HEALTHCARE FRAUD AND ABUSE

Hamline University School of Law
Health Law Institute 2013 J-Term
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INSTRUCTOR CONTACT INFORMATION

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CLASS SCHEDULE

Tuesday, January 8, 4:30pm-9:10pm (two 15-minute breaks)
Wednesday, January 9, 4:30pm-9:10pm (two 15-minute breaks)
Thursday, January 10, 4:30pm-9:10pm (two 15-minute breaks)
Friday, January 11, 4:30pm-9:10pm (two 15-minute breaks)
Saturday, January 12, 8:30am-12:30pm (one 15-minute break)
Saturday, January 12, 1pm-5pm (one 15-minute break)

COURSE DESCRIPTION

This course examines laws and regulations that impose criminal and civil penalties on health care providers for fraud and abuse, with special emphasis on the Federal False Claims Act, the Anti-Kickback Statute, and the Physician Self-Referral (Stark) Law. Civil Monetary Penalty and exclusion laws and the application of traditional federal white collar criminal statutes to health care will also be discussed. Further, other topics - including the use of the Responsible Corporate Officer Doctrine, the use of settlements as enforcement mechanisms, and the changes brought about by the Patient Protection and Affordable Care Act - will be explored. At the conclusion of the course, the student should have a basic working knowledge of the laws and regulations concerning health care fraud and abuse.

COURSE ATTENDANCE and ADMINISTRATION

I will distribute a class roster for you to sign at some point during each class meeting. If you are absent for more than 20 percent of our in-class minutes, I will treat your absences as "excessive" in accordance with the Hamline University School of Law Handbook. This course will be lecture-based, but discussion will be highly encouraged. I will base 100 percent of your course grade on a take-home final exam paper (due date to be announced).

READINGS AND CLASS MATERIALS

Because there is no casebook for this course, all readings and other preparatory materials will be posted to the TWEN site for this course. To access the readings, click on "Course Materials" on the left side of the TWEN course page, and the readings are organized into each class meeting, in date order. Further, when a PowerPoint summary is used in class to aid in the lecture, it will also be posted to Blackboard into these folders after class.

TOPICS AND READINGS:

(Subject to Change)

CLASS 1: January 8

INTRODUCTION TO FRAUD AND ABUSE and THE ANTI-KICKBACK STATUTE, PART I

- **Articles:**
  - Janine Sarti & Asha B. Scielzo, *Navigating the Compliance and Governance Landscape: A Glossary of Key Terms*, Fall 2011, *available at* http://www.healthlawyers.org/Events/Programs/Materials/Documents/FHL11/papers/sarti_scielzo.pdf;
  - *Record Number of Federal Criminal Health Care Fraud Prosecutions Filed in FY 2011*, Syracuse University TRAC Reports, Transactional Records Access Clearinghouse, Dec. 14, 2011, *available at* http://trac.syr.edu/tracreports/crim/270/;
  - *Medicare Fraud & Abuse: Prevention, Detection, and Reporting*, Department of Health and Human Services, Oct. 2011, *available at* http://www.cms.gov/MLNProducts/downloads/Fraud_and_Abuse.pdf.
- **Statutes/Regulations:**
  - 42 U.S.C. 1320a-7b(b);
  - 42 CFR 1001.952.
- **Cases:**
  - *U.S. v. Greber*, 760 F.2d 68 (3rd Cir. 1985);
  - *U.S. v. McClatchey*, 217 F.3d 823 (10th Cir. 2000);
  - *U.S. v. Bay State Ambulance & Hosp. Rental Serv.*, 874 F.2d 20 (1st Cir. 1989).
- **In Class:**
  - Video, *Medicare: The $60 Billion Fraud*, CBS News 60 Minutes, Sept. 5, 2010, *available at* http://www.cbsnews.com/video/watch/?id=6837797n.

CLASS 2: January 9

THE ANTI-KICKBACK STATUTE, PART II, and THE "OTHER" FRAUD STATUTES

- **Statutes/Regulations:**
  - 42 U.S.C. 1320a-7b(b);
  - 42 CFR 1001.952;
  - 42 USC 1320a-7b(a);
  - 18 USC 287;
  - 18 USC 1001;
  - 18 USC 1341;
  - 18 USC 1343.
- **Cases:**
  - *U.S. v. Jain*, 93 F.3d 436 (8th Cir. 1996);
  - *U.S. v. Davis*, 132 F.3d 1092 (5th Cir. 1998);
  - *U.S. v. Starks*, 157 F.3d 833 (11th Cir. 1998).

CLASS 3: January 10

THE CIVIL FALSE CLAIMS ACT

- **Statutes/Regulations:**
  - 31 USC 3729-3730.
- **Cases:**
  - *U.S. ex rel. Franklin v. Parke Davis*, 2003 WL 22048255 (D. Mass. Aug. 22, 2003);
  - *U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899 (5th Cir. 1997);
  - *U.S. ex rel. Thompson v. Columbia/HSCA Healthcare Corp.*, 20 F. Supp. 2d 1017 (S.D. Tex. 1998);
  - *U.S. ex rel. Mikes v. Straus*, 274 F.3d 687 (2d Cir. 2001);
  - *U.S. ex rel. Swafford v. Borgess Medical Ctr*., 98 F. Supp. 2d 822 (W.D. Mich. 2000);
  - *U.S. v. Krizek*, 909 F. Supp. 32 (D.D.C. 1995).
- **Articles:**
  - John T. Boese, *Recent Developments Under the Federal False Claims Act*, Health Care Compliance Ass'n, 2011 Compliance Institute, April 2011.

CLASS 4: January 11

HEALTHCARE FRAUD ENFORCEMENT and QUALITY OF CARE AS FRAUD

- **Reading:**
  - Eric H. Holder, Jr., *Guidance on the Use of the False Claims Act in Civil Health Care Matters*, June 3, 1998, *available at* http://www.justice.gov/dag/readingroom/chcm.htm;
  - U.S. Attorney Manual Sec. 9.28.800 (Corporate Compliance Programs);
  - Larry Thompson, Memo: *Principles of Fed. Prosecution of Business Orgs.*, Jan. 20, 2003;
  - *U.S. Deputy Attorney General Paul J. McNulty Revises Charging Guidelines for Prosecuting Corporate Fraud*, Dept. of Justice, Dec. 12, 2006;
  - Paul J. McNulty, Memo: *Principles of Fed. Prosecution of Business Orgs.*, Dec. 12, 2006;
  - Mark Filip, *Letter to Chairman Leahy and Senator Specter*, July 9, 2008;
  - *Chapter 9: U.S. v. Krizek: Rough Justice Under the Civil False Claims Act,* in Sandra Johnson, Health Law and Bioethics: Cases in Context (2009).
- **Cases:**
  - *U.S. ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048 (9th Cir. 2001);
  - *U.S. ex rel. Aranda v. Comm. Psych. Ctrs. of Okla., Inc.*, 945 F. Supp. 1485 (W.D. Okla. 1996);
  - *U.S. ex rel. Swan v. Covenant Care, Inc.*, 279 F. Supp. 2d 1212 (E.D. Cal. 2002).

CLASS 5: January 12, AM

THE STARK LAW

- **Reading:**
  - Stark Background, Bloomberg BNA Health Law Resource Center.
- **Statutes/Regulations:**
  - 42 USC 1395nn;
  - 42 USC 411.350-370 (skim).
- **Cases:**
  - *Am. Lithotripsy Soc'y v. Thompson*, 215 F. Supp. 2d 23 (D.D.C. 2002);
  - *U.S. ex rel. Singh v. Bradford Reg. Med. Ctr*., 752 F. Supp. 2d 602 (W.D. Pa. 2010).

<u>CLASS 6: January 12, PM</u>

THE RESPONSIBLE CORPORATE OFFICER DOCTRINE, PHARMACEUTICAL FRAUD, and THE FUTURE

- **Case:**
  - *Friedman v. Sebelius*, 755 F. Supp. 2d 98 (D.D.C. 2010).
- **Filing:**
  - Washington Legal Foundation, Amicus Curiae Brief, *Friedman v. Sebelius.*
- **Articles:**
  - Andrew Longstreth, Analysis: U.S. Court Tests Liability of Healthcare Execs, Reuters, Dec. 6, 2011;
  - Washington Legal Foundation News Release, Dec. 2010;
  - Nick Repucci, *An Examination of Off-Label Marketing and Promotion: Settlements, Issues, and Trends*, 13 No. 5 J. Health Care Compliance 15 (Sept.-Oct. 2011);
  - Katrice Bridges Copeland, *Enforcing Integrity*, Ind. L. J. 1033 (2012);
  - Zack Buck, *Caring Too Much: Misusing the False Claims Act to Target Overtreatment*, 74 Ohio St. L.J. __ (forthcoming, 2013).