



Week 3

Criminal and Civil Law

In Week 2, you learned how laws are created. This week, the focus will be more specific to criminal and civil law. In order to promote justice and fairness, laws are established to punish certain behaviors in a consistent manner. In healthcare specifically, punishable behaviors could include failure to provide a reasonable standard of care, deliberate actions such as improper coding and billing for services provided, or failure to obtain consent for medical procedures. Punishments include fines and/or imprisonment. Violations of criminal law are public cases between the government and an individual or group (e.g., “The People vs...”). A criminal case can also arise from violations of administrative laws, which are regulations established by government agencies. Criminal cases are commonly known as either a felony—a serious crime requiring a minimum of a year of imprisonment—or a misdemeanor, a less serious time requiring fines and time served up to one year.

Civil law pertains to disputes between one entity and another. The two major categories in civil law are tort (harm done to others) and contract law. A tort can result from intentional acts such as battery or fraud, or through unintentional and careless acts such as negligence. A contract is an oral or written agreement between two or more parties. Violations of contract law can occur from failing to uphold one’s part in an agreement, otherwise known as a breach of contract. Civil cases can be initiated by private as well as public parties (Annas, 1995; Erstad, 2018; Legal Information Institute, n.d.). It is becoming more common for cases to involve both criminal and civil proceedings. The U.S. Department of Justice began pursuing criminal investigations by paralleling civil investigations in cases of corporate fraud. An example of a case where both criminal and civil charges were sought is when Tenet Healthcare Corporation hospitals paid kickbacks to Hispanic Medical Management for maternity referrals. The structure of the referral process resulted in improper Medicaid eligibility determination and billing practices (Schencker, 2015).

You learned in the first week that the organizational environment can either discourage or encourage unethical actions—actions that could lead to civil or criminal sanctions. Competent, ethical, and engaged chief executive officers (CEOs) are essential to “developing a culture that fosters employee voice and upward communication” (Adelman, 2012, p. 133). Adelman (2012) asserts CEOs who prioritized consistent visibility and

availability to employees encourage open communication and trust- and relationship-building. CEOs are also key players in promoting a corporate culture of continuous improvement that centers on the transparency of information, especially when it comes to encouraging employees to share difficult information (Adelman, 2012). Therefore, through fostering communication and a willingness to report adverse events and near-misses in healthcare settings, executives can help create a culture that reduces the likelihood of criminal and civil violations.

References:

Adelman, K. (2012). Promoting employee voice and upward communication in healthcare: The CEO's influence. *Journal of Healthcare Management / American College of Healthcare Executives*, 57(2), 133-147. Annas, G. (1995). Medicine, death, and the criminal law. *The New England Journal of Medicine*, 333(8), 527-530.

Erstad, W. (2018). Civil law vs. criminal law: Breaking down the differences.

Legal Information Institute: Cornell Law School. (n.d.). Criminal law.

Schencker, L. (2015). Tenet fraud probe signals feds' growing interest in criminal cases. *Modern Healthcare*, 45(20), 14.

Be sure to review this week's resources carefully. You are expected to apply the information from these resources when you prepare your assignments.



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Books and Resources for this Week



Hamilton, E. C., Pham, D. H., Minzenmayer, A. N., Austin, M. T., Lally, K. P., Tsao, K., & Kawaguchi, A. L. (2018, January). Healthcare delivery...

Link



Klaas, P. B., Herge, K. H., Klaas, K. M., Klaas, J. P., & Larson, A. N. (2014). When patients are harmed, but are not wronged: Ethics, law, and...

[Link](#)

Sale, J. A., & Weintraub, B. (2011). Emerging trends in criminal healthcare law enforcement: The Patient Protection and Affordable Care Act...

[Link](#)

Spraker, M. B., Fain, I. R., Gopan, O., Zeng, J., Nyflot, M., Jordan, L., ... Ford, E. (2017). Basic original report: Evaluation of near-miss...

[Link](#)

Office of the United States Attorneys. (n.d.). Steps in the federal criminal process. U.S. Department of Justice.

[Link](#)

Week 3—Assignment: Recommend Strategies to Address Alleged Negligence in a Healthcare Setting

Assignment

 Due July 7 at 11:59 PM

In Weeks 1 and 2, you read about the impact on an organization when it has a culture of hiding allegations of misconduct, failing to respond to complaints quickly or at all, and not addressing negligence or incompetence. As a healthcare executive, you want to avoid the potential loss of trust, erosion of consumer satisfaction, and lowering employee morale that results from a corporate culture that tolerates corruption.

You will write a memorandum to all department heads and other members of your leadership and management team explaining the steps you would like to establish to facilitate:

1. Safe reporting of incidents, adverse events, and near misses.

2. Transparent investigation processes.
3. A recognition system for champions of organizational excellence.

Do not use real names. You can use fictional names or identify the members by titles only.

Table 2. Sample Memorandum

MEMORANDUM	
TO:	<Members of leadership and management team>
FROM:	<Your name>, Chief Executive Officer
DATE:	Month day, year
SUBJECT:	Investigations of Negligence and Misconduct
<Enter your memo narrative here.>	

Length: a minimum of 2 pages (not including title page and reference page).

References: Minimum 3 scholarly resources.