

Syllabus: Introduction to Dispute Resolution in Healthcare

PROFESSOR CHARLES PILLSBURY

Charles.Pillsbury@quinnipiac.edu

Office: School of Law and Education, Room 252

QUSL phone: 203-582-8145; Cell phone: 203-640-3889

Spring 2015, 14 Weeks,

Two Credits [LAWS*539*01 (4724)] [short paper]

Three Credits [LAWS*539*02 (4725)] [long paper]

Mondays, 6:00 – 7:50pm, 01/05/2015 – 04/20/2015

School of Law and Education, Room 352

OVERVIEW: This course will introduce students to the potential role of ADR in resolving some of the most compelling disputes in the healthcare field. As this course will emphasize both conflict resolution skill-building and content-based learning, by the end of the course, students will be familiar with a spectrum of dispute resolution processes and context specific strategies for resolving conflicts in different healthcare settings.

Text: There is no text. All reading materials will be provided to students.

DETAILED SYLLABUS:

Unit 1: Introduction to Dispute Resolution in Healthcare

Class (1) – Mon. 1/5/15

Topic: General Introduction to Dispute Resolution in Healthcare

Assignment:

- Benesch, *Why ADR and Not Litigation for Healthcare Disputes?*
- Morreim, *Conflict Resolution in Health Care_2014*
- Roscoe, *Health Care Reform Will It Impact ADR?*
- § 1.1 History and uses of ADR-Westlaw

Class Resource: **Alternative Dispute Resolution Practice Guide (Westlaw)**

Proposed Class Activities:

- Introductions & Active Listening Exercise
- Course Objectives & Expectations
- “Conflict” Stereotypes – brainstorming “conflict”
- Conflict Style exercise – DYNAD Instrument
- Discuss spectrum of dispute resolution methods
- Discuss **Speziale ADR Symposium** at QUSL on **Friday, March 27, 2015**

Syllabus: Introduction to Dispute Resolution in Healthcare

Class (2) – 1/12/15

Topic: The Culture of Medicine and Dispute Resolution/The Culture of Hospitals: Hierarchical Structure and Hostility to ADR

Assignment:

- Gerardi, *Cultivating Conflict Competent Healthcare Organizations- Part 1: The Need for Conflict Competence and Relationship-based Conflict Engagement*, draft Jan.2013
- Gerardi, *The Many Cultures of Healthcare-A Framework for Orienting to Conflict in Complex Organizations*, draft Jan.2013
- Morrison, *ADR in Healthcare: The Last Big Frontier?*
- Mazadoorian, et al, *A Discussion about Alternative Dispute Resolution in the Healthcare Field*, CT Lawyer, April 2006,

Proposed Class Activities:

- **Speaker: Attorney Bill Stempel** is both a healthcare lawyer and an ADR specialist
- Active Listening Exercises

Unit 2: Patient Centered Conflicts

Class (3) – 1/26/15 – CLASS CANCELED DUE TO SNOW.

Topic: Introduction to Patient Centered Conflicts / Insurance Reimbursement Issues & Medical Malpractice, Part 1

Assignment:

- Balcerzak & Leonhardt, *Alternative Dispute Resolution in Healthcare: A Prescription for Increasing Disclosure and Improving Patient Safety* (2008)
- Hyman, *Mediation and Medical Malpractice*
- Levinson, Lesser & Epstein, *Developing Physician Communication Skills For Patient-Centered Care*, 29 HEALTH AFFAIRS 1310 (2010)
- Novak & Hall, *Conflict Negotiation Guidelines*, HEALTH SYSTEMS 2020, 4:11-17 (2001)
- Sohn & Jayasankar, *Medical liability reform: Is alternative dispute resolution the answer?* AAOS, Dec.2011
- Szmania, Johnson & Mulligan, *Alternative Dispute Resolution in Medical Malpractice: A Survey of Emerging Trends and Practices*, Conflict Resolution Quarterly, Fall 2008

Class (4) – 2/2/15 – MOVED TO 2/9/15

Topic: New Approaches to Medical Malpractice, Part 2: Disclosure, Apology, and Compensation

Assignment: PAPER TOPICS DUE

- § 1.4 Mediation-Westlaw
- Ebert, *Attorneys, Tell Your Clients to Say They're Sorry: Apologies in the Health Care Industry*, 5 Ind. Health L. Rev. 337 (2008)
- Mello, Boothman, McDonald, Driver, Lembitz, Bouwmeester, Dunlap and Gallagher *Communication-And-Resolution Programs: The Challenges And Lessons Learned From Six Early Adopters*, Health Affairs, 33, no.1 (2014):20-29

Syllabus: Introduction to Dispute Resolution in Healthcare

- Mello, Senecal, Kuznetsov and Cohn, *Implementing Hospital-Based Communication-And-Resolution Programs: Lessons Learned In New York City*, Health Affairs, 33, no.1 (2014):30-38
- Morreim, *Malpractice, Mediation and Moral Hazard: The Virtues of Dodging the Data Bank*, 27 Ohio St. J. on Disp. Resol. 109 (2012)

Proposed Class Activities:

- Introduction to Negotiation

Class (5) – 2/9/15 – NOW 2/16/15

Topic: End of Life Decision Making: Bioethics and ADR, part 1

Assignment:

- Cohen, Negotiating death: ADR and end of life decision-making
- Thaddeus Mason Pope, *Multi-Institutional Healthcare Ethics Committees: The Procedurally Fair Internal Dispute Resolution Mechanism* (2009)
- Gerardi, Team Disputes at End-of-Life: Toward an Ethic of Collaboration
- Gerardi, The Emerging Culture of Health Care: Improving End-of-Life Care through Collaboration and Conflict Engagement among Health Care Professionals, 23 OHIO ST. J. ON DISP. RESOL. 105 (2007-2008).

Resource: Dubler & Liebman, *Bioethics Mediation: A Guide to Shaping Shared Solutions*, Vanderbilt Press, 2011

Proposed Class Activities:

Proposed Class Activities:

- Introduction to Mediation
- Role-play 2-4 case studies from Cohen article. Students determine what should be done and who should decide and select their preferred mode of dispute resolution (negotiation, mediation, etc.).

Class (6) – 2/16/15 – NOW 2/23/15

Topic: End of Life Decision Making: Bioethics and ADR, part 2

Assignment:

- Scott, *Ethics Consultations and Conflict Engagement in Health Care* (2014)
- Fiester, *Bioethics Mediation & the End of Clinical Ethics As We Know It* (2014)
- Fiester, *Mediation & Recommendations* (2013)
- SUSSKIND, *MEDIATING VALUES-BASED AND IDENTITY-BASED DISPUTES* (FRANK SANDER LECTURE AT THE ALTERNATIVE DISPUTE RESOLUTION SECTION MEETING OF THE AMERICAN BAR ASSOCIATION), THE CONSENSUS BUILDING APPROACH (APR. 8, 2010), AVAILABLE AT [HTTP:// THECONSENSUSBUILDINGAPPROACH.BLOGSPOT.COM/2010/04/MEDIATING-VALUES-BASED-AND-IDENTITY.HTML](http://theconsensusbuildingapproach.blogspot.com/2010/04/mediating-values-based-and-identity.html)

Proposed Class Activities:

- Introduction to Dialogue Facilitation
 - Role-play involving healthcare ethics committees. Role-play involving case study from Fiester article.
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Unit 3: Provider Team Centered Conflicts

COMBINE ASSIGNMENTS FOR Classes (7) & (8) – 2/23/15 & 3/02/15 – NOW 3/02/15

Class (8) – 3/02/15

Topics: Conflict within Hospitals / The Role of Ombudspersons in Healthcare Settings

Assignment:

- Morreim, *In-House Conflict Resolution Processes: HEALTH LAWYERS AS PROBLEM-SOLVERS*, *Health Lawyer*, Feb. 2014
- Scott & Gerardi, *A Strategic Approach for Managing Conflict in Hospitals: Responding to the Joint Commission Leadership Standard, Part 1*, 2011
- Scott & Gerardi, *A Strategic Approach for Managing Conflict in Hospitals: Responding to the Joint Commission Leadership Standard, Part 2*, 2011
- Waxman, *A Nonlitigational Approach to Conflict Resolution: The Medical Center Ombudsperson As a Model*, *Corporate Counsel's Guide to ADR Techniques*, 2006.
- “The Internal Neutral: Why Doesn't Your Hospital Have One?”
- The Role of the Ombudsperson at Stanford University School of Medicine,
- The Ombudsman Association Code of Ethics,
- Ombudsperson at Stanford School of Medicine, Mediation

Resource: Howard, The Organizational Ombudsman: Origins, Roles and Operations-A Legal Guide, 2010

Class Activities:

- Introduction to the Ombuds Role
- **Speaker: Chuck Howard**, author of The Organizational Ombudsman: Origins, Roles and Operations-A Legal Guide, 2010.

Assignment: **PAPER OUTLINE DUE – midnight Friday, 3/6/15**

No Class – Monday, 3/9/15

Unit 4: Conflicts Between Private Institutions

Class (9) – 3/16/15

Topic: Accountable Care Organizations (ACOs)

- Ronai, *Accountable Care Organization Program: New Healthcare Disputes and the Increased Need for ADR Services*, 2011
- Sobkowiak & Knag, *ACO Disputes: Why Will They Happen and How Should We Solve Them*, *Dispute Resolution Journal (AAA)*, Vol. 69, No. 3, 25-33
- Sample ACO contract - Jan. 2011
- ACO contract overview - June 2013
- ACO Manifesto - September 2013
- § 1.2 Contractual arbitration-Westlaw; § 1.3 Judicial arbitration-Westlaw

Activities:

- Speakers: **Adjunct Professor Gerry Robilotti & Attorney Paul Knag**
- Introduction to Arbitration
- Presentation of student papers

Syllabus: Introduction to Dispute Resolution in Healthcare

Class (10) – 3/23/15

Topic: Payor/Provider Conflicts

Assignment:

- Lash, *Arbitration's Key role in resolving employment related HC disputes_DRJ_V69_3*
- AAA Healthcare DR Brochure – 2011
- AAA Healthcare Payor/Provider (P/P) Arbitration Rules – 2011
- AAA Overview Healthcare P/P Rules – 2012
- ABA DR - ARBITRATION in Healthcare Disputes - 2014

Activity: **Speaker Adjunct Professor Peter Benner**, attorney, mediator & arbitrator – available for entire class; he serves on AAA's national payor/provider arbitration panel

SPECIAL EVENT: FRIDAY, MARCH 27, 2015; Attendance = Two Make-up Classes

Since 1998, the Connecticut Bar Foundation has sponsored eight symposia focusing on alternative dispute resolution (ADR), all of which have been hosted by Quinnipiac University School of Law. The symposia are named for former Connecticut Supreme Court Justice John A. Speziale. **Upcoming Symposium.** The 9th **Speziale ADR Symposium** will be held on **Friday, March 27, 2015**, at the law school. The topic will be **“What are the Cures for Conflict in Healthcare?”** Plenary and breakout topics include:

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- **“Shared governance”** structures within healthcare organizations, which are experiencing conflicts between personnel policies, hospital bylaws and medical bylaws, as clinicians transition from independent practitioners to hospital employees. This topic may also address the impact of Accountable Care Organizations on private practice.
 - **“Reframing clinical conflict”**- using a relational approach to conflict among health professionals, and the skills needed by conflict specialists working in and with healthcare organizations.
 - **“Unexpected outcomes”** in patient care, how they are addressed and a comparison of old processes of outcome and peer review with new processes.
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Unit 5: Conflicts with Governmental Bodies

Class (11) – 3/30/15

Topic: Electronic Healthcare Records (EHR); “Meaningful Use” of Health IT for reimbursement purposes; and IT Vendor contracts

- An Introduction to the Medicare EHR Incentive Program for Eligible Professionals,
- Lieber, As Electronic Health Record Implementations Rise...So will Disputes
- Milwaukee Community health center battles for patients' records, 2013
- *The Health Care Blog*, <http://thehealthcareblog.com/blog/tag/meaningful-use/>

Class Activities:

- Presentation of student papers
- Discuss Milwaukee Community health center battle/IT Vendor contracts
- Discuss/role-play the case studies involving meaningful use in the Health Care Blog.

Syllabus: Introduction to Dispute Resolution in Healthcare

Class (12) – 4/6/14

Topic: Licensure Disputes

Assignment: **FIRST DRAFT OF PAPER DUE**

- “*Mediating Licensure Disputes: The Use of ADR by Canadian Medical and Nursing Licensing Authorities*,” Dr. Robert Robson, Director of Patient Safety, Winnipeg Regional Health Authority, 2002
 - Zuckerman, *Mediating Regulatory Disputes Involving Licensed Professionals: The Connecticut Department of Public Health Experiment*, 62-APR Disp. Resol. J. 14 (February-April 2007)
 - ALTERNATIVE DISPUTE RESOLUTION AND PROFESSIONAL LICENSING, Pam Brinegar, Council on Licensure, Enforcement and Regulation, and Bruce Douglas, Division of Registration, Colorado Department of Regulatory Agencies
Activities:
 - **Speaker Martha Murray** has a unique practice based in New Haven devoted to estate planning and professional licensure matters.
 - Presentation of Student Papers
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Unit 6: Ethical Issues and Professional Codes of Conduct

Class (13) – 4/13/15

Topic: Conflicts Involving Professional Codes of Conduct

- Model Rules of Professional Conduct - http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html
- American Medical Association Code of Ethics - <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page>
- American College of Healthcare Executives Code of Ethics

Assignment:

- Selected readings from above codes of ethics, and others, including nursing and social work
- Menkel-Meadow, *Ethics in ADR: The Many "Cs" of Professional Responsibility and Dispute Resolution* (2001)
- Scott, *Doctors as Advocates, Lawyers as Healers* (2008).

Class Activities:

- **Panel discussion: Prof. J. Herbst; Lynn Price, APRN, JD, MSN, MPH; Merle Waxman, Associate Dean, Ombudsperson and Director, Women in Medicine, Yale School of Medicine;** and
- Course evaluation – were course goals and student expectations met?

Class (14) – 4/20/15

Topic: TBD by students

FINAL DRAFT OF PAPER DUE: 6:00 P.M. MONDAY 5/4/15