Contents

Preface Acknowledgments xxxiii

PART I BIOETHICS: BASIC CONCEPTS

__1_

14.		
	Law, Medicine, and Philosophy	3
Α.	HISTORY OF BIOETHICS AND "BIOLAW"	4
711	Charity Scott, Why Law Pervades Medicine: An	
	Essay on Ethics in Health Care	7
	Notes and Questions	12
B.	PHILOSOPHICAL PRINCIPLES INFORMING BIOETHICS	13
	1. Philosophical Ethical Theory	14
	2. Utilitarianism	14
	3. Kantianism	16
	4. Liberal Individualism	17
	5. Communitarianism	18
	6. Ethics of Care	18
	7. Bioethics Principles	19
	8. "Critical Perspectives"	20
	Rosemarie Tong, Feminist Approaches to Bioethics	21
	Notes and Questions	25
C.	RELIGION AND BIOETHICS	26
	Report and Recommendations of the National	
	Bioethics Advisory Commission, Cloning Human	
	Beings	26
	Notes and Questions	28
	Challenging Issues: Applying Ethical Theory	30
D.	ETHICS OF THE MEDICAL PROFESSION AND THE	
	"BIOETHICS OF BIOETHICS"	31
	1. Formalized Medical Ethics	31
	Hippocratic Oath	31
	Notes and Questions	32

	American Medical Association, Principles of	
	Medical Ethics	33
	David Orentlicher, The Influence of a Professional	
	Organization on Physician Behavior	34
,	Notes and Questions	37
	2. The Ethics of Bioethicists	38
E.	THE HUMAN BODY, HEALTH, AND DISEASE	39
	Kaja Finkler, Experiencing the New Genetics:	
	Family and Kinship on the Medical Frontier	42
	Notes and Questions	43
F	THE LIFESPAN APPROACH	44
1.		TT
	-2-	
	Autonomy and Bodily Integrity	17
	Autonomy and boatty integrity	
Δ	INFORMED CONSENT	48
1 1.	1. Bioethical and Social Perspectives	48
	Peter H. Schuck, Rethinking Informed Consent	48
	Notes and Questions 2. Local Approaches	50
	2. Legal Approaches	52
	Canterbury v. Spence	52
	Notes and Questions	58
	Greenberg v. Miami Children's Hospital Research	~ ~
	Institute	65
	Notes and Questions	68
	Challenging Issues: Informed Consent and	
	Autonomy	70
B.	THE ABSENCE OF INFORMED CONSENT: COERCED	
	TREATMENT AND TREATMENT OF PEOPLE UNABLE	
	TO CONSENT	71
	1. Patients Incapable of Giving Consent	73
	a. Bioethical and Social Perspectives	73
	Norman L. Cantor, The Permanently Unconscious	
	Patient, Non-Feeding and Euthanasia	73
	Note and Questions	75
	b. Legal Approaches	76
	Blouin v. Spitzer	76
	Notes and Questions	78
	Challenging Issues: Informed Consent for	, 0
	Dental Care	79
	2. Patients Who May or May Not Be Capable of Medical	, ,
	Decision Making	80
	a. Bioethical and Social Perspectives	80
	Stephen Hjelt, Informed Consent and	00
	Psychotherapy: Apples and Oranges in the	
	Garden of Doctrine	20
	b. Legal Approaches	Q 1
	Sell v. United States	20
	our v. Omicu states	04

Cor	Contents		
		Notes and Questions	84
		Challenging Issues: National Tracking System	86
	2	Competent Patients Whose Health Care Choices Are	00
	Э.	Questioned	87
			Q.7
		a. Bioethical and Social Perspectives	01
		Carol J. Gill, Health Professionals, Disability, and	
		Assisted Suicide: An Examination of Relevant	0 7
		Empirical Evidence and Reply to Batavia	8/
		b. Legal Approaches	89
		Bouvia v. Superior Court	89
		Notes and Questions	89
		Challenging Issues: Medical Decision Making	92
C.	PR	IVACY AND CONFIDENTIALITY	93
	1.	Bioethical and Social Perspectives	93
		Paul Starr, Health and the Right to Privacy	93
		Note	96
		Challenging Issues: Patient Privacy and Health	
		Care Proxies	97
	9	Legal Approaches	97
	4.	Horne v. Patton	97
		Safer v. Pack	100
			_ 0 0
		Notes and Questions	102
		Challenging Issues: Confidentiality and Potential	100
		Tissue/Organ Donors	108
D.		IATOMICAL GIFTS	108
-	1.	Bioethical and Social Perspectives	108
		Thomas H. Murray, On the Human Body as	
		Property: The Meaning of Embodiment,	
		Markets, and the Meaning of Strangers	108
		Note and Questions	110
		Challenging Issues: Altruistic Donations	111
	2.	Legal Approaches	111
		Wilson v. Adkins	111
		Notes and Questions	113
			1. 1.0
		-3-	
		Life	115
Λ	TL	HE BEGINNING OF LIFE: FETUSES AND EMBRYOS	116
A.			116
	1.	Bioethical and Social Perspectives	110
		Mary Ann Warren, On the Moral and Legal Status	110
	1.	of Abortion	116
	-	James J. McCartney, Embryonic Stem Cell	
	w/	Research and Respect for Human Life:	
	-	Philosophical and Legal Reflections	118
		Evangelium Vitae (The Gospel of Life), encyclical	
		letter of John Paul II	121
		Notes and Questions	122

	•
XI	W

2. Legal Approaches	125
a. Fetuses	125
Roe v. Wade	125
Notes and Questions	127
Stenberg v. Carhart	130
Partial-Birth Abortion Ban Act of 2003	135
Notes and Questions	135
Challenging Issues: Guardian for a Fetus?	136
b. Embryos	137
i. Custody Disputes	137
Davis v. Davis	137
Notes and Questions	139
Challenging Issues: Embryo Adoption	141
La. Rev. Stat. Ann. 9:121-9:133	142
ii. Use of Embryos in Research	143
	143
President's Council on Bioethics, Human Cloning	111
and Human Dignity: An Ethical Inquiry	144
Notes and Questions D. CADADII ITTEE AND INTERDECTE OF LIVING DEINGE	147
B. CAPABILITIES AND INTERESTS OF LIVING BEINGS	149
1. Severely Disabled Individuals	150
In re A	150
Notes and Questions	151
Challenging Issues: Infants with Anencephaly and	
Persons in a Persistent Vegetative State	152
2. Nonhuman Animals	154
Steven Wise, Dismantling the Barriers to Legal	
Rights for Nonhuman Animals	154
Notes and Questions	156
3. Human/Animal Chimera and Robots	157
George J. Annas, Mapping the Human Genome	
and the Meaning of Monster Mythology	158
President's Commission for the Study of Problems	
in Medicine and Biomedical and Behavioral	
Research, Splicing Life: A Report on the Social	
and Ethical Issues of Engineering with Human	
Beings	159
Notes and Questions	161
Challenging Issues: "Self-Aware" Robots	163
Chancinging Issues. Sen-Aware Robbits	103
PART II THE EARLY YEARS	
Assisting and Monitoring Reproduction	167
Janet L. Dolgin, The Constitution as Family	
Arbiter: A Moral in the Mess?	168

١.	AS	SISTING REPRODUCTION	169
		Marsha Garrison, Law Making for Baby Making:	
		An Interpretive Approach to the Determination	
		of Legal Parentage	170
		Aline H. Kalbian, Narrative ARTifice and Women's	
		Agency	171
		Notes and Questions	173
	1	Assisted Insemination	175
		Surrogacy, In Vitro Fertilization, and Gestational Surrogacy	176
į	4.	a. Bioethical and Social Perspectives	176
P. 6		Barbara Bennett Woodhouse, Hatching the	110
		Egg: A Child-Centered Perspective on	
		Parents' Rights	176
			179
		Notes and Questions	- 1
		b. Legal Approaches In the Metter of Deby M	180
		In the Matter of Baby M	180
		In the Matter of Baby M	184
		Johnson v. Calvert	188
		Notes and Questions	192
	0	Challenging Issues: Parentage and Surrogacy	197
	3.	Disputes about Embryos	198
		Davis v. Davis	199
		Notes and Questions	202
		Challenging Issues: Cryopreservation Agreement	204
	4.	Posthumous Reproduction	205
		Woodward v. Commissioner of Social Security	207
		Notes and Questions	211
		Challenging Issues: Arranging for Posthumous	
		Children	213
	5.	Reproductive Cloning	214
		a. Bioethical and Social Perspectives	215
		The President's Council on Bioethics, Human	
		Cloning and Human Dignity: An Ethical Inquiry	215
		Lee M. Silver, Popular Cloning Versus Scientific	
		Cloning in Ethical Debates	217
		Note and Questions	218
		b. Legal Approaches	218
		California	219
		Rhode Island	219
		Notes and Questions	220
		Challenging Issues: Regulation?	221
	6.	Children of ART and Their Best Interests	222
		In the Matter of Baby M	223
		Johnson v. Calvert	226
	7.	Notes and Questions	228
	7	ARTs and Discrimination	233
		Dorothy Roberts, The Genetic Tie	234
		Notes and Questions	236

В.	MONITORING REPRODUCTION	237
	1. Prenatal Testing and Preimplantation Genetic Diagnosis	237
	Report for President's Council on Bioethics,	
	Reproduction and Responsibility: The	
	Regulation of New Biotechnologies	237
	Notes and Questions	240
	2. Having a Baby to Cure a Sick Child	243
	Susan M. Wolf, Jeffrey P. Kahn & John E. Wagner,	
	Using Preimplantation Genetic Diagnosis to	
	Create a Stem Cell Donor: Issues, Guidelines	
	and Limits	243
	Notes and Questions	244
	3. Medical Intervention During Pregnancy	245
	a. Bioethical and Social Perspectives	246
	April Cherry, Symposium Remarks: Maternal-Fetal	410
	Conflicts, the Social Construction of Maternal	
	Deviance, and Some Thoughts about Love and	
	Justice	246
	Notes and Questions	249
	b. Legal Approaches In re Fetus Brown	251
	In re Fetus Brown	251
	Notes and Questions A Substance Abuse During Programmers	254
	4. Substance Abuse During Pregnancy	254
	a. Bioethical and Social Perspectives	255
	Janet W. Steverson, Stopping Fetal Abuse with	
	No-Pregnancy and Drug Treatment Probation	0 + +
	Conditions	255
	April Cherry, Symposium Remarks: Maternal-Fetal	
	Conflicts, the Social Construction of Maternal	
	Deviance, and Some Thoughts about Love and	0
	Justice	257
	b. Legal Approaches	258
	Ferguson v. City of Charleston	258
	Notes and Questions	264
	Challenging Issues: Testing Pregnant Women for	005
	Drug Use	267
	5_	
	Children	269
4		
1.	CHILDREN, FAMILIES, AND HEALTH CARE	270
	1. Bioethical and Social Perspectives	270
	a. Developmental Stages	270
	b. Children in Society	271
	Janet L. Dolgin, The Fate of Childhood: Legal	
*	Models of Children and the Parent-Child	
	Relationship	272
	Note	274

Coi	Contents			
	9	Legal Approaches	274	
	— •	Bellotti v. Baird	274	
		Parham v. J.R.	276	
		Notes and Questions	281	
D		EDICAL DECISION MAKING FOR AND BY CHILDREN	284	
В.			285	
	1.	Children and Informed Consent	•	
		a. Bioethical and Social Perspectives	285	
		Rhonda Gay Hartman, Coming of Age: Devising Legislation for Adolescent Medical		
		Decision-Making	285	
138		Note, Kishka-Kamari Ford, "First, Do No		
		Harm"—The Fiction of Legal Parental Consent		
		to Genital-Normalizing Surgery on Intersexed		
		Infants	287	
		Notes and Questions	288	
		b. Legal Approaches	289	
		i. Statutory Responses	289	
		Rhode Island Gen. Laws §23-4.6-1. Consent to	403	
		Medical and Surgical Care	289	
			290	
		Idaho Code (2003) Col. Form. Code Div. 11. Minora Port 4		
		Cal. Fam. Code, Div. 11. Minors. Part 4	290	
		Notes and Questions	291	
		ii. Judicial Responses	293	
		Curran v. Bosze	293	
	0	Notes and Questions	296	
	2.	Refusing or Demanding Treatment	297	
		Melinda T. Derish & Kathleen Vanden Heuvel,		
		Mature Minors Should Have the Right to Refuse	~ ~ =	
		Life-Sustaining Medical Treatment	297	
)	Rhonda Gay Hartman, Adolescent Autonomy:		
		Clarifying an Ageless Conundrum	298	
		Notes and Questions	299	
		Challenging Issues: Mature Minors	303	
	3.	Experimentation Involving Children	304	
		a. Bioethical and Social Perspectives	304	
		Lainie Friedman Ross, Children as Research		
		Subjects: A Proposal to Revise the Current		
		Federal Regulations Using a Moral Framework	304	
		b. Legal Approaches	306	
		Grimes v. Kennedy Krieger Institute, Inc.	306	
		Notes and Questions	310	
		Challenging Issues: Experimental Care	312	
C.	CH	ILDREN'S ACCESS TO HEALTH CARE	312	
	1.	Economic Factors	312	
	. \$	a. Bioethical and Social Perspectives	312	
		Marian Wright Edelman, Children's Health	•	
		Symposium: Children's Health Needs for the		
		Coming Years	314	
		b. Legal Approaches	315	
		Notes and Questions	316	

Ústřední knihovna právnické fakulty MU Brno

	0
W7 W7 # #	10
XVII	8

Contents

	2. Abuse and Neglect	318
	a. Bioethical and Social Perspectives	318
	b. Legal Approaches	318
	i. Statutory Approach	318
	ii. Judicial Approach	319
	Williams v. Coleman	319
	Notes and Questions	322
	3. Discrimination Against Sick or Disabled Children	324
	a. Bioethical and Social Perspectives	324
	Martha A. Field, Killing "The	344
	Handicapped"—Before and After Birth	324
	Mary Crossley, Of Diagnoses and Discrimination:	
	Discriminatory Nontreatment of Infants with	
	HIV Infection	326
	Notes and Questions	327
	b. Legal Approaches	329
	45 C.F.R. 1350.15 (Services and Treatment for	343
	Disabled Infants)	329
D	Notes and Questions CENOMICS, NEW OTTESTIONS ABOUT NATURE AND	330
IJ.	GENOMICS: NEW QUESTIONS ABOUT NATURE AND NURTURE	999
		333
	Safer v. Pack	335
	Notes and Questions	335
	Challenging Issues: Questions about Genetic	0.0.0
	Testing of Children	336
E.	WRONGFUL LIFE, WRONGFUL BIRTH	337
	1. Bioethical and Social Perspectives	337
	Jeffrey R. Botkin, Prenatal Diagnosis and the	
	Selection of Children	338
	Mark Strasser, Wrongful Life, Wrongful Birth,	
	Wrongful Death, and the Right to Refuse	
	Treatment: Can Reasonable Jurisdictions	
	Recognize All But One?	339
	Note and Questions	341
	2. Legal Approaches	341
	Quinn v. Blau	341
	Kassama v. Magat	343
	Notes and Questions	346
	Challenging Issues: Claims of Siblings	347
	-6-	
	Avoiding Reproduction: Sterilization,	
	Contraception, and Abortion	349
	Gont aception, and Aboution	ノイン
A	NIONIOONIOUNIOUTAT ATTOUT ANTOU OF THE STATE OF THE	
	NONCONSENSUAL AVOIDANCE OF REPRODUCTION	350
	1. Coerced Sterilization	350
	a. Buck v. Bell and Its Cultural Context	351

Contents	\mathbf{x}_{1}	ix

			i.	Bioethical and Social Perspectives	351
				Paul A. Lombardo, Taking Eugenics Seriously:	
				Three Generations of ??? Are Enough?	351
				Notes and Questions	353
	*		11	Legal Approaches	353
			II.	Buck v. Bell	354
				Note and Questions	354
		h	Λft	ter Buck v. Bell	356
		D.		Bioethical and Social Perspectives	356
Į.			l.		330
3				Joe Zumpano-Canto, Nonconsensual Sterilization of the Montelly Disabled in North Canalina An	
				of the Mentally Disabled in North Carolina: An	
				Ethics Critique of the Statutory Standard and Its	256
				Judicial Interpretation	356
4			• •	Notes and Questions	357
			11.	Legal Approaches	357
				Skinner v. Oklahoma	357
				Notes and Questions	359
	2.			ed Contraception	362
		a.	Bio	oethical and Social Perspectives	364
				Radhika Rao, Law and Equality: Constitutional	
				Misconceptions (reviewing John A. Robertson,	
				Children of Choice)	364
				David S. Coale, Note, Norplant Bonuses and the	
				Unconstitutional Conditions Doctrine	365
				Notes and Questions	366
				Challenging Issues: Distinguishing Coercive from	
				Noncoercive Sterilization or Use of	
				Contraception	371
В.	CC	NS	ENS	SUAL AVOIDANCE OF REPRODUCTION	372
				aception	373
				pethical and Social Perspectives	373
		a.	DIC	Janet L. Dolgin, The Family in Transition: From	010
				Griswold to Eisenstadt and Beyond	373
				Notes and Questions	374
		h	T o		375
		U.	LC	gal Approaches Crisweld v. Connecticut	
				Griswold v. Connecticut	375
				Eisenstadt v. Baird	376
	0	A 1		Notes and Questions	378
	2.		orti		379
		a.	B10	pethical and Social Perspectives	380
		1		John Hart Ely, The Wages of Crying Wolf: A	
		31	41	Comment on Roe v. Wade	380
		The state of the s		Reva Siegel, Reasoning from the Body: A Historical	
	1	1		Perspective on Abortion Regulation and	
		F		Questions of Equal Protection	382
		-		Teresa Godwin Phelps, The Sound of Silence	
				Breaking: Catholic Women, Abortion, and the	
		N. Marie		Law	383
				Notes and Questions	384

W7 W7		
XX		

Contents

b. Legal Approaches	386
Roe v. Wade	386
Notes and Questions	389
Planned Parenthood of Southeastern Pennsylvania	
v. Casey	391
Notes and Questions	398
Challenging Issues: Undue Burden Test	402
PART III ACROSS THE LIFESPAN	
-7-	
Human Subject Research and	
Experimental Health Care	405
A. BIOETHICAL AND SOCIAL PERSPECTIVES	407
Jay Katz, Human Sacrifice and Human	
Experimentation: Reflections at Nuremberg	407
Guido Calabresi, Reflections on Medical	
Experimentation in Humans	412
Notes and Questions	414
B. CURRENT PRACTICES	415
Hazel Glenn Beh, The Role of Institutional Review	
	/
Boards in Protecting Human Subjects: Are We	11C
Really Ready to Fix a Broken System?	416
Trudo Lemmens & Paul B. Miller, The Human	
Subjects Trade: Ethical and Legal Issues	
Surrounding Recruitment Incentives	418
Jesse A. Goldner, Dealing with Conflicts of Interest	•
in Biomedical Research: IRB Oversight as the	
Next Best Solution to the Abolitionist Approach	419
Notes and Questions	424
Challenging Issues: Lessons from Legal Ethics?	425
C. LEGAL APPROACHES	426
1. Ethics Codes	426
The Nuremberg Code	427
Questions	428
World Medical Association, Declaration of Helsinki	428
Notes and Questions	432
2. Federal Regulations	433
Code of Federal Regulations, Basic HHS Policy for	
Protection of Human Research Subjects	434
Notes and Questions	438
Challenging Issues: Research Protocol to Withdray	
Medication from Schizophrenic Patients	v 440
3. Tort Law	442
Grimes v. Kennedy Krieger Institute, Inc.	443
Notes and Questions	449

		Greenberg v. Miami Children's Hospital Research	
		Institute	452
		Notes and Questions	452
	4.	Special Populations of Research Subjects: Are More Permissive	
	_,	Standards Justified?	453
		a. Donors of Biological Samples	453
		Challenging Issues: Research on Stored Biological	
		Samples	453
		b. Experiments on Military Personnel	456
		Minns v. United States	456
IDA		Notes and Questions	459
		c. Research among Populations of Developing Countries	460
		d. The Terminally Ill	461
		George J. Annas, Faith (Healing), Hope, and	
		Charity at the FDA: The Politics of AIDS Drug	
		Trials	462
		Notes and Questions	463
		1 votes and Sacstrons	100
		8	
		Conflicts of Interest, Profits, and Commerce	465
Δ	CO	NFLICTS OF INTEREST FACING INDIVIDUAL HEALTH	
Service Control of the Control of th		RE PROVIDERS	465
		Nonfinancial Conflicts of Interest	465
		a. Bioethical and Social Perspectives	466
		Notes and Questions	468
		b. Legal Approaches	468
		Watkins v. Mercy Medical Center	468
		Notes and Questions	470
		Challenging Issues: Refusing Service or Care	471
	9	Financial Conflicts of Interest	472
	4.	a. Bioethical and Social Perspectives	479
		Marc A. Rodwin, Strains in the Fiduciary	1/4
		Metaphor: Divided Physician Loyalties	
		and Obligations in a Changing Health	
			472
		Care System Notes and Questions	474
		Steven D. Wales, The Stark Law: Boon or	TIT
		Boondoggle? An Analysis of the Prohibition on	
			475
		Physician Self-Referrals Notes and Ouestions	476
		Notes and Questions Lerome P. Kassirer, Financial Conflict of Interest:	1/0
	The same of the sa	Jerome P. Kassirer, Financial Conflict of Interest: An Unresolved Ethical Frontier	477
			477
		Notes and Questions Pichard S. Saver, Squandering the Cain:	110
		Richard S. Saver, Squandering the Gain: Caincharing and the Continuing Dilemma of	
		Gainsharing and the Continuing Dilemma of	170
		Physician Financial Incentives	479
		Notes and Questions	481

		b. Legal Approaches	483
		Fla. Stat. §456.052 (Disclosure of financial interest	
		by production)	483
		The "Stark" Law	483
		American Lithotripsy Society v. Thompson	485
		Notes and Questions	486
		Challenging Issues: Healers and Business	
		Managers: Regulating Physicians	489
	3	From the Corporate Practice of Medicine Doctrine to the	103
	J.	Corporatization of Health Care?	490
		_	
		a. Corporate Practice of Medicine Doctrine	491
		i. Bioethical and Social Perspectives	491
		Mark A. Hall, Institutional Control of Physician	
		Behavior: Legal Barriers to Health Care Cost	401
		Containment	491
		E. Haavi Morreim, Playing Doctor: Corporate	
		Medical Practice and Medical Malpractice	492
		Notes and Questions	494
		ii. Legal Approaches	495
		Pediatric Neurosurgery, P.C. v. Russell	495
		Berlin v. Sarah Bush Lincoln Health Center	495
		Notes and Questions	498
		Challenging Issues: Relying on the Corporate	
		Practice of Medicine Doctrine	501
		b. Managed Care	501
		i. Bioethical and Social Perspectives	501
		Dionne Koller Fine, Physician Liability and	
		Managed Care: A Philosophical Perspective	501
		Notes and Questions	503
		Challenging Issues: Starting a Boutique Practice	505
		ii. Legal Responses	505
		Neade v. Portes	505
		Notes and Questions	510
В.	CC	ONFLICTS OF INTEREST INVOLVING HEALTH CARE	010
_		RODUCTS" AND DISCOVERIES	513
		Pharmaceutical Companies: Profits and Research	513
	1.	a. Bioethical and Social Perspectives	513
		Heidi Li Feldman, Pushing Drugs: Genomics and	010
		Genetics, The Pharmaceutical Industry and the	
		Law of Negligence	513
		Notes and Questions	515
		b. Legal Responses	517
		United States ex rel. David Franklin v. Parke-Davis	517
		Notes and Questions	521
	9	Owning Cells and Genes?	522
	4.	a. Patenting Life	522
		i. Bioethical and Social Perspectives	523
		Margo A. Bagley, Patent First, Ask Questions	343
		Later: Morality and Biotechnology in	500
		Patent Law Notes and Questions	523
		Notes and Questions	525

Contents			XX111
	ii.	Legal Approaches	526
		Diamond v Chakrabarty	526

	II. Legal Approacties	340
	Diamond v. Chakrabarty	526
	Notes and Questions	529
	b. Genetic Information and Human Tissue	530
	i. Bioethical and Social Perspectives	530
	David E. Winickoff, Governing Population	
	Genomics: Law, Bioethics, and Biopolitics in	
	Three Case Studies	531
	Note and Questions	533
API	ii. Legal Approaches	533
IRE	Greenberg v. Miami Children's Hospital Research	
	Institute	533
	Notes and Questions	538
	—9—	
	Access to Health Care	543
		~ 1 1
A.	SCOPE OF THE OBLIGATION TO TREAT	544
	Payton v. Weaver	545
	Notes and Questions	548
В.	ALLOCATING HEALTH CARE	549
	1. Distribution of Scarce Resources	549
	Einer Elhauge, Allocating Health Care Morally	549
	Notes and Questions	550
	2. Allocating Scarce Resources: Organs for Transplantation	551
		553
	a. Bioethical and Social Perspectives	333
	Adam J. Kolber, A Matter of Priority: Transplanting	~ ~ 0
	Organs Preferentially to Registered Donors	553
	Michele Goodwin, Altruism's Limits: Law, Capacity,	
	and Organ Commodification	555
	Notes and Questions	556
	Challenging Issues: Regulation of a Commercial	
	Market in Organs?	561
	b. Legal Approaches	561
	i. Statutory Responses	561
		561
	Organ Procurement and Transplantation Network	301
111	United Network for Organ Sharing (UNOS):	F C 0
	Organ Distribution Policy	563
	Notes and Questions	564
	ii. Judicial Responses	565
	Newman v. Sathyavaglswaran	565
	Notes and Questions	568
	Challenging Issues: Allocating Organs for	
	Transplantation	571
C	DISCRIMINATORY BARS TO ACCESS	571
U .	1 Class	571
	Morry Arma Dahimali II alala Diamanisi and 141	3/1
	Mary Anne Bobinski, Health Disparities and the	r
	Law: Wrongs in Search of a Right	572
	Notes and Questions	573

2 .

	2.	Race and Ethnicity	575
		a. Bioethical and Social Perspective	575
		Sidney D. Watson, Health Law Symposium:	
		Forward	575
	•	Joel Teitelbaum & Sara Rosenbaum, Medical Care	
		as a Public Accommodation: Moving the	
		Discussion to Race	576
		Notes and Questions	577
		b. Legal Approaches	580
		Hall v. Bio-Medical Applications, Inc.	580
		Notes and Questions	581
		Challenging Issues: Disparities in Health Care:	
		Race and Gender	584
	3.	Discrimination Based on Gender	585
		Karen H. Rothenberg, Gender Matters:	
		Implications for Clinical Research and Women's	
		Health Care	585
		Notes and Questions	586
	4.	Discrimination Against People with Disabilities	587
	_,	a. Bioethical and Social Perspectives	587
		Mary Crossley, Becoming Visible: The ADA's	
		Impact on Health Care for Persons with	
		Disabilities	587
		b. Legal Approaches	588
		Sumes v. Andres	588
		Notes and Questions	591
		Challenging Issues: Accommodating Patients Who	001
		Are Disabled	592
D	AC	CESS TO ALTERNATIVE FORMS OF HEALTH CARE	592
1 .		Bioethical and Social Perspectives	593
	1.	Michael H. Cohen, A Fixed Star in Health Care	333
		Reform: The Emerging Paradigm of Holistic	
		Healing	593
		Notes and Questions	595
	9	Legal Approaches	598
	4.	a. Legislative Responses	598
		Access to Medical Treatment Act (a bill introduced	390
			500
		to the Senate, S. 1410)	598
		Notes and Questions b. Judicial Paganger	599
		b. Judicial Responses Responses Responses	602
		Rogers v. State Board of Medical Examiners of Florida	602
		Foster v. Georgia Board of Chiropractic Examiners	605
		Notes and Questions	607
		Challenging Issues: Rejecting Conventional	
		Options	608
E.	AC	CESS TO HEALTH CARE THROUGH E-MEDICINE AND	
	TH	IE INTERNET	608
		Michael A. McCann, Message Deleted? Resolving	
		Physician-Patient E-Mail Through Contract Law	609

~	-	+0	mtc
		LC.	nts

XXV

	Notes and Questions	611
	Challenging Issues: Use of E-mail and the Internet	
	by Health Care Providers	612
	-10-	
	Public Health	615
Α.	THE INTERSECTION OF BIOETHICS AND PUBLIC	
71.	HEALTH	617
	1. Bioethical and Social Perspectives	617
	Charles B. Smith, et al., Are There Characteristics	
	of Infectious Diseases That Raise Special Ethical	
	Issues?	617
	Notes and Questions	621
	2. Legal Approaches	621
	Scott Burris, Steffanie A. Strathdee & John	
	S. Vernick, Lethal Injections: The Law, Science,	
	and Politics of Syringe Access for Injection Drug	
	Users	621
	Notes and Questions	622
B.	HISTORY OF THE CONTROL AND PREVENTION OF	
	INFECTIOUS DISEASE IN THE UNITED STATES	622
	1. Vaccination	622
	Jacobson v. Commonwealth of Massachusetts	622
	Notes and Questions	625
	2. Quarantine and Isolation	626
	Quarantine and Isolation: Lessons Learned	
	from SARS	626
	Notes and Questions	628
C.	INFECTIOUS DISEASE: MODERN RESPONSES	629
	1. Tuberculosis: A Case Study	629
	a. Legal Approaches	629
	City of Newark v. J.S.	629
	Notes and Questions	638
	b. Bioethical and Social Perspectives	640
	John D. Arras, Principles and Particularity: The	
	Role of Cases in Bioethics	640
	Notes and Questions	643
	c. Public Policy	644
	Paul Farmer & Nicole Gastineau Campos,	
	Rethinking Medical Ethics: A View from Below	644
	Notes and Questions	647
	2. AIDS: The Exception?	647
	3. Bioterrorism	648
	Lawrence O. Gostin, The Model State Emergency	
	Health Powers Act: Public Health and Civil	
	Liberties in a Time of Terrorism	649
	Model State Emergency Health Powers Act	649

Ken Wing, Policy Choices and Model Acts:	
Preparing for the Next Public Health Emergency	654
Notes and Questions	656
4. Civil Commitment of "Sexually Violent Predators"	658
Kansas v. Hendricks	658
Notes and Questions	661
D. OTHER PUBLIC HEALTH CHALLENGES	662
1. Genetics as Public Health	662
James E. Bowman, The Plight of Poor	
African-Americans: Public Policy on Sickle	
Hemoglobin and AIDS	663
Mary Mahowald, Aren't We All Eugenicists?:	
Commentary on Paul Lombardo's "Taking	
Eugenics Seriously"	664
Notes and Questions	667
Challenging Issues: Setting Public Policy for	
Prenatal Testing	668
2. The Obesity "Epidemic"	669
Pelman v. McDonald's Corp.	671
Notes and Questions	673
Challenging Issues: Avoiding Obesity by Avoiding	
Some Births?	674
PART IV THE LATER YEARS	
11	
Aging	677
A. ACCESS TO HEALTH CARE FOR ELDERLY PEOPLE	680
A. ACCESS TO HEALTH CARE FOR ELDERLY PEOPLE1. Discrimination Against the Elderly	680 681
1. Discrimination Against the Elderly	681
 Discrimination Against the Elderly a. Bioethical and Social Perspectives 	680 681 681
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and 	681 681
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice 	681 681
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions 	681 681 681 682
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions Challenging Issues: Autonomy and Age 	681 681 681 682 685
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions Challenging Issues: Autonomy and Age Legal Approaches 	681 681 681 682
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions Challenging Issues: Autonomy and Age Legal Approaches Nev. Rev. Stat. Ann., Crimes Against the Person: 	681 681 681 682 685
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions Challenging Issues: Autonomy and Age Legal Approaches Nev. Rev. Stat. Ann., Crimes Against the Person:	681 681 682 685 685
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and	681 681 682 685 685 686
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and	681 681 682 685 685 686 687
1. Discrimination Against the Elderly a. Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions Challenging Issues: Autonomy and Age b. Legal Approaches Nev. Rev. Stat. Ann., Crimes Against the Person: Abuse, Neglect, Exploitation and Isolation of Older Persons Ohio Rev. Code Ann. Adult Protective Services Notes and Questions	681 681 682 685 685 687 687
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions Challenging Issues: Autonomy and Age Legal Approaches Nev. Rev. Stat. Ann., Crimes Against the Person:	681 681 682 685 685 686 687
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions Challenging Issues: Autonomy and Age Legal Approaches Nev. Rev. Stat. Ann., Crimes Against the Person:	681 681 682 685 685 687 687 688
 Discrimination Against the Elderly Bioethical and Social Perspectives Linda S. Whitton, Ageism: Paternalism and Prejudice Notes and Questions Challenging Issues: Autonomy and Age Legal Approaches Nev. Rev. Stat. Ann., Crimes Against the Person:	681 681 682 685 685 687 687 688

		George P. Smith, II, Distributive Justice and	
		Health Care	691
		Notes and Questions	692
	3.	Government Entitlements: Medicare and Medicaid	692
		a. Bioethical and Social Perspectives	695
		Timothy L. Takacs & David L. McGuffey,	
		Perspectives on Elder Law: Medicaid Planning:	
		Can It Be Justified? Legal and Ethical	
		Implications of Medicaid Planning	695
7		Notes and Questions	696
*		b. Legal Approaches	698
		In the Matter of Manuel L. Labis	698
		Notes and Questions	701
B.	CA	RING FOR THE ELDERLY	702
D .		Families	702
		a. Bioethical and Social Perspectives	702
		Honorable Patricia M. Wald, Looking Forward to	
		the Next Millenium: Social Previews to Legal	
		Change	704
		Notes and Questions	705
		b. Legal Approaches	706
		Jacobs v. Newton	706
		Cal. Fam. Code, Support of Parents	708
		Notes and Questions	708
		Challenging Issues: Caring for Elderly Relatives	710
	2.	Long-Term Care: Nursing Homes, Assisted Living Centers,	
		and Other Options	712
		Nathalie D. Martin, Funding Long-Term Care:	
		Some Risk-Spreaders Create More Risks Than	
		They Cure	713
		Notes and Questions	714
		a. Legal Approaches	715
		Fleming v. Barnwell Nursing Home and Health	
		Facilities	715
		§2801-d. Private Actions by Patients of Residential	
		Health Care Facilities	716
		Weinstein v. Cherry Oaks Retirement Community	717
		Notes and Questions	719
	3.	Elder Abuse and Neglect	721
		Seymour Moskowitz, On Golden Pond: Integrating	
		Legal Issues of the Elderly into Family Law	721
		Notes and Questions	722
C.		NHANCEMENTS": PROLONGING LIFE? PROLONGING	L ~ .
		EALTH? PROLONGING MYTHS?	724
	1.	Bioethical and Social Perspectives	725
		The President's Council on Bioethics, Beyond	
		Therapy: Biotechnology and the Pursuit of	
		Happiness	725
		Notes and Questions	728

	Dying	731
	$D_{-}TAT:$	
	DeWitt C. Baldwin, Jr., M.D., The Role of the	
	Physician in End-of-Life Care: What More Can We Do?	739
A	WITHHOLDING OR TERMINATING LIFE-SUSTAINING	134
L L •	TREATMENT	733
	1. Patients Without Competency	734
	a. The Constitutional and Common Law Right to Refuse	, , ,
	Treatment	734
	Cruzan v. Director, Missouri Department of	
	Health	734
	The Case of Terri Schiavo	741
	Notes and Questions	743
	Challenging Issues: State Law	749
	Challenging Issues: Special Requirements for	
	Withdrawing Nutrition and Hydration	749
	Challenging Issues: Evidence of the Patient's	
	Wishes	751
	b. Never Competent Patients	752
	Superintendent of Belchertown State School v.	
	Saikewicz	752
	Notes and Questions	756
	Challenging Issues: Withholding Antibiotics for	
	Treatment of Pneumonia in a Never Competent	H H H
	Patient Adverses Dinestives	757
	c. Advance Directives	758
	i. Bioethical and Social Perspectives Loappe Lypp, Why I Don't Have a Living Will	758 758
	Joanne Lynn, Why I Don't Have a Living Will Rebecca Dresser, Precommitment: A Misguided	150
	Strategy for Securing Death with Dignity	760
	Notes and Questions	763
	ii. Legal Approaches	764
	Wright v. Johns Hopkins Health Systems Corp.	764
	Notes and Questions	770
	Challenging Issues: Individualized Living Wills	772
	Challenging Issues: Nutrition and Hydration:	
	Feeding by Hand	773
	Challenging Issues: Questions of	
	Interpretation	773
	2. Competent Patients Who Wish to Refuse Treatment	774
	a. Bioethical and Social Perspectives	774
	Paul K. Longmore, Elizabeth Bouvia,	
	Assisted Suicide and Social Prejudice	774
	b. Legal Approaches	779
	Bouvia v. Superior Court	779
	Notes and Questions	783

-12-

XX1X Contents Ms. B v. An NHS Hospital Trust 784 Notes and Questions 791 3. When the Patient or Her Family Wants "Futile" Treatment 791 Causey v. St. Francis Medical Center 791 Notes and Questions 794 PHYSICIAN-ASSISTED SUICIDE 794 Bioethical and Social Perspectives 795 Timothy E. Quill, Death and Dignity—A Case of Individualized Decision Making 795 Patricia Wesley, Dying Safely 799 Notes and Questions 802 Lois Shepherd, Dignity and Autonomy after Washington v. Glucksberg 803 Notes and Questions 806 807 2. Legal Approaches Compassion in Dying v. State of Washington 808 Washington v. Glucksberg 815 Vacco v. Quill 820 Notes and Questions 822 Oregon Death with Dignity Act 824 Oregon Department of Human Services, Fifth Annual Report on Oregon's Death with Dignity 828 Act Notes and Questions Challenging Issues: The Person with a Disability Seeking Physician-Assisted Suicide 830 Challenging Issues: Universal Access to Physician-Assisted Suicide 830 -13-Death 833 DEFINITIONS AND DETERMINATIONS OF DEATH 833 1. Bioethical and Social Perspectives 834 2. Legal Approaches 836 New Jersey Statutes Annotated 836 Challenging Issues: Individualized Definitions of Death to Accord with Religious Beliefs 837 In re T.A.C.P. 838 Notes and Questions 842 Challenging Issues: Advance Directives for Organ Donation in the Event that an Individual Enters a Persistent Vegetative State 844 Challenging Issues: Procuring Organs from Non-Heart-Beating Cadaver Donors 844 B. TREATMENT OF THE DECEASED BODY 846 Anatomical Gifts 846

Florida's Anatomical Gift Act

846

	Notes and Questions	849
	State v. Powell	849
	Notes and Questions	853
2. Autopsies and Other Uses of Human Corpses		854
	Janicki v. Hospital of St. Raphael	855
	Notes and Questions	859
	Challenging Issues: Practicing Intubation on the	
	Newly Deceased	859
	Challenging Issues: Postmortem Sperm Retrieval	859
1 hham din 1		061
Appendix A		861
Table of Cases		871
Index		875