

CHAPTER 1

INTRODUCTION

It should be no news to anyone that health care is the most heavily regulated industry in this nation. There is a complex web of federal laws and federal regulations, as well as state laws and state administrative rules, governing virtually every aspect of health care. Our front-line, hands-on health care providers are the nurses. They are the heroes. They are the true primary care givers and patient advocates that deliver the majority of health care in this country.

Yet nurses, like physicians and most other health care professionals, rarely receive any formal education or training in the law. Even those nurses who obtain masters level and doctoral level education, or who become advanced nurse practitioners, rarely have access to or take a course in the law. Fortunately, there are several graduate degree programs across our country which include a course in health law. Graduate programs which offer a master in health services administration, public administration or management sometimes include a graduate level course in health law (sometimes called legal aspects of health law, legal aspects of hospital law, or legal aspects of health services administration). Often there are many nurses, especially the nurse leaders in hospitals and other institutions, who are able to take such programs. I have had the honor and privilege of teaching such graduate courses for Golden Gate University, Troy State University, Southern Adventist University, Webster University, University of St. Francis and University of Central Florida. In the last course I taught for the University of St. Francis, a majority of the 17 students in the course were nurses.

Some nurses do find themselves in the field of health care risk management, the pragmatic younger sister of health care law. They educate themselves in the many related courses formal risk management programs offer. Most health care risk management does include education and training in many different areas of the law. Many nurses become risk managers for major hospitals or health care systems.

Unfortunately, few nurses have the time or the opportunity to participate in such advanced education courses. They are caught in the position of learning the laws and administrative rules that govern their profession on their own studying for their basic licensing exam. Other than this, all other knowledge of the law and legal principles is learned through on-the-job training, most often as they are required to confront one legal problem after another. Through their colleagues, through their supervisors, through their hospital, nursing home or insurance company attorneys, they obtain their legal education the hard way.

This book is written for the lay nurse, the nurse who has not had formal education in health law. It is meant to be a resource and a reference book. It should not be seen as a do-it-yourself manual. I am always quick to quote Charles Dickens's paraphrase of an ancient proverb: "He who is his own lawyer has a fool for a client" as well as its often spoken corollary "and an ass for an attorney." This manual is meant for the purpose of helping you to avoid legal mistakes. By assisting you in identifying major issues and major pitfalls, hopefully, it will help you to learn how to prevent legal harm or legal liability from befalling you as well as when you really should hire an attorney. As I always do, whenever I encourage anyone to hire an attorney, I am, of course, referring to a competent, aggressive attorney who specializes in the specific area of law in which your problem lies and who has experience in handling the specific type of case you have. Often it is not easy to locate such an attorney, but you should not settle for less. Hopefully, chapters in this book will assist you in these goals.

Many attorneys, especially general practitioners and litigators, think that they can competently and effectively handle any kind of case. Don't be fooled by false assurances or over confident attorneys. If you needed spinal surgery, you wouldn't go to your family practice physician for it, would you? The practice of law is no different. Today, the practice of law, just as medicine, has many officially recognized, board certified legal specialties. The one in which most of your problems will lie is known as Health Law. Although there are no formally recognized sub-specialties beneath Health Law, falling under health law would be attorneys who concentrate in various areas such as nursing law, hospital law, administrative hearings, professional licensing cases, nursing and medical malpractice, and other sub-areas. In addition, there are many attorneys who are nurses (or former nurses) in addition to being an attorney. Always search for and retain the services of an attorney with ample, actual experience in the problem you have. This book may help you locate one in the event you need one.

Although we have tried to include various sample forms for illustrative purposes, you should be reluctant to just take these and attempt to use these for yourself. Just as in medicine, every patient is different. Every set of circumstances is different. Every institution, hospital, or medical group is different. There is no such thing as "the standard contract" or "the routine Board of Nursing case." Every one is different. A slight change in facts or circumstances can cause a vastly different result. Only a senior, experienced attorney, one with ample experience in the type of problem you have, will be able to properly analyze the situation and advise you of the possible different outcomes. Inexperienced attorneys will do you a disservice, even if not intentionally.

This is the first version of this book. We have attempted to make it useful, keep it pragmatic and make it so that lay people will not have difficulty in understanding the information that we present. We welcome your comments and constructive criticisms. If you see errors, please let us know. If you disagree with our opinions, don't let us know; go write your own book. If you would like to see additional subjects covered, please let us know. If there are forms or documents that you would like to see us include in future editions of this book, we would like to hear from you. If the law or regulations have changed, please advise us of this. We have made every effort to make sure this book is current as of its publication in July 2008. However, the law is constantly changing.

Thank you for being a nurse and for reading this book. We hope you find it useful.