

Course syllabus for the **Fall 2014 class 5397 Foundational Issues in Health Law: Patient, Provider, Society and the Law**

Professor: Michael S. Ewer, MD, JD, LL.M. – 25376

Course description: *This three-credit course introduces students to basic legal and theoretical concepts related to the study of health law. Major topics include bioethical theories and their relevance to the law, medical malpractice, and the role of the courts in defining and applying standards of care. We will cover an array of interesting and challenging issues over the course of the semester, including the meaning of health, the nature of the physician-patient relationship, including privacy, access to care, and informed consent, public health, reproductive and genetic technologies, and end-of-life care. This class has a heavy discussion component and students are expected to come to class prepared to engage in an in-depth conversation about the assigned material. To that end, students enrolled in this course will become well-versed in the theory underlying the law and policy we study, as well as the black letter law.*

Students will be expected to come to class prepared, and will be called upon at random to discuss assigned cases or specific problems. Institutional requirements regarding attendance and punctuality will be followed. If there are specific problems you encounter please discuss them with me.

Grading: will follow institutional requirement for the distribution of grades. There will be one final 3-hour exam that forms the basis for your grade, but I may increase or decrease any student's grade by one increment (i.e., from "B" to "B+" or "B-") based on participation (or lack of it). The exam will be "open book" in that you may use the textbook, your own notes or notes prepared among a group of students and used for study purposes, and any handouts that have been provided. Commercial reviews or notes prepared by other students and used solely for exam purposes will not be permitted in the exam room—you must have contributed to the preparation of study notes in some meaningful way.

Textbook: We will use the Hall-Bobinski-Orentlicher textbook ***Health care Law and Ethics*** 8th edition. There have been substantial changes and updates in this book from the previous edition, and the material will be covered as it appears in the newest edition. We will cover the first seven chapters in the book, largely in the order of the text, but there will be exceptions. Let me know if you have problems with regard to the textbook.

First week of class: Please read chapter 1 of the Hall textbook. This chapter is quite lengthy, but offers a great perspective on what we will cover for the rest of the semester. There are numerous small essays in this chapter that will give you some idea of how consumers of medical care (patients) think about providers, the health care system, and the problems that we as providers and attorneys see on a daily basis. We will hit the road running, so I expect that students will have spent some time reviewing this material.

Office hours: I am available before class and happy to meet with you on a one-on-one basis. If other times are more convenient please e-mail me to that we can set up a time. mewer@mdanderson.org

Current events: As we go through the semester there will be a number of issues that reach local or national prominence. These may be cases that have reached higher courts or could be related to health law in a variety of ways. These will be discussed in class as they occur, and students are encouraged to bring interesting and timely issues to me for consideration.

Provisional outline

- **Week 1:** General introduction to Health Law, the present environment, and a discussion of economic and social concerns, expectations, and the limits to appropriate care. We will review the material in Chapter 1 of the Hall textbook.
- **Week 2:** Duty to treat and the right to refuse treatment, as well as the structure of the treatment relationship. We will look at a series of cases that help define the establishment of the doctor-patient relationship, who has obligations to treat, when the doctor-patient relationship ends, and the special situations that arise when there are expectations that care will be provided as in the emergency room setting. EMTALA (Emergency Medical Treatment and Active Labor Act) will be part of these discussions, as will the obligations of institutions to provide care that meets standards under the law.
- **Week 3:** We will introduce the concepts of confidentiality and the requirements under the HIPAA legislation, and provide an overview of what can, what must, and what may not be shared regarding personal health information. Some examples and cases will be reviewed, but this material lends itself to a more formal lecture with PowerPoint graphics; these will be distributed to class participants in either hard copies or electronic form.
- **Week 4:** We will finish our discussion of privacy and begin the sections on the fiduciary nature of the treatment relationship. Included in this topic is an analysis of informed consent, the various standards of consent under the law that apply to the various levels of specialization, and defenses that may be applicable. We will discuss the distinction between issues of medical malpractice (think of tort—failure to meet standards of care) vs. issues of informed consent (think of contract—failure to do that what the patient has agreed should be done). These discussions and the cases we review will continue, and we will introduce informed consent as it applies to research. We will also touch upon conflicts of interest.
- **Week 5 and 6:** We will start our overview of medical malpractice—what constitutes the standard of care, alternate standards of care that may apply in settings of general vs. more specialized care; we will also look at legal defenses. We will introduce the concept of expert testimony, and expand our discussion to product liability with regard to drugs, devices and vaccines; the *Kearl rule* will be reviewed as a rational basis for liability. We will look at tort reform in Texas and other states, as well as protections that apply within Texas for State institutions. We will look at alternate theories of liabilities such as *res ipsa*, and the role of specialty organizations in the development of standards of care. Part of our discussions will look at liability in the face of the complex nature of a modern hospital, and the “captain of the ship” analysis. We will consider statutes of limitations and repose.

- **Week 7:** We will finish our discussion of medical malpractice with review of cases such as “Day in the Life of...” contracts of adhesion, and of the effect of professional data banks that may influence the reputation of providers. We will look at whether or not insurance coverage can pay a claim over the objection of insured. We will start our discussions of credentialing and privileging of health care professionals using some cases but also with a PowerPoint presentation.
- **Week 8:** We will have a day to review current events with regard to health care and to play “catch-up.” If time permits and if there are questions raised, we may review the first five chapters (Part 1) of the hall book (up to page 517). We will look at evolution of health care from the legal, ethical, and institutional perspective.
- **Week 9:**
Monday: We will have a guest lecture: Professor Christopher Lewis (hopefully) will lead the discussion on ERISA; material will be provided in advance.
Wednesday: We will start our discussion on end-of-life considerations and medical ethics. We will start with a review of classic cases of refusing ongoing life-prolonging therapy, the role of advance directives. We will review the Texas act commonly referred to as the “Texas futility Act.”
- **Week 10 and 11:** We will review the role of institutional ethics committees and the balance of different coalitions as they attempt to provide ethical medical care. The class will be involved in two ethics committee hypothetical deliberations. We will look at physician involvement in ending life; we will discuss the various interventions and definitions such as “assisted suicide” “refusal of therapy” and “euthanasia.” Brain death and futility will also be discussed.
- **Week 12:** Organ transplantation and donation issues. Donation of body parts taken from patients with special needs; issues related to “re-generable” “non-re-generable” organs. The need for guardians with regard to children, the mentally compromised, and those in correctional institutions for cases of donation.
- **Week 13:** Special legal issues related to reproductive rights and termination of pregnancy, surrogacy, and untraditional conception issues.
- **Week 14:** We will start our discussion on the affordable care act, and what has and has not changed. How providers, patients, and third-party payers will adjust to the changing environment.
- **Week 15:** Review, and a guest lecture of how politics, medicine, greed, and conflict-of-interest have conspired to create the most costly system of health care in the world today.