

**WIDENER UNIVERSITY SCHOOL OF LAW**  
**HEALTH LAW II (710)**

**Spring 2008**

**Professor Thaddeus Pope**

**Contacts:** Room 325; tmpope@widener.edu; 302-477-2230

**Time & Place:** Mondays 6:30 – 7:55 p.m. & Wednesdays 8:20 – 9:45 p.m. in L-123

**Exam:** Friday, May 2, 2008 from 6:30 to 9:30 p.m.

**I. Course Description**

Health Law can be divided into five subfields: (i) finance and regulation, (ii) public health, (iii) biotechnology, (iv) bioethics, and (v) patient care. In contrast to *Health Law I* which focuses on liability and patient care issues, *Health Law II* addresses the regulation, structure, and financing of the U.S. health care system.

Regulation and structure issues include: (i) how health care institutions are legally organized as business associations; (ii) the charitable tax exemption doctrine; (iii) professional relationships, including medical staff structure and disputes; (iv) federal fraud and abuse, including the False Claims Act and Stark regulations; (v) health care transactions, and (vi) antitrust.

Access and financing issues include: (i) common law and statutory obligations to provide access; (ii) health care spending, coverage, and reimbursement methods by private insurers; (iii) state regulation of insurance, including ERISA preemption; and (iv) public health benefits programs, including Medicare, Medicaid, and SCHIP.

**II. Course Objectives**

Upon completion of the course, students will have:

- A. A basic systematic understanding of the legal principles surrounding health care finance and regulation;

- B. Further honed legal analysis and writing abilities, through (i) exposure to and critique of legal arguments in judicial opinions, legislative reports, and scholarly writing; (ii) participation in classroom discussion; (iii) completion of weekly written problems; and (iv) completion of a written final examination; and
- C. Integration of material learned in other classes such as business organizations, tax, civil procedure, and torts.

### **III. Required Materials**

- A. BARRY R. FURROW ET AL., THE LAW OF HEALTHCARE ORGANIZATION AND FINANCE (Thomson/West American Casebook Series 5th ed. 2004) (ISBN 0-314-15405-1).
- B. Alternatively, you can also use FURROW ET AL., HEALTH LAW: CASES, MATERIALS, AND PROBLEMS (5th ed. 2004), which is the larger hardback casebook from which the above red paperback is derived.
- C. Health Law is a rapidly developing area. Accordingly, from time to time, I will post additional current materials to the course TWEN site. I will clarify both in class and on the website whether these are required or suggested materials.

### **IV. Class Schedule**

- A. The class will meet on Mondays from 6:30 to 7:55 p.m. and on Wednesdays from 8:20 to 9:45 p.m. in Room L-123.
- B. The class will *not* meet on the following days: (i) Monday, January 21<sup>st</sup> due to MLK Day, (ii) Monday, March 3<sup>rd</sup> due to spring break, (iii) Wednesday, March 5<sup>th</sup> due to spring break, and (iv) Wednesday, April 23<sup>rd</sup> due to Friday class makeup. The last class meets on Monday, April 21<sup>st</sup>.
- C. Depending on class interest, I am happy to schedule a “review” class during the weeks before the final exam.

### **V. Attendance, Preparation, and Participation**

- A. Attendance: Under American Bar Association rules, 80% attendance is required to allow you to write the final exam. Attendance will be taken by passing class lists for signature at the start of each class session.

- B. Preparation: I employ little lecture but lots of problems and case method arguments. Consequently, students must come to class prepared to discuss the material assigned. All assigned cases must be read and briefed, and all problems must be considered, before the applicable class session. You do not need to know the correct answer (if there is one). But know the reading material and make a reasonable effort to think about the issues raised in the problems and questions.
- C. Class Participation: *All* students are expected to participate in class discussions. If illness or emergency prevents you from being fully prepared, please notify me *before* class. I reserve the right to reward exemplary class participation by raising your grade one step (e.g. B+ to A-).
- D. Show & Tell: The topics in this class are constantly in the news and in the plot lines of movies and broadcast shows. If you notice a story that illustrates or discusses a class topic, please drop me a note or bring it up in class.

## VI. Classroom Etiquette

- A. The classroom environment must be conducive to learning for all students. Distractions made possible by advances in technology may undermine that goal.
- B. Audial: During class, in addition to usual courtesies, kindly disable and refrain from using cell phones, pagers, and any other communication device other than your laptop computer.
- C. Visual: Please refrain from displaying wallpaper, screen savers, or other material on your laptop computer that you can reasonably expect to be offensive to other students.
- D. End Time: I will be diligent about starting the class precisely at 6:30 and 8:20 p.m. and ending it precisely at 7:55 and 9:45 p.m. In return, please do not begin to pack-up while others are still trying to be engaged in the class discourse.

## VII. Grading

- A. Quizzes and Problems (25%).
- B. Final Exam (75%).

- C. To make my calculations more objective and transparent, I convert all the above percentages into points. There are a total of 240 points for the course. The final exam is worth 180 points. The problem analyses are worth a total of 60 points. Grading methods are more fully explained in the next two sections.

### **VIII. Required Quizzes and Problems**

- A. While I will provide informal, oral feedback during class discussions, I do not want the first *formal* feedback that you receive to be your graded final exam, provided several weeks *after* the end of the semester. Therefore, I will assign weekly multiple choice quizzes and/or short essay problems. These may often be quite short, consisting, for example, of just one question or just one paragraph.
- B. I will grade the quizzes. For the short essays, I will distribute a score sheet and/or a model answer. But I am happy to review and provide individualized feedback on your essay. Just ask.
- C. The ten quizzes and essays, in the cumulative, comprise 25% of your total course grade. Nine of these are each worth four (4) points or roughly 2% of your total course grade. The full-length essay problem is worth twenty-four (24) points, or 10% of your total course grade.
- D. While I may ask you to complete some quizzes and essays during class, you will complete most of the quizzes and essays before class on the course TWEN site. I will announce and post the problems and questions at least five days in advance of the due date. I will either review the quiz/problem in class or pose a feedback memo. More details will be discussed when the first problem is assigned.

### **IX. Final Exam**

- A. Date: The final exam is scheduled from 6:30 to 9:30 p.m. on Friday, May 2, 2008.
- B. Format and Length: The final examination will be comprised of three parts. The first part will include multiple choice questions. The second part will include short answer questions. The third part will include one long essay problem.

- C. Coverage: The exam will test those concepts and issues either covered in assigned readings or explored during class lectures and discussions. The exam will roughly reflect the relative time and emphasis on topics in the course.
- D. Open Book: On the exam, you will be allowed to use any written or printed materials you choose. No electronic devices are permitted.
- E. Grading and Feedback: All exams will receive a raw score from zero to 180. The raw score is meaningful only relative to the raw score of the other students in the class. The raw score will be converted to a scaled score, based on the class curve. For example, if the highest raw score in the class were 70, then that student would probably receive an A. I will provide an explanatory memo and/or a model answer after the exam.
- F. Grading Criteria: I will post my old *Health Law* exams and my old exam feedback memos and score sheets on TWEN. While those exams had a broader coverage than we will have in this course, you can get a good sense of the criteria that I employ in grading. In short, I look for:
  - 1. An ability to muster relevant evidence and authority to make arguments cogently and clearly
  - 2. An understanding of substantive legal doctrine
  - 3. An appreciation for broader policy concerns that influence how legal doctrine applies to novel situations
  - 4. A practical appreciation for the context of care in a hospital setting and for the context of tort litigation

## X. Office Hours

I look forward to talking to you outside class. There are several means of doing this:

- A. After class: I will remain in the classroom after each class for all trailing questions, until or unless we are kicked out by another class.
- B. Office: I can typically be found in my office before and after class. If this is not a convenient time, just let me know in class or by email and we can make an appointment with each other. You are welcome to drop in my office anytime, but it is best to confirm a particular time in advance.
- C. Email: Feel free to e-mail me at tmpope@memphis.edu if you are unable to come by in person.
- D. Lunch: I have found that grabbing a quick lunch (or given the time of this class, coffee) is a good way to get to know each other. If you and one or two other students want to share a bite, please let me know.

## **XI. TWEN Site**

The TWEN site will include the following materials:

- A. PowerPoint slides for each class, posted shortly before each class
- B. Links to MP3 recordings of selected classes
- C. Problems and Quizzes (see section VIII, *supra*)
- D. Statutes, cases, and other materials

**Warning!!** Do not permit the availability of these materials to deter you from preparing and participating in class. I provide these materials to supplement and enhance classroom learning, not to substitute for it. It is important to remember that knowledge acquisition is only one small part of law school education. I plan to do little lecturing during classes. Lectures may seem to provide more value – more content, more certainty. It may seem like you are “learning” more. But this would be poor preparation for the practice of law where there is little certainty. Furthermore, nonattendance is not an option given University and ABA attendance requirements, and the grading policy described above.

## **XII. Study Aids and Reference Materials**

Despite the prevalence of health law courses in U.S. law schools, there are, as yet, few student-oriented ancillary materials. But there are numerous clear and lucid law review articles and background reports. I will provide copies of or links to the more useful of these materials on a topic-by-topic basis. There are also some good reference books. You really *do not* need to use any of these sources. I list them here only should you want to consult them to get more depth on certain issues.

### **A. Study Aids**

- 1. MARCIA M. BOUMIL ET AL., *MEDICAL LIABILITY IN A NUTSHELL* (West 2d ed. 2003).
- 2. BARRY R. FURROW, THOMAS L. GREANEY, SANDRA H. JOHNSON, TIMOTHY STOLTZFUS JOST & ROBERT L. SCHWARTZ, *HEALTH LAW* (2d ed. West Hornbook series 2000) (adapted from the 3-volume practitioner series).
- 3. MARK A. HALL, IRA MARK ELLMAN & DANIEL S. STROUSE, *HEALTH CARE LAW AND ETHICS IN A NUTSHELL* (2d ed. West 1999).
- 4. GEORGE D. POZGAR & NINA SANTUCCI, *LEGAL ASPECTS OF HEALTH CARE ADMINISTRATION* (Aspen 7th ed. 1999) (directed toward non-lawyers).

B. **Reference Materials**

This is, of course, a highly select list. I have not included CLE or practitioner-oriented materials. Nor have I included materials more narrowly focused on specific health law issues.

1. AMERICAN COLLEGE OF LEGAL MEDICINE TEXTBOOK COMMITTEE (SANDY SANBAR ET AL.), LEGAL MEDICINE (Mosby 5<sup>th</sup> ed. 2001)
2. AMERICAN HEALTH LAWYERS ASSOCIATION, FUNDAMENTALS OF HEALTH LAW (West 3d ed. 2004), Westlaw database AHLA-PAPERS.
3. AMERICAN HEALTH LAWYERS ASSOCIATION, HEALTH LAW PRACTICE GUIDE (West CBC looseleaf) (3 volumes), Westlaw database HTHLPG.
4. ALISON BARNES ET AL., HEALTH CARE LAW DESK REFERENCE (ALI-ABA 2001).
5. SCOTT BECKER, HEALTH CARE LAW: A PRACTICAL GUIDE (Lexis 2005), available on LEXIS.
6. ALEXANDER M. CAPRON & IRWIN M. BIRNBAUM EDS., TREATISE ON HEALTH CARE LAW (Matthew Bender 2005) (5 volumes), on LEXIS.
7. DEAN M. HARRIS, CONTEMPORARY ISSUES IN HEALTHCARE LAW AND ETHICS (Health Admin. Press 2003).
8. PAUL C. LASKY ED., HOSPITAL LAW MANUAL (Aspen looseleaf) (KF3825.A6.A85).
9. BRYAN A. LIANG, HEALTH LAW & POLICY: A SURVIVAL GUIDE TO MEDICOLEGAL ISSUES FOR PRACTITIONERS (Butterworth Heinemann 2000).
10. CLAIRE C. OBADE, PATIENT CARE DECISION MAKING: A LEGAL GUIDE FOR PROVIDERS (West CBC looseleaf), Westlaw database PCAREDM.
11. STEVEN E. PEGALIS, AMERICAN LAW OF MEDICAL MALPRACTICE (West CBC 3d ed. 2005).
12. FAY A. ROZOVSKY, CONSENT TO TREATMENT: A PRACTICAL GUIDE (3d ed. Aspen 2006).

### **XIII. Course Reading Outline**

The outline below is intended to give you a sense of the scope and order of course coverage. It is *not* a reading schedule. We may deviate from the coverage and sequence below. I will give the specific assignment for the following week during the prior week.

#### ***Health Care Financing*** • • • • • • •

##### **1. Health Care Cost and Access**

1.1.	Problems in the Policy Context	122-135	494-508
1.2.	Expanding Access, Controlling Costs	136-155	508-527

##### **2. Obligations to Provide Access**

2.1.	Common Law Duties	156-166	528-538
2.2.	Statutory Duties	166-193	538-556

##### **3. Private Health Financing**

3.1.	Introduction	194-208	566-580
3.2.	State Regulation	236-271	608-543
3.3.	Federal Regulation		
3.3.1.	ERISA Preemption	272-288	644-660
3.3.2.	ERISA Fiduciary Obligations	288-298	660-670
3.3.3.	ERISA Remedies	321-341	693-713
3.3.4.	HIPAA, COBRA, ADA	341-358	713-730

##### **4. Public Health Financing**

4.1.	Medicare	359-400	731-772
4.2.	Medicaid	400-430	772-808
4.3.	SCHIP	430-436	803-808

#### ***Health Care Regulation*** • • • • • • •

##### **5. Professional Relationships**

5.1.	Staff privileges	438-494	810-866
5.1.1.	Hospital-Physician Contracts		
5.1.2.	Managed Care Contracts		
5.1.3.	Labor & Employment		
5.1.4.	Discrimination Law		
5.2.	Business Organizations	495-527	867-899
5.3.	Corporate Practice of Medicine	527-548	899-920

<b>6. <u>Charitable Tax Exemption</u></b>		
6.1. Charitable Tax Exemption Doctrine	548-573	920-945
6.2. Tax Exempt Organizations	573-602	945-975
<b>7. <u>Fraud &amp; Abuse</u></b>		
7.1. False Claims Act	603-638	976-1011
7.2. Bribes and Kickbacks	638-660	1011-1033
7.3. Stark I, II, and III	660-670	1033-1043
7.4. State Statutes	671-672	1043-1045
<b>8. <u>Antitrust</u></b>		
8.1. Cartels and Professionalism	673-687	1046-1060
8.2. Justified Collective Actions	687-704	1060-1077
8.3. Integration and Financing	704-728	1077-1101
8.4. Physician's Unions, Exclusive Contracts	728-740	1101-1113
8.5. Mergers and Acquisitions	740-760	1113-1133