



# Medical Law and Ethics

## Handout 1.4

### The American Legal System: Laws Part 2

### Public Law and the American Court System

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We are now going to finish up the chapter with public law and the American court system.

In the previous handout, we examined civil law which handles matters regarding private relationships such as those between individuals or between individuals and private entities. The matters handled by civil law are non-criminal.

#### **Public Law**

Examples of branches under public law consist of criminal law, administrative law, constitutional law, and tax law.

For this handout we will cover criminal law and administrative law since they are relevant to the medical and health professions.

Since criminal offenses are against society as a whole, citizens of the United States cannot bring a criminal lawsuit against another individual. **Criminal laws** are designed to protect the public from harmful acts perpetrated by others. It is considered a criminal act when a person or institution performs an illegal act or commits a failure to act (omission).

It is the duty of healthcare professionals and institutions such as hospitals to provide the appropriate care for patients. Unless the patient or person in charge of the patient's care terminates any consent to treatment, an omission by the healthcare professional or institution is considered a breach of contract when they fail to provide the treatment as prescribed by law.

Criminal law requires that evidence is **beyond a reasonable doubt** meaning that the evidence shows that a person (or people) committed a crime with almost absolute certainty.

**Prosecutors** at the state and federal levels bring about legal proceedings against the accused individual or institution.

Criminal cases are legal proceedings brought upon by the federal or state governments of the United States against individuals or groups who have been accused of committing a crime. If the defendants in the case are found guilty, they will have to pay a fine, face imprisonment, or both as determined by the court.

Federal criminal offenses include tax evasion, terrorism, counterfeiting, and drug trafficking.

Criminal acts are separated into two categories: misdemeanors and felonies.

**Misdemeanors** are less serious offenses that are punishable by fines or imprisonment of up to one year. Misdemeanors include disorderly conduct, petty theft, vandalism, and minor traffic violations.

**Felonies**, on the other hand, are more severe crimes that can be punishable by death or imprisonment for more than one year. Felonies include practicing medicine without a license, murder, tax evasion, kidnapping, and treason.

If a healthcare professional is convicted of a crime, the state licensing board may revoke his/her license. Criminal cases involving healthcare professionals have included inappropriate sexual conduct, violations involving controlled substances, and substance abuse by the professional.

### **Administrative Law (Regulatory Law)**

Administrative law (or regulatory law) is the branch of law that handles regulations set by government agencies. We began discussing this in our previous handout when we discussed the Food and Drug Administration (FDA) and how they regulate the sale and safety of products such as food and medical prescriptions.

Congress and state legislatures authorize agencies such as the FDA to create rules and regulations under their jurisdiction. Other agencies include the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the Centers for Medicare & Medicaid Services (CMS).

For example, the Centers for Disease Control and Prevention (CDC) regulate laws which maintain public health and safety within the realms of disease control and prevention. The Centers for Medicare & Medicaid Services (CMS) handle the administration of Medicare and Medicaid (with state governments) as well as the oversight of the healthcare insurance website, Healthcare.gov, under the Patient Protection and Affordable Care Act (Obamacare).

Violating regulations prescribed by federal and state agencies are usually civil law violations, but may also embody criminal violations. Healthcare professionals and institutions who violate these regulations may be subjected to a penalty such as fines or a revocation or termination of one's professional license.

Many of the regulations handled by healthcare agencies include:

- Maintenance and oversight of the distribution and handling of controlled substances (including licensing of professionals, researchers, and manufacturers/distributors)
- Regulations concerning taxation and IRS rules related to healthcare
- Medical/insurance fraud
- Regulations by health departments such as reporting specified communicable diseases

### **The American Court System**

The United States has a federal and state court system. These two systems have their own responsibilities where **only one** court may hear a specific case, but both may also have **jurisdiction** (the power to hear a case) where both courts can hear a case. Regarding the latter, the plaintiff can choose which court they can present their case to as long as the court has jurisdiction regarding the matter of the case.

### **The Federal Court System**

The federal court system has jurisdiction under the following conditions:

- The dispute is related to the United States Constitution or federal law
- The United States government is a party involved in the dispute
- Citizens of different states in the US are involved in the dispute and the case involves an amount over \$75000 US dollars
- Citizens of a different country have a dispute with a United States citizen and the case involves an amount over \$75000 US dollars
- The dispute occurred in international waters

**If a case does not fall under these conditions, it must be brought to state court.** However, one of the above conditions can exist, but may instead be heard by the state court.

The court system is divided into three levels. **For the federal level from (lowest to highest):**

*District (or municipal)*  
*Court of appeals (or circuit courts)*  
*U.S. Supreme Court*

Cases are heard at the lower level court first. If the lower court's decision is challenged or appealed, the higher court will reexamine the case and its decision.

**For the state court level (from lowest to highest):**

*District or municipal trial courts*  
*State court of appeals*  
*State's highest court for final appeals*

The lower courts usually handle traffic violations and small claims. In an example, if a patient does not pay their medical fees, the physician can bring a patient to small claims court.

Probate court (or estate court) handles matters involving a deceased patient's estate. It is important for a physician/healthcare professional to sort out and handle any payment for services rendered to dying and deceased patients. If he or she does not, it can be considered negligence regarding a patient's treatment or death.

### Court Trials in the United States

In the American judicial system, a trial is where the facts of the case are presented and examined so that a proper judgment can be passed by the court.

In a trial, evidence is presented (such as a witness's testimony, reports from law enforcement and investigation officials, tangible evidence such as guns or an object with the victim's blood, etc.), relevant facts are determined from the evidence, and then the attorneys from each side will explain the relevance of legal principles to the case.

We will now go through the process in more detail.

The American federal government and many of its state governments utilize a grand jury in the first step in many criminal judicial proceedings. The grand jury consists of a group of 12 to 23 private citizens who hear evidence about a case in private. The evidence is presented by a prosecutor and the members of the grand jury deliberate to determine whether it will proceed to being heard in court.

The **defendant**, the person or group of people being sued, may or may not be present in front of the grand jury. The members of the grand jury may ask for clarification of

evidence or ask the witnesses questions related to the case. The grand jury then deliberates and votes on whether to move the **indictment**, the written legal charge against the defendant, to the trial court.

The grand jury serves as a way to filter out cases which have insufficient evidence to proceed and be heard in court.

If two parties cannot resolve a dispute, they may resort to **litigation** where one party will take another to court in order to resolve the dispute or lawsuit. The **plaintiff** is the person or group of people who instigate the lawsuit. For example, if a patient was harmed during a medical procedure, he/she can take the healthcare professional or institution to court to be compensated for damages or injuries. In this case, the patient is the plaintiff and the healthcare professional or institution is the defendant.

In a criminal case, the **prosecutor** is the official who brings a criminal lawsuit on behalf of the government.

There are cases where lawsuits do not have to end up in court. In these cases, the attorneys for both parties work out an agreement to settle the matter between the two parties. This is referred to as **settling out of court** where a trial is not needed.

If the two parties cannot settle out of court, a trial will be held. The case will be tried before a judge or a judge and a jury of the defendant's peers. The plaintiff and defendant may **waive** (give up a right) to a jury trial or request to have a jury.

If a jury trial is requested, a group of private citizens (around 6 to 12 people) of the United States who live in the region are chosen from a pool of potential jurors. The judge and the attorneys for both parties then ask the jurors questions to determine their impartiality to hear a case. Once the jury is chosen, the case can begin.

Here is a summary of the trial process once it starts:

- Opening statements are made by the plaintiff and defendant's attorneys to provide the court with facts which will be used to prove their case
- The plaintiff's attorney questions the first witness, an individual who is placed under oath to truthfully testify about the circumstances regarding the case
- The defendant's attorney (defense counsel) then has a chance to cross-examine the witness. The cross-examination is used by the opposing counsel to question the credibility of the witness's statements from the direct examination.

Direct examination is the initial questioning when the witness is questioned by the side for who they are testifying for. In this case, the plaintiff performs the direct examination and afterward, the defendant's attorney cross-examines the witness.

- After the plaintiff's attorney has presented all of the witnesses and they have been cross-examined by the defense counsel, the defense counsel can present their witnesses to testify. The plaintiff's attorney can then cross-examine the defense's witnesses.
- Once this has been completed (along with questioning and cross-examining any additional witnesses), both parties will "**rest their case**," meaning that all evidence and witnesses have been presented

**In the United States legal system, all people are innocent until they are proven guilty.** Since the plaintiff instigates the lawsuit by presenting evidence that the defendant violated the law, the burden of proof is on the plaintiff to prove that the defendant is at fault.

### Subpoenas

**Discovery** is the legal process by which facts are discovered before a trial. The parties for each side can obtain evidence and records from the opposing side or can subpoena an individual or records.

A **subpoena** is a court order for an individual to appear in court or for records to be brought to court. A **deposition**, an oral testimony that is made before a public officer of the court to be used in a lawsuit, can be taken and the person may not need to appear in court. The attorney then submits the deposition during the case.

A **subpoena duces tecum**, a Latin phrase meaning, "*under penalty, take with you*," is a court order requiring a person to appear in court and to bring relevant records, documents, and materials to a trial or deposition. A person can also submit documents and materials to the court voluntarily which won't require a subpoena.

Failing to respond to a subpoena may be penalized. It can be considered a contempt of court.

The subpoena must be sent to the person who it is addressed to. A physician's assistant or employee cannot accept the subpoena on the physician's behalf without the physician's knowledge. If a physician does have knowledge, they can have their assistant accept it on their behalf, but it is not encouraged to do this.

### Summary Judgment

A **summary judgment** is a judge's ruling to end a lawsuit without a trial based on a matter of law presented in pleadings. The plaintiff or defendant's side can request a summary judgment in lieu of a civil lawsuit. If the evidence supporting one side is very

clear from the beginning, a trial is not necessary. This can bring quick closure to a case solely based on the pleadings (formal written statements) and a win for one side.

### Closing Arguments

The attorneys for both the plaintiff and the defendant present their **closing arguments** where they summarize the evidence and the summaries of their cases. If a trial is conducted in front of a judge without a jury, the judge makes the decision based on the evidence and the law.

If a trial does have a jury, the judge will explain the areas of law that are relevant to the case before they can deliberate. After the judge explains, the jury is excused so that they can deliberate, reexamine the evidence, and settle on a verdict.

For civil cases, if the judge or jury finds in favor of the plaintiff, the defendant will usually be ordered to pay the plaintiff a monetary award.

For criminal cases, if the defendant is found guilty, the judge will sentence the defendant to pay a fine and/or serve a prison sentence. The defendant can appeal a guilty verdict where a court of appeals will examine that the original trial and verdict were correct and just. After the judge rereads/reviews the original case's transcripts, he or she can affirm the original decision, reverse it, or make changes to it.

If a defendant wins a civil case or is found not guilty in a criminal case, the case ends.

If the verdict is "not guilty," it doesn't necessarily mean that the defendant did not perform a crime or wrongful action (such as a medical malpractice case). It just means the plaintiff did not present enough evidence to prove their case to the court.

### Standards of Proof

Depending on the severity of the crime, different levels of proof are required. In a civil trial, the **preponderance of evidence** is the standard of proof required to be met by the plaintiff in order to win a trial. Evidence with greater weight can help push in favor of one side over the other. (One strong testimony by a witness with strong knowledge of the circumstances has stronger weight versus 20 witnesses who are unclear; Another example is a physician having an agreed written contract for payment for a procedure versus an agreement for services that is not explicitly written out).

As we had discussed previously for criminal trials, the facts of the case must establish the guilt of the defendant when proven "beyond a reasonable doubt" by the court that the defendant committed the crime.

## Expert Witness

Many professionals in the healthcare field act as expert witnesses in cases (usually healthcare related). An **expert witness** is an expert (such as a medical practitioner) who through education, training, or experience, has specialized knowledge about a subject and provides testimony about the subject in court.

Expert witnesses are usually paid a fee and clarify points in the case related to their body of knowledge. Expert witnesses do not testify about the actual facts of the case, only clarify the points which may be unclear to those present in court. For example, if a proper medical procedure needs to be clarified in a medical malpractice case, the expert witness can explain the current proper standards to perform the medical procedure so that the court can take it into consideration beside the fact of what the defendant in the case performed.

If you are called upon as a witness, always maintain professional standards and behavior. In this case, always provide truthful testimony, remain calm, and do not answer questions that you don't comprehend. It's perfectly fine to ask the attorney to clarify or repeat the question or state that you don't understand. This is especially important during cross examinations when the opposing counsel may ask difficult questions.

**When testifying, stick to the relevant facts of the case and do not give irrelevant/unnecessary information or opinions.** For example, a fact would be "The patient did not want to take his medication and yelled at the nurse." An opinion would be "The patient seemed upset and hostile."

Now that we've finished covering a brief overview of the United States legal system, we will go into more detail in the next handout on the applications of the legal system to the medical and health professions. For example, we will cover the licensure requirements to practice in the medical/health fields and issues such as confidentiality and standard of care.