

HEALTH CARE TRANSACTIONS

Spring 2018

University of Houston Law Center
Professors Jessica Mantel, Chris Shea, and Robert McStay

Syllabus

[as of October, 2017]

Time and Location

Credits: Three (3) credit hours
Time: Wednesday evenings, 6:00-8:45pm
Office hours: By appointment (e-mail or see us after class to set up a mutually convenient time)

Professors' Contact Information

Prof. Jessica Mantel
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Course Description

In this advanced health law course students learn and apply substantive laws and lawyering skills to model health care transactions. Working in teams of associates under the supervision of the professors, including practicing health care attorneys, students will engage in health care contract drafting, client interviews, negotiations, due diligence, and regulatory analysis. The model health care transactions are based on deals commonly entered into by hospitals and health systems, including hospital-physician employment agreements, health care joint ventures, and acquisitions. Groups will rotate throughout the semester so that students have the opportunity to work with different colleagues and represent different parties to the transactions.

Prerequisite

Enrolled students must have previously taken The U.S. Health System: An Introduction to Managed Care, Transactions, and Policy (Law 6365).

Required Reading

The required text for this course is TINA L. STARK, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO, 2d ed. (Wolters Kluwer 2014). ISBN: 978-0-7355-9477-7

These texts will be supplemented by additional required reading assignments, which will be provided on the class web site. To access the class website, go to <http://law.uh.edu/faculty/jmantel/Health-Care-Transactions.html>.

Attendance, Class, and Group Participation

Due to the hands-on and participatory nature of the class, students with **more than 2 absences** or whose participation in the development of group work product repeatedly falls below that of the other group members, may receive a grade reduction at the discretion of the Professors.

Students are expected to complete the readings and assignments in advance of each class, arrive at class on time, attend and participate in class discussions, work cooperatively with classmates in group projects, and be respectful of all other class members. Much of the course will involve working within groups of associates.

Evaluation and Grading

Students will be evaluated on the basis of the completion of three transactional projects including (a) a physician employment contract, a professional services agreement, and a physician practice asset purchase agreement; (b) written legal memoranda; and (c) other work products including oral communication and presentations, term sheets, closing checklists, and board resolution materials. As agreements are, in the real world, a product of a team's effort, your ability to work together to create a quality product is a realistic and fair basis on which to grade. In most cases, all students in the same group will receive the same grade for group-produced work products. In extraordinary circumstances where one group member's contribution to the group is substantially lacking, Professors will reserve the right to adjust grades accordingly.

Students will also be given **individual participation grades** that will be based upon: (d) in-class preparation, attendance, and participation; (e) self-evaluations for transactional projects; and (f) the quality of peer-review evaluations provided to others. Participation grades shall constitute 20% of the final grade.

Individual grades will be awarded based on the cumulative total of your groups' performance on graded documents, negotiations, and presentations; individual memoranda and work products (if any); and your individual participation.

Grade calculation:

Physician Employment Agreement & Negotiation	10%
Professional Services Agreement, Client Interview, Board Resolutions	20%
Physician Practice Acquisition Agreement, Diligence Memorandum, Closing Checklist	50%
Individual Participation	20%
Total	100%

Collaboration with Students and Others

We encourage you to cooperate with each other in all aspects of this course. You should feel free to share ideas with each other. However, each group must do its own writing. Please do NOT collaborate with the other group assigned to your party (i.e., other Physician group if you are also representing the Physician, other Hospital group if you are representing the Hospital) for the purposes of drafting agreements. Do not co-write memoranda or other work products with classmates outside of your own group. From a learning perspective, it is important to preserve the ability for different groups to reach different solutions to similar drafting problems.

You may not solicit or receive the aid of anyone outside this class, such as practicing lawyers (other than the Professors). A violation of the rules in this paragraph is an honor code violation.

Course Learning Objectives:

1. Synthesize substantive health law doctrine with the practice of law by affording you the opportunity to exercise lawyering skills in an instructional environment.
2. Integrate and apply the knowledge gathered from health law courses to real-life situations you are likely to encounter after graduation if your practice involves health care transactions and regulatory compliance.
3. Develop professional judgment by analyzing ethical and professionalism issues; and
4. Engage in exercises that will promote team work and cooperation.

Skills Development:

1. Review health care contracts for regulatory compliance issues, legally significant provisions, and business terms.
2. Draft and edit contract language and engage in negotiations with counterparties.
3. Plan and execute the steps needed to close health care transactions from information gathering, regulatory review, licensure and certification issues, notifications, and other closing checklist items.
4. Conduct regulatory analysis of proposed health care transactions and document in

written legal memoranda and oral reports to supervising attorney.

5. Advise client of regulatory issues and gather business and other information necessary to construct term sheets, letters of intent, and health care transactional documents.
6. Develop professionalism and communication skills for working with colleagues, clients, and counterparties.

ASSIGNMENTS

The following sets forth the schedule of readings, assignments, and class activities. Additional readings and course materials will be posted on the course web site or emailed to you. Video lectures also will be available on the course website. The schedule for topics and assignments are subject to revision over the course of the semester, so please check the course website regularly for updates.

Instructions for submitting assignments:

- Group assignments are due on either the Friday or Monday following class, as indicated in the chart below. Assignments due on Friday must be submitted by 5 p.m. and assignments due on Monday must be submitted by 9.a.m.
- All assignments shall be submitted via email to Elaine Fiala at efiala@central.uh.edu and titled as follows: *LastName-LastName-Assignment title* (e.g., Smith-Jacobs-Employment Agreement).
- Put your name(s) on every page in the header.
- Formatting: use one-inch margins all around, 12-point font, paginate any document longer than one page.

Week	Class Meeting Date
1	1/17
2	1/24
3	1/31
4	2/7
5	2/14
6	2/21
7	2/28
8	3/7
9	3/21
10	3/28
11	4/4
12	4/11
13	4/18
14	4/25

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.

HEALTH TRANSACTIONS

Course Schedule:

Weeks 1-4: Hospital-Physician Employment Agreement

Weeks 5-7: Professional Service Agreement

Weeks 8-14: Physician Practice Acquisition

Week	Class Date	Assignment	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 P.M	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 A.M
PART I: HOSPITAL-PHYSICIAN EMPLOYMENT AGREEMENT				
1	1/17/2017	<u>Read:</u> Tina Stark, Ch. 1-5, 27 <u>Watch:</u> Video lecture, "Overview of a Contract's Parts" <u>In-Class:</u> Exercise 5-2 (Stark p. 57-60) in groups	<u>Submit:</u> Exercise 5-2 (Stark p. 57-50)	
2	1/24/2017	<u>Read:</u> <ul style="list-style-type: none"> · Tina Stark, Ch. 6, 7, 8.1-8.2, 8.4, 10, 13, 16 · TBD: Materials on Texas law on restrictive covenants for physicians · Memo on Physician Employment Agreement <u>In-Class:</u> Draft physician employment contract provisions: <ul style="list-style-type: none"> - Introductory provisions - Physician duties 		<u>Submit:</u> Draft physician employment contract provisions: <ul style="list-style-type: none"> - Introductory provisions - Physician duties - Term - Benefits - Restrictive covenants - Miscellaneous provisions

Week	Class Date	Assignment	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 P.M	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 A.M
		<ul style="list-style-type: none"> - Term - Benefits - Restrictive covenants - Miscellaneous provisions 		

3	1/31/2017	<p><u>Read:</u></p> <ul style="list-style-type: none"> · Tina Stark, Ch. 8.3, 22 · TBD: Materials on Federal Anti-Kickback and Stark laws · Memo on Employment Agreement <p><u>Watch:</u> Video lecture, "Physician Employment Compensation"</p> <p><u>In-Class:</u> Draft physician employment contract provisions: - Compensation</p>		<p><u>Submit:</u> Draft physician employment contract provisions: - Compensation</p>
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4	2/7/2017	<p><u>Read:</u></p> <ul style="list-style-type: none"> · Tina Stark, Ch. 9, 15, 26 · Sample Reps, Warranties, and Termination Provisions · Sue Payne: Contract Drafting Checklist 		<p><u>Submit:</u> Final Physician Employment Agreement, clean and blackline (tracked changes) versions</p>
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Week	Class Date	Assignment	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 P.M	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 A.M
		<u>Watch:</u> Video lecture, "Termination, Reps & Warranties" <u>In-Class:</u> Draft physician employment agreement provisions: - Representations and warranties - Terminations		
PART II: PROFESSIONAL SERVICE AGREEMENT (PSA)				
5	2/14/2017	<u>Complete:</u> Evaluation of self and peers from Part I of course (on TWEN) <u>Read:</u> <ul style="list-style-type: none"> Form of Professional & Administrative Services Sample Exclusive Service Agreement Grading Rubric: Professional Services Agreement TBD: Materials on Anti-Kickback on Stark laws on independent contractor personal services arrangement <u>Watch:</u> Video lecture, "Hospital-Physician Professional Services Agreements"	<u>Exercise:</u> Professional Services Agreement Scavenger Hunt	

Week	Class Date	Assignment	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 P.M	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 A.M
		<u>In-Class:</u> <ul style="list-style-type: none"> Interview clients for Professional Services Agreement Exercise: Professional Services Agreement Scavenger Hunt 		
6	2/21/2017	<u>Read:</u> <ul style="list-style-type: none"> Tina Stark: Ch. 28 NAWL Beyond the Bar: Effective Legal Negotiation Toolkit <u>Prepare:</u> Read Notes on PSA and prepare negotiation issues assigned to you <u>In-Class:</u> Negotiations of PSA (Students not engaged in negotiation are scriveners drafting revisions)		<u>Submit:</u> Draft Professional Services Agreement as negotiated and agreed to by parties
7	2/28/2017	<u>Read:</u> TBD: Materials on board resolutions <u>In-Class:</u> <ul style="list-style-type: none"> Draft board resolutions Revise PSA 		<u>Submit:</u> <ul style="list-style-type: none"> - Final PSA (clean and redline copies) - Board resolution

Week	Class Date	Assignment	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 P.M	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 A.M
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PART III: PHYSICIAN PRACTICE ACQUISITION AGREEMENT				
8	3/7/2017	<p><u>Complete:</u> Evaluation of self and peers from Part II of course</p> <p><u>Read:</u></p> <ul style="list-style-type: none"> · Tina Stark: 5.10, 8.5, 10.3, 11.3, 11.4, 17, 21.5.3, 25, 26 · Letter of Intent · Sample Asset Purchase · Sample Due Diligence Request List · Begin Reviewing data room documents <p><u>Watch:</u> Video lecture, "Intro to physician practice acquisition, the Asset Purchase Agreement"</p>		
9	3/21/2017	<p><u>Review:</u> Data room materials</p> <p><u>Read:</u></p> <ul style="list-style-type: none"> · Form of Asset Purchase Agreement <p>Start filling in deal-terms into Asset Purchase Agreement, eliminating irrelevant provisions</p> <p><u>In-Class:</u></p> <ul style="list-style-type: none"> · Discuss data room findings with group 		

Week	Class Date	Assignment	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 P.M	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 A.M
10	3/28/2017	<u>Read:</u> <ul style="list-style-type: none"> TBD: Materials on Anti-Kickback and Stark laws governing physician acquisitions <u>In-Class:</u> <ul style="list-style-type: none"> Draft due diligence memorandum 		
11	4/4/2017	<u>Read:</u> <ul style="list-style-type: none"> Closing Checklist Article Sample Closing Checklist Memo on Asset Purchase Agreement Negotiation <u>Watch:</u> Video lecture on Indemnification <u>In-Class:</u> Draft closing conditions, indemnification, and termination provisions		<u>Submit:</u> Due diligence memorandum
12	4/11/2017	<u>Read:</u> <ul style="list-style-type: none"> Memo from your client describing its business position/objectives for negotiation <u>Watch:</u> Video lecture, "Closing Checklists" <u>Prepare:</u> Draft the following sections of the APA in preparation for negotiation:		<u>Submit:</u> Draft closing checklist

Week	Class Date	Assignment	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 P.M	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 A.M
		<ul style="list-style-type: none"> - Closing - Representations and Warranties of Seller - Pre-Closing Covenants of Seller - Conditions Precedent to Obligations of Buyer - Indemnification - Exhibits/Schedules relating to all of the above <p>You will draft/negotiate from the point of view of your Group's client (i.e., hospital or physician group). You do not need to turn in this draft.</p> <p><u>In-Class:</u></p> <ul style="list-style-type: none"> · Negotiation of select provisions of agreement · Draft closing checklist 		
13	4/18/2017	<p><u>In-Class:</u></p> <ul style="list-style-type: none"> · Revise checklist · Continue drafting Asset Purchase Agreement 	<p><u>Submit:</u></p> <p>Draft Asset Purchase Agreement</p>	<p><u>Submit:</u></p> <p>Final closing checklist</p>
14	4/25/2017	<p><u>Complete:</u></p> <p>Evaluation of self, peers, and project due by 9 am Wednesday</p> <p><u>In-Class:</u></p> <p>Closing Dinner</p>		<p><u>Submit:</u></p> <p>Final Asset Purchase Agreement</p>