ASSIGNMENT 1

Read this entire introduction. Then read Chapter 1 in your textbook, *Legal Aspects of Health Information Management*. When you’ve read all of the material for Assignment 1, complete *Self-Check 1* in this study guide.

Begin by reading the Introduction to Chapter 1 on page 2. Then go back and read the Learning Objectives on page 1. Look at the “Key Concepts” for this chapter. Look up the definitions of any words you don’t know in the glossary and copy down the definitions in your journal. Chapter 1 explores the basic workings of the legal system in America.

Objectives

When you complete this assignment, you’ll be able to

- Differentiate between public law and what the author calls “private law”
- Understand the difference between procedural and substantive criminal law
- Identify the various sources of law
- Explain how the three branches of government create, administer, and enforce the law
- Understand and describe what your author calls quasi-legal requirements to which health-care providers are subject

Criminal versus Civil Law

Your author refers to *public law* and *private law*. In public law (which includes criminal law), the government prosecutes the case and the purpose is punishment or deterrence of
illegal behavior. The most common example is criminal law. If someone commits a crime, the government charges and punishes that person. This would be an example of criminal litigation. The key idea is that the government is prosecuting or enforcing rules for the public good.

Private law (which roughly corresponds to civil law) is pursued by individuals for their own benefit. If you carelessly drive your car into mine, I can sue you for damages to my car and injuries to me. This would be an example of civil litigation.

The same event can, however, give rise to both civil and criminal litigation. If you were intoxicated when you drove your car into mine, you might be charged by the government with “driving while intoxicated,” and I could still sue you for damages in a civil case.

Your textbook says litigation between private parties generally falls into two categories—contract and tort. This generally holds true with regard to litigation concerning management of confidential health care information.

Contracts are enforceable promises that two or more people have agreed upon. For example, I promise to paint your house if you promise to give me $100 for doing so. If I keep my promise, and paint the house, but you don’t keep the promise to pay me, you can be sued for breach of contract. Patients enter into contractual relationships with insurance companies, doctors, and other people in the health care industry.

Tort involves damage to person or property where the rights and duties involved are not derived from contract. Going back to the car example, if you smash my car, I can sue for damages, not because we had a contract that you wouldn’t smash my car but because, as you’ll learn later, all persons owe a general duty to exercise reasonable care and avoid harming the person or property of others. Medical malpractice is a kind of tort where the doctor has breached his duty to treat patients according to the same standard of care that other doctors would provide.

Both criminal and civil law have two aspects—procedure (rules for how to prosecute a case) and substantive (the legal rights and duties that exist between the parties).

Note the textbook’s definitions of felony and misdemeanor.
Sources of Law

Constitution

There are a number of constitutions in the United States, including the federal (or U.S.) Constitution and constitutions for each of the states. Constitutions define the powers of government and the rights of citizens. For example, the U.S. Constitution gives Congress the power to adopt legislation which, if not vetoed by the president, becomes law. The U.S. Constitution, in the First Amendment, prohibits the government from passing laws that interfere with the free exercise of speech and religion. Constitutions are the highest source of law, and laws that conflict with them can be declared “unconstitutional” and void by a court.

The First Amendment to the U.S. Constitution says

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Statutes

Statutes are laws adopted by legislative bodies, like Congress, a state legislature, or a local city council. Local statutes are often called ordinances.

Administrative Decisions, Regulations, and Rules

Agencies are created to carry out or implement a law that’s passed and fill in the details not addressed in the statutes. For example, Congress passes a law that we must pay income tax, but the Internal Revenue Service (IRS) creates rules and regulations about how we file the taxes, how certain parts of the tax law will be interpreted, and procedures for amending our tax returns.
Confidentiality of Health Information

Judicial Decisions

When courts decide cases by identifying rules that should be followed in future cases on the same issue, they *make* law. This reliance on *precedent*, or what has preceded, is called *stare decisis* (a Latin phrase that means “to stand by decided matters”). Often, a court interprets the meaning of a constitution, statute, or regulation. There’s also *common law*—a body of law, much of it taken from English law, that represents legal concepts based upon custom and usage rather than what a legislature has decreed.

Note that the Constitution recognizes the separation of government into three branches (the legislative, the executive, and the judicial). Also note that the judicial branch has the power to interpret other sources of law and declare these laws to be either constitutional or unconstitutional.

Quasi-legal Rules

Some rules must be followed, even if they aren’t, strictly speaking, laws. Each of the following sources provide such rules:

- Licensing
- Accreditation
- Ethical and professional standards
- Internal policies of the medical care provider

As your textbook points out, these quasi-legal requirements are often used to establish the standard of care in medical malpractice lawsuits or licensing hearings. So take careful note of them!
Lesson 1

Review Questions

How many of the review questions can you answer? For any one you can’t answer, reread the assigned pages in the textbook and try to find the answer.

Enrichment Activity

Try the activity described for this chapter and see what you can learn.

Self-Check 1

At the end of each assignment in Confidentiality of Health Information, you’ll be asked to pause and check your understanding of what you’ve just read by completing a “Self-Check.” Writing the answers to these questions will help you review what you’ve studied so far. Please complete Self-Check 1 now.

Fill in the blanks.

1. The fundamental law of a nation or state is its ______.

2. ______ means that when precedent is established by a ruling in one case, it has to be followed by lower courts in similar cases in the future.

3. ______ is the area of law in which two or more people in agreement make enforceable promises to act or refrain from acting in a certain way.

4. ______ is a body of law created by judges.

5. ______ are more serious than misdemeanors.

Indicate whether the following statements are True or False.

_____ 6. Procedure is the set of rules for prosecuting a lawsuit.

_____ 7. Medical malpractice would be an example of a tort claim.

Check your answers with those on page 103.
ASSIGNMENT 2

Read this entire introduction. Then read Chapter 2 in your textbook, *Legal Aspects of Health Information Management*. When you’ve read all of the material for Assignment 2, complete *Self-Check 2* in this study guide.

Begin by reading the Introduction to Chapter 2 on page 20. Then go back and read the Learning Objectives on page 19. Look at the “Key Concepts” for this chapter. Also, look up the definitions of any words you don’t know in the glossary and copy down the definitions in your journal. Chapter 2 explores the court systems and legal procedures in America.

Objectives

When you complete this assignment, you’ll be able to

- Compare and contrast subject matter jurisdiction in federal and state court systems
- Explain the difference between subject matter jurisdiction and personal jurisdiction
- Explain the differences between trials and appeals
- Identify steps in a lawsuit
- Describe different methods of discovery
- Explain the function of judge and jury at a trial
- Explain the different types of alternative dispute resolution
- Understand the difference between garnishment and execution

Subject Matter Jurisdiction

The court’s *subject matter jurisdiction* tells us the type of case a court can hear. A court that’s not limited to hearing cases of a certain type is a court of *general jurisdiction*. However, not all courts have authority to hear all types of cases.
The basis for subject matter jurisdiction in federal court for most cases is either federal question jurisdiction, which means a U.S. law, regulation, or the Constitution is involved, or diversity jurisdiction. Diversity jurisdiction means the parties on opposite sides of the case live in different states.

Concurrent jurisdiction means two or more courts have subject matter jurisdiction. For example, if a driver from Arizona collides with a driver from New Mexico in New Mexico and has at least $75,000 in injuries, the lawsuit could be brought in federal court, based upon diversity, or in New Mexico state court.

Courts may have subcategories, like probate court or traffic court, but these are just divisions of the same court.

**Personal Jurisdiction**

The court must also have authority over the parties in order to issue a judgment. This is personal jurisdiction. A person who files suit automatically submits to the jurisdiction of the court. Serving a summons and complaint upon the person being sued usually will give the court personal jurisdiction over the other party. Questions about personal jurisdiction can arise when the court tries to exercise authority over someone who doesn’t live within or have significant contact with the state in which the lawsuit is being filed.

**Court Structure**

Court systems have several levels, as illustrated on page 23 of your textbook. Each court must follow the precedent of any higher court. The highest court of all is the U.S. Supreme Court.

Courts also can be divided into trial courts and appellate courts. Trial courts hear evidence and decide the dispute. Appellate courts review the record of the trial court to see if errors occurred, but they don’t hear evidence.
Beginning the Lawsuit

As you read, note that the **plaintiff** is the person who **sues** (initiates a lawsuit) and that the **defendant** is the person sued by the plaintiff. A **counterclaim** is where the defendant not only defends the lawsuit but asserts a claim against the plaintiff as well. A **cross-claim** is where one defendant sues another defendant. Note that time requirements apply to filing an answer, and failure to answer within the time can result in a **judgment by default**. Another way a case can end short of a trial is through **summary judgment**, which can be entered if the court believes there’s no need for a trial because the important facts aren’t really disputed by the parties.

Discovery

**Discovery** involves devices or tools used to get information from the other party and from witnesses in order to prepare for trial. Where lawsuits involve injuries, medical records may be the subject of discovery.

**Depositions** involves oral questions answered under oath. **Interrogatories** are written questions that should be answered in writing within 30 days. Your textbook explains that depositions

- Are taken from doctors and other medical personnel involved in treating or evaluating a patient. (The person who must answer the questions is called the **deponent**.)

- Can be introduced into evidence at trial instead of calling the witness

- Can be videotaped so they can be played to the jury

Study how a deposition takes place, described on page 27 of your textbook. Review the discovery chart at the top of that page before you take the self-check and again before you take the examination for this lesson.
Production of Documents

For documents possessed by a *party* (either the plaintiff or the defendant), it will be sufficient for the other party to simply request them and make reference to the civil rule that authorizes this discovery.

If the documents are possessed by a *nonparty* (someone who isn’t the plaintiff or defendant), a *subpoena duces tecum* (a court order for a person to appear at the court with relevant documents) will be required. In some jurisdictions, it’s necessary also to schedule a deposition at a certain time and place. In other jurisdictions, simply mailing the document is permitted.

Physical or Mental Exam

Civil rules allow a party to compel the other party to submit to an exam if that party’s physical or mental condition is an issue in the case. In practice, lawyers usually do this by agreement rather than resorting to civil rules.

*Requests for admissions* are designed to reduce the amount of proof at trial by getting the other side to admit things that aren’t really contested.

Pretrial Conference

This is described well at the bottom of page 29 of your textbook. Note the role of the trial judge in pretrial conferences.

Trial

Make sure you know the meaning of each of the following terms:

- Opening statement
- Closing statement
- Direct examination
- Cross-examination
The plaintiff has the burden of calling witnesses and presenting its case first. If there’s not enough evidence to support the claim, the defendant can ask that the case be dismissed. Then, the defendant won’t be required to call any witnesses. This rarely occurs, however. After the plaintiff presents his or her case, the defendant calls witnesses for his or her own defense.

*Jury instruction* involves the judge telling *jurors* (members of the jury) what their job is and describing which laws are relevant for deciding the case. For example, in a medical malpractice case, the jury instructions would include the legal definition of medical malpractice so the jury could compare the proof that was presented to that definition to see if malpractice occurred.

Certain types of cases aren’t entitled to jury trial. If there’s a jury, the jury determines what the true facts are and applies the law as the judge has presented it in the jury instructions. If there’s not a jury, the judge finds the facts and applies the law. During both a jury trial and a *bench* (judge only) trial, the judge rules on objections involving evidence and motions made by the attorneys.

After the verdict is entered, the losing party can ask for a new trial, based on errors that occurred during the trial. These motions rarely win, because the motion is addressed to the same judge who presided over the trial (and therefore made the alleged errors). A motion for a judgment different than what the jury decided can also be made, but would be granted only if the jury decided something that couldn’t be supported by the evidence presented. For example, if there were proof of only $10,000 in medical bills and the jury found that there were $20,000, that would be a finding no reasonable jury should have made.

**Appeal**

This is described well in your textbook on page 32. Note the three possible conclusions of an appeal. The case may be *affirmed, modified, or reversed.*
Satisfying the Judgment

Winning the case doesn’t put money in the plaintiff’s pocket. The money has to be collected. If there’s insurance that applies, the insurance company will write a check (unless there’s an appeal). If there’s no insurance, two ways to collect the money are **garnishment** (an order to a third-party who has something that belongs to the losing party—the most common garnishments are of wages and bank accounts) or **execution** (for example, the sheriff seizes and sells property belonging to the losing party and applies the proceeds towards satisfying the judgment).

Alternative Dispute Resolution

ADR increasingly is being used, sometimes by the court system itself. The difference between **mediation** and **arbitration** is that a mediator can’t impose a decision whereas an arbitrator is like a private judge and **does** impose a decision that the parties agree in advance to be bound by. Arbitration provisions often appear in contracts. Courts can’t require parties to submit to arbitration but can require them to attend mediation.

**Negotiation and settlement** is the process in which the parties settle the dispute without third-party involvement. This can occur without a case being filed, during the litigation, or during appeal.

Case Study

Look at the case study on page 35 of your textbook and try to come up with an answer. Compare your answer to the discussion of this case by the textbook in the appendix on pages 255 and 256.

Review Questions

How many of the seven review questions can you answer? For any one you can’t answer, go back to the textbook and try to find the answer.
Enrichment Activity

If you can, attempt the activity described on page 36 of your textbook and see what you can learn.

Self-Check 2

1. Which party must call its witnesses first at a trial, plaintiff or defendant?
   __________________________________________________________________________

2. Which discovery tool requires answering oral questions under oath?
   __________________________________________________________________________

3. Which discovery tool eliminates the need for proof of matters that aren’t really contested?
   __________________________________________________________________________

4. When two or more courts have subject matter jurisdiction, that’s called ________.

Questions 5–8: Indicate whether the following statements are True or False.

_____ 5. Federal courts can always hear a case involving a federal question, no matter how much money is at issue.

_____ 6. Federal courts can always hear a case involving citizens who live in different states, no matter how much money is at stake.

_____ 7. State and federal court systems have intermediate appellate courts.

_____ 8. Prior to trial, the judge may conduct a pretrial conference with the attorneys to check on the status of the case or set a date for trial.

9. The pleading that begins a lawsuit is called a ________.

10. The response to the pleading referred to in question #9 is called an ________.

Check your answers with those on page 103.
ASSIGNMENT 3

Read this entire introduction. Then read Chapter 7 in your textbook, Legal Aspects of Health Information Management. When you’ve read all of the material for Assignment 3, complete Self-Check 3 in this study guide. Then take the examination for Lesson 1.

Begin by reading the Introduction to Chapter 7 on page 134. Then go back and read the Learning Objectives on page 133. Look at the “Key Concepts” for this chapter. Look up the definitions of any words you don’t know in the glossary and copy down the definitions in your journal. Chapter 7 explores the judicial process regarding health information.

Objectives

When you complete this assignment, you’ll be able to

■ Define the legal meaning of these terms: evidence, admissible, and hearsay

■ Explain why medical records are hearsay and the exception to the rule that allows them to be admitted

■ Explain the role of the health information manager in establishing the foundation and trustworthiness of records for evidence purposes

■ List questions commonly asked to establish the foundation for entering records into evidence

■ Explain the application of patient-doctor privilege in the judicial process

■ Describe the differences between a subpoena, subpoena ad testificandum, and a subpoena duces tecum

■ Compare and contrast a court order authorizing disclosure of health information with a subpoena

■ Compare and contrast the three recommended responses of a health information manager to a subpoena

■ Explain what to do when presented with an invalid subpoena duces tecum
Medical Records as Evidence

*Hearsay* involves out-of-court statements offered to prove the truth of some legal matter. Written statements, such as medical records kept by doctors, nurses, or other health professionals, would be inadmissible in court.

However, there’s an exception to the rule that applies to medical records—the *business records exception*. There are two requirements for using this exception. First, there must be a *foundation*, or evidence that the records were made in the ordinary course of business, at or near the time the event was recorded, and by a person with knowledge of the information in the record. And second, the records must be shown to be accurate and trustworthy.

The health information manager can give testimony to establish this foundation. In practice, attorneys often dispense with this step and agree to the admissibility of the records.

Privilege

The *physician-patient privilege* prevents forced or unauthorized disclosure of confidential health information. In cases where the patient has authorized release of the information in a proper manner, the information can be released. Where that’s *not* the case, legal counsel should be consulted regarding whether privilege should be asserted. Also, though the patient has signed an authorization, it doesn’t necessarily mean that all information can be released. You’ll see in later lessons that for certain types of information, the authorization must refer to that information specifically.

Court Orders

Court orders for release of medical records are used when such release, without a court order, would otherwise violate statutes or regulations. Figure 7-5, at the top of page 143 in your textbook, lists components of a valid court order authorizing disclosure. If the information released exceeds the limits of the order, there may be a breach of confidentiality.
Under the *Health Insurance Portability and Accountability Act (HIPAA)*, protected health information may be disclosed in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal.

**Subpoenas**

Your textbook explains, on page 139, that the term *subpoena* means a command issued by the court and distinguishes between *subpoena ad testificandum* (commanding a witness to appear and give testimony) and *subpoena duces tecum* (commanding a witness to produce documents or things). The latter is what would be used to compel release of medical records. Unlike a court order, subpoenas by themselves may or may not be sufficient to authorize release, depending upon the jurisdiction. Some jurisdictions also require a written authorization from the patient. Also, if the information involves treatment for substance abuse, mental health, or AIDS, additional rules may apply. Note the example given on page 144 of your textbook regarding *John Roe v. Jane Doe*. Subpoenas are subject to valid defenses against them, and the health-care provider may be under a duty to resist the subpoena. But as your textbook notes, a health information manager should *not* ignore a subpoena.

Under HIPAA, protected health information may be disclosed in a judicial or administrative proceeding *pursuant to* (in accordance with) a subpoena if certain assurances regarding notice to the individual or a protective order is provided.
Responding to a Subpoena

There should be policies in the health-care providers office for responding to subpoenas. Your author describes three options. The first is to turn the subpoena over to counsel (your legal team or lawyer). Counsel can

- Advise the health-care provider that all or part of the information can be released
- Resist release by filing a motion to quash (suppress or nullify) the subpoena
- Send a letter saying the subpoena won’t be complied with (in which case a show cause order [a court order to someone that requires him or her to come to the court and explain why the court shouldn’t take a certain action] may issue)

The motion to quash or the show cause order will result in a hearing at which the judge decides whether or not the information can be released.

The second option is to send counsel for the requesting party a preprinted authorization form that complies with all confidentiality restrictions that apply.

The third option is to release part but not all of the records requested, removing those portions which it would be improper to release.

Case Study

Look at the case study on page 145 of your textbook and try to come up with an answer. Compare your answer to the discussion of this case by the textbook on page 260 in the Appendix.

Review Questions

How many of the seven review questions on page 146 of the textbook can you answer? For any one you can’t answer, go back to the assigned readings and try to find the answer.
Enrichment Activity

If you can, attempt the activity described for this chapter on page 146 of the textbook and see what you can learn.

Self-Check 3

1–5: Indicate whether the following statements are True or False.

_____ 1. A subpoena and a court order are basically the same thing.

_____ 2. A subpoena duces tecum requests production of records, documents, and other things.

_____ 3. Where treatment of substance abuse is present, not only a subpoena but a court order may be required.

_____ 4. Under HIPAA, records may be disclosed pursuant to a subpoena provided certain assurances regarding notice to the patient or a protective order are provided.

_____ 5. The doctor gives testimony to establish the foundation and trustworthiness of records being admitted under the exception to the hearsay rule.

6. What do you call a motion made by counsel for the health-care provider’s attorney to object to disclosing records that are being subpoenaed?

__________________________________________________________________________

7. What is the exception to the hearsay rule that allows medical records to be introduced into evidence?

__________________________________________________________________________

Check your answers with those on page 103.