HCB 502: Landmark Cases in Bioethics

Course Meeting Details:

- Semester: Fall 2018 (8/27/18 – 12/20/18)
- Schedule: Tuesdays, 6:00 – 9:00 pm
- Location: Room 067, Preventive Medicine, HSC 3rd Floor

Course Co-Directors will attend sessions throughout:

Julie Agris, PhD, JD, LLM FACHE
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Affiliate, Center for Medical Humanities, Compassionate Care and Bioethics
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Stephen G. Post, PhD
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Professor of Family, Population and Preventive Medicine
Stony Brook University School of Medicine
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631.444.9797

Office hours for faculty may be made by appointment.

Course Description:

What is a life worth living? How do we decide—and who decides—when to use medical technologies such as ventilators, kidney dialysis machines, artificial feeding tubes, and reproductive technologies? This is an intensive introduction to some of the landmark legal cases in medical ethics that have changed the ways that we are born, cared for, and die in the United States, with examples and comparisons from the history and cross-cultural settings. This course melds the expertise of medical ethics and health law and policy to facilitate recognition of the importance of landmark legal cases in shaping US law and policy, and the ways in which new medical technologies bring to the fore conflicts and challenges that were either not present or not as pressing in the past.

Topics include: the right of privacy and health care; end-of-life planning and treatment; informed consent for medical treatment; public health and vaccination; ethics of research on human subjects; women’s bodies and reproductive rights; triage and allocation of scarce health care resources.

Course Objectives:

1. At the end of this class, students will have been introduced to a selection of the big ideas and canonical legal and medical cases in bioethics.
2. Students will be able to identify and describe the principles, interests, and moral and legal philosophies at stake in the cases, and understand how these were weighed and balanced in the case, and whether consensus has shifted since.

3. Students will have an appreciation for the context and history underlying both the cases explored and the sets of rules, regulations, and principles currently used to decide these issues.

**Course Objectives specific to legal materials include:**

1. Students will have a general familiarity with the following: structure of US government and the legal system, basics of Constitutional law including the right of privacy, using legal terminology, as well as the processes of legal reasoning and analyzing legal issues.

2. Students will have a basic understanding of substantive laws related to selected health care issues including informed consent for medical treatment, participation in research with human subjects, end-of-life treatment decisions, reproductive rights including abortion, and individual liberties involving sexuality.

3. A general goal for students is to demystify aspects of the law for non-lawyers.

**Required Text:**


**Supplemental Texts (optional):**


**Course Requirements:**

This course will be conducted as a graduate seminar, with formal presentation of some background material by the instructor and rich discussion of the readings and the cases for the week, with each week designed to explore a different set of ethical, social, and legal issues raised by medical and public health practice. Students are expected to read the all assigned articles, cases, chapters, and excerpts in advance, AND come to class prepared to discuss them. Items labeled “Further Reading” are optional.
Evaluation:
Students will be graded on:

Performance will be evaluated as follows:

<table>
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<tr>
<th>Task</th>
<th>Percentage</th>
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<tr>
<td>Quality of individual student’s meaningful class participation</td>
<td>20%</td>
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<td>throughout the course.</td>
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<tr>
<td>First Case Reflection</td>
<td>15%</td>
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<tr>
<td>*The case reflections will focus on legal cases studied in class or</td>
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<td>other cases related to health law and ethics. They should outline</td>
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<td>the “Issue,” “Rule,” “Application” and “Conclusion” of the case.</td>
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<td>In addition, the reflection should include a section on “Supplemental</td>
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<td>Information” that would have been helpful to analyze the case and</td>
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<td>a section on “Future Application” which explains how one might</td>
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<td>foresee the case being applied in future healthcare practice.</td>
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<tr>
<td>Second Case Reflection</td>
<td>15%</td>
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<tr>
<td>First Draft of Paper in Thesis-Driven Format and Presentation to</td>
<td>20%</td>
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<tr>
<td>Class</td>
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<tr>
<td>*This paper will argue and support your position on an issue of</td>
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<td>your choice with cross-cutting legal and ethical dimensions. The</td>
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<td>issue may be based on materials covered in the course or a relevant</td>
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<td>external area of interest. Please see the “Writing Thesis-Driven</td>
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<td>Papers” and “Legal Reference Materials” sections herein for</td>
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<td>guidance on research and writing your paper.</td>
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<td>Final Paper in Thesis-Driven Format</td>
<td>30%</td>
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<td>*This paper will demonstrate editorial revision from the first</td>
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<td>draft through deeper thought of the selected topic. Feedback of</td>
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<td>faculty, subject-matter experts (if applicable), peer input and</td>
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<td>one’s own self-reflection should drive this writing-improvement</td>
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<td>process.</td>
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<td>Total</td>
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Planning Ahead:
Students are urged to read ahead in the course materials, to briefly review all readings in the Pence book and on Blackboard to begin planning their paper topics early. If desired, students may schedule a meeting with Dr. Post or Dr. Agris to discuss their choice of paper topics.

Incomplete Policy:
Our official Program Policy does not permit the issuance of “Incomplete” grades, except in cases of verifiable extenuating circumstances, such as extreme health emergencies or disability. In such circumstances, students must notify the instructor and make specific arrangements for the completion
of outstanding coursework prior to the final course deadline (see Course Outline for specific dates below). Students who do not complete coursework on time may receive a grade of ‘F’ for the course.

**References and citation of sources:**
Students will be expected to adhere to standard academic conventions for quotation and citation of sources. Any standard reference system, University of Chicago, MLA, AMA or other system of citation, is acceptable as long as it allows your readers to trace the origins of your claims to the original publication or source. **If you are in doubt regarding whether to cite a source, include it in your references.**

**Feedback:** Written submissions will receive comments from a faculty member. This feedback will be as comprehensive as possible save for time constraints imposed by University end of semester grade submission requirements.

**Course Readings:**
There is one required book for the course which will be available for purchase on Amazon via the Stony Brook Health Sciences Center Bookstore on Level 2 of the HSC building. It is also available from other online bookstores and a variety of used book resellers. Additional required readings will be posted on the course Blackboard site, available from the Stony Brook Library. Please advise faculty immediately if you have any difficulty accessing course readings.
<table>
<thead>
<tr>
<th>Week</th>
<th>DATE</th>
<th>TOPIC</th>
<th>LECTURERS</th>
<th>ASSIGNMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8/28/18</td>
<td>Introduction to the Legal System and the Intersection of Ethical Theory</td>
<td>Drs. Agris and Post</td>
<td>Pence—Ch. 1 and See Reading List Below on Blackboard</td>
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<tr>
<td>2</td>
<td>9/4/18</td>
<td>Labor Day- No Class Meeting</td>
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<td>Read ahead for upcoming weeks--(See assignments herein)</td>
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<td>3</td>
<td>9/11/18</td>
<td>Introduction to Constitutional Law</td>
<td>Drs. Agris and Post</td>
<td>See Reading List Below and on Blackboard</td>
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<td>4</td>
<td>9/18/18</td>
<td>Origins of the Right to Privacy: Liberty and Substantive Due Process—\n(Griswold v. Connecticut) Equal Protection—\n(Eisenstadt v. Baird)</td>
<td>Drs. Agris and Post</td>
<td>Pence—Ch. 4 and See Reading List Below and on Blackboard \n*Begin to draft final paper</td>
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<td>5</td>
<td>9/25/18</td>
<td>Apex of the Right to Privacy and Strict Scrutiny: Reproductive Freedom and the Right to Die: \nThe right to reproductive freedom—\n(Roe v. Wade) \nThe right to refuse medical treatment—\n(In re Quinlan)</td>
<td>Drs. Agris and Post</td>
<td>Pence—Ch. 4 and See Reading List Below and on Blackboard \n*Continue to draft final paper</td>
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<td>6</td>
<td>10/2/18</td>
<td>The Erosion of Privacy and Strict Scrutiny--Ascendance of Federalism and Emergence of the Undue Burden Standard: \nThe right to refuse life-sustaining treatment—\n(Cruzan v. Director, Missouri Department of Health) \nLimiting the right to abortion—\n(Planned Parenthood of Southeastern Pennsylvania v. Casey)</td>
<td>Drs. Agris and Post</td>
<td>First Case Reflection Due \nPence—Ch. 3 and See Reading List Below and on Blackboard \n*Continue to draft final paper</td>
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<td>7</td>
<td>10/9/18</td>
<td>Recent Constitutional Developments in Reproductive Health and Sexuality: Privacy Revived?</td>
<td>Drs. Agris and Post</td>
<td>Pence—Ch. 13 and See Reading List Below and on Blackboard \n*Continue to draft final paper</td>
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<td>Week</td>
<td>Date</td>
<td>Topic</td>
<td>Instructor(s)</td>
<td>Additional Notes</td>
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<td>Week 8</td>
<td>10/16/18</td>
<td>Clinical Informed Consent &amp; Refusal of Care: Autonomy v. State Interests</td>
<td>Drs. Agris and Post</td>
<td><strong>Second Case Reflection Due</strong> Pence—Ch. 14 and See Reading List Below and on Blackboard *Continue to draft final paper</td>
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<tr>
<td>Week 9</td>
<td>10/23/18</td>
<td>Physician Assisted Suicide: Legal and Clinical Aspects</td>
<td>Drs. Agris and Post</td>
<td>Pence—Ch. 2 and See Reading List Below and on Blackboard *Continue to draft final paper</td>
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<td>Week 10</td>
<td>10/30/18</td>
<td>Ethics of Triage and Allocation of Scarce Resources</td>
<td>Drs. Agris and Post</td>
<td>Pence—Ch. 11 and See Reading List Below and on Blackboard *Continue to draft final paper</td>
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<td>Week 12</td>
<td>11/13/18</td>
<td>Research Ethics: Tuskegee and Other Scandals</td>
<td>Drs. Agris and Post</td>
<td><strong>Draft Final Paper Due for Review and Discussion Purposes</strong> Pence—Ch. 9 and See Reading List Below and on Blackboard</td>
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<tr>
<td>Week 13</td>
<td>11/20/18</td>
<td>Thanksgiving Holiday—No Class Meeting</td>
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<td>Rejuvenate-Enjoy Family and Friends! *Also, prepare to discuss papers</td>
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<tr>
<td>Week 14</td>
<td>11/27/18</td>
<td>Student Paper Presentations and Discussion</td>
<td>Drs. Agris and Post</td>
<td>Pence—Ch. 17</td>
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<td>Week 15</td>
<td>12/4/18</td>
<td>Ethical Issues of the Affordable Care Act</td>
<td>Drs. Agris and Post</td>
<td><strong>Final Paper Due (12/7/18)</strong></td>
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Reading List

Week 1 (8/28/18)—Introduction to Ethical Theory and the Legal System

- Pence—Chapter 1
  - Daniel Callahan, “Bioethics,” vol. 1, pp. 278-287. (See Blackboard)
  - Donald C. Ainslie, “Principalism,” vol. 4, pp. 2099-2104. (See Blackboard)
  - Albert R. Jonsen, “Casuistry,” vol. 1, pp. 374-380. (See Blackboard)

Week 3 (9/11/18)—Introduction to Constitutional Law

- Read the entire Constitution of the United States of America, including all Amendments, on Blackboard (consider buying a pocket copy of the Constitution for future reference).
  - In the event your Blackboard links to the Constitution do not function:
    - [http://www.archives.gov/exhibits/charters/constitution_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)

Week 4 (9/18/18)—Origins of the Right to Privacy

- Pence—Chapter 4
- *Griswold v. Connecticut* (See Blackboard)
- *Eisenstadt v. Baird* (See Blackboard)
- Menikoff—Chapter 2, pp. 17-34. (See Blackboard)
- McCrary S.V. Key to Constitutional Standards (See Blackboard)
  - (It will be helpful to print and bring this to class with you each week.)
- Re-read Amendments # 5 and # 14 to the US Constitution (See links from Week 1 above)
Week 5 (9/25/18)—Apex of the Right to Privacy and Strict Scrutiny: Reproductive Freedom and the Right to Die

- Pence—Chapter 4
- *Roe v. Wade* (See Blackboard)
- *In re Quinlan* (See Blackboard)
- Menikoff—Chapter 4, pp. 53-68 (See Blackboard)
- Menikoff—Chapter 10, pp. 241-256 (See Blackboard)

**Further Reading:**


Week 6 (10/2/18)—The Erosion of Privacy and Strict Scrutiny: Ascendance of Federalism and Emergence of the Undue Burden Standard

- **First Case Reflection Due**
- Pence—Chapter 3
- *Cruzan v. Director, Missouri Department of Health* (See Blackboard)
- *Planned Parenthood of Southeastern Pennsylvania v. Casey* (See Blackboard)
- Menikoff—Chapter 11, pp. 304-326 (See Blackboard)
- Menikoff—Chapter 4, pp. 68-76 (See Blackboard)
- Excerpt from *Harris v. McRae* (See Blackboard)
Week 7 (10/9/18)—Recent Constitutional Developments in Reproductive Health and Sexuality: Privacy Revived?

- Pence—Chapter 13
- Menikoff- Chapter 2, pp. 35-38 (See Blackboard)
- Excerpt from Bowers v. Hardwick (See Blackboard)
- Lawrence v. Texas (See Blackboard)
- Liptak A. “Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide” and “Highlights from the Supreme Court Decision . . .”, The New York Times, June 26, 2015. (See Blackboard)

Week 8 (10/16/18)—Clinical Informed Consent and Refusal of Care: Autonomy v. State Interests

- Second Case Reflection Due
- Pence—Chapter 14
- Menikoff, Law & Bioethics, Ch 7. The Doctor-Patient Relationship, pp. 151-174 (See Blackboard)

Further Reading:


**Week 9 (10/23/18)—Physician-Assisted Suicide: Legal and Clinical Aspects**

- Pence—Chapter 2
- *Washington v. Glucksberg*
- *Vacco v. Quill*
- Menikoff—Chapter 11, pp. 327-355.

**Week 10 (10/30/18)—Ethics of Triage and Allocation of Scarce Resources**

- Pence—Chapter 11

**Further Reading:**


**Week 11 (11/6/18)—Public Health Law**

- *Jacobson v. Massachusetts* (See Blackboard)
- *Buck v. Bell* (See Blackboard)
- Menikoff—Chapter 3, pp. 39-42. (See Blackboard)
Week 12 (11/13/18)—Research Ethics: Tuskegee and Other Scandals

- Draft Final Paper Due for Review and Discussion Purposes
- Pence—Chapter 9

Consent and Coercion: The Nuremberg Doctors’ Trial


The Whistleblower: Henry Beecher


The Tuskegee Study

- Alan Brandt, “Racism and Research: The Case of the Tuskegee Syphilis Study”

Week 14 (11/27/18) and 15 (12/4/18)—Ethical Issues of the Affordable Care Act

- Pence—Chapter 17

- Final Paper Due (12/7/18)
Legal Reference Materials:

If you wish to pursue legal research on your own, you may find the following sites helpful:

**Lexis**- excellent on-line legal research tool via the Lexis/Nexis Academic Universe (access available through official Stony Brook main library site; click on “Research Databases”, select category “L”, then “Lexis Academic”, then “Legal Research”)
http://www.sunysb.edu/library/

(Direct access via Stony Brook computers- [http://web.lexis-nexis.com/universe](http://web.lexis-nexis.com/universe))

**Legal Information Institute**- a good legal research site at Cornell Law School
http://www.law.cornell.edu/

**Thomas**- official legislative research site for the U.S. House of Representatives
http://thomas.loc.gov/

**United States Senate**- official legislative research site for the U.S. Senate
http://www.senate.gov/

**New York State Legislature**- official legislative research site
http://leginfo.state.ny.us:82/INDEX1.html

**New York State Assembly**- official legislative research site for the Assembly only
http://assembly.state.ny.us/

**Code of Federal Regulations**- official U.S. administrative law research site
http://www.access.gpo.gov/nara/cfr/index.html

**Hieros Gamos** – legal reference materials (e.g. law dictionaries) and research databases
http://www.hg.org/index.html

**FindLaw**-commercial site, but not bad
http://www.findlaw.com/index.html

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Writing Thesis-Driven Papers (adapted from Dr. Post’s syllabus):

1. **Introduction**

A successful thesis-driven piece of scholarship will always begin with a very clear question replete with careful definition of terms. Then state your answer to the question in a clear, debatable thesis statement. A debatable thesis statement is one about which reasonable persons may have differing opinions. This is best placed in the first paragraph of the paper. You will need to work on this and revise as needed, but do not ever lose sight of your thesis statement. You should not veer off course, because the rest of the paper is an argument supporting your thesis. Every sentence in your paper ought to be connected to your thesis in some way. It might help introduce your audience to the nuances of the topic you are discussing so that they will understand how your thesis differs from claims made by others.

A good paper usually includes a second paragraph that discusses in brief why the question and thesis are important. Is the thesis important for solving a major problem in ethics, law, or both? Who might be impacted by your paper and how?

A third paragraph usually describes how you are planning to structure the paper, and some mention of key sources. It is a good idea to ask about every topic or point in your paper, “how will adding this information help my reader understand my thesis?” If you cannot answer this question, then the information is probably better left out. For example,

“In this paper, I will argue that the 2014 U.S. Supreme Court case of Burwell v. Hobby Lobby Stores, Inc., was wrongly decided. I will evaluate the relevant legal precedent and analyze arguments from the Court’s opinion, including arguments x, y, and z. I will further argue that the Court wrongly disregarded material about medical facts from relevant amicus briefs and provide supporting scientific literature.”

Or/

“I shall contend that under certain urgent conditions, the forced C-section can be justified. I will cover the history of debate over this issue, the philosophical and ethical positions of relevance, and some of the case law involved.”

Or/

“Selective abortion for reasons of gender alone is morally unacceptable. I will examine the history of this practice, and arguments for and against this practice drawing on gender studies, ethics, and policy. In addition to providing a balanced exposition of these arguments, I will contend that the practice is unacceptable for reasons x, y, and z.”

The outline and headings (i.e., the organization of the paper) should be designed to move your thesis forward in a constructive way. Outline your thoughts before you begin to write.

2. **Main Body**

Be certain to use headings well. Headings are a roadmap for the reader. They are like signposts on the highway. They should not be complex or long, so choose a few effective words. Subheadings can sometimes also be quite helpful. **Headings** should be in bold, and **subheadings** should be in italics.
Develop your ideas and use transitions to link the major strands of your exposition. Remember, though your interlocutors may be able to follow certain moves you make because they are familiar with the literature the public will not. Make sure that an intelligent person who is not an expert in your topic could easily follow your argument. If you jump around without an indication of why, it will be extremely difficult for your reader to follow you.

When agreeing or disagreeing with an author, including authors of judicial opinions and statutes, don’t merely state that you agree or disagree but make a case for why you do. Clearly identify the views of the author whom you will be discussing. Highlight important distinctions and concepts of which the author makes use. It is essential to use citations when doing this. This will indicate to your interlocutors precisely the point at which you disagree, while introducing the public to an important aspect of the conversation you are engaging in and of which they may not be aware.

If you plan to disagree with an author’s position, then raise at least one objection that you would advance against the view as you understand it. While the public may be interested in simply learning alternative views on the matter, your interlocutors will want to know why your position differs from those already accepted. If you plan to agree with the author’s position, then be sure to explain why it is important that you agree. Others may have raised objections to the position with which you agree. Explain these objections and then explain how it is that the position you endorse overcomes them. Once again, proper citation is essential to this aspect of your paper.

When in doubt, break up long sentences and split up long paragraphs. Semi-colons are hard to use well, so avoid them unless you are sure of your grammar, and avoid page-long paragraphs that beg to be broken up into two or three.

Take care to select quoted phrases, sentences, or segments of several lines with scholarly precision. Only quote the material that makes your point best, and always reference it. There is no need to quote excessively, and you should help the reader understand what you want them to get from a block quote, rather than leave it dangling at the end of a paragraph. Block quotes are acceptable if used wisely, but they should rarely, if ever, exceed ten lines.

3. Conclusion

Conclude with a brief summary of your paper.

Additional Writing Assistance

For your reference, there are selected tips from the Purdue University On-Line Writing Laboratory (OWL) in the course documents on Blackboard.
Americans with Disabilities Act:

If you have a physical, psychological, medical or learning disability that may impact your course work, please contact Disability Support Services, ECC (Educational Communications Center) Building, Room 128, (631) 632-6748. They will determine with you what accommodations, if any, are necessary and appropriate. All information and documentation will remain confidential.

Academic Integrity:

Each student must pursue his or her academic goals honestly and be personally accountable for all submitted work. Representing another person's work as your own is always wrong. Faculty are required to report and suspected instances of academic dishonesty to the Academic Judiciary. Faculty in the Health Sciences Center (HSC) (Schools of Health Technology & Management, Nursing, Social Welfare, Dental Medicine) and School of Medicine are required to follow their school-specific procedures. For more comprehensive information on academic integrity, including categories of academic dishonesty, please refer to the academic judiciary website at http://www.stonybrook.edu/uaa/academicjudiciary/

Critical Incident Management:

Stony Brook University expects students to respect the rights, privileges, and property of other people. Faculty are required to report to the Office of Judicial Affairs any disruptive behavior that interrupts their ability to teach, compromises the safety of the learning environment, or inhibits students' ability to learn. Faculty in the HSC Schools and School of Medicine are required to follow their school-specific procedures.