

Healthcare and the Law (PHLT/PSCI 236)

Fall 2023

Dewey Room 2110E | Tues/Thurs | 2:00 PM - 3:15 PM

Instructor: Dr. Molly McNulty

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Office Hours: Thursdays 12:30 – 1:30 pm Morey Hall Suite 206, or Zoom by appointment

** Office hours will start Tuesday, September 3rd

Teaching Assistant: Zachary Sussman

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Office Hours: Thursdays, 3:30pm - 4:30pm in iZone Project Room D, or by appointment!

** Office hours will start Thursday, September 7th

Course Description

Welcome to _____, a course cross-listed with Public Health and Political Science! The overall purpose of this course is to bring to vivid life the role that the courts play in the hottest public debates of the day – climate change, access to healthcare for LGBTQ+ patients, new restrictions on reproductive rights, COVID restrictions, and restricted access to healthcare for marginalized populations and more.

This course introduces the legal foundations of healthcare in America, with emphasis on the role of the courts (the role of the legislature and executive agencies is covered in my spring course, PH/PSC 230 Public Health Law and Policy.)

Please go to the Course Home Page and complete:

ACCEPTANCE OF ACADEMIC HONESTY

Please review the [Academic Honesty policy](#) and then acknowledge your acceptance by **Clicking the link** "Acceptance of Academic Honesty Policy", and then click begin.

Course Objectives

Upon completion of this course students will be able to:

- I. Critically assess the values, ethics, and biases underlying health law decisions.
- II. Assess the impact of common law doctrines on the development of healthcare law.
- III. Analyze the constitutional implications of judicial opinions related to health equity.
- IV. Acquire oral presentation and argumentative writing skills.

Course Materials

- x Wilensky, S. E. (2023).

Academic Integrity Affirmation

At Rochester, we are committed to academic excellence, which depends on academic honesty. Academic honesty means being truthful in our a

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Course Schedule

MODULE 1	FOUNDATIONS	
1	8/31/2023	Introduction to the Course
2	9/5/2023	The Everyday Relevance of Health Law
3	9/7/2023	Health Politics, Policy, Law and Ideologies

- x Watch Youtube video, How Law Can Make a Difference in Health Outcomes, <https://www.youtube.com/watch?v=m2FDAAsUeK0> (explains how law can promote or harm health outcomes)
- x McNulty, Sources of Health Law and Policy News (August 2023) (brief guide to health law news sources)
- x University of Rochester Research Guide, Finding News, <http://libguides.lib.rochester.edu/news> (provides hyperlinks and descriptions of the many databases for searching news)
- x Follow-The-News Learning Teams Instructions and Rubric, found in Module 1, "News" Assignment (Graded Assignment Instructions, Rubrics, and Submission Link)

Be prepared to: Learning Teams : Follow The News

CLASS # 3 9/7/2023 Health Politics, Policy , Law and Ideologies

- x Wilensky Chapter 7 Structural and Social Drivers of Health and the Role of Law in Optimizing Health,

<https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=314>

(describes connection between law and health equity and outcomes)

CLASS # 5 9/14/2023 Introduction to U.S. Law, continued

We will focus our discussion on the role of individual rights in healthcare litigation.

Be prepared to offer thoughts about how the law can be used to promote health “equity.”

Required Assignments (you will be tested on this chapter)

- x Wilensky, Chapter 6, Individual Rights in Health Care and Public Health,

<https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=253>

CLASS # 6 9/19/2023 Mastery Quiz

Graded Assignment of Mastery: Quiz of Legal Concepts IN CLASS (5%)

This quiz will last a maximum of 60 minutes, in class, with no digital access allowed (unless required by the Office of Disability) The quiz will be handwritten on blue exam booklets.

It will cover Wilensky Chapters 2, 3, 6, and 7. It will be a combination of multiple choice and short answers. The Wilensky textbook can be found in the library.

Permalink:

https://rochester.primo.exlibrisgroup.com/permalink/01ROCH_INST/1mf88u3/alma9978422435605216

or via the Publisher’s Ebook link:

<https://ebookcentral.proquest.com/lib/rochester/detail.action?docID=6953578>

CLASS # 7 9/21/2023 How to Think Like A Legal Scholar

Students will learn how to think like a legal scholar, following principles defined by the National Constitution Center.

- x YouTube, Threedy, Introduction to Case Reading, <https://youtu.be/FDhc90jyldc?si=ILXWhf2SjtTu6uOS>, 9 minutes viewing.
- x Sutherland, treatise on Statutes and Statutory Construction, "

- x McNulty List of Standard Reading Focus Questions.
- x Case Annotation Guide

- x Katskee Reading Focus Questions
- x , 515 N.W.2d 645, 245 Neb. 808 (1994)

Module 2: Evolution of Common Law's Role in Health Law

Module 2 Overview

Module Course Objectives

Students will be able to identify and describe how common law – which the U.S. inherited from Britain and France - affects U.S. health law.

Module Graded Assignments

Case questionnaire, Jacobson v. Massachusetts (10) %

Module 2 Content

CLASS # 9 9/28/2023 Common Law History

We will learn the history and meaning of the legal doctrines of "common law" and "precedent" (stare decisis)," and how they have been applied to particular health law issues.

Be prepared to discuss your ideas about how the common law has affected the development of health law.

Required Assignments

- x View, YouTube, The Common Law and Colonial Legal Precedents, <https://youtu.be/VgkmQXSntTs> (7 minutes viewing) (great lecture providing historical overview of English and American common law, including why and when American common law veered away from the English model)

Recommended Reading to refresh your knowledge:

- x Chapter 3 Law and the Legal System, Excerpt on "The Definitions and Sources of Law" (describes specific ways that the law can be used as a tool of social change, to promote or hinder health equity)
- x Wilensky Chapter 6: Individual Rights in Health Care and Public Health) (describes history of common law and describes the most important Supreme Court cases)

Recommended Viewing

- x Pernicious Doctrine of Stare Decisis: A Debate (Duke University), <https://youtu.be/ISnIKBQHZJY> (60 minutes viewing) (" , in Latin literally "Let the decision stand," is the doctrine by which courts adhere to previously decided cases or precedents. Professors Paulsen (stare decisis unconstitutional) and Gerhardt (stare decisis constitutional) will debate this provocative topic"

Module 3 Constitutional Law

Module 3 Overview

Module 3 Learning Objectives

- x To describe how the 3 major articles of the U.S. the constitution influence healthcare law
- x To be able to illustrate how the legal doctrines of federalism and "separation of powers" been applied in court cases about health law
- x To explain how the "Bill of Rights" amendments have been applied to promote or hinder health equity for specific access-to-care issues

Module 3 Graded Assignments

Case questionnaire,

CLASS # 13 Bill of Rights & the 14th Amendment

To describe in broad strokes how the Constitutional Bill of Rights amendments have been applied to promote or hinder health equity.

Assignments

- x VIEW "Bill of Rights" video, 16 minutes, <https://constitutioncenter.org/the-constitution/constitution-101-course>
- x
- x Recommended: Refresh
- x Wilensky Ch 6 Individual Rights in Healthcare and Public Health, UR Permalink:

Assignments

- x View YouTube: Common Law What Happened to the ‘Promised Land’ Harvard Law School professor Randall Kennedy discusses past and present visions for a “promised land” on race, and what law can do to shape it. (University of Virginia School of Law, Jan. 26, 2021) (31 minutes viewing) Transcript available at: <http://at.virginia.edu/3pluv41>
- x Finger Lakes, Common Ground Health: **The Color of Health: The Devastating Toll of Racism on Black Lives** (July 2021) (Press Release, <https://www.commongroundhealth.org/news/articles/racism-is-key-driver-of-illness-and-early-death-for-black-residents-regional-study-finds>)
- x Goodwin & Lynch, **Health Law and Anti-Racism: Reckoning and Response** (The Journal of Law, Medicine & Ethics, (2022)

Come prepared to discuss: what is the definition of “structural racism”? What sort of legal challenges do you see to its manifestations in the health law universe?

Class #18 11/2/2023 Racial Justice and Health Law

TBA

Class #19 11/7/2023 Reproductive Justice, Abortion, and Health Law

Reading Assignments

- x Harvard “Bill of Health” blog, “A Brief History of Abortion Jurisprudence” (June 2022) (provides /7.3 (t)-5.7 (i)-3)uW2u).3r

Required Reading:

- x [CMS Guidance on Contraceptive Coverage](https://www.cms.gov/files/document/faqs-part-54.pdf) (July 28, 2022), 13 pages, (describes federal law about the contraceptive mandate, including access to FDA approved medical abortion methods)
<https://www.cms.gov/files/document/faqs-part-54.pdf>

Module 4: Health Reform

Module 4 Overview

Module 4 Learning Objectives

To Identify key aspects of health reform reform efforts over c (s)-154.9 (dn Tc -0. (r)-2.P.04 72 5(y0 Tc 0 Tw 8.83 0d()TjE

- x The U.S. Supreme Court's Decision in National Federation of Independent Business v. Sebelius); <https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=569>; and
- x "Key Issues Going Forward," <https://ebookcentral.proquest.com/lib/rochester/reader.action?docID=6953578&ppg=573>

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CLASS # 28 12/12/2023 Course Wrap-Up

In this class, you will generate a list of the key take-away points from this class.