

FOURTEENTH EDITION

# Legal Aspects

OF HEALTH CARE ADMINISTRATION

**GEORGE D. POZGAR, MBA, CHE, D.LITT.**

*Legal Review*

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*Nina Santucci-Pozgar*



*I dedicate this book to Nina Marie Santucci-Pozgar.*

*The world on July 12, 2021, lost a woman who suffered 22 years from Systemic Scleroderma, a painful, debilitating disease. Yet she never gave up. She fought until her dying breath.*

*Who was she? Ask her family. Ask her friends. Ask her students.*

*Ask the New York Suffolk County District Attorney's Office, where she was Bureau Chief of White Collar Crime and her Court Wins totaled 100%.*

*Ask Janet Reno, who appointed her General Counsel for the U. S. Department of Justice COPS program. Ask Bob Pozgar, who worked with her on the General Counsel..*

*Ask me, her husband.*

*During her lifetime she accumulated many awards. She never bragged about them. She was a powerful kind woman of patience.*

*She reached out to those in need of help, whoever they were, wherever they were. She did all she could for family, for friends, for others, with tremendous humility, understanding and compassion.*

*If you only knew her for a short time, you would never forget her.*

*She memories of her are seared in my heart and the hearts of all of us who were blessed to have known her. She is truly Earth's loss and Heaven's gain.*

*"Nina Pozgar, Chief, White Collar Bureau, ever the inspirational teacher, her outstanding advocacy skills, contagious enthusiasm, and unfailing good humor have set the standard for prosecutorial leadership. She epitomized the 'follow me' spirit."*

*—Suffolk County District Attorney's Office*

*Her unwavering faith in God and the challenges she faced have forever changed the lives of so many. Her life is a testimony to goodness, kindness, and compassion.*

*- George*



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# Epigraph



*I consider ethics, as well as religion, as supplements to law in the government of man.*

—**Thomas Jefferson**, President of the United States  
(1743–1826)



*In law a man is guilty when he violates the rights of others. In ethics he is guilty if he only thinks of doing so.*

—**Immanuel Kant**, philosopher (1724–1804)



*Books are the carriers of civilization. Without books, history is silent, literature dumb, science crippled, thought and speculation at a standstill. I think that there is nothing, not even crime, more opposed to poetry, to philosophy, ay, to life itself than this incessant business.*

—**Henry David Thoreau**, author, poet,  
philosopher (1817–1862)



*It is curious—curious that physical courage should be so common in the world, and moral courage so rare.*

—**Mark Twain**, American author,  
humorist (1835–1910)



*In civilized life, law floats in a sea of ethics.*


—**Earl Warren**, Chief Justice of the United States  
(1891–1974)



*How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the striving, and tolerant of the weak and the strong—because someday you will have been all of these.*

—**George Washington Carver**, American inventor  
(1864–1943)

# Preface

 *He has achieved success who has lived well, laughed often and loved much; who has gained the respect of intelligent men and the love of little children; who has filled his niche and accomplished his task; who has left the world better than he found it, whether by an improved poppy, a perfect poem, or a rescued soul; who has never lacked appreciation of earth's beauty or failed to express it; who has always looked for the best in others and given them the best he had; whose life was an inspiration; whose memory a benediction.*

—Bessie Stanley

**L***egal Aspects of Health Care Administration, Fourteenth Edition* as with the previous 13 editions, continues to be the most comprehensive and engaging book encompassing both the legal and ethical issues of healthcare administration. The *Fourteenth Edition* continues its tradition of providing a solid foundation in a wide range of current healthcare topics in an understandable format that carefully guides the reader through the complex maze of law and ethics, as well as an overview of practical ways to improve quality and safety in the delivery of patient care. As in previous editions, the *Fourteenth Edition* serves as a valuable tool for both undergraduate and graduate programs. Additionally, as has been well recognized by practicing healthcare professionals, *Legal Aspects of Health Care Administration* continues to be a valuable reference tool in their day-to-day work activities.

The author infuses life into the educational process through legal case studies that have been litigated

in the courtroom or reported in the press, as well as real-world healthcare events through “reality checks” experienced by patients and healthcare professionals. The author’s approach inspires dynamic discussion and excitement in the learning process, thus creating an atmosphere of interest and participation, which is conducive to learning.

Although the court cases relating examples of malpractice are often mirror images of the failures of medicine, this *Fourteenth Edition* provides a comprehensive resource from which the reader will learn how the law, ethics, and medicine intertwine. The contents of this book serve as a reminder to its readers of the need to learn from the mistakes and tragedies experienced by others to avoid repeating them. The legal cases and resulting headlines should stand as a reminder of the responsibility that caregivers bear to the profession they have chosen. The knowledge gained here will help prevent caregivers from becoming the next headline.

Although there will always be a “next time” for human error, the reader who grasps the contents in this book and understands its lessons will better understand how failures can turn to success and how the pain of past mistakes can turn to hope. The application of the knowledge gained from this book and in the classroom learning process will serve to improve the competency of the reader and the quality of life for the patient through an educational process that will help prevent further injury in the healing process.

# About the Book

*Legal Aspects of Health Care Administration, Fourteenth Edition* lays a strong foundation in both health law and ethics. Chapter 1 begins with a review of hospitals through the ages, providing the reader with an overview of the historical development of hospitals as influenced by medical progress. This allows the reader to see the successes and failures of hospitals through the centuries and how history has a way of repeating itself, thus creating a need to learn from past mistakes in order to prevent repeating them. Chapter 2 continues with an introduction to government, law, and ethics.

Chapters 3 and 4 introduce the reader to negligence and intentional torts. Chapter 5 discusses tort reform and risk reduction, which pertain to reducing the costs of health care. Chapter 6 reviews the criminal aspects of health care, and Chapter 7 reviews the basics of contract law as it pertains to healthcare professionals. The reader is then introduced to civil procedure and trial practice in Chapter 8. The reader's journey continues with a discussion of corporate structure and related legal issues in Chapter 9. A review of medical staff organization and physician liability is covered in Chapter 10, followed by nursing and the law and common nursing practice errors in Chapter 11. Chapter 12 reviews the legal risks of various other hospital departments and healthcare professions.

Information management and patient records are reviewed in Chapter 13, followed by a review of issues related to patient consent in Chapter 14. A discussion of patient rights and responsibilities is provided in Chapter 15.

Chapter 16 continues with a review of healthcare ethics, theories, principles, and values. This review is followed by procreation and ethical dilemmas in Chapter 17 and end-of-life issues in Chapter 18. Legal reporting requirements are discussed in Chapter 19.

Human resources are reviewed in Chapter 20, which includes an overview of labor relations, employment-at-will doctrine, as well as employee rights and responsibilities.

Chapter 21 presents an overview of managed care and national health insurance. An overview of professional liability insurance is provided in Chapters 22.

The practical application of the law and ethics in the healthcare setting is accomplished by interspersing the thoughts of great minds through *Quotes*, organizational experiences through *Reality Checks*, and patient experiences through legal rulings and summaries through *Case Law*. When reviewing the various cases, the reader should consider both the ethical and legal implications of a dilemma and how they intertwine with one another. It is important to recognize that the decisions in the cases described are generally governed both by applicable state and federal statutes and common law principles. When reviewing a case, the reader must keep in mind that the case law and statutes of one state are not binding in another state.

There is no one magical legal or ethics book that can possibly compress into its pages the plethora of issues that have bombarded the healthcare industry. This book is merely a beginning of the study of legal and ethical issues and is an adventure that all caregivers should take. Although there is always much more that could be discussed on any one topic, the reader will understand that this book provides a solid foundation for practical everyday use as well as further study in the law and ethics.

The *Fourteenth Edition* presents real-world life experiences that bring the reader through a journey of learning that provides an effective transitional stage from the classroom to the reality of the everyday work environment. When considering matters of law and ethics, healthcare professionals are usually considering matters of freedom in regard to personal choices, one's obligations to other sentient beings, or judgments about human character and the right to choose. The author's objective is to equip the reader with the background knowledge necessary to understand that legal and ethical behavior begin with recognizing that we have alternatives and choices in our behavior. To make good decisions, each individual must first understand that those decisions will only be as good as the knowledge and understanding he or she possesses of right and wrong. This book is not an indictment of any profession or organization. There is a deluge of ethical issues in every aspect of human existence.


**IT'S YOUR GAVEL...**

"It's Your Gavel" boxes offer the reader an opportunity to make their own decisions about actual court cases. Many chapters begin with a case that has been reviewed by the courts in state or federal jurisdictions. After reviewing each case and subsequent relevant material, readers can take on the role of the fact finder and render a decision. Then, at the end of the respective chapters, the actual court findings and reasoning for each case are given in "The Court's Decision" box.

Although cultural differences, politics, and religion influence who we are, it is all of life's experiences that affect who we become.

## ► Case Presentation Format

When reviewing the various cases in this book, the reader should consider what happened, why things went wrong, what the relevant legal issues are, and how the event could have been prevented. The reader should also consider how, if one fact in a particular case changed, the outcome might have been different. What would that fact be? The cases presented in the text have been chosen because of the frequency of their occurrence. The general format for each boxed case review is as follows:

**Title:** Each case has a title that signals the type of case to be reviewed.

**Case Citation:** The case citation describes where a court's opinion in a particular case can be located. It identifies the parties in the case, the text in which the case can be found, the court writing the opinion, and the year in which the case was decided. For example, the case citation of *Bouvia v. Superior Court*

(*Glenchur*), 225 Cal. Rptr. 297 (Cal. Ct. App. 1986) is described as follows:

- *Bouvia v. Superior Court (Glenchur)*: Identifies the basic parties involved in the lawsuit
- 225 Cal. Rptr. 297: Identifies the case as being reported in volume 225 of the California Reporter on page 297
- Cal. Ct. App. 1986: Identifies the case as being decided in the California Court of Appeals in 1986

Students who wish to research a specific case should visit a law school library, which provides access to various state and regional reporters.

**Facts:** A review of the material facts of the case is presented.

**Issues:** This is the disputed point or question the judge or jury must decide. The issues discussed in any given case are selected for review based on medical and legal pertinence to the healthcare professional. Although any one case in this text may have multiple issues, emphasis is placed on those issues considered to be more relevant for the reader in the context of the topic being discussed.

**Holding:** The court's ruling based on the facts, issues, and applicable laws pertaining to a case is summarized.

**Reason:** The rationale for the court's decision based on the facts, issues, and relevant laws surrounding a case is presented.

This book is not a definitive treatise but rather a portrait of the ever-evolving story of health care through the study of law and ethics. It is educational in nature and should not be considered a substitute for legal advice on any particular issue. Moreover, each chapter presents an overview, rather than an exhaustive treatment, of the various topics discussed.

The author, legal reviewers, and/or the publisher cannot be responsible for any errors or omissions, including additions to, interpretations of, and/or changes in the regulations presented in this book.

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