UNIVERSITY OF LOUISVILLE SCHOOL OF MEDICINE

Department of Family and Geriatric Medicine

Syllabus

MEDICAL JURISPRUDENCE – INTRODUCTION TO HEALTH LAW

Professor: Winsor C. Schmidt, J.D., LL.M.
Endowed Chair/Distinguished Scholar in Urban Health Policy
Professor of Psychiatry and Behavioral Sciences
Professor of Family and Geriatric Medicine
Professor of Health Management and Systems Sciences

Office: Suite 240, 501 East Broadway, MedCenter One
Telephone: 852-6457
E-mail: wcschm01@louisville.edu

Course: FMED-924
Classroom: B106, “B Building”
Course time: usually 3-5 p.m.

Required textbooks


Recommended textbook


Course Description

This course is an examination of “medical jurisprudence”: the law, legal system, and legal reasoning related to medicine. This introduction to health law undertakes a survey of legal issues in medicine focusing on the four ultimate health care system concerns: quality; autonomy, or personhood; equitable access; and cost. Coverage includes: (a) introduction to law, the legal system, and legal reasoning; (b) quality control regulation through licensing of health care professionals; (c) the physician-patient relationship, informed consent, and confidentiality; (d) professional liability and reforming the tort system for medical injuries; (e) cost and access to health care in the health care delivery system; (f) professional relationships in health care enterprises, staff privileges, managed care contracts, labor and employment, and discrimination law; (g) Medicare and Medicaid fraud and abuse, false claims, and Stark Law self-referrals; (h) reproduction and birth, legal status of the embryo/fetus, medical intervention in reproduction, and fetal maternal decision-making; (i) legal issues in human genetics; and (j) life and death decisions, advance directives, withholding/withdrawing life support, treatment refusal for religious reasons, decisional capacity and guardianship, deciding for children, futile treatment.

According to available literature, “Medical jurisprudence” is one of the teaching topic areas surveyed by the U.S. Liaison Committee on Medical Education (LCME) Part II Annual Medical School Questionnaire. The most recent survey of the state of American medical education in health law concludes that “the cumulative amount of time devoted to . . . health law . . . does not appear commensurate with [its] importance.” Britain’s General Medical Council has established medical law as

1 Williams & Winslade, “Educating Medical Students about Law and the Legal System,” 70 (9) Academic Medicine 777-785 (September 1995).
2 Association of American Medical Colleges, “Hot Topics in Medical Education,” [110 of 126 medical schools reportedly have “medical jurisprudence” as a topic in a required course (87%; up from 104 of 125, 83%, in 2004-2005)].
one of the core components of the medical curriculum, including a consensus statement of the core list of topics to be covered. The course on Medical Jurisprudence is consistent with this literature.

The course should enhance sensitivity, not only to those needing medical care, but also for the contributions, problems, and limitations of the disciplines and professions that formulate, contribute to, and administer medical care and health policy.

**Course Objectives**

A principal objective of the course is for students to acquire the ability to recognize, describe, discuss, and apply the significant issues in health care law. Course objectives include: (a) providing students with knowledge and understanding of physicians’ legal obligations sufficient to enable legally effective medical practice with minimum legal risk; and (b) enabling students to appreciate the intellectual satisfaction of discussion within health law and that “legal reasoning and critical reflection are natural and integral components in their clinical decision making and practice.”

In alignment with the University of Louisville School of Medicine’s education goal to “Graduate physicians who have the knowledge, skills, and attitudes to provide outstanding medical care and who are well prepared for residency training,” particular objectives of medical jurisprudence/health law include the knowledge, skills, and attitudes objectives of: (a) specifying, discussing, and applying the significant issues in health care law; (b) recognizing legal issues, “learning to tell their attorneys what constitutes appropriate medical care and then ask how to deliver that care with minimal legal risks,” and acquiring critical reasoning/legal reasoning competencies (“reason by analogy, interpret language, apply general, mutable principles to particular cases, establish probabilities, and measure benefits against burdens”) by “practicing the application of legal principles to decisions about patient care and about health policy”; and (c) “increase confidence in clinical decision making . . . and make physicians less averse to legal risk” and “learn to be enthusiastic participants in the process of policymaking.”

**Methodology**

“The case method has played an important role in the study of law, medicine, and business for many years.” When reading *Health Law*, students should prepare one-page briefs of all briefable cases. In class it is expected that students will be able to orally relate, in their own words, using their briefs and notes if desired, any of the following elements present in each case: the name, date, and citation of the case; a short statement of the essential facts; the issue; the holding; the reasoning. Students should then be prepared to compare the case with preceding cases, to synthesize a line of cases, to identify what the case communicates about the subject, and to discuss such matters in context of the text’s questions, problems, and narrative.

As a general rule, students should spend a minimum of at least two or three hours preparing for class for each hour in class.

Class will be conducted in seminar and informal lecture style, including some Socratic method.

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5. Consensus Group of Teachers of Medical Ethics and Law in UK Medical Schools, “Teaching Medical Ethics and Law within Medical Education,” 24 *Journal of Medical Ethics* 188-193 (1998).

6. *Id.* at 188-189.

law dictionary (e.g., *Black’s Law Dictionary*) or medical glossary or dictionary (e.g., *Dorland’s Medical Dictionary*) may be helpful, but is not required. Students can be called upon randomly without prior notice and questioned on the facts, issues, legal principles, and judicial reasoning of the cases, and on the content of the non-case material.

It is assumed that graduate-level students “have gained sufficient mastery of at least one discipline [as undergraduates] that they can take on a major part of the responsibility for their own education.” Graduate-level course emphasis is not on classroom lecture or discussion by the instructor, but on the reading, thinking and problem solving done by the students. “A graduate course is one in which students are required to deepen their understanding of a disciplinary area largely through independent work under the guidance of a qualified instructor.”

**Requirements**

1. Readings in *Health Law* and as otherwise specified.
2. School of medicine class attendance requirements apply.
3. Class preparation and participation are assumed and expected.
4. Aspiring professionals are expected “to keep up to date on emerging issues and potential problems.” I recommend that students join the American Society of Law, Medicine and Ethics, 765 Commonwealth Avenue, 16th St., Boston, MA 02215, (617) 262-4990. Regular annual membership is $230; student membership is $90. Membership includes subscriptions to the *American Journal of Law and Medicine*, and the *Journal of Law, Medicine, and Ethics*.

**Method of Evaluating Student**

Paper or final written examination.

If the final written examination is selected, one week before the exam date, short answer essay questions will be identified in class. Students will prepare all questions. At exam time, students will be told which specific questions constitute the exam. This format is take home and prepare, come back into class and write without benefit of text, briefs, notes, or any other inappropriate aid.

Students may negotiate with the instructor a 3,000-5,000 word term paper as an alternative to the final written examination. Students should aspire to do papers suitable for publication. The topic should be something like: “Legal Issues [or Implications] in [some aspect of] Medical Care.”

As an alternative to the paper or final examination, students may choose to do five 600-1000 word problems spaced throughout the course. The problems should be typewritten, double-spaced, and error-free. Late papers or problems will be penalized. Graduate quality work and writing are expected. Please do not use a plastic cover.

**Literature Review References:**


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8 From your college education, you are presumed to have knowledge and experience at the level of the following guide for college students: *MLA Handbook for Writers of Research Papers, Seventh Edition*, NYC, NY: Modern Language Association.


Grading (of all course performance) will be based on comparison with the performance of fellow students.

Disability Services Reasonable Accommodations Statement

Reasonable accommodations are available for students who have a documented disability. Please notify the instructor during the first week of class of any accommodations needed for the course. Late notification may cause the requested accommodations to be unavailable. All accommodations must be approved through the University’s disability resource center.

Schedule of Assignments

Due Date
Jan. 5, 3-5 p.m. Introduction
Introduction to law, the legal system, and legal reasoning
Instruction on briefing court cases

Jan. 6, 3-5 p.m. Benchmarks for Measuring Developments in Health Law:
(a) Legal Perspectives on Defining Sickness, Quality, and the Problem of Medical Error; (b) Distributive Justice and Resource Allocation (the Example of Human Organ Transplantation); and (c) the Constitutional Foundation of Public Health Law (Forced Treatment, Isolation, and Quarantine)
Read “Introduction to Health Law... for Non-Law Students” (8 pp.).
Read handout on briefing court cases including sample brief of Wiener v. United States, 357 U.S. 349 (1958).
Furrow, preface and pp. 1-115 (brief cases on pp. 3, 28, 84, 99).

Objectives:
To define sickness, quality, and medical error in various legal contexts.
To understand how the law addresses the problem of medical error.
To understand distributive justice and the allocation of health care resources using the example of human organ transplantation.

Recommended:
Yorker, pp. 40-55 (Feb. 1, 1999).
Joint Commission on Accreditation of Healthcare Organizations, http://www.jcaho.org/general+public/gp+speak+up
The Leapfrog Group, http://www.leapfroggroup.org
Commonwealth Fund: http://whynotthebest.org/
DHHS Hospital Compare: http://www.hospitalcompare.hhs.gov/
Institute for Safe Medication Practices: http://consumermedsafety.org/

Jan. 12, 3-5 p.m.  
**Promoting Quality: Quality Control Regulation through Licensing of Health Care Professionals**
Furrow, pp. 115-158 (brief cases on pp. 117, 120, 132, 141, 150).
Optional problem due (p. 10, 57, 66, 76, 83, 92, 105, or 113).

Objectives:
To determine how law regulates quality through licensing of health care professionals in the contexts of discipline, complementary and alternative medicine, unlicensed providers, and scope of practice.

Jan. 13, 3-5 p.m.  
**The Physician-Patient Relationship: The Contract Between Patient and Physician**
Furrow, pp. 195-229 (brief cases on pp. 195, 203, 212, 219, 222).

Objectives:
To understand the contract between patient and physician including the express and implied contract, physicians in institutions, specific promises and warranties of cure, exculpatory clauses, and partial limitations on the right to sue.

Jan. 20, 3-5 p.m.  
**Informed Consent: The Physician’s Obligation**
Furrow, pp. 230-283 (brief cases on pp. 233, 246, 258, 268, 277, 279).

Objectives:
To understand the origins and legal framework of informed consent, including negligence as a basis of recovery, the disclosure of physician-specific risk information, the disclosure of statistical mortality information, the disclosure of risks of non-treatment, and the disclosure of physician conflicts of interest.

Jan. 22, 3-5 p.m.  
**Confidentiality and Disclosure in the Physician-Patient Relationship**
Furrow, pp. 283-326 (brief cases on pp. 283, 289, 296, 302, 323).
Optional problem due (p. 228, 228-9, 230,258, 267, 296, or 325.)

Objectives:
To analyze causation complexities, damage issues and punitive damages, and exceptions to the legal duty to disclose.
To understand the health care institution’s obligation regarding informed consent.
To understand confidentiality and disclosure in the physician-patient relationship, including breaches of confidence, duties to protect third parties, confidentiality and disclosure of AIDS-related information, and federal medical privacy standards (e.g., HIPAA - Health Insurance Portability and Accountability Act).

Jan. 26, 3-5 p.m.  
**Liability of Health Care Professionals**  
Furrow, pp. 327-386 (brief cases on pp. 327, 342, 357, 364, 371, 381, 381).

Objectives:
To understand how the standard of care is established, including practice guidelines as codified standards of care, examination of expert witnesses, defendant admissions, medical expert plaintiffs, common knowledge, res ipsa loquitur, and strict liability.
To examine judicial balancing of risk and benefit.
To define plaintiff theories of negligent infliction of emotional distress, duties to contest reimbursement limits, and fraudulent concealment and spoliation of evidence.

Jan. 27, 3-5 p.m.  
**Liability of Health Care Professionals (Defenses to a Malpractice Suit) and Reforming the Tort System for Medical Injuries**  
Furrow, pp. 386-436, 539-559 (brief cases on pp. 386, 390, 405, 412, 421, 425). Optional problem due (p. 354, 380, 384, 421, 434, 552) or the following two-part problem:

(a) Define, describe and discuss the extent to which there is a medical malpractice crisis. (b) Identify and discuss what, if anything, should be done about any such medical malpractice crisis.

Objectives:
To define the respectable minority rule, practice guidelines as an affirmative defense, clinical innovation, Good Samaritan acts, and contributory fault of the patient.
To understand causation problems of delayed, uncertain, or shared responsibility in the contexts of the discovery rule, multiple defendants, and the alternative causal tests.
To define the damages innovations of the “loss of a chance” doctrine, and increased risks and “fear of the future”.

Feb. 9, 1-3 p.m.  
**Cost and Access to Health Care in the Health Care Delivery System: The Policy Context, and the Obligation to Provide Care**  
Furrow, pp. 560-637 (brief cases on pp. 600, 603, 604, 613, 623, 632).

Objectives:
To understand the policy context for the problems of health care access and cost.
To understand approaches to expanding access and controlling costs, including: public health insurance, encouraging the purchase of private insurance, cost control regulation, managed competition, managed care, and health savings accounts.
To understand a physician’s and a hospital’s legal duty to treat.
To understand statutory exceptions to the common law: EMTALA, ADA, Section 504 of the Rehabilitation Act, Title VI.
Recommended:

Feb. 10, 3-5 p.m. **Professional Relationships in Health Care Enterprises**
Furrow, pp. 849-908 (brief cases on pp. 852, 859, 865, 874, 879, 885, 895, 900).
Objectives:
To identify legal issues in staff privileges and hospital-physician contracts.
To identify legal issues in managed care contracts for professional services.
To identify legal issues in health care labor and employment, including employment-at-will, the National Labor Relations Act (physician unions), and discrimination law.

Feb. 17, 3-5 p.m. **Fraud and Abuse: Regulatory Control of Providers’ Financial Relationships**
Furrow, pp. 1023-1094 (brief cases on pp. 1025, 1032, 1037, 1058, 1063).
Optional problem due from pp. 560-637, 849-908, or 1023-1094.
Objectives:
To identify legal issues regarding false claims, Medicare and Medicaid fraud and abuse, The Ethics in Patient Referrals Act (Stark I) and Stark II (part of the 1993 Omnibus Budget Reconciliation Act), and state statutes and alternative approaches to referrals and fee-splitting.

Feb. 18, 3-5 p.m. **Bioethics- Legal Issues in Human Reproduction and Birth**
Furrow, pp. 1186-1296 (brief cases on pp. 1210, 1216, 1225, 1250, 1270, 1286).
Objectives:
To understand when human life becomes a legal person.
To understand legal contexts for medical intervention in reproduction (contraception, abortion, sterilization, tort remedies of wrongful birth, wrongful life and wrongful conception).
To understand legal contexts for facilitating reproduction (artificial insemination; in vitro fertilization, egg transfer and embryo transfer).

Feb. 23, 1-3 p.m. **Bioethics- Legal Issues in Fetal Maternal Decisionmaking**
Furrow, pp. 1296-1351 (brief cases on pp. 1297, 1303, 1313, 1330, 1340, 1344).
Objectives:
To understand legal contexts for facilitating reproduction (surrogacy; cloning and stem cell research).
To understand the legal context for fetal maternal decisionmaking.
Feb. 24, 3-5 p.m. **Bioethics- Legal, Social and Ethical Issues in Human Genetics: Defining Death**
Furrow, pp. 1352-1442 (brief cases on pp. 1361, 1372, 1389, 1410, 1425, 1437, 1440).

Objectives:
To identify legal, social and ethical issues in human genetics (legal responses to privacy, confidentiality, discrimination, commercialization).
To understand issues in defining legal death (development of the “brain death” definition; anencephalic infants; religious objections; patient definition; individual choice).

March 2, 1-3 p.m. **Bioethics- Legal Issues in Life and Death Decisions**
Furrow, pp. 1408-1505 (brief cases on pp. 1464, 1467, 1475, 1488, 1497, 1499).
Optional problem due from pp. 1186-1505 (but not the problems on pp. 1262, 1366, 1367, 1371, 1442).
Optional term paper due.

Objective:
To understand the legal context for life and death decisions (principles of autonomy and beneficence; the constitutional “right to die”; the right to die for patients with decisional capacity).

Recommended:
See “Guardianship and Adult Protective Services Reading List”.

March 3, 3-5 p.m. **The “Right to Die” for Children and Newborns; Physician Assisted Death; Interdisciplinary Institutional Review Boards (IRBs) and Ethics Committees**
Furrow, pp. 1505-1613 (brief cases on pp. 1505, 1528, 1537, 1548, 1587).

Objectives:
To understand the right to die for patients without decisional capacity.
To understand the right to die for children and newborns.
To understand criminal and civil liability in right to die cases.
To identify legal issues in physician assisted death.
To understand the legal context for interdisciplinary decisionmaking in health care (IRBs, ethics committees, and advisory committees).

Recommended:
See “Guardianship and Adult Protective Services Reading List”.

FINAL EXAMINATION OR PAPER
Bibliography (Supplemental Reading List)


Clark, “Medication Errors in Family Practice, in Hospitals and After Discharge from the Hospital: An Ethical Analysis,” 32 *Journal of Law, Medicine, and Ethics* 349-357 (Summer 2004).


M. Kapp, Legal Aspects of Elder Care, Sudbury, MA: Jones & Bartlett (2010).


Adverse Events Research

California


New York


Utah and Colorado


E. Thomas, et al., Incidence and Types of Adverse Events and Negligent Care in Utah and Colorado, 38 Med. Care 261 (2000)

International


**Guardianship and Adult Protective Services Bibliography**

*Books*


*Book Chapters*


Articles in Journals


