

HAMLIN UNIVERSITY SCHOOL OF LAW  
HEALTH LAW CLINIC – Law 9610Q-10  
SPRING 2012 - SYLLABUS

Clinic Professors:

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I. Meeting Schedule and Class Room

A. Class meets Thursday, 3:00 p.m. to 4:50 p.m. in room 100

B. Clinic hours will be arranged during the first class meeting,  
Thurs. Jan. 19, 2012

C. Class room – Law School room 100

II. Readings:

Assigned readings for classes are listed on the schedule attached at the end of this Syllabus. Students are expected to be able to use WestLaw to find cases, statutes and rules using the citations posted on the schedule. Website links are given for articles and reports. If a student is unable to find any reading assignments, please ask faculty for assistance prior to class.

Required text book:

Krieger, Stefan H., and Neumann, Jr., Richard K., *Essential Lawyering Skills*, 3rd Ed. Aspen Publishers, 2007, ISBN: 978-0-7355-6405-3.

Posted to TWEN: *Volunteer Lawyer's Network (VLN) DHS Reconsideration, Attorney Handbook*, by Lindsay Shaw, Cara Hawkinson, and Laura Plummer Zrust, Sept. 2007. [Note: faculty is working to update this manual for class use.]

III. Learning Outcomes for the Course:

A. Central Objective

The Health Law Clinic combines the experience of representing clients under close supervision with the opportunity for careful reflection characteristic of an academic setting. The clinic is intended to provide a foundation for the continuing acquisition and honing of the skills necessary to be a competent practicing attorney. Most cases involve Minnesota Department of Human Services or Department of Health maltreatment and disqualification issues; however, students may also work on other cases, as assigned and related to their interest. The clinic will provide students with substantive health law information, as well

as the opportunity to interview and counsel clients, research client issues, obtain and review evidentiary records, and draft persuasive administrative appeals for clients. Some client cases may involve assisting in an administrative hearing.

B. Sub-Objectives used for Evaluation:

1. Uses critical observation of self and others as a tool for continuing learning and skill development.
2. Makes productive use of available support resources, including classroom experiences, supervision from supervising attorney and input from teammates and other class members.
3. Uses a systematic approach to lawyering.
4. Represents clients competently, effectively, zealously, and ethically.
5. Establishes and maintains a professional relationship with clinic clients.

IV. Attendance Policy

Regular attendance and participation is critical in the Health Law Clinic. Classroom attendance is expected unless illness or an unavoidable conflict interferes. Anticipated classroom absences should be communicated to the professor beforehand via e-mail or telephone, if possible.

Clinic work will require students to have case-related meetings and appointments. Any unapproved absence on a case-related commitment may affect a student's grade. Students are expected to meet their case commitments with the same professionalism expected of licensed attorneys.

V. Evaluation and Grading

The Health Law Clinic is a three-credit course with no final examination. Grades will be based on a combination of casework performance (80%) and class participation (20%). The course evaluation form will be posted on TWEN

- A. Clinic work – Students are required to spend a minimum of 70 hours working on client cases or Legal Services clinic-related research, as assigned. This does not include time spent in class or class preparation. Although students may work on cases in teams, they are graded individually based on their individual efforts and contributions to the project.

Students will keep track of their time spent on each project, as if they were actually billing the client and as required by Central Minnesota

Legal Services. Students will report their hours to faculty at mid-term and end of the term. Students are expected to complete their required clinic hours on or before Friday, May 11, 2012, unless prior approval of faculty is given to complete a client assignment.

Written Work Projects to be submitted to faculty in WORD or pdf format may include, but are not limited to:

- Set aside request for maltreatment
- Reconsideration request for predominance of evidence determination
- Set aside request for misdemeanor/gross misdemeanor
- Research memorandum for LEAP or other Legal Services Attorney [should use proper legal writing format]
- Pre-hearing or post-hearing brief
- Advice letter
- Expungement petition and memorandum

Evaluation feedback regarding clinic work projects may take five forms:

1. Informal, oral evaluation by the supervisor of the student's performance contemporaneously with, or immediately after the performance;
2. Feedback to be provided formally and informally through margin notes and rewrites, with comments on legal research and legal theory development and persuasiveness of arguments and use of facts as applied to the law. Poor organization and sloppy drafting interfere with persuasion. Students are encouraged to revise and resubmit work for self-development;
3. Completion by students of formal self-evaluation forms at mid-semester and at the end of the semester.
4. Completion by Faculty supervisor of an evaluation form at the end of the semester.

B. Classroom Participation – this course is designed to be interactive with opportunities for simulation-based learning during class. Students should come to class prepared to discuss the course material and actively participate in class discussions and activities. Class participation will account for 20% of a student's grade. "Participation" is based on attendance, preparedness, and thoughtful classroom commentary.

## VI. Laptop Policy

Laptops may be used in class to take notes and to look up statutes or class materials. Use of laptops for anything other than class work is not permitted. The Clinic is an interactive class requiring your complete attention and participation.

### Course Schedule<sup>1</sup> – Spring 2012

<b>Date</b>	<b>Topic/Activities/Assignments</b>
Jan. 19 Class 1	<p>Introduction/Overview/Orientation</p> <p>Required activities prior to class:</p> <ul style="list-style-type: none"> <li>• Complete the <i>Clinic Student Information Form</i>, posted on TWEN, and bring the completed form to class or send it to faculty via e-mail before class.</li> <li>• Review and sign the <i>Confidentiality Agreement</i> and the <i>Hamline University School of Law Clinic Policy on Gifts from Clients</i>, posted on TWEN, pages 4 and 5 of the <i>Clinic Student Packet</i>, and bring signed forms to class.</li> <li>• Complete the <i>Student Certification For Clinical Student Practice</i> form, page 6 of the Packet, posted on TWEN, and take it to the Clinic Office. If you do not complete the form, you will be unable to work at Central Minnesota Legal Services.</li> </ul> <p>Assigned Reading:</p> <ul style="list-style-type: none"> <li>• Jon Geffen &amp; Lindsay Davis, <i>Minnesota’s Healthcare Licensing Laws and Their Hidden Impact on the Working Poor</i>, 31 Hamline J. Pub. L. &amp; Pol. 63 (Fall 2009) [available on WestLaw]</li> <li>• Minn. S.Ct. <i>Student Practice Rules</i>, Rule 2 Clinical Student Practice. [posted on TWEN]</li> </ul>
Jan. 26 Class 2	<p>Professional responsibility and establishing professional relationship</p> <p>Assigned Readings:</p> <ul style="list-style-type: none"> <li>• Minnesota Rules of Professional Conduct, Minnesota Rules of Court book on Reserve in the Law Library or <a href="http://www.mncourts.gov/lprb/05mrpc.html">http://www.mncourts.gov/lprb/05mrpc.html</a></li> <li>• <i>Minnesota Rules of Civil Procedure</i> Rule 17. Parties Plaintiff and Defendant; Capacity</li> <li>• Minn. Stat. § 595.02 (witness privileges)</li> <li>• Krieger &amp; Neumann Text, chapters 1-6, pp. 3 – 61.</li> </ul> <p>During Class 2, we will role play and discuss fact situations. Students will research and identify the rules applicable to each fact situation. Students will come to class prepared to act in their assigned roles as attorney or client.</p> <p>Class 2 Fact Situations and research questions will be posted on TWEN</p>

<sup>1</sup> Schedule subject to change based on clinic cases and other related learning opportunities.

Date	Topic/Activities/Assignments
Feb. 2 Class 3	<p>Introduction to clinic substantive law – Minnesota’s background study law and the Dept. of Human Services Fair Hearing procedures. Guest faculty [invited]</p> <p>Assigned Readings:</p> <ul style="list-style-type: none"> <li>• Minn. Stat. Chap. 245C – Human Services Background Studies Law</li> <li>• Minn. Stat. § 245A.08 DHS Hearings</li> <li>• Minn. Stat. Chap. 14 – Administrative Procedures Act</li> <li>• Council on Crime and Justice, <i>Criminal Records in the Hiring Process: what records employers can use, and how to help your clients take some control of their background checks</i>, undated handout. [posted on TWEN]</li> <li>• Minn. Legal Serv. Coalition, Fact Sheet 2, <i>DHS Disqualifications</i>, July 2011. [posted on TWEN]</li> <li>• <i>Sweet v. Comm’r of Human Serv.</i>, 702 N.W.2d 314 (Minn. Ct. App. 2005)</li> <li>• <i>Obara v. Minn. Dept. of Health</i>, 758 N.W.2d 875 (Minn. App. 2008)</li> <li>• <i>Murphy v. Comm’r of Human Serv.</i>, 765 N.W.2d 100 (Minn. Ct. of App. 2009)</li> <li>• <i>In the Matter of the Temporary Immediate Suspension of the Family Child Care License of Christine Strecker</i>, 777 N.W.2d 41 (Minn. Ct. App., 2010)</li> <li>• <i>Thompson v. Comm’r of Human Serv.</i>, 778 N.W.2d 401 (Minn. Ct. App. 2010)</li> </ul> <p><u>Related and Recommended for research on clinic cases:</u></p> <ul style="list-style-type: none"> <li>• Minnesota Department of Human Services searchable data base of appeal decisions at <a href="http://appeals.dhs.state.mn.us/AppealsSearch.aspx">http://appeals.dhs.state.mn.us/AppealsSearch.aspx</a></li> <li>• Minnesota Office of Administrative Hearings searchable decisions data base at <a href="http://www.oah.state.mn.us/apa.html">http://www.oah.state.mn.us/apa.html</a></li> </ul>
Feb. 9 Class 4	<p>Client interviewing</p> <p>Required Reading:</p> <ul style="list-style-type: none"> <li>• Krieger &amp; Neumann Text, chap. 7 - 8, pp. 65 – 108.</li> </ul> <p>Assignment –</p> <ul style="list-style-type: none"> <li>• Prepare to conduct a client interview for the assigned case study. Case studies will be posted on TWEN or handed out in class.</li> <li>• Submit a copy of your prepared questions to faculty <b>prior</b> to class on February 9, 2012 via e-mail.</li> <li>• Submit a revised copy of your prepared questions to faculty on or before February 16, 2012 via e-mail. Revisions would be made based on feedback in class.</li> </ul>
Feb. 16 Class 5	<p>Client interviewing [continued] and Witness interviewing</p> <p>Assigned Reading:</p> <ul style="list-style-type: none"> <li>• Krieger &amp; Neumann Text, chap. 9, pp. 109 - 127.</li> </ul>

Date	Topic/Activities/Assignments
	Assignment: <ul style="list-style-type: none"> <li>• Complete client interviewing. Use examples from actual clinic cases to prepare witness interview strategies.</li> </ul>
Feb. 23 Class 6	Persuasive fact analysis: legal theory of the case Assigned Reading: <ul style="list-style-type: none"> <li>• Krieger &amp; Neumann Text, chap. 10 - 12, pp. 131 - 158.</li> </ul> Assignment – <ul style="list-style-type: none"> <li>• Review the documents from your case study client and all applicable statutes.</li> <li>• Prepare the charts for your case study using the sample charts in Chapter 11, pages 144 – 145.</li> <li>• In class, be prepared to discuss your charts and the legal document that you need to prepare for your case study client.</li> </ul>
Mar. 1 Class 7	Persuasive fact analysis [continued] Assigned Reading: <ul style="list-style-type: none"> <li>• Krieger &amp; Neumann Text, chap. 13 - 16, pp. 159 - 212.</li> </ul> Assignment – <ul style="list-style-type: none"> <li>• Draft the legal document that your client case study requires using one of the models discussed in the Text.</li> <li>• In class, you will read and analyze your draft.</li> </ul>
March 8	No Class – spring break
Mar. 15 Class 8	Evidence in an administrative hearing; Comparison of administrative proceedings available to individuals involved in Minn. Dept of Human Services and Dept of Health licensing and disqualification cases Assigned Reading to complete the Table, posted on TWEN which we will discuss in class: <ul style="list-style-type: none"> <li>• Minn. Stat. Chap. 245C – Human Services Background Studies Law</li> <li>• Minn. Stat. § 245A.08 DHS Hearings</li> <li>• Minn. Stat. § 256.045, subd. 4(b) describes the evidentiary standard in DHS fair hearings.</li> <li>• Minn. Stat. § 14.60 describes the evidentiary standard in contested cases before the Office of Administrative Hearings.</li> <li>• Minn. R. chapter 1400, including Revenue Recapture Act hearing rules at 1400.8505 to 1400.8612</li> </ul>
Mar. 22 Class 9	Expungement to avoid disqualification Assigned Reading: <ul style="list-style-type: none"> <li>• Minn. Stat. Chap. 609A – expungement</li> <li>• Minn. Stat. Chap. 609B – collateral sanctions</li> <li>• Minn. Stat. Chap 638 – pardons</li> <li>• <i>An Amicus Perspective on Recent Minnesota Criminal Expungement</i>, Journal of Law &amp; Practice, by Lindsay W. Davis (February 6, 2009) <a href="http://lawandpractice.wordpress.com/2009/02/06/105/">http://lawandpractice.wordpress.com/2009/02/06/105/</a></li> <li>• Minn. Stat. § 245C.08, subd. 1(b)</li> </ul>

Date	Topic/Activities/Assignments
	<ul style="list-style-type: none"> <li>• <i>State of Minn. v. S.L.H.</i>, 755 N.W.2d 271 (Minn. 2008)</li> <li>• <i>City of Crystal v. N.G.K.</i>, 770 N.W.2d 177 (Minn. Ct. App. 2009)</li> <li>• <i>State of Minn. v. M.L.A.,n/k/a M.L.M.</i>, 785 N.W.2d 763 (Minn. Ct. App. 2010), (rev. denied 2010)</li> <li>• <i>DHS v. S.M.Q.</i>, 2010 WL 2161803 (Minn. Ct. App. 2010) (unpublished)</li> </ul>
Mar. 29 Class 10	<p>Overview of individual health professional licensing, application of Vulnerable Adult Act (VAA) and disqualification laws</p> <p>Assigned Reading:</p> <ul style="list-style-type: none"> <li>• <i>Charles v. State of Minn.</i>, Minn. Ct. of App. A07-703 (unpublished opinion) (May 21, 2008).</li> <li>• <i>C.J.K. v. State of Minn.</i>, Minn. Ct. of App. C09-00-583 (unpublished opinion) (Oct. 31, 2000).</li> <li>• <i>D.R.W., LPN v. Minn. Dept. of Health</i>, Minn. Ct. of App. C5-01-526 (unpublished opinion) (Oct. 9, 2001).</li> <li>• <i>Fosselman v. Comm’r of Human Services</i>, 612 N.W.2d 456 (Minn. Ct. App. 2000).</li> <li>• <i>J.R.B. v. Minn. Dept. of Human Serv.</i>, Minn. Ct. of App. C3-01-346 (August 21, 2001).</li> <li>• <i>Thompson v. Commissioner of Health</i>, Minn. Ct. of App. A09-1061 (Feb. 23, 2010).</li> </ul>
Apr. 5 Class 11	<p>Minn. Dept of Human Services and Minn. Dept of Health provider licensing, administrative procedures and application of VAA and disqualification laws to provider licensure</p> <p>Assigned Reading:</p> <ul style="list-style-type: none"> <li>• Minn. Stat. § 626.557, subd. 9d Vulnerable Adult Act, administrative review.</li> <li>• Provider licensing statutes and rules <ul style="list-style-type: none"> <li>a) Nursing Home</li> <li>b) Home health agency</li> <li>c) Group home (residential services for individuals with developmental disabilities)</li> <li>d) Corporate day care provider</li> </ul> </li> </ul> <p>Table will be posted on TWEN for you to complete and bring to class for discussion related to analysis and application of provider licensing laws</p>
Apr. 12 Class 12	<p>Employment issues related to background studies –</p> <ul style="list-style-type: none"> <li>• Employer’s policies related <ul style="list-style-type: none"> <li>a. Background studies - employer’s choice and the risk of discrimination allegations: DHS required study; private company study, including or not including credit check; internet/social media investigation</li> <li>b. When newly hired employee works or starts to work, <i>eg.</i> before background study or after clean background study</li> </ul> </li> <li>• Policy regarding employment status during investigation related to</li> </ul>

Date	Topic/Activities/Assignments
	<p>conduct at work – suspend with or without pay vs. termination</p> <ul style="list-style-type: none"> <li>• Policy regarding employment status during investigation of conduct outside of work yet potentially related to work, eg. allegations of domestic violence, theft.</li> <li>• When to coach/retrain and when to discipline/terminate – balancing</li> </ul> <p>Assigned Reading:</p> <ul style="list-style-type: none"> <li>• OSHA, <i>Enforcement Procedures for Investigating and Inspecting Workplace Violence Incidents</i>, Sept. 9, 2011  <a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&amp;p_id=5055">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&amp;p_id=5055</a></li> <li>• Council on Crime and Justice, <i>Job Applicants with Criminal Records: what every employer needs to know</i>, GAUGE Training Manual, 2011. [posted on TWEN]</li> <li>• Minn. Stat. § 181.970 – corporation responsibility to employees</li> <li>• <i>Crist v. Focus Homes, Inc.</i>, 122 F.3d 1107 (8<sup>th</sup> Cir. 1997) - Case where employer found responsible for sexual harassment caused by young group home clients</li> <li>• <i>Liljeblad v. Grand Itasca Clinic and Hospital</i>, Minn. Ct. of Appeals. A08-0919 (unpublished opinion) May 26, 2009.</li> <li>• Minn. Stat. § 245C.17 Notice of Background Study Results</li> <li>• Minn. Stat. § 245C.18 Obligation to Remove disqualified individual from direct contact</li> <li>• Minn. Stat. § 245C.19 Termination of affiliation based on disqualification notice</li> </ul>
Apr. 19 Class 13	<p>Background study efforts of health care workers at Federal level and in other states; Wrap-up: final case summaries and reports.</p> <p>Assigned Reading:</p> <ul style="list-style-type: none"> <li>• National Employment Law Project Memorandum to Continuing Care Providers Survey and Certification Group CMCS/CMS, Regarding: <i>Criminal Background Check Protections for Long-Term Care Workers</i>, Sept. 12, 2011 [posted on TWEN]</li> <li>• DHHS Office of Inspector General, <i>Nursing Facilities' Employment of Individuals with Criminal Convictions</i>, OEI-07-09-00110, March 2011 [posted on TWEN]</li> </ul>