

EVELYN M. TENENBAUM

Albany Law School
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ACADEMIC EMPLOYMENT:

Albany Law School – Professor of Law (1996-2001, 2005-present)

Selected Courses: Torts; Health Law; Public Health Policy: Law, Finance, and Ethics;
Bioethics Seminar; Fraud and Abuse in the Healthcare Industry; Applied Health Policy;
Summary Judgment Clinic

Albany Medical College – Professor of Bioethics (2008-present)

Course: Public Health: Ethics, Law and Policy (2008 – 2023)

Selected Responsibilities: Co-coordinator of the joint J.D./Masters in Bioethics Program, develop and implement joint projects with the law school, assist in the development of CLEs, conferences, and projects, principal content specialist in the certificate and master's programs for legal topics, presentations during the Capstone and in the HCS (Health, Care, and Society) program

Albany Medical Center Member: Ethics Review Committee (2014 to present)

- **Sage Graduate School (1999-2001)**, Adjunct Professor
Course: Healthcare Management
- **Sage Evening College (1996-2001)**, Adjunct Professor
Courses: Health Law, Business Law, Civil Rights, Introduction to Law
- **Hunter College of the City University of New York (1977-1987)**, Adjunct Assistant Professor
Course: Business Law II

EDUCATION:

- **Cornell Law School, J.D.**, 1976
- **Northwestern University, B.A.**, 1973

AWARDS:

Distinguished Educator for Excellence in Scholarship (2018)
Director's Award for Scholarship Distinction (2017)

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PUBLICATIONS:

Restoring Congress's Authority Under Article I to Abrogate the State's Eleventh Amendment Immunity: A Remedy That Is Long Overdue, 84 U. Pitt. L. Rev. 665 (2023) (with Howard L. Zwickel)

Dementia, Sex, and Consent: Beyond the Uncomplicated Cases, 53(3) Hastings Center Report 45 (2023) (with Jed Gross)

Splitting Deceased Donor Livers to Double the Transplant Benefits: Addressing the Legal, Ethical, and Practical Challenges, 33 Health Matrix 255 (2023) (with Jed Gross)

Assessing Consent to Intimate Sexual Relations Among Nursing Home Residents with Dementia, in *LIVING WITH DEMENTIA, NEUROETHICAL ISSUES AND INTERNATIONAL PERSPECTIVES* (Springer Publishing, 2021) (Veljko Dubljevic and Francis Bottenberg eds.)

CURRENT ISSUES IN CONSTITUTIONAL LITIGATION, A Context and Practice Casebook, 3d ed. (Carolina Academic Press, 2020) (with Sarah Ricks)

The Advantages of Peer Review Over Arbitration for Resolving Authorship Disputes, 4(10) *Research Integrity and Peer Review* (2019) (with Zubin Master)

Empowering Patients with Alzheimer's Disease to Avoid Unwanted Medical Care: A Look at the Dementia Care Triad, 34(2) *American Journal of Alzheimer's Disease and Other Dementias* 131 (2019) (with Wayne Shelton, PhD; Kevin Costello, MD; and David Hoffman, DPS)

Donate Today So Your Loved One Can Receive a Future Live Donor Kidney: Are Kidney Vouchers Enforceable Contracts?, 14 *Journal of Health and Biomedical Law* 101 (2018)

Swaps and Chains and Vouchers, Oh My!: Evaluating How Saving More Lives Impacts the Equitable Allocation of Live Donor Kidneys, 44 *American Journal of Law and Medicine* 67 (2018)

Can Civil Lawsuits Stem the Tide of Direct-to-Consumer Marketing of Unproven Stem Cell Interventions, 3(1) *npj Regenerative Medicine*, <https://doi.org/10.1038/s41536-018-0043-6> (2018) (with Claire Horner, Zubin Master, and Douglas Sipp)

Bartering for a Compatible Kidney Using Your Incompatible Live Kidney Donor: Legal and Ethical Issues Related to Kidney Chains, 42 *American Journal of Law and Medicine* 129 (2016)

CURRENT ISSUES IN CONSTITUTIONAL LITIGATION, A Context and Practice Casebook, 2d ed. (Carolina Academic Press, 2015) (with Sarah Ricks)

Ethics in Long Term Care, *THE ENCYCLOPEDIA OF ADULTHOOD AND AGING* (John Wiley & Sons, Inc., 2015) (with Gayle Doll, Director Center on Aging, Kansas State Univ.)

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The Union of the Contraceptive Mandate and the Affordable Care Act Gives Birth to First Amendment Concerns, 23 Albany Journal of Science and Technology 539 (2013)

An Innovation in Continuing Medical Education: Online, Remedial Education for Physicians Following a Professional Violation or Incident, 18 NYSBA Health Law Journal 36 (Spring/Summer 2013) (with Dr. Wayne Shelton and Dr. Bruce White)

Revitalizing Informed Consent and Protecting Patient Autonomy: An Appeal to Abandon Objective Causation, 64 Oklahoma Law Review 697 (2012)

Sexual Expression and Intimacy Between Nursing Home Patients with Dementia: Balancing the Current Interests and Prior Values of Heterosexual and LGBT Residents, 21 Temple Political and Civil Rights Law Review 459 (2012); excerpt in *BIOETHICS AND THE LAW*. Janet L. Dolgin and Lois L. Shepard, 2d ed., at 636 (Aspen Publishing 2013)

Using Informed Consent to Reduce Preventable Medical Errors, 21 Loyola University of Chicago Annals of Health Law 11 (2012)

TEACHERS MANUAL, CURRENT ISSUES IN CONSTITUTIONAL LITIGATION (Carolina Academic Press, 2012) (with Sarah Ricks)

CURRENT ISSUES IN CONSTITUTIONAL LITIGATION, author of chapters 14 and 15 (Carolina Academic Press, 2011)

To Be or To Exist: Standards for Deciding Whether Dementia Patients in Nursing Homes Should Engage in Intimacy, Sex, and Adultery, 42 Indiana Law Review 675 (2009)

Memory-Altering Drugs: Shifting the Paradigm of Informed Consent, 7(9) The American Journal of Bioethics 40 (September 2007) (coauthor)

Body Worlds: Choosing to Be Immortalized as an Educational Specimen, 7(4) The American Journal of Bioethics 38 (April 2007) (coauthor)

The Application of Labor Relations and Discrimination Statutes to Lay Teachers at Religious Schools, 64 Albany Law Review 629 (2000)

SELECTED SCHOLARSHIP PRESENTATIONS:

Wrongful Selection as an Alternative to Wrongful Birth in Cases Involving Late Onset Genetic Conditions, Health Law Professors Conference in Philadelphia, Pennsylvania, scheduled for June 6, 2024

Solutions to Informed Consent and Coercion Issues Related to Split Liver Transplants, American Society for Bioethics and Humanities (ASBH) Conference in Baltimore, Maryland on October 12, 2023

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The Unique Informed Consent and Coercion Issues Related to Split Liver Transplants, at the Health Law Professors Conference in Baltimore, Maryland on June 8, 2023

Using Ethics, Law, and Policy to Facilitate Split Liver Transplantation, presented virtually at Ethics Grand Rounds at Albany Medical Center on March 3, 2022 (with Jed Gross)

Splitting the Difference? Ethical and Policy Considerations in Split Liver Transplantation, presented virtually at Grand Rounds, Case Western Reserve University Hospitals, Cleveland, Ohio on February 2, 2022 (with Jed Gross)

Issues Related to Advanced Donation Programs, Including the Voucher, presented virtually by invitation at the 44th SITO (Italian Society for Organ and Tissue Transplantation) National Congress in Naples, Italy on October 3, 2021

Choosing Babies to Avoid Adult Onset Genetic Conditions: Rethinking the Wrongful Birth/Wrongful Conception Causes of Action, at the Health Law Professors Conference in Boston, Massachusetts on June 10, 2021

New York's Child-Parent Security Act – Issues and Possible Solutions, presented virtually at the Reproductive Ethics Conference sponsored by the University of Texas Medical Branch in Galveston, Texas on April 8, 2021

Facilitating Greater Use of Split Liver Transplants, presented virtually at the World Congress of Bioethics Conference in Philadelphia, Pennsylvania on June 19-21, 2021

Reassessing Consent to Intimate Sexual Relations Among Nursing Home Residents with Dementia, presented virtually at the ASBH Conference on October 15, 2020

Half a Chance: Legal and Ethical Challenges Related to Splitting Donated Livers at the ASBH Conference in Pittsburgh, Pennsylvania on October 25, 2019

Addressing the Ethical, Legal, and Organizational Challenges of Splitting Donated Livers at the Health Law Professors Conference in Chicago, Illinois on June 6, 2019

Ethical and Policy Concerns Regarding Negligent Prenatal Testing for Late-Onset Genetic Conditions at the Reproductive Ethics Conference in Albany, New York on April 5, 2019

Vouchers as a Foundation for a New Approach to Determining the Equities of Live Kidney Donation at the ASBH Conference in Anaheim, California on October 18, 2018

Kidney Vouchers: A New Innovation in Kidney Transplantation with Novel Legal and Ethical Concerns at the Health Law Professors Conference in Cleveland, Ohio on June 9, 2018

Ethical Concerns Regarding New Innovations in Live Kidney Donation at the Black-Market Gold: Medical and Transplant Tourism Symposium at Suffolk Law School on March 22, 2018

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Ethical Concerns Regarding New Innovations in Live Kidney Donation at Ethics Grand Rounds at Albany Medical Center on March 1, 2018

Moderated the panel “*Complex Cases and Ethics*” at the Alden March Bioethics Institute Clinical Ethics Conference at Albany Medical Center on November 17, 2017

Jumping to the Front of the Transplant Waiting List at the Health Law Professors Conference in Atlanta, Georgia on June 10, 2017

Splitting Livers Between Transplant Recipients: Ethical and Logistical Considerations, at the Annual Canadian Bioethics Society Conference in Montreal, Quebec on May 25, 2017 (with Jed Gross)

List Paired Donation and the Blood Type O Problem at the ASBH Conference in Washington, D.C., on October 7, 2016

Joined a panel with three other law professors to present *Rethinking Informed Consent, Element by Element* at the ASBH Conference in Washington, D.C. on October 6, 2016.

Causation: The Importance of Moving to a Subjective Standard to Protect Individual Preferences and Priorities at the Health Law Professors Conference in Boston, Massachusetts on June 3, 2016

Teaching Practitioners about Medical Marijuana in New York: An Innovative Joint Continuing Education Program for Bioethicists, Lawyers, Physicians, Nurses, and Pharmacists at the Health Law Professors Conference in Boston, Massachusetts on June 3, 2016

The Ethics of Paired Kidney Donation and Kidney Chains at the ASBH Conference in Houston, Texas on October 24, 2015.

Paired Kidney Donation and the Blood Type O Problem at the Health Law Professors Conference in St. Louis, Missouri on June 6, 2015

Real World Medicine – A Collaborative and Interactive Approach to Teaching Current Events Health Policy at the Health Law Professors Conference in St. Louis, Missouri on June 5, 2015 (with Dr. Bruce White)

Legal and Ethical Issues Related to Paired Kidney Donation and Kidney Chains at Ethics Grand Rounds at Albany Medical Center on April 16, 2015

Legal and Ethical Issues Related to Paired Kidney Donation and Kidney Chains at Touro Law School as part of the Scholarship Exchange with Albany Law School

Legal and Ethical Issues Related to Paired Kidney Donation and NEAD Chains at the Health Law Professors Conference at Hastings College of Law on June 7, 2014

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Chair/discussant on a panel presenting “*State Actors and Litigation*” at the Law and Society Association Annual Meeting in Minneapolis, Minnesota on May 29, 2014

Paired Kidney Donation and NEAD Chains: Issues and Solutions at Western New England School of Law on March 25, 2014 as part of the Scholarship Exchange with Albany Law School

Making Informed Consent More Effective in Protecting Patient Choice at a Forum Series sponsored by the Albany College of Pharmacy and Health Sciences on Feb. 28, 2014

“*Mandatory Immunizations for Healthcare Workers*” as one of three featured speakers at the Clinical Ethics Conference at Albany Medical Center on Nov. 15, 2013

Revitalizing Informed Consent to Protect Patient Autonomy at Grand Rounds at Albany Medical Center on Jan. 17, 2013

Four Independent Institutions and an Interprofessional Course at the Health Law Professors Conference in Tempe, Arizona in June 2012

Reconciling Decision-Making Theories to Protect Intimacy Among Demented Nursing Home Patients at a conference on "Aging in the U.S.: The Next Civil Rights Movement?," Temple Univ., Philadelphia, Pennsylvania on October 2011

The Causation Element of Informed Consent and the Need for Change at the Health Law Professors Conference in Chicago, Illinois in June 2011

Ethics and Disability in Later Life at a conference on Disability and Ethics Through the Life Cycle, Union College, Schenectady, New York in May 2010

A New Approach to Helping Students Navigate the Rocky Mountain of Persuasive Facts at Rocky Mountain Legal Writing Conference, Tempe, Arizona in March 2009

Should Nursing Homes Permit Intimacy and Adultery Among Dementia Patients When the Non-Resident Spouse Objects? at the Health Law Professors Conference, Philadelphia, Pennsylvania in June 2008

Adultery between Dementia Patients in Nursing Homes: Intimacy for the Lonely or Deplorable Violation of Marital Vows? at the Midwest Family Law Conference, Indianapolis, Indiana in June 2008

BODY WORLDS, Dignity, and the Uniform Anatomical Gift Act at the Health Law Professors Conference, Boston, Massachusetts in June 2007

A Marriage of Necessity: Developing Facts Necessary for Effective Analysis and Argument Through Case Law Study at the Rocky Mountain Legal Writing Conference, Las Vegas, Nevada in March 2007

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Blurring the Lines Between Clinical and Legal Writing Courses at the Legal Writing Institute Biennial Meeting, Atlanta, Georgia in June 2006

Building Formal Writing Training into the Clinical Experience at the AALS Conference on Clinical Legal Education, NYC in May 2006

SELECTED CLEs AND OTHER PRESENTATIONS

Medicine and the Law at Albany Medical College every year since 2016

Public Health Policy Practicum at Albany Medical College every year since 2016

Moderator for the initial joint meeting of the Albany Medical College Physician Group for Human Rights and the Albany Law School Health Law Society – *Where Health and Law Meet: Police Use of Force and as First Responders* (February 11, 2021)

Reevaluating Informed Consent to Better Protect Patient Autonomy at a CLE for the New York State Legislature on December 6, 2018

Assessing Whether the Distribution of Live Donor Kidneys is Equitable at a New York State Department of Health CLE program held at University at Albany School of Public Health on September 12, 2017

Privacy Rights of Individuals in Long Term Care Facilities at the Aging Law Series at Albany Law School on June 20, 2017

Moderated a panel on *Health Care Reform* sponsored by the New York State Bar Association and Albany Law School on April 6, 2017

Facilitator at an Inter-Professional Case Conference sponsored by the Sage College of Albany on April 4, 2017. The conference included graduate students from a variety of healthcare disciplines, including nursing, occupational therapy, physical therapy, psychology, nutrition, pharmacology, forensic mental health, and law

Delivered an ethics presentation on kidney transplantation for the New York State Task Force on Life and the Law in New York City on January 19, 2017

Legal Issues Related to Kidney Donation and NEAD Chains at a CLE for the New York State Legislature on December 14, 2016

Sexual Expression and Intimacy between Nursing Home Residents with Dementia at a New York State Department of Health CLE program held at University at Albany School of Public Health on September 20, 2016

Paired Kidney Donation and NEAD Chains: Issues and Solutions at the University at Albany School of Public Health for a New York State Department of Health CLE program on May 4, 2016

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OTHER EMPLOYMENT:

New York State Attorney General's Office

Assistant Solicitor General (2001-2005)

Handled appeals in federal and state courts on behalf of the Department of Health, the Department of Education, and other state agencies.

Section Chief, Albany Litigation Bureau (1994-1995)

Supervised lawyers responsible for defensive cases on behalf of state agencies in federal and state courts. Supervision included editing briefs, reviewing proposed settlements and appeal recommendations, providing litigation advice, and training new attorneys. Handled a caseload including several significant cases.

Section Chief, NYC Litigation Bureau (1984-1993)

Supervised lawyers specializing in litigation on behalf of the Department of Health and also handled defensive litigation on behalf of other state agencies. Handled major cases in lower courts and on appeal especially in the areas of public health, government policy, and constitutional law.

Assistant Attorney General, NYC Litigation Bureau (1980-1984)

Handled a variety of federal and state cases on behalf of the Department of Education, the Department of Social Services, the State University of New York, the City University of New York, and the State Labor Relations Board.

New York State Department of Health (1996-1998), Consultant, Bureau of Professional Medical Conduct. Prosecuted doctors for medical misconduct.

Private Practice in NYC (1976-1980)

Samuel B. Freed, Esq., Hofheimer, Gartlir, Gottlieb and Gross. Handled commercial litigation in the lower courts and on appeal.

SELECTED SIGNIFICANT CASES:

***Cooke Center for Learning and Development v. Mills*, 19 A.D.3d 834 (3d Dep't 2005)**

Upheld as rational Dept. of Education's interpretation of its regulations to mandate that disabled school children be educated, if possible, in their local public schools.

***New York State Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207 (2004)**

Successfully defended Dept. of Health guidelines for office-based surgery against claim that they would operate as regulations and, therefore, were not lawfully promulgated.

***Madison-Oneida Board of Coop. Educ. Servs. v. Mills*, 4 N.Y.3d 51 (2004)**

Upheld the Commissioner of Education's interpretation of the Education Law to give seniority protection to tenured teaching assistants.

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New York State Ass'n of Cemeteries, Inc. v. Fishman, 116 Fed. Appx. 310 (2d Cir. 2004)
Upheld constitutionality of state statute prohibiting combinations of for-profit funeral entities and not-for-profit cemeteries to protect the long-term viability of the cemeteries and to protect consumers from unfair practices.

New York State Empl. Rel. Bd v. Christ the King Reg'l High School, 217 A.D.2d 701 (2d Dep't 1995)
Upheld the constitutionality of applying the State Labor Relations Act to the lay teachers at church-affiliated schools.

New York State Society of Surgeons v. Axelrod, 77 N.Y.2d 677 (1991)
Upheld the Commissioner of Health's decision not to add HIV infection to the lists of communicable and sexually transmissible diseases and, thereby, not to have mandatory testing or contact tracing for HIV infection.

State of New York v. Sullivan, 906 F.2d 910 (2d Cir. 1990)
Affirmative class action invalidating the Social Security Administration's policy of relying exclusively on the treadmill exercise test in determining disability due to ischemic heart disease. Class-wide relief was granted entitling class members to retroactive disability benefits totaling more than \$65 million and saving New York's state and local governments approximately \$11 million per year.

Mullen v. Axelrod, 74 N.Y.2d 580 (1989)
Upheld the Commissioner of Health's discretion to determine whether to proceed with disciplinary action against nursing home employees.

City of New York v. New St. Mark's Baths, 122 A.D.2d 747 (1st Dep't 1986), *appeal dismissed*, 70 N.Y.2d 693 (1987)
Upheld the constitutionality of the state health department's regulation authorizing the closure of establishments where "high risk sexual activity" is taking place to help control the spread of HIV/AIDS.

Catholic High School Ass'n v. Culvert, 753 F.2d 1161 (2d Cir. 1985)
Landmark decision upholding the constitutionality of applying the State Labor Relations Act to lay teachers at church-operated schools.

Sheepshead Nursing Home v. Heckler, 595 F. Supp. 992 (S.D.N.Y. 1984)
Upheld the termination of Medicaid and Medicare payments to a nursing home based on the inadequate care and treatment given to the patients.

New York State Optometric Ass'n v. Blum, 92 A.D.2d 526 (1st Dep't 1983)
Dismissed Article 78 proceeding challenging fifteen-year-old Medicaid fee schedule applied to optometrists.

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CURRENT AND PRIOR PROFESSIONAL MEMBERSHIPS:

- Ethics Review Committee, Albany Medical Center
- Institutional Review Board, Policy Research Associates
- Advisory Board for Sage Graduate Management Program
- Public Advisory Council of State Ethics Commission
- Judicial Screening Panel for the Appellate Division, Third Department

Recent Faculty Committees

Admissions Committee
Harassment Committee
Assessment Committee
Student Affairs Committee
Academic Accommodations Committee