Health Law: The Regulation of Providers  
Law 5615-01

Prof. Sam Halabi

MW 2:00 to 3:15pm  
Hulston Hall Rm 332A  
January 18 – April 26, 2017

DESCRIPTION and GOALS:
This course provides a broad survey of the most fundamental legal issues surrounding the delivery of health care in America. No prior knowledge of health law is required. By the end of this course students should be able to explain both the current state of American health law and the social forces that have shaped its historical development.

Major topics include state and federal regulation of health care providers and institutions; tort liability in the context of medical care; patient and provider rights and obligations; public and private insurance systems; antitrust implications of provider self-regulation; and basic approaches to public health regulation.

OBJECTIVES*: 
1. Identify and analyze major legal issues in health care contexts; 
2. Describe the relationship between cost, quality, and access to health care; 
3. Draft legal documents a healthcare or health law attorney uses and confronts on a regular basis.

*If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), S5 Memorial Union, 573-882-4696, and then notify me of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

CONTENT, OUTLINE AND MATERIALS:
The required casebook for this course is Furrow et. al., HEALTH LAW: CASES, MATERIALS, AND PROBLEMS, 7TH EDITION (West) (“Casebook”).

Additional materials will be posted from time to time and available on the course TWEN site.

Attendance: Regular and punctual attendance in class is expected. Each absence or tardiness in excess of 3 results in a grade reduction.

Instructional Design and Class Participation: The course will be taught using a combination of class discussion, lecture, Socratic dialogue, and in-class group exercises. Because the success of this course is partially dependent on each student’s interest and active involvement, class participation is required.

Technology: Laptop computers as well as tablets are not permitted.
TWEN: The course website is available on TWEN with your Westlaw password. If I need to communicate with the class during the course of the semester, I will do so by e-mail using the class list on TWEN. You will also upload your research papers and your skills exercise to the TWEN Assignments page.

Required Readings: This syllabus includes a tentative schedule of reading assignments for the semester. I expect to cover roughly 25 pages per class session, though our pace may vary depending on the nature of the material. Students are responsible for all assigned readings, and should come to class prepared to discuss them.

Assessment**:  
30% - Research exercise based on False Claims Act Complaint (details given in separate document)  
30% - Skills exercise based on compliance advice developed in light of False Claims Act Complaint (details given in separate document)  
40% - Multiple choice final exam on Monday, May 5 at 8:30 am  

**Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law’s Honor Code as extremely serious matters. Sanctions for such a violation may include academic sanctions such as failing the course, and disciplinary sanctions ranging from probation to expulsion. Please consult me when in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating.

Office Hours  
I meet with students by appointment so feel free to schedule a time to meet via email. I will also be available before class most weeks.

Instructions: Unless otherwise indicated, begin reading with the first full note or case beginning on the first assigned page. Read through the last note or case that ends on the last assigned page. “ACA” denotes a discussion about the Affordable Care Act.

1. **Health, Illness, and Law**

Jan 18. **What is Illness and Who Should Care?**  
• Casebook Pages 1-8, 9-25, 74-82  
• U.S. Constitution art. I, sec. 8, cl. 1 “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”  
• Isaiah Berlin, Two Concepts of Liberty (available under Course Materials) first full paragraph on page 3, first full paragraph on page 14

Discussion Questions
1. What is illness? When, if at all, should the state intervene to either promote health or protect citizens from disease or other health threats?
2. If the state should intervene, what allocation of authority should there be between local, state, and federal governments?
3. What aspects of individual and public health involve so-called “negative liberties” (where the state must refrain from interfering in private rights) and “positive liberties” where the state must provide something essential to its citizens?

II. Regulating Physicians and Health Care Institutions

Jan. 23. Defining the Practice of Medicine: Licensure and Discipline
• Casebook Pages 87-104

Discussion Questions:
1. What is the purpose of medical licensure and discipline? What are the negative indirect effects of licensure?
2. How, if at all, is the standard of care among medical professionals relevant to licensure and discipline?
3. What happens when state control of medical practice conflicts with federal law?

Jan. 25. The Scope of the Doctor-Patient Relationship
• Casebook Pages 177-190, 196-206

Discussion Questions:
1. When does a physician-patient relationship begin? When does it end?
2. What obligations do medical providers and institutions have in the absence of a doctor-patient relationship?
3. When is a patient’s waiver of her right to sue a medical provider valid?

Jan. 30. Introduction to Litigation in the Medical Context
• Casebook Pages p.299-311, 417-31

Discussion Questions:
1. Is a patient’s failure to follow medical instructions comparative negligence?
2. What responsibilities do medical providers (e.g. physicians and nurses) and hospitals have to patients?
3. Why and when are hospitals liable for the acts of independent contractors?

Feb. 1. Federal Conditions of Participation and Conditions of Payment
• Federal Register / Vol. 77, No. 95 / Wednesday, May 16, 2012 / Rules and Regulations 29034-29045 (under Course Materials)
• Casebook Pages 146-55, 161-68, 173-75

1. What is the relationship between state and federal regulation of medical facilities and personnel?
2. What is the relationship between private and public regulation?

Feb. 6. Mechanisms of Enforcement: Introduction to the False Claims Act
Casebook Pages 1073-1089

Special Library Session: Cindy Shearrer and John Dethman on researching False Claims Act cases


Guest Speaker: Jenelle Beavers, Former Trial Attorney, U.S. Department of Justice and Special Assistant U.S. Attorney, U.S. District for Northern Oklahoma

Feb. 13. Informed Consent
• Casebook Pages: 206-22, 234-43, 244-53

Discussion Questions:
1. How do the battery and negligence standards of informed consent differ?
2. How does one prove breach in an informed consent case?
3. How does one prove causation in an informed consent case?
4. What information should patients have about their providers’ conflicts of interest?

Feb. 15. Patient Confidentiality
• Casebook Pages: 255-62, 266-281, 293-97

Discussion Questions:
1. When may a patient recover in tort for breach of confidentiality?
2. What are the requirements of HIPAA? How is it enforced?

Feb. 20. Tort Liability of Health Providers – Evidence and Standard of Care
• Casebook Pages 311-24, bottom of 325-327, 331-40, 432-39
1. Should custom be dispositive in medical practice for the purpose of determining the standard of care? Why or why not?
2. Can clinical practice guidelines be used to define the standard of care? Should they?

Feb. 22. Defenses
• Casebook Pages: 359-60, 362-90 (to beginning of case), 400-402
1. When does a claim for medical malpractice “accrue”? How do you balance the disclosures providers might make about potential mistakes with patient welfare?
2. How do you think through damages in a medical malpractice case?