At its inception, health care law was primarily state-based common law, rooted in ‘Law and Medicine,’ the original term for the field. Over time, private health insurance became the dominant payment mechanism, and its close cousin, managed care, became the leading cost control tool, but regulatory developments still continued to be largely state-based. Meanwhile, the role of the federal government in health care has grown slowly but consistently, both in public programs like Medicare and Medicaid, and through major federal laws that preempted some state-based rules. Traditionally, health care law has been taught as state-based case law with a significant federal overlay, and administrative law was merely a relevant detail.

The time had come to shift the emphasis and fully recognize that health care is a highly regulated industry with a substantial federal administrative law superstructure, just like railroad and airline transportation, financial services, oil and gas, and telecommunications, to name a few examples. After the passage of the Patient Protection and Affordable Care Act of 2010 (ACA), federal statutory and administrative law dominate the field of health care law. You will learn in the following pages about the ACA’s rather complicated history, yet for all the challenges and objections, the law remains largely in place and represents the most sweeping transformation of U.S health care in a generation. The ACA was the farthest reaching in a long line of federal laws that enshrines choices about America’s long-debated approaches to health insurance—private versus public provision of care, medical assistance eligibility, and the state-federal relationship in health care, among other themes. Likewise, most of the challenges to the law have operated in federal courts, Congress, and federal agency rule and policymaking, reflecting the increasingly dominant role of federal health care law. This book is the first health care law casebook to reflect that gravitational shift to the federal domain.

This second edition reflects important changes and key updates that have occurred since the 2016 election, including an adjusted framework for Chapter 1’s introductory material; adding federal endorsement of work requirements in the Medicaid program in Chapter 2 (public insurance); and addressing repeal of the tax penalty associated with the individual health insurance mandate in Chapter 3 (private insurance). The individual mandate and Medicaid work requirements are significant, because they have spillover effects on other parts of the ACA, and they represent a philosophical shift regarding the role of government and individual responsibility for health. In addition to the reframing and updating of Chapters 1, 2, and 3, other updates include Chapter 5 (tax-exempt organizations) to reflect recent IRS enforcement activity around 501(r) Community Health Needs Assessment compliance; Chapter 6 (fraud and abuse) to include the U.S. Supreme Court’s Universal Health Services v. United States ex rel. Escobar opinion, issued just after our
first edition went to press; Chapter 9 (regulating the beginning and end of life), to incorporate the U.S. Supreme Court opinion in _Whole Woman’s Health v. Hellerstedt_ and related developments.

The book retains its distinctive features, including its emphasis on primary source materials beyond appellate cases, which are the bread and butter of most first-year law school courses. Health care law abounds with other forms of legal authority, including statutory, regulatory, and sub-regulatory guidance. We use secondary sources sparingly, including only canonical commentary on the field and data-driven empirical research, which are uniquely important for the practicing health care lawyer. The primary source materials are the focal point, with longer excerpts and light editing, providing an experience that foreshadows the work that our students must do when they become practicing lawyers.

We do not attempt to cover all topics comprehensively. Instead, we chose our key topics carefully, making use of guidelines suggested by practicing attorneys and health law professors in the American Health Lawyers Association, the preeminent professional organization for health law practitioners. While surveying fewer topics than some other health law casebooks, we engage the selected topics in more depth, so students emerge with an understanding of the most important features for the practice of health care law. The result is a three- or four-credit-hour book that is shorter but leaves room for professors to supplement with additional topics they are keen to teach.

Finally, we have listened carefully to students’ comments about classroom materials over the years and have used that feedback in structuring the book. First, we avoided extensive notes, moving most references to scholarly articles and other secondary sources to the teachers’ manual. Second, we use three different kinds of problems throughout the book: ‘Questions,’ which engage an excerpt directly; ‘Problems,’ which offer a practice-like scenario, hypothetical, or policy question to consider; and ‘Capstone Problems,’ which are designed to facilitate integrative and summative mastery of the chapter. While we firmly believe that the sometimes tedious, technical reading of statutes, regulations, cases, and other sources is the real work of health care lawyers, for pedagogical purposes, we highlight key issues, background, and other points of interest through boxed side notes, which enrich understanding in the moment of digesting a key source.

Health care law is complex, but teaching it needn’t be. We hope you enjoy our labor of love.