

HEALTH SERVICES AND THE LAW

PubH 287.10 (Three Credits)

Spring Semester, 2005

Tuesdays 3:00-5:50

Instructors:

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Text: Rosenblatt, Law, and Rosenbaum, *Law and the American Health Care System* Foundation Press, NY, NY (purchase the textbook plus 2001-02 Supplement). **The 2004-2005 update materials and additional materials will be furnished electronically via Blackboard, accessible at www.blackboard.gwu.edu.** The readings can be found under the tab entitled "files." You MUST have a working @gwu.edu e-mail address to gain access to blackboard. There is a link on the homepage that allows you to obtain a colonial mail address if you do not have one.

Office hours: Tuesdays 12:00-2:30 and by appointment.

Description: This course **for non-law degree candidates** focuses on the law and its relationship to the U.S. health care system. This course has been designed to assist future health service managers, public health professionals, and health policy analysts understand the complex interaction between law and health care. The course examines how the law, (including the U.S. and State Constitutions, federal and state statutes and regulations, and judicial opinions) influences – and in turn is influenced by – the health care system. Students will focus on legal issues in health care access, health insurance and employee health benefits, health care legal entitlements, regulation of health care professionals, health care institutions, health insurers and the managed care industry, health care quality, and national health reform.

Objectives: Objectives of the course are as follows: understanding the fundamental principles and processes of the legal system as they relate to the American health care system; understanding the basic legal rights and responsibilities of the relevant stakeholders in the health care system; appreciating the extensive and complex role played by federal and state constitutions, statutes, regulations, and judicial opinions in the day-to-day workings of the health care system; learning to examine and understand legal documents; developing a vocabulary of legal terms in order to facilitate communications between health and legal professionals; and improving skills related to critical analysis in health law and policy.

Grading: Mid term: 40%; final exam: 40%; class participation: 20%.

SYLLABUS

I. Course Overview and Introduction

1. January 18

Hours 1 and 2

Course Overview: The American Legal System and Its Relationship to Health Care

- The relationship between law and public policy
- The role of law: the creation of rights, duties, and remedies
- The Great Pyramid: Private Ordering and the Legal Process
- Sources of law (federalism; content sources of law; judicial versus legislative and regulatory law)
- Bodies of law (contract, tort, criminal, administrative, judicial process, property, trusts, Constitutional) and their relationship to the health care system
- The judicial system – power, politics, and policy -- and the role of the judiciary: *Marbury v Madison*
 - Key concepts: jurisdiction (the power to hear a case, mandatory and prudential)
 - Key concepts: right of action (the right to bring a private case)
- Examples of significant questions in health law:
 - Should there be a right to *health care* and a corresponding duty to furnish health care?
 - Should there be a legal right to *health care financing* and a corresponding obligation to secure health care financing?
 - Should persons have legal rights over certain personal decisions? (e.g., abortion, the right to refuse treatment, the right to assistance in dying) If these rights exist, under what circumstances should they be limited?
 - When should lawmakers regulate market conduct, and how regulatory should lawmakers be? Should the law presume unregulated “free” market? How high a hurdle should regulators have to overcome in setting standards? (Think insurance standards)
 - How deferential should the courts be when they examine the legality of legislation? If lawmakers were to set a medical liability standard which makes physicians liable only for gross negligence in the case of Medicaid beneficiaries, should this distinction be permitted?
 - When should individuals have the right to sue government agencies for violations of federal law?

Hour 3

How to read a case

II. Access to Health Care and the Law

2. January 25: Health Care Access in a Market-Based Health System: The No-Duty Principle and Using Law to Create Modest but Enforceable Rights to Access

Hours 1 and 2:

- The “no duty” principle
 - Hurley v Eddingfield ; Campbell v Mincey and notes (Main text, pp. 42-54)
 - S. Rosenbaum, “The Impact of U.S. Law on Medicine as a Profession, *JAMA* 2003 (**HANDOUT#1**)
- Federal efforts to create a legal duty to screen and treat in medical emergencies: The Emergency Treatment and Active Labor Act (EMTALA)
 - Statute and history (Supplement pp. 11-19)
 - The duty to screen: Power v Arlington Hospital (Main text, pp. 70-76)
 - The duty to stabilize: In the Matter of Baby K (**HANDOUT#2**)
 - EMTALA and medical malpractice, distinguished: Summers v Baptist Medical Center (text p. 77-81)
 - Excerpts from the new EMTALA regulations (**HANDOUT #3**)

Hour 3:

Finding federal statutes, regulations, and policy statements: EMTALA

3. February 1: Using Law to Create Systems of Legally Accessible Care: Public Hospitals and Health Centers

Hour 1

Finding state laws

Hours 2 and 3

Guest lecturer: Adjunct Assistant Professor Katherine Hayes, National Association of Public Hospitals and Health Systems

4. February 8: Civil Rights Laws and Health Care Access

Hours 1 and 2

Access to Health Care as a Civil Right: Title VI of the 1964 Civil Rights Act and the Americans with Disabilities Act

- Title VI of the 1964 Civil Rights Act:
 - Statute and regulations (**HANDOUT #4**)

- LEP Guidelines (**HANDOUT #5**)
- The Americans With Disabilities Act (ADA)
 - ADA Statutory excerpts (**HANDOUT#6**)
 - Bragdon v Abbott (Supplement pp. 56-71)
 - Olmstead v L.C. (Supplement pp. 752-768)

Hour 3: Legislative History:
The ADA

III. Financing Health Care: The Law of Health Insurance, Employee Health Benefits, and Public Health Care Entitlements

5. February 15: Private Health Insurance and Employer-Sponsored Health Benefit Plans

- State regulation of private health insurance
 - Introduction to state insurance regulation (Main text, pp. 139-147)
 - Wohlers v Bartgis (2001-2002 Supplement, pp. 85-92)
- The Employee Retirement Income Security Act (ERISA) and key concepts of settlor function and fiduciary duty
 - Main text 159-161
 - 171-173
 - Supplement 102-103
- When are state laws preempted under ERISA §514 and when are they “saved”?
 - New York State Conference of Blue Cross and Blue Shield Plans v Travelers Insurance Co. (Supplement pp. 113-122)(the “relate to” test)
 - Kentucky Association of Health Plans v Miller (the savings clause test) (2004-2005 Supplement)

6. February 22: ERISA and Individual Enforcement of Insurance Rights

- When does ERISA §502 foreclose access to state law remedies?
 - Pilot Life v Dedeaux (Supplement pp. 103-113)
 - Moran v Rush Prudential Health System (2004-2005 Supplement)
- Challenging decisions by ERISA plan fiduciaries: macro and micro problems
 - Condition-specific coverage limitations and exclusions: McGann v H and H Music (Main text,

- pp. 201-209)
- The legality of condition-specific limitations and exclusions under ERISA and the ADA: Doe v Mutual of Omaha (Supp. pp. 237-246)
- Denials of benefits: Bedrick v Travelers Health Insurance (Supplement, pp. 372-377)

7. March 1: Medicaid and Medicare

Hour 1 and 2: Medicaid

- Overview: Medicaid slides (**HANDOUT #7**)
- When do Medicaid state plan requirements create legally enforceable rights? Wilder v Virginia Hospital Association and notes (Main text, pp. 440-456); Westside Mothers v Haveman (2004-05 Supplement)

Hour 3:

State Medicaid Manual, Medicaid Directors Letters, and Other CMS documents

8. March 8: Medicare

Hours 1 and 2

- Kaiser Family Foundation materials (**HANDOUT#8**)
- Coverage decisions and reviewability: Heckler v Ringer and notes (**HANDOUT#9**)
- Medicare Prescription Drug Improvement and Modernization Act (**HANDOUT#10**)

Hour 3

Reading regulations: Medicare Modernization Act Prescription Drug Regulations

(Get Midterm assignment)

9. March 15: Spring Break

IV. The Law and Health Care Quality

10. March 22: The Professional Standard of Care

(Midterm assignment due)

Overview; the Professional Standard of Care, and Informed Consent

- Overview: Main text, pp. 823-841, including David Hilficker's story
- The professional standard of care, the locality rule, and the emergence of a national standard of

care: Main text, pp. 842-851 When has a national standard emerged?: Washington v Washington Hospital Center (pp. 852-856). Overriding the professional standard of care: The T.J. Hooper (pp. 861-863)

- Informed consent: Canterbury v Spence and Moore v Regents (pp. 892-906)
- HIPAA and the obligation of health care providers regarding personal health information (**HANDOUT #11**)
- The professional standard of care and the poor (the Siliciano essay, main text, p. 890)
- Sources of evidence for the professional standard of care (practice guidelines, accreditation standards, the HIPAA privacy rule)

11. March 29: The Legal Liability of Health Care Corporations for Health Quality

- Medical Care Corporations: Corporate and Vicarious Liability
- Quality Regulation Through Licensure and Peer Review
 - Main text 913-974 and cases therein
- Health Care Quality Improvement: the legal effects of internal and external quality improvement oversight and the problem of “privilege”
- “Pay for Performance” (**HANDOUT #12**)

V. The Evolution of Health Insurance and its Legal Ramifications

12. April 5. An Overview of A transformed Health Insurance System

- The transformation to managed care (Main text pp. 543-587): structural and care process issues and their legal implications
- Key elements of modern insurance products:
 - Contractual duty of care
 - Coverage design: traditional and “consumer driven”
 - Network selection and de-selection
 - Cost containment and payment incentives
 - Quality improvement and payment incentives
 - Specialty coverage products: disease management, behavioral health, prescription drug plans
- Key issues in managed care law
 - Physician incentive plans: Shea v Esenstein (Supplement pp. 306-308)
 - Network selection and de-selection (recap Kentucky Asso. of Health Plans v Miller)
 - External review of health plan decisions: Recap Rush Prudential v Moran; Medicaid managed care decisions: JK v Dillenberg (main text pp. 465-472) ; Medicare grievance and appeals process (**HANDOUT #13**)

13. April 12: Key Issues in an Evolving Insurance System: Insurer Liability for Medical Injuries

- The two hats of managed care, and corresponding liability theory
 - (a) negligent medical treatment (Boyd v Albert Einstein, main text, pp. 1038-1043); Jones v Chicago HMO (Supplement pp. 687-699)
 - (b) negligence in coverage decision making and plan administration:
 - (Wickline v State of California (Main text pp. 1046-1054); McEvoy v Group Health (Supplement pp. 701-708)
- ERISA Preemption of State Law Liability
 - Corcoran v United Health Care (main text pp. 1002-1029); Dukes v U.S. Healthcare (Main text pp. 1019-1029)

VI. Law and the Business of Health Care

14. April 19: Antitrust

- Antitrust law
 - Overview, horizontal arrangements, vertical networks, and market power and monopolization (Main Text pp. 647-687 and cases therein)
 - Peer review and staff privileges (Main text pp. 708-723 and cases therein)

15. April 26: Health Care Fraud and Abuse

Hours 1 and 2

- Fraud and abuse (main text pp. 772-778; 785-796; Humana v Forsythe in 2001-2002 Supplement)

Give out final assignment: Due by May 8.