



PH PSC 236 HEALTHCARE¹ AND THE LAW

v. 13 August 2018

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Credit hours	4 credit hours
Time	Mondays and Wednesdays, 6:15 – 7:30pm
Place	Goergen 109

COURSE DESCRIPTION

This course introduces the legal foundations of health care in America. The material covers a broad range of legal issues in medical care², including constitutional issues related to federalism, an introduction to legal thinking, rules of judicial construction and judicial review. The course also provides an overview of specific legal issues in the health law and policymaking universe, including immunizations, medical malpractice “reform”, the opioid epidemic, genetics, health care reform including the Affordable Care Act (“Obamacare”), the Americans with Disabilities Act, transgender issues, abortion, the doctrine of informed consent, surrogate decision making in health care, and end-of-life advance directives. The course introduces problem-solving skills in healthcare and law and explores the various legal solutions reached by legislatures, agencies, and the courts. Guest speakers will complement the course material.

The course is divided roughly into two parts.

Part I: This first part of this course covers fundamental legal concepts and how they relate to healthcare. You will obtain the **skills** necessary to read, understand, and analyze primary legal documents (legislation and legal opinions). The content will include the structure of government, the foundations of health law, and an introduction to legal thinking.

¹“Health Care or Healthcare?”

<http://www.arcadiasolutions.com/final-word-healthcare-vs-health-care/> This course uses “healthcare”, to indicate a system.

² Public health law issues are covered in my spring course, PH 230 Law in Public Health Practice.

Part II: This portion of the course will provide a survey of a variety of **topics** that involve the intersection of health care and the law. It will continue to provide the student continued opportunity to practice the analytic skills developed in the first part of the course.

COURSE OBJECTIVES:

Upon completion of this course students will:

- have a general understanding of the role of governments and law in promoting and protecting health, including the functions of courts, legislatures, and administrative agencies in relation to health care law and policy;
- understand the relationship between the legal system, health care providers, and patients;
- be able to identify and analyze legal issues in health care.

Specific learning objectives include the ability to:

1. Develop a working definition of "health" and "healthcare"
2. Critically engage with the law and the role of government in health care
3. Identify and analyze legal issues in health care financing and delivery;
4. Communicate the interpretive understanding of a case or statute, or a complex regulatory scheme.

ENROLLMENT:

Cap of 40 students.

ENROLLMENT DEADLINE:

Students will be permitted to add this class only until **September 14, 2018**.

PREREQUISITES:

Not open to first year students

COURSE MATERIALS:

- Teitelbaum & Wilensky, Essentials of Health Policy & Law, PLUS annual supplement 2018 Annual Health Care Update (comes bundled with textbook)
- NOTE: To save \$, you can read this in print through Reserve Desk, or online through the library:
http://rochester.summon.serialssolutions.com/#!/search?bookMark=ePnHCXMw42JgAfZbU5kZuEAIH-i8dFD7nssl1LMGteVN2Bh48pPzL1MgVUDMMFwwAdEzEyNgdmTk0HZtRi07wYU_Ar5aQqQ_YAKBeBjchWA3WuFnMRyHqAtwC4aN4OCm2uls4cu_HqpeOioR7wpaELNFHSriCYuJbD5nXgLC0MzYFPeiAjjAErzP5A
- Primary Law – statutes, regulations and cases, all of which are on Blackboard

COURSE POLICIES AND PROCEDURES:

Class will begin and end promptly.

Class attendance is required and participation is expected. Attendance and informed participation in discussions and group work provide me with evidence that you completed assigned readings in advance and are engaged in the materials.

People often have strong responses to legal, ethical, and policy issues in health care, which inevitably involve discussions about life, death, sex, drugs and other charged topics. Disagreements are common. An important skill in legal and medical professions is the ability to discuss various viewpoints in a civil manner, even if you do not agree with a particular viewpoint. Class comments and discussions must be relevant and respectful of others.

Regarding the use of cell phones, laptops, and other digital devices, the class will develop a policy at the beginning of the semester. No matter what is decided, students should keep in mind that checking mail and surfing the web are examples of behavior that are not courteous and may distract other students, and hence will result in decreased participation points.

The classroom in which the class is held has **terrible acoustics**. I may be difficult to hear (in which case raise your hand and remind me to speak louder – also I will be experimenting with using a microphone), and **you** may be difficult to hear (in which case you may be asked to repeat what you said, louder, and/or turn in your seat to address the classroom instead of me). Another classroom problem is that the **seats** are nailed to the ground. This poses a challenge for the types of active learning exercises I will be asking you to do – primarily small group work. You will be asked to move seats, at times, to work in your groups. This is bothersome, but I don't want to sacrifice particular teaching methods because of the classroom limitations – so please be patient.

ACADEMIC INTEGRITY

Written work must be original. Academic integrity is expected. For guidance on academic integrity and plagiarism, please refer to the College Academic Honesty Website at <http://www.rochester.edu/College/honesty/>. If you have any questions about academic honesty, please do not hesitate to contact me.

LATE ASSIGNMENTS:

Written case questionnaires are due at 6pm before class starts on the due date. Late assignments will be marked down.

FINAL GRADE SCALE

Grades for assignments for this course are assigned a numerical value. The final grade is comprised of the cumulative points earned out of 100 points possible.

A = 93-100 (Superior)

A-	=	90-92
B+	=	87-89
B	=	83-86 (Above Average)
B-	=	80-82
C+	=	77-79
C	=	73-76 (Minimum Satisfactory Grade)
C-	=	70-72
D+	=	67-69
D	=	63-66
D-	=	60-62 (Minimum Passing Grade)
E	=	< 60 (Failure)

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE

If you have a disability, learning or otherwise, please contact the Office of Disability Resources, <https://www.rochester.edu/college/disability/> at the beginning of the semester. This will allow me to implement accommodations immediately.

The University of Rochester respects and welcomes students of all backgrounds and abilities. In the event you encounter any barrier(s) to full participation in this course due to the impact of disability, please contact the Office of Disability Resources. The access coordinators in the Office of Disability Resources can meet with you to discuss the barriers you are experiencing and explain the eligibility process for establishing academic accommodations. You can reach the Office of Disability Resources at: disability@rochester.edu; (585)275-9049.

COURSE ASSIGNMENTS

<u>Assignments</u>	<u>Points/Percentage</u>
In-class case briefs (3; drop 1 lowest)	20
Case brief questionnaire I (Lochner)	10
Case brief questionnaire II (Jacobson)	15
Case brief questionnaire III (Hobby Lobby)	15
Case brief questionnaire IV (Sutton)	15
Case brief questionnaire V (Miller/Baby K)	15
Advance Directive (or alternative tbd)	5
Voting exercise	5
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	100

1. IN-CLASS CASE BRIEFS (3 10-POINT ASSIGNMENTS)

During three unannounced class sessions, each student will write and turn in case briefs; i.e. answers to questions about the assigned case. These in-class assignments are worth 10% each. Students may drop one assignment during the semester to allow for unanticipated absences. Your total grade for the in-class assignments will be the sum of the **top 2 out of the 3** grades.

2. CASE BRIEF QUESTIONNAIRES (5 ASSIGNMENTS; 1 10-POINT, 4 15-POINT)

Reading legal documents is a skill that requires practice. The 5 case brief questionnaires will provide you with questions to facilitate a close reading and understanding of the different components of primary material, and I expect to see gradual improvement over the course of the semester in your analysis.

3. ADVANCE DIRECTIVES (5 POINTS)

Health care and the law intersect acutely at the end of life. Students will be asked to read the New York State advance directives law, and using a guided document from an insurance company, reflect on their own values and fill out a valid advance directive.

4. VOTING REGISTRATION (5 POINTS)

You will be required to register to vote. Instructions will be provided in class.

TOPICS & READING ASSIGNMENTS – REVISED AUGUST 13, 2018

Bolded classes have homework case questionnaires due at the beginning of class. <dates tbd>
Dates are subject to change depending on the pace of the class.

1		Overview of the course; syllabus and hot topics in the news
2		What Is Health?
3		What Is Law? The law and government: The Constitution
4		State vs Federal healthcare law: the Federalism debates (Lochner)
5		Legislation and how to analyze it (patient dumping statute)
6		Legislation and judicial review (Lopez-Soto(3))
7		Case law and how to analyze it: rules of judicial construction (Katskee)
8		"Common Law" and its contours: Immunizations and The "Police Power" (Jacobson)
9		Overview of the US Healthcare System
10		Public Health Insurance Programs: Medicaid, Medicare and CHIP
		OCTOBER BREAK - NO CLASS
11		Patient Protection and Affordable Care Act ("Obamacare")
12		Health reform: An historical perspective (Guest Dr. Ted Brown)
13		Patient Protection and Affordable Care Act & Freedom of religion (Hobby Lobby)
14		Medical malpractice (Guest Spence Studwell Esq.)
15		TBD - Catching Up Time
16		The Opioid Epidemic and Legal Responses
17		Genetics and Healthcare Law
18		The Americans with Disabilities Act (Sutton)
19		Transgender issues in health law (Guest Milo Primeaux Esq.)
20		Regulation of Abortion: "T.R.A.P.ed" video
21		Intellectual Property in Healthcare Law (Guest Brian Shaw Esq)
22		Regulation of Abortion: The Big 3 Supreme Ct Decisions (Roe/Casey/Whole)
		THANKSGIVING - NO CLASS
23		TBD- Catching Up Time
24		The Doctrine of Informed consent (Guest Dr Margie Shaw PhD)
25		Decision making in health care (Miller/BabyK)
26		TBD- Catching Up Time
27		Surrogate decision making in health care (Quinlan)(Guest Dr Rich Demme)
28		Advance Directives (Guest Dr David Kaufman -invited)

PART I LEGAL FOUNDATIONS

(Last updated 8/13/2018 1:00 PM)

PART I HOMEWORK DUE {DATES TO BE DETERMINED}

Lochner

Jacobson

All reading assignments are either in the textbook, or in the Blackboard "Reading Assignments" folder unless otherwise specified.

Overview of the course; introductions, syllabus; and hot topics in the news

- Assignment for First Class: Find & read a news article about healthcare that interests you.

Some primary sources:

- Healthcare Law in the News - <http://khn.org/topics/the-health-law/>.
- American Bar Association Journal: <http://www.abajournal.com/blawgs/topic/health+law>
- New York Times (paywall; limit 10 articles per month)
 - <https://www.nytimes.com/topic/subject/medical-malpractice>
 - <https://www.nytimes.com/topic/subject/health-care-reform>
- Wall Street Journal – free to UR students – sign in and create your account at <https://WSJ.com/ActivateSchool>

What is "health"? What is "disease"? What is "disability?"

- ALS: Listen: Podcast, "Second Language" on the *Reply All* program, starting at 16:01 minutes. <https://www.gimletmedia.com/reply-all/88-second-language#episode-player>
- ASPERGERS: Read: Baron-Cohen. "Is Asperger syndrome/high functioning autism necessarily a disability?" (In Reading Assignments folder)
- DWARFISM: Read: *Passing My Disability On to My Children*, <http://nyti.ms/2cnFENI>

Reading Focus Questions: Come to class prepared to discuss these items, focusing particularly upon differences in the interpretations of "health" and how definitions can differ depending upon one's point of view. What are some of the implications for how health care is obtained?

What is "law"? The law and government: The Constitution

- A More Perfect Union: The Creation of the U.S. Constitution (scroll to bottom left of page for link) <https://www.archives.gov/founding-docs/constitution>
- [The Constitution of the United States: A Transcription](https://www.archives.gov/founding-docs/constitution-transcript)
<https://www.archives.gov/founding-docs/constitution-transcript>

- Orin S. Kerr, *How to Read a Legal Opinion: A Guide for New Law Students*, 11 Green Bag 2d 51 (2007). (in Reading Assignments)

Reading Focus Questions:

1. What were the various views of the delegates attending the Constitutional Convention concerning a central government and state sovereignty?
2. How are the debates about the roles of the various governmental structures relevant today? (E.G. Federal vs. state government power; legislature vs. judicial; etc)
3. What section (identify actual language that you can point to in class) of this history do you find most interesting or compelling and why?

We will also discuss *'How to Read A Legal Opinion'*, and review the Case Questionnaire (*Lochner v NY*)

*** State vs Federal control over healthcare law: the Federalism debates**

→CASE QUESTIONNAIRE 1 *Lochner* IS DUE AT THE BEGINNING OF CLASS

- *Lochner v. New York*, 198 U.S. 45; 25 S. Ct. 539; 49 L. Ed. 937

Reading Focus Questions: Contained in case questionnaire

Legislation and how to analyze it

This class will continue our exploration of how legal thinking works. This class will examine legislation (statutes) as opposed to cases (judicial opinions) and its interpretation.

- 42 U.S.C. § 1395DD “EMTALA – Emergency Medical Treatment and Active Labor Act”
- Richard H. Dees and Jennifer Kwon, “The Ethics of Krabbe Newborn Screening.” *Public Health Ethics* 6 (2013): 114-19

Reading focus questions:

1. Reflecting on the Dees article, what initiated legislation?
2. What does EMTALA require of Emergency Department staff when an individual comes into the ED?
3. Describe an "emergency medical condition" and what it means to “stabilize” someone having an emergency medical condition. Provide examples.

Legislation and judicial review

- *James v. Sunrise Hospital*, 86 F.3d 885 (1996)
- *Soto v. Hawayek*, 175 F.3d 170 (1999)
- *US v James*

Reading focus questions:

The 1st 2 cases are arguments about how to interpret the federal statute EMTALA.

1. In *Sunrise*, what part of the statute are the patient and the hospital fighting about?
2. In *Soto*, what part of the statute are the parties fighting about?
3. Can you find rules of “judicial construction” in *James & Soto*? How do the first 2 opinions compare and contrast?

Tip: The rules of construction are opposing in the 2 opinions:

- *James* – Hospital won
 - b/c all 3 statute provisions must be met
- *Lopez-Soto* – Patient won
 - b/c all 3 statute provisions are “disjunctive”

Case law and how to analyze it: rules of judicial construction

The purpose of this class and the readings is to illuminate the way that courts interpret legal language and rationalize the outcome of their opinions. Please read *Katskee* carefully (at least twice).

- *Katskee v. Blue Cross/Blue Shield of Nebraska*, 245 Neb. 808, 515 N. W.2d 645.

Reading focus questions:

1. What is the nature of health insurance?
2. What is wrong with *Sindie Katskee*?
3. What is the nature of *Katskee's* complaint?
4. Do you think *Katskee* has an “illness”? Be prepared to explain your answer.

***“Common Law” and its contours: Immunizations and The "Police Power"**

→ Case QUESTIONNAIRE 2 *Jacobson* IS DUE AT BEGINNING OF CLASS

- *Jacobson v. Massachusetts*, 197 U.S. 11, 12 (1905)
- In class we will view a video:
 - Frontline's [Vaccine Wars](#) OR
 - [Calling the Shots](#)

PART II HEALTHCARE AND THE LAW TOPICS

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HOMEWORK DUE {DATES TO BE DETERMINED}

HOBBY LOBBY

SUTTON

MILLER/BABY K

ADVANCE DIRECTIVE

Overview of the U.S. Health Care System

- Textbook, Chapter 4, Overview of the United States Healthcare System

Public Health Insurance Programs: Medicaid, Medicare and CHIP³

- Textbook, Chapter 11, Government Health Insurance Programs: Medicaid, CHIP and Medicare

Patient Protection and Affordable Care Act ("Obamacare")

- National Federation of Independent Business et al. v. Sebelius, 567 U.S. ___ (2012) , assigned excerpts (assignments in separate handout)

This assignment is the seminal Supreme Court ruling on the constitutionality of the Affordable Care Act, NFIB v. Sebelius.

This is a long and complicated legal opinion, with many Justices writing their own stand-alone concurrences and dissents. In order to break it down, I have divided the opinion into 6 different pieces based upon the topic. You will be assigned to a group and a topic with specific pages for you to read and lead discussion (separate handout).

I recommend that, **before** you begin reading Sebelius (which begins, by the way, on page 19) you read 2 pieces from the SCOTUS⁴ blog: Sebelius in Plain English, parts [1](#) and [2](#). These readings are in the Reading Assignments folder.

Health reform: An historical perspective (Guest speaker Ted Brown)

- 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
- Brown, Medicare for All

Patient Protection and Affordable Care Act & Freedom of religion HOMEWORK DUE

- Burwell v. Hobby Lobby Stores, Inc.

This week we will read a second important Supreme Court cases on the ACA, Burwell v Hobby Lobby.

³ Allow extra time for reading this chapter – it is very dense with many new concepts

⁴ SCOTUS = Supreme Court of the United States

Reading focus questions:

As you read Hobby Lobby, think about these questions

1. What does the Religious Freedom Restoration Act prohibit?
2. What did the government regulations require?
3. What did the companies argue about 4 of the contraceptives?
4. What did the US Department of Health and Human Services try to argue?
5. The court held that the right to religious freedom was violated by the US regulations. What were its 3 holdings?
6. There was a concurrence (Kennedy) and 2 dissents (Ginsburg; Breyer & Kagan). What were the main points of each?

Medical malpractice: Regulation of the medical profession through tort law (Guest speaker Spence Studwell Esq.)

- Gawande, Atul. Annals of Medicine, "When Doctors Make Mistakes," The New Yorker, February 1, 1999.

Contraceptive Mandate Updated Development

Reading to be determined.

The Opioid Epidemic and Legal Responses

Readings:

- National Institutes of Health website on opiates: surf the site
- States Sue Manufacturers
- Complaint Multnomah County

Reading Focus Questions:

NIDA Webpage (for exploration; try clicking a few links of interest)

1. How does NIDA describe the problem of opiates?
2. What statistics does it refer to?
3. Can you tell which NIH agency is taking the lead on the opioid epidemic (FDA, HHS, NIDA)? Why does this matter?

States Sue Manufacturers

1. Why do states think that the manufacturers should pay for the opioid epidemic?
2. What are the lawsuits about? What claims do they make?
3. Do you agree that manufacturers should be held responsible? Why or why not?

Multnomah County Complaint (for skimming, not close read)

1. What does the county/plaintiff claim the defendants/manufacturers have done wrong?
2. What specific laws have been broken?
3. What specific costs of the epidemic does the complaint describe?
4. Do you agree with the theory of the case (that mfgrs are responsible)? Why or why not?

Genetics and Healthcare Law

Readings:

- GINA Background Reading
- Fuentes v. City of San Antonio Fire Department

Reading Focus Questions:

1. GINA Background Reading:

- What is genetic discrimination?
- What is GINA and why is it significant?
- Think about one example of possible genetic discrimination not listed in the reading for which GINA may be applied.

2. Fuentes v City of San Antonio Fire Department:

- What are the basic facts of the case and the courts holdings?
- How does Fuentes claim his rights under GINA were implicated?
- Do you agree with the court's decision?

LGBTQ Issues in Healthcare Law (Guest Milo Primeaux Esq.)

- Tovar v Essential Health Amicus Brief
- Can Reproductive Trans Bodies Exist?

The Americans with Disabilities Act

HOMEWORK DUE

- The Americans with Disabilities Act excerpt pp 8-22, and
- [Sutton v United Airlines](#).

Intellectual Property in Healthcare Law (Guest Speaker Brian Shaw Esq)

- Intellectual Property and Health Care

Regulation of Abortion: "T.R.A.P.ped" video

- Abortion in the US Fact Sheet
- TRAPPED video (Targeted Regulation of Abortion Providers)

Regulation of Abortion: The Big 3 Supreme Ct Decisions

This class will be covering the triad of significant Supreme Court cases on abortion (*Roe*, *Casey*, *Whole Women's Health*). See separate document on Abortion Reading Focus Questions.

For the curious: There is terrific position-neutral analysis of these cases called "Body Politic" on a website called Oyez - <http://projects.oyez.org/body-politic>. I highly recommend dipping into this.

The Doctrine of Informed consent (Guest Dr Shaw)

- Schloendorff v. Society of New York Hospital, 211 NY 125, 129-130, N.E. (1914)
- Salgo v. Leland Stanford Jr. University Board of Trustees, 154 Cal App2d 560, 317 P2d 170 (1957).
- Natanson V. Kline. 354 P.2d 670 (Kan. 1960).

Decision making in health care HOMEWORK DUE

- Miller ex rel. Miller v. HCA, Inc., 118 SW 3d 758 (2003).
- In The Matter Of Baby "K", 16 F.3d 590; 1994 U.S. App. Lexis 2215; 3 Am. Disabilities Cas. (BNA) 128.

Surrogate decision making in health care (Guest Dr. Rich Demme) In the Matter of Karen Quinlan. 70 N.J. 10; 355 A.2d 647 (1976).

- "Cruzan by Cruzan v. Director, Missouri Department of Health." Oyez, 28 Nov. 2017, www.oyez.org/cases/1989/88-1503.

Advance Directives (Guest Dr David Kaufman) HOMEWORK DUE (Draft Adv Directive)

- Excellus, Advance Directive Booklet