

HEALTH LAW—HMP 652

COURSE SYLLABUS

University of Michigan School of Public Health
Department of Health Management and Policy

Winter 2005

Instructor: Peter D. Jacobson, JD, MPH

Office: SPH II, Rm. M3515

Phone: 936-0928

E-Mail: pdj@umich.edu

Class Schedule: Mondays and Wednesdays, 8:30 A.M. to 10:00 A.M., M-1112

COURSE OBJECTIVES

The purpose of this course is to introduce public health students, especially those interested in health administration and management, to the legal issues they are likely to face in managing a health care organization. With the increasing intersection between health care delivery and law, health care executives will encounter a wide range of legal and regulatory issues, including patients' rights, antitrust, institutional liability, and employee relations. It is thus important for students to be familiar with basic legal principles affecting how health care institutions are operated, how legal rules and doctrine are formulated, and how to interact effectively with attorneys.

This course is designed to provide students with the practical knowledge to identify legal issues and to understand the legal ramifications of strategic decisions. But it is also designed to familiarize students with the emerging health policy issues that courts are likely to confront.

The goals of the course are for students to understand generally:

- The functions of and interaction between courts, legislatures, regulators
- The role of the legal system in health policy and health care delivery
- How to recognize legal issues and communicate with attorneys
- How law will affect students as strategic thinkers in health care positions
- How to find and read cases, statutes, and regulations
- How to apply basic tort, contract, and corporate law principles
- Patients' rights

In an introductory course, it is difficult to cover the myriad instances where the legal system affects health care delivery. We will consider the most salient topics health care executives face rather than attempting in-depth coverage of any particular area. Given the rapid transition from fee-for-service to managed care, the classes will

emphasize emerging legal issues in managed care delivery. In particular, we will consider the legal implications of conflicts between health plans, physicians, individual patients, and patient populations in the new health care environment.

Course Requirements

Course readings and materials are contained in a Course Pack. These readings may be supplemented with more recent readings during the course. In reading the materials, especially the court cases, keep in mind the following types of questions:

- How well does the court, legislature, or regulatory agency understand the health care delivery system?
- What factors does the court consider in reaching its decision?
- What effects do you expect the decision, regulation, or law to have on the health plan or institution?
- As a health care executive or provider, how would you respond to the decision?
- What information would you request from your institution's attorney to comply with the court's decision, the regulation, or the legislation?

I expect everyone to participate in class discussions and exercises. No student will be penalized for not participating in class discussions, but those who actively participate will receive an increase in their final grade. Because many of the issues we will be discussing are topical, students are encouraged to scrutinize media reports of law and health care issues, including legislative and regulatory developments, as well as recent court decisions affecting health care institutions.

Each student will participate in at least one in-class exercise to be designed during the course. Students will also be required to complete either three short papers on topics to be assigned or a longer research paper on a medicolegal topic chosen by the student (subject to approval). There will be a final examination consisting of essay questions. Grades for the course will be determined on the following basis:

- Quality of the research paper(s) 45%
- Final exam 55%

Expectations of Ethical Conduct

When I was in law school, my preceptor set forth the following guidelines for acceptable behavior: don't lie, cheat, or steal. That remains sound advice. Except for the in-class exercises, I expect everyone to do their own work on papers and the final exam. While I encourage interaction and discussion among class members, the final work product must represent the student's individual contributions in conformance with SPH standards of integrity and academic conduct. In addition, I expect that each of us will listen respectfully to each other's ideas and encourage vigorous, but civil, debate over controversial topics.

COURSE TOPICS AND READINGS

PART I: INTRODUCTION TO THE LEGAL SYSTEM

Wednesday, 5 January through Wednesday, 12 January

Framing the Issues in Law and Health Care

Stone AA, Law's Influence on Medicine and Medical Ethics, *New England Journal of Medicine* 1985; 312:309-312.

Annas GJ, Doctors and Lawyers and Wolves, *Jurimetrics Journal* 1989; 29:437-449.

Anderson GF, The Courts and Health Policy: Strengths and Limitations, *Health Affairs* 1992; 11:95-110.

The Legal System I

Southwick AF, *Law of Hospital and Health Care Administration*, Health Administration Press, Second Ed., 1988, pp. 1-22.

Hazard GC Jr., and Taruffo M, *American Civil Procedure: An Introduction*, Yale Univ. Press, 1993, pp. 41-61, 105-124, 128-149 (on reserve in the library).

Menand L, *The Metaphysical Club: A Story of Ideas in America*, Farrar Straus & Giroux, 2002, pp. 338-347.

Glossary of legal terms from Pozgar GD and Pozgar NS, *Legal Aspects of Health Care Administration*, 9th Ed., Aspen Publishers, Inc., Gaithersburg, MD 2004, pp. 527-533 (to be used as reference material).

The Legal System II

Kinney E, Administrative Law Issues in Professional Regulation, in *Regulation of the Healthcare Professions*, TS Jost, ed., Chicago, Health Administration press, 1997, pp. 103-128.

Grodin JR, Do Judges Make Law? *California Lawyer* 1989; 9:62-71.

Burnett DG, Anatomy of a Verdict: The View From a Juror's Chair, *The New York Times Magazine*, 26 August 2001.

PART II: LIABILITY

Wednesday, 19 January through Wednesday, 2 February

General Standards of Liability

Wing KR, *The Law and the Public's Health*, Health Administration Press, Sixth Edition, 2004, pp. 283-327.

Hall v. Hilbun, 466 So.2d 856 (Miss. 1985)--read pp. 860 to 873 (stop @ D) and 877 (start @ V) to 880 (stop before Dissent).

Helling v. Carey, 519 P.2d 981 (Wash. 1974).

Institutional Liability

Petrovich v. Share Health Plan of Illinois, Inc., 719 N.E.2d 756 (Ill. 1999).

Baptist Memorial Hospital System v Sampson, 969 S.W.2d 945 (Tex. 1998).

Contracts

Jacobson PD and Patil NM, Managed Care Litigation: Legal Doctrine at the Boundary of Contract and Tort, *Medical Care Research and Review* 2000; 57:440-463.

Manny v. Central States, Southeast and Southwest Pension and Health and Welfare Funds, 2004 U.S. App. LEXIS (7th Cir. 2004).

Lowell v. Drummond, Woodsum & MacMahon, 2004 U.S. Dist. LEXIS 13059 (D. Me. 2004)

Optional

Randall DA. Contracting Issues Involving the IDS. *Legal Issues and the Integrated Delivery System*, pp. 85-93. American Hospital Association; Chicago, 1996.

ERISA

Jacobson PD and Pomfret SD, ERISA Litigation and Physician Autonomy, *Journal of the American Medical Association* 2000; 283:921-926.

Aetna Health Inc.v. Davila, 124 S. Ct. 2488 (2004).

Tort/ERISA Reform

Studdert DM and Brennan TA, Toward a Workable Model of “No-Fault” Compensation for Medical Injury in the United States, *American Journal of Law & Medicine* 2001; 27:225-244.

Abraham K and Weiler P, Enterprise Liability and the Choice of the Responsible Enterprise, *American Journal of Law & Medicine* 1994; 20(1&2):29-36.

Saravia A, Overview of Alternative Dispute Resolution in Healthcare Disputes, *Journal of Health Law* 1999; 32:139-153.

Optional

Studdert DM, Mello MM, and Brennan TA, Medical Malpractice, *New England Journal of Medicine* 2004; 350:283-292.

PART III: LEGAL ISSUES IN MANAGING HEALTH CARE ORGANIZATIONS

Wednesday, 4 February through Monday, 14 March

The Health Care Organization as a Corporation

Southwick AF, *Law of Hospital and Health Care Administration*, Health Administration Press, Second Ed., 1988, pp. 103-154.

Schwartz JR and Horn HC, Jr., Revisiting the Duty of Care of the Nonprofit Director, *Journal of Health Law* 2003; 183-211.

In the Matter of Manhattan Eye, Ear & Throat Hospital v. Spitzer, 715 N.Y.S.2d 575 (N.Y. 1999).

Tax Exemption—Federal and Local

Needleman J, The Role of Nonprofits in Health Care, *Journal of Health Politics, Policy and Law* 2001; 26:1113-1130.

IHC Health Plans, Inc., 325 F.3d 1188 (10th Cir. 2003).

Private Ruling 200123057; 2001 PRL LEXIS 390, 13 March 2001, pp. 1-3.

Bethesda v. Wilkins, 806 N.E.2d 142 (Ohio 2004).

Optional

Peregrine MW, Charitable Trust Laws and the Evolving Nature of the Nonprofit Hospital Corporation, *Journal of Health and Hospital Law* 1997; 30:11-20.

Tax Exemption—Private Benefit/Inurement and UBIT

Gostin LO and Jacobson PD, excerpts from *Law and the Health System*, New York: Foundation Press, 2005, pp. 1-10.

Antitrust—Overview

JH Shenefield and IM Meltzer, *The Antitrust Laws: A Primer*, 3rd ed., Washington, DC: The AEI Press, 1998 (selected excerpts).

Greaney TL, Whither Antitrust? The Uncertain Future of Competition in Health Care, *Health Affairs* 2002; 21(2):185-196.

Antitrust—Cases

FTC v. Butterworth Health Corporation, 946 F. Supp. 1285 (W.D.Mich. 1996) (read pp. 1288-1304—stop at Ex. A).

Minnesota Association of Nurse Anesthetists v. Unity Hospital, 208 F.3d 655 (8th Cir. 2000).

Institutional Regulations—Fraud and Abuse I

Kalb PE, Health Care Fraud and Abuse, *Journal of the American Medical Association* 1999; 282:1163-1168.

Sage W, Fraud and Abuse Law, *Journal of the American Medical Association* 1999; 282:1179-1181.

Stark Amendments, 42 U.S.C. 1395nn.

§ 42 C.F. R. 411.357—Exceptions to the referral prohibition related to compensation arrangements.

DHHS Office of the Inspector General, OIG Advisory Opinion No. 04-08, 30 June 2004.

Institutional Regulations—Fraud and Abuse II

United States v. St. Luke's Episcopal Hospital, 355 F.3d 370 (5th Cir. 2004).

Dowell MA, Legal Audits and Investigations: A Key Component of Healthcare Corporate Compliance Programs, *Journal of Health Law* 1999; 32:229-250.

Davies SL, Willfulness Under the Antikickback Rules—Lessons From *Bryan v. United States*, *Health Lawyer* 1999; 10(6):14-18.

Institutional regulations—HIPAA

Rosati KB, HIPAA Privacy: The Compliance Challenges Ahead, *Journal of Health Law* 2002; 35:45-76 (endnotes omitted).

67 Federal Register 157, Wednesday, August 14, 2002, pp. 53268-53271, selection of HIPAA regulations (45 CFR Part 164.506—164.514).

McDermott, Will & Emery, and Office for Civil Rights, HIPAA Overview, University of Michigan, 13 September 2002, pp. 1-18.

Joint Ventures

Schwartz JR and Horn HC, Jr., *Health Care Alliances and Conversions: A Handbook for Nonprofit Trustees*, Chapter 5, Joint Ventures, pp. 83-120. San Francisco: Jossey-Bass Publishers, 1999.

St. David's Health Care System, Inc. v. United States, 2002 U.S. Dist. LEXIS 10453 (W.D. Tex. 2002).

DHHS Office of the Inspector General, OIG Advisory Opinion No. 03-13, 16 June 2003.

PART IV: REGULATING QUALITY OF CARE

Wednesday, 16 March through Wednesday, 23 March

Public Oversight—Licensure and Accreditation

National Committee on Quality Assurance, Standards for the Accreditation of Managed Care Organizations (available at NCQA's website, www.ncqa.org--skim the entire site).

Burdle H, The Implementation of Quality and Safety Measures: From Rhetoric to Reality, *Journal of Health Law* 2002; 35:263-281.

Liang BA and Storti K, Creating Problems as Part of the "Solution": The JCAHO Sentinel Event Policy, Legal Issues, and Patient Safety, *Journal of Health Law* 2000; 33:263-285.

Medicare Conditions of Participation, 42 Code of Federal Regulations Part 482, Subparts A, B, and C.

Murphy v. Board of Medical Examiners of the State of Arizona, 949 P.2d 530 (Ariz.Ct.App. 1997).

Institutional Oversight—Staff Privileges

Potvin v. Metropolitan Life Insurance Company, 997 P.2d 1153 (Cal. 2000).

Mason v. Central Suffolk Hospital, 2004 N.Y. LEXIS 3531 (N.Y. 2004).

Optional

DA Lang, *Medical Staff Peer Review*, Chicago: AHA Press, 1999, Chapter 2, Assigned Privileges: The Basis of Peer Review, pp. 41-69.

Institutional Oversight—Peer Review

Lo v. Provena Covenant Medical Center, 796 N.E.2d 607 (Ill. 2003).

The Health Care Quality Improvement Act, 42 U.S.C. 11101-11151.

HCA Health Services of Virginia, Inc. v. Levin, 530 S.E.2d 417 (Va. 2000).

Optional

DA Lang, *Medical Staff Peer Review*, Chicago: AHA Press, 1999, Chapter 6, Improving Individual Performance, pp. 169-201.

PART V: OBLIGATIONS TO PATIENTS AND EMPLOYEES

Monday 28 March through Monday 18 April

Informed Consent

Southwick AF, *Law of Hospital and Health Care Administration*, Health Administration Press, Second Ed., 1988, pp. 350-375, and 397-409.

Arato v. Avedon, 858 P.2d 598 (Cal. 1993).

Johnson By Adler v. Kokemoor, 545 N.W.2d 495 (Wis. 1996).

Privacy and Confidentiality

Gostin LO, Health Care Information and the Protection of Personal Privacy: Ethical and Legal Considerations, *Annals of Internal Medicine* 1997; 127:683-690.

Doe v. Southeastern Pennsylvania Transportation Authority, 72 F.3d 1133 (3rd Cir. 1995).

Hodge JG, Jr., Gostin LO, and Jacobson PD. Privacy, Quality, and Liability: Legal Issues Concerning Electronic Health Information. *Journal of the American Medical Association* 1999; 282:1466-1471.

Nondiscrimination

Gostin LO, HIV Infection and AIDS in the Public Health and Health Care systems: The Role of Law and Litigation, *Journal of the American Medical Association* 1998; 279:1108-1113.

Americans With Disabilities Act, 42 U.S.C. 12101-12117 (Subchapter I—Employment).

Stafne v. Unicare Homes, 266 F.3d 771 (8th Cir. 2001).

Chevron v. Echazabal, 536 U.S. ____ (2002).

Access to Health Care

Kamoie BE, EMTALA: Reaching Beyond the Emergency Room to Expand Hospital Liability, *Journal of Health Law* 2000; 33:25-55.

Federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd.

Matter of Baby K, 16 F.3d 590 (4th Cir. 1994).

Burditt v. U.S. Department of Health and Human Services, 934 F.2d 1362 (5th Cir. 1991).

Death and Dying

Gostin LO, Deciding Life and Death in the Courtroom. *Journal of the American Medical Association* 1997; 278:1523-1528.

Patient Self-Determination Act, 42 U.S.C. 1395cc(a)(1)(f)(1-3).

Miller v. HCA, Inc., 118 S.W.3d 758 (Tex. 2003).

Conflicts of Interest

Miller TE and Sage WM, Disclosing Physician Financial Incentives, *Journal of the American Medical Association* 1999; 281:1424-1430.

Neade v. Portes, 739 N.E.2d 496 (Ill. 2000).

Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations--Final Rule, 42 C.F.R. Part 417, *Federal Register* Vol. 61, No. 60, March 27, 1996, pp. 13430-13434 (I-V) and pp. 13446-13448 (Part 417).

General Employment Issues

Pozgar GC, Employment, Discipline, and Discharge. *Legal Aspects of Health Care Administration*, 9th Ed., Aspen Publishers, Inc., Gaithersburg, Maryland, 2004, Chapters 19 and 20, pp. 433-463.

Luepke EL, White Coat, Blue Collar: Physician Unionization and Managed Care, *Annals of Health Law* 1999; 8:275-298.