



## Recent Developments in Legal Medicine

### Notable State and Federal Cases

ACLM Annual Meeting  
February 26, 2016

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## Federal Cases

- Topics include:
  - The Affordable Care Act (ACA)
    - State and Federal exchanges
    - Religious exemptions from the contraception mandate
  - Lethal injections
  - Pregnancy Discrimination and the ADA
  - Abortion
  - Free speech and firearms
  - Vaccines

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## The ACA – State and Federal Exchanges

- King v. Burwell (2015) 135 S.Ct. 2480
  - The ACA requires a health care insurance marketplace (“exchange”) in every state.
  - The ACA allows tax credits for any “applicable taxpayer” but only specifies that tax credits may go to taxpayers who enroll in “an Exchange established by the State.”
  - Central question: are tax credits available to consumers in an Exchange established by the federal government?

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## The ACA - Contraception Mandate and Religious Exemptions

- Sharpe Holdings, Inc. v. U.S. Dept. of Health and Human Services (8th Cir. 2015) 801 F.3d 927.
  - Nonprofit religious organizations offering self-insurance plans challenged the contraception mandate in the ACA and the accommodation process for religious employers, claiming that the mandate and accommodation process violated the Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause of the First Amendment.
  - The U.S. District Court for the Eastern District of Missouri enjoined enforcement of the mandate.
  - Holding:
    - The accommodation process by which these organizations could gain exemption from the ACA violated the RFRA because it substantially burdened the free exercise of their religious beliefs.
    - The accommodation process was not the least restrictive means to further the federal government’s interest in ensuring equal access to all contraceptives.

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## Deadly Medicine

- Glossip v. Gross (2015) 135 S. Ct. 2726.
  - State death-row inmates brought an action under 42 U.S.C. § 1983 alleging that Oklahoma’s three-drug lethal injection protocol violated the Eighth Amendment because it created an unacceptable risk of severe pain.
  - United States District Court for the Western District of Oklahoma denied inmates’ motion for a preliminary injunction.
  - “Holding that the Eighth Amendment demands the elimination of essentially all risk of pain would effectively outlaw the death penalty altogether.” (*Id.* at p. 233.)
  - Holdings:
    - The death row inmates failed to prove that any risk of harm was substantial compared to a known and available method of execution.
    - The district court did not commit clear error in finding that midazolam (a sedative) is highly likely to render a person unable to feel pain when he is executed.

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## Pregnancy Discrimination and the Americans with Disabilities Act

- **Young v. United Parcel Service (2015) 135 S.Ct. 1338).**
  - UPS employee brought an action against her employer under the Americans with Disabilities Act (ADA) and the Pregnancy Discrimination Act (PDA) for failing to accommodate her lifting restriction while pregnant.
  - UPS had a light-duty-for-injury policy for other disabled persons but not for pregnant workers. UPS sought summary judgment.
  - Holdings:
    - An employee alleging disparate treatment in violation of the PDA may apply the McDonnell Douglas framework.
    - If an employer accommodates a large percentage of non-pregnant employees and fails to accommodate a large percentage of pregnant employees, this can create a genuine issue of material fact as to whether an employer's policies impose a significant burden on pregnant employees.

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## Abortion

- **Whole Woman's Health v. Cole** (5th Cir. 2015) 790 F.3d 563 modified, (5th Cir. 2015) 790 F.3d 598 and cert. granted, (2015) 136 S.Ct. 499.
  - On behalf of themselves and their patients, abortion providers sued State of Texas officials seeking declaratory and injunctive relief against the enforcement of amendments to state laws regulating abortion. Disputed provisions included:
    - A physician performing an abortion needed to have admitting privileges at a hospital within thirty minutes of the abortion location.
    - All abortion clinics had to comply with standards which apply to ambulatory surgery centers.
  - Holding:
    - The requirement for a physician to have admitting privileges was not facially unconstitutional.
    - Providers' claim that the requirement for a physician to have admitting privileges is facially unconstitutional is barred by res judicata.
    - Provider did not establish that the ambulatory surgery center standards were facially unconstitutional.
    - Res judicata did not bar plaintiffs' as-applied claim.
    - The disputed statutes did not place a substantial obstacle in the path of a woman seeking an abortion in the El Paso facility, although the statutes did provide a substantial obstacle for a woman seeking an abortion at a different facility.

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## Free Speech and Firearms

- **Wollschlaeger v. Governor of the State of Florida** (11th Cir., Dec. 14, 2015, 12-14009) 2015 WL 8639875
  - The State of Florida Firearm Owners' Privacy Act
    - Restricts "irrelevant inquiry and record-keeping" by physicians about patients' use and possession of firearms.
    - Instructs health care providers to refrain from inquiring about whether the patient and her family own firearms unless the provider believes in good faith that the information is relevant to the patient's medical care, safety, or the safety of others.
    - States that health care providers may not "intentionally enter" information about a patient's ownership of firearms into the patient's medical record that the practitioner knows is not "relevant" to the patient's medical care, safety, or the safety of others.
    - Violation of any of the Act's provisions constitutes grounds for disciplinary action including fines, restriction of practice, return of fees, probation, and suspension or revocation of her medical license.
  - Physicians and physician interest groups filed for an injunction and argued that the law facially violated the First and Fourteenth Amendments of the U.S. Constitution.
  - Holding: The state's interest in protecting the Second Amendment rights of patients is compelling and the law is narrowly tailored enough to advance that interest. Therefore, the law survives strict scrutiny.

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## Vaccinations

- **Phillips v. City of New York** (2d Cir. 2015) 775 F.3d 538 cert. denied sub nom. **Phillips v. City of New York**, N.Y. (2015) 136 S.Ct. 104
  - Parents of minor unvaccinated children challenged the constitutionality of New York's statutory vaccination requirement and a state regulation allowing unvaccinated children to be excluded from public school based on outbreak of preventable disease.
  - The Court of Appeals held that:
    - The statute does not violate substantive due process or violate the Free Exercise Clause;
    - The children's parents failed to state an equal protection claim.
  - SCOTUS denied a petition for certiorari.

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## State Cases

- Topics include:
  - Abortion
  - Experts in medical malpractice cases
  - Rescission of malpractice insurance
  - Administrative remedies
  - Breach of contract
  - Licensing and the separation of powers

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## Abortion

- **Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Medicine** (Iowa 2015) 865 N.W.2d 252
  - The Iowa Board of Medicine established standards of practice that prohibit abortions via telemedicine in Iowa. Plaintiffs filed suit claiming that the rule was both improperly enacted and that it violated the Iowa Constitution.
  - The Board conceded that a woman's right to an abortion under the Iowa Constitution is coextensive with the federal right. Using the federal undue burden test, the Supreme Court of Iowa concluded that the disputed rules placed an undue burden on a woman's right to terminate her pregnancy as defined by federal constitutional precedents.

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## Expert Witnesses

- Lavi v. NYU Hospitals Center (N.Y. App. Div. 2015) 133 A.D.3d 830 [21 N.Y.S.3d 143]
  - A patient filed suit against a hospital and an endocrinologist, asserting claims of malpractice and lack of informed consent.
  - The patient plaintiff's expert witness failed to lay the foundation for familiarity with endocrinology.
    - He specialized in pathology.
    - He did not indicate whether he had experience or training in endocrinology.
    - He evinced no particularized knowledge of testosterone replacement therapy.
    - He demonstrated no familiarity with relevant literature.
    - Nor did he otherwise show that he was familiar with the applicable standards of care.
  - The Supreme Court, Appellate Division, held that the expert's affidavit was of no probative value and determined that the lower court properly dismissed the cause of action alleging medical malpractice.

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## Rescission of Malpractice Insurance

### ▪ DeMarco v. Stoddard (2015) 223 N.J. 363

- Central question: whether the Rhode Island Medical Malpractice Joint Underwriting Association (RIJUA) must defend and indemnify a podiatrist (Dr. Stoddard) in a medical malpractice action pending in New Jersey.
  - The policy was rescinded after the podiatrist made material misrepresentations concerning the state in which he maintained his primary practice.
  - The claims arose before the rescission of his policy
- The New Jersey Supreme Court held that Dr. Stoddard's misrepresentations "went to his eligibility of insurance through the RIJUA." Because of the rescission, **he was without coverage to respond to the patient's claim of malpractice.** Claims that arose prior to discovery of the misrepresentation are excluded from coverage.

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## Administrative Remedies

### ▪ AIDS Healthcare Foundation v. State Department of Health Care Services (2015) 241 Cal.App.4th 1327.

- Facts:
  - The Department refused to pay claims that Providers submitted. Providers requested and received an administrative review.
  - The administrative law judge (ALJ) ruled in favor of Provider in part and in favor of the Department in part.
  - Before the ruling could become final, the Chief ALJ rejected the first ALJ's decision and remanded it for consideration to a different ALJ.
  - Provider filed a petition for a writ of administrative mandamus in the superior court, seeking an order to direct the Department to withdraw the Chief ALJ's order and adopt the decision of the first ALJ.
  - The Department filed a demurrer, arguing that Provider failed to exhaust administrative remedies because a final decision had not been ordered. The trial court sustained the demurrer without leave to amend.
- Holdings:
  - The doctrine of administrative remedies bars the Provider's petition.
  - The "futility exception" to the exhaustion of remedies requirement did not apply.
  - The inadequate remedy exception does not apply.

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## Breach of Contract

### ▪ Country-Wide Ins. Co. v. Gotham Medical, P.C. (N.Y. Sup. Ct. 2015) 20 N.Y.S.3d 861

- Plaintiff, an insurer, denied claims from Defendant, a medical provider, after Defendant refused to answer material questions under oath that Plaintiff asked as part of an investigation.
- Defendant was awarded some claims through arbitration.
- Plaintiff sought declaratory judgment that Defendant was not entitled to no-fault benefits. Defendant counter-claimed for attorney fees and compensation.
- Plaintiff moved for summary judgment on the grounds that Defendant engaged in upcoding and billed for unnecessary or non-existent treatments. Plaintiff also argued that Defendant's refusal to answer material questions was a breach of the condition precedent in the insurance policies requiring cooperation when examined under oath.
- Holding: Defendant's "failure to answer all relevant questions" constitutes a material breach of contract that precludes his recovery.

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## Licensing and the Separation of Powers

### ▪ Tate v. State Bd. of Medical Examiners (2015) 131 Nev. Adv. Op. 67 [356 P.3d 506]

- One Nevada state law grants physicians the right to judicial review of the board's final decisions. Another state law prohibits district courts from entering a stay of the board's decision pending judicial review. As a matter of first impression, the Supreme Court of Nevada determined that the prohibition against stays violated the state's constitutional separation of powers doctrine.
- "By simultaneously extinguishing the court's ability to impose a stay where the progression of sanctions would impair or eliminate the purpose of seeking judicial review, the statute impermissibly acts as a legislative encroachment on the court's power to do what is reasonably necessary to administer justice." (Id. at p. 511.)

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