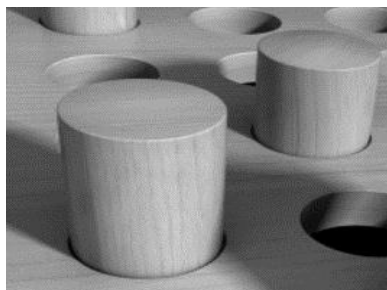


Future of Informed Consent Law

ASLME HLP • June 5, 2015
Thaddeus Mason Pope, J.D., Ph.D.
Hamline University Health Law Institute

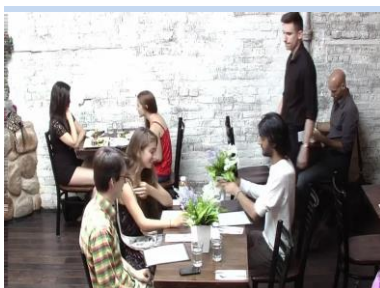
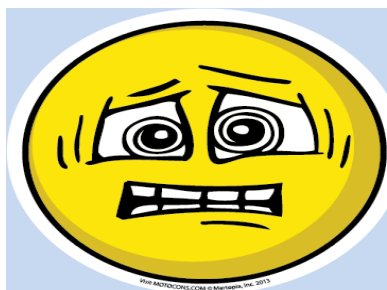
EOL medicine

Advance directives
Surrogates / Agents
POLST
Aid in dying
VSED



Patients **get**
the treatment
they **want**

Informed consent



Too much
Too fast
Too complex

“lengthy
polsyllabic
discourse”

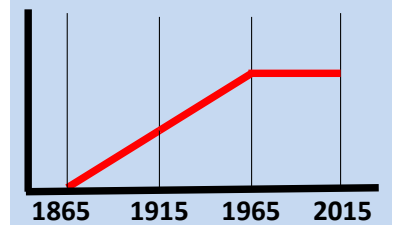
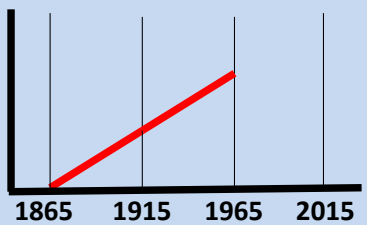
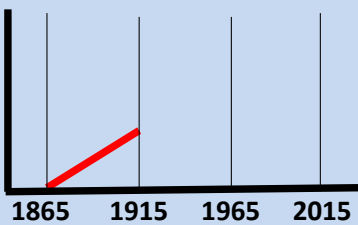
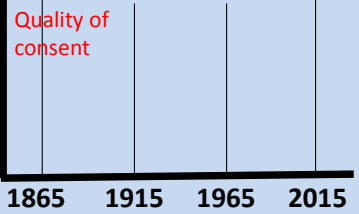
Cobbs v. Grant (Cal. 1972)

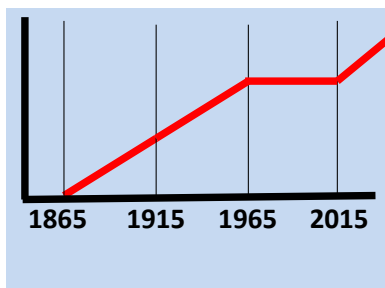
Roadmap

Past
Present
Future

50 year
cycle

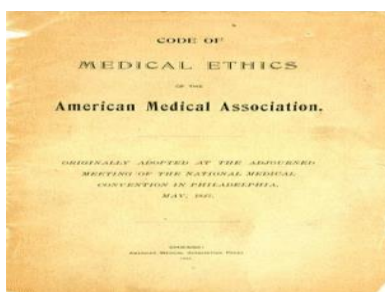
1865 1915 1965 2015





Past

1865



Do **NOT** consider
 patient's "own
 crude opinions"



1915

Battery



Mohr v. Williams (Minn. 1905)



“Every human being of adult years and sound mind has a right to determine what shall be done with his own body”

Consent
But not
“informed”

1965



Salgo v. Leland Stanford (Cal.)



Natanson v. Kline (Kan.)




Present

Structural
Outcomes


Duty
Breach
Causation
Damages

Duty

Prudent
physician
state

Custom
to not
disclose  No
duty

Material
risk state

Odd  No
duty

Breach

Focus on
disclosure NOT
understanding

Causation

PTF would have chosen differently

RPP would have chosen differently

Damages



Outcomes

Health Care Costs in the Last Week of Life
Associations With End-of-Life Conversations

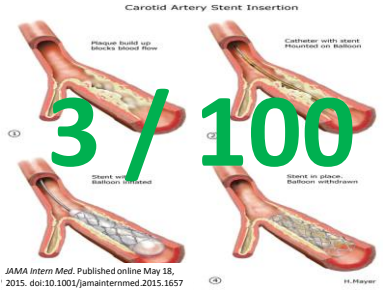
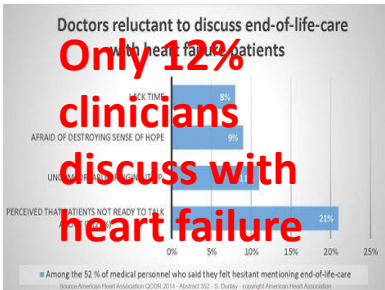
Only 31% with advanced cancer had EOL discussions

Background: Little is known about characteristics, recruitment sites, illness acuity, or treatment preferences. Further, Patient physicians have not been identified by quantiles of propensity scores and associated with lower rates of intensive interventions.

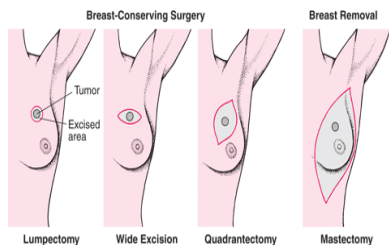
Methods: Funded by the National Institute of Mental Health and the National Cancer Institute, 1000 patients with advanced cancer (a long-term, prospective study) were viewed at baseline procedures (eg, mechanical ventilator use and resuscitation) in the last week of life were aggregated. Patients with advanced cancer who reported EOL discussions with physicians had higher costs in their final week of life. Higher costs were associated with worse quality of death.

Results: Of 1000 participants, 188 (18.8%) reported EOL discussions at baseline. After propensity score matching, the remaining 413 patients did not differ in socio-

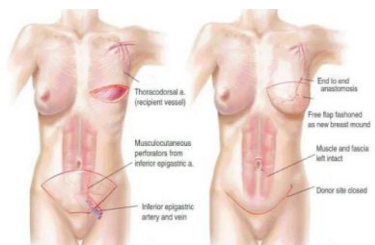
Arch Intern Med. 2009;169(5):480-488



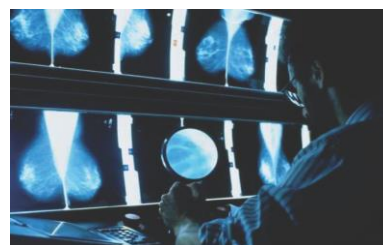
Mandated Disclosures



Breast cancer (1979-1986)



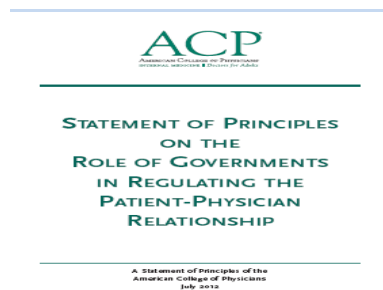
Breast reconstruction coverage



Breast density



EOL options

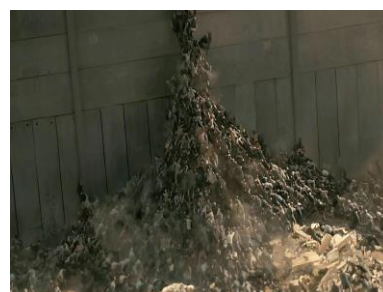


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Legislative Interference with the Patient-Physician Relationship

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Still focused on disclosure



Still focused on **what** physician conveys not **how**

Future

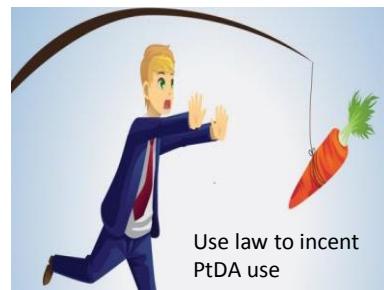
PtDA



Robust evidence shows PtDAs are highly effective

BUT

Hardly any
clinical usage



ACA
3506



Safe harbor
for using
“certified” PtDA



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**Selected
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