

LAW, SOCIAL CHANGE, AND HEALTH SERVICE POLICY

HS/PH 235
Fall Quarter - 2002
Mondays and Wednesdays, 5-7 p.m.
Room 41-268 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
Sept. 30 I. The role of law in society. The purposes of health law. The U.S. legal system. Use of materials.
- Wednesday
October 2 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 7 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.
- Wednesday
October 9 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. Reimbursement and uncompensated care. 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 14 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 and physicians' assistants and new types of health personnel. Public accountability in credentialing.
- Wednesday
October 16 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 21 VII. Medicare, Social Security, and Children's Health Insurance. Basic provisions of Medicare, Medicare + Choice, 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 23 VIII. Medicaid and the 1996 Welfare Law. 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. Current health issues in the welfare law. Guest Lecturer: Lucien Wulsin, J.D.

Monday

October 28 IX. 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 and education. Pre-emption. Priorities. Litigation.

Wednesday

October 30 X. 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.

Monday

November 4 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.

Monday
November 6 XII. Legal issues in managed care. Federally qualified HMOs, Medicare and Medicaid regulation. ERISA and state regulation, liability of managed care organizations for delayed or denied care. Conflicts of interest. Clinical decision making and medical necessity. Coverage of experimental procedures. Procedural protections for patients and providers and patients' rights legislation.

Monday
November 11 **HOLIDAY**

Wednesday
November 13 XIII. 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 18 XIV. 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.

Wednesday
Nov. 20 XV. Abortion laws throughout the world. Legalization of abortion in the United States. Spousal consent. Informed 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.

Monday
Nov. 25 XVI. 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.

Wednesday
Nov. 27 XVII. 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. 2 XVIII. 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 4 XIX. Presentation of student papers.

Examination Monday, December 9, 2002, 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, Westbury, NY, 1997 and 1998 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 18.

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.

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HS/PH 235 Fall Quarter - 2002 Cases and Materials

- September 30 I. **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.
- October 2&7 II & III. **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.
- October 9 IV. **REGULATION OF FACILITIES**
Wing, Ch. 5, Government Regulation of Health Care, pp. 125-167
Rosenblatt, Law, & Rosenbaum, pp. 63-93; 93-129; 913-939; 1139-1216; Supplement, pp. 133-135, 1-5.
Darling v. Charleston Memorial Hospital
Utah County v. Intermountain Health Care (Annas et al, pp. 74-75)
- October 14 V. **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

- October 16 VI. REGULATION OF FOOD AND DRUGS
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.
Roemer, "Regulating Tobacco to Protect Children and Adolescents."
FDA v. Brown and Williamson Tobacco Company
Jennifer Washburn, "Undue Influence: How the Drug Industry's Power Goes Unchecked and Why the Problem is likely to Get Worse," The American Prospect, August 13, 2001, pp. 16-18.
Jerome P. Kassirer and Robert Reisman, MD, A Prescription for Industry Control," The American Prospect, August 13, 2001, pp. 18-22.
- October 21 VII. MEDICARE, SOCIAL SECURITY, AND CHILDREN'S HEALTH
INSURANCE
Wing, pp. 95-6, 306-308
Rosenblatt, Law, & Rosenbaum, pp. 14-16, 374-377, 407-410, 613-619; Supplement, pp. 94-98, 113-124, 135-138, 195-204
Janet O'Keeffe and Jo Ann Lamphere, "Saving Medicare," Issues in Science and Technology, Summer 1998, pp. 56-72
Study Finds Medicare Benefits Can Be Improved, Cost Burdens Reduced, The Commonwealth Fund Quarterly, Spring 2001. Review of a study by Stephanie Maxwell, Marilyn Moon, and Matthew Storeygard of the Urban Institute, "Reforming Medicare's Benefit Package: Impact on Beneficiary Expenditures."
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.
Nicholas Confessore, "This Is Your Party on Drugs," The American Prospect, July 15, 2002, pp. 18-19.
"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.
- October 23 VIII. MEDICAID AND THE 1996 WELFARE LAW
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 1996 Welfare Law
- October 28 IX. 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.

- October 30 X. 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
- November 4 XI. HIV/AIDS
Wing, pp. 43-44
Rosenblatt, Law, & Rosenbaum, pp. 1216-1253
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.
- November 6 XII. 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. 145-146, 156-187, 219-252
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
- November 11 **HOLIDAY**
- November 13 XIII. ANTI-TRUST LAW
Wing, Ch. 7, Government Enforcement of Competition: The Anti-Trust Laws, pp. 201-249
Rosenblatt, Law, & Rosenbaum, pp. 647-772; Supplement, pp. 194-195
Goldfarb v. Virginia State Bar
Arizona v. Maricopa County Medical Society (Annas et al., pp. 827-832)
- November 18 XIV. 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
Rosenblatt, Law, & Rosenbaum, 1255-1281, 1329-1335
Griswold v. Connecticut
Eisenstadt v. Baird
Carey v. Population Services International
Bowers v. Hardwick

- November 20 XV. ABORTION
 Wing, Ch. 3, and pp. 103-121
 Rosenblatt, Law, & Rosenbaum, pp. 1281-1303 and Supplement pp. 309-314
 Roe v. Wade
 Doe v. Bolton
 Poelker v. Doe
 Harris v. McRae
 Planned Parenthood of Southeastern Pennsylvania v. Casey
- November 25 XVI. MENTAL ILLNESS
 Wing pp. 41-3
 O'Connor v. Donaldson
 Wyatt v. Aderholt
 Parham v. J.R.
- November 27 XVII. 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
- December 2 XVIII. ETHICAL-LEGAL ISSUES
 Wing pp. 15-16; 79-92
 Rosenblatt, Law, & Rosenbaum, pp. 1113 -1138
 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
- December 4 XIV. PRESENTATION OF STUDENT PAPERS