Health Law Advocacy

3 credits - Spring Quarter 2014
Tuesday/Thursday, 8:50-10:20am

Co-Instructors:

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Course description: This three-credit interdisciplinary course uses experience-based learning to explore select aspects of legal advocacy on behalf of vulnerable patients and the confluence of legal, ethical, and practical issues surrounding surrogate decision-making in the healthcare setting. The course will emphasize pragmatic problem-solving strategies for vulnerable people in need of assistance.

Course objectives: Students will receive an introduction to the legal issues that commonly arise for vulnerable persons in the healthcare setting. They will develop a framework for resolving challenging health care consent issues. Students will also practice the skills necessary to provide guidance and advocacy in select legal counseling and advocacy situations, including guardianship proceedings, in a supportive and congenial setting.

Course Grading: Grading will be based on: (1) participation in class discussion and class exercises/simulations (20%); one written assignment (30%); a written brief prepared for the final mock guardianship hearing (30%); and performance during mock hearings (20%). There will be no final exam.

Because so much of the grade depends upon class participation, attendance is critical to success in the course. With limited exceptions for legitimate emergencies, any absences must be pre-approved and make-up work may be assigned.

Courtroom observation: Each student must observe at least 45 minutes of court proceedings in the King County Superior Court Ex Parte Department during the regular guardianship calendar (10:30am, Monday-Friday) or during an afternoon when a guardianship hearing will be taking place. Scheduling is at the discretion of the student, but the observation must be completed before the first scheduled mock guardianship hearings in class (see syllabus, below). Students are strongly encouraged to dress professionally when attending court.

Varied roles in all mock hearings: Each student will not only serve as counsel for one of several interested parties in mock guardianship hearings, but also play other roles as needed, including the role of allegedly incapacitated person, guardian ad litem, interested family member, health care provider, etc.
Required Texts. There is no required text. Course materials are composed of a variety of scholarly and newspaper articles; cases; real and hypothetical fact patterns; and other materials; which will be available on the course website or online, or distributed by the instructors.

Disability-related needs: To accommodate any academic needs for assistance due to disability, please contact Disability Resources for Students (DRS) at 206-543-8924 (voice) or 206-543-8925 (TTY). Please also contact one of the instructors to discuss any accommodations.
Syllabus

Part I – Legal Advocacy for Vulnerable Patients

April 1: Course Introduction
- Introduction to the course, instructors and students
- Introductory discussion on the social determinants of health

April 3: The Social Determinants of Health
- With Guest Lecturer Brian Johnston, MD, Chief of Pediatrics, Harborview Medical Center, Associate Professor of Pediatrics and Adjunct Associate Professor of Health Services, University of Washington

Week 1 Readings (For April 1 and April 3 classes):

   Robert Wood Johnson Foundation Commission to Build a Healthier America, “Time to Act: Investing in the Health of Our Children and Communities” (Jan 13, 2013) (updating 2009 recommendations). (Review content at this page and links titled “Explore the recommendation below” and “Explore the charts and graphics.”)

View (for April 1 and April 3 classes):
   a. Watch introductory episode: In Sickness and In Wealth (56 min.) How does the distribution of power, wealth and resources shape opportunities for health?
   b. Choose two of the following:
      • When the Bough Breaks (29 min.) Can racism become embedded in the body and affect birth outcomes?
      • Becoming American (29 min.) Latino immigrants arrive healthy, so why don’t they stay that way?
      • Place Matters (29 min.) Why is your street address such a strong predictor of your health?
      • Not Just a Paycheck (30 min.) Why do layoffs take such a huge toll in Michigan but cause hardly a ripple in Sweden?
April 8: Introduction to the Medical-Legal Partnership Concept and Overview of the Areas of Legal Advocacy Needed for Vulnerable Patients

Overview of the Medical-Legal Partnership concept, the work being done by the Washington Medical-Legal Partnership and the areas of advocacy legal aid attorneys commonly encounter in the medical setting. With Guest Lecturer Scott Crain, JD of the Washington Medical Legal Partnership.

Reading:

A. The Medical-Legal Partnership Model
4. LegalHealth, “Legal Care Good for Patients, Good for Hospitals’ Bottom Lines” (Feb. 26, 2007)

B. The Washington Medical Legal Partnership
4. *Health Care Authority Approves ABA Therapy for Medicaid Children Diagnosed with Autism,* Washington State Health Care Authority, Nov. 1, 2012 (1 page)
April 10 - Overview of Washington State and Federal Health Insurance/Benefits

- With Guest Lecturer from the Northwest Health Law Advocates
- Overview of Washington State, federal and private health insurance and benefits options, focusing on those people of limited means and those who are ill/disabled.

Reading:

4. Excerpts from upcoming Washington Practice Manual – to be provided

Additional reading to be announced.

April 15: State and Federal Benefits – Advocacy Toolkit

- With Guest Lecturer Ashley Greenberg, JD, Northwest Justice Project

Reading:

1. WAC 388 (DSHS)
2. WAC 182 (Health Care Authority)
3. Health Benefit Exchange Procedural Rules
4. Quick reference tool for eligibility issues
5. ACA coverage outside of the open enrollment period
6. ACA exemption to avoid tax penalty
7. Basic info on public benefits Fair Hearings in WA

April 17: Benefits case study and mock client counseling

- With Amy Alexander, JD, Washington Medical-Legal Partnership

Reading: To be provided.

Part II – Surrogate Decision-Making and Guardianships

April 22: Common Dilemmas Caused By Lack of Capacity

Discussion of the different problems that commonly arise from lack of capacity, with a focus on dementia and how it can lead to health and safety risks. Also discussed will be levels of care provided at different types of institutions from acute care hospitals, LTACs, SNFs, nursing homes, dementia units, adult family homes and other group home settings, how individual needs change.
over time, and how the specific needs of the individual will dictate the most appropriate intervention and any given point in time. Discussion will also focus on how quality of life decisions are made in these various settings.

Reading:

1. RCW 7.70.065 (next of kin for medical decisions)
2. RCW 11.92.043 (powers and duties of guardian)
3. RCW 26.28.015(5) (age of majority for consent)

Students are also required to observe a guardianship hearing in King County Superior Court, Ex-Parte Department.

**April 24: Surrogate Decision-Makers**

Discussion of the basis of the right to self-determination, and surrogate consent for medical care. Comparison of power of attorney, guardians, family members and care providers as surrogate decision-makers. Discussion of substituted judgment versus best interests.

Reading:

1. RCW 11.94.010 (power of attorney).
2. RCW 71.32.050 (skim mental health advanced directive).

**April 29: Guardianship**

Discussion of guardianship law and an overview of guardianship procedure. Guest speakers to include David Glazer, Senior Counsel for Group Health Cooperative. Discussion will focus on necessary steps to establish a guardianship and the roles played by the alleged incapacitated person (AIP), the petitioner, the guardian ad litem (GAL), attorney for the AIP, and the guardian.

Reading:

1. Skim RCW 11.88.005 through 11.88.090.
2. Skim RCW 11.92.190, 11.92.040.

**May 1: Role of the Guardian ad Litem**

King County Superior Court “county pay” GAL Keith Thompson will lead a discussion on the role of a GAL and challenges faced by the GAL in complicated medical guardianship actions. He will also adjudicate brief mock hearings of a Petition for Instruction.

Preparation: To be determined based on assigned roles.

Reading:

1. RCW 11.88.090
May 6: Court Authorization for Provision or Withdrawal of Medical Treatment

Specific case examples will be used to explore the court's authority to provide authorization for specific medical treatment, including surgery and the withdrawal of life sustaining treatment.

Reading:


May 8: Introduction to Psychiatric Diagnosis and Mental Health Issues In the Health Care Setting

Guest speaker Terry J. Price, MSW, JD, Associate Director for the Center for Law, Science, and Global Health, University of Washington School of Law, will discuss mental health issues in the health care setting, including a basic overview of common psychiatric diagnoses and how such conditions affect health care decision-making.

Reading:

1. Peter Kramer, Listening to Prozac, 1997 (pp. 42-66).
2. DSM-IV excerpts regarding schizophrenia, bipolar disorder and personality disorders.
3. In re Detention of Harris, 98 Wn.2d 276 (1982).

May 13: Complex Medical Ethical Issues

Guest speaker Denise Dudzinski, PhD MTS from the University of Washington School of Medicine, Department of Bioethics and Humanities, will lead a panel to discuss ethical and practical issues with difficult decisions in the ICU setting. The panel will then lead mock ethics committee meetings based on hypothetical ethical challenges. Students will prepare to play a specific role based on fact patterns in the context of a medical ethics committee meeting.

Reading:

2. Gilmer, Schneiderman, Teetzel; The Costs Of Nonbeneficial Treatment In The Intensive Care Setting, 10.1377/hlthaff.24.4.961Health Aff July 2005 vol. 24 no. 4961-971

May 15: Mental Health Resources

Discussion of community mental health care resources, DSHS funded programs and services for outpatient mental health, assistance at local shelters and access to care issues. Western State, Harborview Mental Health Court and King County Crisis Intervention Team will also be discussed with a focus on issues faced by surrogates, health care providers and the courts when a hospitalized patient suffers from a significant mental illness that raises issues of capacity.

Reading:

1. Chapters 71.05 and 71.32 RCW.
2. Washington’s DSHS proposal, Adult Behavioral Health System – Making the Case for Change
May 20: Complex Guardianship Hearings (1st round)

The class will conduct mock guardianship hearings over controversial and highly contested matters involving amputation, sterilization, placement in a dementia unit, withdrawal of life-sustaining treatment, and medical futility. The mock hearings will be adjudicated by King County Superior Court Commissioner Carlos Velategui.

May 22: Complex Guardianship Hearings (2nd round)

The class will continue to conduct mock guardianship hearings over controversial and highly contested matters involving amputation, sterilization, placement in a dementia unit, withdrawal of life-sustaining treatment, and medical futility. The mock hearings will be adjudicated by King County Superior Court Commissioner Nancy Bradburn-Johnson.