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## Healthcare and the Law (PHLT/PSCI 236)

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Fall 2023

Dewey Room 2110E | Tues/Thurs | 2:00 PM - 3:15 PM

Instructor: Dr. Molly McNulty

Email: [m.mculty@rochester.edu](mailto:m.mculty@rochester.edu)

Office Hours: Thursdays 12:30 – 1:30 pm Morey Hall Suite 206, or Zoom by appointment

\*\* Office hours will start Tuesday, September 3<sup>rd</sup>

Teaching Assistant: Zachary Sussman

Email: [zsussman@u.rochester.edu](mailto:zsussman@u.rochester.edu) | Tel: +1 (240) 446-2357

Office Hours: Thursdays, 3:30pm - 4:30pm in iZone Project Room D, or by appointment!

\*\* Office hours will start Thursday, September 7th

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## Course Description

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Welcome to *Healthcare and the Law*, a course cross-listed with Public Health and Political Science! The overall purpose of this course is to bring to vivid life the role that the courts play in the hottest public debates of the day – climate change, access to healthcare for LGBTQ+ patients, new restrictions on reproductive rights, COVID restrictions, and restricted access to healthcare for marginalized populations and more.

This course introduces the legal foundations of healthcare in America, with emphasis on the role of the courts (the role of the legislature and executive agencies is covered in my spring course, PH/PSC 230 Public Health Law and Policy.) The material covers a broad range of legal issues in healthcare, including federalism, separation of powers, deference to precedent, preemption, and the rights of individuals which are protected by the due process guarantees within the Bill of Rights.

Module 1 introduces the role of values and political ideologies in health politics, policy and law; introduction to U.S. law and the legal system; an overview of the U.S. healthcare system, and methods classes on how to read and analyze a judicial opinion. Module 2 addresses the common law and the “police power,” and how it has been applied to COVID regulations. Module 3 provides an overview of how constitutional law relates to healthcare; and how the bill of rights specifically has been applied to selected legal issues such as gun control, racism in healthcare, and reproductive justice. Module 4 addresses healthcare reform in the U.S., including its history, passage of the Patient Protection and Affordable Care Act, and implementation of the “contraceptive mandate” within the PPACA. Module 5 concludes with an overview of the relationship between ethics and the law, which will cover the doctrine of informed consent, when doctors can refuse care and when they are obligated to deliver it, the right to die, and living wills.

Please go to the Course Home Page and complete:

#### **ACCEPTANCE OF ACADEMIC HONESTY**

Please review the [Academic Honesty policy](#) and then acknowledge your acceptance by [Clicking the link](#) "Acceptance of Academic Honesty Policy", and then click begin.

## **Course Objectives**

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Upon completion of this course students will be able to:

- I. Critically assess the values, ethics, and biases underlying health law decisions.
- II. Assess the impact of common law doctrines on the development of healthcare law.
- III. Analyze the constitutional implications of judicial opinions related to health equity.
- IV. Acquire oral presentation and argumentative writing skills.

## **Course Materials**

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- Wilensky, S. E. (2023). **Essentials of health policy and law** (J. B. Teitelbaum, Ed.; Fifth edition.). Jones & Bartlett Learning. UR Library Permalink: [https://rochester.primo.exlibrisgroup.com/permalink/01ROCH\\_INST/1mf88u3/alma9978422435605216](https://rochester.primo.exlibrisgroup.com/permalink/01ROCH_INST/1mf88u3/alma9978422435605216). Publisher's Ebook link: <https://ebookcentral.proquest.com/lib/rochester/detail.action?docID=6953578>
- **PRIMARY LAW (JUDICIAL OPINIONS) AND ANALYTICAL ARTICLES** Documents and textbook links uploaded to Blackboard
- **UR RESEARCH GUIDE TO "LAW AND LEGAL SOURCES"**  
<https://libguides.lib.rochester.edu/c.php?g=419223&p=9386074>
- **KEY WEBSITES:**

#### GENERAL LAW

- **National Constitution Center**, <https://constitutioncenter.org/>
- **OYEZ** - <https://www.oyez.org/> (Case summaries and oral arguments of SCOTUS cases)
- **SCOTUSBlog** (Independent News and Analysis of SCOTUS) <https://www.scotusblog.com/>
- **Supreme Court of the United States** (official), <https://www.supremecourt.gov/>

#### HEALTH LAW

- **AMERICAN HEALTH LAW ASSOCIATION** [WWW.AMERICANHEALTHLAW.ORG](http://WWW.AMERICANHEALTHLAW.ORG)
- **BILL OF HEALTH: Examining the Intersection Between Health Law, Biotechnology and Bioethics Blog**, HARVARD LAW SCHOOL BLOG, <https://blog.petrieflom.law.harvard.edu/>
- **KFF Health News**, <https://kffhealthnews.org/>,
- **NATIONAL HEALTH LAW PROGRAM**, <https://healthlaw.org/> (litigators of health law issues focused on poverty, discrimination, and access)
- **Network for Public Health Law**, <https://www.networkforphl.org/>

## Academic Integrity Affirmation

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At Rochester, we are committed to academic excellence, which depends on academic honesty. Academic honesty means being truthful in our academic pursuits, maintaining ownership of our own work, and acknowledging our debt to the work of others. All assignments and activities associated with this course--including, but not limited to, collaboration, citation, and use of outside resources--must be performed in accordance with the University of Rochester's [Academic Honesty Policy](#). You must hand-write the "magic sentence" on all your written work: **"I affirm that I will not give or receive any unauthorized help on this assignment, and that all work will be my own,"** and sign it.

## Deadlines and Late Assignments

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Written case questionnaires are due the day before the class starts at 12:00 NOON (e.g. Monday NOON for Tuesday's class). Late assignments will be marked down 1 point daily for the first week after the deadline. Assignments handed 1+ week late will not be accepted; you will receive a failing grade of zero for that assignment, unless you have arranged something different with me *before the initial deadline*.

## Help

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**In general, refer to the Blackboard section called "Student Resources."**

### **Writing, Speaking and Argument Center**

Most of the writing in this course falls into the "argument" category, which is a new writing skill for most students. I encourage you to contact the WSA Center if you want a review of a draft.

*Tutoring Overview* <https://writing.rochester.edu/tutoring/index.html>

1. Writing Consultants
2. Writing Fellows
3. Speaking Fellows

To work with a tutor, sign-up for an in-person or online appointment using their [scheduling system](#) or visit drop-in hours.

**C.A.R.E.** Overwhelmed students (you are not alone!) are encouraged to contact the University's CARE team, <https://www.rochester.edu/care>. *PLEASE Note: I make liberal use of the CARE network and will refer you if you are missing a lot of classes, have failed to hand in homework, or are consistently failing assignments. An important life skill is recognizing when you need help, and asking for it.*

## Grading

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*Corrected 9.2.23*

<b>ASSIGNMENT (Chronologically)</b>	<b>WORTH</b>	<b>DUE</b>	<b>RUBRIC</b>
Media Bias Analysis (Learning Team Assignment)	5%, Group Grade	9/9	Media Bias
Follow The News (Learning Team Assignment)	5%, Group Grade	Throughout the semester	Follow The News
Mastery Quiz About Knowledge of Healthcare and	15%	9/19	Graded Result

Law			
Case questionnaire I Jacobson v. Massachusetts (1905)	20%	10/2	Case Questionnaire
Case questionnaire II Dobbs v. JWHO (2022)	20%	11/13	Case Questionnaire
Case questionnaire III Burwell v. Hobby Lobby	20%	11/27	Case Questionnaire
Living Will/ Family Forms (3)	4%	12/16	Living Will
Living Will/Advance Directives Reflection	1%	12/16	Living Will
Participation (Including Learning Teams)	5%	12/16	Participation
Attendance/Qwickly	5%	12/16	Attendance

## Course Assignments

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### Academic Honesty Affirmance (ungraded but completion is tracked in Grading Center)

- You are required to read and affirm the University's policy on academic honesty (see previous section) **DUE 9/5/23 BY 2:00PM.**

### Prior Knowledge Quiz (Ungraded but completion is tracked in Grading Center)

- This required quiz will assess your pre-course knowledge. It is ungraded, but completion is tracked in the Grade Center. Link is above as "Prior Knowledge Quiz." **DUE 9/5/23 BY 2:00PM.**

### Attendance (5 %)

**DUE 12/16/23**

Attendance with class dialogue is an important component of learning about the law. To maintain fairness in large classes, the Qwickly attendance tool will be used to track attendance. A unique code will be shown 5 minutes before the beginning of every class and for 10 minutes after the start of class (15 minutes total). You must enter this unique code into the tool to be counted as present within the first 10 minutes of the start of class.

Qwickly records you as "Absent" if you don't check in by 2:10pm.

If you were late to class, missed it altogether, believe that you should have been counted as present but were not, OR WISH TO BE COUNTED AS EXCUSED FOR ANY REASON please [contact the teaching assistant](#) within 24 hours after the START of class.

**You can still get an A if you miss 2 classes** (we understand that life happens!) These 2 excused absences that can be used for a range of reasons (medical instances, study/sleep/family need, religious observance, club activities, away games, friends visiting, power outage, etc.). We prefer advance notice, however, you still can obtain an "excused absence" within 24 hours after the start of the class (2:00 the following day) IF you [proactively email TA Zach Sussman](#) notifying him of the reason. You will then be notified whether or not the professor accepts your absence reason as excused (e.g. falling within the above categories).

## RUBRIC

- 5% = 2 *unexcused* absences
- 4% = 3 *unexcused* absences
- 3% = 4 *unexcused* absences
- 2% = 5 *unexcused* absences
- 1% = 6+ *unexcused* absences.

### Participation in Class and Learning Teams (5 %)

In Class Participation Rubric: You can successfully achieve a full participation grade if you:

- Actively Participate in the Discussion
- Fulfill Your Assigned Role Successfully (If Applicable, such as Facilitator of your Learning Team)
- Make an Effort to Adhere to the Agreed Upon Norms (discussed in Module 1)

This is an upper-level class; therefore, you are expected to participate evenly – neither dominating the discussing, nor quietly residing in the back row. All of you have valid observations to make, based on your own lived experiences as well as your course work. The detailed Rubric for grading Participation is on Blackboard.

### Learning Teams Rubric

A second component of your participation grade is work within your Learning Team.

Every exercise and meeting with your learning team, you should contribute *substantive remarks that show you have done the reading*, and can creatively *apply* those readings to the active class exercise assigned.

### Follow The Health Law News (5%)

This is a Learning Teams Assignment that will happen routinely throughout the semester. Students will be assigned a group-based grade, and only 1 person from each Learning Team will submit the Health News presentation (PPT or PDF).

### Media Bias Underlying US Health Law (5%)

This is a Learning Teams Assignment Values that will be completed once. Political ideologies and media bias drive health lawmaking. We will analyze media sources for values and ideologies that create Media Bias. In class, your Learning Teams will work on an exercise, and then submit a single presentation to Blackboard. Every member of the Learning Team will get the same grade.

### Case Brief Questionnaires (60%)

A “case brief questionnaire” is a guided series of questions to help you closely analyze assigned opinions. There are videos introducing how to read a case, including a narrated PowerPoint slideshow created by a previous teaching assistant (Astghik Baghinyan). Three graded cases will be assigned for your analysis: *Jacobson v. Massachusetts*, *Dobbs v. Jackson Women’s Health Organization*, and *Burwell v. Hobby Lobby Inc.* We will also be discussing other courses in class, as listed in the syllabus. You should always come to class prepared to discuss the legal issues presented in those opinion.

### Advance Directive/Living will (5 %)

Health care and the law intersect sharply at the end of life. Students will be asked to read the New York State advance directives law, and using a guided form, reflect on their own values and fill out legally valid advance directives (if notarized).

## Course Schedule

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Corrected 9.2.23

<b>MODULE 1</b>		<b>FOUNDATIONS</b>
1	8/31/2023	Introduction to the Course
2	9/5/2023	The Everyday Relevance of Health Law
3	9/7/2023	Health Politics, Policy, Law and Ideologies
4	9/12/2023	Introduction to U.S. Health Law
5	9/14/2023	Introduction to U.S. Health Law, continued
6	9/19/2023	Mastery Quiz
7	9/21/2023	How To Think Like A Legal Scholar
8	9/26/2023	How To Interpret A Judicial Opinion
<b>MODULE 2</b>		<b>COMMON LAW AND HEALTH LAW</b>
9	9/28/2023	Common Law History
10	10/3/2023	Police Power
11	10/5/2023	Common Law - Police Power & COVID Aftermath
<b>MODULE 3</b>		<b>CONSTITUTIONAL LAW</b>
12	10/12/2023	Introduction to Constitutional Law
	10/17/2023	NO CLASS FALL BREAK
13	10/19/2023	Bill of Rights & the 14th Amendment
14	10/24/2023	Second Amendment - Right to Bear Arms
15	10/26/2023	LGBTQ Health Law
16	10/31/2023	Climate Change and Health Law
17	11/2/2023	Racial Justice and Health Law
18	11/7/2023	Racial Justice and Health Law
19	11/9/2023	Reproductive justice and Health Law
20	11/12/2023	Reproductive Justice and Health Law
<b>MODULE 4</b>		<b>HEALTH REFORM</b>
21	11/14/2023	History of Health Reform
22	11/16/2023	Patient Protection and Affordable Care Act
23	11/21/2023	PPACA & Contraceptive Mandate
	11/23/2023	NO CLASS THANKSGIVING BREAK
<b>MODULE 5</b>		<b>BIOETHICS AND HEALTH LAW</b>
24	11/28/2023	Doctrine of Informed Consent
25	11/30/2023	The "No-Duty-To-Treat" Doctrine
26	12/5/2023	The Right To Die
27	12/7/2023	Surrogate Decision Making and Living Wills
28	12/12/2023	Course Wrap-Up

# Module 1 Foundations of Healthcare Law

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8/31/23 – 9/26/23

## Module 1 Overview

### Module 1 Learning Objectives

1. Students will be able to describe their own political ideologies, to investigate media bias in coverage of healthcare law issues and to follow the health law news.
2. Students will be able to define and describe the law and policy doctrines related to health law.
3. Students will be able to define how judges think as constitutional scholars, to interpret a legal opinion, and to analyze judicial opinions to identify the ideological bias in the majority and minority opinions.

### Module 1 Learning Activities

Self-Test Prior Knowledge Quiz – Ungraded but tracked for completion in the Grade Center, due 9/5/23 by 2:00PM

The in-class activity, introduction to the Learning Team exercise “Follow The News.”

## Module 1 Graded Assignments

Media Bias Assignment – Learning Team Activity (5%) (DUE 9/8)

Follow-The-News - Learning Team Group Assignment (throughout the semester) (5%)

Mastery Quiz of Legal Concepts *IN-CLASS* (15%) (DUE 9/19)

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## Module 1 Content

### CLASS # 1 8/31/2023 Introduction to the course

Students will introduce themselves to their Learning Teams (download the list on Course Home Page), learn what to expect, and how they can achieve success.

**Be prepared** to introduce yourself to your Learning Team members, responding to the prompt “Why Did Your Parents Name You As They Did?”

### **Assignments**

1. Read and acknowledge the Academic Honesty Policy (ungraded, but completion will be recorded)
2. Take the Self-Test Prior Knowledge Quiz (ungraded, but completion will be recorded) – BEFORE CLASS 2. Find on Course Home Page.
3. Read the syllabus and the Learning Modules

### CLASS # 2 9/5/2023 The Everyday Relevance of Health Law

We will learn about all the ways in which the law is present in our everyday lives.

We will review the semester assignment for the Learning Teams: How To Follow Health Law in the News [BB Submission Link with instructions and rubric located in Module 1, Graded Assignments, “News”]

### **Required readings and viewings:**

- Watch Youtube video, How Law Can Make a Difference in Health Outcomes, <https://www.youtube.com/watch?v=m2FDAAsUeK0> (explains how law can promote or harm health outcomes)
- McNulty, Sources of Health Law and Policy News (August 2023) (brief guide to health law news sources)
- University of Rochester Research Guide, Finding News, <http://libguides.lib.rochester.edu/news> (provides hyperlinks and descriptions of the many databases for searching news)
- Follow-The-News Learning Teams Instructions and Rubric, found in Module 1, “News” Assignment (Graded Assignment Instructions, Rubrics, and Submission Link)

**Be prepared to:** *Break into Learning Teams In-Class Activity: Follow The News*

### CLASS # 3 9/7/2023 Health Politics, Policy, Law and Ideologies

We will discuss the findings from the Prior Knowledge Assessment.

We will learn about how different value systems, political ideologies and media bias affect the way law is created and enforced.

**Be prepared to:**

- Participate in an In-Class Activity with your Learning Team, analyzing media bias through a guided process in which you will analyze 3 sources of news.

**Required Assignments**

- Review the instructions and rubric for the Learning Team Assignment “Media Bias” before class (In Module 1, Media Bias assignment)
- Wilensky Chapter 2 Policy and Policymaking Process, <https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=64> (describes respective roles of the three branches of government in creating health law and policy; “authoritative” decision necessary) [This chapter will be on the graded quiz]
- AdFontes (Latin for “to the source,”) <https://adfontesmedia.com/> - browse the “About” section, and the “Methodology” section (explains how it measures reliability and bias in many media sources)
- AdFontes, The Media Bias Chart (August 2023) (1pp)(graphical representation of news sources by reliability and political ideology)

*Graded Assessment(s) of Mastery*

- Learning Team Media Bias Exercise (in class) (Group Grade) (5%) Due Sept 9 11:59PM

### CLASS # 4 9/12/2023 Introduction to U.S. Law

We will learn about the nature of the U.S. legal system, including sources of law, and the roles and responsibilities of each type of lawmakers.

**Be prepared to:**

- Describe what law is and how it differs from policy
- Describe the sources of law, how they differ, and how this might affect healthcare
- Discuss how the law can help or hurt health outcomes and health equity

**Required Assignment** (you will be tested on these chapters)

- Wilensky, Chapter 3 Law and the Legal System, <https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=104> (provides overview of U.S. legal system, including the roles, responsibilities, and power limits on the three branches of government)



- Wilensky Chapter 7 Structural and Social Drivers of Health and the Role of Law in Optimizing Health,  
<https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&pgg=314>  
(describes connection between law and health equity and outcomes)

### CLASS # 5 9/14/2023 Introduction to U.S. Law, continued

We will focus our discussion on the role of individual rights in healthcare litigation.

**Be prepared** to offer thoughts about how the law can be used to promote health “equity.”

**Required Assignments** (you will be tested on this chapter)

- Wilensky, Chapter 6, Individual Rights in Health Care and Public Health,  
<https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&pgg=253>

### CLASS # 6 9/19/2023 Mastery Quiz

#### **Graded Assignment of Mastery: Quiz of Legal Concepts *IN CLASS* (15%)**

This quiz will last a maximum of 60 minutes, in class, with no digital access allowed (unless required by the Office of Disability.) The quiz will be hand-written on blue exam booklets. It will cover Wilensky Chapters 2, 3, 6, and 7. It will be a combination of multiple choice and short answers. The Wilensky textbook can be found UR Library Permalink:

[https://rochester.primo.exlibrisgroup.com/permalink/01ROCH\\_INST/1mf88u3/alma9978422435605216](https://rochester.primo.exlibrisgroup.com/permalink/01ROCH_INST/1mf88u3/alma9978422435605216)  
or via the Publisher’s Ebook link:

<https://ebookcentral.proquest.com/lib/rochester/detail.action?docID=6953578>

### CLASS # 7 9/21/2023 How to Think Like A Legal Scholar

Students will learn how to think like a legal scholar, following principles defined by the National Constitution Center.

**Be prepared** to discuss the concepts about civil constitutional debates introduced by the National Constitution Center, and for your Learning Teams to conduct two in-class exercises.

**Required Readings and Listening**

- READ National Constitution Center (<https://constitutioncenter.org/>),
  - How To Think Like A Constitutional Scholar (brief overview)
  - Handout, Discussion Leader Roles
  - Worksheet, Political vs. Constitutional Frameworks (class exercise)
  - Worksheet, The Importance of Argument in the Law.pdf (class exercise)
- LISTEN to 20 minutes of excerpts of the oral arguments before the Supreme Court in Dobbs v. Jackson Women’s Health Organization, on the OYEZ.org website.  
<https://www.oyez.org/cases/2021/19-1392>. The lawyer arguing that Roe v Wade should be overturned is Scott G. Stewart. Listen from 0:00 to 10:33 minutes. The lawyer arguing the Roe v Wade should not be overturned is Julie Rikelman, listen from 1:03 – 1:13.

### CLASS # 8 9/26/2023 How to Interpret a Judicial Opinion

We will discuss the quirky world of judicial opinions, the structure of opinions, and the tools judges use to craft opinions.

**Be prepared** to discuss the elements of a judicial opinion, and how they rely upon, and create precedent.

**Reading and Viewing**

- Kerr, How To Read A Legal Opinion (walks through the standard sections of a legal opinion)

- YouTube, Threedy, Introduction to Case Reading, <https://youtu.be/FDhc90jyldc?si=ILXWhf2SjtTu6uOS>, 9 minutes viewing.
- Sutherland, treatise on Statutes and Statutory Construction, “Criteria of Interpretation: The problem of ambiguity”
- McNulty List of Standard Reading Focus Questions.
- Case Annotation Guide

#### How To Interpret A Legal Opinion - Case Study

- Katskee Reading Focus Questions
- *Katskee v. Blue Cross/Blue Shield*, 515 N.W.2d 645, 245 Neb. 808 (1994)

## Module 2: Evolution of Common Law’s Role in Health Law

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9/28 – 10/5

### Module 2 Overview

#### Module Course Objectives

Students will be able to identify and describe how common law – which the U.S. inherited from Britain and France - affects U.S. health law.

#### Module Graded Assignments

Case questionnaire, *Jacobson v. Massachusetts* (10) %

### Module 2 Content

#### CLASS # 9 9/28/2023 Common Law History

We will learn the history and meaning of the legal doctrines of "common law" and "precedent" (stare decisis),” and how they have been applied to particular health law issues.

**Be prepared to** discuss your ideas about how the common law has affected the development of health law.

#### **Required Assignments**

- View, YouTube, The Common Law and Colonial Legal Precedents, <https://youtu.be/VgkmQXSntTs> (7 minutes viewing) (great lecture providing historical overview of English and American common law, including why and when American common law veered away from the English model)

#### **Recommended Reading** to refresh your knowledge:

- Chapter 3 Law and the Legal System, Excerpt on “The Definitions and Sources of Law” (describes specific ways that the law can be used as a tool of social change, to promote or hinder health equity)
- Wilensky Chapter 6: Individual Rights in Health Care and Public Health) (describes history of common law and describes the most important Supreme Court cases)

#### **Recommended Viewing**

- Pernicious Doctrine of Stare Decisis: A Debate (Duke University), <https://youtu.be/ISnIKBQHJZY> (60 minutes viewing) (“Stare decisis, in Latin literally "Let the decision stand," is the doctrine by which courts adhere to previously decided cases or precedents. Professors Paulsen (stare decisis unconstitutional) and Gerhardt (stare decisis constitutional) will debate this provocative topic”

## CLASS # 10 10/3/2023 Common Law – “Police Power”

How does common law doctrine of the "police power" relate to healthcare law?

**Be prepared to** discuss how the scope of the police power has changed over the past century.

### **Assignments**

- Jacobson v. Massachusetts, 197 US 1 Supreme Court 1905
- Mariner, W. K., Annas, G. J., & Glantz, L. H. (2005). Jacobson v Massachusetts: It's not your great-great-grandfather's public health law. American Journal of Public Health

### **Graded Assessment(s) of Mastery (20) % Due Oct 3**

- Case questionnaire, Jacobson v. Massachusetts (20) % Due Oct 3 (Instructions and Submissions Box in Module 2.)

## CLASS # 11 10/5/2023 Common Law - Police Power & COVID Aftermath

We will review the Jacobson questionnaires, and also describe how the police power doctrine has been applied in the time of COVID, focused on legal vaccination mandates.

### **Required Assignments**

- Sandro Galea, Introduction: **Politics, Policies, Laws, and Health in a Time of COVID-19**, in COVID-19 POLICY PLAYBOOK: LEGAL RECOMMENDATIONS FOR A SAFER, MORE EQUITABLE FUTURE • MARCH 2021
- Network for Public Health Law, Fact-Sheet-Federal-Vaccine-Mandates-in-Response-to-COVID-19, June 16, 2022, <https://www.networkforphl.org/resources/federal-vaccine-mandates-in-response-to-covid-19/>
- VIEW C-SPAN CLASSROOM, *Historical and Contemporary Legal Precedents for Vaccine Mandates in the United States* (SEPTEMBER 14, 2021) – all 3 clips. <https://www.c-span.org/classroom/document/?18175>

### **Recommended**

- Summary, The Network for Public Health Law, Supreme Court Opinion Summaries (Jan. 2022), <https://www.networkforphl.org/?s=biden+v+missouri> (1 pp)
- Biden v. Missouri and Becerra v. Louisiana, 142 S.Ct. 647 (2022)
- The Network for Public Health Law, Table of COVID-19 Related Opinions and Orders from the U.S. Supreme Court (January 9, 2023)
- Webinar, Trends in Vaccination Law and Judicial Challenges (January 2023), 1 hour 30 minute viewing. <https://www.networkforphl.org/resources/trends-in-vaccination-law-and-judicial-challenges/>

### **Come to class prepared to discuss**

- the C-SPAN questions

## Module 3 Constitutional Law

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10/12 – 11/12

### Module 3 Overview

#### Module 3 Learning Objectives

- To describe how the 3 major articles of the U.S. the constitution influence healthcare law
- To be able to illustrate how the legal doctrines of federalism and "separation of powers" been applied in court cases about health law
- To explain how the "Bill of Rights" amendments have been applied to promote or hinder health equity for specific access-to-care issues

#### Module 3 Graded Assignments

Case questionnaire, *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 597 U.S., 213 L. Ed. 2d 545 (2022).

### Module 3 Content

#### CLASS # 12 10/12/2023 Introduction to Constitutional Law

To describe how the Articles I – III of the U.S. the constitution influence healthcare law

To describe the roles, responsibilities, and limits on the power of the U.S. Supreme Court

To describe how the legal doctrine of "precedent" has been applied by courts to health law disputes

To analyze how the core legal doctrines of federalism and "separation of powers" been applied by courts to health law disputes

#### **Assignments**

- VIEW What the Supreme Court's monumental rulings tell us about the new conservative majority (YouTube) (presents the opposite point of view – that the SCOTUS is increasingly politicized and distant from US values)
- View **The Constitution Center**, "Interactive Constitution," <https://constitutioncenter.org/the-constitution>, especially:
  - The Preamble: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." <https://constitutioncenter.org/the-constitution/preamble>
  - U.S. Constitution, Article I (powers of Congress), Section 8 – and accompanying "interpretation and debate"
  - Articles I – III (explains the history of the U.S. Constitution's formation and rationale, the 'balance of powers' goal of divided power).
  - Watch TOWN HALL: 2023 Annual Supreme Court Review (July 14, 2023) 1 hour 23 minute listening time, <https://constitutioncenter.org/news-debate/americas-town-hall-programs/2023-annual-supreme-court-review>
- Dahl, Decision-Making In A Democracy: The Supreme Court as National Policy Maker (1957) (PDF) (presents older, now-controversial position that U.S. Supreme Court is usually in step with national opinions on social issues)

### CLASS # 13 Bill of Rights & the 14th Amendment

To describe in broad strokes how the Constitutional Bill of Rights amendments have been applied to promote or hinder health equity.

#### **Assignments**

- VIEW “Bill of Rights” video, 16 minutes, <https://constitutioncenter.org/the-constitution/constitution-101-course>
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- Recommended: Refresh
- Wilensky Ch 6 Individual Rights in Healthcare and Public Health, UR Permalink: [https://rochester.primo.exlibrisgroup.com/permalink/01ROCH\\_INST/1mf88u3/alma9978422435605216](https://rochester.primo.exlibrisgroup.com/permalink/01ROCH_INST/1mf88u3/alma9978422435605216)

**Be prepared to** discuss how the Bill of Rights (Amendments 1 – 14) has been used in litigation to pursue various types of health inequities – gun control, racism, reproductive discrimination, LGBTQ discriminations

### CLASS # 14 10/19/2023 Second Amendment - Right to Bear Arms

We will learn about the history of Second Amendment jurisprudence, including the disparate ways that courts have applied the Second Amendment to prevention of injury by firearms. We will also learn assess and predict how these judicial opinions promote or hinder health equity.

#### **Required Readings and Listening:**

- Abbe R. Gluck, Gun Violence in Court (2020)
- SCOTUS Blog, In 6-3 ruling, court strikes down New York’s concealed-carry law (in NYS Rifle & Pistol Assn v. Bruen (Sct 2022)), <https://www.scotusblog.com/2022/06/in-6-3-ruling-court-strikes-down-new-yorks-concealed-carry-law/>
- Oral arguments, New York State Rifle & Pistol Association Inc. v. Bruen, **Oyez.org coverage**

**Be prepared to:** identify the range of factors used by courts to assess federal and state legislation, and the arguments pro and con for gun regulation.

### CLASS # 15 10/24/2023 LGBTQ and Health Law

The learning objective for this class is to learn how the Constitution and popular culture combine or clash in the pursuit of LGBTQ’s access to gender transformation treatments.

#### **Required**

- Transgender Rights, and the Ongoing Culture Wars, Harvard Law School Blog, <https://blog.petrieflom.law.harvard.edu/2023/07/27/303-creative-transgender-rights-and-the-ongoing-culture-wars/#more-31921>

### CLASS # 16 10/26/2023 Climate Change and Health Law

TBA – Class to be taught by TA

### Class # 17 10/31/2023 Racial Justice and Health Law

The objective for this class is to describe how have the Bill of Rights amendments have been applied by courts to address racism in the healthcare system

## Assignments

- **View YouTube: *Common Law - What Happened to the ‘Promised Land’?*** Harvard Law School professor Randall Kennedy discusses past and present visions for a “promised land” on race, and what law can do to shape it. (University of Virginia School of Law, Jan. 26, 2021) (31 minutes viewing) Transcript available at: <http://at.virginia.edu/3pluv41>
- Finger Lakes, Common Ground Health: **The Color of Health: The Devastating Toll of Racism on Black Lives** (July 2021) (Press Release, <https://www.commongroundhealth.org/news/articles/racism-is-key-driver-of-illness-and-early-death-for-black-residents-regional-study-finds>)
- Goodwin & Lynch, **Health Law and Anti-Racism: Reckoning and Response** (The Journal of Law, Medicine & Ethics, (2022)

**Come prepared to discuss:** what is the definition of “structural racism”? What sort of legal challenges do you see to its manifestations in the health law universe?

## Class #18 11/2/2023 Racial Justice and Health Law

TBA

## Class #19 11/7/2023 Reproductive Justice, Abortion, and Health Law

*We will discuss how the Bill of Rights amendments, particularly the doctrine of “substantive due process” under the 14<sup>th</sup> Amendment, have been applied by courts to “reproductive rights” in the healthcare system?*

### Reading Assignments

- Harvard “Bill of Health” blog, “A Brief History of Abortion Jurisprudence” (June 2022) (provides history of abortion jurisprudence)
- Reproductive Health Law Hub, <https://www.americanhealthlaw.org/publications/health-law-hub-current-topics/reproductive-law>
- Alan Guttmacher Institute, Interactive Map: US Abortion Policies and Access After Roe, <https://states.guttmacher.org/policies/> (real-time state-level map categorizing abortion laws by 7 categories from “most restrictive” to “most protective”)
- Oyez.org summary, Roe v Wade Excerpts, U.S. Supreme Court (1973)
- Oyez.org coverage of Dobbs, <https://www.oyez.org/cases/2021/19-1392>
- ABA article on role of precedent in SCOTUS Mississippi v Dobbs opinion

**Be prepared to discuss:**

- Historically, why and how have the major Supreme Court opinions have affected the exercise of access to abortion?
- What has the post-Dobbs reactions been by the federal and state governments?
- What do you predict the future will hold?

### *Graded Assessment(s) of Mastery*

- Case, [Dobbs v. Jackson Women’s Health Organization \(2022\) \(Excerpts\)](#)
- Case Questionnaire II, Dobbs v. Jackson (15) % **Due Nov 13<sup>th</sup> 11:59pm**

## Class # 20 11/9/23 Reproductive Justice, Contraception, and Health Law

We will debrief and discuss the Dobbs questionnaires

We will also discuss how the trends in contraceptive health law are affecting access to contraception (outside the PPACA “Contraceptive Mandate,” which will be covered in class # 22)

### Required Reading:

- [CMS Guidance on Contraceptive Coverage](https://www.cms.gov/files/document/faqs-part-54.pdf) (July 28, 2022), 13 pages, (describes federal law about the contraceptive mandate, including access to FDA approved medical abortion methods)  
<https://www.cms.gov/files/document/faqs-part-54.pdf>

## Module 4: Health Reform

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11/14 – 11/21

### Module 4 Overview

#### Module 4 Learning Objectives

To Identify key aspects of health reform reform efforts over the years.

#### Module 4 Graded Assignments

- Case Brief Questionnaire, *Burwell v. Hobby Lobby* (20%, DUE 11/27)
- *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 - Supreme Court 2014

### Module 4 Contents

#### CLASS # 21 11/14/2023 History of Health Reform

To describe the history of U.S. health reform efforts.

**Come to class prepared** to discuss the history of health reform in the U.S., the facets of the current healthcare system and the choices the U.S. made, and pending proposals for federal reform.

#### Required Reading

- Bruce Vladeck “Universal Health Insurance in the United States: Reflections on the Past, Present, and the Future,” *American Journal of Public Health*, 93 (2003), pp. 16-19. (explains why the U.S. has never adopted a ‘universal free health care system’)
- Wilensky, Chapter 11, *Health Reform and the Patient Protection and Affordable Care Act* (PPACA),  
<https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=569>,  
(reviews history of health reform efforts and the U.S., why efforts have failed, what the PPACA does, the role of the states)

#### CLASS # 22 11/16/2023 Patient Protection and Affordable Care Act

*To explain the elements of the Patient Protection and Affordable Care Act, the legal grounds for challenges to it (NFIB v. Sebelius)*

#### Required Reading

Wilensky, Chapter 11 *Health Reform and the Affordable Care Act*, (whole chapter previously read for Class # 20), [UR Permalink to Book:

*Sections:*

- [The U.S. Supreme Court’s Decision in National Federation of Independent Business v. Sebelius](https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=569)); <https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=569>; and
- “Key Issues Going Forward,” <https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=573>
- Read the Oyez summary of the NFIB v. Sebelius opinion, <https://www.oyez.org/cases/2011/11-393>

**Be prepared to** participate in an in-class exercise by forming into your Learning Teams, and to “brief” the NFIB v. Sebelius opinion using the guided questionnaire.

### CLASS # 23 11/21/2023 PPACA & The “Contraceptive Mandate”

*To explain and analyze how the PPACA relates to reproductive justice.*

#### *Required Reading*

Oyez, *Burwell v. Hobby Lobby Stores*, <https://www.oyez.org/cases/2013/13-354>  
*Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 - Supreme Court 2014

#### **Graded Assignment**

- Case Brief Questionnaire, *Burwell v. Hobby Lobby* (20%, DUE 11/27)

## **Module 5 Ethics and the Law**

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*11/28-12/7*

### **Module 5 Overview**

#### Module Learning Objectives

Students will be able to identify healthlaw issues that have ethical implications for patient care and resource allocation.

#### Module 5 Graded Assignments

Living Will and Directives 12/16 by 11:59pm (5%)

### **Module 5 Content**

#### CLASS # 24 11/28/2023 The Informed Consent Doctrine

To analyze under what circumstances competent adults can refuse treatment and when they cannot

#### Reading

- *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 105 N.E. 92, 93 (1914).
- *Natanson v. Kline*, 186 Kan. 393, 350 P.2d 1093, 1104 (1960), clarified, 187 Kan. 186, 354 P.2d 670 (1960)
- *Canturbury v. Spence*, U.S. Court of Appeals, District of Columbia Circuit. |May 19, 1972 |464 F.2d 772 |1972 WL40403



## CLASS # 25 11/30/2023 The "No-Duty-To-Treat" Doctrine

We will discuss how the historic common law power of healthcare providers to choose who they treat was breached by the revolutionary federal "EMTALA" legislation (Emergency Medical Treatment and Active Labor Act) Social Security Act § 1867, 42 U.S.C.A. § 1395dd.

We will also look at a sampling of subsequent case law defining the scope of EMTALA.

Required Readings:

- "EMTALA" legislation (Emergency Medical Treatment and Active Labor Act) Social Security Act § 1867, 42 U.S.C.A. § 1395dd.
- James v. Sunrise Hospital
- Lopez-Soto v. Hawayek, 175 F.3d 170 (1999)
- 2022 Executive Regulations Applying EMTALA to Medical Abortion in Hospital Emergency Departments

## CLASS # 26 12/5/2023 The Right to Die

We will describe the factors courts use to determine when a mentally competent adult patient can and cannot refuse to consent to medical treatment

*Assignments*

- Vacco v. Quill
- Read *Death With Dignity map*, <https://deathwithdignity.org/states/> (last update July 2023)
- Read *Landmark Euthanasia and Medical Aid in Dying Court Cases*, Last updated on: 6/8/2022 | Author: ProCon.org, <https://euthanasia.procon.org/legal-precedents/>
- Listen Podcast, *The Ventilator: Life, Death And The Choices We Make At The End*, from Hidden Brain: A CONVERSATION ABOUT LIFE'S UNSEEN PATTERNS (53 minute listen), National Public Radio, <https://www.npr.org/2019/11/13/778933239/the-ventilator-life-death-and-the-choices-we-make-at-the-end>,

**Be prepared to discuss** the factors courts use to determine the parameters of when a mentally competent adult patient may decide to die

## CLASS # 27 12/7/2023 Surrogate Decision Making and Living Wills

### **READING**

- Mayo Clinic, About Living Wills
- New York State Bar Association, New York Family Health Decision Act Resources Center, Overview and FHDA Text
- NYS Planning Your Health Care In Advance (34 pages).
- University of Rochester Medical Center's Policies (Living Will, Health Care Proxy, MOLST)

### **VIEW**

- New York State Bar Association, "Video: End of Life Decisions" (30 minutes) Scroll way down to the bottom of the FHDA Resource Center

### **LISTEN**

- Oral argument, "Cruzan by Cruzan v. Director, Missouri Department of Health." Oyez, 28 Nov. 2017 (1 hour)

CLASS # 28 12/12/2023 Course Wrap-Up

In this class, you will generate a list of the key take-away points from this class.