

# Health Law: Quality of Care & Liability Syllabus

Spring 2009

Professor Barbara Colombo  
Hamline University School of Law

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## General Course Information

Course: Health Law: Quality of Care & Liability  
Credits: 3  
Classroom: TBD  
Days/Times: Thursdays 8:00-10:40pm  
Professor: Barbara Colombo  
Office Hours: One hour after class and by appointment  
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## Course Description and Objectives

Welcome to *Health Law: Quality of Care & Liability*. This introductory health law course will explore a variety of different laws designed to assure the quality of health care including provider self-regulation, professional licensure, credentialing, certification, accreditation, government regulation, and the tort system. Special attention will be given to definitional approaches to sickness, health, and quality in health care; medical staff membership and clinical privileges; relationships between medical and allied health professional staff members and scope of practice issues; physician peer review, peer review immunity, the confidentiality of peer review proceedings, and National Practitioner Data Bank reporting and querying; medical errors, sentinel events, and adverse event reporting; professional and regulatory discipline of health care providers who fail to adhere to the standard of care or other professional and regulatory requirements; physician and hospital liability; managed care liability and ERISA preemption thereof; and the regulation of research involving human subjects. The objectives of this course include learning how to apply a range of statutory, regulatory, accreditation, and common law principles to a variety of health care quality and liability issues.

## Course Materials

The required text is BARRY R. FURROW, THOMAS L. GREANEY, SANDRA H. JOHNSON, TIMOTHY S. JOST, ROBERT L. SCHWARTZ, *HEALTH LAW: CASES, MATERIALS, AND PROBLEMS*, 6<sup>th</sup> ed. (West 2008). The syllabus will occasionally

include links to various articles and cases which you are expected to review in advance of class. I will be using PowerPoint for most classes, and will post the slides on TWEN after each class.

### **Technology Policy:**

In order to facilitate an interactive class and small group discussion, there will be occasions when the class will be asked to close their computers and/or turn off technology they have been using. At other times, students may use laptops for note taking. **If a student uses classroom time to read or send email messages, visit web sites or engage in any other online or technology based activities (including cellular telephones) that student will be asked to drop the course and will not receive academic credit for the class.**

### **Course Evaluation**

There are two requirements for the *Health Law: Quality of Care & Liability* course:

- 1. Class Participation:** This course is designed to be highly interactive with weekly opportunities for simulation-based learning. Students should come to class prepared to discuss the course material and actively participate in class discussions and activities. Students will be divided into four groups for purposes of analyzing various problems. Groups will be identified on the first day of class. **Class participation will account for 25% of a student's final grade.** "Participation" is based on attendance, preparedness, and *thoughtful* classroom commentary.
- 2. Final Exam:** A take-home (open-book) final exam will be given. Final exam date pending. **The exam will account for 75% of a student's final grade.**

### **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 four classes, your absences will be treated as "excessive" in accordance with Hamline University Academic Rule 1-110 unless you have approval from me in advance.

### **Course Schedule**

Unless otherwise noted, all readings are from our required text, BARRY R. FURROW, THOMAS L. GREANEY, SANDRA H. JOHNSON, TIMOTHY S. JOST, ROBERT L. SCHWARTZ, HEALTH LAW: CASES, MATERIALS, AND PROBLEMS, 6<sup>th</sup> ed. (West 2008), along with web sites and cases noted under each week's readings.

### **WEEK 1: January 22**

#### **Defining Sickness and Quality in Health Care**

Text: 1 – 40

[http://www.newyorker.com/fact/content/articles/050404\\_fact](http://www.newyorker.com/fact/content/articles/050404_fact)

Problem: p. 10 (“The Couple’s Illness”): Students whose last names begin with A-M prepare to argue for coverage on behalf of the Hendersons; students whose last names begin with N-Z be prepared to argue against coverage.

### **WEEK 2: January 29**

#### **Access to Health Care: The Obligation to Provide Care**

Text: 596-623

<http://www.msnbc.msn.com/id/19207050/> (Come to class prepared to discuss this article)

Problem: p. 607 (“Cheryl Hanacheck”) Students in group 1 and 2 prepare arguments on behalf of Ms. Hanacheck; students in groups 3 and 4 prepare arguments in defense of Drs. Cunetto and Simms.

Problem: p. 622 (“Mrs. Miller”) Students in group 1 prepare arguments on behalf of Mrs. Miller; students in group 2 highlight arguments included in Dr. Martig’s motion for summary judgment; students in group 3 prepare arguments in defense of General Hospital; students in group 4 assume you are the judge in the case, be prepared to rule on the summary judgment motion and respond to the arguments presented by Mrs. Miller and General Hospital.

### **WEEK 3: February 5**

#### **Liability of Health Care Providers**

#### **Professional Relationships in Health Care Enterprises: Staff Privileges**

Text: 327-363

Text: 849-859, 865-873

Students in group 1 will be class experts on Hall, group 2 on Hinlicky, group 3 on Helling, and group 4 on Sokol. All students brief Mahan.

Problem: p. 872 (“Dr. Bennett and Onyx General Hospital”) Students in groups 1 and 2 should be prepared to advise Onyx General Hospital on what it should do about Dr. Bennett; students in groups 3 and 4 prepare arguments on behalf of Dr. Bennett.

### **WEEK 4: February 12**

#### **Liability of Health Care Institutions: Employees, Independent Contractors, Hospital Direct Liability-Negligence and Corporate Liability**

Text: 437-480

Students in group 1 will be class experts on Grimm and Scott, group 2 on Burless and Washington, group 3 on Muse and Thompson, and group 4 on Carter.

Problem: p. 480 (“Cascading Errors”) Students in groups 1 and 2 identify and present the various theories of liability available to Carolyn Gardner’s family; students in groups 3 and 4 present a detailed plan of action to the Bay Hospital Board of Directors.

### **WEEK 5: February 19**

#### **Liability of Health Care Institutions: Hospital Liability-Peer Review**

## **Tort Liability and Managed Care**

Text: 481-498, 504-531

Students in group 1 will be class experts on Larson, group 2 on Petrovich, group 3 on Pagarigan, and group 4 on Shannon.

Problem: p. 498 (“Proctoring Peers”) Students in groups 1 and 2 advise Hilldale Adventist Hospital concerning any potential theories of liability for using Dr. Hook as a proctor and whether Dr. Hook could be directly liable for failing to stop negligent work by Dr. DiBianco.

Problem: p. 498 (“The “Love” Surgeon”) Students in groups 1, 2 and 3 should be prepared to argue on behalf of Ms. Helen Brown in a medical malpractice action against the hospital; students in group 4 should be prepared to present arguments to defend the hospital.

## ***February 26: No Class***

### **WEEK 6: March 5**

#### **Medical Errors, Tort Reform, Voluntary Reporting Systems**

Text: 41-71, 539-552

<http://www.health.state.mn.us/patientsafety/ae/adverse27events.html>

<http://www.ahrq.gov/qual/psoact.htm>

<http://www.sorryworks.net/media35.phtm>

Problem: (“Disclosing Errors”) Students in group 1 prepare to address #1; students in groups 2 and 3 prepare to address #2; students in group 4 prepare to address #3.

### **WEEK 7: March 12**

#### **Confidentiality and Disclosure in the Physician-Patient Relationship**

##### **Duty to Third Parties**

Text: 289-326

Problem: p. 325 (“Leaking Patient Information”) Students in group 1 prepare to address #1 and #2; students in group 2 prepare to address #3 and #4; student in group 3 prepare to address #5 and #6; students in group 4 prepare to address #7.

Reisner v. Regents of the University of California, 31 Cal.App.4<sup>th</sup> 1195, 37 Cal.Rptr.2d 518 (2d Dist. 1995) – Print, brief, and bring to class prepared to discuss.

### **WEEK 8: March 19**

#### **Informed Consent: The Physician’s Obligation, the Institution’s Obligation**

Text: 230-288

Students in group 1 will be class experts on Canterbury, group 2 on Johnson, group 3 on Aroto, and group 4 on Moore and Canterbury (causation complexities).

Problem: p. 258 (“Disclosing Physician Risks”) Students in group 1 prepare to address #1 and #2, students in group 2 prepare to address #3 and #4.

Problem: p. 267 (“Information Overload”) Students in group 3 will assist Gladstone Women’s Clinic in drafting guidelines to help the clinic decide what to disclose to patients about a range of available tests.

Problem: p. 288 (“Automating Consent”) Students in group 4 will advise the community hospital CEO about the advantages and disadvantages of implementing an automated process.

## ***March 26: SPRING BREAK!***

### **WEEK 9: April 2**

#### **Regulation of Research Involving Human Subjects**

Text: 1568-1611

Problem: p. 1583 (“Is it Research?”) Determine if the activities are subject to regulation.

Students in group 1: #1

Students in group 2: #2

Students in group 3: #3

Students in group 4: #4

### **WEEK 10: April 9**

#### **Professional Licensing, Discipline, CAM**

Text: 115-158. Students in group 1 will be class experts on Williams, group 2 on Hoover, group 3 on McDonough, and group 4 on Ruebke. Everyone brief Gonzales.

Problem: p. 156 (“Physicians, Physician Assistants, and Nurses”) Students in groups 1 and 2 have been retained by Drs. Jones and Johnson. Prepare to advise them on whether their plans are consistent with the laws regulating practice in Allstate, and how they might comply while maintaining a low-cost practice. Students in groups 3 and 4 have been retained by Ms. Mayo. Prepare to advise her on whether she ought to affiliate with the doctors and whether her current practice is authorized in Allstate.

### **WEEK 11: April 16**

#### **Quality Control Regulation of Health Care Institutions**

Text: 159-194

Problem: p. 176 (“Residents’ Rights”) Students in groups 1 and 2 should be prepared to advise the Pine Acres Nursing Home administrator regarding her concerns about Francis Scott. Students in groups 3 and 4 should be prepared to advise the administrator regarding her concerns about Emma Kaitz.

### **WEEK 12: April 23**

#### **Regulation of Insurance and Managed Care; ERISA Preemption**

Text: 648-660, 710-734

Students in group 1 will be class experts on Lubeznik, group 2 on Curiale, group 3 on Pegram, and group 4 on Davila.

Problem: p. 660 (“Expanding Insurance Coverage”) All students come prepared with ideas to reduce the number of uninsured.

### **WEEK 13: April 30**

#### **Approaches to Expanding Access and Controlling Costs**

Text: 560-595

Problem: p. 594 (“Health Reform”) All students should work through this problem, draft a brief outline of your initial thoughts for a reformed health care system and be prepared to present your ideas to the class.

We will view the PBS documentary, “Unnatural Causes: Is Inequality Making Us Sick”  
<http://www.pbs.org/unnaturalcauses/>