

THE COMPLETE
ADVOCATE II:
EMPLOYMENT
OFFENSES IN HEALTH
CARE CONTEXTS

*A Practice File for Representing Clients
from Beginning to End*

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from Beginning to End*

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TABLE OF CONTENTS

Acknowledgments	vii
Introduction	ix
Character List	1
Assignment 1: Closed Universe Memorandum	3
Assignment 2: Closed Universe Memorandum	9
Assignment 3: Open Universe Memorandum	15
Assignment 4: Open Universe Memorandum	23
Assignment 5: Client Letters	31
Assignment 6: Pleadings: FCA	35
Assignment 7: Brief: FCA Claim	41
Assignment 8: Oral Defense of FCA Motion’s Brief	73
Assignment 9: Appellate Brief: FCA	77
Assignment 10: Mediation: FCA	81
Assignment 11: Settlement: FCA	87
Assignment 12: Trial Practice: FCA	91
Assignment 13: Pleadings: AKS	95
Assignment 14: Brief: AKS Claim	101
Assignment 15: Oral Defense of AKS Motion’s Brief	133
Assignment 16: Appellate Brief: AKS	137
Assignment 17: Mediation: AKS	141
Assignment 18: Settlement: AKS	147
Assignment 19: Trial Practice: AKS	151

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INTRODUCTION

A common complaint about law school is that students are not given the big picture. They learn bits and pieces of the law—some theory, some practice, some skills—but are never quite sure how, where, or especially when, a particular piece of knowledge fits into the overall task of a client’s representation. In other words, despite their education, they seldom get a bird’s eye view of the entire process, from start to finish, so that they can see all the dimensions that a legal problem might entail.

Like its predecessor text (*The Complete Advocate*, LexisNexis 2010, which concerned age discrimination and professional responsibility matters) *The Complete Advocate II: Employment Offenses in Health Care Contexts*, is designed to guide a student through all aspects of a legal process: researching an area of law, filing pleadings, writing and arguing motions, proposing settlement, and pursuing and arguing appeals—from the beginning of the process to the end. The case file includes intake memos and assignments, for the purpose of drafting pleadings; a variety of litigation documents—depositions, affidavits, and exhibits—for the purpose of preparing litigation memoranda; motions and orders of the district court, for the purpose of filing an appeal; and even private, confidential facts (in the Teacher’s Manual) for use in mediation sessions and trial practice. The text’s purpose is not only to provide students with an education in the substantive and procedural dimensions of the subject matter, but also to provide them with a paradigm for practice—a conceptual model from which they can pattern their future approaches to a litigation matter, regardless of its type. Having “seen” and experienced the development of a case from its first step to its final resolution, students will have a fair estimation of what needs to be done throughout the course of a matter, and can gain a surer footing and orientation as to where they are when brought into the middle of an ongoing lawsuit. This complete view of the legal landscape—from inception to conclusion—is portable knowledge that can be transferred to the nature of any particular enterprise.

The facts of the cases, set in the Tenth Circuit, revolve around the federal False Claims Act (FCA) and the federal Anti-Kickback Statute (AKS). The FCA suit involves a twenty-nine-year-old medical records specialist, Grace Garrett, suing her former employer, Twin Oaks Hospital, a three hundred-bed health facility in Overland Park, Kansas. Garrett claims that the hospital, through its employees Charles McRaney, Coding Supervisor, and Rosemary Rinehart, Hospital Administrator, knowingly coded a series of “basic pneumonia” cases from a nearby retirement facility as the more serious “severe pneumococcal pneumonia.” The result was an unjust enrichment for the hospital, a fact that Garrett says she uncovered and brought to the attention of the Health and Human Services Department. This would entitle her to a portion of the claim as a “whistleblower.” The hospital has several defenses to this claim, ranging from standing arguments to merits arguments.

In addition, Garrett has asked her attorneys to look into possible claims against McRaney and the hospital for intentional infliction of emotional distress and defamation. Further, McRaney wants to know whether he has any

defense against a false imprisonment claim under Kansas law, and also how a potential malicious prosecution claim would stand up against Garrett.

Twin Oaks Hospital's woes continue in a separate claim involving an alleged kickback scheme between it and a local medical practice, The Crenshaw Group. Dr. David E. Barrier, an orthopedic surgeon on staff at Twin Oaks, alleges that the hospital knowingly sponsored a series of health fairs at retirement facilities owned by The Crenshaw Group. He further alleges the group referred its geriatric patients back to the hospital. If established, the claim would entitle Dr. Barrier to a share of the recovery as the whistleblower. The hospital responds with a series of defenses.

Pleadings, discovery, motions and briefs, client correspondence, and settlement negotiations, are all dimensions of the text. The assignments are ordered so that students may gain the full perspective of the advocate. In addition, all assignments are written from the perspective of one of the law firms representing the parties.

The chief advantage of the multi-dimensional approach of this book is that it can be used to teach a variety of skills involving the same fact situation. A professor may custom design the focus of the class in terms of the substantive area, the scope of the research, and the types of assignments chosen. Versatility is a hallmark.

Dates

To prevent the text from becoming out of date, dates are set out according to the following key:

The current year = YEAR (e.g., January 1, YEAR)

A year before the current year = YR-1 (e.g. January 1, YR-1)

Two years before the current year = YR-2 (e.g. January 1, YR-2), etc.

A year *from* the current year = YR+1 (January 1, YR+1)

Two years *from* the current year = YR+2 (e.g. January 1, YR+2); etc.

Pagination

The book is paginated consecutively; however, documents for use in the two Motion's Brief assignments—Assignments #7 and #14—are also paginated in the top right corner, so that they can be assembled as a record on appeal. The Complaint and Answer for each of the two appellate problems are included in the Teacher's Manual, in the event the professor would like to assign pleadings drafting exercises—Assignments #6 and #13. When the appellate record is assembled, it should accord with the pagination at the beginning of the Complaint, top right corner, and proceed in order as the documents dictate. References to the record in each of the two Bench Briefs relate to this pagination scheme.

GARRETT v. TWIN OAKS HOSPITAL, INC.: PARTIES/PRINCIPALS

Stuart Chamberlin, candidate for U.S. Congress

Grace Garrett, 29, Medical Records Specialist, Twin Oaks Hospital

Christopher Heller, Investigations Officer, HHS

Claire Heller, wife of Christopher Heller, KC Payroll Services

Robert Jackson, 40, Assistant Coding Supervisor, Twin Oaks Hospital

Charles McRaney, 55, Coding Supervisor, Twin Oaks Hospital

Walter Ridley, 85, resident of River Crest Retirement Community

Rosemary Rinehart, 59, Hospital Administrator, Twin Oaks Hospital

Leslie Ross, Mid-West Health Insurance, Medicare Intermediary

Amanda Stevenson, secretary, Twin Oaks Hospital

Sarah Wright, secretary to McRaney and Jackson, Twin Oaks Hospital

BARRIER v. TWIN OAKS HOSPITAL, INC.: PARTIES/PRINCIPALS

David Barrier, M.D., 41, orthopedic surgeon, Overland Park Bone and Joint Clinic

Andrew Crenshaw, M.D., 61, managing partner of The Crenshaw Group

Julia Courtland, 40, former Director of Hospital Services, Twin Oaks Hospital

Barry Farr, Chief Financial Officer, Twin Oaks Hospital

Clark Milner, M.D.: Partner, The Crenshaw Group; Brother of Rosemary Rinehart

Rosemary Rinehart, 59, Hospital Administrator, Twin Oaks Hospital

Dan Webster, Compliance Officer, Twin Oaks Hospital