

Health Law I

Professor Pope

Class 1: August 23, 2011

Westlaw

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University of California, Hastings College of the Law
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Sonia Vidal
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Professor's Guide to TWIN
WestlawNext Live Help

LEGAL RESEARCH CENTER

Research Shortcuts

Retrieve a Document:
Enter citation:
-OR-
Run a Search:
Enter keyword(s):

Select an Option:
 Fine KeyCite BriefIt
 ALR LawReviews

LEGAL NEWS

- People v. Park, (Cal App 3d 8/13/10):** September 13, 2010. Criminal Justice - Requirement that city issue notice of automated traffic enforcement system. 30 days prior to enforcement applied to each particular intersection at which automated photographic system was installed. A statute requ...
- Qui v. M.D., (Ohio App. 10 Dist):** September 13, 2010. Family Law - Surrogacy agreement was enforceable, rebutting presumption that surrogate was "natural mother" to baby not genetically related to either party. A surrogacy agreement was valid and enforceable under which a gestational ...
- International Women's Sex-Market Platform Commission, City of San Antonio, (CA 5 Tex.):** September 10, 2010. Civil Rights - Ordinance imposing fees on march organizers provided viable alternatives for unorganized expression. A San Antonio ordinance imposing fees for traffic control and cleanup costs on march organizers provided ample altern...

Why focus a course around an **industry** as opposed to around a unique **doctrinal** approach

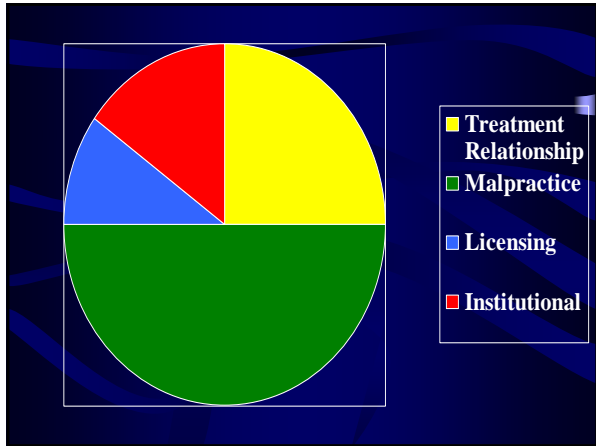
National health spending =
\$2.5 trillion in 2009
17.6% of GDP

Health expenditures increasing **faster**
than the growth in GDP

Health = 6.2% per year
GDP = 4.1% per year

Course Coverage





Health Law
Not Covered

Public Health Law
Law & Science
Finance & Regulation
(Much) bioethics

Public Health Law

Population focus
Prevention focus









Insurance

Access

Public

Medicare

Medicaid

Private

Coverage

Federal regulation

Charitable tax exemption

Fraud & Abuse

Antitrust

State regulation

CON

Transactional

M&As

Joint ventures

Financings

Facility construction

Contracts for 3rd party
reimbursement

Criminal

Medicare & Medicaid fraud

Labor & Employment

Unionization of HCWs
EEO, OSHA

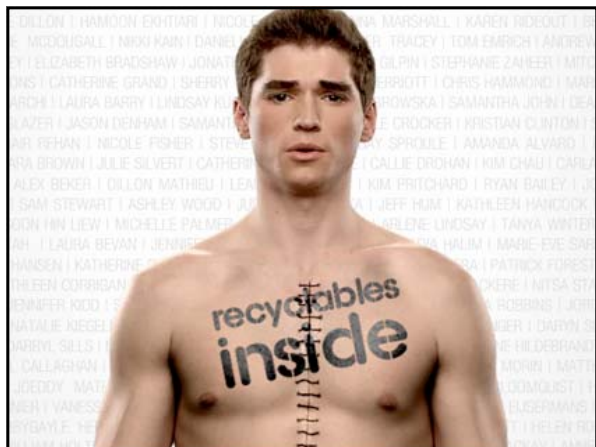
Elder law

Guardianship
Long-term care
Income maintenance
Healthcare funding
Elder abuse

Bioethics







Healthy Adult Volunteers Needed

The National Institute of Mental Health is conducting a study of mild stress and memory. Participants will be interviewed and will complete a series of tasks during which physiological functioning will be recorded. Volunteers must be between the ages of 18-45.

**Financial compensation will be provided
for participation.**

Call: 1-800-411-1222

(TTY: 1-866-411-1010)

<http://patientinfo.nimh.nih.gov>
or for other studies: www.clinicaltrials.gov



Health Law Conference: Taking the Health Law Career Path

October 21, 2011
DePaul College of Law
Chicago

Duty to Treat

Common Law Duty
to Accept Patients

No constitutional
right to health care

Wideman v. Shallowford Comm. Hosp.

No duty to treat

Hurley v. Eddingfield

BUT some erosion
of “no duty rule”

Wilmington Gen. Hosp. v. Manlove

Providers can refuse to treat for any reason or no reason EXCEPT:

	Emergency	Discriminatory	If begun, only if properly terminated	No unreasonable conditions
Hospital	X	X	X	X
Physician		X	X	X

Hurley v. Eddingfield







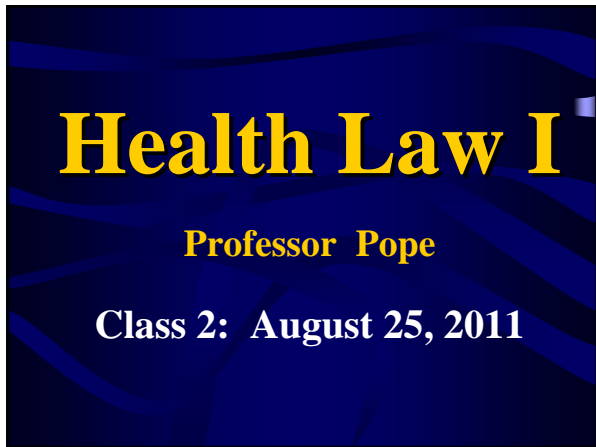


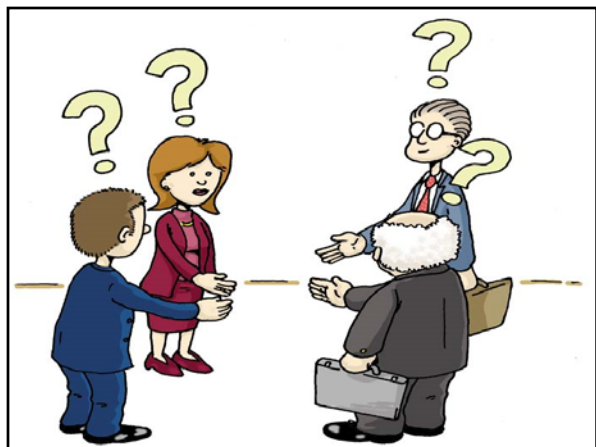
**Wilmington
Gen. Hosp.
v.
Manlove**













**Wideman
v.
Shalloford
Hen. Hosp.**





Health Law I

Professor Pope

Class 5: Sept. 6, 2011

**Treatment
Relationship
Formation**

Often **clear** if there is
treatment relationship

Patient seeks care

Physician provides it

Other times, **less clear**

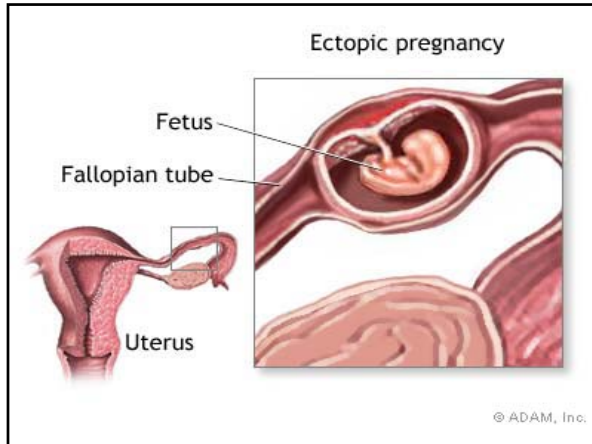
Some interaction

But is it enough?

Adams

v.

**Via Christi
Reg. Med.**



If no duty → merits of the malpractice action are irrelevant

If Dr. O should have suspected ectopic pregnancy

If 9:30pm ER visit would have saved her

Doctor O evidence

Not seen, talked, treated Nichelle
for 4 years

Not speak Nichelle on July 22

No longer even provided
obstetrical care

Took no action

Only discussed Nichelle's
condition in general terms with
mother

Not consider Nichelle his patient

Nichelle not consider him her
doctor

**Mrs. Adams
evidence**

Doctor O called
her “right back”

Doc listened and gave medical
opinion (3 separate pieces)

Abdominal pain not abnormal

Take ER if got worse

See doc next day

“reassure”

“dissuade”

compare *Manlove*

Objective theory of contracts

Objective test:

Look to party's
external acts not
subjective intent

“family physician for
Mr. and Mrs. Adams
and their three
children for several
years”

Clanton
v.
Von Haam




Previously **treated**

Called her back

Listened to symptoms

Recommended continue treatment



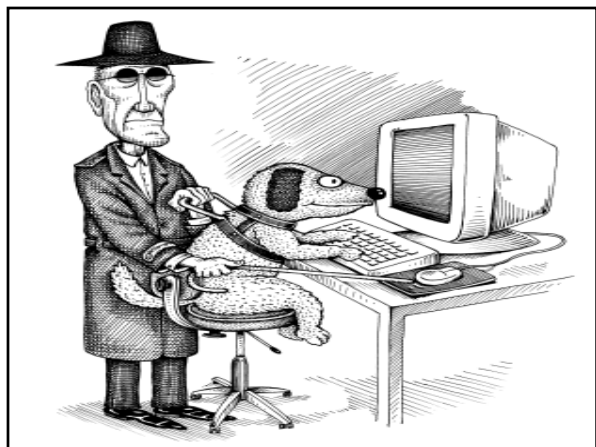
“not . . . suspend efforts”

“never relied”

“no way dissuaded”

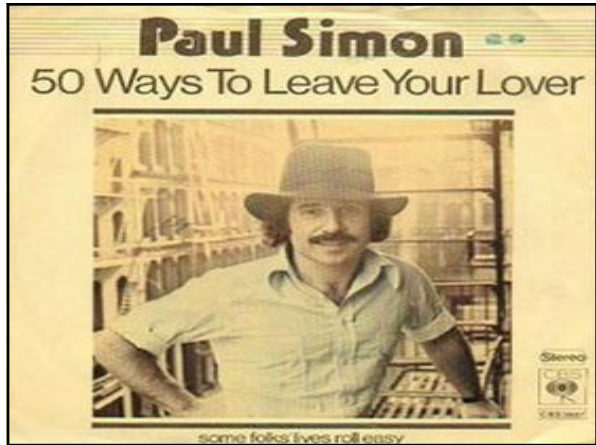


Lyons
v.
Grether



“entrusted his treatment”

“consensual transaction”



Reynolds

v.

Decatur Memorial

Whether the circumstances giving rise to an recognized duty have obtained is a **question of fact**

Whether there should be a duty in particular circumstances is a **question of law** (public policy)



Health Law I

Professor Pope

Class 6: Sept. 8, 2011

INTERACTION	RELATIONSHIP
Provide care	Yes
Make recommendation	Yes
Telephone call	Maybe
Formal consult 2d physician	Yes with both
Informal consult 2d physician	Not with 2d doc

On call → treatment relationship



**Formation with
non-treating
physician**

**Jennings
v.
Badgett**

No treatment relationship



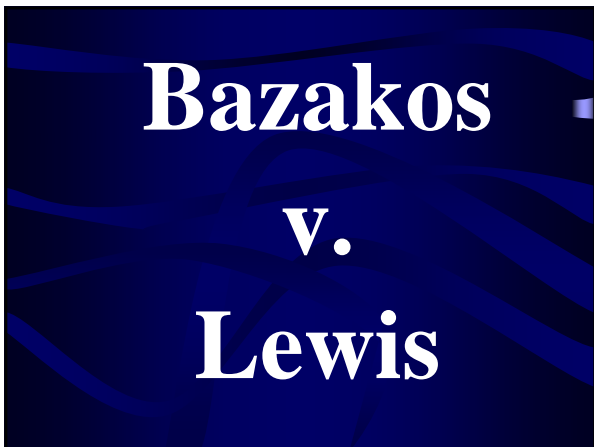
No med mal duty



No med mal claim







Odd posture

Who is arguing
for existence
of treatment
relationship

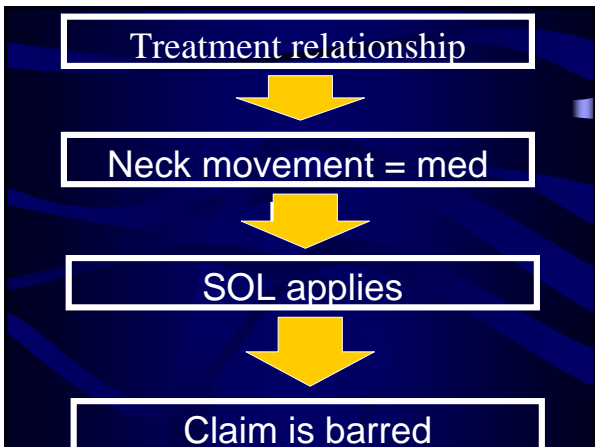


11-27-01 Exam

05-27-04 Med Mal SOL

10-15-04 Complaint

11-27-04 Negligence SOL



Dr. Lewis **actually examined** Bazakos

Still, no relationship
(per the A.D.)

FRCP 35(a)(1)

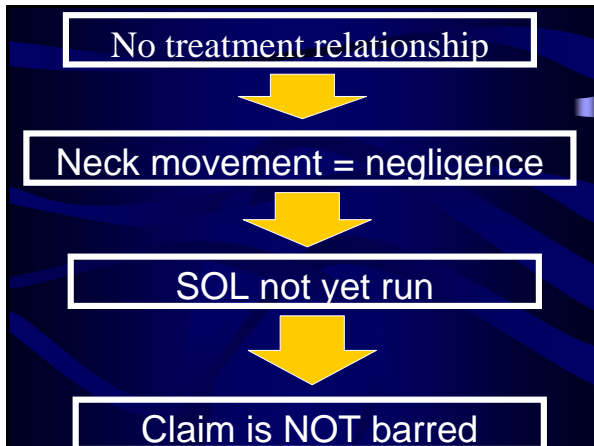
The court . . . may order a party whose mental or physical condition . . . is in controversy to submit to a **physical or mental examination**

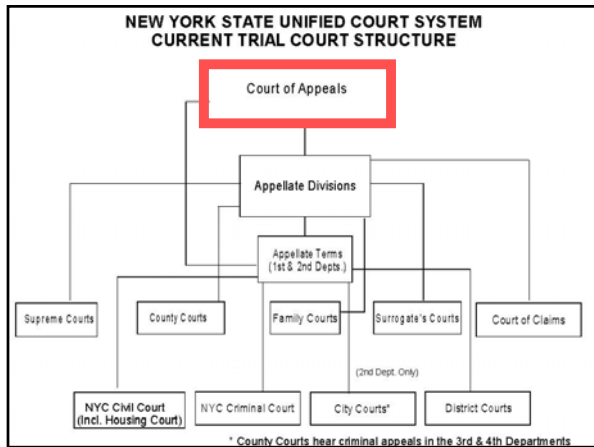
A.D.

Not consensual

Not “treating” the PTF

Examining the PTF





Treatment relationship

But only **limited one**:

Do not affirmatively injure the examinee

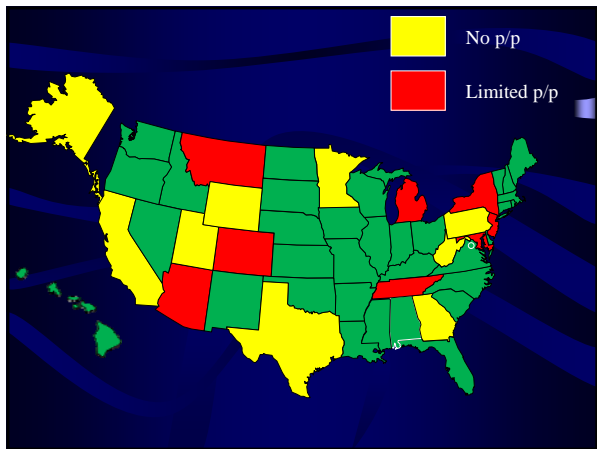
No duty

Diagnose other things,
Continue seeing/treating

Do per SOC

Smith v. Radecki



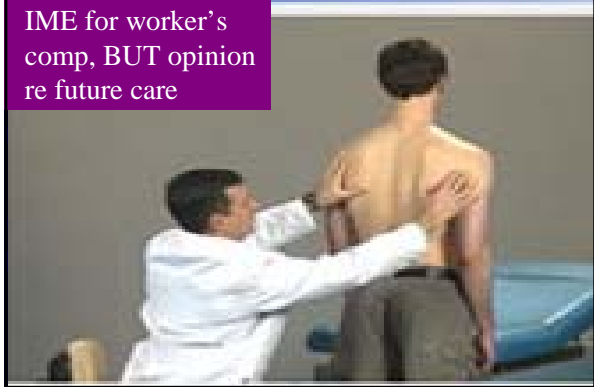


Siwa v. Koch (Ill. App. 2009)



Ritchie v. Krasner (Ariz. App. 2009)

IME for worker's
comp, BUT opinion
re future care



**Terminating the
relationship**

Abandonment

1. Mutual consent
2. Patient's dismisses doc
3. Medical services (at issue) no longer needed
4. Physician withdrawal (with sufficient notice)

Unilateral physician withdrawal is permitted **with sufficient notice** (to allow time to find another provider)

- Reasons to terminate**
- Noncompliance
 - Failure to pay
 - Verbal abuse, threats
 - Drug seeking
 - Failure to keep appointments
 - Others

No treatment relationship



May refuse to treat for **any** reason

Unless

Invidious discrimination
(e.g. race, disability)

Specific duty to treat (e.g.
EMTALA)

Existing treatment relationship



Must continue to treat

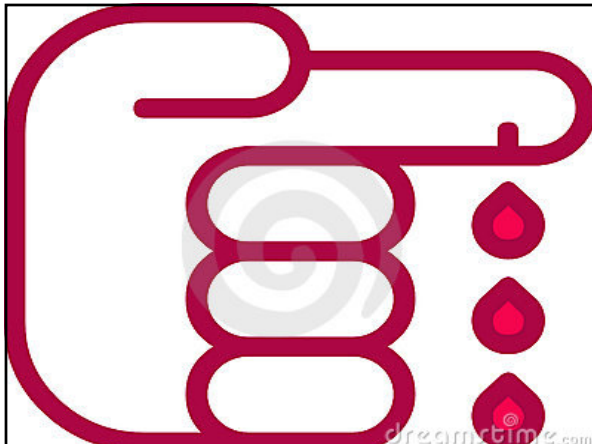
Until

Termination of relationship
(e.g. 1 of 4 valid ways)

Unless

Specific statutory exception

Ricks v. Budge



Mar. 8 R finger on wire
Mar. 11 Budge treats R
Mar. 12-15 R in BM hospital
Mar. 15 R leaves hospital
Dr. B instructs R

Mar. 17 R to Dr. B office
Dr. B. "go to hospital"
Mar. 17 Dr. B **refuses to treat**
R to Cache Valley Hosp. (1 mo)

Payton
v.
Weaver



437,000 patients with ESRD
Covered by Medicare
> \$10 billion

1975-1978
Dialysis w/ Dr. Weaver
Drugs & alcohol
Not following rules
Antisocial
12-12-78 Dr. Weaver notice

04-23-79 Dr. Weaver notice

1979 Writ of mandate settlement: Dr. Weaver will treat, if Payton complies with 6 conditions

1980 Brenda fails to comply with *any* of the 6 conditions

03-03-80 Dr. Weaver 3d notice + offer to help

Do all the (bad) facts about Ms. Payton really make any difference to the abandonment analysis

Explain the different
outcome in *Ricks*
and *Payton*

Health Law I

Professor Pope

Class 7: Sept. 13, 2011

Payton
v.
Weaver

Might Payton have an **ADA claim** against Dr. Weaver

What disability

What denial

Otherwise qualified

What defenses

Is there an
EMTALA
violation

Abandonment

Not just tort

Licensure too

Abandonment **not** purely a
common law tort matter

Licensure codes and
regulations also define the
duty

New Jersey
requirements for
terminating a
licensee-patient
relationship

1. Notify the patient, in
writing, . . . no less than
30 days prior to the date
on which care is to be
terminated, and shall be
made by certified mail...

(d) Notwithstanding (c) above, a licensee shall not terminate a licensee-patient relationship in the following circumstances:

Where to do so would be for any discriminatory purpose and/or would violate any laws or rules prohibiting discrimination; or

Where . . . no other licensee is currently able to provide the type of care or services that the licensee is providing to the patient.



Not just licensure → COPs

42 CFR 494.70(b)(2): “Receive written notice 30 days in advance of an involuntary discharge...”

42 CFR 494.180(f): “no patient is discharged or transferred from the facility unless...”

**Del. Code Ann.
tit. 16, § 2500-**

... provider ... may decline to comply ... decision that requires **medically ineffective health care** or health care contrary to generally accepted health care standards

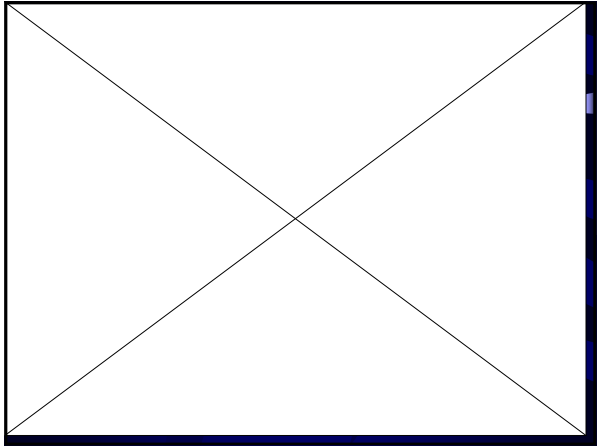
... provider may decline to comply ... for reasons of **conscience.**

[If] decline to comply ...
(1) ... inform the patient ... [surrogate]
(2) Provide continuing care, including continuing life sustaining care, ... **until a transfer can be effected**
(3) Not impede the transfer ...

Want to refuse →
try transfer

No transfer → must
comply

Limiting Treatment Relationship



Waivers must be

1. Knowing
2. Voluntary
3. Consistent with public policy

Knowledge

- Understand risks
- Appreciate consequences

Voluntariness

- Agree freely, have a choice
- Look at bargaining power
- Look at necessity of the action to the plaintiff
- Look at plaintiff's relative vulnerability

Tunkl
v.
UCLA

RELEASE: The hospital is a nonprofit, charitable institution. In consideration of the hospital and allied services to be rendered and the rates charged therefor, the patient or his legal representative **agrees to** and

hereby **releases** . . . the hospital from **any and all liability** for the negligent or wrongful acts or omissions of its employees, **if** the hospital has used due care in selecting its employees.



The waiver bars the malpractice suit,
so attack the waiver

Voluntariness / understanding grounds
(rejected by jury)

Public policy / legality grounds
(accepted by SCOC)

Tunkl waivers
prohibited

But **PARTIAL**
waivers allowed

Patient leaves hospital
AMA
Patient waives court for
arbitration

UW Medicine
HARBORVIEW MEDICAL CENTER - UW MEDICAL CENTER
UNIVERSITY OF WASHINGTON PHYSICIANS
SEATTLE, WASHINGTON

DISCHARGE - AGAINST MEDICAL ADVICE

I, _____, am voluntarily leaving and signing out
(Name of patient)

(OR)

I, _____, am voluntarily taking _____
(Name of person signing) (Name of patient)

from the Medical Center, contrary to the advice of the medical staff in attendance. This is to certify that I, in so doing, assume full responsibility for any and all risks of this action, and hereby agree to hold the Medical Center and its' staff free from any liability of any consequences that may result directly or indirectly by reason of such removal.

(Signature of patient or person assuming responsibility)

(Relationship of person assuming responsibility)

Cal Civ. Proc. Code 1295(a) Any contract for medical services which contains a provision for arbitration of any dispute as to professional negligence . . . shall have such provision as the **first article** of the contract . . . in the following language:

"It is understood that any dispute as to medical malpractice, . . . will be determined by submission to **arbitration** . . . and not by a lawsuit or resort to court process"

(b) Immediately before the signature line . . . in at least 10-point bold **red** type:

"NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS CONTRACT."

Cal Civ. Proc. Code 1295(e)

Such a contract is **not** a contract of adhesion, nor unconscionable nor otherwise improper, where it complies with subdivisions (a), (b), . . .

Patient insists on medical
treatment for **religious**
reasons

Patient participates in
experiment
