

Syllabus

Governance and Ethics in Health Care Compliance

Course: Governance and Ethics in Health Care Compliance

Credits: 2

Classroom: 105

Time: Thursdays 4:00-5:50 (one 10-minute break)

Instructor: Judith Walker
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Description: This course focuses on the role of Boards of Directors in meeting health care challenges and the ethical dilemmas commonly faced by compliance officers. Subjects to be covered include federal and state laws applicable to health care organizations; governance structure; duties of boards and management; and responsibility for oversight of finances, internal controls, quality and compliance by health care organizations. Students will learn about for profit and not for profit differences, including in taxation, and about the unique ethical issues faced by the various stakeholders in the health care system. Students will also explore the reasons why organizations commit ethical lapses, with a key focus of the course on exploring how compliance officers and the board can address and prevent them.

Technology Policy:

In order to facilitate focused interactive class and small group discussion, there will be occasions when the class will be asked to close their laptop computers and turn off technology. At other times, students may use laptops for note taking. Students are expected to give undivided attention to class. Use of technology in class for reasons unrelated to class will be factored into the scores for class participation and preparedness.

Course Evaluation:

Subject to the caveat below regarding class participation, 100% of your course grade will be based on one anonymous take home examination. The caveat is that your course grade may be adjusted one-half letter (up or down) based on class preparedness in accordance with Hamline University School of Law Academic Rule 105. More specifically, I reserve the right to: 1) raise your course grade by one-half of a letter if you

participate substantially when not called on or distinguish yourself when called on; or 2) lower your course grade by one-half of a letter if you are not prepared when called on. Your active participation in small group exercises will be assessed as part of your class preparedness.

Course Attendance:

At the beginning of each class, I will distribute a class roster for you to sign. If you are absent for more than two classes, your absence will be treated as “excessive” in accordance with Hamline University School of Law Academic Rule 108 unless you have approval from me in advance.

Materials and Topics:

Please read *The Lucifer Effect: Understanding How Good People Turn Evil*, by Philip Zimbardo. This is a book we will discuss in class beginning with the April 14 session. Other specific reading and class assignments are noted below, but please note they will be updated as the semester progresses.

Course Schedule:

January 20: Laying the foundation: understanding the various types of health care organizations, the distinction between nonprofit and for profit organizations and the relevant tax issues/implications

Reading materials:

MSA §§ 302A.101, 302A.115, 302A.201, 302A.203, 302A.205, 302A.235, 302A.402

MSA §§ 317A.101, 317A.115, 317A.201, 317A.203, 317A.205, 317A.235, 317A.811

Minnesota Constitution Article X, Section 1

Minnesota Statutes Sections 272.02

Under the Rainbow Child Care vs. County of Goodhue, 741 NW2d 880 (Minn. 2007)

Minnesota Statutes Section 297A.70

Internal Revenue Code Sections 501(a), 501(c)(3) and 170(b)(1)(A)(iii)

January 27 and February 3: Laying the foundation: Discussing key aspects of regulatory oversight of health care organizations; a view of the state and federal regulatory landscape

Reading materials and class preparation:

Read just the table of contents for Minnesota Statutes Chapters 62A, 62C, 62D, 62L and 62Q

Read Chapter 9 of the Centers for Medicare and Medicaid Services (CMS) Prescription Drug Manual

Identify the statutory authority for state regulation of health care providers

February 10: Fiduciary Duties of Directors and Officers

- Understand duty of care, duty of loyalty and duty of obedience as a board member.
- Do duties differ based on type of health care organization involved?
- On whom can directors rely?
- Discuss consequences for breach of duties.
- Identify areas of liability for directors and ways to protect individuals from liability.
- Understand indemnification rights.
- Understand state liability exemption for volunteer directors.

Reading materials:

MSA §§ 302A.251, 302A.255, 302A.361, 317A.251, 317A.255, 317A.361, 317A.257

Guide for Board Members – Fiduciary Duties of Directors of Charitable Organizations from the Office of Minnesota Attorney General at www.ag.state.mn.us/Brochures/pubFiduciaryDutiesofDirectors.pdf

Doulgeris v. United States No. 8:08-CV-00282 (M.D. Fla.) Aug. 3, 2009

Verret v. United States 103 AFTR 2d 2009-1189 (Feb. 26, 2009)

February 17: Overview of best practices in corporate governance in health care organizations.

- Role of the Board.
- Role of Committees.
- Understanding the organization's mission.
- Size and composition of boards.
- Whistleblower policies.
- Meeting minutes.

- Discuss document retention practices.
- Begin discussions on conflict of interest policies, compensation practices, financial oversight and other board practices.

Reading materials and class preparation:

Principals for Good Governance and Ethical Practice – A Guide for Charities and Foundations (Panel on the Nonprofit Sector October 2007) at

<http://www.nonprofitpanel.org/Report/principles/index.html#principles>

Click on “Download guide for charities and foundations”

IRS training materials on governance issues for tax-exempt organizations at

www.irs.gov/pub/irs-tege/governance_practices.pdf

Bring a copy of IRS Form 990 to class

February 24: Ethical and governance challenges in complying with fraud, waste and abuse requirements

Reading materials and class preparation: TBD

March 3: A chief legal officer perspective: ethics and governance issues in for profit vs. nonprofit organizations; the differing obligations and roles of legal and compliance officers

Reading materials and class preparation: TBD

March 17: A regulator’s perspective on ethics and governance in health care organizations. What does the government look for? Does it really matter?

Reading materials and class preparation: TBD

March 24: A compliance officer perspective: ethics and governance challenges in health care providers vs. health plans; what happens when the two conflict?

Reading materials and class preparation: TBD

March 31 and April 7: The role of internal controls and financial regulation in health care organizations

Class preparation for March 31:

1/3 of class: present to class a summary of the events that precipitated the passage of Sarbanes-Oxley

1/3 of class: describe the key attributes and objectives of Sarbanes-Oxley

1/3 of class: Pros and cons of Sarbanes-Oxley (has it worked and at what cost?)

April 14, 21 and 28: Best practices in ethics and compliance: why do organizations fail ethically? What is the significance of corporate culture? What is the government looking for in an effective compliance and ethics program? Do ethics “pay off” from a business perspective?

Reading materials and class preparation:

The Lucifer Effect by Philip Zimbardo

Corporate Responsibility and Corporate Compliance: A Resource for Health Care Boards of Directors at

<http://oig.hhs.gov/fraud/docs/complianceguidance/040203corpresprsceguide.pdf>

An Integrated Approach to Corporate Compliance: A Resource for Health Care Organization Boards of Directors at

<http://oig.hhs.gov/fraud/docs/complianceguidance/Tab%204E%20Appendx-Final.pdf>

In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996)

Stone v. Ritter 911 A2d 362 (Del 2006)

U.S. Sentencing Guideline Manual § 8B2.1 found at

www.ussc.gov/2007guid/CHAP8.html