Sexual Harassment in Health Care
2016 JAMA study found that 30% of female physician-scientists reported that they had experienced sexual harassment during their careers.
What does ‘innocent until proven guilty’ mean?

Nassar surrounded by adults who enabled his predatory behavior

NATIONAL

USC Reaches $215 Million Settlement Over Gynecologist Abuse Allegations
Professional Boundaries Policy

Policy 1-020: Required Professional Boundaries in Relationships. Revision 0. Effective date July 1, 2018

https://regulations.utah.edu/general/1-020.php
What To Do When Enforcement Knocks
What to Do When Enforcement Knocks

A Lesson in Leverage
(courtesy of Inigo Montoya)

**Inigo:** Give us the gate key.

**Yellin:** I have no gate key.

**Inigo:** Fezzik, tear his arms off.

**Yellin:** Oh, you mean this gate key.
What to Do When Enforcement Knocks

Don’t Panic

Remember: You Are Not Alone!
- Contact key resources
  - Legal counsel/compliance personnel

Remember: The Leverage Lesson
- Cooperate
- Trust (but verify)
What to Do When Enforcement Knocks

Key Steps
- Express commitment to cooperation
- Explain the need to understand intent and scope
- Verify credentials and legal authority
- Explain the need to engage appropriate University personnel
- Call for assistance
Conflicts of Interest
Key Takeaways

- Fully and accurately disclose outside relationships
  - To the University
  - To journals/publications
  - To others as required by the COI Committee and University administrators

- Having financial and other relationships with outside entities that do or may do business with the University often creates COIs
  - Complete recusal is required

- The perception of a COI can be just as problematic as an actual COI

- Don’t accept gifts from vendors/industry reps
  - This applies regardless of the gift’s value and regardless of where the gift is given
Affirmative Action
Harvard Admissions Case

- Plaintiffs allege that Harvard’s admissions process discriminates against Asian Americans
- Harvard has a holistic admissions policy, in which applicants are individually assessed based on a number of factors, including:
  - Academics
  - Athletics
  - Extracurricular activities
  - “Personal factors” (the plaintiffs believe this factor is highly problematic)
- Harvard argues that while race is one of many factors considered, it is never used against an applicant, it is not a deciding factor, etc.
LEGISLATIVE COMMUNICATIONS

JIM HAISLEY
Utah Political Activities of Public Entities Act

Prohibits public entities from:
- Expending public funds to influence voters’ decisions on:
  - Candidates for public office
  - Judges standing for retention
  - Ballot initiatives

Prohibits public employees from:
- Using public email to solicit a campaign contribution or to influence voters’ decisions on:
  - Candidates for public office
  - Judges standing for retention
  - Ballot initiatives
  - Solicit campaign contributions
What’s Allowed
Advocacy by Private Citizens
◦ No limitation on free speech
  ◦ Own time
  ◦ Own resources
  ◦ Not acting on behalf of University

FREE SPEECH!
“Legislative Communications”

General rule: employees cannot directly/indirectly communicate, on behalf of the University, with a legislator to influence actions before the Utah Legislature.

Exceptions:
- President Watkins
- Dr. Michael Good and Dr. Dan Reed (2 SVPs)
- Jason Perry (VP for Government Relations)
- Natalie Tippets (Special Assistant to VP)
- Others as appointed by the President
- Position must be consistent with Governor and Regents
Key Takeaways

Advocacy as a private citizen OK, but you must:
◦ Use your personal resources/email (Gmail, personal letterhead, etc.)
◦ Do it on your own time
◦ Make the appropriate disclaimer (“I’m speaking on my own behalf”)

University advocacy through legislative liaison

No gifts to legislators, unless authorized in advance by Jason Perry
Tax Cuts and Jobs Act

- November 2, 2017 - Original bill introduced in the House
- November 16, 2017 - House passed the tax bill
- December 2, 2017 - Senate passed its version of the tax bill
- December 15, 2017 - Reconciliation of House and Senate bills completed
- December 22, 2017 - Signed into law
Key Changes for Tax-Exempt Organizations

- Unrelated Business Income Tax (UBIT)
- Charitable Giving
- Fringe Benefits to Employees
Unrelated Business Income Tax (UBIT)

UBIT = Federal corporate tax on the UBI of a tax-exempt organization

UBI = Gross income derived from:
1. Trade or business;
2. Regularly carried on; and
3. Substantially unrelated to the University’s exempt purpose
   • Substantial causal relationship (other than production of income)
   • Educational, scientific, health care, community benefit etc.

Common Exclusions:
- Passive sources – royalties, interest, dividends
- Convenience – bookstore, hospital gift shop, vending, parking lots
- Rent for real property (passive)
- Research
- Qualified sponsorships
UBIT Changes

- **New “Silo” Rule**
  - Pre-Act – Aggregate gross income from all T/B and deduct aggregate expenses from all T/B
  - Business A – Income ($100,000) – Deductible Expenses ($75,000) = UBTI for Business A ($25,000)
  - Business B – Income ($100,000) – Deductible Expenses ($125,000) = Net Operating Loss (NOL) for Business B ($-25,000)
  - Post-Act – Each unrelated T/B is its own silo
    - UBTI of organization is sum of UBTI for each T/B, but UBTI for each T/B cannot be less than $0
    - Separate trade or business???
      - Reasonable, good-faith interpretation
      - NAICS 6-digit codes

- **Corporate Tax Rate**
  - Pre-Act - 35%
  - Post-Act – Reduced to 21%
Charitable Giving

- Rights to Purchase Tickets to Athletic Events
  - Pre-Act – Claim charitable contribution deduction for 80% of amount paid for rights
  - Deduction eliminated

- Increase Standard Deduction
  - Charitable contribution must be itemized to receive deduction
  - Option to itemize deductions or take the standard deduction
  - Single filers ($6K to $12K); Joint filers ($13K to $24K)
  - Sunsets 12/31/2025
Fringe Benefits

- **Costs of Certain Fringe Benefits Added to UBTI**
  - Qualified transportation fringe
    - Transit Pass
    - Qualified Parking
  - Parking facility used with qualified parking

- **Moving Expenses**
  - Pre-Act – Qualified moving expense reimbursement from employer is excluded from employee’s income
  - **Post-Act – Exclusion is suspended until January 1, 2026**
Once More Unto the (HIPAA) Breach!
Lessons from the Moran Eye Center Theft

BRIAN WATTS
What exactly *is* a HIPAA breach?

- Impermissible acquisition, access, use, or disclosure of protected health information (PHI) that compromises the security or privacy of the PHI.

- A breach **does not** include:
  - Unintentional acts by workforce or other authorized individuals that do not result in further impermissible use or disclosure.
  - Situations in which there is a good faith belief that an unauthorized person would not reasonably be able to retain PHI.
What exactly is a HIPAA breach?

• Absent an exception, unauthorized acquisition, access, use, or disclosure of PHI is presumed to be a HIPAA breach unless U of U Health can demonstrate that there is a low probability that the PHI has been compromised.

• To determine the probability of compromise, we consider:
  • Nature and extent of PHI.
  • Who improperly used or received the PHI.
  • Whether PHI was actually acquired/viewed.
  • Extent to which risk has been mitigated.
HIPAA Breach Risks

• HIPAA breaches can involve a single patient or millions of patients. *U of U Health is required to notify patients if their PHI is breached.*

• Breach notification should occur as soon as possible, but in no event later than 60 days following “discovery.”

• U of U Health must report all breaches to the government at least annually.

• If a breach involves 500 or more individuals, notification to the federal government and prominent media outlets must occur no later than 60 days following “discovery.”
HIPAA Breach Risks

• Reputational Harm
  • Loss of Patient/Public Trust
• Direct Financial Harm
  • Costs of Investigation, Breach Response
  • Civil Lawsuits
• Enforcement Risk
  • Monetary Penalties
  • Regulatory Oversight (Corrective Action Plan)
HIPAA Breach: Avoiding the Pain

No reporting obligations for a breach of encrypted PHI!
MD Anderson slapped with $4.3M penalty for HIPAA violations

An HHS administrative law judge upheld an HHS Office for Civil Rights finding requiring the University of Texas MD Anderson Cancer Center in Houston to pay $4,348,000 in civil penalties for HIPAA violations related to the organization's encryption policies, HHS confirmed June 18.
The Moran Eye Center Breach

Could it happen to you?

(Spoiler: Yes)
The Moran Eye Center Breach

Laptop and external hard drive discovered missing.
Neither device was encrypted or password protected.
Both stored in locked cabinets when not in use.
PHI on devices:

- Full or partial first and last names
- DOB
- MRN
- Retinal images
The Moran Eye Center Breach

**Reportable breach**
Possibility of re-identification.
Sensitivity of some of the information on the devices.
607 patients.
What can you do?

- **IDENTIFY** resources that store PHI.
- **ASSESS** the need of maintaining PHI on those resources.
- **SECURE** PHI by encrypting or (if encryption is not possible) implementing additional control measures.
- **ASK** your IT professionals for guidance and assistance.

GRAMA, What Big Teeth You Have!

Requests for University Records and Other Records Questions

LAURA ANNE STETSON
ASSOCIATE GENERAL COUNSEL
Common Records Questions

- GRAMA Requests
- Subpoenas
- Records Retention
What is GRAMA?

• Utah’s open records law

• Designed to promote governmental transparency and accountability

• State equivalent of federal Freedom of Information Act ("FOIA")
How to Submit a GRAMA Request

New ONLINE system!
Definition of a Record

A book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics

That is prepared, owned, received, or retained by a governmental entity or political subdivision
GRAMA and You

• GRAMA applies to all University records
• Includes records of University employees
• Includes internal emails, University memoranda, meeting minutes, voicemails, contracts, text messages
• Very broad – if the University has a record, the court can compel disclosure
Classification of Documents

• Public—all records are presumed public unless they fall within a statutory exception

• Private—home address and telephone number, personal financial information

• Protected—commercial information covered by a business confidentiality claim, trade secrets, test questions, letters of recommendation, unpublished notes and data related to research

• Controlled—health records

• Restricted—competitive or proprietary information in a technology transfer or sponsored research agreement
Mistaken Beliefs About GRAMA

• Marking a document “PHI,” “private,” or confidential” will NOT prevent disclosure of the document

• Email IS subject to GRAMA

• Text messages ARE subject to GRAMA

• Do not escape open records laws by using a gmail account

• Contract terms ARE generally subject to disclosure
Practical Tips for Recordkeeping a/k/a Things to Do BEFORE You Receive a GRAMA Request

• Have conversations about sensitive topics in person or over the phone
• Front Page Test—how would an email look if printed in the Salt Lake Tribune?
• Keep documents in draft form until finalized
• Get legal advice on contracts, especially if there is a confidentiality provision
• Remind third parties to submit business confidentiality claims
If You Receive a GRAMA Request

• Direct the requestor to use the University’s online GRAMA system - link from OGC FAQ’s

• Call the Office of General Counsel for legal advice
  ◦ Protected and Private Categories
  ◦ Fee Schedule
  ◦ Timing
  ◦ Appeals Process

Hello, I received a GRAMA request, can I speak with Laura Anne?
If You Receive a Subpoena

• Send the process server to the Office of General Counsel

• Call the Office of General Counsel for legal advice
  o Timing
  o Objections
Records Retention

• State & University Retention Schedules
• Federal or other specific retention requirements
• 7-year statute of limitations for most Utah court actions
Federal

◦ U.S. Congress
  ◦ Democrats now control the House
  ◦ Republicans still control the Senate

◦ Utah Delegates
  ◦ Mitt Romney will replace Senator Hatch
  ◦ Still awaiting results in 4th Congressional District race between Mia Love and Ben McAdams
State

- Republicans maintain control of the House and the Senate
- New leaders to be chosen this week
  - Rep. Brad Wilson likely to become Speaker of the House
  - Sen. Stuart Adams likely to become President of the Senate
Prop 2 Poised to Pass

In general, Prop 2:

- Authorizes the establishment of licensed facilities to grow, process, test, and sell medical cannabis
- Establishes a state-controlled process for people with certain conditions to receive approval to acquire, use, and, in certain limited circumstances, grow medical cannabis

On 10/4/2018, Governor Herbert announced that he will call the Utah Legislature into Special Session to discuss a “compromise bill”
Prop 3 Poised to Pass

- In general, Prop 3:
  - Expands Medicaid to cover adults under 65 years of age with incomes below 138% FPL, beginning 4/1/2019
  - Pays for the expansion by increasing the state sales tax rate on non-food items by 0.15%
  - An estimated 150,000 Utahns will gain coverage
Tax Cuts and Jobs Act

- Among other things, the TCJA eliminated the tax penalty tied to the individual mandate, starting in 2019
  - Concern: if there is no penalty for not having coverage, healthy folks are less likely to enroll, negatively impacting the risk pool in the individual market
    “Death spiral?”


BUT....
New carriers entered the individual markets in 2019, including in UT (Molina rejoined)


-7.5%
+16.1%
+1.8%
+9%
+20.2%
+1.9%
+7.1%
+1.8%
+7.1%
-7.5%
+16.1%
-26.2%
-14.3%
-1.9%
-1.5%

Multi-State ACA Lawsuit

Texas, Wisconsin, Alabama, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah West Virginia

Texas, Wisconsin, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah West Virginia

Texas, Wisconsin, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah West Virginia


United States of America et al.

Texas, Wisconsin, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah West Virginia

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Texas, Wisconsin, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah West Virginia

Texas, Wisconsin, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Main
To see a map illustrating the estimated percentage of adults under 65 with preexisting conditions in each state, including adults in those states suing to overturn the ACA, see States Attacking ACA Would Suffer Most if Preexisting Conditions Shield Gets Axed, HENRY J. KAISER FAMILY FOUND. https://khn.org/news/states-attacking-aca-would-hurt-most-if-shield-on-preexisting-conditions-were-axed/?utm_campaign=KHN:%20Daily%20Health%20Policy%20Report&utm_source=hs_email&utm_medium=email&utm_content=64498180&_hsenc=p2ANqtz--1oLUzCTF8jH_3xLntuv0iBwmXIzQHWsXYkxHK68YzKI9Rjh3FQuaAtbhp9xfLJU4hKEOEhwQl_lQ4prP_yqz-Yp77Q08AoQIYYm6P6lw4ol7Myk&_hsmi=64498180 (last visited Nov. 6, 2018).
Costs of Health Care
Leon Lederman, Nobel laureate who made key discoveries in particle physics, dies at 96
Sometimes listed as “mucus recovery system,” a single tissue box in a hospital costs $8.

**Charge to patient:** $8

CMS Finalizes Changes to Empower Patients and Reduce Administrative Burden

PRICE ESTIMATE GUIDE

HOW DO WE

Determine Your Price?

- PHARMACY
- SUPPLIES
- FACILITIES
- PHYSICIANS
- PATIENT CARE
- ANESTHESIA
- RADIOLOGY
- LABS

https://healthcare.utah.edu/pricing/
Senators unveil legislation to protect patients against surprise medical bills

A bipartisan group of senators unveiled the plan to prevent medical bankruptcies
Why Apple, Amazon, and Google are making big health care moves

Silicon Valley wants to disrupt your health care.

Apple announces new app to help knee and hip replacement patients; U of U looking for study participants

Walgreens Will Open 600 Medical Testing Locations in Its U.S. Stores

Fallen and can't get up? Best Buy's new acquisition wants to help

https://www.usatoday.com/story/money/2018/08/15/best-buy-steps-up-shift-health-services/1004388002/
A Fear of Lawsuits Really Does Seem to Result in Extra Medical Tests

Doctors are known for complaining about how the malpractice system adds costs. But it has been hard to prove, until now.

“[T]he possibility of a lawsuit increased the intensity of health care ... by about 5 percent ... those patients who got the extra care were no better off.”
Suicide
Utah’s suicide rate has shot up 46.5% since 1999 — making it the fifth-highest in the nation.
Utah’s governor launches youth suicide task force as state reveals 44 suicide deaths among 10-to-17-year-olds in 2017
SUICIDE PREVENTION PROGRAMS

2017 GENERAL SESSION

STATE OF UTAH

- 2017 HB 346, Suicide Prevention Programs
  - Anti-bullying grants for elementary schools
  - Psychological autopsy examiner

https://le.utah.gov/~2017/bills/static/hb0346.html
2017 HB 390, Suicide Prevention Modifications

- Creates a "Suicide Prevention Education Program"
- Grants for firearms dealers to train employees regarding suicide prevention

https://le.utah.gov/~2017/bills/static/hb0390.html
MANSLAUGHTER AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

- 2018 HB 86
  - Manslaughter amendments
  - Criminal to aid someone in committing suicide

A Deadly Year

According to the CDC, 2017 was the deadliest year for drug overdose deaths in the US:

**Over 72,000** drug overdose deaths

- Nearly 200 a day
- More than guns, car crashes, or HIV/AIDS ever killed in a single year in the U.S.
- More than all US military casualties in the Vietnam and Iraq wars combined
- 2/3rds linked to opioids

Positive Developments

◦ Opioid-related overdose deaths decreased last year in UT by almost 20%


◦ Across the U.S., the number of drug overdose deaths has begun to level off


◦ Congress passed a bipartisan measure to confront the opioid crisis
Continued improvement due to:

- Changes in prescribing behavior
- Upgrades to Controlled Substances Database
- Increased addiction treatment
- Increased naloxone distribution, training, and use
- Prosecution of bad actors


Etc.
Medicaid Work Requirements
New Community Engagement Policy Guidance

◦ In Jan 2018, CMS issued new policy guidance for states:
  ◦ States may condition Medicaid eligibility for able-bodied, working-age adults based on work or participation in community engagement activities, such as:
    ◦ Skills training
    ◦ Education
    ◦ Job search
    ◦ Volunteering
    ◦ Caregiving
    ◦ Etc.
  ◦ States cannot apply these requirements to individuals who are eligible for Medicaid due to a disability, elderly beneficiaries, children, or pregnant women
• Most nonelderly Medicaid adults are working or face significant barriers to work, which means Medicaid work requirement policies are directed at a small share of adults. In 2016, among non-SSI, nonelderly Medicaid adults:
  • 42% worked full time
  • 18% worked part time
  • 14% were not working due to illness or disability
  • 6% were not working due to school attendance
  • 12% were not working due to caregiving
  • 7% were not working for other reasons


• For a map of approved and pending state Section 1115 Medicaid waivers with work requirements, see Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State, HENRY J. KAISER FAMILY FOUND. (Nov. 2, 2018) https://www.kff.org/medicaid/issue-
“Right to Try”
Right to Try Act

- Federal & UT law allow “eligible patients” to request access to certain “investigational drugs”
- The federal Right to Try Act was passed, in part, to address perceived roadblocks to access
- Neither physicians nor drug companies are required to honor patients’ requests
- The FDA continues to operate its Expanded Access Program
- UU Health encourages physicians to explore Expanded Access before considering a “Right to Try” pathway
- Physicians interested in exploring access through “Right to Try” should work with the Chief Medical Officer for UUHC
Questions?