



Hematol Oncol Clin N Am  
16 (2002) xi–xiii

---

---

HEMATOLOGY/  
ONCOLOGY  
CLINICS OF  
NORTH AMERICA

---

---

Preface  
Health policy and law



Bryan A. Liang, MD, PhD, JD  
*Guest Editor*

This issue of the *Hematology/Oncology Clinics of North America* is devoted to health law and policy and reflects some of the modern changes in the United States health delivery system. Increasingly, and seemingly inexorably, the practice of medicine is being directed and constrained by more and more laws and public policies. Under these conditions, it is important to understand the general nature of these directives and any underlying issues relating to new practice structures and methods; it is also important to seek competent assistance to maintain the role of patient advocate while avoiding liability.

This issue begins with an overview of United States law as it applies to the health delivery system. Many of the concepts will be familiar to readers; however, misunderstandings and incorrect notions about the legal infrastructure often exist among those who have not been exposed to this area since their high school civics classes. The goal of the first article is to correct or fill in the “lore of the floors” with regard to law and health policy and to serve as a foundation for the rest of the issue.

Dr. Marsha Ryan, a physician-attorney, provides a thorough overview of the rules of medical malpractice. Malpractice, a traditional area of interface between law and medicine, is also an area rife with misunderstandings by those who are subjected to it, often related to the lore of the floors. Dr. Ryan’s article will hopefully clarify some of these issues for practitioners.

There are subcategories connected to the legal arena of traditional medical malpractice. Loss of chance doctrine—an exceedingly important subset of malpractice that is directly applicable to specialties such as hematology and oncology—is covered by another physician-attorney, Dr. Mark Garwin. This

legal doctrine is a developing area of the law that can result in provider liability even when the patient has suffered complications due to the disease itself. Dr. Garwin's article provides an important caution for those who diagnose and treat patients with diseases that are accompanied by progressive morbidity and mortality.

Another traditional medical–legal area is informed consent. Nurse-attorney Ms. Karen Coulson, research associate Ms. Brandy Glasser, and I review the facets of this important area of patient care. We attempt to provide information that emphasizes the nature of informed consent rather than mere consent; the former reflects a true provider–patient partnership, which is vital to an effective therapeutic relationship.

In a segue to some modern medical–legal areas, an important area of discussion that is an extension of informed consent is the topic of advanced directives. Patients, as partners in the health care enterprise, have the right to indicate their medical treatment choices and direct their care, including at the end of life. Professor Eugene Basanta provides an overview of this important topic, discussing the varying forms of advance directives as well as do not resuscitate orders.

The legal definition of death has significant implications for both the patient and the patient's family. Important legal and ethical issues are involved. Ms. Anna Schlotzhauer, a scientist-attorney with extensive interest and work in biomedical ethics, and I review some of these concerns, which are often not considered until the provider faces his or her first dying patient.

Currently, in daily practice, it is inevitable that patient–provider conflicts will arise. Although the litigation system is the traditional forum to resolve such disputes, litigation is usually destructive to the relationship and does not improve or promote communication of the delivery system areas that need to be corrected. Professor and Dean Emeritus Edward A. Dauer, an internationally recognized scholar in the area of alternative dispute resolution, provides insights into methods that may avoid the downside of litigation in patient–provider conflicts.

Some of these conflicts may arise because of inappropriate use or disclosure of patient information. Patients have a right to privacy of their health care records, and providers have an ethical duty to keep this sensitive information private. Both state-based common law and, more recently, federal medical privacy mandates provide significant constraints as to just how, when, and under what conditions patient medical information may be accessed. I review of these concepts in the medical privacy and confidentiality piece.

Other ethical mandates are important, particularly because of recent difficulties in clinical trials reported broadly in the lay and medical press. Professor Marshall Kapp, a world-renowned bioethicist, provides a review of this important area and the development of policies to protect human subjects participating in medical experimentation.

One of the most important recognitions affecting quality of care in recent and perhaps not-so-recent times is the problem of medical error. The patient safety movement has become an important response to this issue. Drs. Steve Small and

Paul Barach, internationally recognized leaders in this field, provide an important overview of the safety movement and discuss some of the legal difficulties regarding the attempt to implement important system tenets to improve care.

Hematologists and oncologists are often involved in pain management; however, recent cases—such as the OxyContin affair and the California physician found liable for too little pain treatment—have resulted in confusion regarding the potential liability in this area. Professor Barry Furrow, a leader in health care law with a special interest in pain management, provides important information about pain management issues and liability.

Other, more modern concerns have arisen in the information age. Terms such as *e-health* and *e-medicine* have become commonplace, yet the legal and policy implications for these activities have not been clearly elucidated. Professor Ross Silverman, an expert in the area of electronic medical information use and regulation, provides an overview of the important implications and legal issues associated with this area of modern medical practice.

Finally, attorney Michael Barrett and I review some of the basics of an extremely important area for practitioners: fraud and abuse. Because the business side of medicine is so complex, it behooves practitioners to understand when their business relationships may be deemed unacceptable by the government and when to seek appropriate guidance. This is particularly important when severe criminal and civil penalties could be levied, even if the relationships are begun innocently.

Overall, health care delivery and medical practice is now unalterably intercalated with a vast array of laws and public policies. Practitioners faced with such a regulatory system should inform themselves about the vagaries of these non-clinical facets of medical practice so that they best understand what they can and should do in the best interest of their patients and, perhaps more importantly, what they cannot and should not do. It is my hope that this issue contributes to that understanding.

Bryan A. Liang, MD, PhD, JD  
*University of Houston Law Center*  
*Health & Law Policy Institute*  
100 Law Center  
Houston, TX 77204-6060, USA

*University of Texas Medical Branch*  
*Institute for the Medical Humanities*  
301 University Boulevard  
Galveston, TX 77555-1311, USA