

Legal system essay



**ASSIGN
BUSTER**

Imagine 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 costs incurred as part of the contract. (Case Study, p. 20) Review this case study.

Define and describe each branch of government and discuss the roles each branch will play in considering this legislation. How would you and your professional organization act to influence this process? Evaluate how the various sources of law relate to this case? Our government has three branches. Imagine a triangle. At the top is the executive branch. The two bottom corners are the judicial branch and the legislative branch (also called Congress). Each part of the government is connected to the other. Each has its own responsibilities and powers.

A system of checks and balances prevents one branch from gaining too much power. Congress is responsible for making laws. When Congress passes a bill, it goes to the president who reviews it. If he likes it, he signs it, and it becomes a law. If the president does not like it, he vetoes it. The judicial branch can review laws made by Congress and approved by the president. They are responsible for deciding if the law agrees with our constitution. A crucial function of the executive branch is to ensure that laws are carried out and enforced to facilitate such day-to-day responsibilities of the federal government.

The legislative branch, as a whole, is charged with passing the nation's laws and allocating funds for the running of the federal government and providing assistance to the 50 U. S. states. Trying to place a cap on photocopying would undoubtedly cause problems within the healthcare system. All the facts of why a cap is needed in the first place should be presented and challenged as to what the lobbyist power and influences are in getting the legislation to even consider promoting the idea. Legal Procedures Imagine you are the in-house counsel at a local hospital.

You have been contacted by an attorney for a former patient of the hospital whose inpatient hospitalization resulted in some harm to the patient. That harm was recorded in an incident report prepared by hospital staff. Your review of the incident report indicates that the harm described by the attorney is consistent with the harm described in the incident report. Based on your conversations with the attorney, you believe a lawsuit is imminent. Since you believe it is in the best interest of all concerned to avoid the cost of litigation, you wish to consider methods of alternative dispute resolution.

Identify at least three methods of alternative dispute resolution for this case and discuss the relative advantages and disadvantages of each method.

Assuming the alternative methods are not successful, use Fig. 2. 4 to explain the steps in the legal process to begin a lawsuit. Be sure to relate each step to this specific case. Negotiation is the most basic means of settling our differences. It is back-and-forth communication between the parties to the conflict with the goal of trying to find a solution. You may negotiate directly with the other person.

You may hire an attorney to negotiate directly with the other side on your behalf. There are no specific procedures to follow – you can determine your own – but it works best if all parties agree to remain calm and not talk at the same time. Mediation is a voluntary process in which an impartial person (the mediator) helps with communication and promotes reconciliation between the parties which will allow them to reach a mutually acceptable agreement. Mediation often is the the next step if negotiation proves unsuccessful. At the beginning of the mediation session, the mediator will describe the process and the ground rules.

The parties or their attorneys have an opportunity to explain their view of the dispute. Arbitration is the submission of a disputed matter to an impartial person (the arbitrator) for decision. Arbitration is typically an out-of-court method for resolving a dispute. The arbitrator controls the process, will listen to both sides and make a decision. Like a trial, only one side will prevail. Unlike a trial, appeal rights are limited. Health Records Pretend you supervise the correspondence unit of the health information services department of a medical center.

Today, you received a subpoena duces tectum from an attorney, demanding either the originals or copies of all health records concerning Mary Smith, who allegedly is or was a patient of the medical center. The subpoena lacks sufficient information for you to determine whether Mary Smith is or was a patient in your facility. The subpoena is not accompanied by a valid authorization to release information for Mary Smith, as required in your state. (Case Study, p. 62) How should you respond to the subpoena? In

addition to providing the legal rationale for your response, describe the necessary information the subpoena should have included.

Assuming Mary Smith was a patient at the facility, who has ownership over her health record – Mary Smith or the medical center? A Subpoena is a legal document or order requiring an individual to appear, and usually to testify, in court on a certain date and/or to produce documents. Subpoena duces tecum is derived from the Latin meaning “bring it with you.” It is an order requiring a witness to bring specific documents, reports, tapes or any other specified records that are in the possession or under the control of the witness to a certain place at a certain time.

One of the simplest and most overlooked ways to handle subpoenas is to seek the client’s permission to release the requested information to the entity cited in the subpoenas. In cases where a client wants or is willing to authorize to release the information, the client simply fills out and signs the Authorization to Release Information. If a subpoena arrives from a client’s attorney without a signed client’s release form, check with your client (not with the attorney) before releasing the documents. Before releasing the records, obtain a written authorization. <http://www.zurinstitute.com/subpoena.html>

A subpoena must identify the person to whom it is directed by name or by description or office or position (person subpoenaed). If you wish to subpoena an organisation, the subpoena should be directed to a person authorised to act on behalf of the organisation. A subpoena may be directed to two or more persons if the subpoena is to give evidence only or if the subpoena requires the production of the same documents from each

person subpoenaed. A subpoena for production must identify the specific document or thing to be produced.

These documents or things should be properly described so the person subpoenaed knows what to produce. These documents or things should already exist and not be subpoenaed to create. A subpoena cannot be written in a way that requires the person subpoenaed to make a decision about whether a document or thing needs to be produced. For example, the subpoena should not ask for ‘ all documents relating to any account held by the person subpoenaed in a false name’. <http://www.fmc.gov>.

http://www.fmc.gov/au/pubs/html/issue_of_a_subpoena.html Legal Liability A surgeon performs elective surgery on John Smith.

Smith later complains to his surgeon about pain resulting from the surgery. His surgeon dismisses his complaints as not credible and eventually withdraws from the case. Smith is then treated by another surgeon, who determines that Smith developed complications from surgery and that the delay in treatment has made the complications worse. Smith sees an attorney about a possible lawsuit against the first surgeon. (Case Study, p. 88) Based upon the information above, describe at least two theories of liability that could support a lawsuit under these circumstances.

Be sure to discuss each theory in detail and thoroughly explain the rationale for your choices. What are the potential defenses and limitations of the liability theories you have chosen? The two theories of liability I would support in this case would be malpractice and medical abandonment. Let's begin with the liability of malpractice. The surgeon in this case was not

acting professionally or ethically when he dismissed the information from Mr. Smith concerning his level of pain after the surgery. Mr. Smith clearly has the grounds to support his malpractice case against the surgeon.

The elements of negligence in this case are breach of duty by the surgeon because he refused to acknowledge the pain Mr. Smith was experiencing, duty of care that was not provided to Mr. Smith during his sufferings, damages resulting from the complications from the first surgery and finally causation. The second liability in this case would be medical abandonment. Mr. Smith was still experiencing pain after the surgery and instead of assisting Mr. Smith and acknowledging his discomfort the surgeon dropped his case which resulted in Mr.

Smith having to consult another surgeon for help. Mr. Smith deserves to know exactly what happen and why he was dropped as a patient. Mr. Smith did previously have a relationship with the surgeon, therefore proving his case should not be difficult. There is evidence proving this relationship as this surgeon conducted the surgery that is the root cause of this entire case.