

WILLAMETTE UNIVERSITY COLLEGE OF LAW

SYLLABUS* HEALTH LAW AND POLICY II

**Spring Semester 2022
Course No. Law 268**

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OBJECTIVES OF THE COURSE

This course is an in-depth continuation of Health Law and Policy I (Law 248). As such, topics covered in Health Law and Policy I will be revisited to some extent (especially for those who have not taken Health Law I) and the matters covered in that course will be expanded upon. Since we do have a few students who have not taken Health Law and Policy I, I am expecting the veterans of that class to help these students if necessary. Remember, one of the great things about being a health lawyer is that both sides in a transaction must be right – the stakes are too high for grandstanding. My ego gets bruised every day and I never stop learning.

Health Law and Policy II is one of the required courses for the Health Law Certificate offered by the College of Law. This is a wonderful credential to have in this vast industry and I hope that you will avail yourselves of this opportunity.

As you are aware, this class will be held remotely on Zoom. I will be attending the Biotech class in person on Thursdays, so my office hours are from 1PM to 2:30 PM on that day.

INTRODUCTION

The health care industry is one-fifth of the gross domestic product of the United States. This country has the most expensive health care system in the world yet it lags way behind other countries in quality. The issue is the “invisible hand” of Federalism, states rights and conflicts of interest. Thus, the discipline and study of Health Law involves the federal, state, and local laws, rules and regulations and other jurisprudence affecting the health care industry as well as the application of health law to patients, providers, payers, and venders in the health care system.

Instead of listing out forthcoming classes, I have listed various topics. I want students to review these topics and we can discuss them at the first class. This will enable you to pick what you wish to study in-depth. This list is not inclusive so feel free to bring up other topics for discussion and if you need more time, that is fine. The first couple of classes will be “catch-up.”

This will be a paper course and students will be given an assignment to be completed a week or so after final exams have ended.. No collaboration on papers will be allowed and the normal prohibitions against plagiarism and copyright infringement apply. Since I am on the editorial task force for the eSource publication committee and have been Chair of The Health Lawyer (both publications of the American Bar Association Health Law Section), I really want quality papers that are worthy of publication. More details about the papers will be forthcoming.

Class participation will count for 20% of the grade. This is especially important given the fact that our class will be conducted remotely. In addition, each student will be required to do a 30-minute presentation as “Professor for the Day” on the topic of their choice. This was done last Spring and it appeared to be well-accepted.

Also, for each class, each student will be required to come prepared with a question based up any topic covered up to that class and each class will have cases assigned to students who will help us focus on the various issues of the topic.

TEXTBOOK

While I recommend “The Law of American Healthcare,” Huberfeld, Weeks and Outterson, Second Edition (Aspen Casebook) as a reference, I will be teaching the class using a format that relies heavily on cases and will assign those cases well in advance of the classes. Thus, there is no requirement to purchase that text.

CLASSES AND ASSIGNMENTS

TBD = To be decided**

January 11, 2022

Whereupon we set sail on this vast sea of health care by examining the pedagogy of the course and consider the discipline and jurisprudence of Health Law.

Please read *Jacobsen v. Massachusetts*, 397 US 11 (1905)

January 13, 2022

The public and private health care systems in the United States and the conflict of state versus federal law.

Please read, *US v. Southeastern Underwriters Association*, 322 US 533 (1944), and *NFIB v. Sibelius*, 567 US 519 (2012) – Syllabus only.

January 18, 2022

The role of insurance and the Employee Retirement Income Security Act of 1974, as amended

January 20, 2022 - TBD

January 25, 2022 - TBD

January 27, 2022 - TBD

February 1, 2022 - TBD

February 3, 2022 -TBD

February 8, 2022 - TBD

February 10, 2022 - TBD

February 15, 2022 - TBD

February 17, 2022 - TBD

February 22, 2022 - TBD

February 24, 2022 - TBD

March 1, 2022 - TBD

March 3, 2022 - TBD

March 8, 2022 – TBD

March 10, 2022 - TBD

March 15, 2022 – TBD

March 17, 2022 - TBD

March 20 to March 25, 2022 – **SPRING BREAK!!!**

March 29, 2022 – TBD

March 31, 2022 – TBD

April 5, 2022 – TBD

April 7, 2022 - TBD

April 12, 2022 - TBD

April 14, 2022 - Last class. Wrap up and discussion of semester. Possible gathering off campus in honor of William R. Leslie, PhD, my mentor in the law.

* The topics covered on the assigned dates are subject to change at the occurrence of important current events in health law and at the whim of Professor Howell.

LIST OF POSSIBLE TOPICS**

Health care antitrust;
Fraud and abuse/referral prohibitions;**
Health care contract issues;
Managed care and managed care organizations;
Risk management/quality assurance/utilization review/patient safety;
Licensure and certification;**
Patient rights;
State licensing and federal conditions of participation;
Medical staff/professional rights;
Physicians' practice issues;**
Reimbursement and coverage (state and federal);
Finance including tax/tax exemptions;
Administrative proceedings;**
Hospital/institutional operations;
Mental health;**
Drugs, devices, and Institutional Review Boards;
Business organizations, mergers and acquisitions;
Labor and employment law;
Health information technology, privacy, confidentiality, and HIPAA**
security and privacy;
Governmental entities/political subdivisions;
Long term care;
Genetics and research technology;
Reproductive rights;**
National health insurance coverage;
Whistleblower cases;
Constitutional issues in Health Care; and
Vaccination policies.**

** Topics of Current Interest

