precedent. By referring to similar cases decided previously and applying the same rules and principles, a court arrives at the same ruling in the current case as in the preceding one. However, slight differences in the situations presented may provide a basis for recognizing distinctions between precedent and the current case. Even when such differences are absent, a court may conclude that a particular common law rule no longer is in accord with the needs of society, and thus the court may depart from precedent.

One clear example of this departure from precedent in the law affecting hospitals was the reconsideration and elimination in nearly every state of the principle of charitable immunity, which had provided

⁹ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

nonprofit hospitals with virtual freedom from liability for harm to patients resulting from wrongful conduct. In state after state over a 30-year period, courts found justification to overrule precedents that had provided immunity, and, thereby, to allow suits against nonprofit hospitals.

Another doctrine that courts follow to avoid duplicative litigation and conflicting decisions is *res judicata*, which means a thing or matter settled by judgment. When a legal controversy has been decided by a court and no more appeals are available, those involved in the suit may not take the same matters to court again. This is different from *stare decisis* in that *res judicata* applies only to the parties involved in the prior suit and the issues decided in that suit. The application of the doctrine of *res judicata* can be complicated by disagreements over whether specific matters actually were decided in the prior case.

Governmental Organization and Function

This section focuses on the structure of the three branches of government—the legislative, executive, and judicial branches—and the manner in which their functions interrelate. In a simplified summary of the functions of the three branches, the legislature makes the laws, the executive branch enforces the laws, and the judiciary interprets the laws. The three branches of government exist under a vital concept in the constitutional framework of the United States government and of the various state governments: the separation of powers. Essentially, separation of powers means that no one of the three branches of government is clearly dominant over the other two; however, in the exercise of its functions, each branch may affect and limit the activities, functions, and powers of the others.

The concept of separation of powers, which may be referred to as a system of checks and balances, is illustrated by the involvement of the three branches in the federal legislative process. Specifically, when a bill to create a statute is enacted by Congress, representing the legislative branch, and signed by the president, representing the executive branch, the bill becomes law. If the president should veto the bill, a two-thirds vote of each house of Congress can override the veto. Thus, by the president's veto, the executive branch can temporarily prevent a bill from becoming law. If later sessions of Congress do not act favorably on the bill, it will not become law at all. In addition, the president can prevent

a bill from becoming law by not taking any action on the bill while Congress is in session. (This inaction by the president is referred to as a “pocket veto.”) Finally, a bill that has become law may ultimately be declared invalid by the United States Supreme Court, representing the judicial branch of government, if the Court decides that the law violates the federal Constitution.

Another example of the relationship among the branches of government involves the selection of federal court judges. Individuals nominated by the president for appointment to the federal judiciary, including the Supreme Court, must be approved by the United States Senate. Thus, over time, both the executive and legislative branches can affect the composition of the judicial branch of government.

In addition, while a Supreme Court decision may be final with regard to the specific controversy before the Court, Congress and the president may generate revised legislation to replace a law previously held unconstitutional. The processes for amending the Constitution, while complex and often time consuming, also can serve as a method for offsetting or overriding a Supreme Court decision.

Each of the three branches of government has a different primary function. The primary function of the legislative branch is to enact laws. This process may involve creating new legislation or amending or repealing existing legislation. It is the legislature’s responsibility to determine the nature and extent of the need for new laws and for changes in existing laws. By means of a committee system, legislative proposals are assigned or referred for study to committees with specific areas of concern or interest. The committees conduct investigations and hold hearings, at which interested persons may present their views, in order to assist the committee members in their consideration of the bills. Some bills eventually reach the full legislative body, where, after consideration and debate, they may be either approved or rejected. The Congress, as well as every state legislature except Nebraska’s, consists of two houses. (Nebraska has only one house.) Both houses must pass identical versions of a legislative proposal before it can be presented to the chief executive.

The primary function of the executive branch is to enforce and administer the law. However, the chief executive—either the governor of a state or the president of the United States—has a role in the creation of law through the power either to approve or to veto a legislative proposal. If the chief executive accepts the bill through the constitutionally established process, the bill becomes a statute, a part of the enacted

law. If the chief executive vetoes the bill, it can become law only if the legislative process for overriding the veto is successful.

The executive branch of government is organized into departments. The departments have responsibilities for different areas of public affairs, and each enforces the law within its assigned area of responsibility. Much of the federal law affecting or pertaining to hospitals and other healthcare providers is administered by the Department of Health and Human Services (DHHS). Most states have separate departments with responsibility over health and welfare matters, and those departments administer and enforce most laws pertaining to hospitals and other healthcare providers. Other departments and government agencies also affect the affairs of hospitals and other healthcare providers, however. On the federal level, for example, laws relating to wages and hours of employment are enforced by the Department of Labor. The federal Department of Justice is also a key player in enforcing healthcare fraud and prohibitions against abuse.

The judicial branch of government is responsible for adjudicating and resolving disputes in accordance with the law. Many types of disputes involving hospitals go before the courts. For example, suits against hospitals by patients seeking compensation for harm allegedly suffered as the result of wrongful conduct by hospital personnel are decided by the courts. Hospitals resort to the courts to challenge exercises of authority by government agencies and departments, to have legislation concerning hospitals declared invalid, to collect unpaid hospital bills, and to enforce contracts.

Although many disputes and controversies are resolved without resorting to the courts, in many situations there is no way to end a controversy without submitting to the adjudicatory process of the courts. A dispute taken before a court is decided in accordance with the applicable law; this application of the law is the essence of the judicial process.

Organization of the Court System

To understand the judicial branch of government and the effect of court decisions as precedents, it is necessary to understand the structure of the court system. There are more than 50 court systems in the United States, including the federal court system, each state's court system, the District of Columbia court system, and those of Puerto Rico

and other U.S. territories. These courts do not all reach the same decisions on specific issues. Frequently, a majority approach and several minority approaches exist on each issue. Thus, careful review is necessary to determine which court's decisions apply to an individual hospital and, if no decisions are specifically applicable, to predict which approach the relevant courts are likely to adopt.

The federal court system and many state court systems have three levels of courts—trial courts, intermediate courts of appeal, and a supreme court. Some states have no intermediate courts of appeal.

State Court System

The trial courts in some states are divided into special courts that deal with specific issues, such as family courts, juvenile courts, probate courts, and limited courts that deal only with lesser crimes, such as misdemeanors, or with civil cases involving limited amounts of money. Each state has trial courts of general jurisdiction that may decide all disputes not assigned to other courts, or disputes barred from the courts by valid federal or state law.

At the trial court level, the applicable law is determined, and the evidence is assessed to determine the facts. The applicable law then is applied to those facts. It is the judge's role to determine what the law is. If there is a jury, the judge instructs the jury as to the law, and the jury determines the facts and applies the law. If there is no jury, the judge not only determines what the law is, but also determines the facts and applies the law. In either case, the determination of the facts must be based on the evidence properly admitted during the trial, so the facts as heard by the decision maker may not necessarily be what actually happened.

In some cases, everyone agrees on the facts, and the only issues presented to the court concern what the law is. In other cases, everyone agrees what the law is, but there is disagreement over the facts. To determine the facts for purposes of deciding the case, the credibility of any witnesses and the weight to be given to other evidence must be determined. Many cases involve both questions of law and questions of fact. The judge has significant control over the trial even when a jury is involved. If the judge finds that insufficient evidence has been presented to establish a factual issue for the jury to resolve, the judge can dismiss the case or, in civil cases, direct the jury to decide the case in a

specific way. In civil cases, even after the jury has decided, the judge can rule in favor of the other side.

Most state court systems have an intermediate appellate court. Usually, this court decides only appeals from trial court decisions. In some states, there are a few issues that can be taken directly to the intermediate appellate court. When an appellate court decides an appeal, it does not accept additional evidence. It uses the evidence presented in the record from the trial court. Appellate courts almost always accept the factual determinations of the jury or judge in the trial court because the trial court saw the witnesses and therefore can judge their credibility more accurately. Usually, the appellate court bases its decision on whether proper procedures were followed in the trial court and whether the trial court properly interpreted the law. However, an appellate court occasionally will find that a jury verdict is so clearly contrary to the evidence that the appellate court will either reverse the decision or order a new trial.

Each state has a single court at the highest level, usually called the supreme court. In some states, the name is different. For example, in New York, the highest court is the Court of Appeals, while trial courts in New York are called supreme courts. The highest level court in each state decides appeals from the intermediate appellate courts or, in states without such courts, from trial courts. The highest level court frequently has other duties, including adopting rules of procedure for the state court system and determining who may practice law in the state, which includes disciplining lawyers for improper conduct.

Federal Court System

The federal court system has a structure similar to that of state court systems. The federal trial courts are the United States district courts and special purpose courts, such as the U.S. Court of Federal Claims, which hears certain claims against the United States. Federal trial courts are fundamentally different from state trial courts because the federal courts have limited jurisdiction. A federal suit must involve either a question of federal law or a dispute between citizens of different states in which the dispute involves an amount of at least \$75,000. Federal questions include cases involving possible violations of federal law or of rights under the United States Constitution. When a federal trial court decides a controversy between citizens of different states, the

court is acting under what is called its diversity jurisdiction, using federal court procedures but applying the law of the applicable state.

Sometimes federal trial courts will decline to decide state law questions until they have been ruled on by a state court. That is called abstention. It is designed to leave states' issues for state courts and to minimize the federal courts' workload. Federal courts generally will not abstain when there also are important federal questions not affected by the state law question. Some states have procedures by which the federal courts can ask a state court directly to decide a particular question of state law when it is important to the decision of a case before the federal court.

Appeals from the federal trial courts go to a U.S. court of appeals. The United States is divided into 12 areas, called circuits. The circuits are numbered 1 through 11, plus the District of Columbia circuit court, which is called the Court of Appeals for the Federal Circuit.

The nation's highest court is the Supreme Court of the United States, which decides appeals from the U.S. courts of appeals. Decisions of the highest state courts also may be appealed to the U.S. Supreme Court if they involve federal laws or the U.S. Constitution. When the courts of appeals or the highest state courts decline to review a lower court decision, the decision sometimes can be appealed directly to the Supreme Court.

The U.S. Supreme Court has the authority to decline to review most cases. With only a few exceptions, a request for review is made by filing a petition for a writ of certiorari. If the Supreme Court grants certiorari, the record for the lower court decision is transmitted to the Court for review. In most cases, the Supreme Court denies the writ of certiorari. Such a denial does not indicate approval of the lower court decision; it merely means that the Court has declined to review the decision.

Stare Decisis

The preceding description illustrates the complexity of the court systems in the United States. When a court is confronted with an issue, it is bound by the doctrine of *stare decisis* to follow the precedents of higher courts in the same court system that have jurisdiction over the geographic area in which the court is located. Each appellate court, including the highest court, generally is bound also to follow the precedents of its own decisions, unless it decides to overrule the precedent due to changing conditions.

Thus, decisions from equal or lower courts or from courts in other court systems do not have to be followed. One exception occurs when a federal court decides a controversy between citizens of different states and must follow the relevant state law as determined by the highest court of the relevant state. Another exception is when a state court decides a controversy involving a federal law or constitutional questions and must follow the decisions of the United States Supreme Court. Another situation that may force a court to alter its prior position is a change in the applicable statutes or regulations by the legislature or an administrative agency.

When a court is confronted with a question that is not answered by applicable statutes or regulations and the question has not been addressed by its court system, the court usually will examine the judicial solutions reached in the other systems to decide the new issue. When a court decides to reexamine its position on an issue that it has previously addressed, it often will examine the judicial decisions of the other systems to decide whether to overrule its position. A clear trend in decisions across the country can form a basis for a reasonable legal assessment of how to act even when the courts in a particular area have not decided the issue. However, a court is not bound by decisions in other systems, and it may reach a different conclusion.

Thus, there can be a majority approach to a certain issue that many state court systems follow, and several minority approaches that other states follow. State courts show more consistency on some issues than on others. For example, nearly all state courts have completely eliminated charitable immunity. However, while nearly all states require informed consent to medical procedures, many states determine the information that must be provided to patients by reference to what a reasonable patient would need to know under the circumstances, while several states make the determination by reference to what other physicians would disclose in like circumstances. A few states have not yet decided what reference to use.

Differences in applicable statutes and regulations between states may force courts in different states to reach different conclusions on certain questions. For example, numerous states have enacted legislation that protects from discovery the records of hospital and medical staff review committees, although the extent of protection varies.¹⁰

¹⁰ Discovery is the formal process in court proceedings by which parties disclose information that is relevant to the parties' underlying legal dispute.

Some statutes provide that such records generally are subject to subpoena, discovery, or disclosure;¹¹ other laws state specifically that such committee records, proceedings, and reports are not discoverable, or the statutes describe such material as confidential or privileged. There also are common exceptions to the nondiscovery statutes, allowing physicians to discover records of staff privilege committees when contesting the termination, suspension, or limitation of their staff privileges. As a result of these variations, courts throughout the country have construed nondiscovery statutes with varying results.

In summary, although it is important to be aware of trends in court decisions across the country, legal advice should be sought before taking actions based on decisions from court systems that have no jurisdiction over the geographic area in which the healthcare provider is located.

¹¹ Generally, a subpoena is a written court order requiring the attendance of the person named in the subpoena at a specified time and place for the purpose of being questioned under oath concerning a particular matter that is the subject of an investigation, proceeding, or lawsuit. In addition, a specific type of subpoena, a subpoena duces tecum, requires that an individual produce specified documents or pieces of evidence.