

# CHAPTER 2

## Court Systems and Legal Procedures

### Curriculum Crosswalk

#### HIA program

<b>Domain:</b>	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"> <li>Health care legal terminology</li> </ul>
	<i>Competency:</i>	Analyze legal concepts and principles to the practice of HIM
	Curricular considerations:	<ul style="list-style-type: none"> <li>Legal principles</li> <li>Legal health records</li> </ul>
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"> <li>E-discovery</li> </ul>
<b>Domain:</b>	Leadership	
Sub-domain:	Leadership roles	
	<i>Competency:</i>	Take part in effective negotiation and use influencing skills
	Curricular consideration:	<ul style="list-style-type: none"> <li>Negotiation techniques</li> </ul>
	<i>Competency:</i>	Apply personnel management skills
	Curricular consideration:	<ul style="list-style-type: none"> <li>Negotiation</li> </ul>

#### HIT program

<b>Domain:</b>	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"> <li>Health care legal terminology</li> </ul>
	<i>Competency:</i>	Apply legal concepts and principles to the practice of HIM
	Curricular considerations:	<ul style="list-style-type: none"> <li>Maintain a legally defensible health record</li> <li>Subpoenas, depositions, court orders, warrants</li> </ul>

### Suggested Enrichment Activity

Bloom's Taxonomy level: Comprehension

Suggest to students that they watch the movie *The Verdict*. This movie focuses on a medical malpractice lawsuit. The movie depicts in a fairly accurate manner the roles of each player in a trial, various legal procedures, the problems of the legal profession, and the anguish faced by a plaintiff and a witness. Ask the students to discuss, in class or through an online discussion board, their impressions of the movie in general and how the movie compares to the information presented in this chapter.

## Answer Key for Review Questions

- Why should a health information professional need to understand the court system and legal procedures?  
A: Demands are placed on health information professionals to comply with the legal process, particularly the use of health information in a lawsuit. Accordingly, the health information professional must understand the variations of court systems and legal procedures in order to comply.
- Give examples of federal question jurisdiction and diversity jurisdiction.  
A: Federal question jurisdiction deals with cases involving a U.S. constitutional principle, treaty, federal statute, or federal rule or regulation. Diversity jurisdiction involves parties who are citizens of different states whose controversy involves over \$75,000.00.
- Does each state have trial courts, intermediate courts of appeal, and supreme courts?  
A: No. All states have trial and supreme courts. Some, but not all, states have intermediate courts of appeal.
- What is meant by the term *legal process*?  
A: The stages through which a lawsuit passes.
- What are the elements of a complaint?  
A: Three elements are necessary in every complaint: (1) the jurisdiction of the court, (2) the plaintiff's claim in a short and plain statement, and (3) the demand for relief to which the plaintiff feels he or she is entitled.
- What do the terms *metadata*, *spoliation*, and *litigation hold* mean?  
A: Metadata refers to unseen information in common text files, which can indicate when a document was created, viewed, or revised and can contain edits, notes, or other private data. Spoliation refers to the wrongful destruction or material alteration of evidence or the failure to preserve property or data for another's use as evidence in pending or reasonably foreseeable litigation. Litigation hold refers to the actions of a party who possesses data to make efforts to prevent routine destruction and preserve electronically stored information (ESI) that may be discoverable, even before the time when a lawsuit is filed.
- What are the similarities and differences between opening and closing statements at trial?  
A: Both opening and closing statements summarize the evidence presented in the case and highlight the weaknesses of the other side's case. They differ in that the opening statement does not ordinarily refer to a witness's credibility, something closing statements often include.
- How did alternative dispute resolution become a popular alternative to litigation?  
A: Because of the dissatisfaction felt by litigants with the existing legal system and its costs to litigants in terms of time, stress, and fees.

## Case Study

You are the in-house counsel at General 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 memorialized 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. Because you believe it is in the best interests of all concerned to avoid the cost of litigation, you wish to consider methods of alternative dispute resolution. Discuss the relative advantages and disadvantages of each method.

## Things to consider

- Mediation offers the assistance of a third party who has nothing to gain or lose by the outcome of the mediation. Therefore, the neutrality of the mediator is a positive aspect for both sides. Also, the mediator brings the parties together to resolve the dispute, increasing the possibility that both sides will be satisfied with the result and comply with any of the result's requirements. Additionally, privacy of both sides is respected because no documents are filed on the public record. Finally, the mediator does not need to be an expert in the health care field, which could have added delay and additional expense to the process.  
A disadvantage is that if the parties cannot agree when choosing the mediator, the mediation fails before any substance is discussed.
- Arbitration also involves a neutral third party, but this third party is generally an expert on the substantive matter in question and therefore will understand the issues involved at a higher level. The parties do not have to compromise to reach an agreement but can rely on the neutral third party to come to an equitable decision. An aggrieved party still possesses the right to pursue a lawsuit overturning the arbitrator's award.  
A disadvantage is that the use of an expert may add additional expense and delay to the process. Also, the arbitrator's award is binding on the parties, meaning the parties are obligated to comply with the terms of the award until such time as a court of general jurisdiction overturns the award.
- Negotiation and settlement have the advantage of not involving a third party, allowing a maximum of confidentiality to all parties and less expense and delay. A disadvantage is that a settlement agreement often contains a release of claims, barring any future litigation concerning the subject of the dispute. And if the parties display animosity for each other, the need for a neutral third party may be so great as to destroy any chance for negotiation and settlement.