

SAMPLE 101 STUDENT PAPERS: Argumentative Essays

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Medical Malpractice Insurance in Pennsylvania

by George Steltzer (revised)

Pennsylvania has joined the growing list of states that are running into a crisis. Malpractice insurance is on the rise, and doctors in high-risk specialties endure medical liability premiums of \$200,000 a year or more (Dench). These costs are so debilitating that doctors are forced to limit services, retire early, leave the field, or move to a state with medical liability reforms that keep premiums more stable.

What does this mean for Pennsylvania? It's clear we are losing our doctors at an alarming rate, and young new physicians won't be looking at Pennsylvania as a place to practice. If a solution is not found very soon, it may get to the point where people will need to travel out of state for surgeries and emergency medical care. The problem is that there is no single solution to fix the problem. The problem comes from a combination of factors, and as much as people may wish, there's no silver bullet solution.

Who or what is the root of this crisis? Blaming out of control jury awards and trial lawyers, Pennsylvania doctors have rallied and urged the governor and state legislature to enact a \$250,000 limit on malpractice awards (Damon 8). Some doctors planned to stop performing surgeries and handling trauma calls in 2003, saying they could not afford medical liability insurance premiums (Damon 9). This call for limits on jury awards also went to Washington, D.C. In 2003, President Bush pushed for a bill to cap pain and suffering awards. On July 9, 2003, U.S. senate Democrats killed this legislation limiting the ability of medical malpractice victims to win monetary damages, rejecting Bush administration claims that caps would halt frivolous lawsuits and ease the healthcare crisis (Health 149). The 49-48 vote was 11 short of the 60 needed to overcome Democratic objections (Health 146). So one place many point to as part of the problem is the federal government and its inability to take effective action.

Others point to different groups. Doctors are clear in that they blame the lawyers for malpractice rates rising so fast. They point out that lawyers try to soak juries for multimillion-dollar awards. It costs on average \$25,000 to defend each case, so even if 80% of the cases are thrown out, there's still a considerable amount of money being spent on lawsuit defense (Michael 337). On top of this, doctors are spending too much time in the courtroom and not enough in the hospital.

However, lawyers place the blame on both the doctors and the insurers. They also claim that putting a cap on awards would only hurt the victims and would make it harder for patients to find legal representation. They ask if a young child was to lose their eyesight due to a bungled operation, would \$250,000 be enough to pay for the pain and suffering? (Health 146) The doctors' response is that if things don't change, there won't be anyone to operate in the first place.

Lawyers also place the blame of the raising rates on the insurers. They say, in recent years, poor investments have forced insurers to raise premiums (Health 147). They note that insurers underbid their premium rates in order to stay competitive. They then invested the money from these premiums to earn huge amounts from the interest (Damon 9). However, since 9/11, profits from the stock market have dwindled. The insurance companies lost big which caused them to raise their rates.

The response from the insurers goes right back to the lawyers and the out of control jury awards. They call on the government for liability reform (Damon 8). Some carriers have pulled out of the market all together because of high losses (Health 148). This limits the ability for some doctors to secure insurance altogether.

Both doctors and insurance companies have petitioned local and state governments for help to resolve the situation. In March 2002, both chambers of the Pennsylvania Legislature passed a measure that would allow malpractice damages to be paid over time (Tanya 1). The bill also set higher standards for expert witnesses, established a patient safety authority, and phased out the Medical Professional Liability Catastrophe Loss Fund, a jury award pool into which physicians must pay. It also established a 7-year statute of limitations on filing a lawsuit unless the case involved a minor or foreign object left in a body (Tanya 1).

Since then, Gov. Ed Rendell unveiled a \$600 million plan to slash the malpractice insurance costs for doctors (Louiglio 1). The plan would cost the state \$200 million a year for 3 years. As the governor pointed out, this would be only a temporary fix, and would in no way go to solve the problem as a whole (Louiglio 2). The money would be used to help keep our doctors here only in the short term. Rendell also pointed out that reform could take 3-5 years to drive down insurance rates, and the doctors need the help now (Louiglio 2).

Clearly, the situation is very complex, and there are many sides to this crisis. The parties involved don't want to share the blame. And yet, the problem won't just go away by ignoring it. Action needs to be taken. There's work in progress now, but more needs to be done. Everyone needs to pull together and work out a solution.

The Social Security Dilemma

(a group paper)

Social Security began over sixty years ago as an attempt to keep the United States' older, retired generation out of poverty. Since its conception, Social Security has been a huge success.

According to an article from Facts.com, the poverty level for people over the age of 64 was a mere twelve percent in 1991. This has gone down dramatically from the 1970s, when the poverty level of the same age group was well into the thirtieth percentile (Social). Unfortunately, Social Security is not perfect and is quickly nearing its own deathbed. It is predicted that by the year 2029, Social Security will be bankrupt (FAQ). As the expected thirty million "baby boomers" retire, Social Security will be stretched to serve sixty-four million people in a thirty year span (Social). This is an alarming reality for the nation's young adults who may have no Social Security with which to retire. While the debate over Social Security reform is expected to escalate between 2010 and 2030, plans are currently being proposed to restructure the program to further its longevity.

Many proposals for Social Security reform are being suggested, but those which are being seriously considered share key aspects. Currently, Social Security is a government-

controlled program which is supplied through a pretax payroll deduction of 12.5% which is paid by workers and their employers (Bush). An important component of the proposed reform plans involves investing a portion of the money into the private market, either in stocks or bonds.

Robert Ball, a former member of the Social Security Commission, currently heads the conservative plan. His plan is to refinance the system to allow the government to invest as much as forty percent of Social Security funds in stocks and corporate bonds (Social). This plan would give the federal government much greater power and influence in the economy.

Critics suggest that such a large investment over a fifteen year period could negatively influence on the private sector (Social). This could then allow government officials to invest for political reasons and not in best interest of Social Security recipients. A Forbes Magazine editorial suggests that legislators and policy makers could try to direct funds into companies that would benefit themselves and their constituents (Social). Ball maintains that government investments could be limited to certain stocks; however this does not remove the risk element involved with privatizing the program (FAQ).

Another major privatization plan is headed by Sylvester Schieber, an executive in a Washington D.C. pension consulting firm. His plan includes allowing workers to place part of their payroll contributions in individual retirement accounts (Social). These workers could invest as they see fit and then withdraw without penalty and tax free upon retirement. This plan is said to also provide a government retirement safety net. A low benefit payment of about \$400 per month would be guaranteed to all retirees. This plan would create a two-tiered system, in which individuals could invest and control a portion of their savings while a reduced government plan would provide a minimum safety net (Social). Critics for Schieber's plan suggest that Social Security support will weaken once the workers learn they can get a much higher return on IRAs.

Under his plan, a worker's money would not redistribute as much money to lower earners as the current system does. This plan also would be based on the amount people contribute on their own investment fortunes, which might harm poorer workers and women, possibly leaving them without enough money on which to retire. This could magnify the gap between rich and poor (Kotlikoff).

While these major plans are inventive solutions to the dilemma, both proposals reduce benefits and increase payroll taxes while raising the retirement age (Kotlikoff). Relying on the stock market to generate funds is another pitfall of these plans. This could be very risky due to the unpredictable nature of the stock market. If the stock market crashes, who bears that burden? Peter Barnes, a writer for the New York Times, commented against investing Social Security funds in the stock market. "The goal of Social Security is not to maximize potential gains for individuals. Social Security is a form of insurance, not unlike health insurance. It guarantees that you as well as your neighbors can face retirement without fears." (Social)

Most politicians in favor of privatization suggest that stock investment would kick start the economy. Opponents say it would be bad especially for people who are not stock market savvy and people who make lower wages could invest in a poor choice and lose money.

Although Social Security reform is inevitable in the upcoming decades, the current strategies have inherent flaws which must be addressed and corrected before a plan can be implemented. Creating a larger divide between the rich and poor and quite possibly losing money to a fallen stock market is not a plan which should be taken lightly. Risky solutions are not the answer.

Gay Marriage Should Be Legal

There is a debate going on in America today that will have an enormous impact on millions of American lives: the debate on whether or not same-sex couples should be allowed to marry. There are many good reasons why gay and lesbian couples should be afforded the same marriage rights as heterosexual couples.

On Wednesday, February 4, 2004, Massachusetts became the first state in the nation to grant full marriage rights to gay and lesbian couples. The Supreme Judicial Court of that state said that allowing anything less would violate Massachusetts' constitutional standards (Elder 1). Since then, there has been a firestorm of controversy. On one side are local district justices and judges around the country who have been granting marriage licenses to gays and lesbians, even when threatened with arrest for doing so. On the other side are President Bush and the people who support his position. Claiming that allowing same-sex marriage will undermine the sanctity of that institution, the President is calling for a constitutional amendment prohibiting gay marriage (Mehren A: 1). Many parallels exist between the gay marriage debate and the earlier debate over racially mixed marriages.

In 1964, the case of "Loving vs. Virginia", concerning interracial marriage, was heard by the U.S. Supreme Court. The Court ruled that forbidding people of different races to marry violated the Equal Protection Clause of the Constitution. The outcome of this case is pertinent to the pro-gay marriage stance, since same-sex marriages may also be protected by the Equal Protection Clause (Strasser 134 -135).

It has been said that the states should decide whether or not gay marriage is permitted within their borders. This was also the case with interracial couples before "Loving" was

decided. In the case of "Loving vs. Virginia", an interracial couple who lived in Virginia got married in a neighboring state, then returned to Virginia to live. Not only did Virginia refuse to recognize the marriage; it also imposed legal sanctions against the couple (Strasser 134). The same thing could conceivably happen if a gay or lesbian couple who did not live in Massachusetts got married there and returned to their home state with the expectation that their marriage would be recognized there. Since sodomy laws have been declared unconstitutional, the couple could not be prosecuted under those statutes; however, they could be charged with fraud if they listed themselves as "married" on a legal form.

"Let the people decide" is the rallying cry for those who believe the Legislature, not the courts, should decide on the issue of gay marriage. A recent poll shows that 51% of those surveyed oppose gay marriage. About two out of every three people polled also feel that marriage is a religious matter (Elder and Seelye 1). When California became the first state to legalize marriage between blacks and whites in 1948, the number of people opposing interracial marriage was higher- 90% of those surveyed vehemently disagreed with the idea of interracial marriage (A: 29). Had a Constitutional amendment banning such marriages been presented to the states, it most certainly would have passed by an overwhelming majority.

The Supreme Court, however, deals with Constitutional interpretation, which does not take public opinion into account. The same "activist judges" charge that is so prevalent today was also leveled at the Court after "Loving" was decided (Mathabane). The feeling was then, as it is now, that if the majority doesn't approve, the Court should not intervene. This is not how the Constitution was set up by the Founding Fathers. The Constitution has checks and balances so that a majority group cannot discriminate against a minority group. The checks and balances written into the Constitution also ensure that no one branch of government holds all the power.

This fact is overlooked by those who want the Legislature, not the Supreme Court, to have the power to decide what happens to marginalized groups in this country.

Marginalizing gays does not seem to bother President Bush. According to The Washington Post, Bush responded to Massachusetts' recognition of gay marriage by stating "that if 'activist judges' insist on 'forcing their will on the people, the only alternative left to the people will be the constitutional process' " (qt in A: 26). This may be an entirely political move on his part. According to the World Wide Web site for the Allentown, PA newspaper, The Morning Call :

[t]he most conservative elements of the Republican Party have objected to a series of Mr. [sic] Bush's actions on immigration, education [,] and budget-busting spending. These are the same Americans who support a constitutional amendment on marriage, according to a poll by the Annenberg Public Policy Center. [Bush wants to secure] their support [...] [by] making [the amendment] part of the Bush platform.

Bush's position is also hurting the economy. Doug Windsor, online columnist for 365Gay.comNewsletter, points out that "[i]n a ranking of states [,] [...] those [...] which did not offer civil rights protections for gays [are] at the bottom of [the nation's] productivity list." America is perceived by numerous people in other countries as an intolerant society. The countries that are attracting the best people are also those countries that have the most progressive social programs and attitudes. The Scandinavian countries and the Netherlands, long known for tolerance policies toward gays, are at the top of the list (Windsor). Coupled with the

job losses suffered under the present Administration, this failure to attract talented people from other countries may very well cost Bush the upcoming election.

Bush's suggestion to amend the Constitution can be challenged legally, but this ignores the real problem with his argument: it is morally wrong. FindLaw.com's Michael C. Dorf writes:

the distinction is not between expanding rights and contracting rights:
it's between adjusting the allocation of rights for a good cause, and adjusting them for a bad one.

Dorf goes on to point out the difference between a legal marriage and a religious marriage. No religion would be required to marry same-sex couples; the only thing conferred would be legal recognition. To persuade people of the moral correctness of legalizing gay marriage, one must use moral, not legal arguments (Dorf). Different groups that would ordinarily disagree are united on this point, even though they may not all agree on gay marriage from a religious point of view. Political conservatives, gay rights activists and civil rights supporters have banded together in some locations to fight the proposed amendment. They agree that the issue of gay marriage is a matter of social policy rather than an issue that needs to be addressed via amending the Constitution. They recognize it for what it is - a political move in an election year (Baldor).

The Politics of Euthanasia

In September of 2002, a French firefighter by the name of Vincent Humbert was involved in a car accident that left him with only the ability to move his right thumb. While paralyzed, he wrote a book about his condition, explaining that "[t]he more time passes, the less I want to live out my days in a hospital bed." (Corbett 83) Humbert's mother, who had begged French President Jacques Chirac on behalf of her son to allow his life to end, injected him with a lethal dose of barbiturates through his IV on the same day his book hit the bookstores. The mother, forty-eight year old Marie Humbert, was arrested and placed in a mental institution. Doctors attempted for two days to stop Vincent from dying. When an outraged public protested the doctors' efforts to keep Vincent alive, the hospital granted permission for resuscitation efforts to end (Corbett 83). The thought of a loved one passing away is always painful; however, some feel that there are worse things than death that can happen to a person. Being trapped in a virtually nonfunctional body is perhaps the most horrible of these fates. On the other hand, with human nature being what it is, a society cannot always be trusted to make the ethically correct decision to reserve euthanasia for extreme circumstances. The potential for the abuse of euthanasia is great- perhaps too great to allow people to play God in the life and death decisions of others. Only in certain select cases should euthanasia be permitted.

In spite of this potential for abuse, many European countries allow euthanasia. The Netherlands became the first country to pass a right-to-die law when it passed a measure in 2001 allowing euthanasia (Starobin 604). Belgium and Switzerland followed suit in 2002 and 2004 respectively (Birchard 59, Deliens 1239). Though euthanasia is not technically legal in the United Kingdom, one-third of the nurses in that country support it (35). In each of these

countries, euthanasia is seen as a humane action that cuts short the suffering of someone who has no chance of recovery. However, physician-assisted suicide in these countries is not without its critics. Henk Reitsema of the Netherlands, whose father died in 1996 of an overdose of morphine administered by doctors, is one such individual. According to Reitsema, his father, a World War II veteran, asked for help - not help to die, but help to relieve his pain. Reitsema said that his father had a survivor's mentality and never would have asked for his life to be cut short. Even though his mother had given her consent for "terminal sedation", Reitsema maintains that she was misled into agreeing to administration of the morphine, believing not that it would kill her husband, but would only relieve his pain (A: 1).

In America, the euthanasia movement was founded by Derek Humphrey, author of the suicide manual "Final Exit". According to Humphrey's group, now known as the End-Of-Life Choices movement, The reason for [the interest in euthanasia] is that a large number of the U.S. public has a fear of losing control over its personal destiny. Specifically[,] Americans fear that if they become hopelessly ill or incompetent[,] they will be kept alive for months or years as a prisoner of medical equipment. [...] 10,000 [sic] comatose individuals are being kept alive by machines in this country. (C: 6) However, stocking a book such as "Final Exit" in libraries is analogous to carrying "The Anarchist Cookbook". The literary value of both manuals is marginal at best, and the potential for abuse of the information both provide is enormous. There is no way to guarantee that the recipes contained in either book will not be used to kill people who want to live - that is, to murder. According to a committee of Catholic bishops,

Those who represent the interests of elderly citizens, persons with disabilities and persons with AIDS or other terminal illnesses are justifiably alarmed when some hasten to confer on them the "freedom"

to be killed. (E :1)

To avoid this scenario, the state of Oregon has issued guidelines permitting euthanasia only in the following circumstances:

- A patient must be mentally alert.
- A patient must be within six months of death.
- A doctor must certify that the patient's decision is not coerced. (Meier)

On the surface, these guidelines look very reasonable. However, a closer look uncovers the following flaws:

- A terminally ill person is often unable to think clearly and may be severely depressed. (Meier)
- "Legalizing assisted suicide is coercive in itself." (Meier) Even when it appears that a person of sound mind has given consent to be euthanized, factors such as fear of the family's financial ruin or the feelings of being a burden to one's caregivers plays a bigger role in a person's desire to die than most people realize. (CFILC)

Even with these flaws, assisted suicide has some good features. The knowledge that someone else will end a person's suffering when it reaches a point where they are no longer able to do so themselves has actually caused people to live longer than if this option was not open to them (Shavelson 28-29). In some of these cases, this knowledge has given a terminally ill person the strength to endure the pain until they finally died a natural death (Shavelson 59,63).

Being denied a natural death is exactly what some disabled people fear. In "Assisted Suicide: A Disability Perspective", The National Council on Disability states:

People with disabilities are among society's most likely candidates for ending their lives, as society has frequently made clear that it believes they would be better off dead, or better that they had not been born. The experience in the Netherlands demonstrates that legalizing assisted

suicide generates strong pressures upon individuals and families to utilize that option, and leads very quickly to coercive and involuntary euthanasia. If assisted suicide were to become legal, the lives of people with any disability deemed too difficult to live with would be at risk, and persons with disabilities who are poor or members of racial minorities would likely be in the most jeopardy of all. (qtd. in Torr 114-115)

The disabled have been able to derail the "Death with Dignity Act" in Vermont, which would have legalized physician-assisted suicide (Smith "Disabling"). Not Dead Yet, an organization of disabled people opposed to euthanasia, has pointed out that, in many cases, those with severe disabilities are denied resuscitation whether or not they have filled out Do Not Resuscitate orders. In these cases, the physicians themselves had made the determination that the quality of life for these patients was such that it was not worth the time or money involved to resuscitate them (Woodman 154). In addition, some HMOs may view euthanasia as a way to cut costs of treating the terminally ill by terminating their lives (B:15). Colleen Clemens, in an opinion article published in Toronto, Canada's Medical Post, writes

The actual goal of euthanasia [...] [is] to allow medicine to rid society of those with no utility, whether or not [they are terminally ill]. [...] Bioethics [...] refuses to look at the utility pressures and economic cost-efficiency pressures operative in the health-care system.[...]. [T]he discussion [...] [is] ungrounded in any consistent theory of ethics. Some are already arguing that it is beneficial to society to euthanize an infant born with severe

defects if the parents are capable of having another baby who will have a better prospect for leading a normal life (Smoker 17).

However, doctors are often wrong. In a case in Harrisburg, Pennsylvania in 1958, doctors at Harrisburg Hospital assisted in the birth of a baby born to a woman suffering from severe toxemia. The woman had gone into what doctors considered spontaneous abortion of a dead fetus. Acquiescing to the mother's pleas to attempt resuscitation, doctors were able to revive the infant, even though they said that the baby would never be able to lead a productive life due to birth defects caused by the premature birth and a birth weight of two pounds eleven ounces. Even though the child suffered from chronic recurring illnesses in both childhood and adulthood, she was and is able to lead a reasonably normal life (Eisenberger). Medicine is more of an art than an exact science. If doctors are allowed to play God in a situation such as the one cited above, many individuals will be denied a chance at life.

Doctors may also be pressured to kill someone by a guardian who has ulterior motives. In the case of Terri Schiavo, her estranged husband Michael Schiavo presented evidence to a medical malpractice jury that his ex-wife would have a normal lifespan. When the jury decided in his favor and the resulting money was in his bank account, he changed his tune, disallowing even the most basic attempts to make Terri's life easier. At one point, a washcloth was placed in Terri's hand to keep her fingers from curling. Her husband claimed that this was physical therapy and forced the nurse to remove the washcloth. According to this same nurse in an affidavit to the Florida court hearing the euthanasia case, Terri's husband was obsessed with her dying as soon as possible (Smith14).

Cases such as Terri Schiavo's show clearly the danger of the choice of a person's life or death being placed in the hands of someone with less than pure motives. Also, if HMO's and

other managed-care organizations that are indifferent at best to the quality of patient care are allowed to make life or death decisions for people whose care costs these insurance companies large sums of money, mass genocide may be the result. A living will, which spells out the exact circumstances in which euthanasia may be permitted, is the best safeguard against involuntary euthanasia. The only other cases in which euthanasia should be permitted are those cases in which the medical profession has exhausted all options available to make a person's situation better, regardless of a person's age, disability, ethnicity, or ability to pay. In addition, a psychiatric examination should be given to all persons requesting euthanasia. If a person is found to be subject to depression, their depression should be aggressively treated before their consent is obtained in writing for the euthanasia to take place. Only by adopting these standards can the potential for abuse of euthanasia be minimized.