1-1-2009

Bioethics and Law in a Nutshell

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To the memory of those of our parents who have completed their life journeys, Mary and Clarence (“Tacky”) Hanneken and Jerome Schwartz

S.H.J. and R.L.S.

*
PREFACE

For more than twenty years, we have been co-authors, with Barry Furrow, Tim Greaney, and Tim Jost, of Health Law: Cases, Materials and Problems, which is now in its Sixth Edition. The Health Law casebook has always included substantial coverage of bioethics issues, and the bioethics chapters have also been published, with additional material, as Bioethics: Health Care Law and Ethics. As those familiar with the casebooks will recognize, a few parts of this Nutshell are taken directly from one or the other of those casebooks. This Nutshell grows out of our experiences in writing these casebooks and in teaching our students over the years.

Our aim in this Nutshell is to provide students with a brief and accessible introductory overview of the central legal issues in bioethics. This volume is not meant to be, and is not, comprehensive. Our readers certainly will be able to list issues that we have not included.

Our concern is to provide a foundation for legal analysis of the most durable bioethics issues that have consistently found themselves at the center of the public debate over the last quarter of a century,
not to address all of the issues that have made an appearance in that debate. Our focus is on the legal issues, and these materials primarily address issues that have found their way into the courts, legislatures, and administrative agencies in the United States. We have included only a brief chapter to provide a precis of the more influential ethical theories at play in bioethics discussions. This Nutshell provides the overview—the forest, if you will; you will have to go elsewhere to study the individual trees in more detail.

We have enjoyed writing this book, but mostly we have enjoyed collaborating for more than two decades now. One of the things we enjoy is that we do not agree with each other on several quite significant issues, and you may even notice this tension in the text. We have tried to be evenhanded, and we hope that we have explained how reasonable people can hold very different views on the propriety of applying law to almost every issue in bioethics.

As always, we are grateful to the students who assisted us in the preparation of this text: Cara Jackson and Kathryn Krieger of Saint Louis University School of Law and Katey Cortese of University of California, Hastings College of the Law. We are grateful as well to the decades of students who have made us think and express ourselves more clearly. We also thank our deans, Jeffrey Lewis and Kevin Washburn for their continuing support. Finally, we thank our families, far and wide, for their constant love.

September 2009

SANDRA H. JOHNSON
ROBERT L. SCHWARTZ
OUTLINE

Page

Preface .............................................................................................................. V
Table of Cases .................................................................................................. XVII

Chapter 1. Introduction to Ethics ................................................................. 1
   I. Ethical Theories ......................................................................................... 1
      A. Utilitarianism ...................................................................................... 2
      B. Deontological Theories ...................................................................... 3
          1. Kantianism ...................................................................................... 3
          2. Natural Law .................................................................................... 5
   II. Applied Ethics .......................................................................................... 6
      A. Principlism ........................................................................................... 6
      B. Feminist Bioethics .............................................................................. 8
      C. Critical Race Theory and Bioethics .................................................. 10
      D. Religious Perspectives in Bioethics .................................................. 11
      E. Virtue Ethics ....................................................................................... 12
      F. Methodological Approaches .............................................................. 13
          1. Casuistry .......................................................................................... 13
          2. Pragmatism ..................................................................................... 13
          3. Narrative Bioethics ....................................................................... 13
   III. Distributive Justice ............................................................................... 14
   IV. The Relationship of Law and Ethics ..................................................... 15
      A. Generally ............................................................................................. 15
      B. Conflicts of Conscience and Law ...................................................... 18
Chapter 2. Human Reproduction

I. Defining a Human Being—Ethics and Law
   A. Introduction
   B. Legal Recognition of Human Life

II. Abortion
   A. Introduction
   B. Roe v. Wade
   C. Planned Parenthood of Southeastern Pennsylvania v. Casey
   D. Gonzales v. Carhart
   E. The Future of Abortion

III. Potential Fetal–Maternal Conflict

IV. Assisted Reproductive Technologies (ART) and Their Legal Consequences
   A. Introduction: The Process of Reproduction
   B. The Legal Questions
      1. Artificial Insemination, In Vitro Fertilization, and the Question of Parentage
      2. The Question of the Status of “Extra” Fertilized Ova
      3. Surrogacy
      4. ART and the Law of Marriage
   C. Cloning

Chapter 3. Genetics

I. Introduction
   A. The Nature of Genetic Information
   B. Legal History of Genetics

II. Definitional Issues
   A. Genetics and Illness
   B. Statutory Definitions of Genetic Information

Chapter 4. Legal Standards for the Determination of Death

I. Introduction

II. Current Legal Standards
   A. Irreversible Cessation of Cardiopulmonary Function
   B. Functions of the Entire Brain
   C. Accommodation of Individual Beliefs

III. Legal Claims Relating to Confidentiality, Privacy, and Discrimination
   A. Confidentiality and Privacy
      1. Confidentiality
      2. Privacy
   B. Discrimination
      1. Discrimination in Insurance
      2. Discrimination in Employment

IV. Mandatory Newborn Genetic Screening
   A. Background
   B. State Authority
   C. Parental Consent
   D. Benefits and Risks
   E. Retention of Samples

V. Genetic Research
   A. Biobanks
      1. Consent
      2. Risk–Benefit Analysis
      3. Property Claims
   B. Clinical Genetic Research
OUTLINE

II. The Supply of Human Organs for Transplantation—Continued
1. Structure of the UAGA ........................................ 194
2. Pre-mortem Document of Gift .................................. 195
3. Post-mortem Donation ............................................ 196
4. Immunity .......................................................... 196
5. Designated Donation ............................................. 197
B. Presumed Consent .................................................. 198
1. Statutory Provisions .............................................. 198
2. Constitutional Challenges to Presumed Consent ............. 199
C. Payment for Organs ............................................... 200
1. Statutory Restrictions ............................................ 200
2. Proposals to Allow Payments for Organs .................... 201
D. Living Donors ...................................................... 203
1. Competent Donors ................................................ 203
2. Incompetent Donors .............................................. 204
E. Determination of Death ........................................... 204
III. Distribution of Organs for Transplantation ..................... 205
A. Federal Law on Organ Distribution and UNOS .............. 206
B. Listing Patients .................................................... 207
C. Geographic Distribution of Organs ............................. 208
D. Organ Matching .................................................... 209
E. Designated Donees ................................................ 210
1. Campaigning for Organs ........................................ 210
2. Paired Donations ................................................ 211
3. LifeSharers ....................................................... 211

Chapter 8. Regulation of Research With Human Subjects .......... 213
I. Introduction ......................................................... 213
II. Sources of Legal Standards Governing Research ............... 216
A. State Legislation .................................................. 216
B. Common Law ...................................................... 217
C. Private Organizations ............................................ 218
D. International Standards .......................................... 219
III. The Federal Regulations .......................................... 220
A. The Common Rule ................................................ 220
B. Coverage .......................................................... 220
1. Covered Entities ................................................ 220
2. Definition of Research .......................................... 221
a. Clinical Innovation .............................................. 222
b. Quality Improvement Studies .................................. 223
3. Human Subjects .................................................. 224
a. Definition ....................................................... 224
b. Human Tissue and Medical Records ......................... 224
C. Institutional Review Boards ..................................... 225
1. IRB Composition ................................................ 225
2. IRB Duties and Authority ........................................ 226
D. Governmental Oversight ......................................... 227
IV. Substantive Federal Standards .................................... 228
A. Risk and Safety ................................................... 229
B. Consent .......................................................... 230
1. Coercion and Undue Influence .................................. 231
2. No Consent and Proxy Consent ................................ 233
C. Selection of Subjects ............................................. 234
1. Children ........................................................ 234
2. Mentally Incapacitated Adults .................................. 238
3. Prisoners ......................................................... 239
OUTLINE

V. Commercial Interests in Research 240
   A. Industry Sponsorship of Research 242
      1. Industry Payment Practices in Research 243
      2. Industry Research, Marketing, and Phase IV Trials 244
   B. Ownership of the Results of Research 245
      1. Researcher Ownership Interests 245
      2. Research Subjects' Claims of Ownership Interests 247
   C. Regulation of Financial Interests of Researchers 249

VI. International Research 250

VII. Stem Cell Research 253
   A. Mechanisms 253
   B. Social and Ethical Issues 255
   C. Legal Issues 256
   D. Federal Funding of Stem Cell Research 258
   E. State Regulation 259

INDEX 261

TABLE OF CASES

References are to Pages

Abdullahi v. Pfizer, Inc., 562 F.3d 163 (2nd Cir.2009), 252
Abigail Alliance for Better Access to Developmental Drugs v. von Eschenbach, 495 F.3d 695 (D.C.Cir.2007), 231

Buck v. Bell, 274 U.S. 200, 47 S.Ct. 584, 71 L.Ed. 1000 (1927), 85

Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990), 114

Douglas County v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (Neb. 2005), 96

Grimes v. Kennedy-Krieger Institute, Inc., 366 Md. 29, 782 A.2d 807 (Md.2001), 217


Guardianship of (see name of party)

In re (see name of party)

Katskee v. Blue Cross/Blue Shield of Nebraska, 245 Neb. 808, 518 N.W.2d 645 (Neb.1994), 87
TABLE OF CASES

Lawrence v. Texas, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003), 33

Miller v. HCA, Inc., 118 S.W.3d 758 (Tex.2003), 165
Moore v. Regents of University of California, 271 Cal.Rptr. 146, 793 P.2d 479 (Cal.1990), 247

Newman v. Sathyavaglswaran, 287 F.3d 786 (9th Cir.2002), 199
Norman-Bloodsaw v. Lawrence Berkeley Laboratory, 135 F.3d 1260 (9th Cir.1998), 94

Pate v. Threlkel, 661 So.2d 278 (Fla.1995), 90
Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992), 30

Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), 29

Schiavo, In re Guardianship of, 916 So.2d 814 (Fla.App. 2 Dist. 2005), 146
Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92 (N.Y.1914), 118

T.A.C.P., In re, 609 So.2d 588 (Fla.1992), 112

Vacco v. Quill, 521 U.S. 793, 117 S.Ct. 2293, 138 L.Ed.2d 834 (1997), 6, 175

Washington University v. Catalona, 490 F.3d 667 (8th Cir.2007), 248

XVIII