

MEDICAL MALPRACTICE

2 credits

Spring, 2009

Professor Alex Stein

This course will examine the liability of medical practitioners and institutions for iatrogenic (medically-caused) injuries sustained by patients.

Specifically, it will focus on the following issues: tort and contract frameworks for adjudicating medical malpractice; duties and standards of care (customs, the locality rule, schools of thought and the respectable minority defense); medical expert testimony and other evidentiary matters; informed consent; uncertain causation; liability for lost chances to recover; compensation and limitations on damage awards; institutional liability; and statutes of limitations and repose.

SYLLABUS AND READING ASSIGNMENTS

Week 1:

Tort, Contract and Inalienability

Sullivan v. O'Connor, 296 N.E.2d 183 (Mass. 1973)
Hawkins v. McGee, 146 A. 641 (N.H. 1929)
Tunkl v. Regents of University of California, 383 P.2d 441 (Cal. 1963)
Porubiansky v. Emory University, 275 S.E.2d 163 (Ga. App. 1980)
Tatham v. Hoke, 469 F.Supp. 914 (1979)

Week 2:

DUTY OF CARE

Duration

Tresemmer v. Barke, 86 Cal.App.3d 656 (1978)
Ricks v. Budge, 64 P.2d 208 (Utah 1937)
Payton v. Weaver, 182 Cal. Rptr. 225 (Cal. App. 1982)

Nature

Franklin v. Gupta, 567 A.2d 524 (Md. App. 1990)

Week 3:

DUTY OF CARE

Scope

Rogers v. Obasaju, 723 N.Y.S.2d 28 (App.Div. 2001)
Rivera v. New York City Health & Hospitals Corporation, 191 F.Supp.2d 412 (2002)
Tarasoff v. Regents of University of California, 17 Cal.3d 425 (1976)

Week 4:
DUTY OF CARE

Custom

Hall v. Hilbun, 466 So.2d 856 (Miss. 1985)
Helling v. Carey, 519 P.2d 981 (Wash. 1974)
Gideon Parchomovsky & Alex Stein, *Torts and Innovation*, 107 MICH. L. REV. 285 (2008)

Week 5:
DUTY OF CARE

The Locality Rule

Sheeley v. Memorial Hospital, 710 A.2d 161 (R.I. 1998)
Nestorowich v. Ricotta, 767 N.E.2d 125 (2002)
Chapel v. Allison, 785 P.2d 204 (Mont. 1990)

Schools of Thought and “Respectable Minority”

Jones v. Chidester, 610 A.2d 964 (Pa. 1992)

Week 6:
Expert Testimony

Locke v. Pachtman, 521 N.W.2d 786 (Mich. 1994)
Sami v. Varn, 535 S.E.2d 172 (Va. 2000)
Thompson v. Carter, 518 So. 2d 609 (Miss. 1987)
Trower v. Jones, 520 N.E. 2d 297 (Ill. 1988)

Publications and Practice Guidelines

Stang-Starr v. Byington, 532 N.W.2d 26 (Neb. 1995)
Rosenberg v. Tavorath, 800 A.2d 216 (N.J. Super. A.D., 2002)

Week 7:
Jury Instructions

Neade v. Portes, 739 N.E.2d 496 (Ill. 2000)
Shea v. Esensten, 622 N.W.2d 130, 135-36 (Minn. Ct. App. 2001)
Nestorowich v. Ricotta, 767 N.E.2d 125 (2002)
McPherson-Corder v. Chinkhota, 835 A.2d 1081 (2003)
Schrempf v. State of New York, 487 N.E.2d 883 (NY 1985)

Week 8:
Privileges: Peer Review and Preventive Measures

Riverside Hosp., Inc. v. Johnson, 636 S.E.2d 416 (Va. 2006)
Fox v. Kramer, 994 P.2d 343 (Cal. 2000)
Chicago Trust Company v. Cook County Hospital, 698 N.E.2d 641 (Ill. App. 1998)
Logue v. Velez, 699 N.E.2d 365 (NY 1998)
Tuer v. McDonald, 701 A.2d 1101 (Md. App. 1997)

Res Ipsa Loquitur

ARIEL PORAT & ALEX STEIN, TORT LIABILITY UNDER UNCERTAINTY 84-100 (2001)
Ybarra v. Spangard, 154 P.2d 687 (Cal. 1944)
Locke v. Pachtman, 521 N.W.2d 786 (Mich. 1994)
Miller v. Jacoby, 33 P.3d 68 (Wash. 2001)
States v. Lourdes Hospital, 792 N.E.2d 151 (2003)
Barrett v. Emanuel Hospital, 669 P.2d 835 (Or.App. 1983)

Week 9:

Medical Records and Spoliation

ARIEL PORAT & ALEX STEIN, TORT LIABILITY UNDER UNCERTAINTY 160-84; 195-201 (2001)
Sweet v. Sisters of Providence in Wash., 881 P.2d 304 (Ala. 1994)
Public Health Trust v. Valcin, 507 So.2d 596 (Fla. 1987)
Welsh v. United States, 844 F.2d 1239 (6th Cir. 1988)
Bondu v. Gurvich, 473 So.2d 1307 (Fla. App. 1984)
Smith v. United States, 128 F.Supp.2d 1227 (2000)
Keene v. Brigham and Women's Hosp., Inc. 786 N.E.2d 824 (Mass. 2003)
Jost v. Lakeland Regional Medical Center, Inc. 844 So.2d 656 (Fla. App. 2003)

Week 10:

Uncertain Causation and Lost Chances to Recover

ARIEL PORAT & ALEX STEIN, TORT LIABILITY UNDER UNCERTAINTY 100-29 (2001)
Zuchowicz v. United States, 140 F.3d 381 (2nd Cir. 1998)
Wendland v. Sparks, 574 N.W.2d 327 (Iowa 1998)
Herskovits v. Group Health Cooperative of Puget Sound 664 P.2d 474 (Wash. 1983)
Alberts v. Schultz, 975 P.2d 1279 (N.M. 1999)
Jorgenson v. Vener, 616 N.W.2d 366 (S.D. 2000)
Kilpatrick v. Bryant, 868 S.W.2d 594 (Tenn. 1993)

Week 11:

Informed Consent

Ashe v. Radiation Oncology Associates, 9 S.W.3d 119 (Tenn. 1999)
Pauscher v. Iowa Methodist Med. Ctr., 408 N.W.2d 355 (Iowa 1987)
Matthies v. Mastromonaco, 733 A.2d 456 (N.J. 1999)
Baird v. American Medical Optics, 713 A.2d 1019 (N.J. 1998)
Morgan v. MacPhail, 704 A.2d 617 (Pa. 1997)
McKinney v. Nash, 174 Cal.Rptr. 642 (1981)
Henderson v. Milobsky, 595 F.2d 654 (D.C. Cir. 1978)
Moore v. Baker, 989 F.2d 1129 (11th Cir. 1993)
Albany Urology Clinic, P.C. v. Cleveland, 528 S.E.2d 777 (Ga. 2000)
Duttry v. Patterson, 771 A.2d 1255, 1257 (Pa. 2001)
Johnson v. Kokemoor, 545 N.W.2d 495 (Wis. 1996)
Allan v. Levy, 846 P.2d 274 (Nev. 1993)
Schreiber v. Physicians Insurance Company of Wisconsin, 588 N.W.2d 26 (Wis. 1999)
Shine v. Vega, 709 N.E.2d 58 (Mass. 1999)
Canterbury v. Spence, 464 F.2d 772 (D.C. Cir. 1972)

Week 12:
DAMAGES

General

Catherine M. Sharkey, Unintended Consequences of Medical Malpractice Damages Caps, 80 N.Y.U. L. Rev. 391 (2005)

Caps and other Limitations

Evans v. State, 56 P.3d 1046 (Ala. 2002)
Lucas v. United States, 757 S.W.2d 687 (Tex. 1988)
Gourley v. Nebraska Methodist Health System, Inc., 663 N.W.2d 43 (Neb. 2003)
Fein v. Permanente Medical Group, 695 P.2d 665 (Cal. 1985)
Smith v. Botsford General Hosp., 419 F.3d 513 (6th Cir. 2005)

Week 13:

Institutional Liability

Adamski v. Tacoma General Hospital, 579 P.2d 970 (Wash. App. 1978)
Darling v. Charleston Community Memorial Hospital, 211 N.E. 2d 253 (Ill. 1965)
Johnson v. Misericordia Community Hospital, 301 N.W. 2d 156 (Wis. 1981)
Strubhart v. Perry Memorial Hospital Trust Authority, 903 P.2d 263 (Okl. 1995)
Hardy v. Brantley, 471 So. 2d 358 (Miss. 1985)
Baptist Memorial Hospital System v. Sampson, 969 S.W.2d 945 (Tex. 1998)
Sword v. NKC Hospitals, Inc., 714 N.E.2d 142 (Ind. 1999)
Boyd v. Albert Einstein Medical Center, 547 A.2d 1229 (Pa. Super. 1988)
McClellan v. Health Maintenance Organization, 604 A.2d 1053 (Pa. Super. 1992)
Petrovich v. Share Health Plan of Illinois, Inc., 719 N.E.2d 756 (Ill. 1999)
York v. Rush-Presbyterian-St. Luke's Medical Center, 854 N.E.2d 635 (Ill. 2006)

Charity Immunity

Keene v. Brigham and Women's Hosp., Inc. 786 N.E.2d 824 (Mass. 2003)
Chamley v. Khokha, 730 N.W.2d 864 (N.D. 2007)

Week 14:

LIMITATIONS OF LIABILITY

Statute of Limitations and Repose

Baird v. American Medical Optics, 713 A.2d 1019 (N.J. 1998)
Cunningham v. Huffman, 609 N.E.2d 321 (Ill. 1993)
Schlote v. Dawson, 676 N.W.2d 187 (Iowa 2004)
Rudenuer v. Zafirooulos, 445 Mass. 353 (2005)