

HAMLIN UNIVERSITY SCHOOL OF LAW

Medical Law at the End of Life

Spring 2012

Professor Thaddeus Pope

Contacts: East Hall 229; tpope01@hamline.edu; 651-523-2519

Time: Mondays and Wednesdays 11:00 a.m. – 12:15 p.m.

Place: Law 103

Midterm Exam: Wednesday, March 14, 2012 (in-class)

Final Exam: Any 72-hour period during the final exam period (take-home)

I. Course Description

The healthcare industry has become perhaps the most regulated in the United States. As providers and other players respond to this regulatory environment, the health law field has become a dynamic and complex area of law. And it is one evidencing a marked growth in legal employment. Indeed, health law has become such a specialized area that some state bars have developed board certification programs in healthcare.

Health Law can be divided into five subfields: (i) finance and regulation, (ii) public health, (iii) biotechnology, (iv) bioethics, and (v) patient care. This course focuses on several key patient care issues, but will also cover some important finance, regulation, and bioethics doctrines and principles.

Recently, a significant body of law, both judicial and statutory, has developed around end-of-life decision-making. This course will address the legal issues engendered by our increasing technological control over the end of life. In particular, this class will consider: (i) the definition of death; (ii) informed consent; (iii) the refusal and withdrawal of life-sustaining interventions by capacitated patients, (iv) the refusal and withdrawal of life-sustaining interventions by incapacitated patients through both advance directives and surrogates; (v) formal and informal dispute resolution mechanisms, including ethics committees; (vi) physician aid-in-dying; (vii) medical futility; and (viii) organ donation. The course will not cover special issues pertaining to newborns and children.

Furthermore, this course permits you to practice and hone legal analysis and writing. To this extent, healthcare is just a “vehicle” for practicing and honing these skills. The course is, in short, designed to prepare you for legal practice regardless of where your professional path takes you.

II. Course Objectives

Upon completion of the course, students will have:

- A. A basic systematic understanding of the legal principles surrounding medical treatment at the end of life.
- B. Further honed legal analysis and writing abilities, through: (i) exposure to and critique of legal arguments in judicial opinions, legislative reports, and scholarly writing; (ii) participation in classroom discussion; (iii) completion of and feedback on weekly problems; (iv) completion of and feedback on a written midterm examination; and (v) completion of and feedback on a written final examination.
- C. Integration of material learned in other classes, such as: civil procedure, contracts, evidence, statutory interpretation, and torts.

III. Required Materials

- A. There is no casebook for this course. All course materials will be distributed through the course TWEN site. I recommend that you download these documents in PDF instead of opening and reading them in HTML. Alternatively, by using citations of the sources on TWEN, you can obtain almost all course materials directly through Westlaw and Lexis, should you want to use their dedicated printers. But note that using such resources probably will not work for the minority of course materials that is comprised of medical journals, reports, and PACER documents.
- B. We will cover a fair number of court cases. But a substantial portion of the course material will be comprised of statutes, regulations, government reports, and academic law and policy articles.
- C. Due to the rapid and current changes in this area, I may add or substitute other materials.

IV. Class Schedule

- A. The class will meet on Mondays and Wednesdays from 11:00 a.m. to 12:15 p.m. in Room Law-103.
- B. The class will meet 28 times. The last class meets on Monday, April 30th.
- C. One or more class sessions may be offered in an online format. This means that you will be able to “attend” these sessions from wherever you have Internet access.

- D. Depending on class interest, I am happy to schedule an extra “review” class during the weeks before the final exam. Please email your questions to me at least 24 hours before such session to better enable me to answer them. I am also happy to meet, at any time during the semester, both with individual students in my office, and with small groups. For example, last year, several students found it useful to review their essays on extra practice problems.

V. What to Do First -- in January

- A. Register for the TWEN site with the email address that you use most regularly.
- B. If you have not used TWEN before, review the student user guide:
<http://west.thomson.com/productdetail/1-5704-5/RM157045/productdetail.aspx>
- C. Calendar key course dates into your planning and calendaring systems.
- D. Register with the Registrar to **type** your midterm exam (highly recommended but not required). Since the final exam is a take-home, you can type that using a Word processor such as Microsoft Word.

VI. Attendance, Preparation, and Participation

- A. Attendance: Under American Bar Association rules, 80% attendance is required to allow you to write the final exam. Attendance will be taken by passing class lists for signature at the start of each class session.
- B. Class Preparation: I employ only a moderate amount of lecture but lots of case method questions and problems. Consequently, students must come to class prepared to discuss the material assigned. All assigned cases must be read and briefed. Many professors recommend analyzing each case using the following headings: (i) essential substantive facts, (ii) procedural posture, (iii) issues, (iv) legal principles, (v) reasoning, and (vi) holding. You do not need to know the correct answer (if there is one), but know the reading material and make a reasonable effort to think about the issues raised.
- C. Preparation Time: It is impossible to say exactly how much time you will need for class preparation, since each person’s needs are different. But it is likely that you will need around three hours of preparation for each class. This includes: reading the materials, briefing the cases, consolidating prior notes, and taking the weekly quiz.
- D. Warning about Class Preparation: Brief the cases **yourself**. Do not make use of commercially prepared outlines before writing your own brief. As Professor DeWolf (at Gonzaga Law) explains, “they are like narcotics. Initially they make

you feel good (by taking away your anxiety), but precisely for that reason they have a corrosive effect upon your learning. It is as though you were taking violin lessons, and instead of playing the scales you were assigned by your teacher, you bought a tape of Itzak Perlman playing those scales.”

- E. Class Participation (“Deck of Cards”): **All** students are expected to participate in class discussions. Sometimes, this will be through “clickers” like PollAnywhere. Other times, it will be by “cold calling” in the following manner. I will write each student’s names on one card in a deck of cards. One student will draw a card from the deck, identifying the student to be called-upon.
- F. Opt Out: If illness or emergency prevents you from being fully prepared, please notify me **before** class. I will remove your card from the deck. As explained in Section X below, 10% of your course grade is based on class participation.
- G. Meandering Discussion: I want to leave discussion sufficiently free so that you discover key points on your own and feel ownership in lessons learned. Still, I must exert control over class discussion to ensure that you are exposed to key points and to ensure that you are not confused by a discussion that runs too long or too tangentially. It is inappropriate and unfair to hold scores of students hostage to the too-peculiar (even if fascinating) line of inquiry of just one student. If we did not get to them, I am happy to explore your questions outside class in any of the ways described in section XIII below.
- H. Laptops: I will use an instant-poll tool (probably PollAnywhere) in which the entire class “votes” on the answers to orally-posed problems through a browser-supported template. Accordingly, laptops are welcome. If you do not bring a laptop, I expect that you can “vote” either through a neighbor’s laptop (after refreshing the browser) or through your cell phone. Normally, the class will discuss these problems in small groups after voting. You will then revote. Only then will I share the best answer and its supporting analysis.
- I. TWEN Participation: Students are encouraged to participate not only in class but also through the TWEN discussion boards. Start a new thread or comment on one already in progress. The best posts: (i) are full of insight and analysis (critical thinking), (ii) reference the course materials, and (iii) are clearly written (organization & style).
- J. Volunteering: I will frequently ask a question that stumps the person whom I have called on. I will give that person time to think about the question, and see if they can come up with an answer. It will sometimes happen that you have an answer, and instinctively raise your hand to volunteer. I may or may not call on you at that moment. I would prefer your attempt to answer than mine, but best of all is to continue dialogue with the student who was initially called on. Nonetheless, to move things along I may let the volunteer help. Please be sensitive to the fact that the student who is called on often suffers from stage fright, and the most obvious things slip from their mind.

- K. Ask Questions: I begin each class by asking for both administrative and substantive questions. If you want to know what pages we will cover, please ask. If you are having trouble grasping a particular doctrine, please ask. Alternatively, send an email or start a discussion thread on TWEN.
- L. Show & Tell: The topics in this class are constantly in the news and in the plot lines of movies and broadcast shows. If you notice a story that illustrates or discusses a class topic, please send me an email or start a discussion thread on TWEN. It is both fun and rewarding to work through legal problems in the context of a visually compelling, dramatic clip. Send me links of files (*e.g.* MPEG, AVI).
- M. Outlining: The traditional law student method of exam preparation involves making an outline of all course material. After every unit of material (*e.g.* formation and termination), but at least **every two weeks**, you should review and consolidate your case notes, class notes, and other material into an outline, flowchart, or other document. Furthermore, you should aim to **edit** this growing document every time you add to it, both to improve the organization and to clarify the content. The more actively you engage the materials, the better your grasp and retention will be.

VII. Classroom Etiquette

- A. The classroom environment must be conducive to learning for all students. Distractions made possible by advances in technology may undermine that goal.
- B. Audial: During class, in addition to the usual courtesies, kindly disable and refrain from using cell phones, pagers, and any other communication device other than your laptop computer. And please mute your laptop.
- C. Visual: Please refrain from displaying wallpaper, screen savers, or other material on your laptop computer that you can reasonably expect to be offensive or distracting to other students.
- D. End Time: I will be diligent about starting the class precisely at 11:00 a.m. and ending it precisely at 12:15 p.m. In return, please do not begin to pack-up early while others are still trying to be engaged in the class discourse.

VIII. Grading

- A. Weekly Quizzes (10%) – see section IX
- B. Class Participation (10%) – see section X
- C. Midterm Exam (20%) – see section XI
- D. Final Exam (60%) – see section XII
- E. To make my calculations more objective and transparent, I convert all the above percentages into points. There are a total of 300 points for the course. The final exam is worth 180 points. The midterm exam is worth 60 points. The weekly quizzes are worth a total of 30 points. Class participation is worth 30 points. Grading methods are more fully explained in the next four sections.

IX. Required Quizzes

- A. Rationale: I will assign weekly quizzes for three reasons. First, while I will provide informal, oral feedback during class discussions, I do not want the first **formal** feedback that you receive to be your graded midterm or final exam. Second, I want you to approach the material **actively**. Third, because later topics in this course build on earlier ones, I want to provide some external motivation to stay current.
- B. Format: Some quizzes will be comprised of three multiple choice questions. Others will entail drafting a roughly 250-word essay. These (along with the midterm) constitute “formative assessment,” while the final exam constitutes “summative assessment.”
- C. Due Date: You will complete the quizzes before class on the course TWEN site. I will announce and post the quizzes on most Thursdays. They will be due by 10:00 a.m. the following Monday. I will review the quiz in Monday’s class or post a feedback memo.
- D. Coverage: These weekly quizzes are primarily meant to test basic understanding of legal principles covered at about the time of the quiz. They are simpler than questions on the midterm and final exams that require more analysis.
- E. Grading: I will grade the quizzes. The ten quizzes, in the cumulative, comprise 20% of your total course grade. Each quiz is worth three points or roughly 1% of your total course grade (300 points).
- F. TWEN: Many students have found it useful to approach the multiple choice question quizzes in this manner: (i) open and print the quiz, (ii) answer the questions “offline,” and then (iii) log-in and submit their answers. The short

essay quizzes should be submitted as Word or PDF files in TWEN's "Assignment Drop Box." If you ever have a technical problem, just email me your quiz answers. Do not let the quizzes consume too much time. It is not intended to be oppressive. If it appears that way, please contact me.

X. Class Participation

- A. Class participation comprises 10% of your course grade, 30 of the 300 total course points.
- B. The typical student who regularly meaningfully participates will earn all 30 points. Those who are unprepared or frequently absent will earn either half or none of these points.

XI. Midterm Exam

- A. Date: The midterm exam is scheduled during the regularly-scheduled class (75 minutes) on Wednesday, March 14, 2012.
- B. Weight: The midterm exam comprises 20% of your course grade, 60 of the 300 total course points.
- C. Format and Length: The midterm examination will be comprised of two roughly equal parts. The first part will include ten 3-minute multiple choice questions. The second part will comprise a 45-minute essay problem, essentially a statement of hypothetical factual circumstances in which you will be expected to:
(i) identify the legal issues, (ii) analyze the problems by applying the correct legal principles to the facts, and (iii) argue for a reasonable conclusion.
- D. Coverage: The exam will test those concepts and issues either covered in assigned readings or explored during class lectures and discussions. The exam will roughly reflect the relative time and emphasis on topics in the course.
- E. Grades: The only letter grade for this course is the final course grade based on the total 300 points. Nevertheless, to enable you to gauge your relative performance, I will assign letter grades to the midterm exams. While the numeric scores compute (60 of 300 points), midterm letter grades are informational only.
- F. Open Book: On the exam, you will be allowed to use any written or printed materials that you choose. No electronic devices are permitted except through ExamSoft.

- G. Warning about Open Book: Having your notes and materials will **not** relieve you of the need to already know the material. Indeed, it is very probable that if you do not study for this exam **exactly** as you would for a closed-book exam, then you will do very poorly and perhaps not pass.
- H. ExamSoft: I strongly encourage you to register to **type** your midterm exam, using your laptop and special security software that you can download from the Law School. Typing your exam allows you to create a work product in a way that will be least distracting from the substance.
- I. Exam Feedback: Several weeks after the exam, I will post on the TWEN site: (i) a copy of the exam, (ii) a blank scoring sheet and explanatory memo, and (iii) model answers.

XII. Final Exam

- A. Date: The final exam is scheduled for you to take as a take-home exam, during any 72-hours within the final period. Specific instructions and word count limits will be distributed later in the semester.
- B. Weight: The final exam comprises 60% of your course grade, 180 of the 300 total course points.
- C. Format and Length: The final examination will be comprised of three roughly equal parts. This three-part structure has been proven to maximize an exam's reliability and validity. The first part will include multiple choice questions. The second part will include short or "directed" essay questions focused on one or two specific issues. The third part will include a longer essay problem. The essays are essentially hypothetical factual circumstances in which you will be expected to: (i) identify the legal issues, (ii) analyze the problems by applying the correct legal principles to the facts, and (iii) argue for a reasonable conclusion.
- D. Coverage: The exam will test those concepts and issues either covered in assigned readings or explored during class lectures and discussions. The exam will roughly reflect the relative time and emphasis on topics in the course.
- E. Grading: All exams will receive a raw score from zero to 180. The raw score is meaningful only relative to the raw score of the other students in the class. The raw score will be added to the midterm and quiz scores. That total will then be converted to a scaled score, based on the class curve. For example, if the highest raw score in the class were 240/300, then that student would receive an A.
- F. Grading Criteria: I have only a few old exams from this course. But I have posted six years of my *Health Law* midterm and final exams and exam feedback memos to my website. The coverage in none of these prior classes will be identical to yours. Your exams will be based only on what we cover in this class.

Still, by working through these old exams, you can get a good sense of the criteria that I employ in grading. In short, I look for:

1. An ability to muster relevant evidence and authority to make arguments both cogently and clearly
 2. An understanding of substantive legal doctrine
 3. An appreciation for broader policy concerns that influence how legal doctrine applies to novel situations
 4. A practical appreciation for the context of care in a hospital setting and for the context of tort litigation
- G. Exam Feedback: Several weeks after the exam, I will post on the TWEN site: (i) a copy of the exam, (ii) a blank scoring sheet and explanatory memo, and (iii) model answers.
- H. Exam Review: All grades are final. While sometimes seemingly unfair in application, pursuant to school rules, there will be no negotiations regarding revisions, except to correct any mathematical or clerical errors in computing the final score. Of course, I will be happy to go over the exam with anyone who schedules an appointment to review the exam. On request, I scan and email you a copy of **your** exam answers. If – after reviewing these against the exam, the feedback memo, model answers, and your notes – you have questions about your exam, please email those to me in advance of our meeting so that I can be sufficiently prepared to ensure a productive and efficient meeting.

XIII. Office Hours

I look forward to talking to you outside class. There are several means of doing this:

- A. After class: I will remain in the classroom after each class for all trailing questions, until or unless we are kicked out by another class.
- B. Office: I can typically be found in my office before and after class. If this is not a convenient time, just let me know in class or by email and we can make an appointment with each other. You are welcome to drop in my office anytime, but it is best to confirm a specific time in advance. If you have a specific question, I recommend that you send me the question via email ahead of time. In this way, I can think about your question and offer my best assistance.
- C. Email: Feel free to e-mail me anytime at tpope01@hamline.edu. I will try to promptly answer any question as soon as possible.
- D. TWEN: Whether you want to elaborate or clarify the required materials or the class discussions, you can start a discussion thread on the TWEN site. You are encouraged to provide constructive comments within each other's threads.

- E. Lunch or Coffee: I have found that grabbing a quick lunch (or given the time of this class, coffee/tea) is a good way to get to know each other. If you and one or two other students want to share a bite/coffee/tea, please let me know.

XIV. TWEN Site

The TWEN site will include the following materials:

- A. All required reading for the course (*e.g.* cases, statutes, articles)
- B. PowerPoint slides for each class, posted before each class
- C. Links to MP3 recordings of selected classes and periodic summaries
- D. Weekly Quizzes (see section IX, *supra*)
- E. Optional supplementary and background reading
- F. Materials concerning health law writing and career opportunities

Warning!! Do not permit the availability of these materials to deter you from preparing and participating in class. I provide these materials to supplement and enhance classroom learning, not to substitute for it. It is important to remember that knowledge acquisition is **only one small part** of law school education. I plan to do little lecturing during classes. Lectures may seem to provide more value – more content, more certainty. It may seem like you are “learning” more. But this would be poor preparation for the practice of law where there is little certainty. Furthermore, nonattendance is not an option given University and ABA attendance requirements, and the grading policy described above.

XV. Study Aids and Reference Materials

Despite the prevalence of health law courses in U.S. law schools, there are, as yet, few student-oriented ancillary materials. But there are numerous clear and lucid law review articles and background reports. I will provide copies of, or links to, the more useful of these materials on a topic-by-topic basis. And you have direct free access to most of these through HeinOnline, Westlaw, and other databases.

There are also some good reference books. You really **do not** need to use any of these sources. I list them here only should you want to consult them to get more depth or breadth on certain issues.

A. Study Aids

1. MARCIA M. BOUMIL & PAUL HATTIS, *MEDICAL LIABILITY IN A NUTSHELL* (West 3d ed. 2011).
2. BARRY R. FURROW, THOMAS L. GREANEY, SANDRA H. JOHNSON, TIMOTHY STOLTZFUS JOST & ROBERT L. SCHWARTZ, *HEALTH LAW* (2d ed. West Hornbook series 2000) (adapted from the 3-volume practitioner series).

3. MARK A. HALL, IRA MARK ELLMAN & DANIEL S. STROUSE, HEALTH CARE LAW AND ETHICS IN A NUTSHELL (3d ed. West 2011).
4. SANDRA H. JOHNSON & ROBERT L. SCHWARTZ , BIOETHICS AND LAW IN A NUTSHELL (West 2009).
5. ROBERT D. MILLER, PROBLEMS IN HEALTH CARE LAW (9th ed. Jones & Bartlett 2006).

B. Study Aids for Non-Lawyers

1. TONIA D. AIKEN, LEGAL AND ETHICAL ISSUES IN HEALTH OCCUPATIONS (Elsevier 2008).
2. GEORGE J. ANNAS, THE RIGHTS OF PATIENTS: THE AUTHORITATIVE ACLU GUIDE TO THE RIGHTS OF PATIENTS (3d ed. NYU 2004).
3. CAROLYN BUPPERT, NURSE PRACTITIONER'S BUSINESS PRACTICE AND LEGAL GUIDE (4th ed. Jones & Bartlett 2011).
4. BONNIE FREMGEN, MEDICAL LAW AND ETHICS (4th ed. Prentice Hall 2011).
5. CARL HORN, LAW FOR PHYSICIANS: AN OVERVIEW OF MEDICAL LEGAL ISSUES (AMA 2000).
6. JANICE L. KAZMIER, HEALTH CARE LAW (Cengage Learning 2008).
7. MARCIA A. LEWIS & CARL D. TAMPARO, MEDICAL LAW, ETHICS, AND BIOETHICS (6th ed. F.A. Davis 2007).
8. GEORGE D. POZGAR & NINA SANTUCCI, LEGAL ASPECTS OF HEALTH CARE ADMINISTRATION (11th ed. Jones & Bartlett 2012).
9. RONALD W. SCOTT, PROMOTING LEGAL AND ETHICAL AWARENESS: A PRIMER FOR HEALTH PROFESSIONALS AND PATIENTS (Elsevier 2008).

C. General Reference Materials

This is, of course, a highly select list. I have not included CLE or practitioner-oriented materials.

1. AMERICAN COLLEGE OF LEGAL MEDICINE TEXTBOOK COMMITTEE, LEGAL MEDICINE (Mosby 7th ed. 2007).

2. AMERICAN HEALTH LAWYERS ASSOCIATION, FUNDAMENTALS OF HEALTH LAW (West 5th ed. 2011), Westlaw: AHLA-PAPERS.
3. AMERICAN HEALTH LAWYERS ASSOCIATION, HEALTH LAW PRACTICE GUIDE (West CBC 3-vol. looseleaf), Westlaw: HTHLPG.
4. ALISON BARNES ET AL., HEALTH CARE LAW DESK REFERENCE (ALI-ABA 2001).
5. SCOTT BECKER, HEALTH CARE LAW: A PRACTICAL GUIDE (Lexis 1-vol. looseleaf), on LEXIS.
6. BNA HEALTH LAW AND BUSINESS LIBRARY, WEB PORTFOLIOS LIBRARY (BNA Online) (also available in print or CD-ROM).
7. DEAN M. HARRIS, CONTEMPORARY ISSUES IN HEALTHCARE LAW AND ETHICS (Health Admin. Press 2003).
8. PAUL C. LASKY ED., HOSPITAL LAW MANUAL (Aspen 5-vol. looseleaf).
9. BRYAN A. LIANG, HEALTH LAW & POLICY: A SURVIVAL GUIDE TO MEDICOLEGAL ISSUES FOR PRACTITIONERS (Butterworth Heinemann 2000).
10. MICHAEL G. MACDONALD ED., TREATISE ON HEALTH CARE LAW (Matthew Bender 5-vol. looseleaf), on LEXIS.

D. **Specific Issue Reference Materials**

1. ALICE G. GOSFIELD ED., HEALTH LAW PRACTICE GUIDE (Thomson/West annual), Westlaw: HTHLPG.
2. DAVID W. LOUISELL, MEDICAL MALPRACTICE (Matthew Bender 5-vol. looseleaf), on LEXIS.
3. ALAN MEISEL & KATHY CERMINARA, THE RIGHT TO DIE (3rd ed. Aspen looseleaf).
4. CLAIRE C. OBADE, PATIENT CARE DECISION MAKING: A LEGAL GUIDE FOR PROVIDERS (West CBC looseleaf), Westlaw: PCAREDM.
5. STEVEN E. PEGALIS, AMERICAN LAW OF MEDICAL MALPRACTICE (West CBC 3d ed. 2005 & Supp. 2008) (3 volumes), Westlaw: ALMM.
6. FAY A. ROZOVSKY, CONSENT TO TREATMENT: A PRACTICAL GUIDE (4th ed. Aspen 2009).

XVI. Course Reading Outline

The outline below is intended to give you a sense of the course coverage. It is **not** a reading schedule. Given the interactive nature of the law school classroom, it is difficult to predict, much less promise, exactly what material we will be covering on a specific future date. Closely (but not exactly) following its sequence, I will give the specific assignment for the following week during the prior week. **Please note that this course is cumulative. Later topics build on earlier ones.**

The current assignment will always be posted on the TWEN home page. Old assignments will be collected as a TWEN “document” under the “Admin” tab. All the following materials are available from the TWEN site. Alternatively, most of them can be also obtained from Westlaw and Lexis, if you would find printing from their dedicated printers more convenient. I will probably assign additional material to reinforce and link legal concepts presented below.

1 Determination of Death

- a. Introduction
 - i. Seema K. Shah & Franklin G. Miller, *Can We Handle the Truth? Legal Fictions in the Determination of Death*, 36 AM. J. L. & MED. 540-85 (2010).
- b. Illustrative Statutes
 - i. Minn. Stat. § 145.135.
 - ii. N.J. Stat. §§ 26:6A-1 to A-7.
- c. Classic Cases
 - i. *In re Bowman*, 617 P.2d 731 (Wash. 1980).
 - ii. *In re T.A.C.P.*, 609 So. 2d 588 (Fla. 1992).

2 Informed Consent

- a. Introduction
 - i. Steven E. Pegalis, 1 AM. LAW OF MED. MALPRACTICE 3d § 4:01.
 - ii. *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir. 1972).
- b. Distinguishing Battery
 - i. *Kohoutek v. Hafner*, 383 N.W.2d 295 (Minn. 1986).
 - ii. Film Clip: *Whose Life Is It Anyway?*

- c. Material Risk Standard
 - i. *Cornfeldt v. Tangen*, 262 N.W.2d 684 (Minn. 1977).
 - ii. *Wilson v. Merritt*, 142 Cal. App. 4th 1125 (2006).
 - iii. *Truman v. Thomas*, 611 P.2d 902 (Cal. 1980).
 - iv. *Arato v. Avedon*, 858 P.2d 598 (Cal. 1993).
- d. Prudent Physician Standard
 - i. *Culbertson v. Mernitz*, 602 N.E.2d 98 (Ind. 1992).
 - ii. *Rizzo v. Schiller*, 445 S.E.2d 153 (Va. 1994).
 - iii. Daniel Merenstein, *Winners and Losers*, 291 JAMA 15-16 (2004).
- e. Statutory Right-to Know Laws
 - i. Cal. Health & Safety Code § 442.5.
 - ii. N.Y. Pub. Health L. § 2997-c.

3 Decision Making Capacity

- a. Introduction
 - i. Paul S. Appelbaum, *Assessment of Patients' Competence to Consent to Treatment*, 357 NEW ENG. J. MED. 1834-40 (2007).
- b. Classic Cases
 - i. *Lane v. Candura*, 376 N.E.2d 1232 (Mass. 1978).
 - ii. *Dept. Human Services v. Northern*, 563 S.W.2d 197 (Tenn. App. 1978).

4 Ethics Committees

- a. Thaddeus Mason Pope, *Legal Briefing: Healthcare Ethics Committees*, 22 J. CLINICAL ETHICS 74-93 (2011).
- b. Thaddeus Mason Pope, *Multi-Institutional Health Care Ethics Committees: the Procedurally Fair Internal Dispute Resolution Mechanism*, 31 Campbell L. Rev. 257-331, 257-273 (2009).

5 The Capacitated Patient's Right to Refuse

- a. Film Clip: *Dax Cowart*
- b. *Bowvia v. Superior Court*, 179 Cal. App. 3d 1127 (1986).
- c. *McKay v. Bergstedt*, 801 P.2d 617 (Nev. 1990).
- d. *Georgia v. McAfee*, 385 S.E.2d 651 (Ga. 1989) (majority only).
- e. *Satz v. Perlmutter*, 362 S.W.2d 160 (Fla. App. 1978).

6 The Never-Capacitated Patient's Right to Refuse

- a. *Superintendent of Belchertown State School v. Saikewicz*, 370 N.E. 2d 417 (Mass. 1977).
- b. *In re Storar*, 420 N.E.2d 64 (N.Y. 1981).

7 The Now-Incapacitated Patient's Right to Refuse

- a. Introduction
 - i. *In re Quinlan*, 355 A.2d 647 (N.J. 1976).
 - ii. *Cruzan v. Director, Missouri Dept. Health*, 497 U.S. 261 (1990).
- b. Advance Directives
 - i. Minnesota Health Care Directive Act, Minn. Stat. §§ 145C.01-.16.
 - ii. Forms
 1. Minnesota Board of Aging, *Health Care Directive*.
 2. Note: April 16, 2012 is National Healthcare Decisions Day
 - iii. Patient Self Determination Act
 1. Statute: 42 U.S.C. § 1395cc(f).
 2. Regulations: 42 C.F.R. §§ 489.100-.104.
 3. Implementation: *State Operations Manual, Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals* § 482.13 (Rev. 37, 10-17-08).
- c. Surrogates
 - i. Introduction
 1. Thaddeus Mason Pope, *Legal Fundamentals of Surrogate Decision Making*, 141(4) CHEST 1074-81 (2012).
 - ii. Types
 1. Agents and Attorneys-in-Fact
 2. Default Surrogates
 - a. *Butcher v. Fashingbauer*, No. C7-94-1717 (Ramsey Cty, Minn.) (Complaint).
 - b. *Butcher v. Fashingbauer*, No. C7-94-1717 (Ramsey Cty, Minn., Sept. 6, 1994) (Order).
 - c. *Butcher v. Fashingbauer*, No. C7-94-1717 (Ramsey Cty, Minn., Mar. 1, 1995) (Amended Order).
 3. Guardians and Conservators
 4. Special Mechanisms for the Unbefriended
 - iii. Cases
 1. *In re Torres*, 357 N.W.2d 332 (Minn. 1984).
 2. *In re Martin*, 538 N.W.2d 399 (Mich. 1995).
 3. *In re Wendland*, 28 P.3d 151 (Cal. 2001).

- d. POLST – MOLST
 - i. Introduction
 - 1. Charles P. Sabatino, *The Evolution of Health Care Advance Planning Law and Policy*, 88 MILBANK Q. 211 (2010).
 - 2. Lem Vawter & Edward Ratner, *The Need for POLST: Minnesota's Initiative*, MINN. MED. (Jan. 2010).
 - ii. Forms
 - 1. POLST form, <http://www.polstmn.org/>
 - 2. POLST form FAQ, <http://www.polstmn.org/>

8 Medical Futility

- a. Introduction
 - i. John M. Luce, *A History of Resolving Conflicts over End-of-Life Care in Intensive Care Units in the United States*, 38 CRITICAL CARE MED. 1623-29 (2010).
 - ii. Thaddeus Mason Pope, *Medical Futility Statutes: No Safe Harbor to Unilaterally Stop Life-Sustaining Treatment*, 75 TENN. L. REV. 1, 1-41 (2007).
- b. Classic Cases
 - i. *In re Wanglie*, No. PX-91-283 (Minn. Dist. Court, Probate Div., 1991).
 - ii. *Causey v. St. Francis Med. Center*, 719 So. 2d 1072 (La. App. 1998).
 - iii. *In re Baby K*, 16 F.3d 590 (4th Cir. 1994).
- c. Newer Cases
 - i. *In re Guardianship of Albert Barnes* (Hennepin Cty, Minn. Probate Ct., Feb. 4, 2011).
 - ii. *Betancourt v. Trinitas Hospital*, 1 A.3d 823 (N.J. Super. A.D. 2010).
- d. Texas Advance Directives Act,
 - i. Tex. Health & Safety Code §§ 166.001, 166.002, 166.045, 166.046, 166.051, 166.052, 166.053
 - ii. Benefits of TADA
 - 1. Robert L. Fine, Point: *The Texas Advance Directives Act Effectively and Ethically Resolves Disputes about Medical Futility*, 136 CHEST 963-67 (2009).
 - 2. Robert L. Fine, *Rebuttal from Dr. Fine*, 136 CHEST 971-72.

- iii. Problems with TADA
 1. Robert D. Truog, *Counterpoint: The Texas Advance Directives Act Is Ethically Flawed: Medical Futility Disputes Must be Resolved by a Fair Process*, 136 CHEST 968-71 (2009).
 2. Robert D. Truog, *Rebuttal from Dr. Truog*, 136 CHEST 972-73.
 3. Thomas Wm. Mayo, *The Baby Doe Rules and Texas's "Futility Law" in the NICU*, 25 GA. ST. U. L. REV. 1003-17 (2009).

9 Hospice and Palliative Care

- a. Introduction
 - i. Kathleen Tschantz Unroe & Diane E. Meier, *Palliative Care and Hospice: Opportunities to Improve Care for the Sickest Patients* 25 NOTRE DAME J.L. ETHICS & PUB. POL'Y 413 (2011).
 - ii. Kathy L. Cerminara, *Pandora's Dismay: Eliminating Coverage-Related Barriers to Hospice Care*, 11 FLA. COASTAL L. REV. 107-154 (2010).
- b. Federal Regulation
 - i. 42 C.F.R. §§ 418.1-.104.

10 Hastening Death

- a. Physician Aid-in-Dying
 - i. Criminal Prohibition
 1. *Washington v. Glucksberg*, 521 U.S. 702 (1997).
 2. *Vacco v. Quill*, 521 U.S. 793 (1997).
 - ii. Legalization
 1. Oregon Death with Dignity Act, Ore. Rev. Stat. §§ 127.800 -.897.
 2. Oregon Dept. Human Services, *Summary of Oregon's Death with Dignity Act* (2011).
- b. VSED - VRRF
 - i. Thaddeus Mason Pope & Lindsey Anderson, *Voluntarily Stopping Eating and Drinking: A Legal Treatment Option at the End of Life*, 17 WIDENER L. REV. 363 (2011).
- c. Palliative Sedation
 - i. Molly L. Olsen et al., *Ethical Decision Making with End-of-Life Care: Palliative Sedation and Withholding or Withdrawing Life-Sustaining Treatments: Concise Review for Clinicians*, 85 MAYO CLINIC PROCEEDINGS 949-54 (2010).