Legal Methods for Medical Professionals: Implementing a Medical School Rotation in the Law School to Promote Greater Cooperation and Understanding between the Professions

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CHRISTINE COUGHLAN

The failure to understand the basic difference in method between doctors and lawyers is often a stumbling block to greater cooperation between the two professions.¹

During the past decade, I taught basic principles of health law and bioethics to both law students and medical students, but in separate settings. Both sets of students are bright, eager learners, but I found a lack of trust and heightened sense of competition between the two. This is something I wanted to change – or at least I wanted to be a part of a change that could lead to greater cooperation and better relations between the two professions. Thus, the idea of the joint course was born to combat the lack of mutual understanding that begins early in the professional education process, where there is little to no opportunity for meaningful dialogue or debate between medical and law students.

It took several years to get this course approved and scheduled. In January 2011, however, we were able to implement a month-long medical school rotation for fourth-year medical students and second- and third-year law students. This rotation was housed primarily at the law school and, as will be explained in further detail, was designed to provide an interactive and multidisciplinary educational experience for members of both educational perspectives.

My personal goals with this course were to shift attitudes so that the

medical students would begin to view the law not as an obstacle to patient care or research, but rather as a guide to providing the best possible patient care or research.\(^2\) I also wanted to empower these future physicians with the tools they would need if, at some point, they sought to get involved in the political process.\(^3\)

With respect to the law students, I hoped they would gain a deeper understanding of the pressures and demands within the medical system, as well as develop a sense of empathy concerning the personal impact of a suit brought against a physician. In addition, I hoped law students would understand a physician's frustration that lawyers are intimately involved with implementing laws that affect every aspect of the provision of medical care, but generally lack the medical training to understand the impact these laws have on the day-to-day delivery of patient care. Moreover, I hoped by providing both medical students and law students with myriad opportunities for discussion, debate, and reflection, all would form meaningful professional relationships and develop a deeper understanding of the interests and the demands on members of other professions when dealing with healthcare issues.\(^4\)

There has been a movement by the American Bar Association ("ABA") to reform legal education, in part, by reforming the legal education accreditation process.\(^5\) With respect to one of the major proposed reforms – using an outcome-based assessment model – the ABA asserts that the other professional schools, including medical schools, all use an outcome-based measures standard to document student success.\(^6\) I wanted to use this outcome-based process in the development of this course. To do so, I worked backwards from my personal goals to create course objectives and then constructed and arranged the individual classes to satisfy the course objectives.

As set forth in Attachment A, based on my personal goals for the course, I fashioned two course objectives: (1) to provide fourth-year medical

\(^2\) See Wake Forest University, Faculty Profile: Chris Coughlin (Feb. 22, 2011), http://news.law.wfu.edu/2011/02/faculty-profile-chris-coughlin-‘90/.

\(^3\) Id.

\(^4\) Id.


students with an in-depth overview of legal education and the legal system, with a particular focus on health-related issues that would positively affect their future practices; and (2) to bring medical students and law students together for education, dialogue and debate of various legal, bioethics and biotechnology-related issues, with a focus on understanding the roles the different professions play in the advancement of medicine, science, ethics, law and policy.

To meet these objectives, neither traditional lecture nor the Socratic dialogue would be appropriate. The students needed an active and experiential learning experience. The "Best Practice Report for Legal Education" provided the following compelling guidance:

Experience is the immersing of one’s self in a task or similar event—the doing. Reflection involves stepping back and reflecting on both the cognitive and affective aspects of what happened or was done. Theory entails interpreting the task or event, making generalizations, or seeing the experience in a larger context. Application enables one to plan for and make predictions about encountering the event or task a second time.

7. See Legal Methods for Medical Professionals/Bioethics and the Law Course Syllabus (Spring 2011) (attached as Attachment A) [hereinafter Course Syllabus].

8. Id.


10. See Christine Coughlin et al., See One, Do One, Teach One: Dissecting the Use of Medical Education’s Signature Pedagogy in the Law School Curriculum, 26 GA. ST. U. L. REV. 361, 397 (2010) [hereinafter See One, Do One, Teach One] (“Active learning exercises, like those used in medical education, incorporate components of the predominant learning theories of behaviorism, cognitivism, and constructivism. Specifically, students learn from repetition, reward and punishment (characteristic of behaviorism); brain-based learning, sorting, encoding, and retention of material from short-term to long-term memory (characteristic of cognitivism); and, most importantly, the ability to apply learned concepts and ideas to new situations (deriving from both cognitivism and constructivism) (internal citations omitted).

11. See generally Roy Stuckey et al., BEST PRACTICES FOR LEGAL EDUCATION (Clinical Legal Educ. Ass’n 2007).

12. Id. at 122 (quoting Steven Hartwell, Six Easy Pieces: Teaching Experientially, 41 SAN DIEGO L. REV. 1011, 1013 (2004)).
I decided to use the reflection, theory, and application approach, although not in that order, by generally providing short lectures consistently followed by an application experience that required the students to utilize the readings and lectures. For the lectures, I invited a variety of guest lecturers who were not only leaders and scholars in their fields, but who were also fantastic teachers. For the application section, I incorporated a myriad of opportunities for simulation and role-playing using realistic legal/medical, biotechnical, and research-related scenarios, such as a clinical ethics consult, investigational review board meeting, mental capacity presentation, as well as a medical malpractice negotiation and mediation session, just to name a few. The students were then given the role of patient, physician, judge, lawyer, congressional representative, agency representative, ethics committee members, etc. to resolve the conflict.

One important twist, however, was that typically the students had to take on opposing roles to their field of study (for example, the law students had to play the role of physician, or other healthcare provider, and the medical students performed the role of lawyer, in-house counsel, judge, etc.). Following the simulations, we would have a “post-mortem” or opportunity for group reflection on the exercise.

One reason that the simulations – and the twist with the role-playing – were so integral to the course design was that the students, even at this early stage in their professional careers, had already formed strong views and biases about the roles of physicians and lawyers in resolving conflict. In order to be able to shift attitudes, I needed the students to “get outside themselves” and practice these new attitudes in a realistic and practical context. It was vital that the students recognized that there were no right answers, but rather valid competing interests for each of the simulations that depended in part upon “individual circumstances in background, culture, economics, education, religion or other social factors.” Their assigned roles motivated them to dispassionately evaluate all potential arguments, as well of a range of appropriate actions, even those they may not personally or professional agree with (i.e., bringing a lawsuit against a

14. Id.
15. Molly Cooke et al., American Medical Education 100 Years After the Flexner Report, 355 NEW ENG. J. MED. 1339, 1342 (Sept. 28, 2006) (noting that “[c]ognitive psychology has demonstrated that facts and concepts are best recalled and put into service when they are taught, practiced and assessed in the context in which they will be used”).
healthcare provider or ruling in favor of a medical malpractice plaintiff and against a health care provider).\textsuperscript{17} In addition, role-playing “protect[ed] them from having to defend or change their own personal beliefs. As a result, students [were] less likely to create internal psychological or social barriers to opposing views”\textsuperscript{18}

Based on the student evaluations and my own experience, I believe that the course satisfied its objectives and was quite successful. A majority of the medical students expressed that the course resulted in an attitude shift.\textsuperscript{19} Specifically, following the course, the medical students changed their preconceived notions about the law and the role of lawyers, which had been negative.\textsuperscript{20} Many agreed that that they began to view the law as a guide to quality patient care, rather than as an obstacle. Students also indicated (although not as strongly) that following the course they were more likely to become involved in the political process if they viewed a law as being unfair, unworkable, or contrary to best practices.\textsuperscript{21}

Interestingly, the law students who participated in the course did not seem to experience any significant attitude shift about physicians or medical malpractice reform. In the future, I would like to determine if this was an aberration in the year’s class, a difference in the educational process (unlike the medical students who were immersed in legal education, the law students were not “immersed” in medical education), a concern on the students’ part that it may be unethical to provide any deference or consideration to a physician in the decision of whether to initiate a lawsuit, or whether it is a result of medical students’ increased reasoning strategy due to the intense clinical and practical training they receive in the third and fourth years of their medical education.\textsuperscript{22}

As with any teaching project, I plan to make changes for next year. These changes include, but are not limited to, the following: (1) teaching public law classes in a group followed by private law classes in order to have a more meaningful distinction for the medical students; (2) having the

\begin{footnotes}
\item[17.] Bioethics and the Law, supra note 16, at 36.
\item[18.] Id.
\item[19.] Interviews with Wake Forest Univ. School of Med. students in Legal Methods for Med. Prof. Course, in Winston-Salem, NC (Feb. 7-8, 2011).
\item[20.] Id.
\item[21.] Id.
\item[22.] In a recent empirical study, third-year law students, unlike fourth-year medical students, “showed only a slight change in reasoning strategy compared to second-year students. . . . whereas [fourth year medical students focused on developing a coherent explanation for a problem.” Stefan H. Krieger, The Development of Legal Reasoning Skills in Law Students: An Empirical Study, 56 J. LEGAL EDUC. 332, 351–53 (2006). Professor Krieger hypothesizes that the differences in reasoning skills between the final-year medical and law students may turn on the difference in later-year curriculum in that medical students all engage in clinical training in their last two years, whereas only a subset of law students do so. Id.
\end{footnotes}
law students shadow physicians before the simulations in order to more fully understand the physician’s role; (3) creating a joint book club where the students read a fictional piece that portrays both physicians and lawyers and reflect upon the story in a social setting, and (4) spending more class time on theories of advocacy and justice, particularly in how they apply in the context of criminal law. This was an area that was quite problematic for the medical students. Specifically, as one medical student pointed out, “we [physicians] work together in a group facing forward, each with our individual expertise to make sure the truth comes out with a diagnosis and proper treatment for the patient. Lawyers face inward and oppose each other and hope that through conflict the truth will emerge.”

In the end, while “[t]here may have been a time when doctors and lawyers had much in common, . . . today their environments are radically divergent and the problem of mutual understanding is a real one.” Thus, it may be that the differences between the professions are much greater than the similarities. It may also be that the animosity and lack of mutual understanding between the professions will continue or worsen. The best way to understand someone, however, is to “walk for a mile in their shoes.”

My hope is that this course allowed students to gain a deeper understanding of each other’s profession and the corresponding demands, and that it ultimately will play a role, albeit small, in promoting greater cooperation and understanding between the medical and legal professions.

23. Interview with Wake Forest Univ. School of Med. student Ravi Ramnik Sanghani, in Winston-Salem, NC (February 2011).
24. CURRAN, supra note 1, at 34-35.
25. But see, e.g., See One, Do One, Teach One, supra note 10, at 366 (“The history of the two educational models further illustrates that the two professions have shared experiences in education reform and that the professions can and should borrow effective educational practices from each other to improve the educational process and client/patient outcomes.”)
26. The source of this quote is unknown. Some individuals assert that the quote is rooted in the Native American culture and the term “shoes” was initially “moccasins.” Other individuals assert that the term “shoes” was originally “boots.”
ATTACHMENT A
Legal Methods for Medical Professionals/Bioethics and the Law
Spring 2011 Syllabus

Course Overview:

The goal of this rotation is to introduce you to the legal system, different sources of law, and legal analysis, with a focus on health-law related topics relevant to medical practitioners. Within the rotation you will become familiar with the Socratic dialogue, and other pedagogical methods used by law professors, to hone your inductive and deductive reasoning skills. You will also be provided with an overview of the litigation process to understand the theories and strategies used by lawyers in trying cases, as well as principles of business drafting that may be relevant in establishing and managing your medical practice.

This rotation will be highly interactive and will involve applying the legal and ethical principles we learn about in realistic legal/medical and research-related scenarios. This course will also involve the use of simulation and role-playing as the professors and students act out the parts of doctors, lawyers, congressional representatives, agency representative, ethics committee members, etc. in practical, real-life scenarios.

Course Expectations, Requirements, and Grading:

There is a lot of reading in this course: some of it is unfamiliar territory for many of you, while other readings will come as second nature. I expect you to read all assigned material before class. I also want you to read with an eye to making connections among different types of readings and exploring relationships among issues. The reading assignments are all available electronically. If you need to be absent, please let me know in advance.

Some of the legal and ethical issues we will be discussing are complex and may be controversial. In addition, “right” answers are rare; thus, reflection and discussion are the best ways to grapple with the questions and lay the groundwork for addressing them in your education and future medical practices.

In addition to class time, each student will be responsible for participating in out of class enrichment activities with at least one other student from the law school. Examples include interviewing local attorneys with medical degrees or who practice various types of health law, attending court sessions, or attending an IRB meeting. We will be discussing the logistics of these activities during class.
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<tr>
<th>Date/Time/Classroom</th>
<th>Topic</th>
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<tbody>
<tr>
<td>Class 1</td>
<td>Intro to sources and systems of law Application: The Sun-Worshipper – Bowker v. Lake Forest Medical Center</td>
<td>• Christine Coughlin et al., A Lawyer Writes, Chapter 2, Sources and Systems of Law [hereinafter A Lawyer Writes] • Mark Hall &amp; Nancy King, Methods in Medical Ethics</td>
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<tr>
<td>Class 2</td>
<td>Intro to bioethics and the law and ethics primer Guest Lecturer: Dr. Frank Celestino Application: Ethics scruples</td>
<td>• Frank Celestino, Ethics Law School • Nancy M.P. King, Glossary of Basic Ethical Concepts in Healthcare and Research • Recommended: Larry Churchill et al., Ethics in Medicine: An Introduction to Moral Tools and Traditions</td>
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| Class 5 | Mental capacity issues in law and medicine  
Guest Lecturers: Prof. Kate Mewhinney & Dr. Stephen Kramer  
Application: Icebreaker and Mental capacity group presentations | • Kate Mewhinney & Stephen Kramer, Outline and Assignments for Mental Capacity Issues |
| Class 6 | Intro to contracts. The role of contract doctrine in health care law in general and with covenants not to compete and in surrogacy cases in particular. Intro to business drafting principles  
Guest Lecturer: Prof. Miles Foy  
Overview of legal resources in the law library: Profs. Sally Irvin & Jason Sowards | • Morris R. Cohen, The Basis of Contract, 45 Harv. L. Rev. 553 (1933) (excerpt)  
• A Consent Theory of Contracts, 6 Colum. L. Rev. 269 (1986) (excerpt) |
| Class 7 | Mental capacity issues in law and medicine  
Guest Lecturers: Prof. Kate Mewhinney & Dr. Stephen Kramer  
Application: Mental capacity group presentations | • John H. Drane, The Many Faces of Competency  
• Charles Duhigg, Shielding Money Clashes with Elders’ Free Will  
• Laura B. Dunn, et al., Assessing Decisional Capacity for Clinical Research or Treatment: A Review of Instruments |
| Class 8 | Intro to criminal law and the role of criminal law in the health care context. Intro to business | • H.L. Packer, The Limits of the Criminal Sanction  
• John Korzen, |
• S33, Medical Liability Reform  
• Mark Hall & Chris Coughlin, Informed Consent case file  
• Johnson v. Kokemoor, 545 N.W. 2d 495 (Wisc. 1996)(excerpt)  
• *Albany Urology Clinic v. Cleveland*, 528 S.E.2d 777 (Ga. 2000) (excerpt)  
• Duttry v. Patterson, 771 A.2d 1255 (Penn. 2001)(excerpt)  
|--------------|---------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| Class 10     | Attend “Palliative Care: Transforming the Care of Serious Illness.” Dr. Diane Meier    | • Wendell Berry, *Fidelity in Fidelity*: Five Stories (1992)(excerpt)  
• Meet with law students in social setting (coffee, lunch, etc.) before conference to discuss reading and other issues that have been brought |
| Class 11 | Introduction to Constitutional law  
Guest Lecturer: Prof. Wilson Parker | • Cruzan v. Director, Missouri Dep’t of Health, 497 U.S. 261 (1990)  
• Wilson Parker, Establishing Justice: The Constitution and Natural Law  
• Griswold v. Connecticut, 381 U.S. 479 (1965) |
| Class 12 | Clinical ethics consultation simulation  
Guest Lecturer: Dr. John Moskop | • John Moskop, Case file for Clinical Ethics Committee  
• ASBH, Core Competencies, Nature and Goals of Ethics Consultation |
| Class 14 | Health care reform  
Guest Lecturer: Prof. Mark Hall  
Health care reform - research  
Guest Lecturer: Jason Sowards  
Application: Examining universal coverage in other countries – what can the U.S. learn? | • Frontline: Sick Around the World (video)  
• CRS, Federal Rulemaking Authority  
• CRS, Bills and Resolutions  
• CRS, Legislative History  
• CRS, Overview of the Authorization-Appropriations Process |
| Class 15 | Practical document review  
Guest Lecturer: Prof. Barbara Lentz | • Barbara Lentz, Drafting contracts (class materials)  
• Litowitz v. Litowitz, 48 |
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### Legal Methods for Medical Professionals

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<tr>
<td>Class 19</td>
<td>The role of health care and research in sports law. Looking at different types of law (health law, sports law, employment law, etc.) and how different basic doctrines come together. Research ethics. Guest Lecturer: Prof. Tim Davis</td>
<td>Nancy M.P. King &amp; Richard Robeson, Athlete or Guinea Pig? Sports and Enhancement Research</td>
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<td>Class 20</td>
<td>Reproductive medicine and regenerative medicine Application: Where does the money go? Group presentations on proposed changes to health care system</td>
<td>Nancy M.P. King, et al., Pluripotent Stem Cells: The Search for the Perfect Source Chris Coughlin &amp; Mark Hall, Stem Cell case file</td>
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<td>Class 21</td>
<td>Medical malpractice mediation and negotiation</td>
<td>Ralph Peeples, Medical malpractice negotiation and mediation case file</td>
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