HAMLINE UNIVERSITY SCHOOL OF LAW HEALTH LAW CLINIC – Law 9610Q FALL 2012 - SYLLABUS

Clinic Professors:

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I. Meeting Schedule and Class Room

- A. Class meets Thursday, 2:30 p.m. to 4:30 p.m. in room 100
- B. Clinic hours will be arranged during the first class meeting, Thurs. August 16, 2012
- C. Clinic orientation will be during first class meeting
- D. Class room Law School room 240

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.

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. See *Evaluation Form* for additional explanation:
 - 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 our clinic policies. Students will report their hours to faculty at least at mid-term and

end of the term. Students are expected to complete their required clinic hours on or before Monday, December 17, 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 preponderance 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 Schedule¹ – Fall 2012

Date	Topic/Activities/Assignments
Aug. 18	Introduction/Overview/Orientation
Class 1	Required activities prior to class:
	• 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.
	Review and sign the Confidentiality Agreement and the Hamline
	University School of Law Clinic Policy on Gifts from Clients, posted
	on TWEN, pages 4 and 5 of the <i>Clinic Student Packet</i> , and bring
	signed forms to class.
	• 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 on clinic cases with clients.
	Assigned Reading:
	Jon Geffen & Lindsay Davis, Minnesota's Healthcare Licensing
	Laws and Their Hidden Impact on the Working Poor, 31 Hamline J.
	Pub. L. & Pol. 63 (Fall 2009) [available on WestLaw]
	• Minn. S.Ct. Student Practice Rules, Rule 2 Clinical Student Practice.
	[posted on TWEN]
Aug. 23	Professional responsibility and establishing professional relationship
Class 2	Assigned Readings:
	Minnesota Rules of Professional Conduct, Minnesota Rules of Court
	book on Reserve in the Law Library or
	 http://www.mncourts.gov/lprb/05mrpc.html Minnesota Rules of Civil Procedure Rule 17. Parties Plaintiff and
	• Minnesota Rules of Civil Procedure Rule 17. Parties Plaintiff and Defendant; Capacity
	Minn. Stat. § 595.02 (witness privileges)
	• Krieger & Neumann Text, chapters 1-6, pp. 3 – 61.
	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.
	Class 2 Fact Situations and research questions will be posted on TWEN

¹ Schedule subject to change based on clinic cases and other related learning opportunities.

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Date	Topic/Activities/Assignments
Aug. 30	Introduction to clinic substantive law – Minnesota's background study
Class 3	law and the Dept. of Human Services Fair Hearing procedures. Guest
	faculty [invited]
	Assigned Readings:
	 Minn. Stat. Chap. 245C – Human Services Background Studies
	Law
	Minn. Stat. § 245A.08 DHS Hearings
	• Minn. Stat. §§ 626.556 [Reporting of Maltreatment of Minors Act]
	and 626.557 [Reporting of Maltreatment of Vulnerable Adults Act]
	 Minn. Stat. Chap. 14 – Administrative Procedures Act
	Council on Crime and Justice, Criminal Records in the Hiring
	Process: what records employers can use, and how to help your
	clients take some control of their background checks, undated
	handout. [posted on TWEN]
	• Minn. Legal Serv. Coalition, Fact Sheet 2, DHS Disqualifications,
	July 2011. [posted on TWEN]
Sept. 6	Client interviewing
Class 4	Required Reading:
	• Krieger & Neumann Text, chap. 7 - 8, pp. 65 – 108.
	Assignment –
	Prepare to conduct a client interview for the assigned case study. TYPEN TO THE PROPERTY OF THE PROPERT
	Case studies will be posted on TWEN or handed out in class.
	• Submit a copy of your prepared questions to faculty prior to class
	on Sept. 13, 2012 via e-mail.
	Submit a revised copy of your prepared questions to faculty on or before Class 5 on Sept. 20, 2012 via e-mail. Revisions would be made based on
	feedback in class.
Sept. 13	Client interviewing (continued) and Witness interviewing
Class 5	Assigned Reading:
Class o	• Krieger & Neumann Text, chap. 9, pp. 109 - 127.
	Assignment:
	Complete client interviewing. Use examples from actual clinic cases to
	prepare witness interview strategies.
Sept. 20	Persuasive fact analysis: legal theory of the case
Class 6	Assigned Reading:
	• Krieger & Neumann Text, chap. 10 - 12, pp. 131 - 158.
	Assignment –
	Review the documents from your case study client and all
	applicable statutes.
	Prepare the charts for your case study using the sample charts in
	Chapter 11, pages 144 – 145.
	In class, be prepared to discuss your charts and the legal document that
	you need to prepare for your case study client.

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Date Sopt 27	Topic/Activities/Assignments Derayagiya fact analysis [continued]
Sept. 27 Class 7	Persuasive fact analysis [continued] Assigned Reading:
Class 1	Krieger & Neumann Text, chap. 13 - 16, pp. 159 - 212.
	Assignment –
	Draft the legal document that your client case study requires using
	one of the models discussed in the Text.
	 In class, you will read and analyze your draft.
Oct. 4	Evidence in an administrative hearing; Comparison of administrative
Class 8	proceedings available to individuals involved in Minn. Dept of Human
Class s	Services and Dept of Health licensing and disqualification cases
	Assigned Reading to complete the Table, posted on TWEN which we will
	discuss in class:
	Minn. Stat. Chap. 245C – Human Services Background Studies
	Law
	Minn. Stat. § 245A.08 DHS Hearings
	• Minn. Stat. § 256.045, subd. 4(b) describes the evidentiary
	standard in DHS fair hearings.
	• Minn. Stat. § 14.60 describes the evidentiary standard in contested
	cases before the Office of Administrative Hearings.
	• Minn. R. chapter 1400, including Revenue Recapture Act hearing
	rules at 1400.8505 to 1400.8612
Oct. 11	Clinic Substantive Law – Comparative analysis of statutory and case law
Class 9	applied to unlicensed and licensed health care workers.
	Students will be assigned to review one or more of these cases:
	• <i>C.J.K. v. State of Minn.</i> , Minn. Ct. of App. C09-00-583 (unpublished opinion) (Oct. 31, 2000).
	• Fosselman v. Comm'r of Human Services, 612 N.W.2d 456 (Minn.
	Ct. App. 2000).
	• J.R.B. v. Minn. Dept. of Human Serv., Minn. Ct. of App. C3-01-346
	(August 21, 2001).
	• D.R.W., LPN v. Minn. Dept. of Health, Minn. Ct. of App. C5-01-526
	(unpublished opinion) (Oct. 9, 2001).
	• Sweet v. Comm'r of Human Serv., 702 N.W.2d 314 (Minn. Ct. App. 2005).
	• Obara v. Minn. Dept. of Health, 758 N.W.2d 875 (Minn. App. 2008).
	• Charles v. State of Minn., Minn. Ct. of App. A07-703 (unpublished
	opinion) (May 21, 2008).
	• Murphy v. Comm'r of Human Serv., 765 N.W.2d 100 (Minn. Ct. of
	App. 2009).
	• Anderson v. Comm'r of Health, 811 N.W.2d 162 (Minn. Ct. App.
	2012); rev. denied Apr. 17, 2012.
	• Thompson v. Commissioner of Health, Minn. Ct. of App. A09-1061
	(Feb. 23, 2010).

Date	Topic/Activities/Assignments
	Related and Recommended for research on clinic cases:
	Minnesota Department of Human Services searchable data base of
	appeal decisions at
	http://appeals.dhs.state.mn.us/AppealsSearch.aspx
	Minnesota Office of Administrative Hearings searchable decisions
	data base at http://www.oah.state.mn.us/apa.html
Oct. 18	NO CLASS
Oct. 25	Expungement to avoid disqualification and related topics
Class 10	Guest faculty: invited.
	Assigned Reading:
	Minn. Stat. Chap. 609A – expungement
	 Minn. Stat. Chap. 609B – collateral sanctions
	Minn. Stat. Chap 638 – pardons
	Minnesota's Inherent Authority Criminal Expungement Law: Two
	Years After State v. S.L.H., by Lindsay W. Davis (April 12, 2012)
	http://lawandpractice.wordpress.com/2012/04/12/minnesotas-
	inherent-authority-criminal-expungement-law-two-years-after-
	state-v-s-1-h/
	An Amicus Perspective on Recent Minnesota Criminal Expungement,
	Journal of Law & Practice, by Lindsay W. Davis (February 6, 2009)
	http://lawandpractice.wordpress.com/2009/02/06/105/
	• Minn. Stat. § 245C.08, subd. 1(b)
	Students will be assigned to review one or more of these cases:
	• State of Minn. v. S.L.H., 755 N.W.2d 271 (Minn. 2008)
	• City of Crystal v. N.G.K., 770 N.W.2d 177 (Minn. Ct. App. 2009)
	• State of Minn. v. M.L.A., n/k/a M.L.M., 785 N.W.2d 763 (Minn. Ct.
	App. 2010), (rev. denied 2010).
	• DHS v. S.M.Q., 2010 WL 2161803 (Minn. App. 2010) (unpublished)
	• In the Matter of the Welfare of J.J.P., 811 N.W.2d 125 (Minn. Ct.
	App. 2012), (rev. granted 2012).
NT 1	• State v. M.D.T., 2012 WL 1149347 (Minn. App.)
Nov. 1	Minn. Dept of Human Services and Minn. Dept of Health provider
Class 11	licensing, administrative procedures and application of VAA and
	disqualification laws to provider licensure
	Assigned Reading:
	• In the Matter of the Temporary Immediate Suspension of the Family Child Care License of Christine Strecker, 777 N.W.2d 41 (Minn. Ct.
	App., 2010)
	15 Oct 0 COC FFF 1 1 0 157 1 11 4 1 1/4 /
	Minn. Stat. § 626.557, subd. 9d Vulnerable Adult Act, administrative review.
	 Provider licensing statutes and rules a) Nursing Home
	b) Home health agency
	c) Group home (residential services for individuals with
	developmental disabilities)
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Date	Topic/Activities/Assignments
	d) Corporate day care provider
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	Table will be posted on TWEN for you to complete and bring to class for
	discussion related to analysis and application of one type of provider
	licensing.
Nov. 8	Employment issues related to background studies. Guest faculty invited.
Class 12	• Employer's policies related
	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
	b. When newly hired employee works or starts to work, eg.
	before background study or after clean background study
	 Policy regarding employment status during investigation related to
	conduct at work – suspend with or without pay vs. termination
	 Policy regarding employment status during investigation of conduct
	outside of work yet potentially related to work, eg. allegations of
	domestic violence, theft.
	When to coach/retrain and when to discipline/terminate –
	balancing
	Assigned Reading:
	OSHA, Enforcement Procedures for Investigating and Inspecting Washington Williams Violence Procedures 2 2011
	Workplace Violence Incidents, Sept. 9, 2011
	http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_ta
	ble=DIRECTIVES&p_id=5055 Council on Crime and Justice Job Applicants with Criminal
	 Council on Crime and Justice, Job Applicants with Criminal Records: what every employer needs to know, GAUGE Training
	Manual, 2011. [posted on TWEN]
	Minn. Stat. § 181.970 – corporation responsibility to employees
	• Crist v. Focus Homes, Inc., 122 F.3d 1107 (8th Cir. 1997) - Case
	where employer found responsible for sexual harassment caused
	by young group home clients
	• Liljeblad v. Grand Itasca Clinic and Hospital, Minn. Ct. of Appeals.
	A08-0919 (unpublished opinion) May 26, 2009.
	Minn. Stat. § 245C.17 Notice of Background Study Results
	Minn. Stat. § 245C.18 Obligation to Remove disqualified individual
	from direct contact
	Minn. Stat. § 245C.19 Termination of affiliation based on
	disqualification notice
Nov. 15	Background study efforts of health care workers at Federal level and in
Class 13	other states; Wrap-up: final case summaries and reports.
	Assigned Reading:
	National Employment Law Project Memorandum to Continuing
	Care Providers Survey and Certification Group CMCS/CMS,

Date	Topic/Activities/Assignments
	Regarding: Criminal Background Check Protections for Long-Term
	Care Workers, Sept. 12, 2011 [posted on TWEN]
	• DHHS Office of Inspector General, Nursing Facilities' Employment of
	Individuals with Criminal Convictions, OEI-07-09-00110, March
	2011 [posted on TWEN]