WIDENER UNIVERSITY SCHOOL OF LAW

HEALTH LAW II (710)

Spring 2008

Professor Thaddeus Pope

Contacts: Room 325; tmpope@widener.edu; 302-477-2230

Time & Place: Mondays 6:30 – 7:55 p.m. & Wednesdays 8:20 – 9:45 p.m. in L-123

Exam: Friday, May 2, 2008 from 6:30 to 9:30 p.m.

I. Course Description

Health Law can be divided into five subfields: (i) finance and regulation, (ii) public health, (iii) biotechnology, (iv) bioethics, and (v) patient care. In contrast to Health Law I which focuses on liability and patient care issues, Health Law II addresses the regulation, structure, and financing of the U.S. health care system.

Regulation and structure issues include: (i) how health care institutions are legally organized as business associations; (ii) the charitable tax exemption doctrine; (iii) professional relationships, including medical staff structure and disputes; (iv) federal fraud and abuse, including the False Claims Act and Stark regulations; (v) health care transactions, and (vi) antitrust.

Access and financing issues include: (i) common law and statutory obligations to provide access; (ii) health care spending, coverage, and reimbursement methods by private insurers; (iii) state regulation of insurance, including ERISA preemption; and (iv) public health benefits programs, including Medicare, Medicaid, and SCHIP.

II. Course Objectives

Upon completion of the course, students will have:

A. A basic systematic understanding of the legal principles surrounding health care finance and regulation;
B. Further honed legal analysis and writing abilities, through (i) exposure to and critique of legal arguments in judicial opinions, legislative reports, and scholarly writing; (ii) participation in classroom discussion; (iii) completion of weekly written problems; and (iv) completion of a written final examination; and

C. Integration of material learned in other classes such as business organizations, tax, civil procedure, and torts.

III. Required Materials


B. Alternatively, you can also use FURROW ET AL., HEALTH LAW: CASES, MATERIALS, AND PROBLEMS (5th ed. 2004), which is the larger hardback casebook from which the above red paperback is derived.

C. Health Law is a rapidly developing area. Accordingly, from time to time, I will post additional current materials to the course TWEN site. I will clarify both in class and on the website whether these are required or suggested materials.

IV. Class Schedule

A. The class will meet on Mondays from 6:30 to 7:55 p.m. and on Wednesdays from 8:20 to 9:45 p.m. in Room L-123.

B. The class will not meet on the following days: (i) Monday, January 21st due to MLK Day, (ii) Monday, March 3rd due to spring break, (iii) Wednesday, March 5th due to spring break, and (iv) Wednesday, April 23rd due to Friday class makeup. The last class meets on Monday, April 21st.

C. Depending on class interest, I am happy to schedule a “review” class during the weeks before the final exam.

V. Attendance, Preparation, and Participation

A. Attendance: Under American Bar Association rules, 80% attendance is required to allow you to write the final exam. Attendance will be taken by passing class lists for signature at the start of each class session.
B. **Preparation:** I employ little lecture but lots of problems and case method arguments. Consequently, students must come to class prepared to discuss the material assigned. All assigned cases must be read and briefed, and all problems must be considered, before the applicable class session. You do not need to know the correct answer (if there is one). But know the reading material and make a reasonable effort to think about the issues raised in the problems and questions.

C. **Class Participation:** *All* students are expected to participate in class discussions. If illness or emergency prevents you from being fully prepared, please notify me *before* class. I reserve the right to reward exemplary class participation by raising your grade one step (*e.g.* B+ to A-).

D. **Show & Tell:** The topics in this class are constantly in the news and in the plot lines of movies and broadcast shows. If you notice a story that illustrates or discusses a class topic, please drop me a note or bring it up in class.

### VI. Classroom Etiquette

A. The classroom environment must be conducive to learning for all students. Distractions made possible by advances in technology may undermine that goal.

B. **Audial:** During class, in addition to usual courtesies, kindly disable and refrain from using cell phones, pagers, and any other communication device other than your laptop computer.

C. **Visual:** Please refrain from displaying wallpaper, screen savers, or other material on your laptop computer that you can reasonably expect to be offensive to other students.

D. **End Time:** I will be diligent about starting the class precisely at 6:30 and 8:20 p.m. and ending it precisely at 7:55 and 9:45 p.m. In return, please do not begin to pack-up while others are still trying to be engaged in the class discourse.

### VII. Grading

A. Quizzes and Problems  (25%).

B. Final Exam  (75%).
C. To make my calculations more objective and transparent, I convert all the above percentages into points. There are a total of 240 points for the course. The final exam is worth 180 points. The problem analyses are worth a total of 60 points. Grading methods are more fully explained in the next two sections.

VIII. Required Quizzes and Problems

A. While I will provide informal, oral feedback during class discussions, I do not want the first formal feedback that you receive to be your graded final exam, provided several weeks after the end of the semester. Therefore, I will assign weekly multiple choice quizzes and/or short essay problems. These may often be quite short, consisting, for example, of just one question or just one paragraph.

B. I will grade the quizzes. For the short essays, I will distribute a score sheet and/or a model answer. But I am happy to review and provide individualized feedback on your essay. Just ask.

C. The ten quizzes and essays, in the cumulative, comprise 25% of your total course grade. Nine of these are each worth four (4) points or roughly 2% of your total course grade. The full-length essay problem is worth twenty-four (24) points, or 10% of your total course grade.

D. While I may ask you to complete some quizzes and essays during class, you will complete most of the quizzes and essays before class on the course TWEN site. I will announce and post the problems and questions at least five days in advance of the due date. I will either review the quiz/problem in class or pose a feedback memo. More details will be discussed when the first problem is assigned.

IX. Final Exam

A. Date: The final exam is scheduled from 6:30 to 9:30 p.m. on Friday, May 2, 2008.

B. Format and Length: The final examination will be comprised of three parts. The first part will include multiple choice questions. The second part will include short answer questions. The third part will include one long essay problem.
C. **Coverage:** The exam will test those concepts and issues either covered in assigned readings or explored during class lectures and discussions. The exam will roughly reflect the relative time and emphasis on topics in the course.

D. **Open Book:** On the exam, you will be allowed to use any written or printed materials you choose. No electronic devices are permitted.

E. **Grading and Feedback:** All exams will receive a raw score from zero to 180. The raw score is meaningful only relative to the raw score of the other students in the class. The raw score will be converted to a scaled score, based on the class curve. For example, if the highest raw score in the class were 70, then that student would probably receive an A. I will provide an explanatory memo and/or a model answer after the exam.

F. **Grading Criteria:** I will post my old *Health Law* exams and my old exam feedback memos and score sheets on TWEN. While those exams had a broader coverage than we will have in this course, you can get a good sense of the criteria that I employ in grading. In short, I look for:

1. An ability to muster relevant evidence and authority to make arguments cogently and clearly
2. An understanding of substantive legal doctrine
3. An appreciation for broader policy concerns that influence how legal doctrine applies to novel situations
4. A practical appreciation for the context of care in a hospital setting and for the context of tort litigation

X. **Office Hours**

I look forward to talking to you outside class. There are several means of doing this:

A. **After class:** I will remain in the classroom after each class for all trailing questions, until or unless we are kicked out by another class.

B. **Office:** I can typically be found in my office before and after class. If this is not a convenient time, just let me know in class or by email and we can make an appointment with each other. You are welcome to drop in my office anytime, but it is best to confirm a particular time in advance.

C. **Email:** Feel free to e-mail me at tmpope@memphis.edu if you are unable to come by in person.

D. **Lunch:** I have found that grabbing a quick lunch (or given the time of this class, coffee) is a good way to get to know each other. If you and one or two other students want to share a bite, please let me know.
XI. **TWEN Site**

The TWEN site will include the following materials:

A. PowerPoint slides for each class, posted shortly before each class
B. Links to MP3 recordings of selected classes
C. Problems and Quizzes (see section VIII, *supra*)
D. Statutes, cases, and other materials

**Warning!!** Do not permit the availability of these materials to deter you from preparing and participating in class. I provide these materials to supplement and enhance classroom learning, not to substitute for it. It is important to remember that knowledge acquisition is only one small part of law school education. I plan to do little lecturing during classes. Lectures may seem to provide more value – more content, more certainty. It may seem like you are “learning” more. But this would be poor preparation for the practice of law where there is little certainty. Furthermore, nonattendance is not an option given University and ABA attendance requirements, and the grading policy described above.

XII. **Study Aids and Reference Materials**

Despite the prevalence of health law courses in U.S. law schools, there are, as yet, few student-oriented ancillary materials. But there are numerous clear and lucid law review articles and background reports. I will provide copies of or links to the more useful of these materials on a topic-by-topic basis. There are also some good reference books. You really **do not** need to use any of these sources. I list them here only should you want to consult them to get more depth on certain issues.

A. **Study Aids**

1. **Marcia M. Boumil et al., Medical Liability in a Nutshell** (West 2d ed. 2003).


B. Reference Materials

This is, of course, a highly select list. I have not included CLE or practitioner-oriented materials. Nor have I included materials more narrowly focused on specific health law issues.

1. **American College of Legal Medicine Textbook Committee** (Sandy Sanbar et al.), *Legal Medicine* (Mosby 5th ed. 2001)


4. **Alison Barnes et al., Health Care Law Desk Reference** (ALI-ABA 2001).

5. **Scott Becker, Health Care Law: A Practical Guide** (Lexis 2005), available on LEXIS.

6. **Alexander M. Capron & Irwin M. Birnbaum eds., Treatise on Health Care Law** (Matthew Bender 2005) (5 volumes), on LEXIS.

7. **Dean M. Harris, Contemporary Issues in Healthcare Law and Ethics** (Health Admin. Press 2003).


10. **Claire C. Obade, Patient Care Decision Making: A Legal Guide for Providers** (West CBC looseleaf), Westlaw database PCAREDM.

11. **Steven E. Pegalis, American Law of Medical Malpractice** (West CBC 3d ed. 2005).

XIII. **Course Reading Outline**

The outline below is intended to give you a sense of the scope and order of course coverage. It is *not* a reading schedule. We may deviate from the coverage and sequence below. I will give the specific assignment for the following week during the prior week.

**Health Care Financing**  

1. **Health Care Cost and Access**
   1.1. Problems in the Policy Context  
       122-135  
       494-508
   1.2. Expanding Access, Controlling Costs  
       136-155  
       508-527

2. **Obligations to Provide Access**
   2.1. Common Law Duties  
       156-166  
       528-538
   2.2. Statutory Duties  
       166-193  
       538-556

3. **Private Health Financing**
   3.1. Introduction  
       194-208  
       566-580
   3.2. State Regulation  
       236-271  
       608-543
   3.3. Federal Regulation  
       3.3.1. ERISA Preemption  
       272-288  
       644-660
       3.3.2. ERISA Fiduciary Obligations  
       288-298  
       660-670
       3.3.3. ERISA Remedies  
       321-341  
       693-713
       3.3.4. HIPAA, COBRA, ADA  
       341-358  
       713-730

4. **Public Health Financing**
   4.1. Medicare  
       359-400  
       731-772
   4.2. Medicaid  
       400-430  
       772-808
   4.3. SCHIP  
       430-436  
       803-808

**Health Care Regulation**  

5. **Professional Relationships**
   5.1. Staff privileges  
       438-494  
       810-866
   5.1.1. Hospital-Physician Contracts
   5.1.2. Managed Care Contracts
   5.1.3. Labor & Employment
   5.1.4. Discrimination Law
   5.2. Business Organizations  
       495-527  
       867-899
   5.3. Corporate Practice of Medicine  
       527-548  
       899-920
6. **Charitable Tax Exemption**
   6.1. Charitable Tax Exemption Doctrine 548-573 920-945
   6.2. Tax Exempt Organizations 573-602 945-975

7. **Fraud & Abuse**
   7.1. False Claims Act 603-638 976-1011
   7.2. Bribes and Kickbacks 638-660 1011-1033
   7.4. State Statutes 671-672 1043-1045

8. **Antitrust**
   8.1. Cartels and Professionalism 673-687 1046-1060
   8.2. Justified Collective Actions 687-704 1060-1077
   8.3. Integration and Financing 704-728 1077-1101
   8.4. Physician's Unions, Exclusive Contracts 728-740 1101-1113
   8.5. Mergers and Acquisitions 740-760 1113-1133