

CURRICULUM VITAE

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Present Position:

Arthur E. Petersilge Professor of Law, Case Western Reserve University, School of Law
Director, The Law-Medicine Center, Case Western Reserve University, School of Law
Professor of Biomedical Ethics, Case Western Reserve University, School of Medicine
Deputy Director for Legal and Regulatory Analysis, Center for Genetics Research
Ethics and Law, Case Western Reserve University

Past Employment:

Professor of Law, CWRU, 1990-1996
Associate Professor of Law, CWRU, 1987-1990
Associate Director, The Law-Medicine Center, CWRU School of Law, 1985-1987
Assistant Professor of Law, CWRU, 1984-1987
Attorney, Arnold & Porter, Washington, D.C., 1975-1984

Education:

J.D., Yale Law School, 1975
B.A., Oxford University (Brasenose College), Philosophy, Politics and Economics, 1972
B.A., Reed College, Portland, Oregon, Political Science, 1970

Honors:

Fellow, The Hastings Center
Marjorie Guthrie Award, Huntington's Disease Society of America, Northeast Ohio
Chapter (2005)
President's Award, American College of Legal Medicine (2003)

Jay Healey Distinguished Health Law Teacher Award, Health Law Teachers Section,
American Society of Law, Medicine and Ethics, 2001

Rhodes Scholarship (Oregon, 1970)

Phi Beta Kappa, 1970

Publications:

Major Academic Publications

A New Era of Biomedical Enhancements, in *Issues in Science and Technology* 59-69
(National Academy of Sciences; Spring 2009).

Moore v. Regents of the University of California, in *Property Stories* (G. Korngold and
A. Morriss eds. 2d edition, New York: Foundation Press 2009).

*Human Subjects Protections in Biomedical Enhancement Research: Assessing Risk and
Benefit and Obtaining Informed Consent*, in 36 *Journal of Law, Medicine & Ethics*
546 (2008) (with Jessica Berg).

The Ethical, Legal, and Social Implications of Antiaging Technologies in *Aging,
Biotechnology, and the Future* (Catherine Y. Read, Robert C. Green, and Michael A.
Smyer, eds. Baltimore: Johns Hopkins University Press 2008).

Behavioral Genetics: Can We Prevent Crimes Before They Are Committed? in
*Biomedical Ethics: A Multidisciplinary Approach to Moral issues in Medicine and
Biology* (David Steinberg ed. Hanover, NH: University Press of New England 2007).

Medical Injustice: The Case Against Health Courts (American Association for Justice
2007) (with Dale Nance)

Dishonest Medical Mistakes, 59 *Vanderbilt Law Review* 1137-1173 (2006).

Promoting Fairness in the Medical Malpractice System, in *Medical Malpractice and the
U.S. Health Care System* 137-153 (William M. Sage and Rogan Kersh, eds.
Cambridge Univ. Press 2006).

Doping in Sports and the Use of State Power, 50 *St. Louis University Law Review* 15-73
(2006) (with Elizabeth Banger and Matthew Wright).

The Shame of Medical Malpractice, 27 *Journal of Legal Medicine* 17 (2006).

Quackery, 31 *Am. J. Law and Medicine* 349-363 (2005).

Malpractice Reforms: Are They Fair? in *Clinics in Perinatology: Risk Management in
Neonatal-Perinatal Medicine* (M. Hermansen, ed. Philadelphia: W.B. Saunders Co.
2005).

Hospital Liability for Physician Malpractice in Health Law and Compliance Update
(2005 ed.) (J. Steiner ed. New York: Aspen Publishers).

- Cognition-Enhancing Drugs*, 82 *Milbank Quarterly* 483-506 (2004).
- Antiaging Medicine: Can Consumers Be Better Protected?*, 44 *Gerontologist* 304 (2004) (with Binstock, Juengst, Ponsaran, and Whitehouse).
- Moore v. Regents of the University of California*, in *Property Stories* (G. Korngold and A. Morriss eds. New York: Fountain Press 2004).
- Predictive Genetic Testing in Urology: Ethical and Social Issues*, 21 *World J. Urology* 433-437 (2004).
- Malpractice, Medical*, in *Encyclopedia of Bioethics* (3rd ed., S. Post ed., MacMillan Reference USA 2003).
- Reforming the Medical Malpractice System: Fairness Considerations* (Project on Medical Liability, Pew Charitable Trusts)(2003)(<http://mediabilitypa.org>).
- Biogerontology, "Anti-Aging Medicine," and the Challenges of Human Enhancement*, *Hastings Center Report* (July-August 2003) (with Juengst, Binstock, Post and Whitehouse).
- Intrinsic Conflicts of Interest in Clinical Research: A Need for Disclosure*, 13 *Kennedy Institute of Ethics Journal* 83-91 (2003) (with Sollitto, Hoffman, Lederman, Youngner and Lederman).
- Anti-Aging Research and the Need for Public Dialogue*, 299 *Science* 1323 (2003) (with Juengst, Binstock and Post).
- Any DNA to Declare? Regulating Offshore Access to Genetic Enhancement*, 28 *American Journal Law & Medicine* 179 (2002) (with Kristen Rabe).
- Should Physicians Withhold Highly Active Antiretroviral Therapies from HIV-AIDS Patients Who Are Thought To Be Poorly Adherent to Treatment?* 15 *AIDS* 153 (2001) (with Sharmon Sollitto, Stuart Youngner, & Michael Lederman).
- Liability for Prescribing Intravenous Injection Equipment to IV Drug Users*, 11 *Health Matrix* 73 (2001).
- Dying To Save Money: Economic Motives for Physician-Assisted Suicide*, in *Alternatives to Physician-Assisted Suicide* (Poynter Center for the Study of Ethics and American Institutions, 2000).
- Human Enhancement Uses of Biotechnology, Genetic Enhancement and the Regulation of Acquired Genetic Advantages*, *Encyclopedia of Ethical, Legal and Policy Issues in Biotechnology* (Murray and Mehlman, eds. John Wiley & Sons 2000).
- The Law of Above Averages: Leveling the New Genetic Enhancement Playing Field*, 85 *Iowa Law Review* 517 (2000).

- How Will We Regulate Genetic Enhancement?* 34 Wake Forest Law Review 671 (1999).
- Getting a Handle on Coverage Decisions: If Not Case Law, Then What?*
31 Indiana Law Review 75 (1998).
- Genetic Testing for Cancer Risk: How to Reconcile the Conflicts*, 279 JAMA 179 (1998)
(with E. Kodish, G. Weisner, and T. Murray).
- When Do Health Care Decisions Discriminate Against Persons With Disabilities?*, 22
Journal of Health Politics, Policy and Law 1385 (1997) (with M. Durchslag and D.
Neuhauser).
- Enhancing Cognition in the Intellectually Intact: Possibilities and Pitfalls*, 27 Hastings
Center Report 14 (1997) (with P. Whitehouse, T. Murray, and E. Juengst).
- Access to the Genome and Federal Entitlement Programs in the Human Genome Project
and the Future of Health Care* (113-132) (1996, Indiana University Press, T. Murray,
M. Rothstein and R. Murray, Jr., eds.).
- Historical Trends in Malpractice Litigation*, in *Physician Executives and the Law: Issues
and Trends in Liability* (21-44) (1996, American College of Physician Executives, T.
Sagin ed.).
- Medical Advocates: A Call for a New Profession*, 1 Widener L. Rev. 299 (1996).
- The Need for Anonymous Counseling and Testing*, 58 Am. J. Hum. Genet. 393-397
(1996) (with others).
- The Patient-Physician Relationship and the Allocation of Scarce Resource—A Law and
Economics Approach*, 4 Kennedy Institute of Ethics J. 291 (1994) (with S. Massey)
(reprinted in NWP Journal of Clinical Practice-Sept. 1995),
- Bad “Bad Baby” Bills*, 20 American J. of Law, Medicine and Ethics 129 (1994).
- Informed Consent to Amnestics or What Sound Does A Tree Make In The Forest When It
Falls On Your Head?*, 5 J. of Clinical Ethics 105 (1994) (with G. Kanoti and J.
Orlowski).
- Coverage of Genetic Technologies Under National Health Reform*, 55 American J. of
Human Genetics 1054 (1994) (with others).
- Wrongful Birth: Medical, Legal, and Philosophical Issues*, 22 J. of Law, Medicine and
Ethics 21 (1994) (with J. Botkin).
- The Patient-Physician Relationship in an Era of Scarce Resources: Is There a Duty to
Treat?*, 25 U. Conn. L. Rev. 349 (1993), (reprinted in *Specialty Law Digest: Health
Care Law*, October 1993).
- Medicare and Medicaid: Are They Just Health Care Programs?*, 29 Houston L. Rev. 835
(1992) (with K. Visocan).

- The Oregon Medicaid Program: Is It Just?*, 1 Health Matrix 175 (1991).
- Presumed Consent to Organ Donation: A Reevaluation*, 1 Health Matrix 31 (1991).
- Assuring the Quality of Medical Care: The Impact of Outcome Assessment and Practice Standards*, 18 Law, Medicine and Health Care 368 (1991).
- Fiduciary Contracting: Limitations on Bargaining Between Patients and Health Care Providers*, 51 University of Pittsburgh Law Review 365 (1990).
- Setting Limits: Age-Based Rationing and Technological Development*, 33 St. Louis University Law Journal 671 (1989), (reprinted in 7 Specialty Law Digest: Health Care Sept. 1990).
- Medicare Quality Assurance Mechanisms and the Law*, background paper, Institute of Medicine, National Academy of Sciences (1989) (with A. Smith).
- The Ethics of Teaching and Practicing Intubation Techniques on Newly-Expired Patients*, 319 New England Journal of Medicine, 439-41 (1988) (with J. Orłowski and G. Kanoti).
- Containing the Costs of Medical Technology: A Critique of Waste Theory*, 36 Case Western Reserve Law Journal 778 (1986).
- Rationing Expensive Lifesaving Medical Resources*, 1985 Wisconsin Law Review 239 (1985), (reprinted in Specialty Law Digest: Health Care-Jan. 1987).

In Process

- “Genetic Enhancement in Sport,”* (book chapter, Johns Hopkins University Press).
- “The Social Control of Biomedical Enhancement”* (book under contract with Johns Hopkins University Press).
- “Anticipating Enhancement: Ethics, Law and a Framework for Policy”* (book, with E. Juengst and T. Murray).
- “Modern Eugenics and the Law”* (book chapter)
- “Genetic Enhancement Research on Athletes”* (book chapter)

Books

- Genetic: Ethics, Law and Society* (with Andrews and Rothstein)(Thompson/West, second edition 2006).

Wondergenes: Genetic Enhancement and the Future of Society (Indiana University Press 2003).

Genetics: Ethics, Law and Society (casebook, with L. Andrews and M. Rothstein, West Group 2002).

The Encyclopedia of Ethical, Legal, and Policy Issues in Biotechnology. (John Wiley & Sons 2000, T. Murray, co-editor).

Access to the Genome: The Challenge to Equality (Georgetown University Press 1998, with J. Botkin).

Delivering High Technology Home Care (1991, S. Younger, co-editor).

Justice and Health Care: Comparative Perspectives (John Wiley & Sons 1995, A. Grubb, co-editor).

Other Publications

Medical Malpractice, by Frank A. Sloan and Lindsey M. Chepke (book review), 358 *New Eng. J. Med.* 2853 (2008).

Las Tecnologías Genéticas y El Desafío a la Igualdad in Los Desafíos Éticos de la Genética Humana (Filuna and E.R. Lopez, eds. 2005)

Genetic Enhancement: Plan Now to Act Later, 15 *Kennedy Institute of Ethics J.* 77-82 (2005).

Review of George Annas, *The Rights of Patients*, 3d. ed., 26 *J. Legal Med.* 133-139 (2005).

"What's Wrong with Using Drugs in Sports? Nothing," *USA Today*, Aug. 12, 2004, at 13A.

"An Assist from Drugs," *Philadelphia Inquirer*, June 27, 2004.

Introduction: The Law-Medicine Center 50th Anniversary Symposium: The Field of Health Law: It's Past and Future, 14 *Health Matrix* 1-3 (2004).

Anti-Aging Medicine and Science: An Arena of Conflict and Profound Societal Implications, 6 *Geriatrics and Aging* 61 (2003) (with Binstock, Juengst and Post).

Behavioral Genetics: Can We Prevent Crimes Before They Are Committed? *Medical Ethics* 4 (Lahey Clinic, Spring 2002).

Ethics Forum: How Should Physicians Handle Patients' Requests that Sensitive Information Be Kept Out of the Medical Record, *AMA News* June 3, 2002 at 17.

The Human Genome Project and the Courts: Gene Therapy and Beyond 83 *Judicature* 124 (1999).

- Mehlman and Neuhauser, *Alternative Definitions of Disability: Changes in a Dichotomous vs. Continuous System*, 21 *Disability and Rehabilitation* 385 (1999).
- Review of Mark Hall, "Making Medical Spending Decisions," 4 *The Journal of Ethics, Law and Aging* 49 (Spring/Summer 1998).
- "A Solution to Genetic Testing Worries," *San Francisco Chronicle*, July 16, 1997 at A19.
- Reply to Clayton and Rothstein* (letter), 59 *American Journal of Human Genetics* 1170 (1996, with others).
- Drug Regulation: By Whom For Whom?*, 10 *Medical Humanities Review* 13 (1996, book review, *Ethical Issues in Drug Testing, Approval and Pricing: The Clot-Dissolving Drugs* by Baruch A. Brody).
- Health Care Rationing: Legal Considerations*, 2 *Bioethics Network of Ohio (BENO) Newsletter* 6 (Fall 1993).
- Physicians Infected with HIV*, 265 *JAMA* 2337 (1991, letter with M. Lederman).
- The Case of Brotherton v. Cleveland: Transplant Organs, Property Rights and the Constitution*, 2 *Health Law Journal of Ohio* 1 (1991).
- Employer Liability to Employees in Selective Contracting*, in 1990 Workshop Series Compendium 36 (Incentive Benefits Committee, Greater Cleveland Health Quality Choice Coalition, April 1991).
- New Directions: Public Accountability and Program Evaluation*, in *Medicare: New Directions in Quality Assurance (Proceedings)* 82 (National Academy Press, 1991).
- Saying No to No-Fault: What the Harvard Malpractice Study Means For Medical Malpractice Reform* (New York State Bar Association, 1991).
- New Rules for Providers: The Rise of Fiduciary Law*, 2 *Health Law Journal of Ohio* 83 (1991).
- The Harvard Medical Practice Study*, 19 *INCL J.* 8 (Dec. 1990, testimony).
- Book Review, *Office Of Technology Assessment, Life Sustaining Treatments and the Elderly* (1987) 28 *Jurimetrics* 95 (1988).
- Encouraging Donation of Organs for Transplantation by Requiring Request*, 5 *Health Matrix* 35 (1987).
- First Interdisciplinary Grand Rounds: The Legal Implications of the Artificial Heart*, 3 *Health Matrix* (1985).
- New Legislation Would Curtail FDA Ban Authority*, *Legal Times* 14 (1982, with S. Land).

FARA—Some Proposals for Reform, in the *Registration of Foreign Agents in the United States: A Practical and Legal Guide* 317 (J. Pattison and J. Taylor, eds. 1981).

The New California “Market Share” Theory in Drug Liability Cases, 36 *Food, Drug, Cosm. L.J.* 39 (1981, with S. Land).

United States Restrictions on Exports to South Africa, 73 *American Journal of International Law* 581 (1979, with T. Milch and M. Toumanoff).

Handbook of Legislative Drafting, (Yale Law School 1977, with E. Grossman).

Major Grants:

Co-Investigator, NIH 2R01-AG/HG20916 (National Institute of Aging, National Human Genome Research Institute), "Controlling Human Aging: Alternative Rationales and Implications" (2006-2009).

Principal Investigator, NIH 1 R01 HG003879-01 (National Human Genome Research Institute), "Protecting Human Subjects in Genetic Enhancement Research" (2006-2008).

Co-investigator, NIH No. 2 R01 HG01446-05 (National Human Genome Research Institute), "Enhancement Ethics and the Molecular Genetics of Aging: Issues for Families, Health Professionals, and Society" (2001-2004).

Co-investigator, NIH RIHG01446B2 (National Human Genome Research Institute), "Managing Enhancement: Professional, Ethical and Public Policy Issues" (1999-2001).

Co-investigator, NIH No. 1 RO1 HG01446-01A1 (National Human Genome Research Institute), "Anticipating Enhancement: Ethical, Legal and Social Issues" (1997-1999).

Principal investigator, NIH Grant No. HG00683-02 (National Center for Human Genome Research), "Access to the Genome: Justice on the Frontiers of Science" (1992-1994).

Co-investigator and Associate Director for Public Policy, NIH Grant No. 1 P50 HG03390-01 (National Center for Human Genome Research), Center for Genetic Research Ethics and Law (2004-2009).

Other Professional Activities:

Member, Ethical, Legal, and Social Implications of Human Genetics Study Section, Center for Scientific Review, National Institutes of Health.

Chair, President's Task Force on Conflict of Interest and Conflict of Commitment, Case Western Reserve University (2008-).

Research Group Member, Hastings Center Project on "Ethical, Conceptual, and Scientific Issues in the Use of Performance Enhancing Technologies in Sport," funded by US Anti-Doping Agency (2002-2004).

Associate Editor for Law, Encyclopedia of Bioethics (3rd Ed., MacMillan).

Chair, Amicus Committee, American College of Legal Medicine (2001-).

Editorial Board, Journal of Philosophy, Science and Law (2001-)

Member, Ethics Working Group, Center for AIDS Research, Case School of Medicine.

Member, Ad Hoc Study Section, Ethical, Legal and Social Implications Branch, Office Of Human Genome Research, National Institutes of Health (July 1994).

Consultant, American Association of Retired Persons (1992).

Report: Medical Malpractice Reform: An Evaluation of Alternate Methods Assuring the Quality of Care and Compensating Victims (1992, with Michelle Hardman).

Participant, Joint Working Session on Security and Confidentiality of Patient Medical Information, JCAHO/NCQA, November 10, 1997.

Participant, Surgeon General's Workshop on Increasing Organ Donation, July 8-10, 1991, Washington, D.C.

Special Counsel, National Kidney Foundation, amicus appearance, *Brotherton v. Cleveland*, No. 89-320 (Jan. 18, 1991).

Chairman, Section of Law, Medicine and Health Care, American Association of Law Schools (1990 term).

Special Counsel, Special Committee on Medical Malpractice, New York State Bar Association (1988-1994).

Professional Advisory Board, Center for Biomedical Ethics, CWRU School of Medicine (1988-Present).

Member, Legal Policy Review Panel, National Leadership Coalition on AIDS.

Cases Editor, Journal of Law, Medicine and Ethics, American Society of Law, Medicine And Ethics.

Editorial Advisory Board, Health Law Journal of Ohio.
Keck Research Fellow, Health Systems Management Center, Weatherhead School of Management, CWRU, 1985-1986

Senior Editor, Yale Legislative Services, 1973-1975

Associate, Health Management Center, Weatherhead School of Management, CWRU.

Member, Advisory Panel on the Oregon Medicaid Demonstration Project, Office of Technology Assessment, U.S. Congress (1991-92).

Member, Executive Committee, Institute for Urban Health, CWRU School of Medicine (1990-92).

Committee to Design a Strategy for Quality Review and Assurance in Medicare, Institute of Medicine, National Academy of Sciences (1987-1990). Consensus Panel on Magnetic Resonance Imaging, National Institutes of Health (1987).

Law & Economics Center, Law & Economics Institute for Law Professors, Emory University School of Law, 1986.

Memberships:

Member of the Bar, District of Columbia Court of Appeals (1976-); U.S. District Court for the District of Columbia (1975-); U.S. Court of Appeals for the D.C. Circuit (1976-); U.S. Court of Claims (1977-); Supreme Court of Ohio (1988-)

American Society of Law, Medicine and Ethics

American College of Legal Medicine

National Health Lawyers Association

American Bar Association

Ohio Selection Committee, Rhodes Scholarship trust (1985-1990, 1996-2005)

Board of Trustees, The Stockbridge School, Stockbridge, Massachusetts (1973-76)

Chairman, Education Committee, The Stockbridge School, Stockbridge, Massachusetts (1975-1976)

Board of Trustees, Huntington's Disease Society of America, Northeast Ohio Chapter (1997-2000)

National Ski Patrol (October 2000-)

Akron Symphony Orchestra Chorus (2002-)

Society of Benchers (2006 -)