# University of Florida Levin College of Law Health Care Law Syllabus Fall 2008

Randall Baldwin Clark Visiting Assistant Professor Tue., Wed., Thur., 10:00-10:50am, Room 360 rbclark@ufl.edu 352-273-0657 Office: Room 374

# PLEASE READ THESE INSTRUCTIONS WITH CARE

#### Introduction

This introductory course will attempt to survey the law governing a large and heavily regulated market: the provision of health care. Our discussion will cover the three basic relationships: (1) between provider and patient; (2) among patient, provider, and state; and (3) among providers, the state, and institutions such as third-party payers and guilds. Particular attention will be paid to those exceptional features of medical care claimed as justifying the law's intrusion into — or absence from — these relations: Do the presence of disease, pain, and possible death call for greater, lesser, or different regulation than governs the markets for other goods and services?

# **TWEN**

I expect students to register for two TWEN classes — (1) "Health Care Law" and (2) "Clark Office Hours Sign-Up Sheet" — and to supply them both with a valid e-mail address.

# Readings

The primary text for this course is Mark A. Hall et al., *Health Care Law and Ethics* (7th ed., Aspen 2007). Reading assignments from this book are listed in a separate document, titled "Readings," posted under the "Syllabus" heading on TWEN. Additional readings, both required and recommended, will be posted to TWEN throughout the semester under the "Course Materials" heading. For the first class, please come prepared to discuss *Moore v. Regents of the Univ. of Cal.*, 793 P.2d 479 (Cal. 1990). I also recommend reading Rebecca Skloot, "Taking the Least of You." Both of these are posted to TWEN under the "Course Materials" heading.

#### **Office Hours**

Tuesdays, Wednesdays, and Thursdays, from 11:00-11.30am and 3:00-3.30pm. It is not necessary to have an appointment. Priority will be given, however, to those students who make appointments via the TWEN class "Clark Office Hours Sign-Up Sheet." I have scheduled these at ten-minute intervals. Feel free to sign up for an additional ten minutes if you think it appropriate. I would also encourage you to come at other times, with or without an appointment.

In addition to my office hours, I will be happy to answer your questions via e-mail. I will post my answers, along with your anonymized questions, to the forums found on the TWEN class "Health Care Law." Students are encouraged to post follow-up questions to my answers. In my experience, I have found this venue particularly useful to students in the hectic weeks leading up to the exam.

#### Grading

One-half of a student's grade will be based on the quality of his final exam. The remaining half will be come from his panel presentations and class participation.

Revision date: August 25, 2008 Page 1 of 2

# University of Florida Levin College of Law Health Care Law Syllabus Fall 2008

# **Panel Presentations and Class Participation**

This class will be conducted in a variety of presentation formats, principally lecture, Socratic discussion, and panel presentation. For the vast majority of the classes, students will participate in panels which will make presentations to the class, engage in a debate or role-playing scenario, or other similar activities. These panels will consist of approximately four to seven students each.

I strongly encourage you to select these as groups. (That is, gather a few friends with whom you are comfortable working and select topics you think you might be interested in.) A student should expect to participate in at least three such panels over the semester, though this number will depend on the final enrollment count. Students may select the panels they wish to participate in by signing up on the TWEN site for "Health Care Law." By default, I will assign grades for these presentations individually (that is, each of the panel members will receive a separate and perhaps different grade), but I am happy to assign a single grade to the entire panel, if you so desire. If you would like the group-grade option, please be sure to request such consideration before the pertinent class session begins.

Most of the panel topics can be found in the casebook and the rest are in the document titled "Panel Topic Appendix," posted under the "Syllabus" heading on TWEN. But for some sessions I have not yet located an appropriate topic. I welcome suggestions from interested groups. For that matter, your group should feel free to suggest presentation topics different from the ones suggested in the "Readings" document.

#### **Exam**

The exam is three hours long and will take place on December 10, 2008 at 1:00pm. You will be responsible for all issues raised in the assigned readings, whether or not they are discussed in class. You will also be responsible for all issues raised in class, whether or not they are covered in the assigned readings.

# Credit

A passing grade in this class will result in the award of three credits.

#### **Etiquette**

Students are expected to refrain from activities that could distract themselves or others from the discussion. These include, among others, e-mail and instant-message communication, internet browsing, side conversations, game playing, and eating. I request, but do not mandate, that students turn off and put away all electronic devices before class begins.

Revision date: August 25, 2008 Page 2 of 2

DATE	SES.	READING	CLASS TOPIC Introduction	SUGGESTED PANEL TOPIC
Tue., Aug. 26	1	Moore v. Re	egents of the Univ. of Cal., 793 P.2d 479 (Cal. 1990)	none
Wed., Aug. 27	2	103-132	Pt. I: The Provider and the Patient Ch. 2: The Treatment Relationship: Formation etc. A. The Duty to Treat 1. The Duty to Accept Patients	none
Thur., Aug. 28	3	132-146	2. Wrongful Reasons to Reject Patients	none
Tue., Sept. 2	4	146-71	B. The Structure of the Treatment Relationship	Contractually Altered Standard of Care (Appendix)
Wed., Sept. 3	5	173-97	Ch. 3: The Treatment Relationship: Confidentiality etc. A. Fiduciary Nature B. Confidentiality of Medical Information	"Discussion Problems" (196-97) AND/OR Cocaine-Testing of Pregnant Women (Appendix)
Thur., Sept. 4	6	197-224	C. Informed Consent  1. Goals, Aspirations, Policies  2. The Competing Disclosure Standards  3. Limiting Liability for Failure to Disclose	TBD: Applications welcome
Tue., Sept. 9	7	224-44	4. Fiduciary Principles etc.	Informed Refusals (224)
Wed., Sept. 10	8	244-72	5. Human Experimentation etc.	"Moore" Liability (244)
Thur., Sept. 11 & Tue., Sept. 16	9&10	515-45	Pt II: The Patient, the Provider, and the State Ch. 5: The Right and "Duty" to Die A. Refusal of Life-Sustaining Treatment	none

DATE Tue., Sept. 16 & Wed., Sept. 17	<b>SES.</b> 10&11	<b>READING</b> 596-626	CLASS TOPIC  B. Physician Aid in Dying	SUGGESTED PANEL TOPIC Is It Aid in Dying or Is It Withdrawal of Treatment? (625-26)
Thur., Sept. 18	12	626-42	C. Futility	Nursing-Home Patient Brought to an Emergency Room (Appendix)
Tue., Sept. 23	13	643-62	Ch. 6: Organ Transplantation A. Organ Donation	Conceiving a Child to Make Tissue Available for Transplantation (654-55)
Wed., Sept. 24	14	662-91	B. Ownership and Control of the Body	Obligatory Stem Cell Donation (677-78)
Thur., Sept. 25	15	691-709	C. Allocation of Organs	none
Tue., Sept. 30	16	869-88	Ch. 8: Public Health Law  A. Public Health Strategies	State Law, Disaster-Planning and Bioterrorism Preparedness (887-88)
Wed., Oct. 1	17	888-902	B. The Source and Limit of Authority	Bioterrorism and Smallpox Vaccination (895-96) AND HPV Vaccination (896-97)
Thur., Oct. 2	18	902-917	C. Regulating Medical Treatment  1. Restricting Consumer Choice	Drug Importation (913) AND/OR Motorcycle Helmets and the Law (916) AND/OR Public Health and the Crushing Problem of Obesity (916-917)
Tue., Oct. 7	19	917-41	2. Testing and Public Health 3. Confidentiality, Reporting, etc.	HIV Screening for Pregnant Women and Newborns (928) AND Routine HIV Screening for All (928-29)
Wed., Oct. 8	20	942-62	4. Isolation and Quarantine	State Law, Disaster-Planning and

DATE	SES.	READING	CLASS TOPIC  5. Civil Commitment etc.	SUGGESTED PANEL TOPIC Bioterrorism Preparedness (929) AND Public Health Emergencies, Mandatory Treatment, and Quarantine (958-61)
Thur., Oct. 9 & Tue., Oct. 14	21&22	963-1011	Pt. III: Institutions, Providers, and the State Ch. 9: Health Care Financing and Reform A. Sources of Health Insurance	TBD: Applications welcome
Wed., Oct. 15 & Thur., Oct. 16	23&24	1011-31	B. Insurance and HMO Regulation	TBD: Applications welcome
Tue., Oct. 21 & Wed., Oct. 22	25&26	1031-45	C. ERISA Preemption	TBD: Applications welcome
Thur., Oct. 23	27	1045-66	D. Health Insurance Coverage  1. Rationing and Discrimination	Allocation Choices in a Public Program (1066)
Tue., Oct. 28	28	1066-91	2. Medical Appropriateness	TBD: Applications welcome
Wed., Oct. 29	29	1091-1105	E. Provider Reimbursement  1. Open-Ended Reimbursement	Medicare Reform (Appendix)
Thur., Oct. 30	30	1105-20	2. Prospective Payment	Technology Innovation (1119-20)
Tue., Nov. 4	31	1120-35	3. Capitation Payment	TBD: Applications welcome
Wed., Nov. 5	32	1136-57	F. Health Insurance Reform  1. Foreign Models  2. Reform Proposals	Universal Access to Health Care (1156)
Thur., Nov. 6	33	1157-70	3. Economic and Regulatory Theory	Debate: Obama v. McCain (Appendix)

DATE	SES.	READING	CLASS TOPIC	SUGGESTED PANEL TOPIC
Wed., Nov. 12	34	1171-94	Ch. 10: Regulation of Health Care Facilities etc. A. Professional and Facility Regulation 1. Professional Licensure	Professional Licensure (1193-94)
Thur., Nov. 13	35	1194-1210	2. Facility Licensure and Accreditation	Medicare/Medicaid Certification (1204-05)
Tue., Nov. 18	36	1210-21	B. Corporate Form  1. Nonprofit and Public Entities	For-Profit Joint Venture (1221)
Wed., Nov. 19	37	1222-47	2. Charitable Tax Exemption	Choosing a Corporate Form (1247)
Thur., Nov. 20	38	1248-60	3. The Corporate Practice of Medicine	Hospital and Physician Contracting (1260)
Tue., Nov. 25	39	1260-74	C. Medical Staff Structure  1. Medical Staff Bylaws	Economic Credentialing (1273-74)
Wed., Nov. 26	40	1274-96	<ul><li>2. Medical Staff Disputes</li><li>3. Membership in Managed Care Networks</li></ul>	Negotiating a Managed Care Contract (1294-96)
Tue., Dec. 2	41	1359-81	E. Referral Fee Laws	Panel One: Medicare/Medicaid Fraud and Abuse (1379) AND/OR Reverse Referral Feet (1379-80)
				Panel Two: Forming an Integrated Delivery System (1380)
Thur., Dec. 4	 42	 TBD	TBD	