

**WURZWEILER SCHOOL OF SOCIAL WORK
YESHIVA UNIVERSITY
Ph.D. PROGRAM IN SOCIAL WELFARE**

**LEGAL FOUNDATIONS OF SOCIAL WORK
SWK 8809
SPRING 2018**

I. COURSE DESCRIPTION

Social work practice is guided by developments in the arenas of law, governmental policy, and ethics. Whether framed by court decisions, duly passed legislation, or government agency regulations, laws shape the activities of social work organizations and practitioners. Practice is also shaped by ethical standards of care, formulated by professionals and their professional associations, and often incorporated into law. It is therefore incumbent upon social work scholars to understand how to analyze legal, policy, and ethical developments and innovations, and how to conduct independent research using these analytic skills.

The focus of this course is the application of legal and policy research skills to social work practice. This course builds upon Social Policy and Ideology, which among other courses introduced first-year students to law, policy, and ethical dilemmas in social work practice. To ensure focus and depth in this course, the instructor will select a main topic or theme for investigation throughout the semester, with wider applications to students' areas of interests as they think about their dissertation topics. During the current semester, legal, policy, and ethical analysis will be applied to legal and ethical dilemmas in health care, enabling students to appreciate the application of these arenas to a particular substantive area. Students will be able to apply acquired skills in legal, policy, and ethical reasoning to social work issues – for example, in health care, mental health, education, child welfare, elder services, disability concerns, or civil rights – related to practice, policy development, and advance research. In addition, the course will serve as a general introduction to the many substantive issues and dilemmas confronting health-care providers, including health care social workers, and patients today.

II. EDUCATIONAL OBJECTIVES

A. Knowledge Objectives: General Applicability

At the end of the semester, students will have acquired a basic understanding of:

- the principles of legal analysis
- the principles of ethical analysis, including autonomy
- key constitutional rights, including due process, equal protection, and privacy -
the roles of professional codes of ethics

B. Knowledge Objectives: Health Care

At the end of the semester, students will have acquired an understanding of:

- informed consent and the role of capacity
- confidentiality and truth-telling
- right to refuse care
- surrogate decision-making and advance care planning
- assisted suicide
- reproductive rights, including contraception and abortion
- special issues of children and youths
- clinical research, including roles and responsibilities of institutional review boards (IRBs)

B. Skill Objectives

At the end of the semester, students will be able to:

- Identify legal case materials for analyzing social problems.
- Analyze legal case materials for analyzing social problems.
- Apply legal principles to social problems
- Analyze situations using from an ethics perspective
- Apply ethical principles to social problems

III. COURSE REQUIREMENTS

A. Texts and Readings

Required Texts

Menikoff, J. (2002). *Law and bioethics: An introduction*. Washington, DC: Georgetown University Press.
List: \$39.95 ISBN-10: 0878408398

Stein, T.J. (2004). *The role of law in social work practice and administration*. New York: Columbia University Press. (Selected chapters.)
List: \$90.00 ISBN-10: 0231126484

Assigned readings from sources other than the required texts will be on reserve at the Pollack Library or available online.

Recommended Texts

Altilio, T. & Otis-Green, S. (Eds.)(2011). *Oxford textbook of palliative social work*. New York: Oxford University Press.
List: \$99.95 ISBN-10: 0199739110

Beauchamp, T.L., & Childress, J.F. (2013). *Principles of biomedical ethics, 7th Edition*. New York: Oxford University Press.
List: \$57.73 ISBN-10: 0199924589

Berlinger, N., Jennings, B., & Wolf, S.M. (2013). *The Hastings Center guidelines for decisions on life-sustaining treatment and care near the end of life*. New York: Oxford University Press.
ISBN-10: 0199974551 List: \$39.95

DeGrazia, D., Mappes, T., & Brand-Ballard, J. (2011). *Biomedical ethics, (7th ed.)*. New York: McGraw-Hill.
ISBN-10: 0073407453 List: \$103.49

Dolgin, J.L., & Shepherd, L.L. (2013). *Bioethics and the law, (3rd ed.)*. New York: Aspen.
ISBN-10: 1454810769 List: \$194.00

Dresser, R. (2012). *Malignant: Medical ethicists confront cancer*. New York: Oxford University Press.
ISBN-10: 0199757844 List: \$31.95

Levine, C (2011). *Taking sides: Clashing views on bioethical issues*. 14th ed., Dubuque, IA: McGraw-Hill/Dushkin.
ISBN-10: 0078050111 List: \$52.20

Perlin, M.L. (2005). *Mental disability law, (2nd ed.)*. Durham, NC: Carolina Academic Press.
ISBN: 1594601607 List: \$100.00

Post, L.F., Blustein, J. & Dubler, N.N. (2007). *Handbook for health care ethics committees*. Baltimore, MD: Johns Hopkins University Press.
ISBN-10: 0801884489 List: \$35.00

Sisti, D.A., Caplan, A.L., & Rimon-Greenspan, H.R. (2013). *Applied ethics in mental health care: An interdisciplinary reader*. Cambridge, MA: MIT Press.
ISBN-10: 0262525011 List: \$48.24

Slater, L.K. & Finck, K.R. (2012). *Social Work Practice and the Law*. New York: Springer Publishing Company.
ISBN-10: 082611766X List: \$56.23

Sloan, A.E. (2012). *Basic Legal Research: Tools and strategies, (5th ed.)*. New York: Wolters Kluwer Law & Business.
ISBN-10: 1454808470 List: \$85.27

B. Course Assignments

It is expected that all reading assignments listed as “required” in the course outline will be read prior to the class at which they will be discussed.

Final Assignment: Legal and Ethical Analysis of Health Issues

Due Date: Class 12

Students are to select an issue or problem in health or mental health practice or policy for ethical and legal analysis. While class discussion or materials may cover the issue or problem selected, the paper should go into much greater depth on a particular aspect of this issue, and analyze new professional literature and cases.

The paper should be developed as follows:

1. **Problem / Issue Identification.** Explain the issue or question to be examined by the paper. What is the problem? How did it first develop? What are the legal questions raised by this issue? What are the ethical questions raised by this issue? Explain the scientific or clinical background implicated by this issue. Whom does this issue impact? Students should incorporate at least 3 seminal articles from peer-reviewed ethics literature to support problem analysis.
2. **Ethical Analysis.** Analyze your topic from the perspective of ethical principles and reasoning. Consider the application of professional codes of conduct, such as those issued by the American Medical Association and NASW. Incorporate 3-5 seminal or leading articles from the peer-reviewed literature.
3. **Legal Analysis.** Analyze and synthesize 3-5 key cases in which your problem is at issue. Analysis of legal cases should incorporate the fact pattern, the legal issue presented for resolution, legal principles used to resolve the dispute, the case holding (decision), and implications for future cases. Preference should be given to U.S. or State Supreme Court decisions, or leading appellate court decisions. Also, if applicable, integrate the reasoning of dissenting opinions. (Note: The court decisions should be read and cited in the paper, not analyses of those decisions by other authors.)
4. **Resolution.** Explain your resolution of the legal/ethical issue following the application of legal and ethical perspectives. Does this resolution comport with applicable professional codes of conduct? Are there ethical, legal, or policy questions left unresolved? Why are you satisfied, or not satisfied, with the resolution?

Length: 18-20 pages, not including references.

Adherence to APA style of sectioning, referencing and margins is required. It is expected that students will evidence communication skills consistent with doctoral education standards. It is expected that written work is carefully proofread and edited before submission. It is expected that assignments will be handed in on the due date. Grades may be reduced for late papers.

Class Presentation:

Final papers will be briefly and concisely presented and discussed, using Power Point slides, during classes 13 and 14. The class presentation format may be modified depending upon class size.

C. Class Format

It is assumed that each student will have read the assigned readings prior to each class session. The background material will be used as the point of departure for class discussion.

The course is conducted in seminar format. Students are encouraged to draw upon their experiences and the literature to think analytically about current issues, problems and alternative solutions regarding legal and ethical analysis, health care and social work policy and practice, and qualitative research. Each student is expected to actively participate in class discussions, contributing knowledge, experience and ideas.

D. Grading

The University grading system will be applied. The grade will be based upon the extent to which the student meets the course objectives, as demonstrated in the form, content, and promptness of written assignments as well as class attendance and meaningful class participation.

Criteria for final grades are:

1. Final Paper	70%
2. Class Presentation	10%
3. Meaningful Participation & Attendance	20%

The policy of WSSW is that absences beyond two in a semester may be cause for failure.

E. Evaluation

Students are provided opportunity to evaluate doctoral courses. An evaluation form pertaining to the course and instructor will be conducted on-line. There will also be oral discussion of students' perspectives about the course. Evaluation is ongoing and students are encouraged to provide feedback about their learning needs throughout the semester.

COURSE SCHEDULE

Class 1 INTRODUCTION & OVERVIEW OF THE COURSE

- Overview of course
- Understanding the legal process
- Using legal documents
- Basic legal principles
- Social worker – attorney collaboration

Required readings:

Stein, T.J., Chapter 1, "Introduction," and Chapter 2, "Sources of Law," pages 3-42.

Retkin, R., **Stein, G.L.**, & Draimin, B.H. (1997). Attorneys and social workers collaborating in HIV care: Breaking new ground. *Fordham Urban Law Review*, 24, 533-565.

Class 2 INTRODUCTION TO LEGAL RESEARCH

- Basic skills for conducting legal research
- Researching caselaw
- Researching legislation
- Researching law review journals
- Using electronic databases
- Using the law library
- Introduction to legal citations

Stein, Chapter 4, "Legal Research," pages 74-95.

Class 2 will take place at **Cardozo Law School**, 55 Fifth Avenue at 12th Street, New York, on a date to be determined.

Class 3-4 CONSTITUTIONAL LAW: THE RIGHT TO PRIVACY

- Understanding the justice system
- Concept of legal precedent
- Understanding due process
- Understanding equal protection
- Understanding right to privacy
- Application to reproductive rights and sexual privacy

Stein, Chapter 3, pages 43-57

Menikoff, Chapter 2, "The Right to Privacy," pages 17-38.

Roe v. Wade, in Menikoff, pages 53-63

Planned Parenthood of Southeastern Pennsylvania v. Casey, in Menikoff, pages 68-74

Lawrence v. Texas (e-res)

Class 5 UNDERSTANDING ETHICAL PRINCIPLES IN HEALTH CARE

- Principle of autonomy
- Informed consent doctrine
- Capacity to make medical decisions
- Professional codes of ethics

Required readings:

Beauchamp, T.L. & Childress, J.F. (2013). *Principles of Biomedical Ethics*, 7th edition, New York: Oxford University Press. Chapter 4, "Respect for autonomy," pages 101-141.

Dresser, R. (2012). *Malignant: Medical ethicists confront cancer*. New York: Oxford University Press, Chapter 1, pages 1-9; Chapter 5, pages 57-69.

Caplan, A.L. (2008). Cancer and bioethics: Caring and consensus. *Cancer Supplement*, 113(7), 1801-1806.

The Hippocratic Oath (distributed in class).

American Medical Association (2002), "Fundamental elements of the patient-physician relationship," *Code of medical ethics: Current opinions with annotations* (Distributed in class)

National Association of Social Workers, *Code of Ethics*

Suggested readings:

Beauchamp, T.L. & Childress, J.F. (2013). *Principles of Biomedical Ethics*, 7th edition., New York: Oxford University Press. Chapter 5, "Nonmaleficence"; Chapter 6, "Beneficence"; and Chapter 7, "Justice"; pages 150-301. (Volume placed on reserve at library.)

Class 6 RELATIONSHIPS WITH HEALTH CARE PROFESSIONALS

- The role of confidentiality
- Informed consent to care

- Relationship of culture to truth-telling
- Parents and children: parameters to consent in special situations

Required readings:

Menikoff, Chapter 7, "The Doctor-Patient Relationship," pages 151-184.

Hurley v. Eddingfield, in Menikoff, pages 152-153.

"The law of torts: From battery to informed consent," in Menikoff, pages 154-157.

Canterbury v. Spence, in Menikoff, pages 157-166.

Tarasoff v. Regents of the University of California, in Menikoff, pages 176-181.

Tucker, B.T. (1998). "Deaf culture, cochlear implants, and elective disability," *Hasting Center Report*, 28, pages 6-14.

Groveman, S.A. (1998). "The Hanukkah bush: Ethical implications in the clinical management of intersex," *Journal of Clinical Ethics*, 9(4), pages 356-359.

Class 7 RIGHT TO REFUSE CARE

- Legal right to refuse medical care
- Surrogate decision-making
- Understand advance care planning
- Disagreements between patient and provider

Required readings:

Menikoff, Chapter 10, "The right to refuse care," pages 241-303.

In re Quinlan, in Menikoff, pages 242-252.

Bouvia v. Superior Court, in Menikoff, pages 256-262.

"Making decisions for incompetent patients," in Menikoff, pages 268-274

In re Conroy, in Menikoff, pages 284-292.

Powell, T. and Lowenstein, B. (1996). "Refusing Life-Sustaining treatment after catastrophic injury: Ethical implications," *Journal of Law, Medicine, and Ethics*, 24, pages 54-61.

Schaeffer, J. (2013). Supporting end-of-life decisions: The social worker's role in advance directives. *Social Work Today* (Special White Paper Report)

CLASS 8-9 RIGHT TO DIE

- Doing your own directives
- Is there a constitutional right to assisted suicide?
- Distinguishing assisted suicide from euthanasia
- Appropriate role for health care professionals when asked for aid to die - Disorders of consciousness

Required readings and exercise:

Complete state-specific advance directives:

New York State Advance Directive, download from:
http://www.caringinfo.org/UserFiles/File/New_York.pdf

New Jersey Advance Directive, download from:
<http://www.caringinfo.org/UserFiles/File/NewJersey.pdf>

Other state advance directives, download from:
<http://www.caringinfo.org/stateaddownload>

Medical Orders for Life-Sustaining Treatment (MOLST). Downloaded from:
<http://www.health.ny.gov/forms/doh-5003.pdf>

Menikoff, Chapter 11, "The constitution and the right to die," pages 304-355.

Cruzan v. Director, Missouri Department of Health, in Menikoff, pages 304-313.

"Physician-assisted suicide," in Menikoff, pages 327-329

Washington v. Glucksberg, in Menikoff, pages 329-338.

Vacco v. Quill, in Menikoff, pages 346-349.

Oregon Death with Dignity Act, in Menikoff, pages 351-353.

Hartocollis, A. (2009, December 27). Hard choice for a comfortable death: Drug-induced sleep. *The New York Times*. Downloaded from:
[http://www.nytimes.com/2009/12/27/health/27sedation.html?pagewanted=1&_r=1&sq=comfortable death&st=cse&scp=1](http://www.nytimes.com/2009/12/27/health/27sedation.html?pagewanted=1&_r=1&sq=comfortable%20death&st=cse&scp=1)

Swidler, R.N. (2010). The [New York State] Family Health Care Decisions Act: A Summary of Key Decisions, *New York State Bar Association Health Care Law Journal*, 15(1), 32-35.

Oregon Public Health Division (2012). Oregon's Death with Dignity Act – 2012. Downloaded from:
<http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year15.pdf>

Eisenberg, D. (2005, April 4). "Lessons of the Schiavo battle," *Time*, pages 22-30.

Gorman, C. (2005, April 4). "When does the brain go blank?" *Time*, pages 26-27.

CLASS 10 CHILDREN AND YOUTH

- Parental rights of decision-making
- Rights of adolescents to make decisions
- Emancipated minors
- Religious vs. secular values in protecting minors with treatable illnesses

Required readings:

Weir, R.F., & Peters, C. (1997). Affirming the decisions adolescents make about life and death, *Hastings Center Report*, 27(6), 29-40.

Ross, L.F. (1997). Health care decisionmaking by Children: Is it in their best interest? *Hastings Center Report*, 27(6), 41-45.

Orr, R., Novotny, W.E., and Perkin, R. (2003), "Faith-based decisions: Parents who refuse appropriate care for their children," *Virtual Mentor*, 5:8, download at:
<http://virtualmentor.ama-assn.org/2003/08/ccas1-0308.html>

Sheldon, M. (1996). Ethical issues in the forced transfusion of Jehovah's Witness children. *Journal of Emergency Medicine*, 14(2), 251-257.

Johnson, D. (2009, January 21). Trials for parents who chose faith over medicine. *The New York Times*, download at:
http://www.nytimes.com/2009/01/21/us/21faith.html?_r=1&sq=parents medical neglect&st=nyt&scp=13&pagewanted=print

Minors consenting to medical care: legislative approaches (distributed in class).

CLASS 11 CLINICAL RESEARCH

- Understanding clinical research
- Distinction between experimental health care and treatment
- Necessity for informed consent

- From Nuremberg to Tuskegee to current case: Protecting the public
- The Federal regulatory approach
- Institutional review boards
- Special guidelines for research involving children

Required readings:

U.S. Department of Health and Human Services, "Basic HHS policy for protection of human research subject," 45 *Code of Federal Regulations*, Sections 46.101-46.116. Downloaded from: <http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html> (Key sections to be announced). The Nuremberg Code (1948) (distributed in class) "Ethical Codes," pages 253-259.

King, P. (1992). "The dangers of difference: The legacy of the Tuskegee Syphilis Study," *Hastings Center Report*, 22(6), 35-38.

McNeill, D.G. (2011, August 30). Panel hears grim details of venereal disease tests. *New York Times*.

Zimmer, C. (2013, August 7). A family consents to a medical gift, 62 years later. *New York Times*.

Mastroianni, A.C., & Kahn, J.P. (2002). Risk and responsibility: Ethics, *Grimes v. Kennedy Krieger*, and public health research involving children. *American Journal of Public Health*, 92(7), 1073-1076.

Dolgin J.L. and Shepherd, L.L. (2005). *Bioethics and the Law*, New York, NY: Aspen Publishers, Chapter 7, "Human Subject Research and Experimental Health Care," pages 442-451, 461-463.

Williams, T. (2011, September 15). Racial bias seen in study of lead dust and children. *New York Times*.

CLASS 12 RIGHTS OF MENTAL HEALTH PATIENTS

- Involuntary hospitalization
- Mandatory outpatient treatment
- Right to treatment
- Least restrictive environment
- Right to community care

Required readings:

Stein, Chapter 14, "Mental health and the law," pages 337-363.

Wyatt v. Stickney, 325 F.Supp. 781 (M.D. Ala. 1971)

Olmstead v. L.C., 527 U.S. 581 (1999).

CLASSES 13 & 14 PRESENTATIONS OF STUDENT RESEARCH

Students will present their research papers briefly and concisely, using Power Point slides. Presentations shall last 20 minutes each, with 5 minutes for class discussion.