

HEALTH LAW SURVEY: LAW 6322
Fall 2012: Section 12609
Syllabus and Course Policies

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I. Introduction

Welcome to Introduction to Health Law! This semester, we will explore various areas of the law that deal with creating and maintaining “health.” In particular, we will cover the major mechanisms for ensuring quality in health care and the ethical dilemmas that may result from medical treatment or other kinds of scientific interventions. Moreover, this course incorporates broad theoretical elements. Throughout the semester, we will continually revisit the question, “What is health?” and examine whether the law successfully helps or hinders the goal of promoting and sustaining health.

In addition to cases, statutes, regulations, and law review articles, we will also read materials dealing with theory, policy, and current events. Please take the time to read over the syllabus to get a sense of the class.¹ This course covers four main topics:

- (1) The Role of Theory & Policy in Health Law
- (2) The Treatment Relationship
- (3) Regulating & Enforcing Quality of Care
- (4) Issues in Bioethics

I’m very excited to be your professor this term. As I want the class to be as engaging and as useful as possible, I encourage questions and welcome feedback. Please feel free to contact me with questions regarding the readings, your assignments, or just the course in general. I look forward to spending the semester with you!

II. Logistics

Required Texts²

BARRY R. FURROW et al., HEALTH LAW: CASES, MATERIALS, AND PROBLEMS (6th ed. 2008) (“CB” in reading assignments).

Furrow et al., Health Care Reform Supplement (2011) (“Supplement” in reading assignments).

¹ ‘Introduction to Health Law’ is not a pre-requisite for any other health law course at the Law Center. Thus, if your interests lie primarily in regulation and implementation, you may wish to enroll instead in Health Care Financing, Organization & Quality, offered in the spring. Depending upon the instructor, that class may also use the casebook assigned for this course.

² All additional reading assignments will be posted on Blackboard under “Course Content.”

Class Hours

We will meet Mondays and Wednesdays, from 2:30 PM-3:50 PM, in Room 240 BLB.

Office Hours

I will hold office hours in my office on Tuesdays from 10:00 AM-11:30 AM and by appointment. You may also email me your questions.

Course Policies

Accommodation:

If you have a disability and require an accommodation, I encourage you to contact the Center for Students with Disabilities and to forward the Center all required documentation if you've not done so already. I encourage you to speak to me as well. All students should let me know what I can do to maximize your learning potential, participation, and general access during this course. I want to make the course material accessible, and I want you to succeed as a student. If any aspects of the course or the assignments pose accessibility problems, we can discuss alternatives.

Attendance:

You are expected to attend all class sessions. Please see the "Attendance and Preparedness" section under the "Course Requirements" section. I will circulate a sign-in sheet every class. It is your responsibility to sign in. For days on which a problem is due, the hard copy of your problem will count as your attendance. (For details on the course policy related to problems, see *Casebook Problems* below.) Falsifying attendance violates the Law Center's Honor Code and is, therefore, grounds for disciplinary action.

Course Website:

All non-casebook reading is available on Blackboard. You can log on through the UH website (<http://www.uh.edu/blackboard/>). I may occasionally post additional, non-legal readings—such as timely news articles—that deal with the issues we are covering. (On that note, if you come across interesting or topical articles, please forward them to me, so I can share them with the class!)

Seating Assignments:

After the first week of class, I will create a seating chart. You must sit in your assigned seat the remainder of the semester.

Sensitive Material:

We will cover sensitive material, such as voluntary euthanasia and stem-cell research, over the course of the semester. If for any reason, you do not want to participate in a particular discussion, please let me know ahead of time and I will not call on you.

Casebook Problems:

Our casebook provides a number of thought-provoking problems based on the readings. We will occasionally discuss those problems in class. On the days when I have assigned a problem, please come to class having read the problem and written a 500-1000 word, typed response. Please bring a hard copy of the response with you. Your printed response will count as your attendance for the day. I will not accept responses to the problems by email.

III. Course Requirements

This course has three key requirements: (1) preparing for and attending class sessions (including turning in casebook problems when assigned); (2) participating in *at least two* discussion panels; and (3) completing a three-hour exam.

- (1) **Attendance and Preparedness.** You are expected to arrive on time and prepared for all of our class sessions. Pursuant to the Law Center's policy, you must attend at least 80% of all class meetings; however, you should strive to attend 100%. In other words, you can miss no more than five classes. Missing more than five classes will result in your being dropped from the course. As noted, on the days when I have assigned a problem, the printed, hard copy of your response will count as your attendance.
- (2) **Class Participation (Discussion Panels).** To facilitate our class discussion, we will use discussion panels in lieu of an on-call system.³ You must sign up for at least *two* discussion panels. I will circulate the panel sign-up in class on **Wednesday, August 29**. (If you are unable to attend class that day or if you enroll in the course after the first week, the sign-up will be available with my assistant Edward in the Health Law & Policy Institute until **Friday, September 7**.) If you do not sign up for two panels, I will randomly assign you to under-enrolled panels. On the days of your panels, you should have prepared extensively for class and should expect to be called on. I may contact discussion-panel members before their assigned class regarding my planned discussion. Members of the discussion panel will be my "go-to" people for that day; however, I reserve the right to call on any member of the class. Students with outstanding in-class participation will be eligible for an upward adjustment of a partial letter grade (e.g., from B to B+, or from B+ to A-).⁴
- (3) **Exam.** Finally, you will complete a three-hour exam, which will consist of a combination of issue-spotting and policy questions. During the exam you may consult three things: (1) your casebook, (2) any *printed* additional course reading, and (3) your outline and notes. More details regarding the exam format and content will be discussed as the exam date approaches.

³ By allowing you to choose when you are on-call, you can select topics that are of particular interest to you, as well as the timing that best suits your needs. For example, those of you who do not like speaking in class might choose to schedule your discussion panels for earlier in the semester to get them out of the way. Please choose your panels carefully because once the panels are set, they cannot be changed.

⁴ I consider good in-class participation to be anything that both helps your classmates learn and indicates your effort to read and understand the assigned material. In making a positive adjustment, I will consider the overall quality—not the quantity—of a student's in-class participation.

IV. Course Reading

These reading assignments are subject to change based on the pace of our discussion. I will announce any changes in class and on Blackboard.

I. Introduction to Course Themes

A. Bioethical Theory & Defining Health & Disease

Week One—Theoretical & Conceptual Background

August 27

Syllabus

Introduction to Bioethics, Excerpt from *Bioethics*, pp. 1-22

August 29

Defining Sickness, CB pp. 1-15

Kenneth M. Boyd, *Disease, Illness, Sickness, Health, Healing and Wholeness: Exploring Some Elusive Concepts*, 26 J. MED. ETHICS 9 (2000).

Marc Ereshefsky, *Defining 'Health' and 'Disease,'* 40 STUD. HIST. PHIL. BIO. & BIOMED. SCI. 221 (2009).

Week Two—Theoretical & Conceptual Background, cont'd

September 3

NO CLASS (LABOR DAY)

September 5

Defining Quality in Health Care, CB pp. 15-40

Johannes Bircher, *Towards a Dynamic Definition of Health and Disease*, 8 MED., HEALTH CARE, & PHIL. 355 (2005).

B. Role of Policy in Health Law

Week Three—Public Health & Distributive Justice

September 10

Public Health, CB pp. 95-114; Supplement, p. 16-17

Exec. Order No. RP65, Relating to the Immunization of Young Women from the Cancer-Causing Human Papillomavirus, Feb. 7, 2007.

Ralph Blumenthal, *Texas Is First to Require Cancer Shots for School Girls*, N.Y. TIMES, Feb. 3, 2007, at A9.

--, *Texas Legislators Block Shots for Girls Against Cancer Virus*, N.Y. TIMES, Apr. 25, 2007, at A16.

Janet Elliott, *Reluctant Governor Yields on HPV Shots*, HOUS. CHRON., May 9, 2007, at A1.

Tara Parker-Pope, *After Menu Labels, Parents and Kids Order Same Food*, N.Y. TIMES BLOG, Feb. 16, 2011.

Problem: Obesity as a Public Health Issue

OR

Problem: Opting Out of Childhood Immunization

September 12

Distributive Justice (Organ Transplants as Case Study), CB pp. 71-95

Week Four—Balancing Cost & Access

September 17

Balancing Cost & Access, CB pp. 560-75; Supplement pp. 78-80

Deborah Stone, *The Struggle for the Soul of Health Insurance*, 18 J. HEALTH POL. & LAW 287, 287-94, 308-14 (1993).

The Cost of Dying (2010) (in class)

September 19

NO CLASS

II. Treatment Relationship

A. Forming the Treatment Relationship

Week Five—Professional-Patient Relationship & Duty to Provide Care

September 24

Contract Between Patient & Professional, CB pp. 195-203, pp. 212-30

Pauline W. Chen, *The Surgeon's Pact with the Patient*, N.Y. TIMES, Sept. 9. 2010.

September 26

Duty to Provide Care (Common Law), CB pp. 596-609

EMTALA, CB pp. 609-23

September 28 (make-up)

ADA & Rehab Act, CB pp. 623-33

Title VI, CB pp. 633-37

David Barton Smith, *Racial and Ethnic Health Disparities and the Unfinished Civil Rights Agenda*, 24 HEALTH AFF. 317 (2005).

B. Obligations of the Treatment Relationship

Week Six—Informed Consent

October 1

Informed Consent, CB pp. 230-58

Treatment Choices for Coronary Artery Disease (in class)

Problem: Disclosing Physician Risk

October 3

Informed Consent cont'd, CB pp. 258-86

Week Seven—Confidentiality & Physician's Perspective

October 8

Confidentiality, CB pp. 289-313

October 10

A Physician's Perspective: Guest Lecture

III. Regulating & Enforcing Quality of Care

A. Professional Licensure

Week Eight—Medical Licensing

October 15

Discipline, CB pp. 115-31
Texas Medical Board Information Sheet
Texas Medical Board Mission
Texas Medical Board Complaint Process
Texas Medical Board Complaint Form

October 17

Introduction to Licensure and the Practice of Medicine, Excerpt from
Complementary and Alternative Medicine and the Law, pp. 33-40
Complementary & Alternative Medicine, CB pp. 131-40
Unlicensed Providers, CB pp. 140-49

B. Malpractice Suits

Week Nine—Standard of Care

October 22

Establishing the Standard of Care, CB pp. 327-42

October 24

Practice Guidelines, CB pp. 342-57
Algorithm for Pre-Surgery Cardiac Evaluation
Glycemic Control Alignment for Type 2 Diabetes Mellitus in Adults
Judicial Standard Setting, CB pp. 357-63

Week Ten—Defenses

October 29

Standard of Care Exceptions, CB pp. 381-86
Innovation, CB pp. 386-404
(Note: The excerpt from *Richardson* is quite long. Read the facts and holding carefully but feel free to skim.)

October 31

Affirmative Defenses, CB pp. 404-12
Contributory Fault, CB pp. 412-21
Attenuation, CB pp. 421-25
Providence Health Center v. Dowell, 262 S.W. 3d 324 (Tex. 2008) (Wainwright, J. concurring in part and dissenting in part).
Problem: The Difficult Patient

IV. Issues in Bioethics

A. Reproductive & Genetic Technologies

Week Eleven—Reproductive Technology

November 5

Introduction to Reproductive Technologies, CB pp. 1262-66
In Vitro Fertilization, CB pp. 1283-96

November 7

Natural & Gestational Surrogacy, CB pp. 1296-1321

Week Twelve—Cloning, Stem-Cell Research, & Genetic Information

November 12

Cloning & Stem-Cell Research, CB pp. 1321-29
Exec. Order No. 13505, Removing Barriers to Responsible Scientific Research Involving Human Stem Cells, 74 C.F.R. 10667 (2009).
Sherley v. Sebelius, 776 F. Supp. 2d 1, 12-21 (D.D.C. 2011).
Scott Wilson, *Obama Reverses Bush Policy on Stem Cell Research*, WASH. POST, Mar. 10, 2009, at A10.
Del Quentin Wilber, *Ban on Human Stem Cell Funding Is Lifted*, WASH. POST, Apr. 30, 2011, at A3.
Eryn Brown, *Federal Funding Reaffirmed for Stem Cell Research*, L.A. TIMES, July 28, 2011, at A11.
Meredith Wadman, *Plantiffs in U.S. Stem Cell Case Try Again*, NATURE NEWS BLOG, Jan. 13, 2012.
Jocelyn Kaiser, *In Stem Cell Suit Appeal, Arguments Over Technicalities*, SCI. INSIDER, April 23, 2012.
A Discussion on Cloning (2008) (in class)

November 14

Genetic Information, CB pp. 1352-67, 1372-79; Supplement pp. 252-56

B. Death & Dying

Week Thirteen—Introduction to Death & Dying

November 19

Defining Death, CB pp. 1380-89
“Dead Donor” Rule, CB pp. 1389-1405

November 21

NO CLASS (THANKSGIVING HOLIDAY)

Week Fourteen—Right to Die & Physician-Assisted Death

November 26

Right to Die, CB pp. 1408-32
Brief for Not Dead Yet as Amicus Curiae, *Vacco v. Quill*, 521 U.S. 793 (1997).

November 28

Physician-Assisted Death (Constitutional), CB pp. 1537-56

Week Fifteen—Right to Die & Physician-Assisted Death, cont'd

December 3

Physician-Assisted Death (Statutory), CB pp. 1556-67; Supplement pp. 262-79

Problem: Drafting Legislation

December 5

Exam Review

Final Exam

December 12, 2:00 PM-5:00 PM