

# LAW, SOCIAL CHANGE, AND HEALTH SERVICE POLICY

**HS/PH 235**  
**Fall Quarter - 2004**  
**Mondays and Wednesdays, 5-7 p.m.**  
**Room 41-235 CHS**

**Instructor: Ruth Roemer, J.D.**

- Purpose: This course examines legal issues and legislation affecting health services in order to develop the ability of public health students to recognize legal issues and the capacity of the law to serve as a tool for the authorization, organization, and implementation of sound health programs.
- Monday  
Oct. 4 I. The role of law in society. The purposes of health law. The U.S. legal system. Use of materials.
- Wednesday  
October 6 II. Constitutional and legal bases for governmental action related to health. Federal powers in health. The State police power and the power of the legislature to delegate authority. The power to make rules and regulations. Basic public health activities: compulsory reporting laws, immunization, quarantine, compulsory medical examination; fluoridation; searches and seizures. Liability of public health officers.
- Monday  
October 11 III. Individual rights as a limitation on governmental powers in matters concerning health. Public health and the Bill of Rights. Preemption. Due process and equal protection of the law. The right to privacy. The regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- Wednesday  
October 13 IV. Regulation of health-care facilities. The Hill-Burton Act and facility licensure. Joint Commission on Accreditation of Health Care Organizations. Impact of Medicare on facility standards. Liability of hospitals for the quality of care. Access to services, Hill-Burton obligations, and enforcement of civil rights. The Emergency Medical Treatment and Active Labor Act of 1986. Integrated health care delivery systems. Mergers of for-profit and non-profit facilities. Financing of facilities as a regulatory and cost-containment mechanism. Tax exemption of non-profit facilities.
- Monday  
October 18 V. Regulation of health personnel. Legal and voluntary mechanisms. Licensure and its effects on occupational choice, scope of practice, health care costs, and quality of care. Ensuring continuing competence. Advertising by health professionals. Regulation of nurse practitioners, physicians' assistants, and new types of health personnel. Public accountability in credentialing.
- Wednesday  
October 20 VI. Regulation of food, drugs, and equipment. The Federal Food, Drug, and Cosmetic Act: history, provisions, and enforcement. State role in food and drug regulation. FDA jurisdiction over nicotine as a drug held invalid in *FDA v. Brown and Williamson*. Problems of consumer protection. Product liability.
- Monday  
October 25 VII. Medicare, Social Security, and Children's Health Insurance. Basic provisions of Medicare, Medicare + Choice(Medicare Advantage), and proposed changes in

Medicare. Pharmaceutical benefits. Social Security and the baby boomers. Is there a crisis? Proposals for reform. Development of Children's Health Insurance. Health Insurance Portability and Accountability Act of 1996.

Wednesday  
October 27

VIII. Medicaid, the 1996 Welfare Law and the uninsured. Government entitlement programs for the aged, the poor, and the disabled. Issues of eligibility, services, cost-sharing, utilization controls, quality assurance, reimbursement, and cost containment. The uninsured and emergency care. Legal immigrants and the undocumented. The role of the federal and state governments in Medicaid. Guest Lecturer: Lucien Wulsin, J.D.

Monday  
November 1 IX

Long Term Care. Populations served Types of long-term care. Financing, Regulation. Quality. Rights to long-term care of persons with disabilities. Olmstead v. L.C. Guest Lecturer: Aram Dobalian, Ph.D., J.D.

Wednesday  
November 3

X. Family planning and sterilization. The right to privacy. Sale and advertising of contraceptives. Consent of minors and access of adolescents to birth control. Voluntary sterilization and informed consent. Federal sterilization regulations. Genetic counseling and screening. Sex selection. Legislation on sex education and information. Industrial safety and fetal protection policies. Emergency contraception.

Monday  
November 8

XI HIV/AIDS. Measures for the prevention of the spread of HIV/AIDS. Protection of the blood supply. Issues relating to testing, reporting, partner notification, and special population groups (prisoners, immigrants). Americans with Disabilities Act. Rights and duties of health care professionals. OSHA regulations. Importance of confidentiality and non-discrimination. Prevention through education and other strategies. Guest Lecturer: David I. Schulman, J.D.

Wednesday  
November 10 XII

Anti-trust law and legal constraints on entry into the health care field. Historical background of Sherman and Clayton Acts. Acquisitions and mergers. Denial of staff privileges to physicians and non-physicians. Requirement for fair procedures. Anti-trust law and inter-institutional arrangements, PPOs, HMOs, provider sponsored organizations, provider service networks, and physician sponsored HMOs. Guest Lecturer: Stanton J. Price, J.D.

Monday  
November 15 XIII

X. Abortion laws throughout the world. Legalization of abortion in the United States. Roe v. Wade and Dre. v. Bolton. Spousal consent. Parental consent and notification laws. Legal rights and duties of personnel and facilities. Medicaid funding of abortions. Shortage of abortion providers. Viability and standard of care. The Webster case. Planned Parenthood of Southeastern Pennsylvania v. Casey. Clinic violence and harassment. Merger of secular hospitals with Catholic hospitals. Refusal clauses.

- Wednesday  
November 17 XIV
- Legal Issues in managed care. Definition of managed care and historical development. Types of managed care organization. Cost containment and physician autonomy. Legal theories of liability. Impact of the Employee Retirement Income Security Act (ERISA), including the Preemption clause and the Savings clause, and the Deemer clause. Benefit determinations, medical decisions, and liability of managed care organizations. State health policy and ERISA. Trends in managed care.
- Monday  
November 22 XV
- Legal aspects of mental illness. Mental hospital admission laws and due process. The right to treatment and the right to care in the least restrictive alternative setting. Mental hospital admissions of minors. De-institutionalization. Involuntary outpatient admissions, The 1996 Federal mental health parity law. Right of the mentally ill to job protection under the Americans with Disabilities Act.
- Wednesday  
Nov. 24
- XVI. Tobacco control legislation. Importance and types of legislation. WHO Framework Convention on Tobacco Control. Issues: taxation, advertising and promotion, environmental tobacco smoke and control of smoking in public places and the workplace, preventing teen smoking, information, education, and cessation. Preemption. Priorities. Litigation.
- Monday  
Nov. 29
- XVII. Regulation of the quality of care. IOM Report, "To Err is Human" Peer Review of Utilization and Quality of Health Care Services (PRO) Program and control through the financing mechanism. The Health Care Quality Improvement Act of 1986. Influence of health maintenance organizations and preferred provider organizations and control through the pattern of delivery. Impact of capitation programs on quality. Malpractice actions and control through the courts. Alternatives to the tort system. Guest Lecturer: Stanton J. Price, J.D.
- Wednesday  
December 1
- XVIII. Patients' rights. Informed consent. Right to emergency care. Right to choice of treatment. Right to refuse treatment. Confidentiality. Right to privacy. Right to standard of care. Medical records: ownership, use, and access to medical records by the patient and third parties. Balancing the interest in freedom of information and the right to privacy.
- Monday  
Dec. 6
- XIX. Ethical-legal issues. Clinical experimentation. Issues of life and death. Physician-assisted suicide. Organ transplants. Allocation and rationing of health care. New conceptions. Ethical issues in managed care and the patients' rights legislation.
- Wednesday

December 8 XX. Presentation of student papers.

**Examination Monday, December 13, 2004, 8 AM - 11 AM**

**Required Texts:** Kenneth R. Wing, The Law and the Public's Health, 5th edition. Health Administration Press, 1995.

Cases and Materials, available from Westwood Copies, Inc., 1001 Gayley Avenue, #1004, Los Angeles, Tel# (310) 208-3233.

**Optional Texts:** Lawrence O. Gostin, Public Health Law: Power, Duty, Restraint, University of California Press, Berkeley, 2000.

David Kessler, A Question of Intent: A Great American Battle with a Deadly Industry, Public Affairs, New York 2001. (This is a page-turner.)

Rand E. Rosenblatt, Sylvia A. Law, and Sara Rosenbaum, Law and the American Health Care System, The Foundation Press, NY, NY, 2001-2002 Supplement.

Frank P. Grad, Public Health Law Manual, 2nd edition, American Public Health Association, Washington, D.C., 1990.

Ruth Roemer and George McKray (Eds.) Legal Aspects of Health Policy: Issues and Trends, Greenwood Press, Westport, Conn., 1980.

**Note:** The optional texts are on reserve at the Biomedical Library.

One copy of each of the required texts is on reserve at the Biomedical Library.

**Class Work:** Issue Paper (8-10 pages) on a legal or legislative issue, setting forth a problem in health law or policy, differing points of view, options for solution, your recommendation and reasons, and including references. Due November 17.

Final Examination (both short answer and essay questions).

Grading. The paper counts for 40%, class participation for 10%, and the exam for 50% of the grade.

# LAW, SOCIAL CHANGE, AND HEALTH SERVICE POLICY

## HS/PH 235

### Fall Quarter - 2004

### Cases and Materials

- I. Oct. 4      **ROLE OF LAW: USE OF MATERIALS**  
Wing, Ch. 1, The Law and the Legal System; Ch. 6, The Scope of Administrative Agencies in Matters affecting Health and Health Care, pp. 169-199;  
Constitution of the United States  
How to Read Legal Citations  
Lawrence O. Gostin, "Public Health Law in a New Century: Law as a Tool to Advance the Community's Health," JAMA, Vol. 283, No. 21, June 7, 2000, pp. 2837-2841  
Eric Foner, "Our Living Constitution," In These Times, August 11, 2003.
- II&III October 6&11      **GOVERNMENTAL ACTION AND INDIVIDUAL RIGHTS**  
Wing, Ch. 2, The Power of the State Governments in Matters affecting Health Care, pp. 19-44  
Grad, Ch. 7, Searches and Inspections: Public Health and the Fourth Amendment  
Jacobson v. Massachusetts  
Schuringa v. City of Chicago  
State v. Armstrong  
Euclid v. Ambler Realty Co.  
Camara v. Municipal Court of City and County of San Francisco  
See v. City of Seattle  
Buck v. Bell  
In re Osborne  
Georgetown College Case  
Lawrence O. Gostin, "Public Health in a New Century: Public Health Powers and Limits," JAMA, Vol. 283, No. 22, pp. 2979-3122, June 14, 2000.  
Lawrence O. Gostin, "Public Health in a New Century: Public Health Regulation: A Systematic Evaluation," JAMA, Vol. 283, No. 23, pp. 3118-3121, June 21, 2000.
- IV. October 13      **REGULATION OF HEALTH-CARE FACILITIES**  
Wing, Ch. 5, Government Regulation of Health Care, pp. 125-167  
Rosenblatt, Law, & Rosenbaum, pp. 63-93; 913-939.  
Rosenblatt, Law and Rosenbaum, "The Emergency Medical Treatment and Active Labor Act," pp. 63-70.  
Darling v. Charleston Memorial Hospital  
Rosenblatt, Law and Rosenbaum, "Structuring the Hospital Quality Assurance Process: Substance, Procedure, and Immunity," pp. 943-961
- V. October 18      **REGULATION OF HEALTH PERSONNEL**  
Wing, Ch. 5, Government Regulation of Health Care, pp. 125-167  
Rosenblatt, Law, & Rosenbaum, pp. 967-996; 1271-1274  
Roemer and McKray, Ch. 4, pp. 97-128  
Barber v. Reinking  
Virginia State Board of Pharmacy v. Consumers Council  
Magit v. Board of Medical Examiners  
Sermchief v. Gonzales

- VI. October 20 REGULATION OF FOOD, DRUGS AND EQUIPMENT  
 Roemer and McKray, Ch. 6, pp. 173-211 (on reserve)  
 Sindell v. Abbott Laboratories  
 Brown v. Superior Court of the City and County of San Francisco  
 U.S. Food and Drug Administration, "Nicotine In Cigarettes And Smokeless Tobacco Is A Drug and These Products Are Nicotine Delivery Devices under the Food, Drug, and Cosmetic Acts. Jurisdictional Determination," August 1996.  
 FDA v. Brown and Williamson Tobacco Company  
 Kaiser Family Foundation, "Prescription Drug Coverage for Medicare Beneficiaries: A Summary of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003  
 National Committee to Preserve Social Security and Medicare, "An Inside Look at the Medicare Modernization Act: Medicare Benefits"  
 David G. Savage, "Drug Price Breaks upheld," LA Times, May 20, 2003
- VII. October 25 MEDICARE, SOCIAL SECURITY, AND CHILDREN'S HEALTH INSURANCE  
 Wing, pp. 95-6, 306-308  
 Bruce C. Vladek, "Learn Nothing, Forget Nothing - The Medicare Commission," The New England Journal of Medicine, vo. 345, no. 6, August 9, 2001, pp. 456-458.  
 Thomas Bodenheimer et al., Rebuilding Medicare for the 21<sup>st</sup> Century: A Challenge for the Medicare Commission and Congress, The National Campaign to Protect, Improve, and Expand Medicare, February 1999  
 "Unproductive Medicare Bashing, Editorial, New York Times, August 20, 2002, p. A20.  
 Geoffrey Kollman, "Social Security: Recommendations of the 1994-1996 Advisory Council on Social Security," CRS Report for Congress, Congressional Research Service, The Library of Congress, January 10, 1997.  
 Cindy Mann, Diane Rowland and Rachel Garfield, "Historical Overview of Children's Health Care Coverage," The Future of Children, vol. 13, no. 1, pp 31-53, Spring 2003
- VIII. October 27 MEDICAID, THE 1996 WELFARE LAW, AND THE UNINSURED  
 Wing, Ch. 4, Social Welfare in the United States: The Rise and Fall of Judicially Created Entitlements, pp. 93-124  
 Rosenblatt, Law, & Rosenbaum, pp. 368-466 and Supplement pp. 124-125, 133  
 Memorial Hospital v. Maricopa County  
 Children's Defense Fund, Health Provisions in the Welfare Bill  
 Lucien Wulsin's website: [www.itup.org](http://www.itup.org)
- IX. November 1 LONG TERM CARE. Rosenblatt, Law, and Rosenbaum, pp. 1139-1178; Supplement pp. 742-768 including Olmstead v. L.C.
- X. November 3 FAMILY PLANNING, STERILIZATION, AND THE RIGHT TO PRIVACY  
 Wing, Ch. 3, The Police Powers and the Evolution of the Right to Privacy, pp. 45-91  
 Griswold v. Connecticut  
 Eisenstadt v. Baird  
 Carey v. Population Services International  
 Lawrence v. Texas

- XI. November 8 HIV/AIDS  
Wing, pp. 43-44  
Grad, Ch. 5, pp. 66-83  
School Board of Nassau County v. Arline  
Bragdon v. Abbott  
David I. Schulman, "The Dentist, HIV and the Law: Duty to Treat, Need to Understand," California Dental Association Journal, November 27, no. 7, July 1999, pp. 545-551.
- XII. November 10 ANTI-TRUST LAW  
Wing, Ch. 7, Government Enforcement of Competition: The Anti-Trust Laws, pp. 201-249  
Goldfarb v. Virginia State Bar  
Arizona v Maricopa Medical Society
- XIII. November 15 ABORTION  
Wing, Ch. 3, and pp. 103-121  
Rosenblatt, Law, & Rosenbaum, pp. 1281-1303  
Roe v. Wade  
Doe v. Bolton  
Poelker v. Doe  
Harris v. McRae  
Planned Parenthood of Southeastern Pennsylvania v. Casey  
Adam Sonfield, "New Refusal Classes Shatter Balance between Provider 'Conscience', Patient Needs," The Guttacher Report." August 2004, pp. 1-3.
- XIV. November 17 LEGAL ISSUES IN MANAGED CARE  
Wing, ch. 9, The Law and Managed Care, pp. 293-324  
Rosenblatt, Law, & Rosenbaum, pp. 543-647, 159-292, Supplement, pp. 280-506, especially pp.281-295, p. 320, pp.472-47.  
Wickline v. California  
Wilson v. Blue Cross of Southern California  
New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance  
Rudy  
DeBuono v. NYSA-ILA Med. Serv. Fund  
Pegram v. Herdrich  
Linda Greenhouse, "Justices Limit Ability to Sue Health Plans," NY Times, June 24, 2004  
Aetna v. Davila, Cigna v. Calad
- XV. November 22 MENTAL ILLNESS  
Wing pp. 41-3  
O'Connor v. Donaldson  
Wyatt v. Aderholt  
Parham v. J.R.  
John V. Jacobi, "Parity and Difference: The Value of Parity Legislation for the Seriously Mentally Ill." American Journal of Law and Medicine. Vol. 29, Nov. 2&3, pp. 185-201, 2003
- XVI. November 24 TOBACCO CONTROL LEGISLATION  
Ruth Roemer, "Alcohol and Tobacco Legislative Policies in Multicultural Communities." In Snehendu B. Kar, Substance Abuse Prevention: A Multicultural

Perspective. Baywood Publishing Company, Amityville, NY 1999.

"Agenda for Action," In Curbing the Epidemic: Governments and the Economics of Tobacco Control, The World Bank, 1999.

Robert L. Rabin, "The Third Wave of Tobacco Tort Litigation," in Robert L. Rabin and Stephen D. Sugarman, Regulating Tobacco, pp. 176-206.

XVII November 29 QUALITY OF CARE

Wing, Ch. 8, Malpractice: Liability for Negligence in the Delivery of Health Care, pp. 251-292

Wing, PROs, pp. 145, 155-156

Rosenblatt, Law, & Rosenbaum, pp. 943-967

Cobbs v. Grant

Truman v. Thomas

Havighurst, Blumstein, and Brennan, "Two IOM Reports on Quality," pp. 112-116.

XVIII December 1 PATIENTS' RIGHTS

Wing, Ch. 8, Malpractice: Liability for Negligence in the Delivery of Health Care, pp. 251-292, 320-321

Canterbury v. Spence

Matter of Seiferth

Wallace v. Labrenz

Fitzgerald v. Porter Memorial Hospital

Tarasoff v. Regents of the University of California (Wing, pp. 275, n. 5)

Helling v. Carey

California Confidentiality of Medical Information Act

George J. Annas, HIPAA Regulations-A New Era of Medical-Record Privacy? New England Journal of Medicine 348:15, pp. 1486-1490

XIX. December 6 ETHICAL-LEGAL ISSUES

Wing pp. 15-16; 79-92

In re Quinlan

Bouvia v. Superior Court

Cruzan v. Missouri Department of Health (Wing, pp. 104-7, 111nn6,7)

Washington v. Glucksberg

Vacco v. Quill

Steve P. Calandrillo, "Legislative Activity: Physician Assisted Suicide under Managed Care," The Journal of Law, Medicine, and Ethics, Vol. 26: 1, Spring 1988, pp. 72-75

Durable Power of Attorney for Health Care Decisions

XX. December 8 PRESENTATION OF STUDENT PAPERS