

Iceberg Straight Ahead! Communication strategies to navigate legal changes such as *Dobbs v. Jackson Women's Health Organization*.

Presenters

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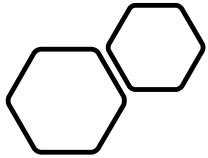
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Presenters

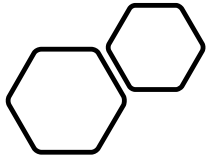
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Learning Outcomes

1. Describe how PAs, bound by ethics and law, convey and reconcile personal and professional beliefs when there are changes in the law governing professional practice and healthcare delivery.
2. Distinguish between intrapersonal beliefs and ethical and legal professional responsibility.
3. Integrate communication strategies and techniques to facilitate nonpolitical conversation surrounding legal and ethical issues of care delivery.



What Does Moral Conscience Have To Do With Professional Practice?



What Guides Our Actions?

law = formal rules that govern how we behave, what we must and must not do, creating an enforceable standard of behavior ^{C1}

morality = framework of values, principles, beliefs, customs, & ways of living, not usually enforced by the state in the U.S., which usually guides us unconsciously ^{C1}

ethics = process of conscious reflection for determining what action to take based on values, principles and purpose ^{C1}

law ≠ morality ≠ ethics

^{C1} What is the difference between Ethics, Morality, and the Law? The Ethics Centre, 2020 <https://www.youtube.com/watch?v=Xki2fRA0bY8>

What Guides Our Actions?

morality = framework of values, principles, beliefs, customs, & ways of living, not usually enforced by the state in the U.S., which usually guides us unconsciously ^{C1}

conscience = commitment to act in accordance with our morality ^{C2}

- having moral principles
- being bound to these principles

^{C1} Beard M. What is the difference between Ethics, Morality, and the Law? The Ethics Centre, 2020 <https://www.youtube.com/watch?v=Xki2fRA0bY8>

^{C2} Sulmasy DP. Conscience, tolerance, and pluralism in health care. Theoretical Medicine and Bioethics. 40(6); 2019. 507-521.

<https://pubmed.ncbi.nlm.nih.gov/31741165/>

Morals in Medicine

Professional

- Public servants must act in the public interest. ^{C3}
- Nonmaleficence forbids selfish action or inaction ^{C4}
- Discernment entails recognizing ethical, legal, and moral dimensions of each healthcare decision ^{C4}

Personal

- PAs are people with morals
- Healers provide care with compassion - empathetic action to alleviate suffering ^{C5}
- Moral judgements are made in context ^{C6}
- Dissonance between morality and action is distressing ^{C6}

^{C3} Savulescu J. Conscientious objection in medicine. British Medical Journal, 332(7536);2016., 294 <https://pubmed.ncbi.nlm.nih.gov/16455733/>

^{C4} Lo B. Resolving Ethical Dilemmas: A Guide for Clinicians. 2020. Philadelphia: Wolters Kluwer eISBN 9781975142155
<https://meded.lwwhealthlibrary.com/book.aspx?bookid=823>

^{C5} McGonigal K. The Practical Science of Compassion. Compassion in Therapy Summit. 2021

^{C6} Taylor CR, Dell'Oro R. Health & Human Flourishing: Religion, Medicine, and Moral Anthropology. 2006. Georgetown University Press ISBN 9781589010796
<https://meded.lwwhealthlibrary.com/book.aspx?bookid=823>

Morals in Medicine

moral distress

- psychological distress of being in a situation in which one is constrained from acting on what one knows to be right ^{C7}
- leads to anger, anxiety, frustration, helplessness, fatigue, burnout _{C4}

[!] Actions dissonant with conscience elicit moral distress

^{C7} Petriceks AH. A clinical catharsis: Moral distress and the uses of tragedy in palliative care. Palliative and Supportive Care. 2022;1-2. doi:10.1017/S1478951522000359 <https://pubmed.ncbi.nlm.nih.gov/35317882/>

^{C4} Lo B. Resolving Ethical Dilemmas: A Guide for Clinicians. 2020. Philadelphia: Wolters Kluwer eISBN 9781975142155 <https://meded.lwwhealthlibrary.com/book.aspx?bookid=823>

Laws of Conscience in Medicine

Health care provider conscience is protected from punishment at law in some cases. ^{C8}

The DHHS Office of Civil Rights (OCR) investigates and enforces protections. ^{C8}

Law ^{C9}

- The Church Amendments
- Public Health Service Act § 245
- The Weldon Amendment
- The Affordable Care Act

^{C8} Perez L, Lear M, Worley M, Weigel G, Beecher TM, Estrada W, Schaefer S. Ethical Dilemmas in Medicine: What Does The Law Say? US Department of Health and Human Services Office of Civil Rights. 2021.

^{C9} Conscience Protections for Health Care Providers. US Department of Health and Human Services Office of Civil Rights Conscience and Religious Freedom Division. <https://www.hhs.gov/conscience/conscience-protections/index.html?language=en> Retrieved 11-07-2022

Laws of Conscience in Medicine

Church Amendments (1973)
prohibit discrimination of: ^{C8}

- employment
- promotion
- termination

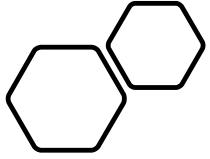
based on refusal to participate in
abortion or related procedure if
doing so contrary to conscience
regarding sterilization or abortion.

Conscience protections at law
carry ethical duties: ^{C10}

- Inform employers and patients
of conscientious objections to
perform vital services
- Disclose referral options
- Perform services contrary to
conscience in emergencies

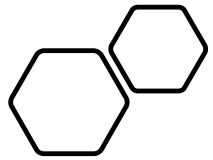
^{C8} Perez L, Lear M, Worley M, Weigel G, Beecher TM, Estrada W, Schaefer S. Ethical Dilemmas in Medicine: What Does The Law Say? US Department of Health and Human Services Office of Civil Rights. 2021.

^{C10} Beauchamp TL, Childress JF. Principles of Biomedical Ethics. 8th edition. 2019. Oxford University Press <https://global.oup.com/ushe/product/principles-of-biomedical-ethics-9780190640873?cc=ca&lang=en&>



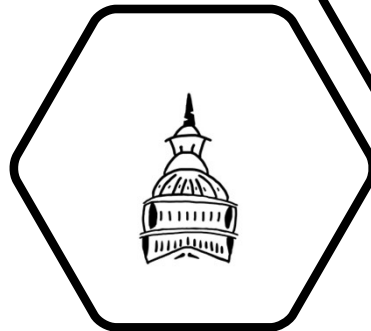
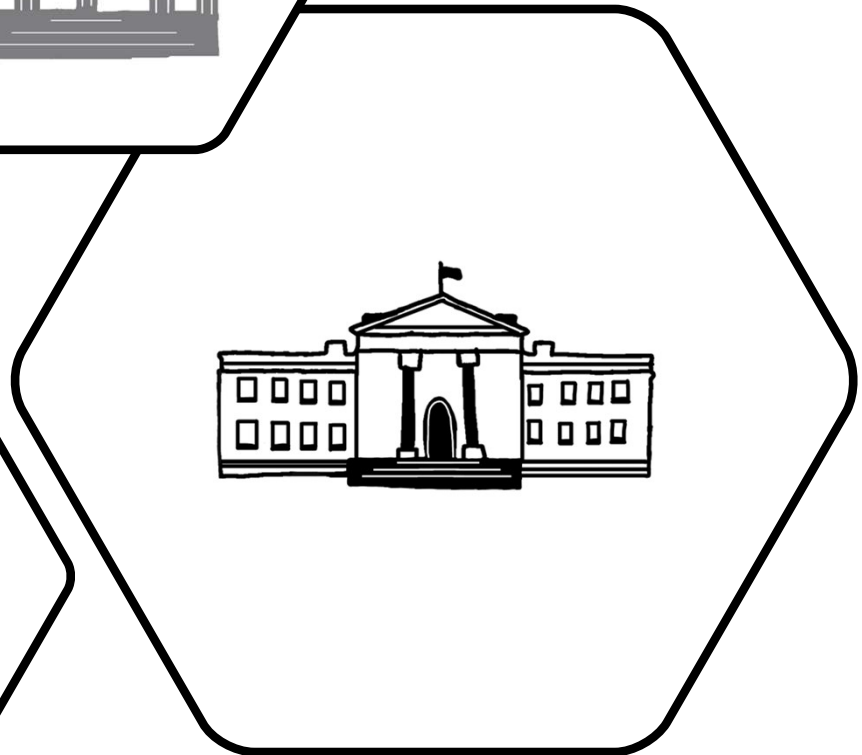
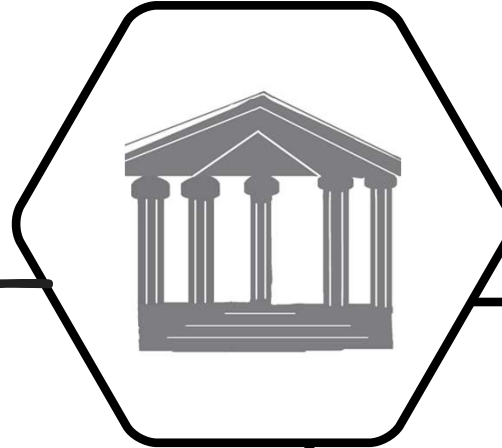
Medical & Legal Journey of Abortion Care





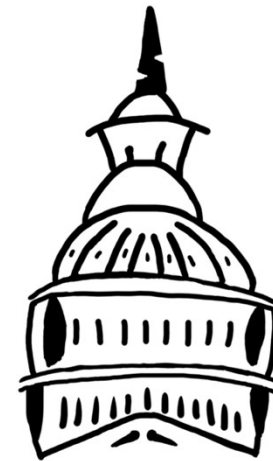
Branches of Government

The U.S. Constitution created 3 branches of government



Legislative Branch

- Article I of the [Constitution](#).
- Comprised of the House of Representatives and Congress.
- Can only act within the power granted by the Constitution.
- Creates statute.



Executive Branch

- Article II of the Constitution empowers the President to:
 - execute and enforce the laws.
 - sign legislation into law or veto.
- 15 executive departments heads make up the cabinet
 - Department of Health and Human Services

[More About the Executive Branch](#)



Judicial Branch

Article III of the Constitution

Cases & Controversies

1. **cases in law and equity arising under the Constitution, laws, and treaties of the United States;**
2. cases affecting ambassadors, other public ministers and consuls;
3. all cases of admiralty and maritime jurisdiction;
4. controversies to which the United States is a party;
5. controversies between two or more states;
6. controversies between citizens of different states;
7. controversies between citizens of the same state claiming lands under grants of different states;
8. controversies between a state or its citizens and foreign states, citizens, or subjects.
9. controversies between a state and citizens of another state;



Four Sources of U.S. Law

1. Federal Constitution
 - The supreme law of the land
2. Statute
 - Governing laws created by the legislative branch
3. Administrative Law
 - Regulations
4. Common Law
 - Derived from the courts



History of abortion

We see many references to nonsurgical abortion techniques in ancient cultures

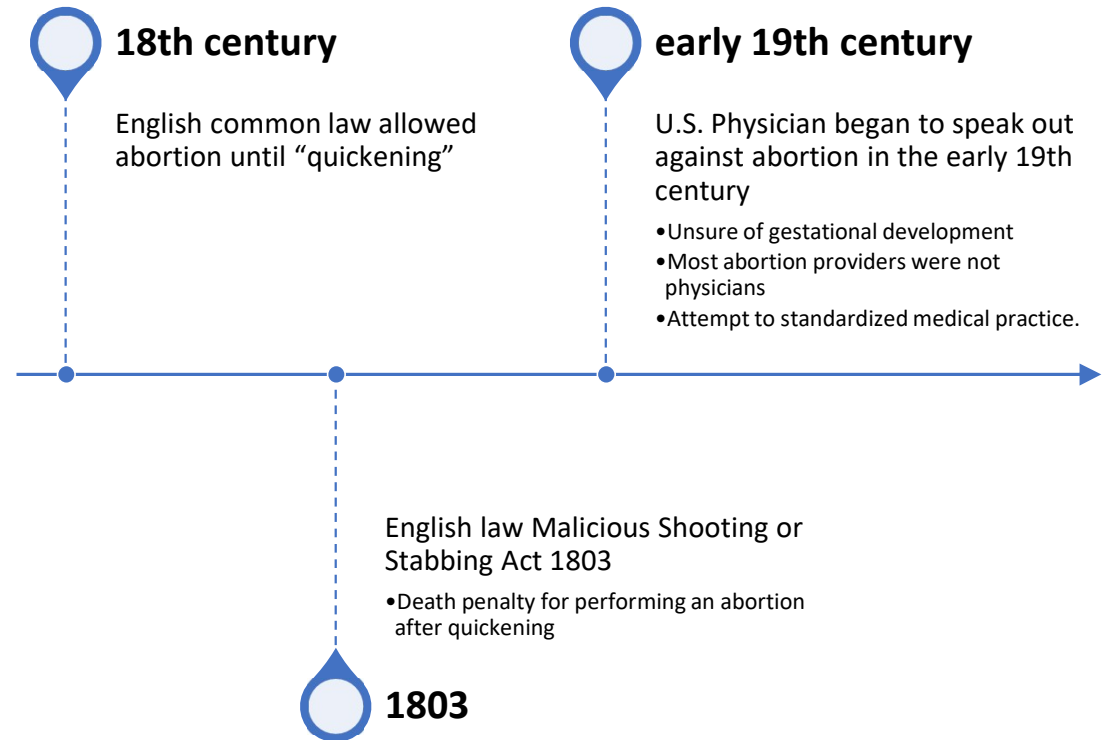
- Physical activity
- Fasting
- Bloodletting
- Irritating herbology
- Abdominal pressure
- Abuse

1550 BCE Egypt

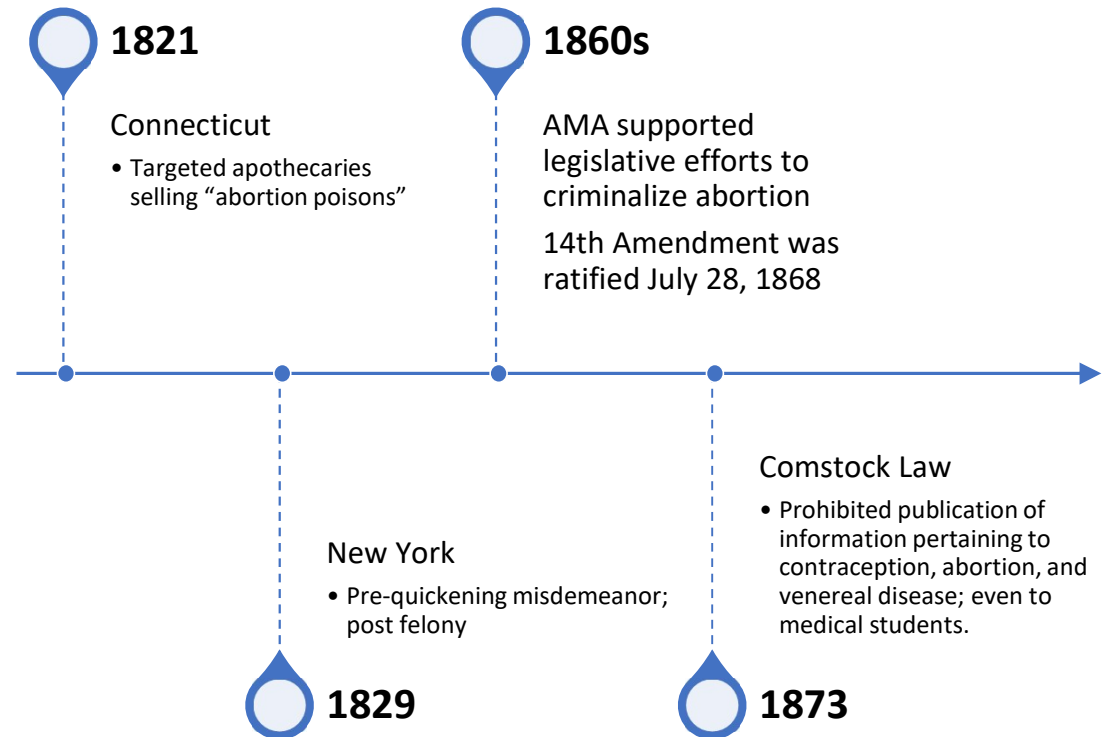
8th-century Sanskrit

12th-Century Japan

Legal History of Abortion



Legal History of Abortion

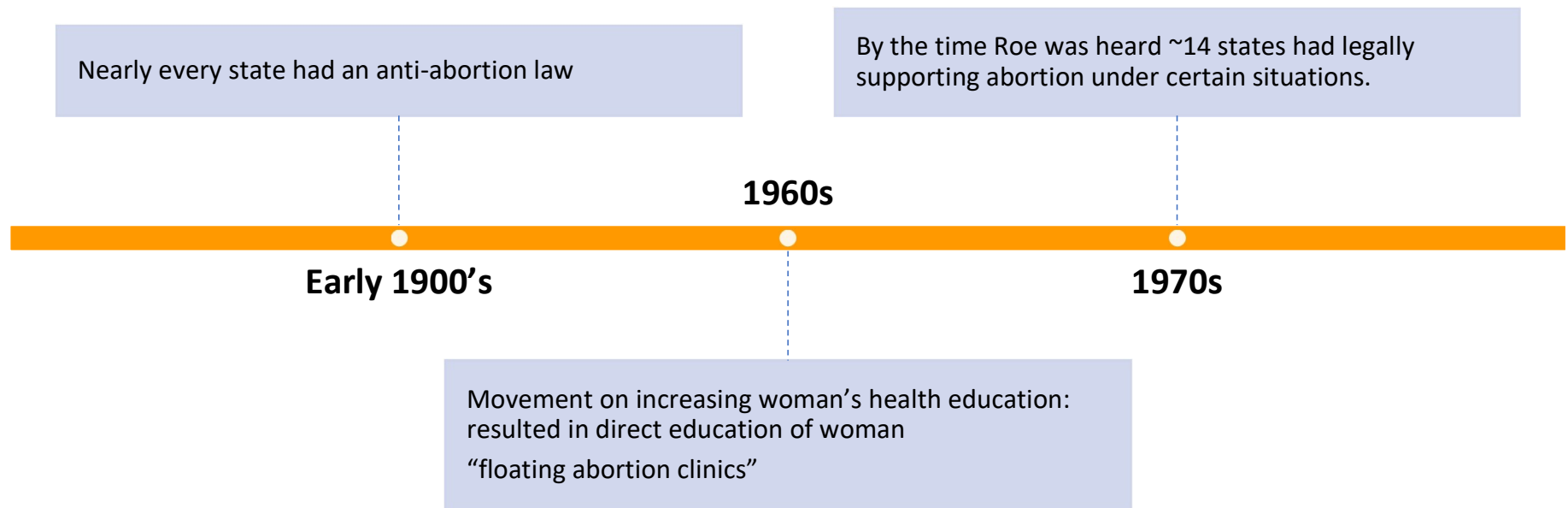


14th Amendment Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without **due process of law**; nor deny to any person within its jurisdiction **the equal protection of the laws**.

Legal History of Abortion



Roe v. Wade ^{K1}

Plaintiff's argument

- The Texas law invaded an individual's right to "liberty" under the 14th Amendment
- The Texas law infringed on rights to marital, familial, and sexual privacy guaranteed by the Bill of Rights
- The right to an abortion is absolute - a person is entitled to end a pregnancy at any time, for any reason, in any way they choose

Defendant's argument

- States have an interest in safeguarding health, maintaining medical standards, and protecting prenatal life
- A fetus is a "person" protected by the 14th Amendment
- Protecting prenatal life from the time of conception is a compelling state interest

^{K1} Roe v. Wade, 410 U.S. 113 (1973). <https://supreme.justia.com/cases/federal/us/410/113/>

Holding in *Roe v. Wade*

- The Court held that the **Due Process Clause** of the 14th Amendment to the U.S. Constitution provides a “**fundamental right to privacy**”, which protects a pregnant woman's right to an abortion. The Court also held that the right to abortion is not absolute and must be balanced against the government's interests in protecting women's health and prenatal life.
- The Court created a **pregnancy trimester timetable** to standardize abortion across the nation.
- Classified abortion as “fundamental” requiring future courts to evaluate challenged abortion laws under “the strict scrutiny standard”. The judicial process most stringent judicial review.

^{K1} Roe v. Wade, 410 U.S. 113 (1973). <https://supreme.justia.com/cases/federal/us/410/113/>

Planned Parenthood v. Casey ^{K2}

- Pennsylvania Abortion Control Act of 1982
- § 3205's **informed consent** — a woman seeking abortion had to give her informed consent prior to the procedure. The doctor had to provide her with specific information at least 24 hours before the procedure was to take place, including information about how the abortion could be detrimental to her health and about the availability of information about the fetus.
- § 3209's **spousal notice** — a woman seeking abortion had to sign a statement declaring that she had notified her husband prior to undergoing the procedure, unless certain exceptions applied.
- § 3206's **parental consent** — minors had to get the informed consent of at least one parent or guardian prior to the abortion procedure. Alternatively, minors could seek judicial bypass in lieu of consent.
- § 3203's **medical emergency definition** — defining a medical emergency as "[t]hat condition, which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function."
- §§ 3207(b), 3214(a), and 3214(f)'s **reporting requirements** — certain reporting and record keeping mandates were imposed on facilities providing abortion services.

^{K2} Planned Parenthood v. Casey, 505 U.S. 833 (1992). <https://supreme.justia.com/cases/federal/us/505/833/>

Planned Parenthood v. Casey

Question to the Court:

- Can a state require women who wants an abortion to obtain informed consent, wait 24 hours, if married, notify their husbands, and, if minors, obtain parental consent, without violating their right to abortion as guaranteed by Roe v. Wade?

^{K2} Planned Parenthood v. Casey, 505 U.S. 833 (1992). <https://supreme.justia.com/cases/federal/us/505/833/>

Planned Parenthood v. Casey

District court: found the law unconstitutional

3rd Circuit of Appeals supported all aspects of the law except notifying husband- unduly burdensome

Supreme Court

- Upheld “essential holding of Roe”
- Abandoned Roe’s trimester framework to “viability analysis”
- Planned Parenthood of Southeastern Pennsylvania v. Casey | Oyez

Whole Woman's Health v. Hellerstedt^{K3}

In 2013 Texas Legislature passed legislation with provisions related to abortion

- required that any physician performing an abortion have admitting privileges at a hospital within 30 miles of where the abortion was performed
- required that all abortion clinics comply with standards for ambulatory surgical centers

Went to Supreme Court in 2016

^{K3} Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016). <https://supreme.justia.com/cases/federal/us/579/15-274/>

Whole Woman's Health v. Hellerstedt

Question to the Court:

- Should a court's "substantial burden" analysis take into account the extent to which laws that restrict access to abortion services actually serve the government's stated interest in promoting health?
- Supreme Court Held:
 - that the provisions of H.B. 2 at issue do not confer medical benefits that are sufficient to justify the burdens they impose on women seeking to exercise their constitutional right to an abortion. Therefore, the provisions unconstitutionally impose an undue burden

June Medical Services v. Russo ^{K4}

In June 2014, Louisiana passed Act 620

- “that every physician who performs or induces an abortion shall ‘have active admitting privileges at a hospital that is located not further than thirty miles from the location at which the abortion is performed or induced.’”

5th Circuit decided

- “no clinics will likely be forced to close on account of the Act,” and thus, the law would not impose an undue burden on women’s right to choose abortions.

Case was being appealed when *Hellerstedt* was decided

Supreme Court reversed the decision striking down the Louisiana Law.

Dobbs v. Jackson Women's Health ^{K5}

2018 Mississippi enacted the Gestational Age Act prohibiting abortions after 15 weeks of age.

- Jackson's Women's Health was the only abortion clinic in Mississippi and obtained a temporary restraining order.

District court prohibiting Mississippi from enforcing the law

- State failed to provide evidence fetus is viable at 15 weeks

5th Circuit affirmed

^{K5} Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022). <https://supreme.justia.com/cases/federal/us/597/19-1392/>

Dobbs v. Jackson Women's Health

Question to Court:

- Is Mississippi's law banning nearly all abortions after 15 weeks' gestational age unconstitutional?

^{K5} Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022). <https://supreme.justia.com/cases/federal/us/597/19-1392/>

Dobbs v. Jackson Women's Health

Court Held:

- The Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives.

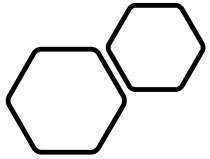
^{K5} *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). <https://supreme.justia.com/cases/federal/us/597/19-1392/>

Dobbs v. Jackson Women's Health

The five factors that should be considered in deciding whether a precedent should be overruled support overruling *Roe v. Wade* and *Planned Parenthood v. Casey*:

- (1) they “short-circuited the democratic process,”
- (2) both lacked grounding in constitutional text, history, or precedent,
- (3) the tests they established were not “workable,”
- (4) they caused distortion of law in other areas, and
- (5) overruling them would not upend concrete reliance interests.

^{K5} *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). <https://supreme.justia.com/cases/federal/us/597/19-1392/>



Political Salience and Medical Care

"Political biases and awareness of one's own biases should be incorporated into our training, just as other biases are"

- Dr. Goldenberg, Associate Professor of Psychiatry at Yale ^{B1}

^{B1} Lawrence L. Taking the Pulse of Health Care and Politics. American Society of Hematology Clinical News.
<https://ashpublications.org/ashclinicalnews/news/4660/Taking-the-Pulse-of-Health-Care-and-Politics>

Ethical Dilemma of Politics

Political discussions are potentially risky for a number of reasons: ^{B2}

- Alienation of the patient relationship due to difference of opinion
- Possible misinterpretation of the provider's viewpoint that could lead to a suspicion of biases
- A patient's sense that their opinion doesn't matter to the provider
- Workplace distrust and conflict

^{B2} Vogel L. Should doctors talk politics with patients?. CMAJ. 2018;190(16):E520-E521. doi:10.1503/cmaj.109-5589
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915256/>

Moral, Ethical, and Legal

“PAs are expected to behave both legally and morally. They should know and understand the laws governing their practice. Likewise, they should understand the ethical responsibilities of being a health care professional. Legal requirements and ethical expectations will not always be in agreement. Generally speaking, the law describes minimum standards of acceptable behavior, and ethical principles delineate the highest moral standards of behavior. When faced with an ethical dilemma, PAs may find the guidance they need in this document.”^{B3}

^{B3} Guidelines for Ethical Conduct for the PA Profession. American Academy of Physician Assistants (AAPA). 2013. <https://www.aapa.org/wp-content/uploads/2017/02/16-EthicalConduct.pdf>

AAPA Guidelines for Ethical Conduct ^{B3}

- Autonomy
- Beneficence
- Nonmaleficence
- Justice

^{B3} Guidelines for Ethical Conduct for the PA Profession. American Academy of Physician Assistants (AAPA). 2013. <https://www.aapa.org/wp-content/uploads/2017/02/16-EthicalConduct.pdf>

Ethical Duty as a PA

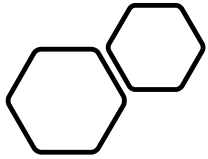
“A PA has an ethical duty to offer each patient the full range of information on relevant options for their health care. If personal moral, religious, or ethical beliefs prevent a PA from offering the full range of treatments available or care the patient desires, the PA has an ethical duty to refer a patient to another qualified provider. That referral should not restrict a patient’s access to care. PAs are obligated to care for patients in emergency situations and to responsibly transfer patients if they cannot care for them”^{B3}

^{B3} Guidelines for Ethical Conduct for the PA Profession. American Academy of Physician Assistants (AAPA). 2013. <https://www.aapa.org/wp-content/uploads/2017/02/16-EthicalConduct.pdf>

Reproductive Care

- “Patients have a right to access the full range of reproductive health care services, including fertility treatments, contraception, sterilization, and abortion. PAs have an ethical obligation to provide balanced and unbiased clinical information about reproductive health care.”^{B3}
- “When the PA's personal values conflict with providing full disclosure or providing certain services such as sterilization or abortion, the PA need not become involved in that aspect of the patient's care. By referring the patient to a qualified provider who is willing to discuss and facilitate all treatment options, the PA fulfills their ethical obligation to ensure the patient's access to all legal options.”^{B3}

^{B3} Guidelines for Ethical Conduct for the PA Profession. American Academy of Physician Assistants (AAPA). 2013. <https://www.aapa.org/wp-content/uploads/2017/02/16-EthicalConduct.pdf>



What Does Professional Practice Look Like?



Caring for Yourself

sympathy = recognizing someone's present experience

empathy = simulating internally someone's present experience

compassion = action from empathy

Compassion activates the social engagement system in the brain resulting in less subjective vulnerability. ^{C5}

Caregiving triggers oxytocin, dopamine, and vasopressin release. ^{C5}

^{C5} McGonigal K. The Practical Science of Compassion. Compassion in Therapy Summit. 2021

Communicating with Others

OARS from Motivational Interviewing: ^{C12}

- Open-ended questions
- Affirmations
- Reflections
- Summarizing

Directive or non-directive communication on a politically salient topic

SPIKES from Giving Bad News: ^{C13}

- Setting
- Perceptions
- Invitation
- Knowledge
- Empathy/Emotion
- Summary/Strategy

^{C12} Douaihy A, Kelly TM, Gold MA. 'Chapter 9: Brief Interventions'. Motivational Interviewing: A Guide for Medical Trainees, 1 (New York, 2014; online edn, Oxford Academic, 1 Nov. 2014), <https://doi.org/10.1093/med/9780199958184.003.0009>, accessed 20 Oct. 2022. <https://academic.oup.com/book/333>

^{C13} Baile WF, Buckman R, Lenzi R, Glober G, Beale EA, Kudelka AP. SPIKES—A Six-Step Protocol for Delivering Bad News: Application to the Patient with Cancer. *The Oncologist*. 5(4); Aug 2000. 302–311. <https://doi.org/10.1634/theoncologist.5-4-302>

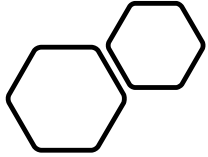
Communicating with Others

REDE from Relationship-Centered Care: ^{C14}

- Relationship
 - Establishment
 - Development
 - Engagement
- Demonstrate empathy using **S.A.V.E.** (Support, Acknowledge, Validate, Emotion naming)
 - Explore the patient's perspective using **V.I.E.W.** (Vital activities, Ideas, Expectations, Worries)
 - Dialogue throughout using **A.R.I.A.** (Assess, Reflect, Inform, Assess)

^{C14} Windover AK, Boissy A, Rice TW, Gilligan T, Velez VJ, Merlino J. The REDE Model of Healthcare Communication: Optimizing Relationship as a Therapeutic Agent. J Patient Exp. 2014 May;1(1):8-13. doi: 10.1177/237437431400100103. Epub 2014 May 1. <https://pubmed.ncbi.nlm.nih.gov/28725795/>

^{C15} Chapter 4: Birth of the R.E.D.E.™ Model. In: Boissy A, Gilligan T. eds. Communication the Cleveland Clinic Way: How to Drive a Relationship-Centered Strategy for Superior Patient Experience. McGraw Hill; 2018. Accessed October 14, 2022. <https://accessmedicine.mhmedical.com/book.aspx?bookID=2312>



Roleplay: Professional Political Conversations

Scenario #1

Provider and Supervising Physician

Scenario #2

Provider & Administrator

Group Agreements for Discussion

- Speak for yourself (“I” statements)
- Practice deep confidentiality
- Listen to understand
- Contributions are invited, not required
- Trust and learn from silence
- No fixing, saving, advising, or correcting
- Discomfort is an opportunity for growth
- When the going gets tough, turn to wonder