FAST FACTS ABOUT NURSING AND THE LAW

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FAST FACTS ABOUT NURSING AND THE LAW

Law for Nurses in a Nutshell

Paula DiMeo Grant, JD, BSN, MA, RN
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This book is dedicated to nurses—the heart of health care.
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Preface

Nurses continue to hold a position of central importance in the world of health care, and this role will increase in the future. As we know, nurses are challenged every day by the latest clinical advances, new technology, and cutting-edge information based on science and research, to name a few areas.

In this ever-changing environment, this singular vital constant—nurses—must be able to practice their profession with knowledge and skill. In the practice of their profession, nurses are expected to make rapid decisions on critical issues. We understand that. We also understand that many decisions that the nurse is called upon to make have legal implications and therefore it is crucial that the decision be the best it can be.

This is why we wrote this book. This Fast Facts legal reference is intended to provide high-quality legal information in a nutshell! It is written for the nurse who is busy, who wants a ready reference, and who wants to obtain quality guidance in decision making as quickly as possible.

This reference covers many of the timely topics included in our earlier comprehensive text, Law for Nurse Leaders: A Comprehensive Reference. Recognizing that nurses will use that reference for more in-depth research, we created this book in response to the need for a quick and ready legal reference that will provide “on the spot” information.
The nurse will find valuable legal information on sources of law, Nurse Practice Acts, and the disciplinary process; nursing malpractice and negligence; documentation; informed consent and patient rights; employment; corporations, risk management, and compliance; disasters and public health emergencies; and dispute resolution.

Of course, we caution that the information provided in this book does not constitute legal advice and is not a substitute for competent legal representation. Only retained counsel, with full knowledge of any specific situation, can provide such representation and specific legal advice. However, in this book we have taken complex topics and presented them in straightforward, understandable language that you will find practical, useful, valuable, and indispensable.

As nurse attorneys, we are committed to providing you with the most relevant and useful information possible. We are confident you will find that we have accomplished that in this book.

Paula DiMeo Grant, JD, BSN, MA, RN
Diana C. Ballard, JD, MBA, RN
We are grateful to the many people who helped to make this book a reality.

We thank Springer Publishing Company for its constant and steadfast support and for its ongoing commitment to bring nurses the best possible resources. Allan Graubard, former Executive Editor at Springer, has been a genuine friend and gifted resource to us. We continue to benefit from all he has taught us. We also acknowledge the assistance and support of Assistant Editor Chris Teja for his invaluable and expert assistance in the production of this book. We are also grateful to Rose Mary Piscitelli, Senior Editor, and her team, who so capably led us to the finish line.

We are deeply grateful to the contributors of our earlier book, Law for Nurse Leaders: A Comprehensive Reference. Their outstanding contributions in the development of that first book were instrumental in the creation of this book. Their work is cited throughout this book with deep gratitude.

As always, we are able to count on the support of our friends and family, whose support and encouragement were given as enthusiastically in the writing of this book as they were with our first book. To our husbands, who have continued to be unwaveringly patient and supportive—to Paula’s husband, Dr. James Grant, and to Diana’s husband, John Capone—we express our heartfelt gratitude. Ms. Grant recognizes with

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love and gratitude her late parents, Samuel and Emilie DiMeo, and is forever grateful to them for inspiring her to be her best.

We, the authors, recognize each other with a level of respect and friendship that has not only made our achievements possible, but has made them a satisfying and fulfilling experience.
Overview of Nursing and the Law
Primary Sources of Law

Paula DiMeo Grant

The delivery of health care has become increasingly complex and requires nurses to have knowledge of the law as it relates to nursing practice and the care they deliver to patients. Part I: Overview of Nursing and the Law consists of three chapters and will focus on the primary sources of law, Nurse Practice Acts, the role and function of the Boards of Nursing, and the nursing disciplinary process. Case examples will illustrate salient points. Chapter 1 will address the four primary sources of law.

In this chapter, you will learn to:

1. Describe the four primary sources of law
2. Identify the source of law responsible for Nurse Practice Acts
FOUR PRIMARY SOURCES OF LAW

The four primary sources of the law consist of the following:

1. Constitutional Law
2. Common Law
3. Statutory Law
4. Administrative Law

Constitutional Law

The Constitution is the basic framework of our government, and parallel systems exist on both state and federal levels. Constitutional law is the interpretation and application of the principles as set forth in the Constitution. The United States Constitution guarantees basic rights to all U.S. born or naturalized citizens. The first 10 amendments of the U.S. Constitution are known as the Bill of Rights. The jurisprudence system ensures that these basic rights will not be infringed upon without due process of the law. The due process clause of the 14th Amendment of the U.S. Constitution states in part:

No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of the life, liberty or property, without due process of the law; nor deny to any person within its jurisdiction equal protection of the laws.

Common Law

Common law is the body of law that is distinguished from law that is enacted by legislatures. It is a body of law that is derived from usage or custom, or from judgments or decrees of the courts. It
is based upon the principle of precedent or *stare decisis*, which is Latin for “to abide by or adhere to” (*Black’s Law Dictionary*, 1979). Common law originated in England and was later adopted by this country, and is often referred to as judge-made law or case law.

**Statutory Law**

Statutory law is law passed by the legislative branch of the state or U.S. government. It is a declaration that prohibits or demands certain actions to be taken or specific requirements to be met. Nurse Practice Acts are examples of statutory laws enacted by state legislatures.

**Administrative Law**

Administrative law is the area of law that is created by state and federal agencies or governing bodies. These agencies or governing bodies have rulemaking and adjudicatory powers. They promulgate rules and regulations and enforce administrative orders from matters adjudicated before an administrative law judge. The Boards of Nursing fall into this category.

**FAST FACTS in a NUTSHELL**

Common law originated in England and was later adopted in this country, and is often referred to as judge-made law or case law.

**FAST FACTS in a NUTSHELL**

State statutory law is primarily responsible for education, licensing, and regulation of nursing practice.
SUMMARY

The four primary sources of law as described in this chapter form the basic foundation for addressing the legal issues in nursing. As a result of the interrelatedness of law and nursing, and the changing landscape of the health care delivery system, it is important for nurses to have a basic knowledge of the law. The next two chapters of this book will focus on Nurse Practice Acts as well as the function of Boards of Nursing.