Medical Law and Ethics

BONNIE F. FREMGEN, Ph.D.
Library of Congress Cataloging-in-Publication Data
Fremgen, Bonnie F.
Medical law and ethics / Bonnie F. Fremgen. — 3rd ed.
p. cm.
Includes bibliographical references and index.
ISBN-10: 0-13-512904-4
KF3821.F74 2008
344.7304’1—dc22
2007037829

Notice: The material in this textbook contains the most current information about the topic at the time of publication. This text is not meant to be used in lieu of qualified legal advice for situations that arise in either one’s professional practice or personal life. An attorney should always be consulted for legal advice. Since laws for healthcare professionals vary from state to state, it is always wise to consult specific laws within one’s state of practice.

Note Re Case Studies: The names used in the case studies throughout the text are fictitious.
To my children, who have always been my inspiration for ethical behavior.
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensure and Certification of Allied Health Professionals</td>
<td>53</td>
</tr>
<tr>
<td>Standard of Care</td>
<td>55</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>56</td>
</tr>
<tr>
<td>Statute of Limitations</td>
<td>57</td>
</tr>
<tr>
<td>Good Samaritan Laws</td>
<td>58</td>
</tr>
<tr>
<td>Respondeat Superior</td>
<td>58</td>
</tr>
<tr>
<td>Risk Management</td>
<td>62</td>
</tr>
<tr>
<td>4 Medical Practice and Allied Health Professionals</td>
<td>67</td>
</tr>
<tr>
<td>Today’s Healthcare Environment</td>
<td>69</td>
</tr>
<tr>
<td>Types of Medical Practice</td>
<td>73</td>
</tr>
<tr>
<td>The Ethics of Fee Splitting</td>
<td>77</td>
</tr>
<tr>
<td>Medical Specialty Boards</td>
<td>77</td>
</tr>
<tr>
<td>Allied Health Professionals</td>
<td>80</td>
</tr>
<tr>
<td>PART II THE HEALTHCARE ENVIRONMENT</td>
<td>87</td>
</tr>
<tr>
<td>5 The Physician–Patient Relationship</td>
<td>87</td>
</tr>
<tr>
<td>Physician’s Rights</td>
<td>89</td>
</tr>
<tr>
<td>Physician’s Responsibilities</td>
<td>90</td>
</tr>
<tr>
<td>Professional Practice Responsibilities</td>
<td>91</td>
</tr>
<tr>
<td>Patients’ Rights</td>
<td>100</td>
</tr>
<tr>
<td>Rights of Minors</td>
<td>106</td>
</tr>
<tr>
<td>Patients’ Responsibilities</td>
<td>107</td>
</tr>
<tr>
<td>Role of the Healthcare Consumer</td>
<td>111</td>
</tr>
<tr>
<td>6 Professional Liability and Medical Malpractice</td>
<td>117</td>
</tr>
<tr>
<td>Professional Negligence and Medical Malpractice</td>
<td>120</td>
</tr>
<tr>
<td>The Tort of Negligence</td>
<td>121</td>
</tr>
<tr>
<td>Fraud</td>
<td>125</td>
</tr>
<tr>
<td>Office of Inspector General</td>
<td>126</td>
</tr>
<tr>
<td>Defense to Malpractice Suits</td>
<td>128</td>
</tr>
<tr>
<td>Professional Liability</td>
<td>130</td>
</tr>
<tr>
<td>Alternative Dispute Resolution</td>
<td>135</td>
</tr>
<tr>
<td>Liability of Other Health Professionals</td>
<td>136</td>
</tr>
<tr>
<td>Role of the Supervisor</td>
<td>139</td>
</tr>
<tr>
<td>Chapter</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>7</td>
<td>Public Duties of the Physician</td>
</tr>
<tr>
<td></td>
<td>Public Health Records and Vital Statistics</td>
</tr>
<tr>
<td></td>
<td>Controlled Substances Act and Regulations</td>
</tr>
<tr>
<td></td>
<td>Protection for the Employee and the Environment</td>
</tr>
<tr>
<td>8</td>
<td>Workplace Law and Ethics</td>
</tr>
<tr>
<td></td>
<td>Professionalism in the Workplace</td>
</tr>
<tr>
<td></td>
<td>Discrimination in the Workplace</td>
</tr>
<tr>
<td></td>
<td>Privacy and the Workplace</td>
</tr>
<tr>
<td></td>
<td>Cultural Considerations</td>
</tr>
<tr>
<td></td>
<td>Religions Considerations</td>
</tr>
<tr>
<td></td>
<td>Effective Hiring Practices</td>
</tr>
<tr>
<td></td>
<td>Legal and Illegal Interview Questions</td>
</tr>
<tr>
<td></td>
<td>Federal Regulations Affecting the Medical Professional</td>
</tr>
<tr>
<td></td>
<td>Equal Employment Opportunity and Employment Discrimination</td>
</tr>
<tr>
<td></td>
<td>Employee Health and Safety</td>
</tr>
<tr>
<td></td>
<td>Compensation and Benefits Regulations</td>
</tr>
<tr>
<td></td>
<td>Consumer Protection and Collection Practices</td>
</tr>
<tr>
<td></td>
<td>Antitrust Laws</td>
</tr>
<tr>
<td></td>
<td>Federal Labor Law</td>
</tr>
<tr>
<td>9</td>
<td>The Medical Record</td>
</tr>
<tr>
<td></td>
<td>Purpose of the Medical Record</td>
</tr>
<tr>
<td></td>
<td>Contents of the Medical Record</td>
</tr>
<tr>
<td></td>
<td>Confidentiality and the Medical Record</td>
</tr>
<tr>
<td></td>
<td>Ownership</td>
</tr>
<tr>
<td></td>
<td>Retention and Storage of Medical Records</td>
</tr>
<tr>
<td></td>
<td>Reporting and Disclosure Requirements</td>
</tr>
<tr>
<td></td>
<td>Use of the Medical Record in Court</td>
</tr>
<tr>
<td>10</td>
<td>Confidentiality in Medical Practice</td>
</tr>
<tr>
<td></td>
<td>Confidentiality</td>
</tr>
<tr>
<td></td>
<td>Health Insurance Portability and Accountability Act (HIPAA) of 1996</td>
</tr>
<tr>
<td></td>
<td>Ethical Concerns with Information Technology (Informatics)</td>
</tr>
</tbody>
</table>
PART III MEDICAL ETHICS 243

11 Ethical and Bioethical Issues in Medicine 243
   Early History 245
   Ethical Standards and Behavior 246
   Codes of Ethics 247
   Codes of Ethics for Other Medical Professionals 248
   Bioethical Issues 250
   Ethical Issues and Personal Choice 254
   The Ethics of Biomedical Research 255
   Human Genome Project 258
   Genetic Engineering 259
   Healthcare Reform 262

12 Ethical Issues Relating to Life 269
   Fetal Development 271
   Assisted or Artificial Conception 272
   Contraception 276
   Sterilization 277
   Abortion 280
   Genetic Counseling and Testing 286
   Wrongful-Life Suits 290

13 Death and Dying 297
   The Dying Process 299
   Legal Definition of Death 299
   Stages of Dying 309
   Quality-of-Life Issues 309
   Use of Medications 310
   Hospice Care 311
   Palliative Care 311
   Viatical Settlements 312
   Advance Directives 313
   Choices in Life and Death 314
<table>
<thead>
<tr>
<th>Appendix A. Codes of Ethics</th>
<th>321</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appendix B. Healthcare Regulatory Credentialing Agencies</td>
<td>329</td>
</tr>
<tr>
<td>Appendix C. Healthcare Websites</td>
<td>331</td>
</tr>
<tr>
<td>Appendix D. Case Citations</td>
<td>335</td>
</tr>
<tr>
<td>Glossary</td>
<td>339</td>
</tr>
<tr>
<td>Index</td>
<td>347</td>
</tr>
</tbody>
</table>
The allied health professional has always been an important member of the medical team. This team awareness is even more critical in today’s healthcare environment, since the physician no longer practices medicine alone.

Medical Law and Ethics is written in straightforward language that is aimed at the nonlawyer health professional who must be able to cope with multiple legal and ethical issues. This text is appropriate for those studying in a college or university who are working toward careers in the allied health field in a variety of settings, such as medical offices, hospitals, clinics, and skilled-nursing facilities. A wide range of pertinent topics is discussed, such as the legal system, the physician–patient relationship, professional liability and medical malpractice, public duties of the physician, the medical record, and ethical and bioethical issues. Additional material has been added relating to cultural and religious considerations as well as the role of the supervisor in medical ethics. There is an in-depth discussion of the regulations affecting the healthcare professional, including up-to-date information about the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The intent is to help healthcare professionals to better understand our ethical obligation to ourselves, our patients, and our employers.

Many legal cases are sprinkled throughout the text to demonstrate the history of the law as it pertains to subjects such as patient confidentiality, managed care, federal regulations affecting the employee, death and dying, and abortion. In some examples, the cases may seem old, but since our legal system is based on case law, they are still pertinent today. A legal icon (scales of justice) appears in the left margin to indicate legal case citations.

A special feature called Med Tips provides quick information about law and ethics. These brief scenarios and hints help to maintain interest in this vital subject. Each chapter includes glossary terms highlighted in bold on first reference, extensive end-of-chapter exercises, and one actual practice case. The appendices include a thorough compilation of codes of ethics that form a basis for current practice, a listing of healthcare regulatory agencies and useful medical websites, case citations, and supplemental cases for discussion.

This text provides an overview of medical law and ethics. Practicing health care professionals should know the legal requirements in their own jurisdictions.

CHAPTER STRUCTURE

- **Learning Objectives.** These include an overview of the basic knowledge discussed within the chapter and can be used as a chapter review.
- **Key Terms.** Important vocabulary terms are listed alphabetically at the beginning of each chapter and printed in bold the first time they are defined in the text.
- **Introduction.** Each chapter begins with an introductory statement that reflects the topic of the chapter.
Review Challenge. A selection of matching, multiple-choice, and fill in the blank questions are included to test the student’s knowledge of the chapter material.

Case Study. The case studies are based on real-life occurrences and offer practical application of information discussed within the chapter. These are included to stimulate and draw upon the student’s critical-thinking skills and problem-solving ability.

Bibliography. These useful resources provide further information on the topics included within the chapter.

SPECIAL FEATURES

Med Tip. Med Tips are placed at strategic points within the narrative to provide helpful hints and useful information to stimulate the student’s interest in the topic.

Legal Case Citations. Discipline-specific cases are used throughout the text to illustrate the topic under discussion. The cases reflect the many medical disciplines, including that of the physician, that come together in the care of the patient. While this book is not meant to be a law book, the cases cited in the book are meant to emphasize the importance of the law for the students.

Points to Ponder. Thought-provoking questions give students an opportunity to evaluate how they might answer some of the tough, medically related ethical dilemmas in today’s society. These questions can also be used for critical debate among students during a class activity.

Discussion Questions. These end-of-chapter questions encourage a review of the chapter contents.

Put It into Practice. These thought-provoking activities appear at the end of each chapter. They provide a clinical correlation with the topics discussed in the chapter and stimulate the student’s own contemplation of legal and ethical issues that are apparent in everyday life.

Web Hunt. This end-of-chapter Internet activity encourages the student to access the multitude of medical resources available through this medium.

Appendices. Codes of Ethics are included in Appendix A; a list of U.S. regulatory agencies appears in Appendix B; useful medical websites are listed in Appendix C; the case citations used throughout the book are listed in Appendix D.

Additional Examination Review Questions. These are included in the Instructor’s Resource Manual.

ACKNOWLEDGMENTS

This book would not have been possible without the assistance and guidance of many people. I am grateful to the editorial and production staffs at Prentice Hall for their skill and patience with this project. I thank Mark Cohen, acquisitions editor, for his leadership with this project; Nicole Ragonese and Melissa Kerian, whose courtesy and thoroughness are greatly appreciated; Pat Walsh, managing production editor, whose calm presence is always available; and Jessica Balch, project manager at Pine Tree Composition, Inc., and Christina Zingone, production liaison, for their great attention to detail and all their hard work.
Letter to the Student

It’s a natural tendency to read some of the case examples in this book and think that they must be fictional since no well-trained healthcare professional would ever be so negligent. However, the short cases at the beginning of each chapter are indeed real. And in most cases, they are drawn from the author’s experience. Throughout the book there are numerous examples of actual legal cases that usually resulted in suffering for patients, as well as for physicians and other healthcare professionals. These cases are not meant to frighten but, rather, to alert all of us to the potential risks to patients when healthcare professionals are not diligent about the care they provide. Do not memorize the case citations, but rather try to understand the circumstances and why the case was included in this book.

I have a great respect for all the disciplines mentioned in this book. My intent is to prepare students to protect themselves as well as their employers from lawsuits.

For a successful start to your study of medical law and ethics, consider following the ABCs of classroom success: Actively participate, Benefit from the experience, and Commit to learning. It is necessary for you to attend class to truly benefit from your ethics education. So much happens in the classroom—especially the interaction between you and your classmates. The discussion portion of an ethics class is one of the most important components. You must be present to contribute. The text serves as an information source and as the first step in your education—the dynamics of classroom interaction between you, your instructor, and the other students is critical for success in learning.

**Actively participate** when you attend class. It is necessary to absorb what takes place during the class session. Listen carefully to what your instructor and fellow students say. If you don’t share your ideas, experiences, and questions, then the rest of the class is losing what you have to offer. The dialogue about ethics that you have with your instructor and fellow classmates can be one of the most meaningful learning experiences.

**Benefit** from the experience and ideas of your peers (classmates). Listen to the opinions of others during class discussions. Pay particular attention to the opinions that differ from your own. As a member of the healthcare team, you will frequently hear opinions that differ from your own—both from your coworkers and your patients. You do not have to change your opinions or beliefs, but try to keep an open mind.
Commit to learning by carefully reading and analyzing the textbook material. Look for new information and also for discussion points that both agree and disagree with your own perspective. Keep an open mind to the opinions of others. Take this course seriously so that it is not a waste of your time. In fact, your ethics class can be one of the most important classes that you take! Communicate what you have learned. Your perspective is important for others to hear. Use your time wisely in class, share your ideas, and listen to the thoughts of others.

The law is dynamic and often is revised as changes take place in society. For example, one of the newest laws affecting healthcare, the Healthcare Insurance Portability and accountability Act of 1996 (HIPAA), has recently had an added impact regarding the necessity for healthcare organizations, including physicians’ offices, to provide notice to all patients concerning their privacy practices. This textbook is not meant to be a study of the law, but rather to introduce students to the impact that law and ethics have on their professional lives.
How to Interpret Case Citations

Selected legal cases are used in this textbook to illustrate various legal principles. At the end of each case summary is a citation such as, *Moon Lake Convalescent Center v. Margolis*, 433 N.E.2d 956 (Ill. App. Ct. 1989). This citation, similar to a street address, tells you where you can find this case among the many sets of reported cases (called reporters) in the library. Most case citations end with information in parentheses, such as (Ill. App. Ct. 1989), which tells you what court (the Illinois Appellate Court) decided the case and the year (1989) of the decision, but you do not need that information when you are simply trying to locate a particular case in the library. The small v. between the litigants’ names stands for “versus.” A case citation consists of:

- The italicized case name—usually the name of the plaintiff and the defendant. In our example, *Moon Lake Convalescent Center* (defendant) and *Margolis* (plaintiff).
- The name of the reporter(s) where the case is published (Northeast Reporter, 2d series).
- The volume number(s) of the reporter(s) where the case is published (433).
- The page number of the volume where the case begins (956).
- The year the case was decided (1989).
- For federal Court of Appeals cases, a designation of the circuit; for federal District Court cases, the state and judicial district where the court is located; for state cases, an indication of the state if it is not apparent from the name of the reporter (Illinois Appellate Court).

Therefore, our example case between Moon Lake Convalescent Center and Margolis is found in volume 433 of the Northeast Reporter, 2d series, on page 956.

Abbreviations for other reporters (books) are:

A (Atlantic Reporter)
P (Pacific Reporter)
U.S. (United States Reports)
F. Supp. (Federal Supplement)
F (Federal Reporter)
NE (Northeast Reporter)
NW (Northwest Reporter)
NYS (New York Supplement)
So (Southern Reporter)
SW (Southwestern Reporter)
Most reporters have been published in two or more series, such as 2d, meaning second series. The student should not be concerned with memorizing the names of the reporters. The abbreviations for them are found at the beginning of most of the legal research publications that we use. As you do research within your own state, you will become familiar with the abbreviations that are most commonly used. Legal research can be done through a law library or via the Internet from Lexis-Nexis, which is a subscription service used by law firms and libraries.
About the Author

Bonnie F. Fremgen, Ph.D., is a former associate dean of the Allied Health Program at Robert Morris College. She has taught medical law and ethics courses as well as clinical and administrative topics. In addition, she has served as an advisor for students’ career planning. She has broad interests and experiences in the healthcare field, including hospitals, nursing homes, and physicians’ offices.

Dr. Fremgen holds a nursing degree as well as a master’s in healthcare administration. She received her Ph.D. from the College of Education at the University of Illinois. She has performed postdoctoral studies in medical law at Loyola University Law School in Chicago.

Dr. Fremgen has taught ethics at the University of Notre Dame, South Bend, Indiana; University of Detroit, Detroit, Michigan; and Saint Xavier University, Chicago, Illinois.
Reviewers

THIRD EDITION REVIEWERS

Frank Ambriz, PA-C, MPAS  
Assistant Professor/Director, PA Program  
University of Texas–Pan Am  
Edinburg, Texas

Theresa Allyn, BS  
BSTEC Instructor  
Edmonds Community College  
Lynnwood, Washington

Deborah Bedford, AAS, CMA  
Program Coordinator, Medical Assisting  
North Seattle Community College  
Seattle, Washington

Susan J. Burnham, RNC, CLNC, IBCLC  
Instructor, Allied Health  
Renton Technical College  
Renton, Washington

Kat Chappell, CMA, BS  
Instructor, Medical Assisting  
Highline Community College  
Des Moines, Washington

Mack Henderson, PhD, MEd, CPC, CCSP  
Program Director, Health Information Technology  
Durham Technical Community College  
Durham, North Carolina

Robert K. Johnson, JD  
Instructor of Law  
Ivy Tech Community College  
Greenwood, Indiana

Vivian C. Lilly, PhD, MBA, MS, BS, RN  
Dean of Health & Human Services  
North Harris College  
Houston, Texas

Sharon Tompkins Luczu, RN, BA, MA, MBA  
Program Director, Health Services Management  
Gateway Community College  
Phoenix, Arizona

Christine Malone, BS  
Instructor, Health Sciences  
Everett Community College  
Everett, Washington

Betsey Morthland, MS  
Instructor, Health Information Management  
Black Hawk College  
Moline, Illinois

Lisa Nagle, CMA, BSEd  
Program Director, Medical Assisting  
Augusta Technical College  
Augusta, Georgia

Michael O’Sullivan, DPH  
Associate Professor/Program Coordinator, Health Management and Policy  
University of Massachusetts–Lowell  
Lowell, Massachusetts

Helen W. Spain, BSEd, MSEd  
Program Coordinator, Medical Office Administration  
Wake Technical Community College  
Raleigh, North Carolina

Susan Stockmaster, MHS  
Instructor  
Trident Technical College  
Charleston, South Carolina

Lenette Thompson  
Program Coordinator, Dual Enrollment  
Piedmont Technical College  
Greenwood, South Carolina

Amy L. Wilson, BS, RT(R), RDMS, RVT  
Instructor, Radiologic and Imaging Sciences  
University of Southern Indiana  
Evansville, Indiana

Lenette Thompson
Program Coordinator, Medical Office Administration  
Wake Technical Community College  
Raleigh, North Carolina

Susan Stockmaster, MHS  
Instructor  
Trident Technical College  
Charleston, South Carolina

Amy L. Wilson, BS, RT(R), RDMS, RVT  
Instructor, Radiologic and Imaging Sciences  
University of Southern Indiana  
Evansville, Indiana

PREVIOUS EDITION REVIEWERS

Anne M. Arto  
District Coordinator of Continuing Education  
Pasco-Hernando Community College  
Brooksville, Florida

Deborah J. Bedford, CMA, AAS  
Program Coordinator, Medical Assisting  
North Seattle Community College  
Seattle, Washington

Norma Bird, MEd, BS, CMA  
Director, Medical Assisting  
Idaho State University College of Technology  
Pocatello, Idaho

Rafael Castilla, MD  
Dean of Academics  
Hohokus School of Business and Medical Sciences  
Ridgefield, New Jersey

Michael W. Cook, MA, RRT  
Professor, Respiratory Therapy  
Mountain Empire Community College  
Big Stone Gap, Virginia