

# HEALTH LAW: QUALITY OF CARE AND LIABILITY

Fall Term, 2009  
Law School Building, Room 06  
Hamline University School of Law  
**Professor Katrina Pagonis**

## SYLLABUS

Welcome to *Health Law: Quality of Care & Liability*. Health law is a vast and dynamic discipline that covers the myriad interactions between law, medicine, and individual and population-level health. The objectives of this introductory 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.

Over the semester, we will explore a variety of mechanisms that are used to improve the quality of health care, including provider self-regulation, professional licensure, credentialing, certification, accreditation, government regulation, and the tort system. We will compare how different legal tools operate to impact quality—whether they are designed to remedy past errors or improve future quality of care; whether they focus on systemically improving quality or preventing the worst types of errors; and whether they empower patients, providers, health care institutions, or the government to address quality issues. We will also examine the tension between accessibility and quality: When does improving the quality of care make prevention and treatment cost prohibitive? And how can quality be improved without compromising access to care?

Special attention will be given to the following topics:

- Definitional approaches to sickness, health, and quality in health care;
- Licensure and regulation of health care professionals, including professional discipline and scope of practice issues;
- Regulation of health care institutions;
- Medical staff membership and clinical privileges;
- Informed consent and privacy issues;
- Physician and hospital liability; and
- Managed care liability and ERISA preemption thereof.

We will also cover selected special topics in health care law including quality and liability issues arising from the government's obligation to directly provide health care to certain populations (e.g., veterans, immigration detainees, and prisoners) and additional topics that will be selected based on class interest.

## I. LOGISTICS

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- A. **Time and Place.** This three-credit course will meet twice a week on **Tuesdays and Thursdays**, from **2:30-3:45pm** in **Room 06** of the Law School Building.
- B. **Textbook and Readings.** The syllabus contains a list of readings for each class meeting. 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** (6th ed., 2008). Readings from the textbook will be occasionally supplemented with selected cases and articles, as indicated on the syllabus. These supplemental readings will be made available through the class TWEN site. *Students are responsible for reading all assignments and familiarizing themselves with the appropriate materials before each class.*
- C. **TWEN Site.** Course documents, updates, and supplemental readings will be posted on the class TWEN site.

## II. COURSE REQUIREMENTS & POLICIES

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- A. **Participation & Attendance**  
At the beginning of each class, I will distribute a class roster for you to sign. *If you are absent for more than three classes, your absences will be treated as “excessive”* in accordance with Hamline University Academic Rule 1-110 unless you obtain approval from me in advance.  
Most class sessions will be based on lectures and class discussion of the issues raised by the lecture and readings. Class discussions showing rigorous thought and an informed understanding of the subject matter will be an integral part of the learning process. *Please read all of the assigned materials before class to facilitate discussions.* All students will be expected to actively participate in class discussions. Class participation will be assessed on a qualitative rather than quantitative basis.
- B. **Assignments**  
This syllabus will be updated to reflect these assignments and the small group presentations described above. Please always refer to TWEN for the most up-to-date copy of the syllabus.
- C. **Technology Policy**  
Students are expected to use technology in a professional and productive manner. The use of technological devices (e.g., laptops and mobile phones) in a manner that does not further our learning objectives is strictly prohibited. **If a student uses technology in a way that distracts others, he or she may have his grade lowered by one-half of a letter; if the student does so again, he or she may be asked to drop the course without receiving academic credit for the class.**

### III. COURSE EVALUATION

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The grade for the course will be based on your fulfillment of the course requirements, allocated as follows:

- 25% will be based on your *midterm assignment*; and
- 75% will be based on your *final exam*.

Your course grade may be adjusted one-half of a letter (up or down) based on class preparedness in accordance with Hamline University Academic Rules 1-107C5 and 1-110. More specifically, I reserve the right to: 1) raise your course grade by one-half of a letter if you participate substantially when not called on or distinguish yourself when called on; or 2) lower your course grade by one-half of a letter if you are not prepared when called on. Your active participation in small group exercises and the group class presentation will be assessed as part of your class preparedness.

### IV. INSTRUCTOR AVAILABILITY

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I want to be fully available to help students whenever they need assistance with the content and readings in the class.

I will hold *office hours one hour after each class*. I am also available to meet with students by appointment.

Office: TBA

Telephone: TBA

E-Mail: [kpagonis01@hamline.edu](mailto:kpagonis01@hamline.edu)

### V. FINAL THOUGHTS

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I am fascinated by the subject matter of this course and hope you will share my enthusiasm for the intellectually challenging ideas presented in the readings and the class work. I look forward to getting to know you and to our many thoughtful discussions. If I can ever be of assistance, please come by and see me at any mutually convenient time.

## COURSE SCHEDULE

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The following course schedule sets forth the readings for our first four weeks of class. As the semester progresses, I will distribute (in class and via TWEN) assignments for our remaining class sessions. On the first day of class and through the TWEN site, you will have the opportunity to identify any particular areas of interest that you may have. I will endeavor to incorporate these topics into our final class sessions.

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### Week 1—August 20

#### Introduction; Defining Sickness and Health

Introduction: Overview of the course; explanation of course syllabus; grading and class preparation requirements.

Defining sickness and health: Compare definitions of sickness, disease, and health and the relationship between these three concepts. Students should be prepared to discuss the problem on page 10 of Furrow (“The Couple’s Illness”) and to argue both for and against coverage.

- Reading
- Furrow 1-10
  - International Covenant on Economic, Social, and Cultural Rights, Article 12 ([http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm))
  - General Comment 14—The Right to the Highest Attainable Standard of Health, ¶¶ 1, 4, 7-12 ([http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument))
  - Furrow 10-15
  - Barry Meier, *Panel Suggests U.S. Medical Priorities*, N.Y. TIMES, June 30, 2009 (<http://www.nytimes.com/2009/07/01/health/policy/01compare.html>)

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### Week 2—August 25 & 27

#### Overview: Health Care Quality and Medical Error

Explore definitions of quality and medical error. Begin discussing the differences between minimizing errors and improving overall quality. What legal tools are best suited to the former or the latter? Is minimizing errors more important than improving quality? Or vice versa?

- Reading
- Furrow 15-71

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### Week 3—September 1 & 3

#### Regulation of Health Care Professionals

Examine the issues surrounding the licensing and discipline of health care providers (including alternative health care providers). Particular attention will be paid to problems of quality and access.

- Reading
- Furrow 115-17, 140-158 [recommended: skim 131-32 for some brief background on CAM before reading pp. 140 *et seq.*]
  - *Dent v. West Virginia*, 129 U.S. 114 (1889) [focus on pages 117-25 and 128]
  - Eugene Sekiguchi, Albert H. Guay, L. Jackson Brown, Thomas J. Spangler,

Jr., *Improving the Oral Health of Alaska Natives*, 95 AM. J. PUB. HEALTH 769 (2005) (<http://www.ajph.org/cgi/reprint/95/5/769>)

- Myron Allukian, Jr, Michael E. Bird, Caswell A. Evans, Jr, Letter—*APHA Presidents Support Dental Therapists*, 95 AM. J. PUB. HEALTH 1880 (2005) (<http://www.ajph.org/cgi/reprint/95/11/1880>)
- Dyan Campbell, Howard F. Pollick, Kathy M. Lituri, et al., Letter—*Improving the Oral Health of Alaska Natives*, 95 AM. J. PUB. HEALTH 1880 (2005) (<http://www.ajph.org/cgi/reprint/95/11/1880>)
- Furrow 117-140

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#### **Week 4—September 8 & 10**

##### **Regulation of Health Care Institutions; Staff Privileges**

Examine the direct regulation of health care institutions and initiatives that focus on using markets to improve quality. Consider how staff privileges and contracting decisions allow hospitals and managed care companies to address provider-based quality issues.

- Reading
- Furrow 159-94
  - Furrow 849-59, 865-73