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**Medical Law and Ethics 4th Edition Bonnie F. Fremgen**

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## **Essential of the Legal System for Healthcare Professionals**

### **CHAPTER SYNOPSIS**

Even though only a small number of malpractice cases actually end up in court, it is nevertheless important for the student to understand how the law impacts upon his or her physician/employer. The licensing requirements are important to remember, since the actions of healthcare personnel can have a direct impact upon a physician's reputation and medical license.

<b>Chapter Lecture Outline</b>	<b>Instructor's Notes</b>
<p>I. Medical Practice Acts</p> <ul style="list-style-type: none"><li>A. Establish duties of a licensed physician.</li><li>B. These may vary from state to state but generally have the following in common:<ul style="list-style-type: none"><li>1. Establish the baseline for the practice of medicine in the state.</li><li>2. Determine the prerequisites for licensure.</li><li>3. Forbid the practice of medicine without a license.</li><li>4. Specify the conditions for license renewal, suspension, and revocation.</li></ul></li></ul> <p>II. Licensure of the Physician</p> <ul style="list-style-type: none"><li>A. Examination—Each state offers its own exam.</li><li>B. Endorsement—An approval or sanction.</li><li>C. Reciprocity—The cooperation of one state in granting a license to practice medicine to a physician already licensed in another state.</li><li>D. Registration<ul style="list-style-type: none"><li>1. Physicians must pay a fee.</li><li>2. Renewal or re-registration occurs annually or biannually.</li><li>3. Physicians are required to complete 75 hours of continuing medical education (CME) units in a three-year period.</li></ul></li></ul>	

- E. Revocation and suspension of license—A state may revoke or suspend a physician’s license for cases of severe misconduct.
- F. Physicians can be certified in specialty areas.
- G. Physicians cannot practice without a license.

III. Licensure and Certification of Allied Health Professionals

- A. Licensure and certification are two different things.
  - 1. Certification indicates that an allied health professional has met certain standards, but is not licensed.

**Chapter Lecture Outline**

**Instructor’s Notes**

- 2. Licensure indicates that a medical professional has met a mandatory credentialing process that is required by law.

IV. Accreditation—A voluntary process in which an agency is requested to officially review and authorize healthcare institutions and educational programs.

V. Standard of Care

- A. The ordinary skill and care that medical practitioners use and that is commonly used by other medical practitioners in the same locality when caring for patients.
- B. The standard of care for particular professionals has changed somewhat over the years.
- C. Physicians are not obligated to treat everyone, except in the case of an emergency.
  - 1. Once a physician accepts a patient for treatment, he or she has entered into a contract.
  - 2. The law does not require a physician to use extraordinary skill. It only requires reasonable, ordinary care and skill. The physician is expected to perform the same acts that a “reasonable and - prudent” physician would perform (Prudent Person Rule).
  - 3. Physicians are expected to exhaust all resources available to them when treating patients and not to expose patients to undue risk.

VI. The Prudent Person Rule

- A. Also called the “reasonable person” standard.
- B. Physician must provide information to the patient that a reasonable person would want to know.
- C. Diagnosis, risks, and potential consequences of treatment, expected benefits, alternative treatments, prognosis if no treatment, and costs.

VII. Confidentiality

- A. Confidentiality refers to keeping private all information about a person (patient) and not disclosing it to a third party without the patient’s written consent.
- B. Medical Patient Rights Act—Federal law
  - 1. Information given to a physician by a patient should be communicated on a need-to-know basis.
  - 2. Medical practitioners should be especially careful about discussing in public anything relating to a patient.

VIII. Statute of Limitations

**Chapter Lecture Outline**

**Instructor’s Notes**

- A. Statute of limitations is the period of time that a patient has to file a lawsuit.
- B. Discovery rule—Legal theory that provides that the statute of limitations begins to run at the time the injury is discovered or when a patient should have known of the injury.
- C. *Guardian ad litem* (“court appointed”)—Legal term for an adult who will act in court on behalf of a child in litigation.

IX. Good Samaritan Laws

- A. Good Samaritan laws are state laws that help protect healthcare personnel from liability during emergency care to an accident victim.
- B. No one is required to provide aid in an emergency (except in Vermont).
  - 1. Responder is only required to act within the limits of acquired skill and training.
  - 2. Trained professionals are not under legal obligations, but do have an ethical obligation in an emergency.

X. *Respondeat Superior*

- A. “Let the master answer” means the employer is responsible for the actions of the employees.
  - B. Duties can be delegated, but not responsibility.
  - C. Employees have a duty to interpret and carry out orders.
  - D. Employers have a duty to provide a safe work environment.
  - E. Insurance and employer liability—Bonding insurance to cover employees who handle financial statements, records, and cash.
  - F. Scope of practice—Every employee must work within the scope of practice for his or her particular discipline.
- XI. Risk Management—A practice used to control or minimize the incidence of problem behavior that might result in injury to patients and employees
- A. Incident report—documentation of problem areas whenever an unusual occurrence such as a fall or error occurs.

## LEARNING OBJECTIVES

(Student answers may vary.)

1. Define all glossary terms.

**Accreditation** a voluntary process in which an agency is requested to officially review healthcare institutions, such as hospitals, nursing homes, and educational institutions, to determine compliance.

**Bonding** a special type of insurance that covers employees who handle financial statements, records, and cash.

**Confidentiality** refers to keeping private all information about a person (patient) and not disclosing it to a third party without the patient’s written consent.

**Discovery rule** legal theory that provides that the statute of limitations begins to run at the time the injury is discovered or when the patient should have known of the injury.

**Endorsement** an approval or sanction.

**Good Samaritan laws** state laws that help protect healthcare professionals from liability while giving emergency care to accident victims.

**Guardian ad litem** court-appointed guardian to represent a minor or unborn child in litigation.

**Incident report** a means of documenting problem areas within a hospital or other medical facility.

**Joint Commission on Accreditation of Healthcare Organizations (JCAHO)** an agency that oversees hospital accreditations standards.

**Prudent person rule** also called the responsible person standard, means the healthcare

professional must provide the information that a prudent, reasonable person would want before making a decision about treatment or refusal of treatment.

**Reciprocity** the cooperation of one state in granting a license to practice medicine to a physician already licensed in another state. Reciprocity can be applied to other licensed professionals, such as nurses and pharmacists.

**Respondeat superior** Latin phrase meaning “let the master answer” means the employer is responsible for the actions of the employee.

**Revoke** take away, as in revoke a license.

**Risk management** a practice to minimize the incidence of problem behavior that might result in injury to the patient and liability for the organization.

**Scope of practice** the activities a healthcare professional is allowed to perform as indicated in their license, certification, and/or training.

**Standard of care** the ordinary skill and care that medical practitioners use and that is commonly used by other medical practitioners in the same locality when caring for patients; what another medical professional would consider appropriate care in similar circumstances.

**Statute of limitations** the period of time that a patient has to file a lawsuit.

**Tolling** also known as running of the statute of limitations, means the time has expired.

2. List the four basic characteristics of state medical practice acts.
  - Establish the baseline for the practice of medicine in that state.
  - Determine the prerequisites for licensure.
  - Forbid the practice of medicine without a license.
  - Specify the conditions for license renewal, suspension, and revocation.
3. Describe the three methods by which a state grants a license to practice medicine.
  - Examination—Each state offers its own examination for licensure.
  - Endorsement—This is an approval or sanction granting a license by endorsement to applicants who have successfully passed the National Board of Medical Examination.
  - Reciprocity—A license to practice medicine may be granted by a state that accepts a medical license granted by another state.
4. Discuss conduct that may result in a physician’s loss of license to practice medicine. Conduct that could result in the loss of a physician’s license includes Medicare/ Medicaid fraud, rape, murder, larceny, narcotics conviction, and the inappropriate use of drugs and alcohol.
5. Identify the difference between licensure and certification.

A license is granted by a state or federal entity. This provides the legal right for a professional, such as a physician, to practice.

Certification is granted by a certification board and means that a person has met the special requirements, such as additional education and training, of the certifying board.
6. Discuss what the term *standard of care* means for a physician and what it means for someone in your profession.

[Responses will vary depending on the student’s profession.] Standard of care, as it relates to the physician, is the ordinary skill and care that medical practitioners use and that is commonly used by other medical practitioners in the same locality when caring for patients. It is the care that another professional would find appropriate in similar circumstances.

7. Describe the importance of the discovery rule as it relates to the statute of limitations.  
The discovery rule is the legal theory that provides that the statute of limitations begins to run at the time the injury is discovered or when the patient should have known of the injury.
8. Discuss the importance of the phrase *respondeat superior* as it relates to the physician.  
This translates to “let the master answer.” It means that the employer (physician) is responsible for the actions of the employee.

### **THE CASE OF LATOYA AND THE PHYSICAL THERAPY PATIENT**

Latoya is in training to become a physical therapist. Dr. B., the head of the Physical Therapy Department, has told her that she helps the patients too much. Many times he has said, “You can’t go home with the patients. They must learn to take care of themselves.” Nearing the end of her program, Latoya is doing very well in all her studies, but she fears that Dr. B will not give her a good performance evaluation unless she can better prepare her patients for independence.

One of her patients, a 72-year-old woman recovering from a stroke, is adamant in her refusal to walk with either a walker or a cane. She insists on remaining in her wheelchair because she is afraid of falling. Latoya is sympathetic toward this patient’s fears. She remembers seeing a patient fall during a physical therapy session resulting in a fractured vertebra (bone) in her spine. The woman was, subsequently, bedridden for several weeks while she recovered. In addition, a statement that Latoya heard in one of her classes, *primum non nocere* meaning “first of all, do no harm,” has always influenced her behavior. Latoya is very reluctant to force her patient to do something she doesn’t want to do.

### **Case Questions**

1. How can Latoya balance the benefits and harm of encouraging her patients to do something they do not want to do?  
First of all, Latoya is doing nothing wrong by worrying about her patient’s safety. Dr. B. is also quite correct in his wish for patients to be able to become as independent as they can. But there is help for Latoya.
2. In your opinion, is Dr. B. placing too much pressure on the student?  
Physical therapy is a discipline that prepares patients to return home as independent as possible. This is good time for Latoya to better understand the career that she has chosen. She needs to learn as much as she can from Dr.B.—but never forget that her first responsibility is to the patient. She must talk with her instructor about her concerns.
3. Is this a legal or ethical problem or both?  
It would be both illegal and unethical if Dr. B were asking Latoya to do something that would cause injury to the patient. As far as we know from this case, this doesn’t seem to be the problem. If the patient is too frail or ill to perform the exercises, then Latoya would have to report this to both the doctor and her supervisor.
4. Who should Latoya talk to about her dilemma?  
Students must always be aware that they are not acting independently of their supervisor—in this case, that would be her instructor. Students can always seek out the advice of their faculty member.

### **POINTS TO PONDER (FROM TEXTBOOK)**

*Teaching notes:* Students should be aware that anyone can institute a lawsuit against anyone else. Even though, in principle, students are protected by doctrines such as *respondeat superior*

and by laws such as the statute of limitations and the Good Samaritan laws, they can still be sued. In some cases, they are liable if they have caused injury to the patient, but in many cases, lawsuits without merit are not even tried in court. These issues are not meant to frighten students, but to alert them to the necessity for careful medical practice.

1. If a patient who suffers from cirrhosis tells me in confidence that she has started drinking again, what should I do?
2. Does *respondeat superior* mean that I am fully protected from a lawsuit? Why or why not?
3. Does the Medical Practice Act in my state allow a registered nurse to prescribe birth control pills for patients? Why or why not?
4. Is it really beneficial for me to become a licensed or certified member of my profession? Why or why not?
5. Am I expected to maintain the same standard of care for patients that my - physician/employer is held to?
6. Am I protected by Good Samaritan laws if I perform CPR on a patient in a hospital emergency room waiting area and the patient dies?
7. Am I protected from a lawsuit if I have reported a medical emergency to my supervisor that I did not believe I was capable of handling?
8. If an injury occurred four years ago, am I protected from a lawsuit if the statute of limitations is two years in my state?

## **REVIEW QUESTIONS (FROM TEXTBOOK)**

### **Discussion Questions**

1. You have a patient collapse on the floor in your department (office) and you must administer CPR. If the patient is injured when you administer CPR, are you protected from a malpractice suit under the Good Samaritan laws?  
The Good Samaritan laws only protect medical personnel who administer emergency care outside of their work environment.
2. Describe the process Dr. Williams might use to become licensed to practice medicine when she moves from Chicago to New York.  
Dr. Williams would apply, in writing, to the New York state medical licensing board for reciprocity, which would allow her to practice in New York.
3. Describe what *reasonable and prudent* means as it relates to standard of care.  
Reasonable and prudent refers to the care that a normal healthcare professional would administer in similar circumstances.

## **REVIEW CHALLENGE**

### **Short Answer Questions**

1. What are some of the duties that an employee has to his or her employer as discussed in this chapter?
  - To maintain a safe environment.
  - See that caution signs such as “Wet Floor” are posted by housekeeping.
  - Keep medications and narcotics locked at all times.
  - Do not discuss the personal life of the employer (and fellow employees).

2. Does the doctrine of *respondeat superior* always protect the employee? Explain why or why not.  
Anyone can be named in a lawsuit; however, in most cases the employee is protected as long as he or she is acting within the scope of their practice.
3. When does the “discovery rule” begin to run?  
Under the statutes of limitations, the “running” usually starts when the problem is discovered or should have been discovered. This means that it does not necessarily start when the improper treatment was given.
4. What is the purpose of the JCAHO?  
The Joint Commission on Accreditation of Healthcare Organizations examines the policies and procedures of the organization being accredited. It is an objective third party to encourage a organization to have high standards of patient care.
5. Explain the difference between endorsement and reciprocity for license.  
*Endorsement*, meaning an approval or sanction, is when a physician is granted a license to practice based on having passed the NBME examination.  
*Reciprocity* occurs when a license to practice medicine is granted by one state when a physician is already licensed to practice in another state.
6. What does *standard of care* mean and why is it important?  
This refers to the ordinary skill and care that medical practitioners are expected to use when treating and caring for patients. It is important because it sets a certain standard of care that is expected from all healthcare professionals.
7. Explain the *prudent person rule* as it relates to the patient.  
This means that the healthcare professional must provide the information that a “reasonable and prudent” person would wish to have before he or she can make a decision about his or her treatment.
8. Who or what determines the length of time for the statute of limitations?  
The statute of limitations is a state law. Each state has determined the period of time that a patient has to file a lawsuit. Students must be encouraged to determine what the law is in their own state.

### Matching

#### Column A

1. endorsement
2. *guardian ad litem*
3. revoked
4. *respondeat superior*
5. statute of limitations
6. discovery rule
7. reciprocity
8. standard of care
9. Good Samaritan law
10. nonrenewal of license

#### Column B

- g. sanction
- d. court-appointed representative
- h. medical license taken away
- c. “let the master answer”
- f. period of time that a patient has to file a lawsuit
- a. begins at the time the injury is noticed or should have been noticed
- j. one state granting a license to a physician in another state
- b. ordinary skill that medical practitioners use
- e. law to protect the healthcare professional
- i. practicing medicine without a license

### Multiple Choice

1. According to the Medical Patient's Rights Act, patient information
  - a. may be given over the telephone without the patient's consent.
  - b. must be communicated on a need-to-know basis.
  - c. can always be given out to another physician.
  - d. other than test results, cannot be given out to a relative.
  - e. can never be given out to a third party.

Answer: b

2. The term for a court-appointed person to represent a minor or unborn child in litigation is
  - a. *respondeat superior*.
  - b. advance directive.
  - c. *guardian ad litem*.
  - d. durable power of attorney.
  - e. living will.

Answer: c

3. Standard of care refers to
  - a. ordinary skill.
  - b. type of care given to patients by other practitioners in the same locality.
  - c. only the care given by the physician.
  - d. a, b, and c.
  - e. a and b only.

Answer: e

4. The statute of limitations varies somewhat from state to state but is typically
  - a. ten years.
  - b. five years.
  - c. one to three years.
  - d. there is no limitation.
  - e. none of the above.

Answer: c

5. *Respondeat superior* means that
  - a. a healthcare employee can act independently of the employer.
  - b. the healthcare employee is never found negligent by the courts.
  - c. the employer is liable for the actions of the employee.
  - d. healthcare employees have a duty to carry out the orders of their employers without question.
  - e. all of the above.

Answer: c

6. A process by which a physician in one state is granted a license to practice medicine in another state is
  - a. endorsement.
  - b. reciprocity.
  - c. statute of limitations.
  - d. revocation.
  - e. suspension.

Answer: b

7. Patients' rights to have their personal privacy respected and their medical records handled with confidentiality are covered in the
- statute of limitations.
  - rule of discovery.
  - FLEX Act.
  - Medical Patients Rights Act.
  - Good Samaritan laws.

Answer: d

8. The prudent person rule refers to
- the needs of a medical assistant.
  - the information that a reasonable person would need.
  - the type of employee that a physician would wish to hire in his or her office.
  - the credentials of a malpractice attorney.
  - none of the above is correct.

Answer: b

9. When a physician places an ambiguous order, the healthcare professional
- has a duty to carry out the order.
  - can decline to carry out the order .
  - should immediately notify the physician.
  - b and c only.
  - none of the above is correct.

Answer: d

10. Both physicians and employees are
- liable in a lawsuit.
  - have the same responsibility to protect patient's confidentiality.
  - operate under a standard of care.
  - must be trained to perform a procedure before attempting it.
  - all of the above.

Answer: e

## Discussion Cases

- I. *Analyze the case at the beginning of this chapter, The Case of Latoya and the Physical Therapy Patient, by answering the following questions:*

- a. How can Latoya balance the benefits and harm of encouraging her patients to do something they do not want to do?

Latoya will have to gain the confidence of her patient. However, her concern that her patient may get injured if she falls is a sign that she already has her patient's well-being in mind. She will most likely gain more confidence as she continues to practice in her specialty.

- b. In your opinion, is Dr. B. placing too much pressure on a student?

Latoya must learn as much as she can from Dr. B—but never forget that her first responsibility is to the patient. She must talk to her instructor about her concerns.

- c. Is this a legal or ethical problem, or both?

It appears that Latoya has done nothing wrong. It is neither a legal nor an ethical

problem unless her patient is harmed. She should be reassured that her concern is an indication of a professional.

d. Who should Latoya talk to about her dilemma?

Her supervisor and/or instructor. The student should realize that she or he always has someone to go to when facing a problem he or she cannot handle.

II. *You are a phlebotomist drawing a specimen on Emma Helm, who says she doesn't like having blood drawn. In fact, she tells you that the sight of blood makes her "queasy." You attempt to make her feel relaxed by quietly talking to her as you help her onto a chair in the hospital laboratory. While you are taking her blood pressure, she faints and hits her head against the side of a cabinet.*

a. Are you liable for Emma's injury? Why or why not?

You, as the phlebotomist, did not listen to your patient when she told you that she was "queasy." You should have had her lie down before you drew the sample of blood. You may be liable for an injury, but your superior (laboratory director, hospital administrator, or office physician) and employer are also liable under the doctrine of *respondeat superior*.

b. If you are not *liable*, do you know who is?

Your employer under the doctrine of *respondeat superior*.

c. Is Emma Helm at fault for her accident? Why or why not?

Emma stated that she didn't like to have her blood drawn and became "queasy" at the sight of blood. This should have warned the phlebotomist.

d. Is this a legal or ethical problem, or both?

It is both. Emma's warning was ignored. This violated ethics. If she is injured, and it appears that she is, then there could be liability.