

MCS Selective Health Law

This course covers several topics essential to an understanding of the healthcare system and the issues confronting healthcare actors today.

Description of the Course

The topics to be covered in this course include: the structure and formation of the treatment relationship, EMTALA, ADA, informed consent, medical malpractice and associated defenses, institutional liability, health care financing, physician liability, the laws surrounding reproduction and genetics, the right to die, and protection of public health, amongst other topics.

Instructor



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Educational Objectives:

At the conclusion of this selective you will have the ability to:

- 1 Have a basic understanding of the substantive law in the areas set out in the course overview, including relevant doctrines, policies, and practice areas.
- 2 Demonstrate the ability to communicate and apply the substantive law effectively both orally and in writing.
- 3 Demonstrate the ability to use problem solving skills to apply the substantive law to new and current issues and problems.

Sessions:

Each session, students should be prepared to discuss the assigned readings and engage with the in-class exercises contained in the Supplement compiled by the professor.

Assigned Texts:

1. Supplement compiled by Professor
2. All other required readings will be provided via email by the Professor.

Week 1: Introduction + The Treatment Relationship

Topics:

- Introduction to the Course
- The Duty to Treat
- The Structure of the Treatment Relationship
- The Fiduciary Nature of the Treatment Relationship
- Confidentiality of Medical Information
- Informed Consent
- EMTALA
- ADA

Readings (tentatively):

- *Hurley v. Eddingfield*
- *Wilmington General Hospital v. Manlove*
- *Wideman v. Shallowford Community Hospital*
- *Walker v. Pierce*
- *Ricks v. Budge*
- *Payton v. Weaver*
- *In the Matter of Miguel M. v. Barron*
- *Bradshaw v. Daniel*
- *Canterbury v. Spence*
- *Moore v. Regents of the University of CA*

In-Class Exercises:

- Supplement p. 30: Medical Practice Problem 2
- Week One Discussion Problems

Week 2: Medical Malpractice

Topics:

- Medical Malpractice
- Medical Mistakes and Quality
- Physician Liability
- Alternative Theories of Liability
- Causation and Affirmative Defenses
- Institutional Liability
- Medical Malpractice Reform

Readings (tentatively):

- *McCourt v. Abernathy*
- *Locke v. Pachtman*
- *Jones v. Chidester*
- *Chapel v. Allison*

- *Helling v. Carey*
- *Schloendorff v. Society of New York Hospital*

In-Class Exercises:

- Supplement p. 7: McKinney's Education Law § 6530
- Supplement p. 117: § 214-a. Action for medical, dental, or podiatric malpractice.
- Medical Malpractice Reform Problem
- Week 2 Discussion Problems

Week 3: Public Health Law + The Right to Die + Reproductive Rights

Topics:

- Public Health Law
- The Right and Duty to Die
- Reproductive Rights and Genetic Technologies
- Regulating Medical Treatment to Protect Public Health

Readings (tentatively):

- *In the Matter of Karen Quinlan*
- *In re Conroy*
- *Cruzan v. Director, Missouri Department of Health*
- *Lane v. Candura*
- *Washington v. Glucksberg*
- *Vacco v. Quill*
- *Buck v. Bell*
- *Skinner v. OK*
- *Griswold v. Connecticut*
- *Roe v. Wade*
- *State v. Handy*
- *Whalen v. Roe*

In-Class Exercises:

- Supplement p. 125: Institutional Liability Chart
- Week 3 Discussion Problems

Week 4: Catch-Up + Regulation of Institutions

Topics:

- Catch-Up from Last Classes
- Institutions, Providers, and the State
- Health Care Financing and Reform
- Regulation of Health Care Facilities and Transactions

Readings (tentatively):

- *State v. Miller*
- *Estate of Smith v. Heckler*
- *Cospito v. Heckler*

In-Class Exercises:

- Supplement p. 34: Practice Problem: Jones v. Smith

Responsibilities for Successful completion:

Throughout the semester, students will complete practice problems that develop their skills in health law, analyzing related issues, and advocating for a position. Students will also consider ethical issues, exercise independent judgment, and work in groups.

This course will require active student participation. Students will be expected to actively participate in class discussions, to apply the principles learned in class to various fact patterns, and to brainstorm policy concerns and solutions as a group. Each student will also be required to work in small groups to determine relevant legal standards and to apply the materials learned in class. Students will be required to present the findings of their practice problems throughout the semester that test the students' mastery of the information presented in class.

To complete the selective, a student must:

1. Attend the four sessions.
2. Come to class having prepared all readings and been familiarized with the in-class exercises.
3. Actively participate in each class session.
4. Present group findings at least once throughout the duration of the course.
5. Contribute to a respectful learning environment.

Discussion Problems:

Week One Discussion Problems:

Consider how you would analyze the following problems. What law(s) or regulations would apply in your state? Will the health care provider have a duty to maintain confidentiality, or a duty to disclose information?

1. A 30-year-old woman meets with a physician who had also treated her mother. The woman asks the physician for specific information about her mother's medical history. The woman argues that she needs the information to determine whether she is at a significantly higher risk for (a) cancer, (b) high blood pressure, or (c) glaucoma. Should it matter whether the woman's mother is deceased? On this last point, see 45 CFR § 164.502(f) ("A covered entity must comply with the [privacy] requirements . . . with respect to the [PHI] of a deceased individual for a period of 50 years following the death of the individual.")
2. A drug treatment center's admission form includes the following notice:

"We understand that persons who have problems with drugs and alcohol may fear that treatment information will be disclosed to others, including family members or employers. Rest assured that your medical treatment information will be protected from disclosure as provided by law."

A patient undergoes voluntary HIV testing and received a positive test result. May or must the treatment center disclose the patient's HIV status to other patients? What if it appears that the HIV-infected patient has begun a sexual relationship with another patient? What if the patient is taking anti-retroviral therapies, which reduce the risk of transmission, and claims that she or he is using safer sexual practices?

3. Law enforcement officials are concerned about another possible anthrax bioterrorism event. Local authorities approach pharmacies in a particular town, seeking information about recent prescriptions for antibiotics. May the pharmacies release the information to law enforcement officials? Suppose that a physician in the town recently received a call from a patient, inquiring about a prescription for an antibiotic thought to be effective against anthrax. May or must the physician disclose this information to anyone?
4. Dr. Claude R. Thomas was Mrs. Rena Truman's personal physician from 1963 to 1969. In 1969, another physician discovered that Mrs. Truman had advanced cervical cancer. Mrs. Truman died in 1970, at the age of 30. Rena Truman's children sued Dr. Thomas for failing to perform a Pap test on Mrs. Truman between 1964 and 1969. Trial testimony indicated that (1) if the Pap smear had been performed during this time period, Mrs. Truman's condition would have been discovered at an earlier stage and she probably would have lived; (2) medical practice required physicians to inform women of the purpose of a Pap test; and (3) Dr. Thomas repeatedly advised Mrs. Truman to undergo the test but did not specifically explain the possible consequences of her refusal. Consider this case under the professional and material risk standards of disclosure. What arguments can you make on behalf of Mrs. Truman's children? Dr. Thomas?

Week Two Discussion Problems & Assignment:

1. Older women are at higher risk of giving birth to children with certain congenital birth defects such as Down syndrome. Amniocentesis, the test for these defects, itself poses risks of causing a miscarriage. The universal, accepted practice for pregnant women without a family history of defects is to use amniocentesis routinely only for women age 35 or older. The logic is that, under 35, the statistical risk of miscarriage is greater than the chance of detecting serious birth defects. Also, amniocentesis can have false positives, which can result in erroneously aborting a healthy fetus. How would you evaluate the age-35 rule of thumb under *Helling*? Under informed consent law?

Assignment: Do background research on your topic and come prepared to discuss and explain your alternative to the rest of the class, and why it is a good/bad option (or how it improves on regular old malpractice).

- Topics:
 - o Enterprise Liability
 - o “No Fault” Administrative System
 - o Medical Courts
 - o “Early Offer”/Disclosure and Apology

Week Three Discussion Problems:

1. Ashley is a profoundly disabled six-year-old with the mental capacity of a three-month-old whose parents have asked a Seattle-area hospital for surgery to remove her uterus and to prevent breast growth, along with hormone treatments to restrain her growth. Should the treatment be provided? With what procedural and substantive protections?
2. Grace and Tony Jones have a daughter, Alice, who is 17 years old. Alice has a low IQ. She attends school along with other children in the neighborhood, but she takes part in special classes designed to meet her intellectual and emotional needs. Alice is a friendly person who takes a great interest in others and in animals. She has an ordinary interest in sexual activity and often talks about looking forward to having her own child. On the other hand, she is not fond of going to her physician and has a low tolerance for pain. She is easily distractible and must be reminded by others to bathe and eat. Alice’s parents are concerned about her future, particularly because they are entering their 50s and can foresee a period of declining health. They want to ensure that Alice is not “burdened by the trauma and responsibility of childrearing or the loss of a child by adoption.” They have heard that forced sterilization of minors and incompetents is very controversial. As an alternative, they have approached Alice’s physician to have Alice undergo insertion of an IUD contraceptive, which could prevent against pregnancy for several years. If this is not possible, they want Alice to be given a birth control pill prescription. How would you advise Alice’s physician? Are there any potential sources of liability?

Week Four Discussion Problems:

1. Review past weeks’ problems/catch up.