

Evolution of the Healthcare Contract:

A 1982 President's Commission identified professional and social difficulties with the judicially imposed doctrine of informed consent, including widespread confusion about its requirements. President's Commission for The Study of Ethical Problems in Medicine and Biomedical Research (Making Health Care Decisions: The Ethical And Legal Implications Of Informed Consent In The Patient-Practitioner Relationship. USGPO ;1:105 (1982.)

In 1983, California Board of Medical Quality Assurance conducted hearings on such far-reaching questions as how medical licensure served the public interest, whether its laws were unreasonable constraints on the growth of emerging health care perspectives and whether the law should be modified. It was called The 2052 Project because it considered the potential repeal of Cal. Bus. & Professions Code Sec. 2052 which defined and protected the scope of licensed medical practice. The chairman concluded the inquiry stating that:

...the central issue concerning the scope of professional responsibility was the need for doctors (and indeed all health practitioners) to establish with patients a process for clarifying their individual and mutual responsibilities in clinical relationships. This can best be accomplished through public and professional education about the way we allocate responsibility in all other relationships -- the making of individual agreements and contracts. (Ben Winters, California Board of Medical Quality Assurance 2052 Committee Memorandum, 5/20/83)

The late Yale Law Professor Jay Katz, MD, authored the classic book on Informed Consent, *The Silent World of Doctor and Patient*. He lived to see shared decision making emerge, and he taught that shared decision is the appropriate context in which we can discover how informed consent is understood and used.”

Plaintiff’s writings and presentations at grand rounds and conferences address the doctor-patient agreement. This evolution is still in a transition, begun by Chicago Law Professor Richard Epstein’s 1978 Law Review article *Medical Malpractice: The Case for Contract*, which was written for legal academia and the judiciary to prepare us for decades of evolution.

Bibliography of Jerry Green

Contracts With Your Doctor?, *New Realities* 1978 V.2, N.1

Allocating Responsibility by Contract, *Medicolegal News* 10/88, *Am Soc L Med*

The Health Care Contract: A Model for Sharing Responsibility, *Somatics* 3, (4) 1982

The Health Care Contract: Key to Minimizing Malpractice Risks,

Professional Liability Newsletter, 3/82 *Insurance Corporation of America*

Minimizing Malpractice Risks by Role Clarification: The Confusing Transition from Tort to Contract, *Annals of Int Med* 109/3: 234-241, 8/1/88 Written for physicians, this piece discusses the difficulties with informed consent identified by a President’s Commission in 1982 and their suggestion that shared decision-making be employed by the profession. It postulates the scope of practice and the allocation of responsibility for decisions.

Shared Decision Making and Role Clarification Potentials in Medicine
by Jerry Green <http://www.mediate.com/articles/greenJ3.cfm?nl=157>

Shared Planning: A New Foundation for Quality Criteria, *Physician Executive* 5/89
Dentistry and the Scope of Practice Boundaries, *Int J Biosocial & Med Res* 13(1) Spring 91
Compliers, Consenters, Collaborators & Deciders: Know Your Decision-Making Preferences
Medical Malpractice Prevention 9/91 WMCO
Medicine and the Scope of Practice Boundaries, *The Townsend Letter for Doctors*, Feb, 95
Integrating Conventional Medicine and Alternative Therapies,
Alternative Therapies in Health and Medicine, July 96
Collaborative Physician-Patient Planning and Professional Liability: Opening the Legal Door to
Unconventional Medicine, *Advances in Mind-Body Medicine*, V.15, N.1, Spring '99

Medical Conference Presentations of Jerry Green

UCSF/Harvard Pilgrim Health, National Education Conference
Kaiser Permanente Hospital Grand Rounds
U. of California Obstetrics Grand Rounds
Cal. Soc. for Healthcare Risk Managers (CSHRM)
Annual Meeting Medical Board of California Colloquium
Barristers' Health Law Committee, S.F. Bar Association Cambridge Health Resources
Complementary Medicine Innovision/Alternative Therapies Annual Conference NMHCC
Integrating Alternative Medicine & Managed Care Alta Bates Medical Center
Health Care Administrators
Philadelphia Academy of Family Physicians
Sante Health System, Keynote: Nuts & Bolts of Managed Care
Ethix Development Corporation / Health Data Research
Health Devices Research Institute
Blue Shield Medical Directors of Northern California
Blue Shield Medical Directors of Southern California
University of California Extension Program for Managed Care
University of California at Santa Cruz Extension
University of San Diego
Southern California Utilization Management Conference
Rand Corporation Medical Committee
California Association of HMOs (CAHMO)
Annual Conference American College of Utilization Review Physicians Certification
Family Medicine Conference: Power of the Art
St. Lukes Medical Center Grand Rounds
Pacific Presbyterian Medical Center Department of Medicine
Marin County Chamber of Commerce
University of California Surgical Grand Rounds
Childrens Hospital Grand Rounds
Pacific Presbyterian Medical Center Grand Rounds
Obstetrical Anesthesia-1987 UCSF Medical Center
Medical Educators Committee UCSF/ Pacific Presbyterian Hospital
California Board of Medical Quality Assurance 2052 Committee
Collaborative Health Program, The San Francisco Consortium

Medical decision making is now evolving from being seen in the courts as governed by tort principles. Several academic centers now exist such as Mass General Hospital's Health Decision Sciences Center seek to foster shared decision making and implement sustainable decision aid delivery. (<https://search.app/vxeNkCXHtSG4VGfRA>)

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Retired Attorney Jerry A. Green graduated from University of California in Berkeley and attended Boalt Law School. He defended holistic health practitioners and pioneered role clarification and published and lectured on the healthcare contract. He is a special consultant to other attorneys on medical issues in malpractice cases and founding advisor to CommonSpace Community Land Trust, and he offers coaching for individuals who are self-represented in litigation matters. He studied Somatics, Structural Integration and has trained in Aikido since 1980. He's a Lead Elder of the NorCal Mankind Project, and a founding member of Applied Aikido Association. <https://www.applied-aikido.org>

"Your professional education at Grand Rounds in at UCSF was extremely enlightening and very effective in defining the various roles played by each person."
Edward C. Hill, MD Professor Emeritus, University of California, San Francisco

There exists between doctors and patients certain identifiable patterns of misunderstandings which generate unrealistic expectations, adversity and litigation. The remedy for these misunderstandings is role clarification and collaborative planning. "This makes the practice of medicine more interesting and more fun."
Dermatologist David Elpern, MD

"I am fortunate to have found Mr. Green, who is a fruitful source of ideas on successfully structuring health care practice. He is unusually talented in explaining these ideas in an educational format. He listens to client concerns, analyzes them cogently, and suggests approaches succinctly and effectively."
K. Lee Peifer, Health Care Attorney

Jerry equalizes the playing field for Plaintiff's in medical malpractice cases; a great source of expert referrals. He helps immensely with identifying and focusing on the issues where experts are needed. Medical malpractice is a technical field, and I don't take it on without him. He is the best!
John K. Crowley, Attorney