FRAUD AND ABUSE (SPRING 2018)
COURSE #5217
THURSDAYS – 5:30 p.m. - 7:30 p.m.

Adjunct Professor

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Course Objectives

This course explores the administrative, civil, and criminal enforcement of health care fraud and abuse laws and the penalties imposed on health care providers for a variety of unlawful activities. Specifically, the course examines the Anti-Kickback Statute, the federal anti-referral (Stark) law, federal false claims laws, exclusion authorities, and federal criminal statutes, as well as the strategies employed by the government to pursue health care violations and by defense attorneys who represent accused providers.

Course Requirements and Grading

Course Notes: This is an LL.M class, but JD students are encouraged to register, if space is available. During Spring 2018, the course will be offered in an online format. The course sessions will be a live lecture from 5:30 – 7:30 PM on Thursdays using Zoom technology viewable from any location with Internet access.

Requirements: In person attendance is **mandatory at the University of Houston Law Center** for the Investigation Workshop which is presently scheduled for April 12th and April 19th. General course attendance is required per Law Center attendance policy. If you anticipate that you will miss a class, please inform the professor by email in advance. Participation in class discussions is expected and, as set forth below, will comprise a portion of the grade.

Grading: There will be no final examination. Grades for the course will be determined as follows:

1.	Completion of two short, written take home exercises – maximum 5 pages (40% each)

- First exercise due February 26, 2018 at 3:00pm
  o	The exercise will be made available beginning February 22, 2018.

- Second exercise due May 10, 2018 at 3:00pm
  o	The exercise will be made available beginning May 1, 2018.
  o	Students must complete the exercise within 90 hours.

2.	Class Participation (20%) – presentation of at least one "Hot Topic" and participation in problem workshops

3.	During the semester, students will have the opportunity to complete an additional, written exercise for extra credit which may be applied to their lowest written exercise score.

Text

Carrie Valiant and David E. Matyas, *Legal Issues in Healthcare Fraud and Abuse: Navigating the Uncertainties*, Fourth Edition

CAPS

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

COURSE OUTLINE

January 18	**Introduction**
	Agency/Process Overview
	Text: Chapter 1, pp. 1-15
January 25	**Stark Law – Overview and History**
	Text: Chapter 3, pp. 131-154, 200-208, 218-223
	42 U.S.C. § 1395nn, and regulations set forth at 42 C.F.R. §§ 411.350 - .389 (Read the statute in its entirety and briefly review the regulations)
	Stark Law – Exceptions
	Text: Chapter 3, pp. 154-200
	CMS Advisory Opinion No. 2011-01 - Available online at: https://www.cms.gov/PhysicianSelfReferral/Downloads/CMS-AO-2011-01.pdf
February 1	**Anti-Kickback Statute – Overview and History**
	Text: Chapter 2, pp. 21-29, 68-87, Chapter 6, pp. 360-364
	42 U.S.C. §§ 1320a-7b(b), (f), (g), and (h), and regulations set forth at 42 C.F.R. § 1001.952 (Read the statute in its entirety and briefly review the regulations)
	United States v. Greber, 760 F.2d 68 (3d Cir. 1985)
	United States v. Bay State, 874 F.2d 20 (1st Cir. 1989)
	United States v. Kats, 871 F.2d 105 (9th Cir. 1989)
	Polk Cnty., Tex. v. Peters, 800 F. Supp. 1451 (E.D. Tex. 1992)
	United States v. McClatchey, 217 F.3d 823 (10th Cir. 2000)
February 8	**Anti-Kickback Statute – Statutory Exceptions/Safe Harbors**
	Text: Chapter 2, pp. 30-68, 88-97, 109-130
	United States v. Shaw, 106 F. Supp. 2d 103 (D. Mass. 2000)
	United States v. Borrasi, 639 F.3d 774 (7th Cir. 2011)
	United States v. Starks, 157 F.3d 833 (11th Cir. 1998)

	United States v. Crinel, 2015 U.S. Dist. LEXIS 77773, 2015 WL 3755896 (E.D. La., June 16, 2015) *United States v. Patel*, 778 F.3d 607 (7th Cir. 2015)
February 15	**Anti-Kickback Statute – Statutory Exceptions/Safe Harbors, Cont.** **Stark and Anti-Kickback Workshop**
February 22	**False Claims Act and Affirmative Civil Enforcement** Text: Chapter 4, pp. 225-251, 265-275, 277-308 31 U.S.C. §§ 3729-3733 42 U.S.C. § 1320a-7a *Universal Health Servs., Inc. v. United States*, 136 S. Ct. 1989 (2016) *United States v. Rogan*, 517 F.3d 449 (7th Cir. 2008) *U.S. ex rel. Drakeford v. Tuomey*, 792 F.3d 364 (4th Cir. 2015)
March 1	**Parallel Proceedings** Yates Memo (September 2015) Holder Memo (January 2012) USAM 1-12.000, 4-3.100, and 9-28.000, et seq. Jaime A. Pena, J. Chris Larson, and Eileen O'Connor-Barnes, "Parallel Investigations and Prosecutions in Anti-Kickback Cases Involving Healthcare Providers," *United States Attorneys' Bulletin*, Vol. 64, No. 6 (November 2016)
March 8	**Criminal Enforcement** Text: Chapter 4, pp. 254-265 Federal Criminal Statutes: 18 U.S.C. §§ 1341, 1343, 1347, and 1349, 18 U.S.C. § 371, 18 U.S.C. § 1028A, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. § 1320d-6, 18 U.S.C. §§ 1001 and 1035, 18 U.S.C. § 1518, 18 U.S.C. §§ 1956 and 1957 *United States v. O'Brien*, 14 F.3d 703 (1st Cir. 1994) *United States v. St. Junius*, 739 F.3d 193 (5th Cir. 2013)

	United States v. Mahmood, 820 F.3d 177 (5th Cir. 2016)
	United States v. Miles, 360 F.3d 472 (5th Cir. 2004)
	United States v. Shoemaker, 746 F.3d 614 (5th Cir. 2014)
March 15	**Spring Break**
March 22	**Government Investigations and Strategy**
March 29	**The Agent's Perspective**
April 5	**Ethical Considerations for Health Care Attorneys**
April 12	**Investigation Workshop**
April 19	**Investigation Workshop**
April 27	**Review and Self-Study**