

CHAPTER 4

FINDING THE LAW

Throughout this Manual, the authors refer to different types of law. This law may be federal statutes, federal regulations, state statutes, state regulations (referred to in Florida as "Rules" or "code articles"), case law or other such legal authorities. In order for you to understand certain legal documents when you read them or to utilize this nursing manual to your advantage, you need an understanding of how to "read" the citations for the specific statutes, regulations or case law.

I. LOCATING AND INTERPRETING A STATUTE

A. LOCATING A STATUTE

In order to locate a specific federal regulation or statute, it is necessary to have a complete citation. For example, the legal citations for the Federal Administrative Procedure Act (APA) and for Florida's Nurse Practice Act are shown below in Figure 4-1. A complete citation includes the following:

1. Name of the statute (e.g., Nurse Practice Act)
2. Volume number or title number that indicates the subject classification within the legal reference. Federal law is organized into fifty (50) titles. Florida state law (also referred to as Florida Statutes, abbreviated Fla. Stat., or Florida Statutes Annotated, abbreviated Fla. Stat. Ann.) is organized into 985 chapters.
3. Abbreviation of the legal reference that contains federal or state law. (See names immediately above.)
4. Numbers following the legal reference abbreviation that indicate the chapter number or the section (§) number in the referenced volume in which the law is located.
5. A date, in parentheses, which should be the effective date of the particular law that applies to the case, act or situation, e.g., "(2007)."

B. INTERPRETING STATUTORY REFERENCE ABBREVIATIONS

Finding a statute requires the ability to interpret the abbreviation of the legal publication which contains the statute. The following lists and diagrams frequently cited legal publications:

Federal Administrative Procedure Act.

Title No.	Federal Code Abbreviation	Chapter No.	Section	No.
5	U.S.C.		§	551

For example, the foregoing would be cited as 5 U.S.C. § 551 (2007), Federal Administrative Procedure Act. The section symbol "§" can be replaced with either the word "Section" or the abbreviation "Sect."

Florida Nurse Practice Act.

Title No.	Florida Code Abbreviation	Chapter No.	Section	No.
	Fla. Stat.	Ch. 464	§	001-027

For example, the foregoing would be cited as Sect. 464.001, Fla. Stat. (2007), The Florida Nurse Practice Act. The different sections of the act are specified as follows: 464.002, 464.003, etc. The section symbol "§" can be replaced with either the word "Section" or the abbreviation "Sect."

Federal Statutes.

Abbreviations:

- L.W. United States Law Week: recently enacted statutes
- Stat. United States Statutes at Large: a chronological list of all statutes enacted during a single legislative session
- U.S.C. United States Code: all federal statutes
- U.S.C.A. United States Code Annotated
- U.S.C.S. United States Code Service

"U.S.C.," U.S.C.A., and "U.S.C.S." all refer to the same laws, just the editions are published by different publishers. The "official" version, published by the U.S. Government Printing Office is the United States Code or "U.S.C."

Federal Regulations.

Abbreviations:

C.F.R. Code of Federal Regulations: federal regulations arranged by title

F.R. Federal Register: published daily updates the C.F.R.

State Statutes.

State statutes are published in official states sets using the standard state abbreviations. For example, the Florida Statutes are abbreviated as "Fla. Stat." They are sometimes incorrectly abbreviated "F.S.," which is a lazy, short-hand version. The annotated version of these (containing short summaries of different cases interpreting or citing the section of the statute, or "annotations"), is published by West Publishing Company, and is called Florida Statutes Annotated and is abbreviated "Fla. Stat. Ann." or, sometimes, "F.S.A. (a lazy, short-hand version). You may locate the latest official published version of Florida Statutes online by going to: <http://www.leg.state.fl.us/Statutes/>.

State Regulations or Rules.

State regulations are published in official state sets using standard state abbreviations. For example, in Florida the Florida Administrative Code is abbreviated as "F.A.C." The Florida Administrative Code is divided into volumes, chapters and subchapters. The individual regulations are referred to as "Rules." These Rules are organized into approximately 64 different volumes and are frequently moved around, repealed, amended or reassigned different numbers. You may access these regulations online at: <https://www.flrules.org/Default.asp>. These regulations are incredibly large files and take a long time to download and open.

If you are a licensed health professional in the state of Florida, the easy way to access most of the Florida Statutes and Florida Administrative Code Rules that govern your particular profession is to go onto the Florida Department of Health's website. You then need to locate the web page for the Division of Medical Quality Assurance ("MQA"). On its web page look for the menu item for "Professional Update" or "Information on Your Profession." Select this item and it will take you to another page with all of the health professions listed. Select on your profession (e.g., "Nursing" and it will take you to the web page for the Florida Board of Nursing" On the right side of the page there should be a menu item for "Laws and Rules." Select this item and a list of applicable Florida Statutes and Florida Administrative Code Chapters should appear at the bottom of the page. These are direct links to those laws or Rules. You should be able to click on these links and go straight to the Internet website for those Rules or laws. You can then search for the rule, law, or subject you are researching.

C. READING A STATUTE

A law should be read in the context of the words and phrases, in the context of the total statutory scheme, and in the context of the times in which it was written. The reader should:

1. Identify the legislative purpose. What end did the legislature want to accomplish by enacting the law? For example, the child abuse statutes are enacted to protect children and nurse practice acts are enacted to protect the public.
2. Identify the legislative intent. What means did the legislature employ to accomplish its purpose? For example, the child abuse statutes create a reporting and investigative process and the nurse practice acts create a mandatory licensing process.
3. Identify any exemptions to the statute. The exemptions are usually listed at the end of the statute. For example, medical practice acts exclude from mandatory medical licensure, nurses who are practicing nursing in accordance with the state's nurse practice act.

D. BASIC PRINCIPLES OF STATUTORY CONSTRUCTION

According to the basic principles of statutory construction, a person reading a statute can assume that:

1. The statute has a single true meaning.
2. The preamble to the statute is not law unless the statute indicates that it is.
3. The statute should be read literally with the words given their common ordinary meaning.
4. The statute distinguishes words of permission and mandatory words. In general the word "shall" is considered mandatory and the word "may" is considered permissive.
5. The statute is complete. If something is not expressly mentioned, it should be assumed that the legislature did not want it included.
6. The statute sections are consistent. One part of the statute should not contradict any other part of the statute.
7. The statute is consistent with the constitution, with other statutes, and with the common law.

E. JUDICIAL INTERPRETATION

In enacting legislation, the legislature attempts to formulate rules that will govern future situations. Ambiguity in a statute may occur as a result of legislative compromise, careless draftsmanship, or the legislature's inability to anticipate all of the circumstances in which the statute may be applied. If the meaning of the wording of a statute is clear, then the courts will never get to the point of having to use some of these rules of interpretation. If a statute has ambiguous sections or unclear meaning, it is the responsibility of the court to interpret the statutes in light of the legislature's intent when it enacted the statute intent. The judicial interpretation of a statute can include:

1. A literal reading and interpretation of the words and phrases of the statute.
2. A review of the context in which the disputed word or clause occurs. The court will look at the overall structure of the statute, the name, the titles and subheadings, and the relationship of the disputed word or clause to other clauses.
3. A search for evidence of legislative intent. The court will examine the act's legislative history, which includes the records of the legislative debates and hearings and all relevant documents.

II. FINDING AND INTERPRETING A CASE

In order to locate a specific federal or state case, it is necessary to refer to the citation. The appropriate citation for a state and a federal court decision is shown below.

A citation includes the (1) names of the parties, (2) volume number, (3) reporter abbreviation, (4) page number, and (5) date on which the case was decided.

<u>Appellant</u>		<u>Appellee</u>	<u>Vol. No.</u>	<u>Reporter Abbrev.</u>	<u>Page</u>	<u>Year</u>
Olsten Health Servs.	v.	Cody	979	So.2d	1221	(2008)
Roe	v.	Wade	410	U.S.	113	(1973)

A. INTERPRETING THE CASE CITATION

1. Names of the Parties.

Case names consist of the last names of the parties. The name of the appellant (the party bringing the appeal) is usually listed first and the respondent (the opposing party) is listed second. In some jurisdictions the plaintiff's name is listed first regardless of which party (plaintiff or defendant) is bringing the appeal. Corporations are listed by their full name, including first names or initials; however, common abbreviations such as Co., Inc., Bd., and HMO are used to shorten the title. When the case contains one or more parties or when several cases have been consolidated, the citation uses only the name of the first party listed on each side or the first case listed. When the state is a party to a case in its own courts, it is usually listed as the People v. _____ or the State v. _____. When the state is a party in a federal court, it is cited as state name v. _____. For example, if Florida were a party it would be cited as Florida v. _____.

Case names are usually underlined in typed (or word-processed) documents and pleadings. This is changed to italics in printed publications such as books, journals, and case reporters.

2. Numbers Before and After the Case Reporter Abbreviation.

The numbers before the reporter abbreviation indicate the volume in which the case is found, and the numbers after the reporter abbreviation indicate the page number where the case begins. The number in parentheses indicates the year in which the case was decided. Some citations also identify the court. For example, Smith v. Jones, 700 So.2d 1350 (Fla. 1999). In the parentheses, first is the Court, "Fla." for the Florida Supreme Court, and second, the year in which the opinion was issued, 1999. If there is no specific court listed, such as "3d DCA" (Third District Court of Appeal), then you assume that the court is the highest court in the jurisdiction. That is why if only "Fla." is listed, you assume that the case is a case decided by the Florida Supreme Court.

A typical citation for a District Court of Appeal would appear: Jones v. Smith, 721 So.2d 1350 (Fla. 3d DCA 2000). The cite is identical to the Supreme Court cite, except that the designation of the court is different. The "3d DCA" indicates that the Third District Court of Appeal issued the decision. The same principle would apply in the case Jones v. Smith, 721 So. 2d 1350 (Fla. 1st DCA 2000).

3. Case Reporter Abbreviations.

A case reporter is a publication that has many bound volumes, like an encyclopedia. It contains the cases decided by certain courts either in a certain geographical area (for example, in the southern states or in the northwestern states) or on certain subjects (for example, all bankruptcy cases, all trademark cases, all tax cases, all federal appellate court cases). For example, Florida cases are published in the book called the Southern Reporter. Once a certain number of volumes are printed, a new series will start over starting with volume 1. For example the Southern Reporter (abbreviated "So."), only went up to volume 200 in the first series, ending with cases decided in about 1941. Then Southern Reporter Second Series (abbreviated "So.2d") began over with volume 1. We are now up to volume 979 in So.2d through 2008.

A court case on the state level may have two sets of identifying numbers and abbreviations, as in Collins v. Westlake Community Hospital, 57 Ill. 2d 388, 312 N.E.2d 614 (1974). The first set of letters and numbers is the official citation, which indicates where the case can be found in the state's official publication of court case decisions. The second set is the unofficial citation, which indicates where the case can be found in a commercially published set of court case decisions that are classified by geographic region.

Federal cases are published in a reporter system that includes the Supreme Court, the U.S. Courts of Appeals (formerly called the U.S. Circuit Courts of Appeals) and selected decisions of the U.S. district courts. The initials 2d and 3d refer to the second series of the reporter or the third series of the reporter. For example, F.2d indicates the case is located in the Federal Reporter, Second Series.

If the U.S. Supreme Court has refused to hear an appeal of a case ("denied certiorari"), this will appear in the citation. For example, the full citation for the frequently cited hospital negligence case in which the court refused to hear the appeal is Darling v. Charleston Community Memorial Hospital, 33 Ill. 2d 326, 211 N.E.2d 253 (1965), cert. denied 383 U.S. 946 (1966).

B. INTERPRETING CASE REFERENCE ABBREVIATIONS

1. Federal Court Decisions.

F. Federal Reporter: U.S. Courts of Appeals decisions

F. Supp. Federal Supplement: U.S. district court decisions

L.Ed. Lawyer's Edition, United States Supreme Court: Supreme Court decisions

L.W. United States Law Week: recently issued unofficial Supreme Court decisions

S.Ct. Supreme Court Reporter: Supreme Court decisions

U.S. United States Reports: Supreme Court decisions

2. State Court Decisions.

About two-thirds of the states publish state court decisions in official state sets that are cited by the standard state abbreviation. The official report is the authoritative text and must be cited in legal briefs. The official report is cited before the unofficial report. The unofficial reports consist of the commercially published National Reporter System, which collectively contains most of the decisions issued by the appellate courts of the 50 states every year. The National Reporter System divides the country into seven

regions. The decisions of the appellate courts of the states in each of these regions are published together in one series of reporters, as listed below:

- A. Atlantic Reporter
Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Pennsylvania, New Jersey, Delaware, Maryland
- N.E. North Eastern Reporter
Illinois, Indiana, Ohio, New York, Massachusetts
- N.W. North Western Reporter
North Dakota, South Dakota, Nebraska, Iowa, Minnesota, Wisconsin, Michigan
- P. Pacific Reporter
Kansas, Oklahoma, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, Oregon, Washington, California, Alaska, Hawaii
- S.E. South Eastern Reporter

West Virginia, Virginia, North Carolina, South Carolina, Georgia
- So. Southern Reporter
Louisiana, Mississippi, Alabama, Florida
- S.W. South Western Reporter
Kentucky, Tennessee, Missouri, Arkansas, Texas

C. UNDERSTANDING THE CASE FORMAT

The West Publishing Company, perhaps the largest and best known publisher of law books and case reporters, has adopted a format that is used throughout the federal and state reporters. The format for each case includes the following sections:

1. The title or name of the case.
2. Identifying data such as the docket number, the name of the court or jurisdiction, and the date of the decision.
3. A case synopsis, which consists of a brief descriptive paragraph of the case including the facts, the judicial history, and the lower court decision.
4. A brief statement of the appellate court decision and, if there are concurring or dissenting opinions, a notation to that effect.

5. A series of headnotes summarizing the points of law that are discussed in the case. Each headnote is classified in accordance with the West Key Number System, which has assigned a permanent number to specific points of case law.
6. The names of the lawyers for each party and the names of the judges who have heard and decided the case.
7. The complete text of the opinion, which includes a recitation of the facts, the identification and discussion of the issues, and the judicial reasoning.
8. The holding or court ruling on each issue. The holding is considered law in this case and is binding on the courts in subsequent cases. The holding should be differentiated from dictum, a term that refers to the statements, remarks, or observations in a judicial opinion that are not necessary for the decision of the case. Dictum is not binding on the courts in subsequent cases.
9. The disposition of the case. The court can affirm the lower court decision, reverse the lower court decision, or affirm in part and reverse in part the lower court decision. If the case is remanded to the lower court with instructions, the lower court is bound to follow the instructions.
10. The full text of the concurring and dissenting opinions of the judges. A judge may indicate that he or she agreed (concurred) with one part of the opinion but disagreed (dissented) with another part of the opinion. A judge may indicate that he or she agrees with the holding of the majority opinion but for different reasons.
11. The names of the judges who were absent.

Many of the items described above, for example, numbers 3, 4, and 5, are prepared by the publisher to aid lawyers in reading and analyzing the cases. They are not part of the official decision published by the court.

III. ACCESS TO LAWS AND CASES ON THE INTERNET

In the past few years, it has become progressively easier and cheaper to obtain the law over the internet. More and more courts are publishing their case decisions directly onto their websites on the Internet. In addition, state and federal governing bodies and administrative agencies are making their laws, rules and regulations available online.

Following are some current Internet links (as of June 2008) to laws you may desire to review.

United States Code: <http://www.gpoaccess.gov/USCODE/index.html>

FLORIDA NURSING LAW MANUAL

- U.S. Code of Federal Regulations: <http://www.gpoaccess.gov/index.html>
- The Federal Register: <http://origin.www.gpoaccess.gov/fr/>
- Florida Statutes: <http://www.leg.state.fl.us/Statutes/>
- Florida Administrative Code (F.A.C.): <https://www.flrules.org/Default.asp>
- Florida Nurse Practice Act: http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0464/titl0464.htm&StatuteYear=2007&Title=%2D%3E2007%2D%3EChapter%20464
(Note: use no tabs, breaks or spaces)
- (or go to Florida Statutes at: <http://www.leg.state.fl.us/Statutes/>
and then go to Chapter 464)
- F.A.C. Rules on Nursing: <https://www.flrules.org/gateway/Organization.asp?OrgNo=64B9>
- F.A.C. Uniform Rules for Administrative Hearings:
<http://www.doah.state.fl.us/internet/usedDocs/UniformRules.pdf>
- Florida Supreme Court and Courts of Appeal Decisions:
<http://www.floridasupremecourt.org/decisions/index.shtml>

K:\Fla Nursing Law Manual\Ch-4 Finding the Law-revised.rtf