

REVIEWS

The Course Syllabus: Legal Contract or Operator's Manual?

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A course syllabus provides a roadmap for pharmacy students to achieve course learning objectives and develop lifelong learning skills. For several decades the literature has referred to syllabi as legal documents and/or contracts between students and professors. A review of the legal precedents reveals that syllabi are not considered contracts because the courts refuse thus far to recognize educational malpractice or breach of contract as a cause of action. Syllabi do, however, represent a triggering agent for instructional dissent and grade appeals, may be binding in student appeal proceedings, and are used in judicial hearings. Pharmacy faculty members should review their syllabi and follow process improvement strategies to construct legally sound syllabi that can both enhance learning and minimize risks of student grievances and appeals.

Keywords: syllabi, syllabus, educational malpractice, contract, grievances

INTRODUCTION

The syllabus, a document where course parameters such as assignments, procedures, and assessments are housed, and which professors usually spend the first day of class reviewing, remains an important course communication tool. Each college has its own rules, guidelines, and format for syllabi. Despite their importance, there is a dearth of empirical research addressing syllabi issues and an absence of related topics in the pharmacy literature. Several studies reported differences between faculty and student perceptions regarding important syllabus components.^{1,2} Other studies have evaluated content, syllabi construction and alignment with student learning outcomes, faculty concerns, and strategies for communicating syllabi to students.³⁻⁵ The purpose of this article is to examine the legal precedent regarding syllabi and identify best practices for faculty members to create legally sound syllabi while inculcating student responsibility for learning.

REVIEW

A literature search was conducted in relevant biomedical science and educational databases through November 2015 to examine the extent to which faculty members, students, and colleges view syllabi as contracts, and to find articles pertaining to syllabi-related problems. The search was conducted in Ovid-Medline (1946-November 2015), Ovid-Medline (In Process), EMBASE

(1974-November 2015), ERIC (Educational Resources Information Center) (1966-November 2015), PsycINFO (1887-November 2015) using "syllabi or syllabus" and the Boolean operator "AND" with the search terms "contract or grievance or appeal or educational malpractice or negligence or legal or law." Limiting the search to articles in which the search terms occurred within the title was too restrictive and resulted in missing pertinent articles. The search was expanded to include articles in which the terms occurred anywhere within the article, and approximately 2800 citations were retrieved. However, most of the citations were not relevant. Most of the irrelevant articles described syllabi developed for contracts or law courses. After review of the article titles and available abstracts, approximately 40 relevant citations were identified. The bibliography of each of these articles was manually reviewed to obtain additional references. A search for court cases was conducted in both Lexis and Google Scholar (limited to cases). Cases cited within each case retrieved were reviewed manually to identify additional relevant cases.

Based on the literature review and the search of university websites, identification or declaration of syllabi as contracts was evident, including widespread use of the term "learning contract."⁶⁻¹³ For the past several decades, much of the literature has referred to syllabi as contracts and invoked the term "contract" or "learning contract" when referring to syllabi.^{9,10} Both faculty members and students appear to view a syllabus as a contract.^{9,14,15} In a study of nursing school faculty members and students, 74% of faculty members and 49% of students identified a syllabus as a contract.¹ In defining the four primary functions of syllabi, Matejka and Kurke⁹ identified "establishing a contract

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between instructor and student,” and stated the importance of “making the syllabus a binding agreement.” They suggest having students sign a statement that they have “completely read this syllabus and understand and agree to the course requirements.”⁹ Self-directed learning experiences often use what is commonly known as a “learning contract.”¹⁶ Unlike syllabi, learning contracts are often constructed by the student and reviewed by the faculty member who then provides feedback and suggestions for modification.¹⁷ Although the literature, faculty members, and students may consider a syllabus as a contract, the final arbiter is the judicial system.

Although there have only been a handful of cases involving syllabi, the courts have consistently ruled that a syllabus is not a contract.¹⁸⁻²⁴ In these cases, students brought lawsuits for breach of contract where the professor did not follow the syllabus or applied a different grade assessment.¹⁸⁻²⁴ In one case a student sued the university for educational malpractice.²⁵ Educational malpractice is a tort cause of action based on contract law which states that educational institutions and their employees breached their duty to educate the plaintiffs adequately.²⁶ Such cases are brought where students fail to pass licensure or certification examinations. Students have been unsuccessful in asserting these claims, and courts remain reluctant to create a cause of action for either breach of contract or educational malpractice.^{27,28} Courts have generally ruled so because it is difficult to define the duty to educate; causation is difficult to determine; courts are reluctant to insert themselves into public policy issues such as the quality of education; and such interference by the courts would open a floodgate of litigation from academically unsuccessful students.^{29,30}

While no appellate court has ever ruled that a syllabus is a contract, an exception exists where courts have recognized breach of contract claims against educational institutions where the specific circumstances of the claims were pleaded in court with clarity and detail.³¹ That is, courts generally recognize a contractual relationship between a university and its students, especially with regard to brochures, handbooks, course offerings or bulletins, official statements, policies and publications.³²⁻³⁴ In some cases, the word “contract” is explicit in these documents. In other cases, language disavowing the document as a contract exists. In the former case, the courts are more likely to recognize a contractual relationship. The University of Michigan website entitled “Syllabus FAQ” states the syllabus is not a legal contract but then goes on to state that faculty members must follow course expectations and procedures announced at the beginning of the semester and cites various contractual documents such as the faculty handbook.³⁵

In each of the following cases regarding course syllabi, students did not prevail in their legal claims against

the university. One case involves a pharmacy school. In *Gabriel v Albany College of Pharmacy and Health Sciences, et al*, the student sued the college, 10 professors or administrative personnel, and the Accreditation Council of Pharmacy Education (ACPE) for \$1.1 million, alleging breach of contract together with discrimination in violation of Title VII of the Civil Rights Act of 1964 when a syllabus was changed.^{18,36} The professor allegedly checked an assignment for plagiarism using Turnitin and informed the class she would tolerate “limited” plagiarism, which she defined as a “free pass” on one sentence copied in full from another work. In the complaint, this was referred to as the “free pass” phenomenon. The plaintiff specifically contended that the syllabus is a contract, where said contract made no mention of the “free pass” phenomenon. He argued that award of “free passes” constituted a breach of that contract. The plaintiff, accused of plagiarism, claimed that he was denied a “free pass” because of his nationality and religion. The court dismissed the breach of contract as well as the Title VII claims. The reason for the court’s dismissal of the case is that Title VII makes it unlawful for employers, not educational institutions, to discriminate. Therefore, students have no standing to bring such claims against colleges.

In *Miller v Loyola University of New Orleans*, the university prevailed when it was sued by a student for breach of contract on the basis that the professor changed the time of the course listed in the syllabus without university permission.¹⁹ Similar rulings were obtained in *Collins v Grier*, where the court stated “there is no contract between a professor or instructor and a student created by the syllabus or university guidelines.”²⁰ In *Collins*, the professor rounded up several student grades but not that of the plaintiff. The professor, but not the university, was sued. Despite this, the court did not find the conduct to be arbitrary, capricious, or in bad faith and, thus, not a matter conducive to being settled by a court of law.

Twenty-five years later, in *Yarchaski v University of Medicine and Dentistry of New Jersey*, a nursing student received a zero on a group presentation based on criteria and directions stated in the course syllabus.²¹ Upon appeal of the grade for the course, the student was given an opportunity to submit an alternative assignment. Upon receiving a failing grade on the alternative assignment, he was dismissed from the program. In his complaint, the student alleged breach of contract, breach of the covenant of good faith and fair dealing, violations of his due process rights, and tortious interference with a contractual relationship (by the professor). The covenant of good faith and fair dealing assumes that people will act in good faith and deal fairly without breaking their word or denying what the other party obviously understood. Although syllabi are not legal documents, changes to syllabi that are

punitive to students after a course begins would go against the concept of a syllabus as a “good faith” agreement. However, in this case, the court ruled that a syllabus did not constitute a legally enforceable contract.

In *Odemena v Devlin et al*, a law student sued the Massachusetts School of Law under the state consumer protection law when a professor changed the syllabus grade assessment, resulting in the student receiving a D grade for the course.²² The student was dismissed from the program on academic grounds and was unable to obtain admission to another law school. The student sued for the costs of litigation as well as damages for loss of future earnings as a lawyer. The professor contended that he orally amended the written syllabus the first day of class to reflect the change in assessment methods. This statement by the professor was found in the notes of another student, thereby corroborating the professor’s assertion that he informed the class of the change. However, under a legal doctrine in contract law known as the parole evidence rule, a unilateral oral statement not agreed upon by the parties cannot serve as the basis for a different agreement when contrary terms are written in the agreement. The *Odemena* case was dismissed in June 2015 for failure to state a legal claim. However, even if such a lawsuit were allowed to proceed, the student would have had a difficult time convincing a jury that he suffered financial damage beyond lost tuition dollars.

There are several tuition refund cases for breach of contract where the hours of instruction or topics deviated from what was detailed in college catalog or course syllabi. In *Paynter v New York University*, the university cancelled classes because of student unrest during the Vietnam War and students filed lawsuits for breach of contract.²³ The court ruled that “it would be an error to substitute its judgment for that of university administrators” with regard to the decision to cancel classes. Similarly, in *Barngrover v Maack*, minor scheduling changes were not found to constitute breach of contract.²⁴ The court found that a professor was not bound by the course catalog description and was free to deviate and devote class time to each topic as deemed necessary. However, in 2012, courts stated that a college would be liable for failure to deliver the agreed upon number of hours of instruction or to provide specified services and, therefore, obligated to refund the tuition.¹⁸

More than 80 cases involving claims of educational malpractice were retrieved from the literature search. However, only one case, *Miller v MacMurray College*, involves a claim for educational malpractice and syllabi.²⁵ The student of an Interpreter Training Program alleged that the college failed to fulfill its contractual obligations to provide appropriate education and experiential hours associated with its programs, resulting in the

inability of the student to pass the certification examination and delaying employment. The plaintiff argued that the hours of instruction were decreased and the college failed to provide a 300-hour practicum. The court identified the claim as “nothing more than an attempt to disguise a claim for educational malpractice, which the state of Illinois does not recognize as a tort.” The court noted the college’s course bulletins were devoid of any hour requirement. However, the syllabi contained hourly requirements. With regard to the syllabi, the court stated, “such documentation does not contractually obligate the college but instead, is a variable metric derived by the individual course instructor” and “unrelated to an educational institution’s contractual obligation to its students.”

Several cases revolved around the intellectual property rights for syllabi and university employment actions against faculty members for failure to adhere to their syllabi and/or cover course material in the syllabi.³⁷⁻³⁹ These cases do pertain to litigation revolving around syllabi but do not involve student claims. When several states refused to release their syllabi to the National Council on Teacher Quality (NCTQ) for research it was conducting, the NCTQ filed lawsuits.³⁹ While other states settled, the one holdout state has been successful and the courts have ruled syllabi are protected by federal copyright law and not public records under Freedom of Information Act (FOIA) laws. However, in New York, courts have ruled that course syllabi from public colleges are obtainable under the state’s FOIA.⁴⁰

Although the dollar amounts in controversy are small in the cases involving course syllabi thus far and all courts dismissed the breach of contract cases based on the defendant’s motions, with appeal courts affirming the dismissals, universities expend considerable financial and legal resources to defend to either the summary judgment or trial stage of litigation.³⁰

DISCUSSION

Clearly, the formality and gravity of a syllabus gives it the appearance of a contract, although the courts do not recognize it as a contract, and it currently does not comport with either contractual law⁴¹ or higher education law. While a university may be able to require faculty members to adhere to their syllabi, students still would not be able to enforce the promises contained within a syllabi under contract law.⁴² Similarly, faculty members could not enforce a syllabi obligation upon student nonperformance in a court of law.

Several authors have stated that syllabi function as an implicit contract between students and the university.^{7,10} A question exists as to whether students actually review the syllabus before signing up for a class. Research indicates that students often fail to review the syllabus, refer to it sparingly, and are unable to recall basic information

Table 1. Best Practices for Creating Legally Sound Syllabi

Best Practices
Create syllabi as noneditable pdf documents (especially for team taught courses or where there are adjunct faculty members involved);
Insert disclaimers for the ability to modify the class schedule and time spent covering each topic;
Insert a “syllabus subject to change” statement; insert a clause to excuse for non-performance based on extraordinary events or circumstances;
Adhere to institutional syllabus standardization;
Accurately reflect current college and university policies (eg, academic integrity, limits to confidentiality, accommodations for students with disabilities, disruptive behavior);
Comply with the contractual documents of the institution (ie, faculty handbook and course catalog). Incorporate by reference or add a definition list;
Clearly specify course policies regarding grading, late assignments, missed examinations, and attendance;
Include any course procedures unique to the course that might cause students to reconsider their enrollment in the course;
Describe policies regarding attendance and excused absences, eg, student participation at professional meetings;
Delineate class participation policy;
Detail policy regarding use of social media derived from the classroom, recordings, copyrighted property;
Include a policy regarding use of cell phones, laptops, calculators and other electronic equipment in the classroom; be specific;
Add a statement regarding use of plagiarism detectors (eg, Turnitin);
Avoid risk of overpromising and underdelivering.

contained within it.⁴³ Perhaps syllabi function more like an end user licensing agreement, which the student glances at, clicks “agree to terms,” and moves on to the product without reading any of the terms. A syllabus may more akin to an owners’ manual, describing the product, or an employee manual, than to an actual offer and acceptance of terms.

Some authors and university websites explicitly state a syllabus is a contract between the professor and students.^{9,41,44-46} Claiming a syllabus is a contract might produce a different legal outcome. While there may not be harm in thinking a syllabus is a contract, there may be legal risk in proclaiming it so.⁴⁷ In none of the legal precedents did the faculty member refer to their syllabus as a contract. Under the doctrine of estoppel, faculty members who verbalize that their syllabi are contracts risk having them treated as such. Estoppel is the principle that precludes a person from asserting something contrary to what is implied by a previous action or statement of that person or by a previous judicial determination.⁴⁷

With regard to educational malpractice, while most states do not recognize the tort of educational malpractice, most recognize a breach of contract action if it is alleged that the educational institution failed to perform on a specific promise it made in handbooks or bulletins.^{27,40} While courts have ruled the syllabus is not a contract, they have ruled that the relationship between students and the university is a contractual one.^{48,49} However, while students and the university may be in a contractual relationship, it does not necessarily follow that faculty members and students are in a contractual relationship.

As in *Yarchaski*, it is the arbitrary and capricious standard of conduct that the Supreme Court has applied when

reviewing university conduct in dismissing students for academic or behavioral reasons. Traditionally, great deference is given to university decisions.^{50,51} However, where evidence exists that a professor’s actions were arbitrary and capricious (eg, inconsistent enforcement of the attendance policy), a factual dispute is created where the presumption of good faith can be overcome. In these cases, courts are more likely to allow the lawsuit to proceed.⁵²

Creating Legally Sound Syllabi

Syllabi are learning tools that memorialize the course requirements, serving as both a permanent record for the benefit of accrediting bodies and faculty reviews. Despite the long-standing precedent of court noninterference with an academician’s professional judgment, and lack of legality, syllabi often represent the triggering agent of instructional dissent by students.⁵³ That is, although courts do not view syllabi as contracts, they may lead to student grade appeals and grievances.⁵⁴ They also may be used as evidence in grievance and judicial hearings, especially with regard to various performance assessment methods or issues such as academic integrity/plagiarism, copyright, class recording, and syllabus change policy.⁷

Even the most experienced faculty member can identify problems encountered to bring a process of continuous quality improvement to course syllabi, resulting in syllabi that are more focused on achieving their goals with clear, consistent policies. If prepared properly, they can be motivational and enhance the student’s ability to achieve lifelong learning skills.^{55,56}

Moreover, applying best practices to syllabi development can both improve document clarity and minimize

the risks of student grievances or involvement with litigious students. While the few courts that have considered the issue concluded that a syllabus does not constitute a contract, and it is risky to proclaim a syllabus is a contract, it may actually be beneficial to treat syllabi as such. Although syllabi are not considered to be legal documents, it is good practice for professors to treat them as such and construct them using principles of clear contract drafting with a focus on avoiding educational malpractice. One need not be an attorney to develop this expertise. Table 1 lists some best practices for creation of legally sound syllabi.

Curriculum committees are involved with review and/or approval of course materials including course syllabi. However, their focus is usually on review of course proposals, evaluating courses, learning objectives, expected student competencies, and assessments.⁵⁷ Although there is broad latitude in the content of syllabi, when syllabi are reviewed by curriculum committees, it is also to ensure all elements of the college's syllabi template and course management policies (ie, use of cell phones and recording equipment) are included. A faculty member certainly should adhere to any syllabi format and content standardization at their particular institution such as mapping course learning outcomes to the most current ACPE (ie, 2016) standards. Faculty members must always keep course descriptions consistent with course catalog statements and/or course offering bulletins and avoid misrepresenting university documents, which are legally binding. Syllabi should provide students with the specificity they need to help them complete their work with a full understanding of what is expected of them. For example, if use of cell phones is prohibited, the syllabus should also specify whether that includes texting. This level of detail should be specified to avoid later disputes.⁴⁰

A syllabus must have a clear grading policy that is adhered to throughout the semester. This not only puts students at ease by informing them of what is required for success in the course, but also allows the professor to refer to it when students come in with complaints. In addition to becoming the first line of defense for the faculty member, stating a clear grading policy in the syllabus will also eliminate many student complaints. When it is clear the syllabus will be followed, students will not waste time lobbying for special circumstances and the professor will immunize herself from charges of favoritism or unfairness in grading. If an instructor intends to round up grades, he should state in the syllabus how this will be done. It is important to remember that syllabi are "binding" in student (or faculty) appeal procedures.^{9,58}

It may not be required to provide a week-by-week schedule of lectures, and faculty members often indicate

that such a schedule will be subject to change/evolution. Therefore, as long as the potential for change is indicated on the syllabus, the syllabus cannot be "held against" the student who decides to enroll. The student assents to the course policies by virtue of enrollment in the course. Nothing prevents the professor from providing more detailed information in separate documents during the conduct of the course where academic freedom should prevail and protect the interests of the faculty member.

Sometimes the syllabus is either obtrusive or unclear or important policies are omitted. That is, the syllabus is silent with regard to some course information. Sometimes changes are needed but they may not always be permissible. Some universities do not permit changes to the syllabus once it is made available to students. Students adversely affected by changes to the syllabus made later in the semester, for example, when an examination is dropped, the final examination is no longer given, or the grade weighting for an assignment is changed, may complain and grieve these actions. However, in an article on a survey of faculty members and student perceptions regarding changes to the syllabi components once the semester begins, the results indicated that the majority of respondents preferred the syllabus be somewhat flexible rather than static.² For example, if an assignment due date was found to coincide with the administration of midterm examinations, perhaps the due date could be changed but not the nature of the assignment.

In addition to not making changes to the syllabi, two actions on the part of professors would help avoid problems. The first is the addition of language to the syllabus that states that it is merely a guide to the course and may be changed at the discretion of the professor. This involves the addition of a clause which allows a party to suspend or terminate the performance if its obligations when certain circumstances arise that make performance inadvisable, impractical, or impossible, (eg, natural disaster which results in class cancellation). The second is documentation of any changes to the syllabus announced orally. A brief email or post on the online course management and communication system used at the college (eg, Blackboard) directly after the class, stating the change, would suffice. Finally, to minimize inadequate performance, faculty members should avoid overpromising, such as stating examinations will be graded within a specific timeframe or emails will be answered within 24 hours.

SUMMARY

Contracts are legally enforceable documents; syllabi are not. Syllabi have persisted in the culture of higher education and are foundational parts of the pharmacy curricula that encourage students to develop an acceptance of

a lifelong responsibility for learning. For decades, syllabi have been referred to in the literature as contracts between students and professors. In the handful of cases involving syllabi, the claims have been mostly for breach of contract. To date, courts have not recognized claims of breach of contract for syllabi and do not consider syllabi as contracts. Students will continue to file lawsuits regarding syllabi and creating legally defensible syllabi can avoid time-consuming and expensive legal actions.

A description of essential components of syllabi is beyond the scope of this article. However, best practices for developing legally sound syllabi include detailed precision regarding course requirements. Like preventative medicine, early attention to the content and format of a course syllabus can prevent and mitigate subsequent complications. Faculty members embarking on the intellectual journey of creating syllabi, especially junior faculty members, can use the information provided in this article to evaluate, and possibly improve, their course syllabi.

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