OVERVIEW OF COURSE

MEDICAL MALPRACTICE: Theory & Practice

Hamline University School of Law Fall Semester 2012

Adjunct Professors Marlene S. Garvis, MSN, JD & Patti J. Skoglund, BSN, JD

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MEDICAL MALPRACTICE: Theory & Practice

FALL SEMESTER 2012

INSTRUCTORS:

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COURSE SCHEDULE INFORMATION

Tuesdays, from 5:00 p.m. to 7:00 p.m.

Classroom: TBD

PURPOSE AND OBJECTIVES

This course is intended to provide an overview of substantive health care liability, theories, case law and statutes, focusing mainly on Minnesota, although there will be some discussion of Wisconsin and Iowa case law and statutes; and to give you an opportunity to practice pretrial litigation skills in a courtroom setting.

ASSIGNMENTS

Reading assignments will be given out each week, including cases, articles, statutes, and any related handout materials. Students will be grouped in teams to present case assignments on a rotating basis.

CLASS EXPECTATIONS

You will be expected to participate in all class discussions, to read all the assignments, and to be prepared to discuss the cases, statutes, and handout materials. As you can see below, class participation is a portion of your grade and this will include your presentation of the cases, statutes, and handout materials and your overall responsiveness when called on in class.

Writing assignments will include drafting Discovery Requests and Responses; and instead of a final exam, you will be preparing the motion documents oral arguments for a summary judgment/dismissal motion that will be argued before the judicial and legal community who have volunteered their time. Therefore, we will expect you to be well prepared and you should begin allotting your time accordingly early in the course with regard to preparing the written motions documents and oral argument. For in-class assignments and the summary judgment/dismissal motion assignment, you will work in teams.

We will allow you to bring your laptop computers to class and your use of it during class to the extent that it facilitates class discussion and is thus conducive to our learning objectives. In order to facilitate focused interactive class and small group discussion, there will be occasions when the class will be asked to close their notebook computers and/or turn off technology they have been using. At other times, students may use their laptops for note taking. BUT if a student uses classroom time to read or send e-mail messages, visit web sites or engage in any other online or technology-based activities (including cellular phones), that student will have his or her grade lowered by one-half of a letter. If this occurs a second time, that student will be asked to drop the course and will not receive academic credit for the class.

GRADE PERFORMANCE EVALUATION

Class Participation	25%
Preparation of Affidavit	10%
Preparation of Motion (Dismissal/SJ) Documents	40%
Oral Argument of Dismissal/SJ Motion	25%

REQUIRED READING

- There is no Casebook required for the class. Reading assignments will be handed out each week either by email or in class as appropriate.
- 2. Turner, Dennis. <u>Steele v, Kirchener, NITA</u> (2004) is the case file that will be used as the foundation of the writing assignments and oral argument. You should purchase a copy of this case file. It will be available for purchase in the bookstore.
- 3. The <u>Steele v, Kirchener</u> case will be used throughout class and will provide the information you will use in writing your in-class discovery assignments and the summary judgment/dismissal motion at

the end of the course.

4. Additional Materials will be distributed by email or in class

MEDICAL MALPRACTICE: Theory & Practice SYLLABUS FALL SEMESTER 2012

August 21, 2012

CLASS TOPIC: Introduction/Class Expectations

- Discuss Class Materials
- Discuss Class Content Overview and Assignments
- Review of Malpractice Litigation Process
- Expectations for Students
- Review Video and Class Discussion of Medical-Legal Issues

August 28, 2012

CLASS TOPIC: <u>Liability of Health Care Professionals</u>

September 4, 2012

CLASS TOPIC: <u>Liability of Health Care Professionals:</u>

Defenses, statute of limitations, expert affidavit

September 11, 2012

CLASS TOPIC: Introduction to Case Problem and Assignment;

Review of Minn. Stat. § 145.682 Requirements and Cases

September 18, 2012

CLASS TOPIC: Damages, Causation, Breach of Contract

September 25, 2012

CLASS TOPIC: Professional-Patient Relationship: Confidentiality and duty to disclose

October 2, 2012

CLASS TOPIC: Professional-Patient Relationship: Informed Consent

Submission of Minn. Stat. § 145.682 Affidavits by all students

October 9, 2012

CLASS TOPIC: Professional-Patient Relationship: Informed Refusal

October 16, 2012

CLASS TOPIC: Wrongful Death and Product Liability Claims

SPEAKER: TBD

October 23, 2012

CLASS TOPIC: Liability of Healthcare Entities

SPEAKER: TBD-ECONOMIST

Moving Party: Submit Motion Papers

October 30, 2012

CLASS TOPIC: Peer Review

November 6, 2012

CLASS TOPIC: Vulnerable Adult and Impact on Liability: Individual & Institution

SPEAKER: TBD-AG MINNESOTA

November 13, 2012

CLASS TOPIC: Managed Care Liability: EMTALA and ERISA

SPEAKER: Ruth Flynn, Esq.-U PHYSICIANS VP-COUNSEL

SPEAKER: Kara Rahimi, Esq-KOZIERADSKI & SMITH Law Firm

Opposing Party: Submit Motion Papers

November 20, 2012

CLASS TOPIC: <u>HIPAA Other Issues Related To Liability of Health Care Providers</u>

Week of November 26, 2012

ORAL ARGUMENTS-Summary Judgment/Dismissal Motions (Dates, Times & Locations to be determined)

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Case and Statute Discussion Guide: Include the Following Content Areas:

- Procedural Posture
- Facts
- Issues
- Contentions of Defendant(s)
- Contentions of Plaintiff(s)
- Decision of Court
 - o Holding, Dicta, Dissent (if significant)
 - Underlying Policy Issues (if any)
- Ultimate Outcome of Case
- What Case Adds to Status of Doctrine/Theory
- The "Rule" or "Law" of the Case

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GRADING CRITERIA FOR §145.682 EXPERT AFFIDAVIT

COMPLIANCE WITH MINN. STAT. §145.682 and Case law

- A. Identification and Qualifications of Expert
- B. Substance of Expert's Facts and Opinions
 - 1. Standard of Care
 - 2. Departures
 - 3. Interpret the facts and connect those to departures from standard of care

(how the expert will use the facts to arrive at opinions and causation) Sorenson v. St Paul Ramsey 457 N.W.2d 188 (1990)

- 4. Chain of Causation
- C. Grounds for each Opinion of Expert
- D. Proper Form and procedural requirements: e.g., caption, service affidavit, signature and certification of attorney, signature of expert, use of exhibits
- E. Timeliness of submission of Affidavit

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§ 145.682/SUMMARY JUDGMENT MOTION GRADING CRITERIA

I. ORAL ARGUMENT

- A. Preparation
 - 1) Knowledge of Facts
 - 2) Knowledge of Record and case law
- B. Legal Argument: Content
 - 1) Knowledge of § 145.682
 - 2) Knowledge of Rule 56, Minnesota Rules of Civil Procedure, Rule 56, et. Other
 - 3) Knowledge and application of case law applicable to § 145.682, statute of limitations, etc.
 - 4) Knowledge and application of case law applicable to Rule 56, etc.
- C. Organization of Argument
- D. Style/Technique
- E. Ability to Respond and Handle Court's Questions
- F. Responsiveness to Other Attorney's Argument
- G. Comments Generally

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§ 145.682/SUMMARY JUDGMENT MOTION GRADING CRITERIA

II. WRITTEN DOCUMENTS

- A. Proper Format and Organization
 - 1) Notice of Motion and Motion
 - 2) Memorandum
 - 3) Order
 - 4) Affidavit of Service
 - 5) Exhibits
- B. Legal Argument
 - 1) Knowledge of § 145.682, statute of limitations, etc.
 - 2) Knowledge of Rule 56, Minnesota Rules of Civil Procedure, Rule 56, et. Other
 - 3) Knowledge and application of case law applicable to § 145.682, statute of limitations, etc.
 - 4) Knowledge and application of case law applicable to Rule 56, etc.
- C. Style/Overall Format
- D. Comments Generally