

Readings in
Comparative Health Law and
Bioethics

Readings in Comparative Health Law and Bioethics

THIRD EDITION

Edited by

Nathan Cortez

ADELFA BOTELLO CALLEJO ENDOWED PROFESSOR OF LAW
SMU DEDMAN SCHOOL OF LAW

I. Glenn Cohen

JAMES A. ATTWOOD AND LESLIE WILLIAMS PROFESSOR OF LAW AND
FACULTY DIRECTOR OF THE PETRIE-FLOM CENTER FOR
HEALTH LAW POLICY, BIOTECHNOLOGY, AND BIOETHICS
HARVARD LAW SCHOOL

Timothy Stoltzfus Jost

ROBERT L. WILLETT FAMILY PROFESSOR OF LAW EMERITUS
WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW



CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2020
Carolina Academic Press, LLC
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Names: Cortez, Nathan, editor. | Cohen, I. Glenn, editor. | Jost, Timothy S., editor.
Title: Readings in comparative health law and bioethics / by Nathan Cortez, I. Glenn Cohen, Timothy Stoltzfus Jost.
Description: Third edition. | Durham, North Carolina : Carolina Academic Press, [2019] | Includes bibliographical references and index.
Identifiers: LCCN 2019032692 | ISBN 9781531002459 (paperback) | ISBN 9781531002466 (ebook)
Subjects: LCSH: Medical care--Law and legislation. | Medical laws and legislation. | Bioethics.
Classification: LCC K3601 .R415 2019 | DDC 344.04/1--dc23
LC record available at <https://lcn.loc.gov/2019032692>

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

For N.S.C., H.A.C., and M.S.C.
—*Nathan Cortez*

For J.A.
—*I. Glenn Cohen*

Contents

Introduction	xv
Acknowledgments	xxi
Chapter 1 · The Right to Health and Its Implementation	3
A. The Right to Health in International Law	3
Eleanor D. Kinney, <i>The International Human Right to Health: What Does This Mean for Our Nation and World?</i>	7
Notes	11
Karen Noelia Llantoy Huamán v. Peru	12
Note	17
B. The Right to Health in Constitutional Law	18
Eleanor D. Kinney & Brian Alexander Clark, <i>Provisions for Health and Health Care in the Constitutions of the Countries of the World</i>	20
Note	23
Paschim Banga Khet Mazdoor Samity v. State of West Bengal	26
Notes	29
Chaoulli v. Quebec (Attorney General)	31
Note	37
C. The Organization of National Health Care Systems	38
World Health Report 2000	39
Timothy Stoltzfus Jost, <i>Why Can't We Do What They Do? National Health Reform Abroad</i>	41
Notes	45
D. Perspectives on Health Care Systems	47
Theodore R. Marmor, <i>Comparative Studies and the Drawing of Policy Lessons: Describing, Explaining, Evaluating, and Predicting</i>	47
Notes	52
Nathan Cortez, <i>The Elusive Ideal of Market Competition in United States' Health Care</i>	52
Notes	57
Uwe E. Reinhardt, <i>Reforming the Health Care System: The Universal Dilemma</i>	58
Notes	65
Carolyn Hughes Tuohy, <i>Dynamics of a Changing Health Sphere: The United States, Britain, and Canada</i>	66
Notes	70

George J. Annas & Frances H. Miller, <i>The Empire of Death: How Culture and Economics Affect Informed Consent in the U.S., the U.K., and Japan</i>	71
Notes	74
E. The Role of Legal Institutions in Allocating and Rationing Health Care Resources	75
Jenna Wright & Jeanna Holtz, <i>Essential Packages of Health Services in 24 Countries: Findings from a Cross-Country Analysis</i>	76
Timothy Stoltzfus Jost ed., <i>Health Care Coverage Determinations: An International Comparative Study</i>	77
Colleen Flood, Mark Stabile & Carolyn Tuohy, <i>What Is In and Out of Medicare? Who Decides?</i>	81
Notes	85
Christopher Newdick, <i>Rebalancing the Rationing Debate: Tackling the Tensions between Individual and Community Rights</i>	87
Note	93
F. Traveling to Pursue Health: Patient Mobility and Medical Tourism	94
Nathan Cortez, <i>Patients Without Borders: The Emerging Global Market for Patients and the Evolution of Modern Health Care</i>	94
I. Glenn Cohen, <i>Patients with Passports: Medical Tourism, Law and Ethics</i>	98
Notes	102
Chapter 2 · The Rights of Patients in Relationship with Health Care Professionals and Institutions	103
A. Patients' Rights	103
Lars Fallberg, <i>Citizens' Choice and Patients' Rights</i>	103
World Medical Association Declaration on the Rights of the Patient	107
A Declaration on the Promotion of Patients' Rights in Europe, 1994	109
Tamara K. Hervey & Jean V. McHale, <i>Rights: Mobile Patients' Rights as Human Rights</i>	114
Notes	116
B. The Right to Be Free from Medical Negligence	118
1. Civil Liability	118
Cour de Cassation of France	119
Notes	120
<i>Bolam v. Friern Hospital Management Committee</i>	121
Nathan Cortez, <i>Recalibrating the Legal Risks of Cross-Border Health Care</i>	122
Ken Oliphant, <i>Medical Malpractice and Compensation: Comparative Observations</i>	125
Zhu Wang & Ken Oliphant, <i>Yangge Dance: The Rhythm of Liability for Medical Malpractice in the People's Republic of China</i>	127

2. Administrative and Specialized Tribunals	129
Nathan Cortez, <i>A Medical Malpractice Model for Developing Countries?</i>	130
3. Criminal Liability	136
Robert B. Leflar, <i>The Law of Medical Misadventure in Japan</i>	136
Notes	139
4. “No Fault” Alternatives to Negligence Litigation	140
Michelle M. Mello, Allen Kachalia & David M. Studdert, <i>Administrative Compensation for Medical Injuries: Lessons from Three Foreign Systems</i>	140
Notes	147
C. The Right to Consent to Treatment	148
1. The Standard of Disclosure	149
<i>Sidaway v. Bethlem Royal Hospital Governors and Others</i>	149
Notes	159
<i>Rogers v. Whitaker</i>	159
Notes	164
<i>Montgomery v. Lanarkshire Health Board</i>	164
Notes	174
John G. Culhane, King-Jean Wu, Oluyomi Faparusi & Eric J. Juray, <i>Toward a Mature Doctrine of Informed Consent: Lessons from a Comparative Law Analysis</i>	175
Note	180
2. The Problem of Causation	181
Dieter Giesen, <i>International Medical Malpractice Law</i>	181
Notes	189
<i>Chappel v. Hart</i>	189
Notes	199
D. Rights to Control over Patient Information	199
1. Confidentiality and Secrecy	199
Colin J. Bennett, <i>The European General Data Protection Regulation: An Instrument for the Globalization of Policy Standards?</i>	200
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016	201
Note	207
Peter Carey, <i>Data Protection: A Practical Guide to UK and EU Law</i>	207
Notes	209
Chen-Hung Chang, <i>Controversy over Information Privacy Arising from the Taiwan National Health Insurance Database Examining the Taiwan Taipei High Administrative Court Judgment No. 102-SU-36 (Tsai v. NHIA)</i>	210
Luca Marelli & Giuseppe Testa, <i>Scrutinizing the EU General Data Protection Regulation</i>	215
Note	219

2. Access to Medical Records	220
<i>McInerney v. MacDonald</i>	220
<i>Breen v. Williams</i>	226
Notes	238
Mohammad Hossein Yarmohammadian, Ahmad Reza Raeisi, Navid Tavakoli & Leila Ghaderi Nansa, <i>Medical Record Information Disclosure Laws and Policies among Selected Countries: A Comparative Study</i>	239
Notes	241
Chapter 3 · The Patient's Right to Self-Determination and Competing Considerations	243
A. Abortion	243
Abortion Policies: A Global Review	244
Notes	248
Reva Siegal, <i>The Constitutionalization of Abortion</i>	249
Note	255
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i>	255
Note	262
<i>R. v. Morgentaler</i>	263
Notes	273
Excerpts of the Constitutional Court's Ruling That Liberalized Abortion in Colombia	274
Notes	285
Decision 48/1998 (XI. 23.) AB	285
Notes	295
B. Assisted Reproduction	297
Dov Fox, <i>Reproductive Negligence</i>	298
Marsha Garrison, <i>Regulating Reproduction</i>	298
Doron Dorfman, <i>The Inaccessible Road to Motherhood — The Tragic Consequence of Not Having Reproductive Policies for Israelis with Disabilities</i>	299
Martin Hevia & Carlos Herrera Vacaflor, <i>The Legal Status of In Vitro Fertilization in Latin America and the American Convention on Human Rights</i>	300
Rosario M. Isasi, Bartha M. Knoppers, Peter A. Singer & Abdallah S. Daar, <i>Legal and Ethical Approaches to Stem Cell and Cloning Research: A Comparative Analysis of Policies in Latin America, Asia, and Africa</i>	301
<i>Regina (Quintavalle) v. Human Fertilisation and Embryology Authority</i>	302
Notes	308
1. Anonymous Sperm (and Egg) Donation	308
<i>Pratten v. British Columbia (Attorney General)</i>	309

The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations (2004)	313
Notes	314
2. Embryo Disposition Disputes	315
<i>J.B., Plaintiff-Respondent, v. M.B., Defendant-Appellant, and C.C., Defendant</i>	315
<i>Evans v. UK</i>	321
Notes	324
3. Surrogacy	325
Katherine Voskoboynik, <i>Clipping the Stork's Wings: Commercial Surrogacy Regulation and Its Impact on Fertility Tourism</i>	326
<i>In re Baby M</i>	329
Notes	330
4. Fertility Tourism	332
Lisa C. Ikemoto, <i>Reproductive Tourism: Equality Concerns in the Global Market for Fertility Services</i>	332
Notes	335
5. Wrongful Birth/Life Actions	336
Ivo Giesen, <i>Of Wrongful Birth, Wrongful Life, Comparative Law, and the Politics of Tort Law Systems</i>	336
Notes	340
C. End of Life: Withdrawal	341
1. Refusal of Treatment	341
Herman Nys, <i>Physician Involvement in a Patient's Death: A Continental European Perspective</i>	343
Notes	360
Konstantin Tretyakov, <i>The Right to Die in the United States, Canada, and China: Legal Fictions and Their Utility in a Comparative Perspective</i>	364
Notes	366
D. Physician Aid in Dying	367
1. The Netherlands and Europe	368
<i>Office of Public Prosecutions v. Chabot</i>	368
Notes	374
<i>Pretty v. United Kingdom</i>	376
Notes	384
2. Canada	384
<i>Carter v. Canada (Attorney General)</i>	385
Notes	397
3. South Africa	400
<i>Minister of Justice and Correctional Services v. Estate Stransham-Ford</i>	400
Notes	409

4. Japan	410
Tōkai University Hospital — Euthanasia Case	410
Note	418
Chapter 4 • The Rights of the Individual and the Interests of Society	419
A. Public Health Law: Legal Approaches to HIV/AIDS	419
John A. Harrington, <i>AIDS, Public Health and the Law: A Case of Structural Coupling?</i>	420
Notes	429
Maya Berinzon, <i>Copy and Paste: Transplanting International HIV/AIDS Model Laws into African Countries</i>	430
Notes	433
B. Public Health Law and Infectious Disease Emergencies: SARS and Ebola	434
Chenglin Liu, <i>Regulating SARS in China: Law as an Antidote?</i>	436
Jason W. Sapsin, Lawrence O. Gostin, Jon S. Vernick, Scott Burris & Stephen P. Teret, <i>SARS and International Legal Preparedness</i>	441
Mark A. Rothstein, <i>From SARS to Ebola: Legal and Ethical Considerations for Modern Quarantine</i>	446
Mark J. Siedner, Lawrence O. Gostin, Hilarie H. Cranmer & John D. Kraemer, <i>Strengthening the Detection of and Early Response to Public Health Emergencies: Lessons from the West African Ebola Epidemic</i>	453
James G. Hodge, Jr., et al., <i>Law, Medicine, and Public Health Preparedness: The Case of Ebola</i>	459
Emily A. Largent, <i>EBOLA and FDA: Reviewing the Response to the 2014 Outbreak, to Find Lessons for the Future</i>	459
J. Benton Heath, <i>Global Emergency Power in the Age of Ebola</i>	461
Notes	464
C. Public Health Law: Tobacco Regulation	466
Roseann B. Termini, <i>The “Why” of Tobacco Products Regulation</i>	466
William Tilburg, Kathleen Hoke & Melissa Sager, <i>FDA Regulation of Electronic Nicotine Delivery Systems and the “Deeming” Rule: What’s Left for States?</i>	472
Leslie Zellers, <i>Global Tobacco Control: What the U.S. Can Learn from Other Countries</i>	476
Panel Report, <i>Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging</i>	484
<i>RJR-MacDonald Inc. v. Canada</i>	495
Notes	501
D. Research Involving Human Subjects	503
World Medical Association, <i>Declaration of Helsinki, Ethical Principles for Medical Research Involving Human Subjects</i>	504
Note	509

European Convention on Human Rights and Biomedicine, Oviedo, 1997	510
Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Biomedical Research, 2005	512
Notes	519
Federal Policy for the Protection of Human Subjects	520
Notes	523
Solomon R. Benatar, <i>Towards Progress in Resolving Dilemmas in International Research Ethics</i>	523
Notes	527
Index	529

Introduction

This book is a collection of annotated readings to be used for teaching comparative health law and bioethics.

Since the Second Edition was published in 2007, comparative health law has become a much more mature, substantial field. Legions of academic books and articles have been written about comparative health systems, comparative law, and/or comparative policy in health care over the last decade. Indeed, these topics have caught the attention of popular audiences in recent years. For example, immediately after the Second Edition was published, the PBS Frontline documentary *Sick Around the World* (2008) and T.R. Reid's popular book *The Healing of America: A Global Quest for Better, Cheaper, and Fairer Health Care* (2009) highlighted for lay audiences how unique America's health care system is, particularly when viewed in comparative context.

Like the Second Edition, the Third Edition is located within the discipline of comparative law. The traditional concerns of comparative law have been to analyze, classify, and (to the extent possible) understand a foreign legal system as a whole. Traditionally, comparative law has concentrated on comparing continental European civil law systems with common law systems. It has also focused on private law. More recently, comparative law has attempted to apply new tools to comparative analysis—law and economics, feminist legal theory, critical legal theory, or postcolonial theory—to craft metatheories for understanding legal systems.

The task of understanding a foreign legal system as a whole is hard work, whatever approach one takes. One must be grounded in the culture and society of that country, which usually requires a knowledge of the country's language and some time spent on the ground. One must master procedural as well as substantive law. One must also distance oneself from one's own legal system and begin to see that system as a foreign system.

This book stands in the tradition of micro, rather than macro, comparative law. It does not offer an understanding of other legal systems as a whole, but focuses rather on understanding how a wide variety of disparate legal systems deal with issues in a particular field—health care. While this book attempts from time to time to describe the legal or societal context in which health care law is located in various countries, it does not pretend to present a complete picture of the legal systems of these countries. It also does not offer a metatheory that would make sense of the similarities and differences observed in health law in different legal systems.

The goals of this book are instead fairly pragmatic. It is our hope that readers will come to a better understanding of the health care law of their own jurisdiction through absorbing these materials. Our assumption is that many (indeed likely most) users of these materials will be from the United States. We assume that many of these students will take an American health law course at some point. We also realize, however, that many students using this book will either be in American summer programs between their first and second year of law school, or in non-law school settings, and will not have taken an American health law course prior to using these materials. We do not see this as an impediment, as the textual notes (supplemented, of course, by the teacher's knowledge) should provide enough information about American health law to orient the novice.

We also hope that the book proves helpful for non-American readers to understand how unusual American health law is, but also draw important comparisons between their own health care system and those of a myriad of other countries. These countries cross divides between common and civil law, between countries with strong versus weaker rule of law traditions, and conservative or progressive issues on some of the most hot button topics (all covered in this book) such as abortion, end of life decision-making, and reproductive technologies.

We hope that every reader will come to see how contingent; how culturally, politically, and historically-determined; and how dependent on the substantive, procedural, and evidentiary law of particular legal systems domestic approaches to various health law issues are. We hope that readers will better understand the possibility that there are very different solutions to the very difficult health law problems we face than the ones we commonly imagine. Finally, we hope that at those points in the reader's later career when an opportunity arises to influence health law or policy, the reader will remember the wealth of alternatives available beyond those that are obvious in the reader's particular system.

While this book is in part intended to inform health policy and bioethics, it is not a book about comparative health policy and bioethics. Many excellent books are available, both in the United States and elsewhere, about comparative health policy, health economics, and health politics. Though the first chapter of this book contains a rather lengthy section describing and analyzing health care systems, it is not the intent of this book to duplicate these sources. Rather, this book focuses on how law, legal systems, and legal institutions influence health care recipients, professionals, institutions, and systems. Thus, for example, this book is not so much concerned with how various health care systems ration care as it is with the role of the courts or of administrative agencies in health care rationing.

Because this is a book about health law and bioethics, it is organized, not surprisingly, around the notion of rights. Whatever else law may be, it is generally understood as an attempt to articulate and protect rights. This book's four chapters deal with legal rights in different settings. The first chapter examines the concept of a human right to health care, established by international law, national constitutions, and domestic legislation. As a context for this discussion, and indeed for most of the rest

of the book, this chapter also includes readings describing generally how health care systems are organized and function.

The second chapter deals with the rights of patients in their relationships with health care professionals and institutions. After a brief section introducing the notion of patients' rights, the topics of malpractice, alternatives to malpractice litigation, informed consent, confidentiality and rights to access medical records are examined.

The third chapter addresses core questions of bioethics about the rights claims of patients and others at the beginning and end of life. This chapter examines abortion, assisted reproduction, and the right to die.

The fourth chapter examines the interface between the rights of individuals and the interests of society in four contexts. First, it looks at the role of public health law in reconciling the rights of the individual and of the public in the context of the worldwide HIV-AIDS crisis. Second, it looks at the role of public health law in infectious disease emergencies—focusing on SARS and Ebola. Third, it examines the attempts of various nations to limit tobacco use. Finally, it looks at issues that arise in health care research, where the interests of society in advancing knowledge sometimes come in conflict with the rights of the individual research subject.

Five final comments may be useful to understand this book. First, throughout the book we generally use the word “patient” to refer to recipients of health care. The word “patient” has increasingly become only one of many words used to describe persons who receive health care in the United States—including also consumer, beneficiary, member, resident, or recipient, to name a few. Patient has, indeed, sometimes taken on a negative connotation, describing one who passively receives health care as opposed to an active participant in the health care enterprise. The word is used here, however, for two reasons. First, it is still, even in the United States, the most specific word used to describe the person who receives health care from health care professionals and institutions. Second, it is the word that is used most widely throughout the world to describe recipients of health care. Given the international scope of this book, deference to international usage is perhaps appropriate.

Second, readers of the Second Edition may notice that the Third Edition is broader in geographic scope. Our goal with this edition was to expand discussions beyond the traditional focus of comparative health law, which tends to linger on North American, European, British, and English-speaking jurisdictions like Australia and New Zealand, with occasional focus on Japan. This edition adds materials from jurisdictions in Africa, Asia, Latin America, and the Middle East to provide a more varied picture of the already-varied approaches to common legal and ethical challenges in health care. It also adds more material from supranational bodies. Comparative lessons can be more difficult to draw the more the jurisdictions being compared differ along social, economic, cultural, and religious dimensions. But we think the effort to be more expansive is worthwhile.

Third, the reader will surely notice that, although this book resembles in many respects a traditional American law school casebook, the excerpts are much longer

than would be found in most contemporary casebooks. It is for this reason that the book is entitled “*Readings in Comparative Law and Bioethics*.” These lengthy excerpts are used for a reason. At the outset, it was noted that to do comparative law properly one should really know the language of the country one is studying, and spend time there observing the cultural context. While most readers of these materials will not have yet had the opportunity to do this for the range of the countries whose law is examined here, this book attempts at least to let the reader stay with one court or one scholar long enough to not simply catch a snippet of black-letter law, but also to observe how the particular author or country thinks about health law. For example, with respect to courts like the British House of Lords or Australian High Court, where multiple opinions are customary, a range of these are reproduced to give the reader a sense of the debate that characterizes these courts.

Fourth, the reader may observe that some of the writing deviates from standard American English. While we are very fortunate that English has become the world language, the English that others speak and write is not always that with which we are most comfortable. We can also learn, therefore, from seeing how others use the English language. This experience may also help us to remember a very important fact: just because others are speaking English does not mean that we can understand them (or they us). Often, really understanding what another is saying is hard work for us, even when the other seems to be speaking our language.

Fifth, some explanation of editing conventions may be helpful. First, cites, which were appropriately numerous in all sources, were in most instances omitted. Second, internal section titles and paragraph numbers were omitted from many sources. Third, ellipses (* * *) are inserted where text was omitted by the editor. Ellipses within a paragraph (or at its beginning or end) show that text was omitted from that paragraph. Centered ellipses between paragraphs show that a full paragraph or more of text was omitted. Brackets indicate additional explanatory text that has been added.

We are very grateful to the many authors and publishers who graciously allowed us to reprint their works in this text, often with no charge or at a reduced charge. The permissions table that follows lists their names. We are also grateful to Herman Nys, who contributed an original article on assisted suicide and the right to die that was adapted from his prior work; Colleen Flood, who patiently explained the last decade’s worth of important developments in Canada; Alain Garay, who assisted us in locating French sources; and Robert Leflar, Pierrick LeGoff, Konstantin Tretyakov, and Martine Jean who translated source materials for us. Finally, we would like to thank all of those who helped bring this work to fruition — our Deans, Jennifer Collins and John Manning, our research liaisons and assistants, including Taylor Custer, Cassie DuBay, Victoria Hall-Palerm, Ellora Israni, Megan Jones, Jessica Ljustina, Michelle Melton, Colin Metcalf, Dana Paikowsky, Haley Penan, Shaiba Rather, Ross Slaughter, Priya Sundaresan, and our assistants, Sharon Magill Tabbert and Jennifer Minnich. Finally, Nathan and Glenn would like to thank our co-author Tim Jost for trusting us with this wonderful project. This edition tries to build on the significant contributions of the first and second editions, for which we thank

Mark Hall, Barry Furrow, Rob Leflar, Norio Higuchi, Eleanor Kinney, Colleen Flood, Ted Marmor, Herman Nys, Eric Feldman, Margaret Lock, Kevin Outterson, Chris Newdick, Hank Greely, Andre den Exter, Larry Gostin, Naoki Ikegami, Fran Miller, Brian Murchison, the Frances Lewis Law Center, and Vera Mencer.

Acknowledgments

Chapter 1: The Right to Health and Its Implementation

- Eleanor D. Kinney, *The International Human Right to Health: What Does This Mean for Our Nation and the World*, 34 *Indiana Law Review* 1457, 1459–62, 1467–71 (2001), copyright © 2001, The Trustees of Indiana University. Reproduced with permission from the *Indiana Law Review*.
- Karen Noelia Llantoy Huamán v. Peru, Human Rights Committee, Communication No. 1153/2003, 24 October 2005. Copyright © 2005 United Nations Publications Board. Used with permission.
- Eleanor D. Kinney and Brian Alexander Clark, *Provisions for Health and Health Care in the Constitutions of the Countries of the World*, *Cornell International Law Journal*, vol. 37, pp. 285, 287, 289–90, 292–96, 298–301 (2004). Copyright © Cornell International Law Journal, 2004. Used with permission.
- WHO, *World Health Report 2000*, pp. 11–13 (2000). Reprinted with Permission.
- Timothy Jost, *Why Can't We Do What They Do? National Health Reform Abroad*, *Journal of Law, Medicine and Ethics* 432, 432–35 (2004). Copyright © 1999, American Society of Law, Medicine and Ethics. Reprinted with permission.
- Theodore R. Marmor, *Comparative Studies and the Drawing of Policy Lessons: Describing, Explaining, Evaluating, and Predicting*, *Journal of Comparative Policy Analysis*, 1–4, 8–9, 12–13 (2017). Copyright © 2017, Taylor and Francis, Ltd. Reprinted with the kind permission of Ted Marmor and Taylor and Francis.
- Nathan Cortez, *The Elusive Ideal of Market Competition in United States' Health Care*, from *Health Care and EU Law*, 359–69. Copyright © 2011, Springer. Reprinted with permission.
- Uwe E. Reinhardt, *Reforming the Health Care System: The Universal Dilemma*, 19 *Am.J.L. & Med.* 21, 21–27, 29, 31–36 (1994). Copyright © 1994, American Society of Law, Medicine and Ethics and Boston University School of Law. Reprinted with permission.
- Carolyn Hughes Tuohy, *Dynamics of a Changing Health Sphere: The United States, Britain, and Canada*, 18 *Health Affairs* 114, 115–16, 118–120, 129–131 (May/June 1999). Copyright © 1999, Health Affairs, Published by Project Hope. Reprinted with permission.
- George J. Annas & Frances H. Miller, *The Empire of Death: How Culture and Economics Affect Informed Consent in the U.S., The U.K., and Japan*, 20 *Am.J.L. & Med.* 357, 360–62, 377–81, 387–90 (1994). Copyright © 1994, American Society of Law, Medicine and Ethics, Boston University School of Law, Frances Miller and George Annas. Reprinted with permission.

- Jenna Wright and Jeanna Holtz, *Essential Packages of Health Services in 24 Countries: Findings from a Cross-Country Analysis*, 1–2, 9, 12–13, 19. Copyright © 2017 U.S. Agency for International Development (USAID). Reprinted with permission.
- Timothy Jost, ed. *Health Care Coverage Determinations: An International Comparative Study*. 240–44, 251–53. Copyright © 2005 Open University Press. Used with the kind permission of Open University Press.
- Colleen Flood, Mark Stabile and Carolyn Tuohy, *What is In and Out of Medicare? Who Decides*, from *Just Medicare*, 15, 16–17, 23–30. Copyright © University of Toronto Press, 2005. Used with the permission of the University of Toronto Press.
- Christopher Newdick, *Rebalancing the Rationing Debate: Tackling the Tensions Between Individual and Community Rights*, in *Prioritization in Medicine: An International Dialogue*. 123–29, 132–35. Copyright © 2015 Springer Nature. Reprinted with permission.
- Nathan Cortez, *Patients Without Borders: The Emerging Global Market for Patients and the Evolution of Modern Health Care*[10]. 71–73, 77–82. Copyright © 2008, *Indiana Law Journal*. Reprinted with permission.
- I. Glenn Cohen, *Patients With Passports: Medical Tourism, Law and Ethics*. 169–73, 186–87, 191, 194–96, 204–05. Copyright © 2014 I. Glenn Cohen and Oxford University Press. Reprinted with permission.

Chapter 2: The Rights of Patients in Relationship with Health Care Professionals and Institutions

- World Health Organization, Regional Office for Europe, Copenhagen, *European Health Reforms: Citizens' Choice and Patients' Rights*, 11, 12–15, 17–19 (1996). Reprinted with permission.
- World Medical Association, *World Medical Association Declaration on the Rights of the Patient*, 2015. Reprinted with permission.
- World Health Organization, European Office, *A Declaration on the Promotion of Patients' Right in Europe*, 1994. Reprinted with permission.
- Tamara K. Hervey and Jean V. McHale, *Rights: Mobile Patients' Rights as Human Rights*, in *European Union Health Law: Themes and Implications*, 185–89. Copyright © 2015, Cambridge University Press. Reprinted with permission.
- Nathan Cortez, *Recalibrating the Legal Risks of Cross-Border Health Care*, *Yale Journal of Health Policy, Law, and Ethics*, vol. 10, 58–62. Copyright © 2010, *Yale Journal of Health Policy, Law, and Ethics*. Reprinted with permission.
- Ken Oliphant, *Medical Malpractice and Compensation: Comparative Observations*, in *Medical Malpractice and Compensation in Global Perspective*, 514–20. Copyright © 2013, Walter de Gruyter GmbH. Reprinted with permission.
- Zhu Wang and Ken Oliphant, *Yangge Dance: The Rhythm of Liability for Medical Malpractice in the People's Republic of China*, in *Medical Malpractice and Compensation in Global Perspective*, 97–99, 117–18, 120–25, 127–28. Copyright © 2013, Walter de Gruyter GmbH. Reprinted with permission.
- Nathan Cortez, *A Medical Malpractice Model for Developing Countries?* *Drexel Law Review*, vol. 4, 217–18. Copyright © 2011, *Drexel Law Review*. Reprinted with permission.

- Robert B. Leflar, *The Law of Medical Misadventure in Japan*. *Chicago-Kent Law Review*, vol. 87, 80–85, 88–89. Copyright © 2012, Chicago-Kent Law Review. Reprinted with permission.
- Michelle M. Mello, Allen Kachalia, and David M. Studdert, *Administrative Compensation for Medical Injuries: Lessons from Three Foreign Systems*. *Issues in International Health Policy*. 1–9. Copyright © 2011, the Commonwealth Fund. Reprinted with the kind permission of the Commonwealth Fund.
- John G. Culhane, King-Jean Wu, Oluyomi Faparusi, and Eric J. Juray, *Toward a Mature Doctrine of Informed Consent: Lessons from a Comparative Law Analysis*. *British Journal of American Legal Studies*, vol. 1, 551, 552–55, 572–79. Copyright © 2012, British Journal of American Legal Studies. Reprinted with permission.
- Colin J. Bennett, *The European General Data Protection Regulation: An Instrument for the Globalization of Policy Standards?* *Information Polity*, vol. 23, 239–40, 243–45. Copyright © 2018, Information Policy, IOS Press. Reprinted with the kind permission of Colin J. Bennett.
- Peter Carey, *Data Protection: A Practical Guide to UK and EU Law*, xxxiii–xxxv. Copyright © 2018, Oxford University Press. Reprinted with permission.
- Chen-Hung Chang, *Controversy over Information Privacy Arising from the Taiwan National Health Insurance Database Examining the Taiwan Taipei High Administrative Court Judgment No. 102-SU-36 (Tsai v. NHIA)*. *Pace International Law Review*, vol. 28, 27. Copyright © 2016, Pace International Law Review. Reprinted with permission.
- Luca Marelli and Giuseppe Testa, *Scrutinizing the General Data Protection Regulation*. *Science*, vol. 360, 496–98. Copyright © 2018, Science. Reprinted with permission.
- Mohammad Hossein Yarmohammadian, Ahmad Reza Raeisi, Navid Tavakoli, & Leila Ghaderi Nansa, *Medical Record Information Disclosure Laws and Policies Among Selected Countries: A Comparative Study*. *Journal of Research in Medical Sciences*, vol. 15, 140–49. Copyright © 2010. Reprinted with permission.
- Chapter 3. The Patient’s Right to Self-Determination and Competing Considerations.**
- Abortion Policies: A Global Review*, United Nations, 1–2, 4–7 (2003). Copyright © United Nations Publications Board. Used with permission.[11]
- Reva Siegal, *the Constitutionalization of Abortion The Constitutionalization of Abortion*. 1071–1075, in *Abortion Law in Transnational Perspective: Cases and Controversies* (ed. Rebecca Cook, Joanna Erdman & Bernard Dickens). Copyright © 2014[12], Oxford University Press. Reprinted with permission.
- Rebecca Cook & Women’s Link Worldwide, *Excerpts of the Constitutional Court’s Ruling That Liberalized Abortion in Colombia*, vol. 15, *Reproductive Health Matters*, 160–62 (2007[13]). Reprinted with permission.
- Dov Fox, *Reproductive Negligence*, *Columbia Law Review*, vol. 117, 163–65 (2017). Copyright © 2017, Columbia Law Review. Reprinted with permission.
- Marsha Garrison, *Regulating Reproduction*, *George Washington Law Review*, vol. 75, 1623–24. Copyright © 2008, George Washington Law Review. Reprinted with permission.
- Doron Dorfman, *The Inaccessible Road To Motherhood—The Tragic Consequence Of Not Having Reproductive Policies For Israelis With Disabilities*, *Columbia Jour-*

- nal of Gender & Law, vol. 30, 55–59. Copyright © 2015, Columbia Journal of Gender & Law. Reprinted with permission.
- Martin Hevia and Carlos Herrera Vacafloer, *The Legal Status of In Vitro Fertilization in Latin America and the American Convention on Human Rights*, *Suffolk Transnational Law Review*, vol. 36, 58–62. Copyright © 2013, Suffolk Transnational Law Review. Reprinted with permission.
- Rosario M. Isasi, Bartha M. Knoppers, Peter A. Singer, and Abdallah S. Daar, *Legal and Ethical Approaches to Stem Cell and Cloning Research: A Comparative Analysis of Policies in Latin America, Asia, and Africa*, *Journal of Law, Medicine & Ethics*, vol. 32, 626. Copyright © 2004, American Society of Law, Medicine & Ethics. Reprinted with permission.
- Regina (Quintavalle) v. Human Fertilisation and Embryology Authority, [2005]. Reprinted with permission of the Controller of Her Majesty's Stationary Office.[14]
- Katherine Voskoboynik, *Clipping the Stork's Wings: Commercial Surrogacy Regulation and Its Impact on Fertility Tourism*, *Indiana International & Comparative Law Review*, vol. 26, 341–352. Copyright © 2016, Indiana International & Comparative Law Review. Reprinted with permission.
- Lisa C. Ikemoto, *Reproductive Tourism: Equality Concerns in the Global Market for Fertility Services*, *Law & Inequality*, vol. 27, 277. Copyright © 2009, Law & Inequality. Reprinted with permission.
- I. Giesen, *Of Wrongful Birth, Wrongful life, Comparative Law, and the Politics of Tort Law Systems*, *Tydskrif vir Heedendaagse Romeins-Hollandse Reg (THRHR)*, vol. 72, 257. Copyright © 2009, THRHR. Reprinted with permission.
- Herman Nys, *Physician Involvement in a Patient's Death: A Continental European Perspective*, *Medical Law Review*, vol. 7. Copyright © 1999, Oxford University Press, and update, copyright ©2007, Herman Nys. Reprinted with permission.
- Konstantin Tretyakov, *The Right to Die in the United States, Canada, and China: Legal Fictions and Their Utility in a Comparative Perspective*, *University of Pennsylvania Journal of Law & Social Change*, vol. 21, 108–113. Copyright © 2018, University of Pennsylvania Journal of Law & Social Change. Reprinted with permission.
- Chabot, *Supreme Court of the Netherlands, Criminal Chamber*, 21 June 1994, no. 96.972, from John Griffiths, Alex Bood, and Haleen Weyers, *Euthansia and the Law in the Netherlands*, 329–38. Copyright © 1998, Amsterdam University Press. Reprinted with permission.
- Chapter 4: The Rights of the Individual and the Interests of Society**
- John A. Harrington, *AIDS, Public Health and the Law: A Case of Structural Coupling?* *European J. Health Law*, vol. 6, 213, 213–26. Copyright © 1999, Kluwer Law International. Reprinted with permission.
- Maya Berinzon, *Copy and Paste: Transplanting International HIV/AIDS Model Laws into African Countries*, *Cardozo Journal of International and Comparative Law*, vol. 23, 296–297, 308–313. Copyright © 2015, Cardozo Journal of International and Comparative Law. Reprinted with permission.
- Chenglin Liu, *Regulating Sars in China: Law as an Antidote?*, *Washington University Global Studies Review*, vol. 4, 81, 82–101, 103–09, 115–17. Copyright © 2005, Washington University Global Studies Review. Reprinted with permission.

- Jason W. Sapsin, Lawrence O. Gostin, Jon S. Vernick, Scott Burris, and Stephen P. Teret SARS and International Legal Preparedness. *Temple Law Review*, vol. 77, 155, 155–165, 167–68. Copyright © 2004, Temple Law Review. Reprinted with permission.
- Mark A. Rothstein, From SARS to Ebola: Legal and Ethical Considerations for Modern Quarantine, *Indiana Health Law Review*, vol. 12, 228, 250–51, 252–54, 254–57, 263–67, 267–68, 271–73, 273–76. Copyright © 2015, Indiana Health Law Review. Reprinted with permission.
- Mark J. Siedner, Lawrence O. Gostin, Hilarie H. Cranmer, John D. Kraemer, Strengthening the Detection of and Early Response to Public Health Emergencies: Lessons from the West African Ebola Epidemic, *PLoS Medicine*, vol. 12, e1001804 (2015[15])
- Emily A. Largent, EBOLA and FDA: Reviewing the Response to the 2014 Outbreak, to Find Lessons for the Future, *Journal of Law and the Biosciences*, vol. 3, 489, 499–501. Copyright © 2016, Oxford University Press. Reprinted with permission.
- J. Benton Heath, Global Emergency Power in the Age of Ebola, *Harvard International Law Journal*, vol. 57, 26–27, 28, 29–30, 32–33, 35. Copyright © 2016, Harvard International Law Journal. Reprinted with permission.
- Roseann B. Termini, The “Why” of Tobacco Products Regulation, *Food and Drug Law: Federal Regulation of Drugs, Biologics, Medical Devices, Foods, Dietary Supplements, Personal Care, Veterinary and Tobacco Products*, vol. 12, 481–491, 497, 504, 509–511. Copyright © 2019, Roseann B. Termini. Reprinted with permission.
- William Tilburg, Kathleen Hoke & Melissa Sager, FDA Regulation of Electronic Nicotine Delivery Systems and the “Deeming” Rule: What’s Left for States?, *Journal of Health Care Law and Policy*, vol. 20, 28–29, 56–63. Copyright © 2017, Journal of Health Care Law and Policy. Reprinted with permission.
- Leslie Zellers, Global Tobacco Control: What the U.S. Can Learn from Other Countries, *Tobacco Control Legal Consortium*. Copyright © 2013, Tobacco Control Legal Consortium. Reprinted with permission.
- World Medical Association, Declaration of Helsinki, Ethical Principles for Medical Research Involving Human Subjects, adopted by the 18th WMA General Assembly, Helsinki, Finland, June 1964, as revised 1975, 1983, 1989, 1996, 2000, 2002, 2004, 2008, 2013. Copyright © 2013, World Medical Association, Inc. Reprinted with permission[16].
- Solomon R. Benatar, Towards Progress in Resolving Dilemmas In International Research Ethics, *Journal of Law, Medicine and Ethics*, vol. 32, 574, 574–75, 579–81 Winter 2004. Copyright © 2004, American Society of Law, Medicine and Ethics. Reprinted with Permission.

