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Reviews

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REVIEWS

RIGHTS OF THE ELDERLY & RETIRED

A Peoples' Handbook

By William R. Wishard

Cragmont Publications, San Francisco, California, 1978. 234 pages. \$9.95
ISBN 0-89666-002-8

Reviewed by Claude Pepper*

At the outset Wishard dispels any illusion that advocacy is among the themes developed in "*Rights Of The Elderly & Retired—A Peoples' Handbook*". The *Handbook* has nothing to do with social activism. No bold new legislative concepts are developed. The book is an exposition of laws and programs affecting older people. It touches on most of the common, and some not so common, concerns of older people.

A Peoples' Handbook is a compendium of topics and subtopics, relating to laws and programs that impinge upon our lives in middle and later years. The principle divisions of the book are income maintenance, health and medical care, housing, employment, consumer protection, miscellaneous benefits, and retirement. Wishard tells us that: "Hopefully, the text will enable older persons and those concerned with their welfare to grasp the nature and extent of these legal rights as well as the correct procedure to enforce them."

In explaining how to use the *Handbook*, Wishard says: "The text does not purport to completely cover the law applying to the elderly; a single book cannot accomplish that. Also, mistakes can be made, the particular laws in question change very rapidly, and readers may interpret the text differently." Users of the book should take all of these cautions seriously. While information in the *Handbook* appears to be generally accurate and reliable, it is extremely difficult to maintain complete reliability in assimilating a mass of data as encompassing as that included in the text. Instances can be noted where qualifying or restrictive language would have given a more accurate perspective of a law or programmatic benefit. More specifically, in discussing eligibility of Supplemental Security Income recipients for Medicare and Medicaid, the *Handbook* says: "Persons who receive SSI checks are automatically eligible for Medicare and Medicaid programs and benefits." The Health Care Financing Administration (the federal agency that administers the Medicare and Medicaid programs) says that the quoted statement is too sweeping; in only 25 states are SSI recipients automatically eligible for Medicare, and 16 states have even opted to limit SSI eligibility for Medicaid to January 1972 criteria in order to protect against caseload growth. This means that in these states recipients of SSI are not automatically eligible for Medicaid.

* United States Representative for Florida's 14th Congressional District; Chairman of the Select Committee on Aging, U.S. House of Representatives.

Although the *Handbook* is generally successful in translating the complexities of laws and social programs into readily understood language, there are passages in which easiness with language obscures more than it clarifies. The following is illustrative of passages in the book in which an easy facility with words is displayed, but the meaning remains obscure:

Some health service prepayment plans arrange to receive payments from Medicare for covered services the plan furnishes to its members. If you belong to a health service plan, ask those in charge whether the plan has such an arrangement with Medicare. You may save the monthly premium cost of the medical insurance, or, where you have to pay hospital coverage, the cost of those premiums. The chances are, however, that you will still have to meet the deductible amount, whether under Medicare or your plan

When asked to comment on the quoted passage, officials of the Health Care Financing Administration said that there is no rule or procedure that would (as the language of the quoted passage implies) permit waiver of Medicare insurance premiums, deductibles or co-insurance payments. To the contrary, all Medicare insureds are required to pay the premiums on their medical insurance. While there may be cost saving features in health service prepayment plans, these features do not amount to a bonanza, except in those instances where an employer continues to pay the plan premiums for its retired workers.

Wishard reminds the reader that "the particular laws in question change very rapidly . . .". Only a few months after publication, the prophecy has been realized. Handbooks that serve as guides to laws and programmatic benefits almost immediately require updating, particularly in the area of federal taxation. For instance, the *Handbook's* reference to a one time exclusion from capital gains of the first \$35,000 of the sale price of a principal residence of a taxpayer age 65 or over is no longer current. The qualifying age of the taxpayer has been changed to 55, and the exclusion to \$100,000 of the gain.

Wishard speaks with considerable authority on consumer protection and debt collection. He offers a variety of approaches and practical tips for avoiding victimization from sharp practices. He expertly details the mechanics of working out compromises for hard pressed debtors of modest means. Wisely, he warns the reader about the risks of buying insurance to supplement Medicare insurance. And it is true that while most insurance companies are reputable, there is undoubtedly danger for those unskilled in analyzing and purchasing medical insurance. The *Handbook* alerts the reader to the possibility of buying more medical insurance, out of fear, than is truly needed. To this suggestion I would add that when buying medical insurance, two or three reputable companies should be contacted and their insurance policies compared before deciding which is the best buy.

Wishard's comments on wills, will substitutes, the incidence of taxation, and the implications of the age discrimination laws, should be welcomed as an insider's tips. When the disadvantages of cotenancy as a will substitute are described, the pitfalls are ticked off with the precision of one who has traveled the road, and understands well the ricochet consequences of inter vivos transfers improvidently made. The book inspires confidence when it explains the disadvantages of cotenancy as a substitute for testamentary transfers by saying:

First, if the retired person later decides to sell that property he cannot transfer ownership without the other persons agreement and signature. And if the other

person is married, there can be further complications. Secondly, the other person can legally request a division of the property to obtain his or her interest at any time, even though the retired person intended that the other person should not benefit from the cotenancy until after the former's death.

Wishard's book offers the reader a good selection of informational materials, and how-to-do-it suggestions that should save steps and time for seniors. Whether read in entirety to supply a perspective on the implications of aging and retirement, or by selected topics as situations arise, *A People's Handbook* will give the reader a ready grasp of possible approaches to be used in coming up with answers that are calculated to produce results.

PROBLEMS IN HOSPITAL LAW

By David G. Warren

Aspen Systems Corporation. Health Law Center, Germantown, Md., 1978, (Third Edition) 339 pages.
ISBN 0-89443-044-0

Reviewed by Robert W. O'Leary*

Public awareness of hospitals and health care issues has never been greater. The passage of Medicare and Medicaid in 1967 popularized the notion of health care as a right in the United States and triggered an upsurge in interest in access to and demand for hospital services. The hospital industry responded to that demand by incorporating an increasing array of new technology into new service modalities. This expansion of service capacity coupled with the aftermath of the economic stabilization program in the mid-1970's has brought about concern on the part of federal and state legislators relative to the increasing share of our gross national product that is dedicated to the health and hospital industry. This concern has manifested itself in a plethora of new federal and state laws and regulations which have substantial impact on the legal and administrative environment in which today's hospitals are administered. Compounding that major development are the legal implications of the growing personal injury liability concern of hospitals and the medical profession and the growing sophistication of hospitals as business enterprises with their corresponding corporate law implications.

In this context, Mr. David G. Warren, Esq., Professor of Health Administration at Duke University Medical Center, has done an excellent job in preparing this third edition of *Problems in Hospital Law*, building on the earlier work

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done by the legal staff of the *Hospital Law Manual* and Professor Hershey at the Graduate School of Public Health at the University of Pittsburgh. The book provides an excellent foundation for the reader with insight into the many facets of hospital law. It is well organized and is unique in that the author has succeeded in meeting the sometimes conflicting goals of producing a book which functions nicely as a reference guide and is also enjoyable reading. A basic text used by most of the programs in hospital administration, it also serves nicely for law students interested in an introduction to the field. The author has comprehensively covered virtually all of the bread and butter legal subjects likely to be touched on by a practicing hospital administrator. As a consequence, his book would be an asset to practicing hospital executives. It is designed to assist them in identifying legal problems before they mature and to aid them in determining when to call for appropriate legal assistance. The book is also useful for attorneys in private practice who occasionally become involved in hospital legal issues.

The contents are organized in a way to facilitate its purpose as a basic orientation and reference guide. The introductory chapters focus on the four key groups within the hospital environment (Administrator, Governing Board, Nursing, and Medical Staff), and analyze and discuss the legal obligations and problems germane to each group. The author has cast the governing board in the broader context of today's legislative environment where much of the discretion previously vested in the local board, has been preempted by federal and state legislation. The chapter on medical staff legal considerations could be enhanced by a more thorough treatment on the role of salaried physicians and corporate medical officers. The issue of medical contractual relationships, particularly those relating to the hospital specialties of radiology, pathology, anesthesiology and the like, are given less than appropriate treatment when one considers the spotlight that is now being focused on these relationships by the courts and various legislative bodies.

While the chapter on nursing deals most effectively with the traditional areas of concern to nursing, it discusses ever so lightly, or not at all, some of the new structural arrangements brought on by the evolving role of the nurse in the hospital setting. The physician's assistant and the independent nursing practitioner's roles are not probed in any depth. In areas of the country which are experiencing nursing shortages, hospitals are turning to Nursing Registries and other forms of contract nursing to meet these needs. The relationship of these independent contractors is not addressed in the text.

After covering the above three groups as well as the role of the administrator, Warren goes on to talk about nine traditional problem areas as they relate to hospital law and then in a concluding chapter discusses a whole series of evolving new areas of concern in the field of hospital law. Certificate of Need, Rate Review, PSROs, Group Practice and Restraint of Trade Issues are all covered. The implications of these statutes and concerns vary from state to state prohibiting a more detailed discussion of their ramifications, but their importance cries out for a more thorough analysis.

One major omission from the text is a comprehensive treatment on the subject of multi-hospital systems and networks. It is clear that these new organizational structures are having and will have an immense impact on the delivery of health care in this country and as such have the potential to cut across every subject touched upon in the text. It perhaps may be the starting point for consideration of the fourth edition.

LEGAL HANDBOOK FOR EDUCATORS**By Patricia A. Hollander**Westview Press, Boulder, Colorado, 1978. 287 pages. \$14.00
ISBN 0-89158-420-x**Reviewed by Laura C. Ford***

Patricia Hollander's *Legal Handbook for Educators* is a valuable reference tool for both educational administrators and attorneys unfamiliar with the burgeoning field of educational law.

Hollander has done a remarkable job of unweaving the various strands that define the legal rights and obligations of educational institutions and their several constituencies (students, faculty, administrators, trustees, alumni, parents, legislators, benefactors, etc.). She has summarized the state of the law on all of the major issues which have been litigated in recent years, without neglecting the need to distinguish between the public and private sectors and between elementary/secondary schools and institutions of higher education. The pervasive impact of those distinctions means that almost every general statement in each section has to be qualified in some way.

The *Handbook's* structure is designed so as to be of greatest utility to the educational administrator. Thus, rather than being divided according to statutory or constitutional provisions, it is divided according to subject matter. Following a general introduction chapter on legal concepts, there are chapters covering due process and sources of liability; the recruitment, admission, and financial obligations of students; the treatment of students; the recruitment, hiring, and compensation of faculty and administrators; the treatment of faculty and administrators; and funding and facilities. Two appendices set forth "twenty-four federal statutes in brief" and codes of professional standards for faculty and administrators.

The *Handbook* is plagued by a problem common to all treatises, that of currency. This is especially noticeable in the field of educational law, in which legal developments are almost a daily occurrence. Indeed, one must question the wisdom of Hollander's advice (p. 41) that "Ideally, next year's problems should have been discussed with your attorney *last year*." Surely any advice rendered two years—or even two months—previously would have to be rendered again.

Several major developments, both judicial and legislative, have occurred since completion of Hollander's work. Judicial developments include decisions by the Supreme Court in the *Bakke* case (reverse discrimination on the basis of race in a public university's admissions scheme), the *Horowitz* case (due process requirements in dismissals for academic cause from a public university), and the *Manhart* case (the legality of sex-based differentials in the operation of retirement plans). In addition, the civil action arising out of the Kent State University killings in 1970 has finally been settled, and the Court of Appeals for the Second Circuit has cast doubt on the future of faculty collective bargaining through its ruling in a case involving Yeshiva University.

Legislative action during the second session of the 95th Congress came about just as rapidly. The Age Discrimination in Employment Act of 1967 was amended to prohibit mandatory retirement of most employees before age

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seventy, with the controversial exception of tenured employees at institutions of higher education (who may be required to retire at age sixty-five until July 1, 1982). Changes were also made in the requirement that medical schools accept a certain number of transfer students from abroad, in the qualification of educational loans for discharge in bankruptcy, and in an employer's duty to treat pregnancy the same as other short-term disabilities in insurance plans.

In addition to telling us what the law is, Hollander also offers guidance as to how educational institutions should act in the absence of legal strictures. For example, in several places throughout the *Handbook* (pp. 11-12, 29, 114, 117), she states that private institutions may wish to abide by constitutional due process standards for pedagogical reasons or as a matter of conscience. Certainly few would quarrel with the desirability of fundamental fairness.

Each chapter of the *Handbook* includes the author's recommendations for keeping educators and their institutions out of trouble. Some of those recommendations are so simplistic as to be of little help: regarding breach of fiduciary duty, "The best advice is to avoid even the appearance of a conflict of interest" (p. 46); and regarding sovereign immunity, "The best advice is to avoid situations of liability when at all possible" (p. 47). Other recommendations are somewhat unrealistic: regarding dress codes, "First, it is important that the code be the result of a cooperative effort of students, parents, administrators, and faculty, so that the result is some sort of consensus" (p. 97).

Hollander tends in several places to overstate the likelihood of legal developments imposing new obligations on educators and educational institutions. For example, she discusses (pp. 56-57) in some detail a bill introduced in the 95th Congress by Michael Harrington (D.-Mass.) to set federal standards restricting the use of standardized tests. That bill was merely one among thousands introduced; no hearings were ever conducted on it, and the higher education community never had reason even to consider it a serious threat.

Likewise, she discusses the possibility of "educational malpractice" suits in a manner that belies the fact that none so far have succeeded: "In the future, however, cases alleging failure of the institution to meet the educational contract by not providing competent academic services may succeed. The implications of such decisions would be far-reaching" (p. 89).

Perhaps necessarily, given the purpose of and the audience for the *Handbook*, Hollander devotes little attention to the possibility of legal challenges to many of the federal regulations she discusses. Even with respect to regulations that have been discredited in court, she suggests compliance in districts not subject to a court order. Having observed that Title IX of the Education Amendments of 1972 is "a statute passed as a response to the practice of sex discrimination in educational institutions in . . . employment of females" (p. 7), she states that the *Romeo* decision (holding that Congress did not intend Title IX to cover employment) is limited to the area of that court's jurisdiction (p. 7) and counsels that Title IX still applies to educational employees outside the district court's jurisdiction (p. 178). Since *Romeo*, four other federal district courts have ruled likewise and none have ruled to the contrary. Many lawyers would argue that educational institutions have no duty to abide by regulations which were not lawfully promulgated.

All things considered, this is a useful volume which will serve as a practical guide to many educational administrators. Guidance is often needed even to recognize when a potential legal problem exists. Hollander has taken on a big job, and has handled it with thorough professional competence.

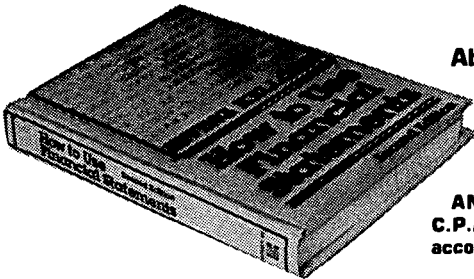
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