

**HEALTH CARE TRANSACTIONS**  
**Spring 2022**

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

*\*\*Due to the changing nature of the COVID-19 pandemic, the instructors may need to make modifications to the course syllabus. Such modifications may include changes to the mode(s) of assessment for the course prior consistent with UH policy. Notice of such changes will be announced as quickly as possible.*

**Syllabus**

**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**

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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://www.law.uh.edu/faculty/jmantel/> and click the link for Health Transactions.

### **Attendance, Group Participation**

**This course is being offered in-person.** 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. However, in light of the current pandemic, we will exercise flexibility when implementing this policy as warranted.

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, 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	15%
Professional Services Agreement, Board Resolutions	25%
Physician Practice Acquisition Agreement, Diligence Memorandum, Closing Checklist	40%
Individual Participation	20%
<b>Total</b>	<b>100%</b>

**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.

**Recording of Class:**

In accordance with UH policy, students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructors. If you have or think you may have a disability such that you need to record class-related activities, please contact the Center for Students with Disabilities. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes will be recorded by the

instructor. Students may use instructors' recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with *anyone* without the prior written approval of the instructors. Failure to comply with requirements regarding recordings will result *in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.*

**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 schedule of readings, assignments, and class activities is set forth in the assignment chart (separate document). Additional readings and course materials will be posted on the course web site or emailed to you. 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 Professor Mantel 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	1/19
2	1/26
3	2/2
4	2/9
5	2/16
6	2/23
7	3/2
8	3/9
9	3/16
10	3/30
11	4/6
12	4/13
13	4/20
14	4/27

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](http://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](http://www.uh.edu/caps/outreach/lets_talk.html).

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University System's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08. Please be aware that under the sexual misconduct policy, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

# HEALTH TRANSACTIONS

## Course Schedule:

Weeks 1-4: Hospital-Physician Employment Agreement

Weeks 5-8: Professional Service Agreement

Weeks 9-14: Physician Practice Acquisition

WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
PART 1: HOSPITAL-PHYSICIAN EMPLOYMENT AGREEMENT			
1	<u>Read:</u> - Tina Stark, Ch. 1-5, 27  <u>In-Class:</u> - Exercise 5-2 in groups	<u>Submit:</u> - Exercise 5-2	

WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
2	<p>Read:</p> <ul style="list-style-type: none"> <li>- Tina Stark, Ch. 6, 7, 8.1-8.2, 8.4, 10, 13, 16</li> <li>- Materials on Texas’s law on restrictive covenants for physicians <ul style="list-style-type: none"> <li>o Texas Business and Commerce Code §15.50</li> <li>o <i>Sadler Clinic v. Hart</i></li> <li>o Neil Burger, Physician Non-Compete Agreements</li> </ul> </li> <li>- Memo on physician employment agreement</li> <li>- Employment Agreement Template – Class #2 version</li> <li>- Contract Grading Rubric – Physician Employment Agreement (FYI)</li> </ul> <p><u>In-Class:</u> Draft physician employment contract provisions:</p> <ul style="list-style-type: none"> <li>- Introductory provisions</li> <li>- Physician duties</li> <li>- Term</li> <li>- Benefits</li> <li>- Restrictive covenant</li> <li>- Miscellaneous provisions</li> </ul>		<p><u>Submit:</u> Draft physician employment contract provisions:</p> <ul style="list-style-type: none"> <li>- Introductory provisions</li> <li>- Physician duties</li> <li>- Term</li> <li>- Benefits</li> <li>- Restrictive covenant</li> <li>- Miscellaneous provisions</li> </ul>

WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
3	<p><u>Read:</u></p> <ul style="list-style-type: none"> <li>- Tina Stark, Ch. 8.3, 22</li> <li>- Materials on Federal Anti-Kickback and Stark laws for employment arrangements <ul style="list-style-type: none"> <li>o All Children’s Health System</li> <li>o Halifax Medical Center (opinion)</li> <li>o Halifax Medical Center (order)</li> <li>o Tuomey Healthcare System</li> </ul> </li> <li>- Memo on Employment Agreement</li> <li>- Form of Employment Agreement</li> </ul> <p><u>In-Class:</u></p> <p>Draft physician employment contract provisions:</p> <ul style="list-style-type: none"> <li>- Compensation</li> </ul> <p>Draft email with fraud and abuse analysis</p>		<p><u>Submit:</u></p> <p>Draft physician employment contract provisions:</p> <ul style="list-style-type: none"> <li>- Compensation</li> </ul> <p>Email to partner with fraud and abuse analysis</p>

WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
4	<p><u>Read:</u></p> <ul style="list-style-type: none"> <li>- Tina Stark, Ch. 9, 15, 26</li> <li>- Sample Reps, Warranties, and Termination Provisions</li> <li>- Sue Payne: Contract Drafting Checklist</li> </ul> <p><u>In-Class:</u></p> <p>Draft physician employment agreement provisions:</p> <ul style="list-style-type: none"> <li>- Representations and warranties</li> <li>- Termination</li> <li>- All remaining terms</li> </ul>		<p><u>Submit:</u></p> <p>Final physician employment agreement</p>

WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
<b>PART II: PROFESSIONAL SERVICES AGREEMENT (PSA)</b>			
5	<p><u>Complete:</u> Evaluation of self and peers from Part I of course</p> <p><u>Read:</u></p> <ul style="list-style-type: none"> <li>- Form of Professional &amp; Administrative Services Agreement</li> <li>- Sample Exclusive Services Agreement</li> <li>- OIG Supplemental Compliance Guidance for Hospitals</li> <li>- <i>US ex rel. Goodstein v. McLaren Regional Medical Center</i></li> </ul> <p><u>In-Class:</u></p> <ul style="list-style-type: none"> <li>- Interview clients for professional services agreement</li> <li>- Exercise: Professional Services Agreement Scavenger Hunt</li> </ul>	<p><u>Exercise:</u> Professional Services Agreement Scavenger Hunt</p>	

WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
6	<p><u>Read:</u></p> <ul style="list-style-type: none"> <li>- Tina Stark, Ch. 28</li> <li>- NAWL Beyond the Bar: Effective Legal Negotiation Toolkit</li> <li>- Exhibit for PSA – Mercy Medical Group Physician Employment Agreement</li> </ul> <p><u>Prepare:</u></p> <ul style="list-style-type: none"> <li>- Read notes on PSA and prepare negotiation issues assigned to you.</li> <li>- Review proposed arrangement for any tax issues and prepare analysis for client (to be presented to client verbally).</li> </ul> <p><u>In-Class:</u> Interview client in preparation for PSA negotiations and explain any tax issues.</p>		
7	<p><u>In-Class:</u> Negotiation of PSA</p>		<p><u>Submit:</u> Draft Professional Services Agreement (PSA) as negotiated and agreed to by parties</p>

8	<p><u>Read:</u></p> <ul style="list-style-type: none"><li>- Materials on Board Resolutions</li><li>- Secretary's Certificate Example</li><li>- Example Board Resolutions</li></ul> <p><u>In-Class:</u></p> <ul style="list-style-type: none"><li>- Draft board resolutions</li><li>- Revise PSA</li></ul>		<p><u>Submit:</u></p> <ul style="list-style-type: none"><li>- Final PSA</li><li>- Board resolution</li></ul>
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WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
<b>PART III: PHYSICIAN PRACTICE ACQUISITION AGREEMENT</b>			
9	<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"> <li>- Tina Stark, Ch. 5.10, 8.5, 10.3, 11.3, 11.4, 17, 21.5.3, 25, 26</li> <li>- Mercy TGS Letter of Intent</li> <li>- Form of Asset Purchase Agreement for Assignment</li> <li>- Sample Asset Purchase Agreement</li> <li>- List of TGS Physicians</li> <li>- Sample Due Diligence Request List</li> <li>- Demystifying Fair Market Value</li> <li>- OIG 1992 Letter on practice acquisitions</li> <li>- OIG 1993 response on practice acquisitions</li> <li>- <i>US ex rel. Goodstein vs. McLaren Regional Medical Center</i></li> <li>- <i>US v. Bradford Regional Medical Center</i></li> <li>- Begin reviewing data room documents</li> </ul>		

WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
10	<u>Review:</u> <ul style="list-style-type: none"> <li>- Data Room materials</li> <li>- Start filling in deal-terms into Asset Purchase Agreement, eliminating irrelevant provisions</li> <li>- TBD – antitrust materials</li> </ul> <u>In-Class:</u> <ul style="list-style-type: none"> <li>- Discuss data room findings with group</li> <li>- Draft due diligence memo</li> </ul>		<u>Submit:</u> Due diligence memorandum
11	<u>Read:</u> <ul style="list-style-type: none"> <li>- Memo on APA Negotiations</li> </ul> <u>In-Class:</u> <ul style="list-style-type: none"> <li>- Interview client in preparation for APA negotiations</li> <li>- Begin drafting closing conditions, indemnification, and termination provisions</li> </ul>		

WEEK	ASSIGNMENT	FOR SUBMISSION BY FOLLOWING FRIDAY AT 5 PM	FOR SUBMISSION BY FOLLOWING MONDAY AT 9 AM
12	<u>Read:</u> <ul style="list-style-type: none"> <li>- Closing Checklist Article</li> <li>- Sample Closing Checklist M&amp;A</li> <li>- Sample Health Care Closing Checklist</li> <li>- Sample Exhibit – Asset List</li> <li>- Sample Exhibit – Assumed Contracts</li> <li>- Sample Exhibit – Bill of Sale and Assignment</li> </ul> <u>In-Class:</u> <ul style="list-style-type: none"> <li>- Negotiation of select provisions of agreement</li> <li>- Draft closing checklist</li> </ul>		<u>Submit:</u> Draft closing checklist
13	<u>In-Class:</u> <ul style="list-style-type: none"> <li>- Revise checklist</li> <li>- Continue drafting Asset Purchase Agreement</li> </ul>	<u>Submit:</u> Draft Asset Purchase Agreement	
14	<u>Complete:</u> Evaluation of self and peers  <u>In-Class:</u> Guest Lecture Lecture on other types of health transactions		<u>Submit:</u> <ul style="list-style-type: none"> <li>- Final APA</li> <li>- Final closing checklist</li> </ul>