

Topics in Law & Medicine, H510
Fall 2019 to Winter 2020 (2-4 credits)
Prof. Steve Calandrillo

Office Hours: Th 12:30 – 1:20, and by appointment (please email stevecal@uw.edu)

Course Description and Learning Outcomes:

This course deals with controversial issues arising from the interface between law and medicine, including: the crisis in healthcare economics, medical malpractice law and reform, informed consent law, the right to die/assisted suicide, and the right to treatment. Class discussions will be devoted to the legal, ethical and social implications of those issues. By the end of the course, students should understand how the law can be of constructive use in clarifying the debates and solving the problems presented.

Students may take this course for 2 credits during the Fall and write a short paper in response to a question that I distribute on the last day of class. Alternatively, students may complete their analytic paper writing requirement during Winter quarter, and receive an additional 2 credits. Generally, an analytic paper should be a substantial 30-35 page research paper on a law & medicine topic of their choice (instructor approval of the selected topic is required).

Required Texts:

The Course Reading Materials will be available online at the UW website course page for Topics in Law & Medicine. There is no textbook for the course.

Syllabus:

Fall Quarter:

- Week 1 (9/26): Health Care in America
- Week 2 (10/3): Medical Malpractice
- Week 3 (10/10): Malpractice & Tort Reform
- Week 4 (10/17): Informed Consent
- Week 5 (10/24): The Right to Treatment
- Week 6 (10/31): The Right to Refuse Treatment
- Week 7 (11/7): Is there a Constitutional Right to Die?
- Week 8 (11/14): Tobacco Litigation; Daylight Saving Time
- Week 9 (11/21): Human Organ Sales & Incentives for Organ Donation;
hand out short paper question (for those enrolled in 2 credit version of the course;
short paper due 12/4/19)
- Week 10 (11/28): No Class – Thanksgiving week Holiday

Winter Quarter: (for students completing the substantial Analytic Paper)

- Weeks 1-2: Email or meet with Prof. C to choose paper topic (if haven't done so yet)
- By January 30: Submit abstract & paper outline/draft
- By March 15: Final papers due to Prof. C (email submission is okay)

Grading:

Generally, the grade you earn on your paper will count for 100% of your course grade, although I reserve the right to factor class participation into your grade if your paper grade is on the margin.

Paper Writing Timeline:

Students may complete a substantial research and writing analytic paper dealing with a current topic in law & medicine. Although the topic may be of the student's choice, the instructor must approve it (no later than Week 2 of Winter quarter). Students may **email me their proposed topics at stevecal@uw.edu**, but the topic may not be one that the student has written on before for any law school class or journal. **An abstract and outline/draft** describing the research topic and your thesis must be submitted to me by **January 30**. The final version of the paper is due **March 15**. Papers should be 30-35 pages, well-footnoted, double-spaced, with one-inch margins, and in 12-point Times Roman font.

Assignments (for those completing the analytic paper) and their due dates are summarized below:

| <u>Assignment</u> | <u>Due Date</u> |
|--------------------------------------|-------------------------|
| • Paper Topic Approved by Instructor | On or before January 10 |
| • Abstract & outline/draft | January 30 |
| • Final Paper | March 15 |

Access and Accommodations:

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but are not limited to mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

Religious Accommodations:

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at Religious Accommodations Policy

(<https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/>).

Accommodations must be requested within the first two weeks of this course using the Religious Accommodations Request form (<https://registrar.washington.edu/students/religious-accommodations-request/>).

With that, I welcome you to Law & Medicine! I hope you will enjoy taking this course as much as I will love teaching it.

Part I: Health Care In America

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| A. The Fiscal Crisis: What’s Old is New | 1 |
| Health Care Graphs | 2 |
| James Fries, “Aging, Natural Death, and the Compression of Morbidity,” <i>New England Journal of Medicine</i> | 7 |
| Edward Schneider, and Jacob Brody, “Aging, Natural Death, and the Compression of Morbidity: Another View,” <i>New England Journal of Medicine</i> | 13 |
| John H. Morrow and Arch B. Edwards, “U.S. Health Manpower Policy: Will the Benefits Justify the Costs?” <i>Journal of Medical Education</i> | 15 |
| Lester Thurow, “Learning to Say No,” (Sounding Board) <i>New England Journal of Medicine</i> | 30 |
| B. Obamacare: The Affordable Care Act | 34 |
| Jennifer Loven, “It’s the Law of the Land: Health Overhaul Signed,” <i>Associated Press</i> | 35 |
| Brendan Farrington, “13 Attorneys General Sue Over Health Care Overhaul,” <i>Associated Press</i> | 38 |
| Richard Alonso-Zaldivar, “Fact Check: Spinning the New Health Care Law,” <i>Associated Press</i> | 41 |
| Noah Feldman, “Supreme Court Should Heed Economic Sense on Health,” <i>Bloomberg</i> | 44 |
| Randy Barnett, “A Noxious Commandment,” <i>NY Times</i> | 47 |
| National Federation of Independent Business v. Sebelius, 132 S.Ct. 2566 (2012) | 49 |
| Z. Byron Wolf, “Donald Trump Thinks He Just Repealed Obamacare,” <i>CNN</i> | 72 |
| C. What do the Democrats want to do in 2020? | |
| Elizabeth Thomas, “‘Medicare For All’ or Single Payer: Here’s how the 2020 Democrats Differ on Health Care,” <i>ABC News</i> | 77 |

Part II: Medical Malpractice

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| A. Physician Liability | 1 |
| 1. The Custom-Based Standard of Care | 2 |
| Locke v. Pachtman..... | 2 |
| Chapel v. Allison | 6 |
| Henderson & Siliciano, “Universal Health Care and the Continued Reliance on Custom in Determining Medical Malpractice” | 9 |
| 2. Alternative Liability Theories: Res Ipsa Loquitor | 10 |
| Locke v. Pachtman..... | 10 |
| B. Hospital Liability | 11 |
| Schloendorff v. Society of New York Hospital | 12 |
| Adamski v. Tacoma General Hospital | 13 |
| Notes: Hospital Vicarious Liability | 17 |
| Darling v. Charleston Community Memorial Hospital..... | 19 |
| C. An Economic Analysis of Medical Malpractice | 22 |
| Helling v. Carey | |

Part III: Malpractice and Tort Reform

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| A. Malpractice Reform | 1 |
| Michael Freedman, “The Tort Mess,” <i>Forbes</i> | 2 |
| “Bush Pitches Medical Liability Reform: Proposes Nationwide Cap on Jury Awards,” <i>Associated Press</i> | 7 |
| Washington Initiative I-330 | 10 |
| Washington Initiative I-336 | 14 |
| David Postman, “Doctors, Lawyers Make Deal on Medical Malpractice Bill,” <i>Seattle Times</i> | 18 |
| David Studdert et al., Health Policy Report, <i>Medical Malpractice</i> | 21 |
| B. Other Efforts to Control Costs | 31 |
| Marisa L. Ferraro, “New Jersey and the Verbal Threshold: Imperfect Together,” <i>Rutgers Law Review</i> | 32 |
| Eric Rakowski & Stephen Post, “Should Health Care be Rationed by Age?” <i>Allyn & Bacon</i> | 35 |

Part IV: Informed Consent

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| A. The Ethical Debate | 1 |
| Introductory Set of Ethical Quandaries..... | 2 |
| Arlan Cohen, Summary Overview of Informed Consent | 4 |
| B. A Theory of Reform | 26 |
| E. Glass, “Restructuring Informed Consent: Legal Therapy for the Doctor-Patient Relationship,” <i>Yale Law Journal</i> | 27 |
| C. Case Law & Commentary: A Patient or Physician-Oriented Standard? | 42 |
| Informed Consent: Professional or Patient-Based Standard? | 43 |
| Canterbury v. Spence, 464 F.2d 772 (D.C. Cir. 1972). | 45 |
| D. Alternative Views | 53 |
| Ronald Epstein et al., “Withholding Information from Patients: When Less is More,” <i>New England Journal of Medicine</i> | 54 |
| Robert Schwartz and Andrew Grubb, “Why Britain Can’t Afford Informed Consent,” <i>Hastings Center Report</i> | 56 |

Part V: The Right to Treatment

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| A. The Common Law Principles Behind the Right to Treatment | 1 |
| Hurley v. Eddingfield, 59 N.E. 1058 (Ind. 1901). | 2 |
| Wilmington General Hospital v. Manlove, 174 A.2d 135 (Del. 1961). | 3 |
| Guerrero v. Copper Queen Hospital, 537 P.2d 1329 (Ariz. 1975). | 8 |
| “Physician’s Duties Arising from the Doctor/Patient Relationship,” <i>American Health Law</i> | 12 |
| Sylvia Law, “Notes and Questions: Common Law Principles” | 15 |
| B. Federal Law Chimes In | 16 |
| Rand Rosenblatt et al., “The Emergency Medical Treatment and Active Labor Act of 1986,” (excerpted from “Law and the American Health Care System”)..... | 17 |
| Power v. Arlington Hospital, 42 F.3d 851 (4 th Cir. 1994)..... | 23 |
| C. Review Affordable Care Act materials from Week 1; Dem’s Healthcare reform plans | |

Part VI: The Right to Refuse Treatment

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| In the Matter of Karen Quinlan, 355 A.2d 647 (N.J. 1976)..... | 1 |
| Superintendent of Belchertown State School v. Saikewicz, 370 N.E.2d 417 (Mass. 1977)..... | 7 |
| George Annas, “Judges at the Bedside: The Case of Joseph Saikewicz,” <i>Medicolegal News</i> | 14 |
| Arnold Relman, “The Saikewicz Decision: Judges as Physicians: <i>New England Journal of Medicine</i> | 17 |
| In the Matter of John Storar, 420 N.E.2d 64 (N.Y. 1981)..... | 19 |
| Barber v. California, 147 Cal.App.3d 1006 (Cal. 1983)..... | 31 |
| In re Schiavo, 780 So.2d 176 (Fl. 2001)..... | 36 |

Part VII: Is there a Constitutional Right to Die

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| Supreme Eloquence | 1 |
| Cruzan v. Director, Missouri Department of Health, 497 U.S. 261, 110 S.Ct. 2841 (1990)..... | 2 |
| Compassion in Dying v. Washington, 79 F.3d 790 (9 th Cir. 1996)..... | 18 |
| Washington v. Glucksberg, 521 U.S. 702 (1997)..... | 36 |
| Vacco v. Quill, 521 U.S. 793 (1997) | 39 |
| James Vicini, “Supreme Court Rules Government Can’t Stop Oregon Suicide Law,” <i>Reuters</i> | 45 |
| Rob Carson, “Spotlight Suddenly on Aid in Dying,” <i>Tacoma News Tribune</i> | 47 |
| Linda Ganzini, et al., “Oregon Physicians’ Attitudes About and Experiences With End-of-Life Care Since Passage of the Oregon Death With Dignity Act,” <i>Journal of the American Medical Association</i> | 52 |
| Washington State Death With Dignity Act Report..... | 59 |

Part VIII: Tobacco Externalities; Daylight Saving Time

1. Smoking Externalities & Tobacco Litigation

Issue = Should tobacco companies be held liable for smokers' healthcare costs?

Kip Viscusi, "A Post-Mortem on the Tobacco Settlement," *Cumberland Law Review*

2. Daylight Saving Time as a Public Health & Safety Issue

Steve Calandrillo, "Time Well Spent: An Economic Analysis of Daylight Saving Time Legislation," *Wake Forest Law Review*

Part IX: Human Organ Sales & Incentives for Organ Donation

KING 5 TV, Robert Mak, *LifeSharers Video/Interview* (I'll show this video at start of class)

Steve Calandrillo, "Cash for Kidneys? Utilizing Incentives to End America's Organ Shortage," *George Mason Law Review*