Course Syllabus
Health Law (LAW 7360), Spring 2012
Room # 106, Mon. & Tues. 10:45 am – 12:10 pm
Course Instructor: William M. McDonnell, MD, JD
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Course Description: Health Law (LAW 7360) provides an introduction to the broad array of legal principles involved in the delivery of health care today. Legal issues related to health policy, health care administration, and biomedical ethics will be included. Topics to be addressed include the physician-patient relationship; confidentiality; informed consent; medical error and apology; medical malpractice and tort reform; end of life issues such as withholding and withdrawing care; Good Samaritan laws; reproductive health issues, including contraception, abortion, and stem cell research; human subjects research; organ transplantation; and regulation of pharmaceuticals. Students have the opportunity to (but are not required to) also participate in the Health Law Clinic. See Clinical Program Descriptions for more information regarding Health Law Clinic.

Required Text: Barry R. Furrow, et al., Health Law Cases, Materials and Problems (6th ed. 2008) and additional materials as designated below. Additional required reading materials are available online through this course’s Westlaw TWEN site. Further reading requirements may be added to the syllabus during the course.

Objectives: The course is intended to provide familiarity with the principles of health care regulation. Students are expected to gain an appreciation of the various competing goals, priorities, and perspectives of the many participants in the health care arena, including health care professionals, patients, financing entities, regulators, and the broader public. Students should be able to articulate arguments on a variety of health law issues from the perspectives of these various participants, and should be prepared to participate in public policy discussions regarding the regulation of the physician-patient relationship and health care delivery. Students should develop a working knowledge of the current state of health law in a number of areas.

Methodology: A variety of teaching methodologies will be employed in this course. Course materials will be presented primarily in the form of reading assignments and lectures by the course instructor, in conjunction with Socratic questioning and class member discussion. Some course lectures may be presented by guest lecturers with particular expertise. Students should anticipate being called upon, at random, to summarize the content of assigned reading materials and to contribute original analyses of the issues under discussion.
Requirements:

Attendance: This course incorporates the College of Law’s and the American Bar Association’s requirement that students attend a minimum of 80% of the regularly scheduled classes. If attendance drops below this 80% benchmark (including absence for illness and/or good cause), attendance may be deemed unsatisfactory, and the student will be involuntarily dropped from the course. Notwithstanding the 80% minimum attendance requirement, students are strongly encouraged to attend all classes, as a substantial portion of the final examination will be derived from classroom discussions and lectures.

Class Participation: Students will be randomly selected during each class period to contribute to the class discussion. Students should review the required reading materials prior to class, and be prepared to summarize the readings, as well as to contribute original analyses of the topics of discussion.

Evaluation: The student’s course grade will be determined by a combination of a midterm examination and a timed, in-school, closed book, essay-style final examination. The final examination will incorporate principles and materials from the required readings and from classroom discussions and lectures. The final exam will constitute 75% of the student’s grade and will draw from the entire course. 25% of the grade will be determined by a take-home essay midterm examination. Students will be allowed 72 hours to complete the take-home examination. The midterm exam will be open-book, and students will be permitted to consult their own class notes, assigned readings, any additional course materials listed by the course instructor on the course TWEN site, and the reference materials cited in this syllabus. Students are not permitted to consult with other students or any other persons regarding the midterm exam.

ADA Disclosure: The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean for Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S Central Campus Drive, Room 162, or you can call (801) 581-5020. All written information in this course can be made available in alternative format with prior notification.
Schedule of Class Discussion Topics and Reading Assignments

Mon 9 Jan  Discussion of Syllabus

Nature of Health Care, Health, and Disease

- Furrow at 10-14, Alain Enthoven, *What Medical Care Is and Isn’t*

Nature of the Physician-Patient Relationship; Treatment Obligations

- Furrow at 600-603: *Ricks v. Budge*, 64 P.2d 208 (Utah 1937)
- Furrow at 609-610: Statutory Exceptions to the Common Law, EMTALA
- Furrow at 613-618; *Baber v. Hospital Corp of America*, 977 F.2d 872 (4th Cir. 1992)

Tue 10 Jan  Civil Immunity for Charitable Services and Volunteer Emergency Services

I. Good Samaritan Laws

- Furrow at 409-412, *Good Samaritan Acts*
- *Hirpa v. IHC Hospitals, Inc.*, 948 P.2d 785 (Utah 1997)
- 12 Vermont Stat. Ann. § 519
- Utah Code Ann. § 78B-4-501
- *Flynn v. U.S.*, 902 F.2d 1524 (10th Cir. 1990)

II. Layperson Use of Automatic External Defibrillators (AEDs)

- Kentucky Stat. § 311.668
Mon 16 Jan  Martin Luther King Jr. Holiday – No Classes

Tue 17 Jan  Medical Error I: Recognizing and Addressing the Problem
   - Furrow at 41-43: The Problem of Medical Error
   - Furrow at 45-53: Strategies for Reducing Medical Errors

Medical Error II: Disclosure, Physician Apologies, and “Benevolent Gestures”
   - Steven M. Donn, Transparency can serve as a tool for risk management, quality improvement. 28 AAP News 15 (July 2007)
   - Idaho Rules of Evidence, Rule 414
   - 40 Pa. Stat. § 1303.308

Mon 23 Jan  Medical Error II: Disclosure, Physician Apologies, and “Benevolent Gestures” (continued)

Medical Error: A Patient’s Perspective
Guest lecturer: Elisabeth Guenther, MD, MPH

Tue 24 Jan  End of Life Issues: Right to Die and Withdrawal of Life Support
   - Furrow at 1408-1410: Life and Death Decisions, Introduction
   - Furrow at 1410-1420: Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990); Notes & Questions #1.
   - Furrow at 1432-1436: Note: Countervailing State Interests; Note: State Law Bases for a “Right to Die”
End of Life Issues: Patients Without Decisional Capacity, Advance Directives, and Surrogate Decision-Making

- Furrow at 1443: Decisional Capacity – Introduction
- Furrow at 1450: Determining the Patient’s Choice
- Furrow at 1457-1459: Note on Advance Directives and Surrogate Consent Laws
- Furrow at 1463-1464: The Patient Self-Determination Act and Advance Directives
- Furrow at 1464-1467: In Re Eichner, 420 N.E.2d 64 (N.Y.App. 1981); Note on Applying the Principle of Substituted Judgment
- Furrow at 1488-1493: Guardianship of Schiavo, 780 So.2d 176 (Fla.App. 2001); Note on the Legal and Political History of the Schiavo Case

Utah’s Advance Directives Legislation
Guest Lecturer: Maureen Henry, Esq.
Executive Director, Utah Commission on Aging
Director, Utah Aging and Disability Resource Network

End of Life Issues: Suicide and Assisted Suicide

- Furrow at 1556-1561: Legislation to Support Physician Assisted Death – “Death with Dignity” Initiative
- Furrow at 1563-1665: Notes & Questions #1-6

Palliative Care, Pain Control, and Medical Marijuana

- State v. McAfee, 385 S.E.2d 651 (Ga. 1989)
- Furrow at 123-124, only the paragraph beginning “One of the areas in dispute . . . .”

**Tue 7 Feb**

Organ Transplantation and Uniform Anatomical Gift Act

- Furrow at 75: Rationing of Scarce Human Organs
- Furrow at 78-83: Note: The Organ Procurement Transplant Network
- Furrow at 84-87: Newman v. Sathyavaglswaran, 287 F.3d 786 (9th Cir. 2002)

Guest Lecturer: Melanie D. Everitt, M.D., Director, Pediatric Heart Transplant Program Primary Children’s Medical Center

**Mon 13 Feb**

Confidentiality: Breach of Confidence, HIPAA Privacy Protection, and Physician-Patient Privilege

- Furrow at 289-293: Breaches of Confidence; Humphers v. First Interstate Bank of Oregon, 696 P.2d 527 (Ore. 1985)
- Holmes v. Nightingale, 158 P.3d 1039 (Okla. 2007)
- Furrow at 325: Problem: Leaking Patient Information #1-4

**Tue 14 Feb**

Confidentiality: Duties to Protect Third Parties

- Tarasoff v. Regents of the Univ. of Cal., 551 P.2d 334 (Cal. 1976)
Tue 14 Feb  Mid-Term Exam begins at 12:10 pm

Fri 17 Feb  Mid-Term Exam due by 1:00 pm

Mon 20 Feb  Presidents’ Day Holiday – No Classes

Tue 21 Feb  Confidentiality: Abuse, Infectious Disease, and Trauma Reporting Obligations
  - U.C.A. § 62A-3-305 Reporting requirements, vulnerable adults
  - U.C.A. § 62A-4a-403 Child abuse reporting requirements
  - U.C.A. § 62A-4a-411 Penalties, failure to report suspected child abuse
  - Florida v. Carter, 2009 WL 4111210 (Fla.App. 1 Dist., November 30, 2009 (NO. 1D09-702))

Mon 27 Feb  Informed Consent: Origins and Basis; Consent to Emergency Care; Children, Emancipated Minors, and the Mature Minor Doctrine
  - Shine v. Vega, 709 N.E.2d 58 (Mass. 1999)
  - Schmidt v. Mutual Hospital Services, Inc., 832 N.E.2d 977 (Ind.App. 2005)
Tue 28 Feb  Regulation of Clinical Research

- Furrow at 1568-1576: Regulation of Research Involving Human Subjects
- Furrow at 1587-1596; Grimes v. Kennedy Krieger Institute, 782 A.2d 807 (Md.App. 2001)

Mon 5 Mar  FDA Oversight of Pharmaceuticals

Guest Lecturer: William J. Stilling, Esq.
Partner at Parsons, Behle & Latimer

- materials to be posted on TWEN prior to class

Tue 6 Mar  Medical Malpractice: Negligence Standard and Community Standard of Care, Expert Testimony, Practice Guidelines

- Furrow at 327-339: Hall v. Hilbun, 466 So.2d 856 (Miss. 1985); Notes & Questions #2, 3, 4, 6; The Locality Rule
- Furrow at 339- first full paragraph 342: Expert Testimony in Professional Liability Cases

Mon 12 Mar  Spring Break – No Classes

Tue 13 Mar  Spring Break – No Classes

Mon 19 Mar  Medical Malpractice Defenses: Respectable Minority, “Two Schools of Thought,” & “Reasonable and Prudent Physician” Rules; Clinical Innovation; Contributory and Comparative Fault; Causation
- Furrow at 381-382: Defenses to the Prima Facie Case; *Chumbler v. McClure*, 505 F.2d 489 (6th Cir. 1974); *Henderson v. Heyer-Schulte Corp.*, 600 S.W.2d 844 (Tex. Civ. App. 1980)
- Furrow at 386-389: Clinical Innovation; *Brook v. St. John’s Hickey Memorial Hospital*, 380 N.E.2d 72 (Ind. 1978); Notes & Questions #2, 4, 5.

**Mon 20 Mar**  
**Medical Malpractice: Wrongful Birth, Wrongful Life and Wrongful Conception**

- Furrow at 1250-1259: Tort Remedies for Failed Reproductive Control: Wrongful Birth, Wrongful Life and Wrongful Conception; *Smith v. Cote*, (N.H. 1986); Notes and Questions #1 & 2.

**Mon 26 Mar**  
**Medical Malpractice Insurance; Tort Reform**

- Furrow at 539-541: Reforming the Tort System for Medical Injuries; Medical Progress and Other Changes in the Health System Environment
- Furrow at 541-544: The Nature of the [Medical Malpractice] Insurance Industry, Notes & Questions #1, 2, 3.
- Furrow at 546-550: Improving Insurance Availability; Altering the Litigation Process; Alternative Approaches to Compensation of Patient Injury

**Guest Lecturers:** Rep. Brian S. King, Esq. & Mark Brinton, Esq., General Counsel, Utah Medical Association

**Tue 27 Mar**  
**Peer Review, Quality Assurance, Medical Education and the “Care Review Privilege”**

- U.C.A. §§ 26-25-1 through 26-25-5
- Benson v. IHC Hospitals, 866 P.2d 537 (Utah 1993)
- Cannon v. Salt Lake Regional Medical Center, 121 P.3d 74 (Utah App. 2005)

Mon 2 Apr  Impaired Physicians


Guest lecturer Elena Dicus, Esq., Director of Physician Relations, Primary Children’s Medical Center

Tues 3 Apr  Reproductive Health I: Defining “Person-hood”

- Furrow at 1186: Reproduction and Birth, Introduction
- Furrow at 1187-1188: When Does Human Life Become a “Person?”
- Furrow at 1194-1202: Legal Recognition of the Beginning of Human Life
- Mississippi Ballot Initiative #26, November 8, 2011 at: [http://www.sos.ms.gov/page.aspx?s=7&s1=1&s2=84](http://www.sos.ms.gov/page.aspx?s=7&s1=1&s2=84)

Mon 9 Apr  Reproductive Health II: Contraception and Abortion

- Furrow at 1205-1206: Note: The Blurry Distinction Between Contraception and Abortion

Tue 10 Apr  Reproductive Health II: Contraception and Abortion (continued)

Mon 16 Apr  Definition and Pronouncement of Death

- Furrow at 1381-1382: Defining Death – Introduction
- Furrow at 1384-1389: Uniform Determination of Death Act; Higher Brain Death
- Furrow at 1389-1392: In Re T.A.C.P., 609 So.2d 588 (Fla. 1992)
- U.C.A. § 26-34-2, Definition of Death
- Linda Carr-Lee, What are we to do when parents do not accept the diagnosis of brain death as death for their child? 15 Medical Ethics in Utah 1 (2005)

Tue 17 Apr  Review

4/18 – 22/12  Reading Days

TBA  Final Exam