

CHAPTER 1

Workings of the American Legal System

Curriculum Crosswalk

HIA program

Domain:	Information Protection: Access Disclosure Archival Privacy and Security	
Sub-domain:	Health Law	
	<i>Competency:</i>	Identify laws and regulations applicable to health care
	Curricular consideration:	<ul style="list-style-type: none"> Health care legal terminology
	<i>Competency:</i>	Analyze legal concepts and principles to the practice of HIM
	Curricular consideration:	<ul style="list-style-type: none"> Legal principles
Sub-domain:	Data Privacy Confidentiality and Security	
	<i>Competency:</i>	Analyze privacy, security, and confidentiality policies and procedures for internal and external use and exchange of health information.
	Curricular consideration:	<ul style="list-style-type: none"> Privacy, confidentiality, security principles, policies and procedures, federal and state laws
Domain:	Data Content Structure and Standards	
Sub-domain:	Data Governance	
	<i>Competency:</i>	Demonstrate compliance with internal and external data dictionary requirements
	Curricular considerations:	<ul style="list-style-type: none"> Accreditation standards <ul style="list-style-type: none"> The Joint Commission

HIT program

Domain:	Information Protection: Access Disclosure Archival Privacy and Security	
Sub-domain:	Health Law	
	<i>Competency:</i>	Apply health care legal terminology
	Curricular consideration:	<ul style="list-style-type: none"> Health care legal terminology
Domain:	Data Content Structure and Standards	
Sub-domain:	Health Record Content and Documentation	
	<i>Competency:</i>	Identify a complete health record according to organizational policies, external regulations, and standards
	Curricular considerations:	<ul style="list-style-type: none"> Medical staff by-laws The Joint Commission, State statutes <ul style="list-style-type: none"> Legal health record and complete health record
Sub-domain:	Data Governance	
	<i>Competency:</i>	Apply policies and procedures to ensure the accuracy and integrity of health data
	Curricular consideration:	<ul style="list-style-type: none"> By-laws <ul style="list-style-type: none"> Provider contracts with facilities, Medical staff by-laws, Hospital by-laws

Teaching Exercises

1. Teach the students to access various sources of law using the Internet. Demonstrate in the classroom or through online discussion how to access the two best Web sites for free legal research of federal laws: <http://thomas.loc.gov> and <http://www.gpoaccess.gov>. The first Web site is maintained by the Library of Congress and contains bill summaries and tracking as well as public laws. The second Web site is maintained by the Government Printing Office and allows access to official information from all three branches of government, including enacted statutes, rules, the Code of Federal Regulations, and the Federal Register. You can select any of the citations to federal statutes or regulations found in the text, the online companion to the text, or you may use any of the following:

HIPAA	42 U.S.C. § 1320d	45 C.F.R Part 162 (Admin. Requirements)
GINA	42 U.S.C. § 2000ff	45 C.F.R Part 164 (Privacy & Security)

After demonstrating how to find these examples, task the students with exploring the Web sites themselves to locate federal statutes and/or regulations that are of interest to them.

2. Discuss the elements of a contract, identified in Table 1.2 in the textbook. Note that the listing makes the assumption that the parties to the contract are competent to act. Introduce to the class the idea that some parties may not be considered competent under the law, using minors as the example. Explain that the law generally considers minors not to possess the full maturity of mind and judgment that is assumed for adults. Excluding the instance of emancipated minors, ask the students to identify what advantages and disadvantages exist for minors and those with whom they contract. Examples of advantages for the minor include:
 - the ability of a minor to cancel (void) a contract that he or she entered into and now regrets;
 - the ability to refuse to sign contracts/not be forced into contracts that the minor doesn't wish to enter; and
 - the ability to share responsibility for the obligations of contracts with an adult who serves as a co-signer.

Examples of an advantage for those who contract with minors include:

- the ability to require an adult to act as a co-signer to a contract, potentially increasing the ability for the responsibilities of the contract to be fulfilled.

Examples of disadvantages for the minor include:

- the inability to contract without the assistance of an adult; and
- the inability to hold the opposing side responsible to fulfill the terms of the contract entered into by the minor.

Examples of disadvantages for those who contract with minors include:

- the inability to hold the minor responsible to fulfill the terms of the contract entered into by the minor; and
- the risk that the minor may cancel the contract at any time, citing the status as a minor as the reason.

Suggested Enrichment Activity

Bloom's Taxonomy level: Application and analysis

Using Table 1.4, Words of Authority, as a guide, review the statutory provisions found in the online companion to the text, looking for instances where these words of authority are employed. Determine the level of change that would occur to the meaning of the statutory provision if one or more of the words of authority found in Table 1.4 were substituted for the word of authority currently located in the statutory provision.

Answer Key for Review Questions

1. Why should a health information professional possess a fundamental understanding of the law?
A: Because the law is a major external force affecting the HIM professional's ability and responsibility to manage patient-specific health information. As the interplay between law and health care increases (e.g., new government regulations and increased lawsuits), the knowledge level of the HIM professional necessary to maintain confidentiality and security of patient-specific health information increases.
2. Does a single document or source of law exist where an individual can find all of the rules governing health information? Why or why not?
A: No. In the United States, laws are passed and regulations are promulgated at the federal, state, and local levels and are interpreted by courts at all levels, making it impossible for all law relating to health information to arise from a single source.
3. How does the content of state constitutions compare with the content of the U.S. Constitution?
A: Typically, they contain similar language to the Federal Constitution. In addition, they may contain additional language that is unique to a given state, even granting broader rights to state citizens than the U.S. Constitution.
4. Statutes governing health information are found at what three levels?
A: Federal (U.S. Congress), state (individual legislatures), and local levels (city councils and boards of alderman).

5. Explain the concepts of *stare decisis* and *res judicata*.

A: *Stare decisis* refers to reliance on the decisions rendered in prior cases (precedent) in future cases, regardless of the parties involved, in a lawsuit containing similar issues. *Res judicata* refers to only the application of precedent to the same parties and issues that may be found in different cases.

6. When does an executive order have the effect of law?

A: After being published in the Federal Register, in the case of the federal system, or in a comparable publication on the state level.

7. What is the function of the judicial branch of government?

A: To interpret the law through adjudication and resolution of disputes.

Case Study A

You are the director of health information services for a medium-sized health care facility. Like many of your peers, you have contracted with an outside copying service to handle all requests for release of patient health information at your facility. You have learned that a lobbying organization for trial attorneys in your state is promoting legislation to place a cap on photocopying costs, which is significantly below the actual cost incurred as part of the contract. Discuss the roles each branch of government will play in considering this legislation and how you and your professional organization may act to influence this process.

Things to consider

Part One: Branches of Government

All three branches will be involved:

1. The lobbying organization will need to find a member of the legislature willing to sponsor its legislative proposal and shepherd it through the committee process.
2. Before the bill can become law, the state governor must sign it or veto it. Furthermore, the bill may direct the state department of health to issue regulations to implement the legislation.
3. Should a dispute arise and a lawsuit be filed, the judiciary may also be called upon to interpret the statute once it has been passed by the legislature and signed into law by the governor.

Part Two: Influencing the Process

Working within your professional association, and possibly in conjunction with other professional associations similarly affected, you may take the following steps:

1. Contact the lobbying organization and/or trial attorneys group directly to educate them about why and how photocopying fees are charged. Depending on the result, the lobbying organization or trial attorneys group may abandon its efforts or work with your association to modify its proposal.
2. Contact the sponsoring member of the legislature to educate him or her in the same manner. Additionally, appear before the appropriate legislative committee to testify about the consequences of the bill.
3. If it appears that momentum has already been built on the topic and a bill on the topic is ripe to pass, submit a counterproposal that your association can accept to a different legislative member for sponsorship.
4. Contact the governor with your associations' views on the topic as part of the signature/veto process.
5. Write letters to the editor or op-ed pieces for publication in your local paper in an effort to educate the voting public. Send copies of the published pieces to those persons or groups listed in numbers 1–4.

Case Study B

Michelle Sargol offers to pay \$9,000.00 for a particular car located on John Weber's car lot. Weber accepts Sargol's offer and promises to transfer title next week, at which time Sargol will pay for the car. The next day, Laura Kavanaugh visits the car lot and offers to pay Weber \$10,000.00 for the same car. Can Weber accept Kavanaugh's offer? What area of law is involved?

Things to consider

No, Weber cannot accept Kavanaugh's offer because Weber already has a contract with Sargol. The scenario illustrates contract law, a component of civil law. The first transaction between Sargol and Weber constitutes a contract—Sargol and Weber had a meeting of the minds regarding the purchase of the car, Sargol made an offer to buy the car, consideration was present (\$9,000.00 in return for the car), and Weber accepted. Because both parties entered into an oral contract, Weber is obligated to honor his acceptance of Sargol's offer. The contract is not less binding because of the fact that the car's title had not been transferred nor had money exchanged hands. If Weber accepted Kavanaugh's offer, he would have breached his contract with Sargol.