

HAD 502 – Health Care Law

Mr. Costello
McGurrin Hall, Room 402

Fall, 2010
3 Credits

Course Description:

Impact of legal factors affecting patient/client care and the operations and administration of healthcare facilities and systems. Examines principles and practices of law, legal relationships, sources of law and legal processes affecting the health service system. Conceptual foundations are drawn from the political sciences.

Prerequisites: None

Required Text:

Health Law: Cases, Materials and Problems, by B.R. Furrow, T.L. Greaney, S.H. Johnson, et.al. Sixth Edition. Thomson/West, 2008.

Recommended Text:

Problems in Health Care Law, by Robert D. Miller. Ninth Edition. Jones and Bartlett Publishers, Inc., 2006.

Course Objectives:

During this course, students will:

- A) evaluate specific factual knowledge about legal applications in health care administration.
- B) analyze fundamental principles, generalization and theories of law in health care management.
- C) apply course material to problem-solving and decision-making skills.

Major Course Activities:

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|------------------------|-------------------------------------|
| A) Class Lecture | F) Case Briefings |
| B) Class Discussion | G) Examinations |
| C) Class Participation | H) Out of Class Project Assignments |
| D) Class Attendance | I) Community Service |
| E) Reading Assignments | |

Grading Criteria:

Mid-Term Examination and Final Examination	(30% each)
Class Participation to include Case Briefs	(20%)
Out of Class Assignment	(20%)

Instructor Information:

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COURSE SCHEDULE

<u>Date</u>	<u>Topic</u>	<u>Read Text</u>	<u>Case Brief</u>
August 26	Course Introduction Policy and the law Legislation and regulation Federal and state courts Administrative agencies Video: US Constitution and the Bill of Rights Article: "The Court Comes Together" by Richard Brust. <u>ABA Journal</u> , April 2004.		
Sept. 2	Contracts Theory Elements Defenses Tort Law Types of Tort Liability Damages Civil Process Crimes Definition Types Criminal Process Video: American Law: How it Works		Katskee v. BC/BS of Nebraska
Sept. 9	The Context of Health Law Defining Sickness Quality Issues Medical Error Distributive Justice Law of Public Health	1 - 71 96 - 114	Berry v. Cardiology Consultants, PA Jacobson v. Massachusetts
Sept. 16	Licensure Regulating Quality Professional Licensure Unlicensed Providers Scope of Practice Institutional Liability Regulatory Systems Private Accreditation	115-194	Hoover v. The Agency for Health Care Administration State Boards v. Ruebke Sermchief v. Gonzalez Fairfax Nursing Home, Inc. v. US Dept. HHS
Sept. 23	Professional and Institutional Liability Standards of Care Practice Guidelines Burden of Proof Defenses Causation Problems Damage Innovations Vicarious Liability Institutional Direct Liability Corporate Negligence Tort System Reform Video: The Malpractice Crisis Article: "The Med-Mal Divide", by John Gibeaut, <u>ABA Journal</u> , March 2005.	195-284 327-552	Helling v. Carey Wickline v. State Herskovits v. Group Health Darling v. Charleston Thompson v. Nason

<u>Date</u>	<u>Topic</u>	<u>Read Text</u>	<u>Case Brief</u>
Sept. 30	Organizational structure Governance Forms and their consequences Integration Tax exemption Sarbanes Oxley implications	909-1022	In re Caremark IHC v. IRS (2) Redlands v. IRS
Article: "Who Pays Hefty Hospital Tabs?", by Terry Carter. <u>ABA Journal</u> , January 2005.			
Oct. 7	Mid-Term Exam (In Class)		
Oct. 14	Federal and State Regulation of Private Health Insurance and Managed Care Basic Concepts Contractual Liability Tort Liability ERISA HIPAA ADA	638-766	Lubeznik v. Health Chicago Colonial v. Curiale Pegram v. Herdrich Doe v. Group Hospitalization
Oct. 21	Out of Class Assignment		
Oct. 28	Medicare and Medicaid Eligibility Benefits Payment Administration Access Emergency Medicine Treatment & Active Labor Act	767-848 596-637	Westside Mothers v. Haveman Williams v. US Childs v. Weis Baber v. HCA Howe v. Hull
Nov. 4	Professional-Patient Relationship Contracts, Warranties, etc. Confidentiality Informed Consent-Physician Informed Consent-Institution Professional-Institutional Relationships Staff Privileges Managed Care Contracts Labor and Employment Employment at will Independent Contractors Collective bargaining Federal and state regulation Discrimination Law	195-326 849-906	Shorter v. Drury Acosta v. Byrum et al. Tunkl v. Regents Tisdale v. Pruitt Sokol v. Akron Potvin v. Metropolitan Wright v. Shriners NYU Medical Center vs. Association of State Psychiatrists Estate of Mauro v. Borgess Medical Center

<u>Date</u>	<u>Topic</u>	<u>Read Text</u>	<u>Case Brief</u>
Nov. 11	Fraud and Abuse False Claims Medicare and Medicaid Issues Stark I and Stark II	1023-1094	US v. Krizek (1) US v. Krizek (2)
Article: "Above Reproach" by T. L. Greaney. <u>Frontiers of Health Service Management</u> , 16(3): 3-38, Spring 2000.			
	Antitrust Cartels Collective Activities Provider-Controlled Networks Exclusive Contracting Payors with Market Power Mergers and Acquisitions	1095-1185	In re Michigan State Medical Society Wilk v. AMA Arizona v. Maricopa Kartell v. BS/Mass.
Article: "Whither Antitrust," <u>Health Affairs</u> , March/April 2002.			
Article: "After the Fact," by M.M. Costello. <u>Hospital Topics</u> , 86(3), 11-14, 2008.			
Nov. 18	Reproduction and Birth Beginnings of life Intervention in reproduction In Vitro Fertilization Surrogacy Cloning Fetal Maternal Decision Making	1186-1351	Roe v. Wade PPSEPA v. Casey Smith v. Cote Davis v. Davis
Dec. 2	Life and Death Decisions Autonomy and Beneficence Constitutional "Right to Die" Decision making capacity Physician Assisted Suicide	1380-1567	Cruzan v. Missouri DOH Bouvia v. Superior Court Guardianship of Schiavo Washington v. Glucksberg
Article: "Patient Capacity and Physician Response Regarding Physician-Assisted Suicide Requests....", by H. Baillie, M.M. Costello and D.J. West, Jr., <u>Journal of Quality Health Care</u> , 2(3), 12-21, 2003.			
Article: "What I Learned from <u>Schiavo</u> " by Gerald S. Witherspoon. <u>The Hastings Center Report</u> . 27 (6), 17-20, 2007.			

Appendix A

Case Briefs

A case brief is a written outline of a court decision. By outlining a judicial decision according to a predetermined format, the student summarizes the key elements of the case and resulting decision. The outline is an analytical tool to help the student understand the decision of the court.

In briefing the cases listed on the syllabus, use the following outline:

CITATION:	Marbury v. Madison 1 Cranch 137, 2 L.Ed. 60 (1803)
NATURE OF CASE:	Form of action, type of proceeding, and relief sought.
FACTS:	What led to the judicial action.
ISSUE:	The concise question to be answered.
HOLDING:	What did the court decide?
RATIONALE:	Why did the court rule as it did?

Appendix B

Community Service

Out-of-Class Assignment

Litigation Alternatives

Instructions

Many observers have suggested that the civil litigation process is not the best way to resolve medical injury claims because the process is too adversarial, too expensive, too lengthy and often does not result in fair and just outcomes. Several of these sources have recommended that medical injury claims be resolved through other means including:

- 1) Special medical courts
- 2) Mandatory arbitration
- 3) No-fault compensation

as well as others. Through literature reviews, find at least two journal articles on litigation alternatives to medical practice litigation and prepare a written analysis that addresses the following points at a minimum:

- 1) How does the procedure work as an alternative to standard civil litigation?
- 2) In what states, and under what circumstances has the procedure been adopted?
- 3) Has it been effective and how has this been determined?

Attached copies of your articles, and any other source material to your analysis and hand in to the Departmental Secretary by 3 pm on Friday, October 22, 2010.

The written analysis will count for 20% of the final course grade and will be evaluated as follows:

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|----|---|-----|
| 1) | Appropriateness of litigation alternative | 25% |
| 2) | Quality of research sources cited and articles attached | 25% |
| 3) | Adherence to each of the three points specified above | 25% |
| 4) | Quality of the written analysis | 25% |

Additional Readings

Books

American Medical Association, 2002, Code of Medical Ethics: Current Opinions with Annotations.

Bauman, LA, ed., 2002, Health Care Fraud and Abuse: Practical Perspectives. Washington, DC: Bureau of National Affairs, Inc.

Bucy, PH, 1998, Health Care Fraud: Criminal, Civil and Administrative Law. New York, NY: Law Journal Seminars Press.

Dauer, EA, Kovach, KK & Liang, BA, 2002, Health Care Dispute Resolution Manual. First Edition. Gaithersburg, MD: Aspen Publishers, Inc.

Furrow, BH, Johnson, SH, Jost, TS, 2008, Health Law Cases, Materials and Problems. Sixth Edition. St. Paul, MN: West Publishing Co.

Gosfield, AG, ed., 2008, Health Law Handbook. St. Paul, MN: Thomson West.

Holder, AR, 1978, Medical Malpractice Law. Second Edition. New York: John Wiley and Sons.

Knag, PE & Boyle, LM, 2002. HIPAA: A Guide to Health Care Privacy and Security Law. First Edition. Gaithersburg, MD: Aspen Publishers.

Moy, MM, 2000, The EMTALA Answer Book, Second edition. Gaithersburg, MD: Aspen Publishers, Inc.

Miller, RD, 2006, Problems in Health Care Law. Ninth Edition. Boston, MA: Jones & Bartlett Publishers, Inc.

Pozgar, GD, 2007, Legal Aspects of Health Care Administration. Tenth Edition. Gaithersburg, MD: Aspen Publishers, Inc.

Rabin, SM, 2001, Managed Care Law and Liability. First Edition. Gaithersburg, MD: Aspen Publishers.

Showalter, JS, 2008. The Law of Health Care Administration. Fifth Edition. Ann Arbor, MI: Health Administration Press.

Snell, RJ & Troklus, D, 2001. In Search of Health Care Compliance. First Edition. Gaithersburg, MD: Aspen Publishers.

US Department of Justice and Federal Trade Commission, 1996, Statements of Antitrust Enforcement policy in Health Care. Washington DC.

Valiant, C. & Matyas, DE, 1997, Legal Issues in Healthcare Fraud and Abuse. Second Edition. Washington, DC: American Health Lawyers Association.

Withrow, SC, 1999, Managing Healthcare Compliance. Chicago, IL: Health Administration Press.