

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT**

HODES & NAUSER, MDs, P.A., on behalf )  
of itself, its patients, physicians, and staff; )  
TRACI LYNN NAUSER, M.D.; TRISTAN )  
FOWLER, D.O.; and COMPREHENSIVE )  
HEALTH OF PLANNED PARENTHOOD )  
GREAT PLAINS, on behalf of itself, its )  
patients, physicians, and staff, )

Plaintiffs, )

v. )

KRIS KOBACH, in his official capacity as )  
Attorney General of the State of Kansas; )  
STEPHEN M. HOWE, in his official )  
capacity as District Attorney for Johnson )  
County; MARC BENNETT, in his official )  
capacity as District Attorney for Sedgwick )  
County; MARK A. DUPREE SR., in his )  
official capacity as District Attorney for )  
Wyandotte County; SUSAN GILE, in her )  
official capacity as Executive Director of the )  
Kansas Board of Healing Arts; JERRY )  
DEGRADO, D.C., in his official capacity as )  
President of the Kansas Board of Healing )  
Arts; and JANET STANEK, in her official )  
capacity as Secretary of the Kansas )  
Department of Health and Environment, )

Defendants. )

Case No. 23CV03140  
Division No. 12  
K.S.A. Chapter 60

**EXPERT DISCLOSURE AND REPORT OF NADIA N. SAWICKI , J.D., M.Bioeth**

Pursuant to K.S.A. 60-226(b)(6), NADIA N. SAWICKI , J.D., M.Bioeth makes the following disclosures:

## **BACKGROUND AND QUALIFICATIONS**

1. I am a legal scholar who specializes in torts, health law, and bioethics. My academic work primarily addresses subjects including the law's role in shaping the informed consent process; tort law regarding patient decisionmaking; and the state's role in enforcing ethical norms in medicine.

2. In 2000, I received a bachelor's degree, magna cum laude, in biomedical ethics from Brown University. In 2004, I received a J.D., cum laude, from the University of Pennsylvania Law School and a master's degree in bioethics from the University of Pennsylvania School of Medicine. Since then, I have researched and taught topics in torts, health law, constitutional law, health justice, and bioethics.

3. Since 2009 I have taught at the Loyola University of Chicago School of Law, where I am currently the Georgia Reithal Professor of Law. I am also the Co-Director of the Beazley Institute for Health Law and Policy. Previously, from 2007 to 2009, I was the inaugural George Sharswood Fellow in Law and Bioethics at the University of Pennsylvania Law School.

4. I am the author or co-author of more than 35 articles, essays, and book chapters on my areas of expertise relating to tort law, health law, and bioethics. More than fifteen of my articles relate specifically to informed consent and/or law regarding patient decisionmaking.

5. Since 2019, I have served as an Advisor to the American Law Institute on its new section on Medical Malpractice in the Restatement Third of Torts, which includes sections on informed consent.

6. I am currently co-editing the tenth edition of one of the leading health law casebooks— Hall *et al.*, Health Care Law and Ethics—and am the lead editor for the chapter on medical liability.

7. My opinions are based on my education, training, research, attendance at and participation in professional conferences, and review of relevant literature.

8. My curriculum vitae, which sets forth my experience and credentials more fully, is annexed hereto as Exhibit A.

## **FACTS AND OPINIONS TO BE EXPRESSED AND THE BASIS AND REASONS FOR THEM**

### **I. Summary of Opinions**

9. The history and development of the tort law doctrine of informed consent demonstrates its foundation in two core principles. First, that the fundamental purpose of informed consent is to protect patients' bodily integrity, their right to control their bodies, and their right to make decisions about their own bodies. Second, that the physician's duty to make disclosures sufficient to secure a patient's informed consent is grounded in negligence standards, which rely significantly (and under the common law of Kansas, exclusively) on the medical standard of care.

10. I have reviewed the challenged restrictions, K.S.A. §§ 65-6701, 65-6708–15 (the "Kansas Woman's Right to Know Act" or "WRTK Act") and the most recent amendment, H.B. 2264. It is my opinion that they are fundamentally inconsistent with the core principles of informed consent that courts have consistently articulated over decades: protecting patients' bodily autonomy by requiring physicians to disclose the medically material and accurate information about the risks and benefits of a proposed health care treatment and its alternatives.

11. Accordingly, viewed through the lens of common law, these laws are fundamentally inconsistent with the doctrine of informed consent, and cannot be considered to be representative of informed consent law or practice.

### **II. Origin of the Informed Consent Doctrine**

12. Legal history demonstrates that judicial recognition of the right to bodily integrity

and the right to control one's body in tort suits against physicians gave rise to the common law doctrine of informed consent, and that these values remained central to the development of common law informed consent disclosure duties.

13. The principle of informed consent to medical treatment was first acknowledged as a basis for a legal claim in the late 1800s, when United States courts began to recognize that physicians who acted outside the scope of their patients' explicit authorizations for particular treatments were liable for claims of trespass to person. The seminal cases described below were grounded in the principle that an offensive touching of the body without consent constitutes battery and enshrined the principle of bodily integrity in the modern concept of informed consent.

14. In 1889, the high court of Maryland decided *State v. Housekeeper*.<sup>1</sup> In that case, a man brought suit against two physicians for the death of his wife, allegedly caused by the negligent or wrongful removal of her entire breast, rather than only a tumor located in her breast. The husband claimed he did not consent to the removal of his wife's entire breast. But the court, expressing the concerns about autonomy and self-determination that animated the development of the informed consent doctrine, held that the consent of the woman herself—not her husband—was required for the medical intervention to be performed.

15. In 1905, the Minnesota Supreme Court decided *Mohr v. Williams*.<sup>2</sup> Anna Mohr had consulted Dr. Williams complaining of pain in her right ear, and agreed to surgery for removal of a polyp and some small bones (ossicles) in her right inner ear. While Mohr was anaesthetized, Dr. Williams examined her left ear and determined it was in a more serious condition than the right; consequently, he surgically removed ossicles within Mohr's left ear. The court concluded that the

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<sup>1</sup> 16 A. 382 (Md. 1889)

<sup>2</sup> 104 N.W. 12 (Minn. 1905)

operation was “in every way successful and skillfully performed.”<sup>3</sup> Mohr sued for assault and battery. The court found that Mohr had not consented to surgery on her left ear by consenting to surgery on her right ear. The fact that Mohr’s family physician was present at the surgery and assented to intervention on her left ear did not cure her lack of consent; the court held that her express consent to the particular treatment was required. The court stated that “every person has a right to complete immunity of his person from physical interference of others,” and concluded that Williams’ action constituted an unlawful “violent assault” despite the fact that his intent was to benefit the patient.<sup>4</sup>

16. Just one year later, the Illinois Supreme Court decided *Pratt v. Davis*.<sup>5</sup> Parmelia Davis suffered from epilepsy and sought treatment from Dr. Pratt. Davis and her husband agreed to a surgery in which Dr. Pratt intended “to loosen the head of the clitoris, to dilate and curette and operate for the laceration of the cervix of the uterus, and to put the rectum in repair.”<sup>6</sup> After the surgery, however, Davis’s symptoms persisted, and she was admitted to Dr. Pratt’s facility a second time. During the second admission, Dr. Pratt anaesthetized Davis and operated on her again, removing her uterus and ovaries without her consent. Davis’s physical condition did not improve, and she sued Pratt in an action for trespass to the person. Dr. Pratt never claimed he had Davis’s consent to the second operation; to the contrary, he testified that Davis was “mentally unsound” and that he “deliberately and calmly deceiv[ed] the woman” in order to remove her ovaries and uterus “for [her] good.”<sup>7</sup> The Court of Appeals rejected this conception of the healthcare provider’s authority to make decisions on behalf of his patient. Instead, it embraced the

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<sup>3</sup> *Id.* at 13.

<sup>4</sup> *Id.* at 16.

<sup>5</sup> 79 N.E. 562 (Ill. 1906)

<sup>6</sup> *Pratt v. Davis*, 118 Ill. App. 161, 169 (Ill. App. Ct. 1905), *aff’d*, 79 N.E. 562 (1906).

<sup>7</sup> *Pratt v. Davis*, 79 N.E. at 564.

principle of patient autonomy, stating that “the free citizen’s first and greatest right, which underlies all others [is] the right to the inviolability of his person, in other words, his right to himself.”<sup>8</sup> It followed that a physician could not “violate without permission the bodily integrity of his patient.”<sup>9</sup> The Illinois Supreme Court affirmed this decision, further cementing the idea that a patient’s interest in bodily autonomy takes priority over the judgment of others purporting to act in her best interest, except in certain emergency situations.

17. In 1914, the high court of New York decided *Schloendorff v. Society of New York Hospital*.<sup>10</sup> Mary Schloendorff had presented at a hospital with complaints about her stomach. A physician examined her and discovered a lump, but could not determine the nature of the lump without examining her under ether. Schloendorff agreed to an ether examination but explicitly objected to a surgical operation. While Schloendorff was anaesthetized, doctors determined that the lump was a uterine fibroid tumor and removed it surgically. Subsequently, Schloendorff developed gangrene and sued the hospital. In what is perhaps the most widely quoted summation of the right to bodily autonomy in medical treatment, Judge Cardozo wrote of the “trespass” to Schloendorff’s body: “Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent commits an assault, for which he is liable in damages.”<sup>11</sup>

18. Each of these landmark cases illustrates that respect for bodily autonomy requires securing a patient’s affirmative consent to medical intervention.

19. Notably, each of these foundational informed consent cases involved

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<sup>8</sup> *Pratt v. Davis*, 118 Ill. App. at 166.

<sup>9</sup> *Id.*

<sup>10</sup> 105 N.E. 92 (N.Y. 1914).

<sup>11</sup> *Id.* at 93.

nonconsensual medical interventions performed on women, which is unsurprising given the history of women's subjugation to paternalistic medical practices. Courts articulating the earliest applications of the doctrine of informed consent explicitly acknowledged that neither husbands nor physicians could usurp a woman's right to bodily autonomy, even when they were acting in what they believed to be her best interests.

20. The next step in the evolution of informed consent doctrine took place in the mid-twentieth century. While bodily integrity remained the core principle underlying the doctrine, informed consent law developed into its modern form when courts began to address cases about the type of information that patients need to make informed medical decisions. Because these cases were about the scope of the physician's duty to disclose, rather than challenges to treatment in the absence of any consent, courts transitioned from viewing informed consent as a battery-based doctrine to a negligence-based doctrine. Accordingly, courts evaluated the scope of the physician's duty by reference to customary standards of reasonable medical practice, and established negligence-based causation requirements for informed consent claims.

21. Tort scholars writing about the history of informed consent consistently rely on three cases that exemplified and defined the new negligence-based framework, one of which was decided by the Kansas Supreme Court.

22. A 1957 California case, *Salgo v. Leland Stanford Junior University Board of Trustees*, is commonly cited as being the first case to hold that physicians have an affirmative duty to disclose medically material facts before securing a patient's consent to treatment.<sup>12</sup> The case involved Martin Salgo, who was diagnosed by Dr. Frank Gerbode as having circulatory problems likely caused by a block in his abdominal aorta. Dr. Gerbode, a cardiovascular surgeon, ordered a

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<sup>12</sup> 317 P.2d 170 (Cal. App. 1957).

translumbar aortography (a procedure that was commonly used in the 1950s through 1970s and involves puncturing the aorta through a patient's back to inject contrast material), which was performed by another surgeon, Dr. Ellis, at Stanford Hospitals. Salgo suffered paralysis in his legs as result. Salgo claimed he received inadequate information about potential side effects of the procedure. The evidence demonstrated that Dr. Gerbode explained to Salgo that he would be anesthetized and material would be injected into his aorta, followed by x-rays, but that he "did not explain all of the various possibilities [to Salgo] of the proposed procedures."<sup>13</sup> Dr. Ellis, prior to the surgery, gave a similar explanation, but both physicians admitted that "the details of the procedure and the possible dangers therefrom were not explained."<sup>14</sup> In reviewing the trial court's jury instructions, the appellate court held that "a physician violates his duty to his patient and subjects himself to liability if he withholds any facts which are necessary to form the basis of an intelligent consent by the patient to the proposed treatment."<sup>15</sup> The court also emphasized that the physician has some degree of discretion in making these disclosures. Later cases throughout the country would build on this recognition that physicians must disclose accurate information about the risks and benefits of a procedure when obtaining informed consent, subject to professional discretion.

23. Three years later, the Kansas Supreme Court decided *Natanson v. Kline*.<sup>16</sup> Irma Natanson sought treatment for breast cancer. She received radiation treatment following a mastectomy at the direction of her surgeon, Dr. Crumpacker. The radiation treatment, which was performed by Dr. John Kline, "destroyed" Natanson's entire chest, skin, cartilage and bone, and

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<sup>13</sup> *Salgo v. Leland Stanford Jr. Univ. Bd. of Trustees*, 317 P.2d 170, 173 (Cal. App. 1957).

<sup>14</sup> *Id.* at 181.

<sup>15</sup> *Id.*

<sup>16</sup> 350 P.2d 1093 (Kan. 1960).

the skin, flesh and muscles beneath her left arm and ribs of her left chest were so burned that they became necrotic.<sup>17</sup> Natanson filed a negligence suit, claiming that although she had consented to the radiation procedure, Drs. Crumpacker and Kline failed to warn her that the treatment involved great risk of bodily injury or death. Because this was a case of first impression in Kansas, the court engaged in an extensive analysis of the issue, relying on both legal scholarship and case law from other jurisdictions spanning back to 1932. It concluded that “Anglo-American law starts with the premise of thorough-going self determination,”<sup>18</sup> which in turn establishes a patient’s right to decline medical treatment. The court framed the issue as being grounded in duty-based principles of negligence, and notably distinguished this informed consent claim from claims of battery where there has been no consent to treatment. It held that, when securing a patient’s consent to treatment, a physician generally has a legal duty to disclose “the nature of the ailment, the nature of the proposed treatment, the probability of success or of alternatives, and perhaps the risks of unfortunate results and unforeseen conditions within the body. . . .”<sup>19</sup> The scope of this duty is, however, limited to “those disclosures which a reasonable medical practitioner would make under the same or similar circumstances,” and is subject to some degree of professional discretion, as long as the basic informed consent disclosure requirements are met.<sup>20</sup> The Kansas Supreme Court’s adoption of a physician-based reasonableness standard gave rise to modern informed consent doctrine’s reliance on the standard of care to define the scope of the physician’s disclosure duty.

24. Overall, the *Natanson* approach built on the earlier battery cases in recognizing that having information to make medical decisions is critical for retaining autonomy over one’s body.

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<sup>17</sup> *Id.* at 1097.

<sup>18</sup> *Id.* at 1104.

<sup>19</sup> *Id.* at 1106.

<sup>20</sup> *Id.*

It established that a more robust understanding of consent requires doctors to go beyond simply getting a patient's permission to treat them, but also to provide the patient with accurate information about medical risks and benefits based on a "reasonableness" standard that aligns with accepted medical practice. For more than a decade, this physician-based standard grounded in customary professional practice was the law in the majority of U.S. jurisdictions.

25. In 1972, another influential and widely cited case, *Canterbury v. Spence*, offered an alternative perspective on the scope of the informed consent disclosure duty.<sup>21</sup> It held that the patient's right of self-determination shapes the duty to disclose, and that doctors in the District of Columbia have a duty to disclose information that would be material to a patient's decision. It defined a risk as material as when "a reasonable person, in what the physician knows or should know to be the patient's position, would be likely to attach significance to the risk or cluster of risks in deciding whether or not to forego the proposed therapy."<sup>22</sup>

26. Today, approximately half of U.S. jurisdictions, including Kansas, rely on the physician-based standard of care described in *Natanson*. Approximately half of states instead define the scope of disclosure by reference to the patient-based standard described in *Canterbury*.

27. There is a benefit to the tort doctrine of informed consent having developed incrementally by way of common law over more than a century. Courts are able to assess specific instances of patients seeking treatment, identify professional standards of care relating to risk disclosure, evaluate which medical risks and benefits would be material to a reasonable patient, and reserve flexibility based on professional discretion. As professional norms and medical techniques evolve, courts can and should incorporate them into the common law of informed

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<sup>21</sup> 464 F.2d 772 (D.C. Cir. 1972).

<sup>22</sup> *Id.* at 787.

consent to the extent they further the patient's right to bodily integrity and self-determination. In contrast, when a legislature steps in to mandate specific disclosures that physicians must make to all patients seeking a procedure, regardless of the patient's needs or interests, the legislature may be mandating disclosures that are not recognized as medically relevant under any reasonableness standard by either doctors or patients. Particularly when legislation targets only one type of medical procedure and does not apply uniformly to all treatment contexts, such legislation may bear no resemblance to bona fide informed consent requirements that truly support bodily integrity and personal decisionmaking.

### **III. Modern Informed Consent Doctrine and Judicial Rejection of Attempts to Expand the Scope of Disclosure**

28. While U.S. jurisdictions are almost evenly split in defining the scope of the disclosure duty (as between the physician-based standard and the patient-based standard), courts in all jurisdictions agree that there is a fundamental duty to disclose, at the very least, accurate information about the patient's diagnosis and prognosis, the risks and benefits of the proposed treatment, reasonable alternatives to the proposed treatment and the risks and benefits of those alternatives, and the consequences of no treatment.<sup>23</sup>

29. In accordance with traditional elements of a negligence cause of action, courts require that a patient in a successful informed consent action demonstrate that (1) their physician breached a duty to disclose a material medical risk associated with a procedure; (2) that a reasonable patient would more likely than not have opted not to undergo the procedure had they

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<sup>23</sup> See Nadia N. Sawicki, *Modernizing Informed Consent: Expanding the Boundaries of Materiality*, 2016 UNIV. ILL. LAW REV. 821, 831 (2016).

known of the undisclosed risk; (3) that the patient suffered a compensable physical injury as a result of her decision; and (4) that the patient's injury was in fact caused by the undisclosed risk.<sup>24</sup>

30. The disputed issue in the vast majority of modern informed consent cases is the substantive scope of the disclosure duty in the first element.<sup>25</sup>

31. With very rare exceptions, courts have concluded that the physician's duty only extends to disclosure of medically material facts—that is, facts about the medical risks and benefits of the treatment being proposed, and not other types of information. This standard is consistent with the practice of reasonable physicians and the recommendations of the American Medical Association.<sup>26</sup>

32. Courts hearing informed consent claims have consistently declined to expand the substance of the physician's disclosure duty beyond medically material risks and benefits.

33. For example, patients have argued that clinicians must proactively disclose information about themselves and their credentials, such as years of experience or professional history, even when a patient has not asked. These arguments have generally failed; the only cases in which patients have seen success are ones where the patient independently requested such information and the physician fraudulently misrepresented their credentials.

34. To the extent the Kansas statute, at K.S.A. § 65-6709(a)(1), requires providers to disclose information about themselves—including, *inter alia*, the year they received a medical degree, the date their employment at the facility began, past discipline or loss of clinical privileges, and whether they are a Kansas resident—these required disclosures are inconsistent with the common law of informed consent.

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<sup>24</sup> *Id.* at 829.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 833–34.

35. Patients have also argued, in “ghost surgery” cases, that informed consent requires the same clinician who explains the risks and benefits of a procedure to actually perform the procedure. Most courts that have considered these claims have rejected them, as a Kansas court recently recognized.<sup>27</sup>

36. To the extent the Kansas amendment, at H.B. 2264 § (1)(c)(1), requires the same clinician to both counsel a patient *and* provide a medication abortion using mifepristone, it is inconsistent with the common law of informed consent.

37. Courts hearing tort cases have furthermore rejected claims that the physician’s duty to secure informed requires disclosure of information about non-medical factors such as the medical procedure’s implications for a patient’s financial or legal interests.

38. To the extent the Kansas statute, at K.S.A. § 65-6709(b), requires disclosure of information that relates to the patient’s financial or personal interests—including, *inter alia*, the availability of medical assistance benefits, contact information for adoption services, child support, and loss of state or federal benefits—these disclosures are inconsistent with the common law of informed consent, which requires disclosure only of medically material information.

39. Several courts have explicitly rejected claims that the informed consent duty requires disclosure of statements about the ethical and philosophical status of a fetus. In reaching this conclusion, courts have pointed to the fact there is no scientific or medical consensus that these statements are material medical facts.<sup>28</sup>

40. In *Acuna v. Turkish*, the Supreme Court of New Jersey rejected a plaintiff’s claim that her abortion provider had a duty to inform her, prior to the procedure, that abortion ends “the

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<sup>27</sup> *Acord v. Porter*, 475 P.3d 665 (Kan. App. 2020).

<sup>28</sup> *E.g.*, *Acuna v. Turkish*, 930 A.2d 416 (N.J. 2007).

life” of an “existing living human being.”<sup>29</sup> Recognizing that the “underlying basis for the doctrine of informed consent” is “a patient’s right of self-determination,”<sup>30</sup> the court found that only *medical* information that a reasonably prudent person in like circumstances would have considered was necessary for informed consent. Although the court ostensibly applied a patient-based standard of materiality, it also relied on the medical standard of care in defining the scope of the disclosure duty, noting that the disclosure requested by the plaintiff is “certainly not the professional norm within this State,” and that the plaintiff had offered no evidence that even a small minority of physicians make such disclosures. The court stated emphatically that “[u]nder the doctrine of informed consent, the knowledge ... sought from [the physician] cannot be compelled from a doctor who may have a different scientific, moral, or philosophical viewpoint on the issue of when life begins,” and that the common law does not require a physician to inform a pregnant patient about the “living” status of an embryo.<sup>31</sup>

41. In *Doe v. Planned Parenthood Chicago Area*, a court similarly rejected a plaintiff’s claim that informed consent requires disclosure that an abortion procedure “would terminate the life of a second patient, a living human being as a matter of biological fact.”<sup>32</sup> The court described the patient’s argument—namely, that the health care facility and its providers have a legal duty to disclose something other than their own scientific viewpoint—as “border[ing] on contrivance.”<sup>33</sup> It noted that “[n]o court, regardless of where it sits, has found a *common law duty* requiring doctors to tell their pregnant patients that aborting an embryo, or fetus, is the killing of an existing human being.”<sup>34</sup>

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<sup>29</sup> *Id.* at 405, 412.

<sup>30</sup> *Id.* at 414.

<sup>31</sup> *Id.* at 420.

<sup>32</sup> 956 N.E.2d 564, 568 (Ill. App. 2011).

<sup>33</sup> *Id.* at 573.

<sup>34</sup> *Id.* at 572 (emphasis in original).

42. To the extent that the Kansas statute, at K.S.A. § 65-6709(b)(5), requires disclosure that abortion will terminate the life of “a whole, separate, unique, living human being,” it is inconsistent with common law informed consent doctrine.

43. To the extent that the Kansas statute, at K.S.A. §§ 65-6709(a)(4), (a)(5), and (b)(6), requires descriptions of the development of the embryo and fetus, it is inconsistent with the common law informed consent doctrine.

44. Inherent in the doctrine of informed consent is the principle that the physician must disclose information that is medically and scientifically accurate. A physician who presents information that is inaccurate or inconsistent with what reasonable medical professionals believe to be true could be liable in malpractice.

45. To the extent that the Kansas WRTK Act and H.B. 2264 require disclosure of information that is inaccurate, false, or inconsistent with medical evidence, it is fundamentally inconsistent with common law informed consent doctrine and, furthermore, actively undermines patients’ ability to exercise the right to autonomous medical decision-making. To my knowledge and belief, the vast majority of the medical community has concluded that medication abortion is not reversible, and that abortion does not cause an increased risk of breast cancer.

46. The Kansas WRTK Act and H.B. 2264 are also inconsistent with the informed consent doctrine in that they speak to liability but do not address two causation-related elements of an informed consent claim (or, indeed, any negligence claim). Tort cases lay out a bright line for what a plaintiff claiming an informed consent violation must prove. First, the plaintiff must demonstrate that the information a physician failed to disclose would have caused a reasonable patient to make a different decision (causation in fact, as judged by an objective standard). Second, the physical injury the plaintiff suffers must be caused by the specific risk that the physician failed

to disclose (proximate cause or scope of liability). For example, if a provider fails to make a state-required disclosure that abortion increases the risk of breast cancer, a plaintiff can only recover in an informed consent action if they develop breast cancer, and can recover only damages associated with the physical injury of breast cancer.

47. Departing from this bright line doctrinal approach, the materials published by Kansas pursuant to K.S.A. § 65-6710 state that “any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages.” Likewise, H.B. 2264 § 1(h) states that a physician who violates the amendment’s informed consent requirements for medication abortion may be liable for damages. To the extent that Kansas law suggests that liability would be imposed in the absence of proof of causation in fact and proximate causation, as described above, this liability regime is fundamentally inconsistent not only with the common law of informed consent, but also with the foundational principles of negligence.

48. The Kansas amendment is also inconsistent with informed consent doctrine in that it permits claims to be brought by parties who have not suffered a physical injury as a result of physician non-disclosure. H.B. 2264 asserts that physicians who provide mifepristone without complying with H.B. 2264’s requirements, including its disclosure requirements, may be subject to civil damages in a lawsuit brought by the “father of the unborn child.” In contrast, under the common law, informed consent safeguards against the violation of a *patient*’s own right to medical self-determination, and does not provide a cause of action for anyone other than the injured patient or their legally appointed guardian, unless the patient is deceased.

#### **IV. Kansas’s Abortion Disclosure Laws Are Fundamentally Inconsistent with the Common Law Doctrine of Informed Consent**

49. The historical origins and modern development of informed consent law demonstrate that the purpose of informed consent is to protect patients’ bodily integrity and right

to medical self-determination. The common law standard that has developed over time establishes that physicians have a duty to disclose medical risks and benefits related to a proposed procedure. In jurisdictions like Kansas, the scope of the required disclosure is tied to the professional standard of care of reasonable physicians. And even in patient-centered jurisdictions, disclosures are limited to those that are medically material, which requires physicians to rely on their medical expertise and professional knowledge.

50. To the extent that the history and development of informed consent in common law informs the scope of permissible state regulation of medical practice, Kansas’s WRTK Act and H.B. 2264 are inconsistent with the well-established principles of informed consent.

51. First, Kansas’s WRTK Act and H.B. 2264 create disclosure obligations that far exceed the scope of disclosure required under the common law of informed consent in the United States.

52. They require disclosure of information that goes far beyond the medical risks and benefits of abortion and its alternatives, whereas common law limits informed consent disclosures to medically material information about the proposed treatment. In fact, they require disclosure of several pieces of information that courts in other jurisdictions have expressly rejected as falling outside the common law requirements of informed consent—for instance, disclosure that “abortion will terminate the life of a whole, separate, unique, living human being.”

53. Kansas’s WRTK Act and H.B. 2264 also require disclosure of information that may not be material or relevant to a reasonable patient’s medical decisionmaking and eliminate any opportunity for professional judgment or discretion. Consistent throughout the historical and modern common law of informed consent are the principles that disclosures be material to patient

decisionmaking, and that physicians maintain discretion in determining what information to disclose and how depending on their patient's unique needs.

54. Even more egregiously, Kansas's WRTK Act and H.B. 2264 require disclosure of some information that, based on my knowledge and belief, has been rejected as scientifically inaccurate by the medical community as a whole. The common law of medical malpractice and informed consent demands that physicians disclose only information that is factually accurate and supported by the medical and scientific community.

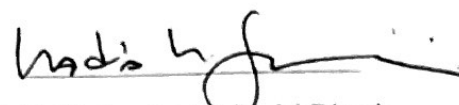
55. Second, Kansas's WRTK Act and H.B. 2264 create disclosure obligations that are inconsistent with the physician-based standard of disclosure that has been the law of Kansas since 1960 and that relies on the standard of care of reasonable medical professionals. It is my understanding that the information providers are required to deliver under Kansas's WRTK Act and H.B. 2264 is not the standard of care practiced by reasonable physicians in the United States.

56. Third, Kansas's WRTK Act and H.B. 2264 appear to impose liability on physicians for breach of informed consent without requiring plaintiffs to prove causation, a fundamental element of any negligence claim.

57. Finally, Kansas's WRTK Act and H.B. 2264 permit recovery for breach of informed consent by parties who have not suffered physical injury, and whose rights to bodily autonomy and self-determination have not been violated, which is inconsistent with informed consent law's definition of injury.

58. It is my opinion that Kansas's WRTK Act and H.B. 2264 are fundamentally inconsistent with the common law doctrine of informed consent and cannot be considered to be representative of informed consent law or practice.

Dated: October 12 2023

A handwritten signature in black ink, appearing to read "Nadia N. Sawicki". The signature is written in a cursive style with a long horizontal stroke at the end.

Nadia N. Sawicki, J.D., M.Bioeth

# **Exhibit A**

## **NADIA N. SAWICKI**

Georgia Reithal Professor of Law  
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Loyola University Chicago School of Law  
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### **ACADEMIC APPOINTMENTS**

#### **Loyola University Chicago School of Law**

*Co-Director, Beazley Institute for Health Law and Policy* (2020 – present); *Academic Co-Director, Beazley Institute for Health Law and Policy* (2018 – 2020); *Academic Director, Beazley Institute for Health Law and Policy* (2016 – 2018)

*Georgia Reithal Professor of Law* (2018 – present); *Professor* (2016–2018); *Associate Professor* (2014–2016); *Assistant Professor* (2009–2014)

*Courses:* Torts; Health Law: Patients and Populations; Bioethics Law and Policy; Health Justice Lab: End of Life; Introduction to Health Law; Constitutional Issues in Health Law; Comparative Health Law and Bioethics; Health Law L.L.M. Thesis Seminar

*Institutional Service:* ABA Reaccreditation Visit Committee (2022-2024); Faculty Appointments Committee (2023-present (chair); 2017–18; 2016–17 (chair); 2015–16; 2011–12); Dean's Advisory Committee (2022-2023; 2010–14); HJP Supervising Attorney Search Committee (2022); Dean Search Committee (2021 – 2022); Faculty Appointments Council (2019 – 2022); Clerkship Committee (2009 – 2022); Internal Faculty Speaker Coordinator (2013–16); Beazley Chair Search Committee (2013–14); Library Director Search Committee (2012–13).

*Institutional Grants and Awards:* Nominee, Most Outstanding 1L Professor (2023); Ambassador, Loyola Institute for Transformative Interprofessional Education (awarded 2021); Recipient, School of Law Faculty Research Grant (2010 – 2023); Nominee, Loyola University Chicago Kolvenbach Award for Engaged Teaching (2019, 2021); Finalist (2015), Nominee (2014), Loyola University Chicago Ignatius Loyola Award for Excellence in Teaching; Recipient, School of Law Teaching Development Grant (2014)

#### **University of Pennsylvania Law School**

*George Sharswood Fellow in Law and Bioethics* (2007–2009)

*Courses:* Law and Bioethics; Topics in Public Health Law

*Arthur Littleton and H. Clayton Louderback Legal Writing Instructor* (2003–2004)

*Courses:* Legal Research and Writing

#### **University of Pennsylvania School of Arts and Sciences**

*Lecturer, Department of History and Sociology of Science* (2005–2007)

*Courses:* Law and Medicine

## PUBLICATIONS

### *Articles and Essays* (\* indicates a peer-reviewed / refereed journal)

*Conscience Protections for Health Care Providers in the Post-Dobbs Era*, JOURNAL OF CONTEMPORARY LEGAL ISSUES (forthcoming 2023)

Elizabeth Kukura and Nadia N. Sawicki, *Dobbs Weakens Pregnant Patients' Right to Medical Self-Determination*, JOURNAL OF LAW, MEDICINE, AND ETHICS (forthcoming 2023) \*

[\*The Politics of Informed Consent and the Limits of the First Amendment\*](#), 329(19) JAMA 1365 (2023) \*

[\*Ethical Malpractice\*](#), 59 HOUSTON LAW REVIEW 1069 (2022)

[\*Tort Law Implications of Compelled Physician Speech\*](#), 97 INDIANA LAW JOURNAL 939 (2022)

[\*State Peer Review Laws as a Tool to Incentivize Reporting to Medical Boards\*](#), 15 ST. LOUIS UNIVERSITY JOURNAL OF HEALTH LAW & POLICY 97 (2021)

[\*Unilateral Burdens and Third Party Harms: Abortion Conscience Laws as Policy Outliers\*](#), 96 INDIANA LAW JOURNAL 1221 (2021)

[\*A Malpractice-Based Duty to Disclose the Risk of Stillbirth: A Response to Lens\*](#), 106 IOWA LAW REVIEW ONLINE 69 (2021)

[\*The Conscience Defense to Malpractice\*](#), 108 CALIFORNIA LAW REVIEW 1255 (2020)

[\*Protections from Civil Liability in State Abortion Conscience Laws\*](#), 322(19) JAMA 1918 (2019) \*

[\*Defining the Known Risk: Context-Sensitivity in Tort Law Defenses\*](#), 12:1 JOURNAL OF TORT LAW 9 (2019) \*

Valerie Gutmann Koch and Nadia N. Sawicki, [\*Everything in Moderation: Dual Role Consent and State Law Mandates\*](#), 19(4) AMERICAN JOURNAL OF BIOETHICS 35 (2019) \*

[\*Disentangling Conscience Protections\*](#), 48(5) HASTINGS CENTER REPORT 15 (2018) \*

[\*Conscience as a Civil and Criminal Defense\*](#), 18:7 AMERICAN JOURNAL OF BIOETHICS 69 (2018) \*

[\*Choosing Medical Malpractice\*](#), 93 WASHINGTON LAW REVIEW 891 (2018)

Y. Tony Yang and Nadia N. Sawicki, [\*Pharmacies' Duty to Dispense Emergency Contraception and Religious Liberty\*](#), 129 OBSTETRICS AND GYNECOLOGY 551 (2017) \*

[\*Informed Consent and Societal Stewardship\*](#), 45 JOURNAL OF LAW, MEDICINE, AND ETHICS 41 (2017) \*

[\*Religious Hospitals and Patient Choice\*](#), 26 HASTINGS CENTER REPORT 8 (Nov./Dec. 2016) \*

[\*Who Judges Harm?\*](#), 27 JOURNAL OF CLINICAL ETHICS 233 (2016) \*

[\*Modernizing Informed Consent: Expanding the Boundaries of Materiality\*](#), 2016 UNIVERSITY OF ILLINOIS LAW REVIEW 821 (2016)

[\*Informed Consent as Compelled Professional Speech: Fictions, Facts, and Open Questions\*](#), 50 WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY 11 (2016)

[\*Mandating Disclosure of Conscience-Based Limitations on Medical Practice\*](#), 42 AMERICAN JOURNAL OF LAW & MEDICINE 85 (2016) \*

[\*Ethical Limitations on the State's Use of Arational Persuasion\*](#), 38 LAW & POLICY 211 (2016) \*

[\*Informed Refusal in the Rehabilitation Context: Legal Considerations\*](#), 8 PM&R: THE JOURNAL OF INJURY, FUNCTION, AND REHABILITATION 691 (2016) \*

[\*Clinicians' Involvement in Capital Punishment – Constitutional Implications\*](#), 371 NEW ENGLAND JOURNAL OF MEDICINE 103 (2014) \*

[\*Compelling Images: The Constitutionality of Emotionally Persuasive Health Campaigns\*](#), 73 MARYLAND LAW REVIEW 458 (2014)

[\*A New Life for Wrongful Living\*](#), 58 NEW YORK LAW SCHOOL LAW REVIEW 279 (2014)

[\*Patient Protection and Decision Aid Quality\*](#), 54 ARIZONA LAW REVIEW 621 (2012)

[\*The Hollow Promise of Freedom of Conscience\*](#), 33 CARDOZO LAW REVIEW 1389 (2012)

[\*Informed Consent Beyond the Physician-Patient Encounter: Tort Law Implications of Extra-Clinical Decision Support Tools\*](#), 20 ANNALS OF HEALTH LAW 1 (2012)

[\*Judging Doctors: The Person and the Professional\*](#), 13 AMA JOURNAL OF ETHICS 718 (2011) \*

[\*The Abortion Informed Consent Debate: More Light, Less Heat\*](#), 21 CORNELL JOURNAL OF LAW AND PUBLIC POLICY 1 (2011)

[\*Character, Competence, and the Principles of Medical Discipline\*](#), 13 JOURNAL OF HEALTH CARE LAW & POLICY 285 (2010)

[\*There Must Be a Means: The Backward Jurisprudence of Baze v. Rees\*](#), 12 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 1407 (2010)

[\*Without Consent: Moral Imperatives, Special Abilities, and the Duty to Treat\*](#), 8:8 AMERICAN JOURNAL OF BIOETHICS 33 (2008) \*

Holly Fernandez Lynch, Michele Mathes, and Nadia N. Sawicki, [\*Compliance with Advance Directives: Wrongful Living and Tort Law Incentives\*](#), 29:2 JOURNAL OF LEGAL MEDICINE 133 (2008) \*

[\*Doctors, Discipline, and the Death Penalty: Professional Implications of Safe Harbor Policies\*](#), 27 YALE LAW & POLICY REVIEW 107 (2008)

[\*Wrongful Pregnancy, Wrongful Life and Wrongful Birth\*](#), 51:3 MEDICAL TRIAL TECHNIQUE QUARTERLY 283 (2005) \*

## **Books**

MARK A. HALL, DAVID ORENTLICHER, MARY ANNE BOBINSKI, NICHOLAS BAGLEY, I GLENN COHEN, NADIA N. SAWICKI, HEALTH CARE LAW AND ETHICS, 10<sup>TH</sup> EDITION (and related volumes) (Aspen, forthcoming 2024)

## **Book Chapters**

*Rewritten Opinion: *Burton v. State**, in [FEMINIST JUDGMENTS: REWRITTEN HEALTH LAW OPINIONS](#) (SEEMA MOHAPATRA AND LINDSAY F. WILEY, EDs.) (Cambridge 2022)

[\*A Common Law Duty to Disclose Conscience-Based Limitations on Medical Practice\*](#), in HOLLY FERNANDEZ LYNCH, I. GLENN COHEN, AND ELIZABETH SEPPER, EDs., LAW, RELIGION AND HEALTH IN THE UNITED STATES (Cambridge 2018)

[\*Complaints to Professional and Regulatory Bodies\*](#), in BILL SAGE, GLENN COHEN, AND ALLISON HOFFMAN, EDs., THE OXFORD HANDBOOK OF U.S. HEALTHCARE LAW (Oxford 2017)

## **Reviews**

[Pregnancy, Childbirth, Pain, and ... Silence](#), JOTWELL (Aug. 4, 2023) (reviewing Francesca Laguardia, Pain That Only She Must Bear: On the Invisibility of Women in Judicial Abortion Rhetoric, 9 J. L. & BIOSCI. 1 (2022))

[Autonomy as Corporeal, Not Just Cognitive](#), JOTWELL (May 11, 2022) (reviewing Megan S. Wright, Resuscitating Consent, BOS. COLL. L. REV. (2022))

[Using Public Health Law to Minimize the Racially Disparate Impact of COVID-19](#), JOTWELL (Mar. 29, 2021) (reviewing Govind Persad, Allocating Medicine Fairly in an Unfair Pandemic, ILL. L. REV. (2021))

[The Dark Side of Childbirth: A Failure of Both Law and Medicine](#), JOTWELL (Oct. 1, 2019) (reviewing Elizabeth Kukura, Obstetric Violence, GEORGETOWN L. J. (2018))

[Book Review: Peculiar Institution: America's Death Penalty in an Age of Abolition](#), 18 ETHICAL PERSPECTIVES 702 (2011) \*

## **Commissioned Reports and White Papers**

Various Authors, [Salzburg Statement on Shared Decision Making](#) (2011).

Joanna Bergmann, Arthur Caplan, and Nadia Sawicki, *Conceiving the Father: An Ethicist's Approach to Paternity Disestablishment*. WHITE PAPER, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES EMERGING ISSUES IN PATERNITY ESTABLISHMENT EXPERT SYMPOSIUM (2006).

Nadia Sawicki, [Discussions of Health Websites in Health Care Trade Publications](#), in Joseph Turow *et al*, DISCUSSIONS OF HEALTH WEBSITES IN MEDICAL AND POPULAR MEDIA: A REPORT TO CONSUMER WEBWATCH (2003).

## **Selected Blog Posts and Op-Eds**

[New Dataset: Conscience Protections for Providers and Patients](#), BILL OF HEALTH (June 19, 2019)

[The Best End-of-Life Plan: It Starts with a Conversation](#), GARNET NEWS (May 14, 2018)

[Health Care Conscience Laws Infringe on the Rights of Others](#), THE HILL (Feb. 15, 2018),

[IRBs Advise Physician Involvement in Informed Consent](#), BILL OF HEALTH (Sept. 13, 2017)

[Fetal Consequentialism and Maternal Mortality](#), BILL OF HEALTH (May 16, 2017)

[Birth Plans as Advance Directives](#), BILL OF HEALTH (May 1, 2017)

[Obstetric Battery](#), BILL OF HEALTH (Feb. 20, 2017)

[On Agency Accommodations and Least Restrictive Alternatives](#), BILL OF HEALTH (July 2, 2014)

[Sincerity and Religious Belief in Hobby Lobby](#), BILL OF HEALTH (July 1, 2014)

["That's a Lot of Marijuana."](#) BILL OF HEALTH (May 28, 2014)

[How Medicine Learns About the Law](#), BILL OF HEALTH (May 20, 2014)

["Sanitizing" Lethal Injection](#), BILL OF HEALTH (May 8, 2014)

[Media Matters: Fetal Abnormalities in the Munoz Case](#), BILL OF HEALTH (Jan. 27, 2014)

[Standards of Care and Patient Advocacy in Religiously Affiliated Hospitals](#), BILL OF HEALTH (Dec. 3, 2013)

[Doctors who DREAM: Clearing up Confusion on Citizenship Requirements](#), BILL OF HEALTH (Sept. 24, 2013)

[Lethal Injection Drug Shortage Leads to Debate](#), BILL OF HEALTH (Aug. 27, 2013)

[Is Paying for Medical Care Like Buying a Used Car?](#), BILL OF HEALTH (Mar. 11, 2013)

[Google, Whole Foods, and ... Big Pharma?](#), BILL OF HEALTH (Dec. 6, 2012)

[Good Science and Bad Verdicts](#), BILL OF HEALTH (Oct. 23, 2012)

[Missouri District Court Dismisses Challenge to Contraception Mandate](#), BILL OF HEALTH (Oct. 3, 2012)

[When is an Emergency Not an Emergency?](#), BILL OF HEALTH (Sept. 26, 2012)

[9<sup>th</sup> Circuit: Prosecution of Women Seeking Illegal Abortions Likely Unconstitutional](#), BILL OF HEALTH (Sept. 18, 2012)

[Tobacco Labeling and the Ethics of Persuasion](#), BILL OF HEALTH (Sept. 11, 2012)

## SELECTED PRESENTATIONS

*Professional Ethics in OB/GYN Care in the Post-Dobbs Era*, Albany Medical College Alden March Bioethics Institute, Grand Rounds (Jan. 2024)

Panelist, *Sexual and Reproductive Health Exceptionalism: Regulation, Surveillance, and Criminalization*, American Society of Law, Medicine, and Ethics (June 2023)

Panelist, *The Future of Feminist Health Law*, Law and Society Annual Meeting (June 2023)

*Professional Ethics in OB/GYN Care in the Post-Dobbs Era*, University of Pennsylvania Perelman School of Medicine Department of Medical Ethics and Health Policy, Alumni Colloquium Series (Apr. 2023)

Invited Participant, UCLA Center on Reproductive Health, Law, and Policy Conference, “Mainstreaming Reproductive Health in Health Law, Policy, and Ethics” (Feb. 2023)

*Dobbs Weakens Pregnant Patients’ Right to Medical Self-Determination*, Boston University School of Law and School of Public Health Symposium, “After Roe: Seeking Reproductive Justice in the Next Fifty Years” (Jan. 2023) (with Liz Kukura)

Keynote, *The Impact of State and Federal Conscience Laws*, University of California San Diego Conference, “The Role of Conscience in the Practice of Medicine and the Rule of Law” (Nov. 2022)

*Pregnancy Care in the Post-Dobbs Era*, American Society for Bioethics and the Humanities (Oct. 2022)

*Health Care Decisionmaking Policies for Unrepresented Patients*, Loyola University Chicago Stritch School of Medicine, Alpha Omega Alpha Cascade Program (Nov. 2021)

Panelist, *Supreme Court Update: Whole Woman’s Health v. Jackson - Implications for Reproductive Rights in Texas and Beyond*, Loyola University Chicago School of Law (Sept. 2021)

*Ethical Malpractice*, American Society of Law, Medicine & Ethics (June 2021); Albany Law School (Mar. 2021)

*Tort Law Implications of Compelled Physician Speech*, Indiana Law Journal Symposium, “Compelled Speech: The Cutting Edge of First Amendment Jurisprudence” (Mar. 2021)

Panelist, *The Vaccine and Your Workplace*, Loyola University Chicago Baumhart Center for Social Enterprise and Responsibility (Jan. 2021)

Panelist, *Preparing for Online Teaching*, American Society of Law, Medicine & Ethics (June 2020)

*Law's Deference to Medical Ethics*, University of Maryland School of Law and Johns Hopkins Berman Institute of Bioethics Charm City Colloquium on Law and Bioethics (Sept. 2019)

*The Conscience Defense to Malpractice: A Multi-Jurisdictional Study of Conscience Laws Relating to Reproductive Health Care*, IU Robert H. McKinney School of Law, Health Law Grand Rounds (Mar. 2019)

*Assumption of Risk and the Malpractice Conundrum*, Association of American Law Schools (Jan. 2019)

*Respecting Patient Autonomy in Labor and Delivery*, Cleveland Clinic Bioethics Grand Rounds (Dec. 2018)

*Disentangling Conscience Protections in Health Care*, American Society for Bioethics and the Humanities (Oct. 2018); American University Journal of Gender, Social Policy, & the Law Symposium, "Church and State: A Symposium on Religion and Individual Rights" (Mar. 2018)

*Conscience as a Defense to Malpractice*, American Society of Law, Medicine & Ethics (June 2018)

*Medical Ethics and Legal Recovery for Obstetric Violence*, Albany Medical College Alden March Bioethics Institute, Reproductive Ethics Conference (Apr. 2018); Birth Rights Bar Association Conference on Childbirth and the Law (Apr. 2018); Cambridge University Press International Bioethics Retreat (June 2018); American Society for Bioethics and the Humanities (Oct. 2017)

*Patient Primacy: Law and Ethics*, National Aging Services Risk Management Conference (Oct. 2017)

Keynote, *Protecting Physician Speech: Can We Rely on the First Amendment?*, Oklahoma City University School of Law, Integris Health Law & Medicine Lecture (Jan. 2017)

*Reconceptualizing the Legal Doctrine of Informed Consent: Expanding the Boundaries of Materiality*, American Society for Bioethics and the Humanities (Oct. 2016); American Society of Law, Medicine & Ethics (June 2016)

*Mandating Disclosure of Physicians' Conscience-Based Limitations on Practice*, Zicklin Center for Business Ethics Workshop Series, The Wharton School of the University of Pennsylvania (Feb. 2016)

*Fictions, Facts, and Open Questions: Informed Consent as Compelled Professional Speech*, American Society of Law, Medicine & Ethics (June 2015)

*Does Informed Consent Require Disclosure of Physicians' Religious Convictions?*, Harvard Law School Conference, "Law, Religion, and Health Care in America" (May 2015)

*Tort Liability in End-of-Life Care*, University of Chicago MacLean Center for Clinical Medical Ethics Seminar Series (Mar. 2015)

*Medical Materiality and the Scope of Informed Consent Disclosure*: Harvard Law School (Mar. 2015); Case Western Reserve University School of Law (Feb. 2015); Marquette Law School (Nov. 2014); Loyola University Chicago Stritch School of Medicine (Nov. 2014).

*Compelling Images: The Constitutionality of Emotionally Persuasive Health Campaigns*: Yale Law School Symposium, "Public Health in the Shadow of the First Amendment" (Oct. 2014); Loyola University Constitutional Law Colloquium (Nov. 2013); Albany Law School (Feb. 2013)

*Medicalization of Schedule I Drugs: Learning from Medical Marijuana*, American Society of Law, Medicine & Ethics (June 2014)

*PPACA, Medicaid, and Reproductive Care: Unresolved Issues*, Loyola University Chicago Public Interest Law Symposium (Nov. 2013)

*Strong of Spirit, Weak of Will: An Alternate Account of Conscience Claims*: American Society for Bioethics and the Humanities (Oct. 2013); American Society of Law, Medicine & Ethics (June 2013); University of Chicago Conference on Medicine and Religion (May 2013)

*The Ethics of Arational Persuasion*: American Bar Foundation (Oct. 2013); Midwest Political Science Association (April 2013); Wake Forest Bioethics Scholars Workshop (March 2013); American Society for Bioethics and the Humanities (Oct. 2012); Valparaiso University Law School (Oct. 2012); American Society of Law, Medicine & Ethics (June 2012)

*A New Life for Wrongful Living*, New York Law School Symposium, “Freedom of Choice at the End of Life” (Nov. 2012)

*Legal Solutions for Ensuring Decision Aid Quality*, University of Chicago Regis J. Fallon Lecture on Health & Law (Feb. 2012); Washington University Law School (Feb. 2012)

*Informed Consent Beyond the Clinical Encounter: Shared Decision-Making and Tort Law Implications*, American Society of Law, Medicine & Ethics (June 2011)

*The Hollow Promise of Freedom of Conscience*, Washington University Law School (Feb. 2011)

*Character, Competence, and the Principles of Medical Discipline*, University of Pittsburgh School of Law (Nov. 2009)

*A Theory of Discipline for Professional Misconduct*, American Society of Law, Medicine & Ethics (June 2009); Drexel University Earle Mack School of Law (Dec. 2008); St. Louis University School of Law (Oct. 2008); University of Pennsylvania Law School (Oct. 2008)

## **PROFESSIONAL HONORS, GRANTS, AND AWARDS**

Elected Member, American Law Institute (awarded 2020)

Ambassador, Loyola Institute for Transformative Interprofessional Education (awarded 2020)

Midwest Province Ignatian Educator of Distinction (awarded 2020)

Public Voices Fellow, Public Voices Greenhouse Op-Ed Project (2018)

Participant, Cleveland Clinic Clinical Ethics Immersion Program (2018)

Junior Scholar in Bioethics, Wake Forest University (2013)

Visiting Scholar, American Bar Foundation (2012)

Fellow, Salzburg Global Seminar (2010)

Recipient, University of Pennsylvania Alumni Development Grant (2010)

Junior Health Law Scholar, American Society for Law, Medicine, and Ethics (2008)

Visiting Scholar, The Hastings Center (1999)

## **PROFESSIONAL SERVICE**

*Co-Section Editor*, JOTWELL Health Law (2019 – present)

*Adviser*, American Law Institute Restatement of the Law 3d, Torts: Medical Malpractice (2019 – present)

*Member*, Illinois General Assembly Home Birth Maternity Care Crisis Study Committee (2019)

*Member*, *Legal Committee*, Unrepresented Patients Project for Illinois (2017 – present)

*Contributor*, Bill of Health (blog of the Petrie-Flom Center for Health Law, Policy, Biotechnology, and Bioethics at Harvard Law School) (2012 – present)

*Member*, American Bar Association Special Committee on Bioethics and the Law (2016 – 2018)

*Co-Chair*, *Law Affinity Group*, American Society for Bioethics and the Humanities (2013 – 2018)

*Editorial Board Member*, MIT Press Bioethics Series (2008 – 2013)

*Peer reviewer*: American Journal of Bioethics; American Journal of Legal History; American Journal of Public Health; American Society for Bioethics and Humanities; American Society of Law, Medicine, and Ethics; Center for Computer-Assisted Legal Instruction (CALI); Harvard Law Review; Law and Social Inquiry; Laws; Journal of Law and the Biosciences; Journal of Law, Medicine, and Ethics; Journal of Legal Medicine; Journal of Medical Regulation; McGill Law Review; MIT Press; New England Journal of Medicine; Oxford University Press; Routledge Press; Sexual and Reproductive Health Matters; Stanford Law Review; University of Chicago Medicine and Religion Conference; World Congress of Bioethics; Yale Journal of Health Policy, Law, and Ethics

## EDUCATION

### University of Pennsylvania Law School

J.D., *cum laude*, 2004

*Honors*: Order of the Coif; A. Littleton and H.C. Louderback Legal Writing Instructor (2003–2004); Edwin V. Sparer Fellowship (2002); Honors in Legal Writing (2002)

### University of Pennsylvania School of Medicine

M.Bioethics, 2004

*Activities*: Editorial Assistant, American Journal of Bioethics (2002–2003)

### Brown University

B.A., Biomedical Ethics, *magna cum laude*, 2000

*Thesis*: *Civil Commitment of the Mentally Ill: Guidelines for Ethical Practice*

*Honors*: Departmental Honors, Biomedical Ethics; Undergraduate Teaching and Research Award, Italian Studies

## NON-ACADEMIC WORK EXPERIENCE

### **Independent Consulting**

*Expert Witness* (2023 – present)

Serve as expert witness in cases requiring expertise in informed consent and medical ethics.

### **AccessLex**, West Chester, PA

*Consultant (Torts), Helix Bar Review* (2019 – 2021)

Drafted, reviewed, and finalized torts questions for a bar preparation program developed for students with limited economic resources who have traditionally been underrepresented in the legal community.

### **Wolf, Block, Schorr and Solis-Cohen, LLP**, Philadelphia, PA

*Associate, Corporate and Securities Practice Group* (2005 – 2007)

Represented investors, emerging companies, and research institutions in corporate governance, M&A, and securities matters; focus on biotechnology and research industries.

### **United States District Court for the Eastern District of Pennsylvania**, Philadelphia, PA

*Law Clerk, Honorable J. Curtis Joyner* (2004 – 2005)

Participated in case management; conducted legal research; drafted bench memos, orders, and opinions in civil cases (including habeas corpus petitions).

### **Pennsylvania Health Law Project**, Philadelphia, PA

*Edwin V. Sparer Fellow* (2002 – 2003)

Represented clients seeking Medical Assistance benefits before the Pennsylvania Department of Public Welfare; engaged in statewide advocacy efforts.

### **Center for Lesbian and Gay Civil Rights**, Philadelphia, PA

*Legal Clinic Intake Advocate* (2002)

Screened potential clients seeking representation in family law, privacy law, medical, property, and probate matters.

### **The Advisory Board Company**, Washington, D.C.

*Analyst, Nursing Executive Center* (2000 – 2001)

Conducted on-site research, interviews, and focus groups of Chief Nursing Officers, nurse managers, and nurses to identify best practices for improving nurse manager performance; developed final practice specifications presented to over 750 Chief Nurse Executives and CEOs; developed and taught introductory course on hospital operations for new employees.

## MISCELLANEOUS

***Bar Admissions:*** Supreme Court of Pennsylvania | Supreme Court of New Jersey | U.S. District Court, New Jersey (all inactive status)

***Languages:*** Ukrainian (fluent); Italian (conversational); French (just enough to get by)

***Personal Interests:*** Cooking and baking; gardening; encaustic painting; yoga; hiking