



# Proceedings

A monthly newsletter from McGraw-Hill

July/August 2012 Volume 4, Issue 1



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## Dear Professor,

A new academic year dawns! Welcome to McGraw-Hill's July-August 2012 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 4, Issue 1 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the July-August 2012 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. The United States Supreme Court's decision to uphold the Patient Protection and Affordable Care Act (also known as "Obamacare");
2. The exoneration of an Illinois man after serving over thirty (30) years in prison for rape and murder;
3. A lawsuit against the University of California at Berkeley for the negligent hiring and retention of a doctor;
4. Videos related to a) political reaction to the United States Supreme Court's decision to uphold the Patient Protection and Affordable Care Act ; and b) a restaurant, known as the "Heart Attack Grill," that actually promotes its unhealthy menu items;
5. An "ethical dilemma" related to the aforementioned "Heart Attack Grill"; and
6. "Teaching tips" related to Article 1 ("Supreme Court Upholds Obama's Health-Care Law") of the newsletter.

Here's to an enjoyable and informative 2012-2013 academic year. May it be your best ever!

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## Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) The United States Supreme Court's decision to uphold the Patient Protection and Affordable Care Act (also known as "Obamacare");
- 2) The exoneration of an Illinois man after serving over thirty (30) years in prison for rape and murder; and
- 3) A lawsuit against the University of California at Berkeley for the negligent hiring and retention of a doctor.

## Hot Topics in Business Law

### Article 1: "Supreme Court Upholds Obama's Health-Care Law"

[http://www.washingtonpost.com/politics/supreme-court-to-rule-thursday-on-health-care-law/2012/06/28/gJQAarRm8V\\_story.html](http://www.washingtonpost.com/politics/supreme-court-to-rule-thursday-on-health-care-law/2012/06/28/gJQAarRm8V_story.html)

According to the article, in a decision announced on June 28, 2012, United States Supreme Court Chief Justice John G. Roberts, Jr. joined the Supreme Court's liberals to save the heart of President Obama's landmark health-care law, agreeing that the requirement for nearly all Americans to secure insurance is permissible under Congress's taxing authority.

The court's 5 to 4 ruling was a stunning legal conclusion to a battle that has consumed American politics for two years. Roberts's compromise offered a dramatic victory for Obama and Democrats' decades-long effort to enact a health-care law and a bitter defeat for Republicans and tea party activists, who had uniformly opposed the Patient Protection and Affordable Care Act.

The decision keeps in place the largest new social program in a generation, a major overhaul of the health-care system that could extend coverage to about 30 million Americans. It creates state-run insurance exchanges and eliminates what have been some of the most unpopular insurance practices.

The ruling did limit one significant portion of the law, which sought to expand Medicaid to cover millions more poor and disabled people. The program is a joint federal-state effort, and the court said the law's requirement that states rapidly extend coverage to new beneficiaries or lose existing federal payments was unduly coercive.

Obama welcomed the justices' decision, which he called "a victory for people all over this country whose lives will be more secure."

At the core of the legislation is the mandate that Americans obtain health insurance by 2014.

The high court rejected the argument, advanced by the Obama administration, that the individual mandate is constitutional under the Commerce Clause of the Constitution. Before this decision, the court for decades had said it gave Congress latitude to enact economic legislation.



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But Roberts found another way to rescue it. Joined by the court's four liberal justices — Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan — he agreed with the government's alternative argument, that the penalty for refusing to buy health coverage amounts to a tax and thus is permitted.

Roberts summed up the split-the-difference decision: "The federal government does not have the power to order people to buy health insurance," he wrote. "The federal government does have the power to impose a tax on those without health insurance."

The chief justice went out of his way several times to portray the court as a neutral arbiter of the facts, adjudicating matters of law, not passing judgment on the wisdom of the health-care legislation.

"Those decisions are entrusted to our nation's elected leaders, who can be thrown out of office if the people disagree with them," Roberts said. "It is not our job to protect the people from the consequences of their political choices."

It was a mark of the tightrope Roberts walked that, after announcing the court's decision, he sat impassively while representatives of the court's conservative and liberal wings read forceful criticisms of his work.

Justice Anthony M. Kennedy, most often the pivotal vote in the court's ideological battles, said the law is an affront to individual liberty and should have been rejected in its entirety.

## Discussion Questions

1. Are you surprised by the United States Supreme Court's 5-4 vote (in terms of the closely-divided split decision)? Why or why not?

*This is an opinion question, so student responses will vary. The close nature of the vote is not particularly surprising, since United States Supreme Court cases are often narrowly decided. What does make this vote surprising is Chief Justice John Roberts' decision to "part ways" with his fellow "conservative" justices and cast the deciding vote in favor of "Obamacare."*

2. What was the specific constitutional authority the Court used in upholding the Patient Protection and Affordable Care Act? Do you agree with the Court's rationale in terms of applying this constitutional authority to support the Act? Why or why not?

*Most constitutional scholars felt that if United States Supreme Court were to uphold the Patient Protection and Affordable Care Act, it would be based on the federal government's right to regulate interstate (and international) commerce by way of the Commerce Clause to the United States Constitution. In a move that surprised both supporters and opponents of the Act, it was upheld on the basis of the taxing authority of the federal government. More specifically, the majority concluded that by imposing a fee on those who chose not to carry mandatory health care insurance, the federal*



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*government would be, in essence, imposing a tax on the uninsured. The federal government has the constitutional authority to impose a tax on the citizenry. Whether such a fee actually constitutes a "tax," however, is an issue that will be debated by legal scholars for years to come!*

3. As the article indicates, the Court rejected application of the Commerce Clause to uphold the Patient Protection and Affordable Care Act. In your reasoned opinion, did the court correctly interpret or misinterpret application of the Commerce Clause to the Act? Explain your response.

*This is an opinion question, so student replies will likely vary in response to this question. As stated in response to Discussion Question 2 above, the Commerce Clause empowers the federal government to regulate "interstate" (i.e., state to state) and international (i.e., United States trade with other countries) commerce. Whether providing health care constitutes commerce is debatable, but one conclusion is certain; namely, that the United States health care industry's reach extends to every state, as well as to perhaps every nation.*

## **Article 2: "Illinois Man Exonerated after 30 Years in Prison for Murder"**

<http://www.usatoday.com/news/nation/story/2012-07-06/man-released-jail-murder-30-years/56074418/1?csp=hf&loc=interstitialskip>

According to the article, a Chicago man who spent more than 30 years behind bars before DNA evidence helped overturn his conviction in the rape and killing of a 3-year-old girl was released from prison recently, just hours after prosecutors dropped the case against him.

An Illinois appeals court in March had ordered a new trial for 50-year-old Andre Davis after tests found that DNA taken from the scene of the 1980 killing of Brianna Stickle was not his. The girl was attacked in Rantoul, about 20 miles north of Champaign.

Davis was recently released from the super-maximum security prison in Tamms in far southern Illinois, said Illinois Department of Corrections spokeswoman Kayce Ataiyero. Champaign County State's Attorney Julia Rietz had decided earlier not to pursue charges against him. Judy Royal of the Center on Wrongful Convictions at Northwestern University, which represented Davis, said he was the longest-serving of the 42 people exonerated by DNA evidence in Illinois.

"Mr. Davis served 32 years in prison for a rape and murder he didn't commit," Royal said. "Tamms is a difficult place to do time. He's hoping to rebuild his life, with the support of his family."

It wasn't immediately known if Davis' family was at the prison when he walked out.

Rietz said that while she did not doubt the results of the DNA tests, she decided not to retry Davis because of the difficulty in taking a 32-year-old case to trial — not because of those tests.



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"After 30 years, witnesses are either deceased, missing or no longer credible to testify," said Rietz, who has been state's attorney in Champaign County since 2004. "Based on the age of the case and the current state of the evidence, we elected to dismiss."

She noted that Davis was twice convicted by juries. His first conviction was overturned because of a mistake made by a bailiff during jury deliberations.

Rietz said any further steps in the investigation of Briana's death will be up to police. Rantoul Police Chief Paul Farber did not return a call regarding the status of the investigation.

Davis was arrested shortly after Briana was found on Aug. 8, 1980, in a house on the street where she lived with her mother and stepfather in Rantoul.

According to trial testimony, Davis — who was 19 at the time — was visiting his father in Rantoul. He spent the day the girl died drinking at the home where she was eventually found with the two brothers who lived there. At some point the brothers left, leaving Davis there alone.

Briana's stepfather, Rand Spragg, said he left the girl playing in the family's front yard and last saw her sitting under a tree.

The family later searched for her. She was found in the brothers' home, naked and under bed clothes in a utility room. She died that night at a local hospital.

An acquaintance of Davis told police that Davis said he'd killed "a woman" at the home. DNA testing was not available in 1980. But in 2004, Davis requested that evidence gathered at the scene of Briana's death be DNA tested.

According to the tests, blood and semen found at the scene weren't from Davis. That led to the March appellate court decision.

Davis' planned release caught his attorneys off guard. Most were on vacation, expecting that he might be released the following week.

Royal, who works closely with Davis' lead attorney, Jane Raley, did not represent him. She was not sure what plans Davis had, but she said that after so many years he was fortunate that family members were still alive to greet him and help him acclimate to life outside prison.

"A lot of times when people are incarcerated for lengthy periods of time, family members die," Royal said. "That is one good thing, that he will have their support."

"I think it's difficult for him to know exactly what to do," she added, noting that the Center on Wrongful Convictions works with the people it helps free to aid in their adjustment. "I know that he's



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very intelligent and he has been assisting in the preparation of his appeal for years and giving some good suggestions in that regard."

## Discussion Questions

1. In your reasoned opinion, did Champaign County (Illinois) and the state of Illinois grossly overuse its prosecutorial authority in convicting Andre Davis? Why or why not?

*This is an opinion question, so student responses will likely vary. Students should know, however, that prosecutors are typically given wide latitude in terms of deciding whether charges should be presented against a suspect, and whether a particular case should be tried. Only in cases of gross overuse of prosecutorial discretion will a prosecutor be sanctioned for abusing his/her authority.*

2. Does Mr. Davis deserve financial compensation for his thirty-two (32) years in prison? If so, who should pay the financial compensation? How much should he be compensated?

*Student responses will likely vary, since this is an opinion question. Mr. Davis' compensation will depend on whether the court concludes that he was "wrongfully convicted," and this conclusion will depend on whether the court believes the prosecutor, judge and/or trial jury committed an unconscionable abuse of discretion in the exercise of his/her/their power. Whether a defendant should be compensated for wrongful conviction, as well as the amount of compensation, are questions for the court to decide.*

3. What evidentiary "weight" should be accorded DNA evidence? In your opinion, does DNA evidence outweigh the circumstantial evidence presented at Mr. Davis' trial in favor of his conviction? Why or why not?

*Student responses will likely vary, since this is an opinion question. In the opinion of your author, great weight should be accorded DNA evidence, since it is scientifically-based, and therefore considerably more reliable than witness (even eyewitness) testimony and other forms of circumstantial evidence. Expressed another way, DNA evidence does not have a motive or a tendency to lie!*

### **Article 3: "Elgin Stafford's Parents Sue UC Berkeley, Dr. Robert Keveess"**

[http://www.huffingtonpost.com/2012/07/05/parents-of-elgin-stafford\\_n\\_1651324.html?utm\\_hp\\_ref=college](http://www.huffingtonpost.com/2012/07/05/parents-of-elgin-stafford_n_1651324.html?utm_hp_ref=college)

According to the article, a now-deceased UC Berkeley student's parents are claiming their son would not have committed suicide had he not endured alleged sexual abuse from a doctor at the university's health care facility. The parents are suing the doctor and UC Regents on behalf of their son.



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Annie and Mike Stafford are the parents of Elgin Stafford, a former Congressional intern, who was 23-years-old when his body was found in the Los Angeles County canal. His parents are suing Dr. Robert Ke vess, for the wrongful death of their son, saying the alleged abuse their son sustained drove him to suicide. Since the suit, Ke vess has been accused by several additional parties alleging similar sexual abuse by him while he worked at the University's Tang Center.

The lawsuit includes reportedly includes dates, alleging when and how Ke vess sexually violated Elgin Stafford over the course of a year.

The criminal complaint states that "As a result of being repeatedly sexually violated and abused, (Elgin Stafford's) sense of trust and wellbeing were severely undermined, he was plagued with nightmares of sexual violation, felt intense shame, humiliation and anger and suffered from Post Traumatic Stress Disorder and suicidal ideation."

According to Bay Area News, Ke vess, 53, resigned after 22 years at the center in April 2011. His resignation came as a consequence of another student alleging to the center's medical director that Ke vess had sexually assaulted him.

Ke vess has since been charged with 19 felony counts, including sexual exploitation of multiple patients, sexual battery with false professional purpose and four counts of sexual penetration by a foreign object. The victims' names have been withheld from the criminal complaint. However, news reports have suggested that at least six males are claiming Ke vess sexually violated them, dating back to 2006.

Ke vess' medical license has been suspended pending the outcome of the criminal case. He is currently out on \$745,000 bail. His pretrial hearing is set for July 27.

Elgin's parents accuse the UC Board of Regents of negligence, negligent supervision and negligent hiring and retention involving their level of responsibility for Ke vess' alleged actions. A spokesman for the University has told members of the media that the school will fight negligence claims.

## Discussion Questions

1. Based on the information set forth in the article, and in your reasoned opinion, is Dr. Robert Ke vess legally responsible for the wrongful death of Elgin Stafford? Why or why not?

*This question might be a bit tricky for students, since legal responsibility cannot be based on personal opinion; instead, legal responsibility is for a jury to decide. Once students understand this, feel free to entertain their personal opinions regarding Dr. Ke vess' responsibility for Elgin Stafford's death.*

2. Based on the information set forth in the article, and in your reasoned opinion, is the University of California at Berkeley legally responsible for the wrongful death of Elgin Stafford? Why or why not?



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*The University does have a responsibility to its students and patients. The ultimate questions regarding Cal-Berkeley's liability for the wrongful death of Elgin Stafford are as follows:*

- a. Did the University know, or should it have known, that Dr. Ke vess had the propensity to sexually abuse Elgin Stafford while Stafford was in the doctor's care?; and*
  - b. Was the University negligent in granting and/or continuing to allow Dr. Ke vess practice privileges at its health care facility?; and*
  - c. Was Elgin Stafford's death proximately caused by the University's negligence?*
3. In terms of a financial award in a jury verdict against Dr. Ke vess and/or the University of California at Berkeley, what is a case like this worth?

*The verdict in virtually every civil case, including the amount of any financial award issued as part of the verdict, depends on the trial jury. Although it is difficult to estimate what a jury might decide in terms of financial compensation, if the jury deems the University liable, it would not be unusual to see a verdict amount in the millions of dollars. Perhaps such a discussion will prompt student discussion regarding tort reform as it relates to the practice of medicine.*



## Video Suggestions

### Video 1: “Obama, Romney and Lawmakers React to SCOTUS Decision”

[http://www.washingtonpost.com/politics/obama-romney-and-lawmakers-react-to-scotus-decision/2012/06/28/gJQAO3kU9V\\_video.html](http://www.washingtonpost.com/politics/obama-romney-and-lawmakers-react-to-scotus-decision/2012/06/28/gJQAO3kU9V_video.html)

#### Discussion Questions

1. Do the opposing opinions expressed in this video surprise you? Why or why not?

*The opinions presented in this video were expressed by President Barack Obama, a Democrat, presumed Republican presidential nominee Mitt Romney, Senate Majority Leader Harry Reid, a Democrat from Nevada, Senate Minority Leader Mitch McConnell, a Republican from Kentucky, House Speaker John Boehner, a Republican from Ohio, and House Minority Leader Nancy Pelosi, a Democrat from California. All comments are consistent with the speaker’s particular political affiliation. Given the political “gridlock” in Washington, D.C. for the past several years, the opinions expressed in this video should come as no surprise.*

2. Do the comments expressed in this video evidence endless “gridlock” in federal government? Explain your response.

*This is an opinion question, so student responses will likely vary, but if the past is any indication, the future portends political “gridlock” in Washington, D.C. Whether this is an advantage or disadvantage in terms of effective governance could be subject to debate, but gridlock guarantees one certain outcome—less legislation (law-making) in federal government. For those who believe “less is more” in terms of effective governance, this could be viewed as an advantage. For those who believe effective government is evidenced by the quality and quantity of laws enacted at the federal level, this could be viewed as a disadvantage. Ask students—In today’s political environment, could the Fair Labor Standards Act be enacted? The Occupational Safety and Health Act? The Environmental Protection Act? The Americans With Disabilities Act?*

3. In his response to the United States Supreme Court’s decision, Republican presidential candidate Mitt Romney stated “What the court did not do in its last day in session, I will do on my first day if elected president of the United States.” Does the president of the United States have the power to overturn a



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law enacted by Congress and upheld by the Supreme Court? Explain your response.

*To suggest he could overturn “Obamacare” on his first day, first year, or even first term in office might be a bit ambitious. The president of the United States does not have the power to overturn a law enacted by Congress and upheld by the Supreme Court. The president can use the “bully pulpit” of his office to encourage Congress to overturn previously-enacted law, but the effectiveness of presidential persuasiveness is entirely dependent on Congress’ responsive willingness to overturn, and accumulation of the votes necessary to overturn, existing law.*

## Video 2: “Heart Attack Grill”

Note: This section of the newsletter is devoted to the following series of videos and articles. Please view the videos and articles in the order in which they are presented.

### a. “The Heart Attack Grill” (Video)

<http://abcnews.go.com/Nightline/video/heart-attack-grill-13100815>

### b. “Apparent Heart Attack at Heart Attack Grill” (2 Videos and Article)

[http://www.cbsnews.com/8301-505263\\_162-57379101/apparent-heart-attack-at-heart-attack-grill/](http://www.cbsnews.com/8301-505263_162-57379101/apparent-heart-attack-at-heart-attack-grill/)

### c. “Woman Collapses at Heart Attack Grill” (Article)

<http://abcnews.go.com/blogs/lifestyle/2012/04/woman-collapses-at-heart-attack-grill/>

## Discussion Questions

1. On the front door of the Heart Attack Grill is the following bold warning: “CAUTION-THIS ESTABLISHMENT IS BAD FOR YOUR HEALTH!” Is such a warning sufficient to avoid legal liability if a customer should die from consumption of the restaurant’s food? Explain your response.

*This warning can be read as an attempted disclaimer of liability, and presents a compelling argument for the Heart Attack Grill—namely, that anyone who eats at a restaurant with such a disclaimer posted assumes the risk of any health hazard(s) associated with consumption of the restaurant’s food. The “assumption of the risk” defense contends that if a plaintiff actively and willingly proceeds in the face of danger, knowing or having reason to know of the danger faced, the defendant is not liable for any injuries sustained by the plaintiff. Expressed another way, assumption of the risk, if accepted by a trial jury as a legitimate defense in a particular case, completely prohibits the plaintiff’s recovery from the defendant. As discussed in response to Discussion Question 2 below, in addition to the “assumption of the risk” argument, the Heart Attack Grill can*



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*defend against liability by arguing insufficient proof of causation of harm. Who could say, with any degree of reasonable certainty, that the Heart Attack Grill's food caused a person's death, when that person might have also eaten at McDonald's, Wendy's and/or Burger King? For that matter, the person could have cooked and consumed a great deal of unhealthy food at home!*

2. In your reasoned opinion, is the Heart Attack Grill legally responsible for the death of its 29-year-old, 570-pound "spokesmodel," Blair River? Why or why not?

*Both the causation and assumption of the risk defenses would make it difficult for Blair River to prevail in a civil case against the Heart Attack Grill. The causation element of tort liability means that in order for a plaintiff to prevail in a tort action against a defendant, the plaintiff must prove, by a preponderance of the evidence, that the defendant caused the plaintiff's harm. How could a jury conclude, with any degree of evidentiary certainty, that consumption of the Heart Attack Grill's food proximately caused Blair River's death? Further, as discussed in response to Discussion Question 1 above, the "assumption of the risk" defense contends that if a plaintiff actively and willingly proceeds in the face of danger, knowing or having reason to know of the danger faced, the defendant is not liable for any injuries sustained by the plaintiff. River knew that the Heart Attack Grill's food is not particularly healthy. Is this knowledge not assumption of the risk?*

3. Heart Attack Grill owner, Jon Basso, admits that "Had he (Blair River, the restaurant's 570-pound spokesperson) been thinner, he would have most likely survived...and that's a hard fact that I'm not here to deny." Is this statement a legal admission of liability for River's untimely death? Why or why not?

*Although this statement could conceivably be used as evidence against Basso and the Heart Attack Grill, this statement is not a legal admission of liability for River's untimely death. What jury could conclude, with any degree of reasonable certainty, that River's 570-pound weight was the direct and exclusive result of his association with the Heart Attack Grill?*



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## Of Special Interest

This section addresses the question of whether the business practices of the "Heart Attack Grill" (referenced in the "Video 2" section of this newsletter) are ethical.

## Ethical Dilemma

### **"Heart Attack Grill"**

Note: This Ethical Dilemma is based on the "business model" (including the advertising and product offerings) of the "Heart Attack Grill" and the associated material (including videos and articles) presented in the "Video 2" section of this newsletter.

### **Discussion Questions**

1. As the first video indicates, Heart Attack Grill owner Jon Basso "absolutely agrees" that he is "very morbidly" using spokesperson Blair River's death to continue to market his restaurant, and that in a "very sick way" River's death has gotten his restaurant's promotional message out further. Basso readily admits that River's death has given him "zero pause" in terms of promoting the restaurant and its theme. Do these statements indicate a lack of business ethics on the part of Jon Basso? Why or why not?

*This is an opinion question, so student responses will likely vary.*

2. As the first video indicates, Heart Attack Grill owner Jon Basso once owned a chain of Jenny Craig weight loss centers and several personal training studios. Basso attempts to justify his restaurant and its associated theme by claiming that America needs "shock therapy" to cure its obesity epidemic. Basso states, "I hope that every single person out there comes in and buys a hamburger and a t-shirt from me. But...I am saying as loudly and as clearly as any business in America can, this (the consumption of fatty foods in huge portions) is dangerous." Is there an argument to be made that Basso is actually acting ethically in terms of his "shock therapy" (offering outrageous portions of unhealthy food?) Why or why not?

*This is an opinion question, so student responses will likely vary. Your author is intrigued by the "shock therapy" argument. It is very interesting to consider whether it is possible for Basso to simultaneously assume the roles of capitalist and consumer advocate, capitalizing on America's cultural compulsion for larger and larger portions of food and the desire to live dangerously, while also sending a not-so-subtle message that such dietary habits can give you a heart attack!*



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3. Is it unethical for the Heart Attack Grill to offer free food to any patron (and employee) over 350 pounds? Explain your response.

*This is an opinion question, so student replies will likely vary. In your author's opinion, although it might be unethical for the Heart Attack Grill to contribute to the "dietary delinquency" of those weighing over 350 pounds, it represents marketing brilliance in terms of the "buzz" (public discussion about the restaurant and its food) it creates!*



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## Of Special Interest

This section of the newsletter will assist you in covering Article 1 (“Supreme Court Upholds Obama’s Health-Care Law”) and Video 1 (“Obama, Romney and Lawmakers React to SCOTUS Decision”) of the newsletter.

## Teaching Tips

### **Teaching Tip 1 (Related to Article 1-“Supreme Court Upholds Obama’s Health-Care Law” and Video 1-“Obama, Romney and Lawmakers React to SCOTUS Decision”):**

Use the following article to discuss with students the key provisions of the Patient Protection and Affordable Care Act. Once you have addressed the specific provisions of the Act with them, solicit their opinion in terms of which measures they support, and which measures they oppose. It would also be interesting to determine whether any students have changed their opinions regarding the Act in light of learning its key provisions.

#### **“Key Provisions of Health Reform that Take Effect Immediately”**

<http://www.whitehouse.gov/healthreform/immediate-benefits>

#### **1) Small Business Tax Credits**

Offers tax credits to small businesses to make employee coverage more affordable. Tax credits of up to 35 percent of premiums will be available to firms that choose to offer coverage.

*Effective beginning calendar year 2010* (Beginning in 2014, the small business tax credits will cover 50 percent of premiums.)

#### **2) No Discrimination against Children with Pre-Existing Conditions**

Prohibits new health plans in all markets plus grandfathered group health plans from denying coverage to children with pre-existing conditions.

*Effective 6 months after enactment* (Beginning in 2014, this prohibition would apply to all persons.)

#### **3) Help for Uninsured American with Pre-Existing Conditions until Exchange is Available (Interim High-Risk Pool)**

Provides access to affordable insurance for Americans who are uninsured because of a pre-existing condition through a temporary subsidized high-risk pool.



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*Effective in 2010*

## **4) Ends Rescissions**

Bans insurance companies from dropping people from coverage when they get sick.

*Effective 6 months after enactment*

## **5) Begins to Close the Medicare Part D “Donut Hole”**

Provides a \$250 rebate to Medicare beneficiaries who hit the donut hole in 2010.

*Effective for calendar year 2010* (Beginning in 2011, institutes a 50 percent discount on prescription drugs in the donut hole; also completely closes the donut hole by 2020.)

## **6) Free Preventive Care under Medicare**

Eliminates co-payments for preventive services and exempts preventive services from deductibles under the Medicare program.

*Effective beginning January 1, 2011*

## **7) Extends Coverage for Young People up to 26th Birthday through Parents' Insurance**

Requires new health plans and certain grandfathered plans to allow young people up to their 26th birthday to remain on their parents' insurance policy, at the parents' choice.

*Effective 6 months after enactment*

## **8) Help for Early Retirees**

Creates a temporary re-insurance program (until the Exchanges are available) to help offset the costs of expensive premiums for employers and retirees for health benefits for retirees age 55-64.

*Effective in 2010*

## **9) Bans Lifetime Limits on Coverage**

Prohibits health insurance companies from placing lifetime caps on coverage.

*Effective 6 months after enactment*



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## 10) Bans Restrictive Annual Limits on Coverage

Tightly restricts the use of annual limits to ensure access to needed care in all new plans and grandfathered group health plans. These tight restrictions will be defined by HHS.

*Effective 6 months after enactment* (Beginning in 2014, the use of any annual limits would be prohibited for all new plans and grandfathered group health plans.)

## 11) Free Preventive Care under New Private Plans

Requires new private plans to cover preventive services with no co-payments and with preventive services being exempt from deductibles.

*Effective 6 months after enactment*

## 12) New, Independent Appeals Process

Ensures consumers in new plans have access to an effective internal and external appeals process to appeal decisions by their health insurance plan.

*Effective 6 months after enactment*

## 13) Ensures Value for Premium Payments

Requires plans in the individual and small group market to spend 80 percent of premium dollars on medical services, and plans in the large group market to spend 85 percent. Insurers that do not meet these thresholds must provide rebates to policyholders.

*Effective on January 1, 2011*

## 14) Community Health Centers

Increases funding for Community Health Centers to allow for nearly a doubling of the number of patients seen by the centers over the next 5 years.

*Effective beginning in fiscal year 2011*

## 15) Increases the Number of Primary Care Practitioners

Provides new investments to increase the number of primary care practitioners, including doctors, nurses, nurse practitioners, and physician assistants.





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*Effective beginning in fiscal year 2011*

## **16) Prohibits Discrimination Based on Salary**

Prohibits new group health plans from establishing any eligibility rules for health care coverage that have the effect of discriminating in favor of higher wage employees.

*Effective 6 months after enactment*

## **17) Health Insurance Consumer Information**

Provides aid to states in establishing offices of health insurance consumer assistance in order to help individuals with the filing of complaints and appeals.

*Effective beginning in fiscal year 2010*

## **18) Holds Insurance Companies Accountable for Unreasonable Rate Hikes**

Creates a grant program to support States in requiring health insurance companies to submit justification for all requested premium increases, and insurance companies with excessive or unjustified premium exchanges may not be able to participate in the new Health Insurance Exchanges.

*Starting in plan year 2011*

## **Teaching Tip 2 (Related to Related to Article 1-“Supreme Court Upholds Obama’s Health-Care Law” and Video 1-“Obama, Romney and Lawmakers React to SCOTUS Decision”):**

Use the following article, which addresses physicians, to discuss with students the Patient Protection and Affordable Care Act and its effect on physicians (Source: [www.physicianspractice.com](http://www.physicianspractice.com))

### **“Key Provisions of the Affordable Care Act for Physicians”**

The Supreme Court's ruling to uphold the Affordable Care Act (ACA) by a 5 to 4 margin means for many physicians the end of two years of uncertainty.

Many of you have stalled in preparing for and/or participating in key elements of the healthcare law, and who could blame you. Until June 28, 2012 (the date of the United States Supreme Court decision upholding the Affordable Care Act), it was unclear whether the law would actually exist in the future. Now it appears that key provisions of the law scheduled to go into effect in 18 months will become a reality.



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Though there is still a ways to go before every milestone is reached (plus, Republican presidential candidate Mitt Romney has said he will repeal the law if he ousts President Obama in November) it is time that physicians take a closer look at the law and the key provisions within it that could affect you and your patients.

Here are a few of the most notable elements of the law to pay attention to:

## **Physician Pay**

The Medicaid expansion portion of the law will broaden the federal program to include individuals under 133 percent of the poverty level, (around \$15,000 for an individual; \$30,000 for a family of four). That will result in 17 million newly insured individuals in 2014.

In an effort to ensure that physicians don't shut their doors to these patients, the health law will increase Medicaid pay to primary-care doctors to Medicare levels in 2013 and 2014. According to the Academy of Family Physicians, that's an average reimbursement increase of about 34 percent.

The ACA also focuses on attracting more physicians to rural areas. It includes provisions to increase payments to rural healthcare providers. For instance, qualified physicians will receive a 10 percent bonus payment for primary-care services provided to Medicare patients from 2011 to 2015.

Physician payment reforms just beginning to take root will also continue at full speed ahead. For instance, the healthcare law authorizes funding for a handful of Medicare value- and cost-based reimbursement initiatives, such as a pilot program for bundled payments, and the Medicare Shared Savings program, also known as the accountable care organization program.

## **Increased Focus on Fraud and Abuse**

The ACA sets forth new resources to fight fraud and abuse in the Medicare and Medicaid programs. Those resources include allocating an additional \$350 million to the Healthcare Fraud and Abuse Control Program to ramp up antifraud efforts, which include increasing scrutiny of claims before payment, investing in sophisticated data analytics, and employing additional law enforcement agents. It also puts in place new screening procedures for physicians participating in the federal payer programs.

That means physicians must ensure that they have a strong fraud and abuse compliance program in place.

"Physicians really can't fly under the radar like they thought they used to be able to now," Todd Rodriguez, a healthcare attorney with Fox Rothschild LLP in Exton, Pa., recently told *Physicians Practice* of the fraud and abuse prevention efforts.



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## Patient Demand

We already mentioned that an estimated 17 million patients will gain insurance as a result of the Medicaid expansion. But that's only half of it. In total, an estimated 32 million people are expected to gain insurance as a result of the ACA and its various provisions — such as one that allows young adults to remain on their parents' insurance plans until age 26.

Others will purchase insurance as a result of the individual mandate portion of the law, which requires that most individuals carry insurance or face a tax penalty for not having it. Access to affordable insurance will also increase for individuals who are not currently insured, as the law bars insurers from denying potential customers insurance or charging them higher premiums due to preexisting conditions or medical history.

For those physicians that have not yet begun preparing for this increase in newly insured patients, you may want to start making some changes. The increase in patient demand, coupled with the physician shortage, means you may be scrambling to find the manpower to treat all of these new patients.

It is important to note that the one element of the law that was struck down has to do with the Medicaid expansion. In simplest terms, originally the ACA stated that the government could refuse Medicaid funding to a state that refused to participate in the expansion. The court said this is unconstitutional and that states could refuse, without risking losing their current funding for Medicaid.

It is unclear how many states will refuse to participate in the expansion. Regardless, there will still be a high number of newly insured individuals who are seeking medical care in 2014.

## Patient Health

If you are a primary-care physician, much of the ACA focuses on expanding patient access to the services you provide. Key elements of the ACA that cover preventive services include:

- Preventive healthcare benefits, such as free coverage for mammograms, birth control, and annual wellness visits for Medicare patients.
- Drug benefit coverage for beneficiaries of the Medicare program for the elderly stuck in the prescription drug benefit coverage gap known as the "doughnut hole."

Again, these provisions will increase patient demand for your services.



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## Chapter Key for McGraw-Hill/Irwin Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 1, 5, 7, 9 and 42	Chapters 1, 5, 9 and 45	Chapters 1, 9 and 45	Chapters 1 and 5
<b>Kubasek et al., Dynamic Business Law: Summarized Cases</b>	Chapters 1, 5, 7, 9 and 42	Chapters 1, 5, 9 and 45	Chapters 1, 9 and 45	Chapters 1 and 5
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 1, 4, 5, 6 and 24	Chapters 1, 4, 6 and 25	Chapters 1, 6 and 25	Chapters 1 and 4
<b>Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 1, 3, 5, 7 and 51	Chapters 1, 3, 7 and 48	Chapters 1, 4, 7 and 48	Chapters 1 and 3
<b>Barnes et al., Law for Business</b>	Chapters 1, 4, 5, 7 and 25	Chapters 1, 4, 7 and 46	Chapters 1, 3, 7 and 46	Chapters 1 and 4
<b>Brown et al., Business Law with UCC Applications</b>	Chapters 1, 2, 5, 6 and 23	Chapters 1, 2, 6 and 15	Chapters 1, 6 and 15	Chapters 1 and 2
<b>Reed et al., The Legal and Regulatory Environment of Business</b>	Chapters 1, 6, 10, 13 and 21	Chapters 1, 6, 10 and 18	Chapters 1, 2, 10 and 18	Chapters 1 and 6
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 1, 4, 5, 7 and 12	Chapters 1, 5, 7 and 15	Chapters 1, 2, 7 and 15	Chapters 1 and 5
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 1, 2, 9, 11 and 22	Chapters 1, 2, 9 and 11	Chapters 1, 5, 9 and 21	Chapters 1 and 2
<b>Bennett-Alexander &amp; Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society</b>	Chapters 1, 6, 8 and 11	Chapters 1 and 6	Chapter 1	Chapter 1



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## This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 11th Edition 2012© (0073377716)
- Bennett-Alexander et al., The Legal Environment of Business in A Diverse Society, 1st Edition 2012© (0073524921)
- Brown et al., Business Law with UCC Applications Student Edition, 13th Edition 2013© (0073524956)
- Kubasek et al., Dynamic Business Law, 2nd Edition 2012© (0073377678)
- Kubasek et al., Dynamic Business Law: The Essentials, 2nd Edition 2013© (0073524972)
- Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition 2013© (0078023777)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 15th Edition 2013© (0073377643)
- McAdams et al., Law, Business & Society, 10th Edition 2012© (0073525006)
- Reed et al., The Legal and Regulatory Environment of Business, 16th Edition 2013© (0073524999)
- Melvin, The Legal Environment of Business: A Managerial Approach 2011© (0073377694)

