

**SYLLABUS**  
**HEALTHCARE LAW AND POLICY**  
**GRADUATE SCHOOL OF BUSINESS COURSE NO. GSB 742**  
**DOMINICAN UNIVERSITY CHICAGO**  
**SUMMER 2017**



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**I. CONTACT INFORMATION AND OFFICE HOURS**

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**Office Hours:** By appointment and on Wednesday nights via Skype and phone from 5:30 pm CST to 8:30 pm CST.

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**1. PRIMARY TEXT**

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**Title:** *The Law of Healthcare Administration*

**Author:** J. Stuart Showalter

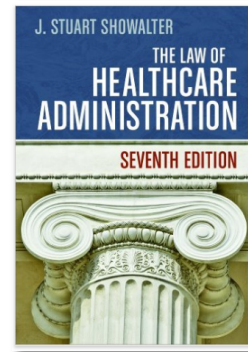
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**2. COURSE OVERVIEW**

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Our federal government has identified healthcare spending growth as the “central fiscal challenge” facing the United States. A vast majority of our business sectors are directly or indirectly related to healthcare services. Therefore, whether you are interested in a career in health care administrative management, government services, information technology, non-for-profit work, administrative policy, or business risk management (or if you simply want to gain better understanding of how different health care spheres operate), you must build a strong foundation for understanding the vital industry of health care law.

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**3. COURSE DESCRIPTION**

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This is a survey course designed to give business students an introduction to the American legal system as it relates to health care law, risk management, and liability across multiple legal environments. This semester, we will explore the foundations of health care regulatory compliance and its many intersections with business practices. This includes examining the judicial system, legal

procedure, crimes, torts, contracts, employer/employee liability, business relationships, ethics, health care privacy/confidentiality, and health care administration.

Students will synthesize and apply the key legal principles and issues that govern the dynamic relationships between (and among) healthcare patients, professionals, institutions and regulatory bodies. The course will provide a broad overview of health law and policy, with a focus on the statutes and regulations most often encountered by healthcare administrators and policymakers. It will also examine court decisions, administrative agency rulings/promulgations and other guidance arising out of the regulation of healthcare relationships.

We will also explore how laws and policies work to promote affordability, quality control, innovation, and efficiency in the ever-evolving public and private markets of health care. By the end of the course, students should have a fundamental understanding of essential health law concepts, how to spot potential key regulatory compliance/risk management concerns, and how to assess common legal issues in business decision-making.

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#### **4. LEARNING GOALS AND OBJECTIVES**

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1. **Gain and apply essential health care business knowledge.** Comprehend how federal and state legal systems impact health care business activities and the health care industry. This includes the relationship of federal and state courts, the power of governments to regulate health care, the role of alternative dispute resolution, civil procedure, and the legal environments of torts, contracts, and privacy/confidentiality. Students will be familiar with “must-know” healthcare market terminology and the answers to such real world concerns as: a) Why costs continue to skyrocket for healthcare, health insurance premiums, and technological advancements; b) Why individual and community health needs outpace all other state and federal spending initiatives; and c) Why Illinois consistently ranks within in the top six states utilizing the most healthcare companies.
2. **Make effective business decisions regarding health care legal rules and ethical constraints.** Recognize and understand the legal issues critical to the successful conduct of health care businesses. These include contract validity and the risk of torts/product liability. We will examine the highly concentrated health insurance market, business opportunities unique to health care, trends of rapid growth in health care expenditures, health care insurance dynamics, and some of the reasons why healthcare costs are so expensive.
3. **Practice effectively communicating health care business knowledge regarding regulatory compliance and risk management.** Apply legal analysis principles to solving problems and making effective business decisions. This includes determining relevant facts, identifying issues, and using inductive reasoning. Explore how to best manage potential legal compliance and risk management problems before they become actual, expensive problems. Better understand when administrators seek legal help and how they can work more effectively with in-house and outside attorneys in resolving legal issues when they do arise. Identify management and other practical strategies to prevent legal violations from occurring. How to improve institutional outcomes relevant to existing audit and institutional liability issues.
4. **Identify ethical and professional standards of behavior for legal compliance in health care spheres.** Understand the sources of legal and ethical standards of conduct as they relate to

business activities. Identify the personal and professional consequences that can flow from violations of legal standards of care (e.g. fiduciary duties and civil/criminal repercussions). Recognize the influence of professional and corporate codes of conduct on business decisions and long-term professional success. Apply fundamental legal concepts and legal principles of health law and policy to real-life situations faced by healthcare administrators and their facilities. Identify and describe key healthcare laws and the related legal issues confronting healthcare professionals, institutions, and administrators. Articulate typical circumstances that give rise to such issues.

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## 5. GRADE COMPUTATION

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Course Submission	Weight
<b>Midterm Exam</b> <ul style="list-style-type: none"> <li>▪ Canvas exam with open book and open notes.</li> <li>▪ Midterm Exam must be submitted in Canvas by 11:59 pm on <b>Sunday, June 4.</b></li> </ul>	30%
<b>Final Exam</b> <ul style="list-style-type: none"> <li>▪ Canvas exam with open book and open notes.</li> <li>▪ Final Exam must be submitted in Canvas by 11:59 pm on <b>Sunday, June 25.</b></li> </ul>	40%
<b>Discussion board/review questions</b> (see rubrics within Canvas) <ul style="list-style-type: none"> <li>▪ Assignments are due by the deadlines set in Canvas for full points (see rubrics within Canvas).</li> <li>▪ No course submissions will be accepted after 11:59 pm on <b>Friday, June 30.</b></li> </ul>	30%

**Grading Scale.** Final grades will be based on the following scale: A 93 or higher, A- 90-92.9, B+ 87-89.9, B 83-86.9, B- 80-82.9, C+ 77-79.9, C 73-76.9, C- 70-72.9, D+ 67-69.9, D 63-66.9, D- 60-62.9, and E less than 60.

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## II. COURSE SCHEDULE

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**Learning Objectives by Week.** See Canvas for a listing of the Learning Objectives for each particular Course Topic in the Course Schedule.

**Materials Posted in Canvas.** Textbook assignments, supplemental readings, PowerPoint slides, and video/audio recordings will be posted in Canvas. Because a portion of the test questions will be dedicated to in-class discussions and verbal lecture materials, students are encouraged to take good notes throughout the course.

Week No.	Dates	Module(s) Covered
1	5/8/17–5/14/17	1-2
2	5/15/17–5/21/17	3-5
3	5/22/17–5/28/17	6-7
4	5/29/17–6/5/17	8 (Midterm)
5	6/5/17–6/11/17	9-11
6	6/12/17–6/18/17	12-14
7	6/19/17–6/25/17	15 (Final)
8	6/26/17–6/30/17	16 (Guest Speakers and Final Exam Review)

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## 6. COURSE PLAN BY TOPIC

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### Module 1. Overview of Healthcare Law and Policy (Week 1)

- Personal introductions.
- Introduction to the business of American healthcare.
- Introduction to American law.
- Authority for laws governing healthcare.
- Sources of healthcare law.
- Managed care organizations.
- Managed health networks.
- Health Maintenance Organizations (HMOs), Preferred Provider Organizations (PPOs), Preferred Provider Organizations (PPOs), and Accountable Care Organizations (ACOs).

### Module 2. Duties to Patients- The Physician/Patient Relationship (Week 1)

- Considerations in the choice of cause of action.
- Contract theories.
- Elements of contracts.
- Breach of contract theories.
- Breach of warranty theories.
- Intentional tort claims.
- Negligence.
- Elements.
- Duty and applicable standard of care.
- Evidence of scope of duty.
- Injury and causation.
- Damages and reform efforts; more conflicting public policy.
- Liability of the healthcare institution.
- *Respondeat superior* (“let the superior answer”); implied authority and independent contractors.
- Doctrine of apparent (ostensible) agency.
- Doctrine of corporate liability; negligent credentialing and other theories of liability.
- Simple processes to manage risk and avoid liability.
- Introduction to informed consent.

### Module 3. Licensing and Accreditation of Healthcare Institutions (Week 2)

- General licensing statute issues for all facilities.
- Scope of regulated activities; implications for the institution.
- Agency authority in regulating facilities; administrative agencies and administrative law.
- Triggers of state surveys; avoiding and preparing for review.
- Remedies, penalties and conflicting considerations in penalizing facilities.
- Certificate of Need issues.
- Joint Commission accreditation, other accreditation options and related considerations.
- License status, Medicare “deemed status” and other possible legal and business significance of Joint Commission accreditation.
- Standard of care issues.

- Peer review privilege and Joint Commission disclosures.
- Medicare conditions and standards of participation.
- Authority of Medicare regarding accredited facilities.
- Medicare scrutiny vs. Joint Commission scrutiny.
- Medicare focus-related issues.

#### **Module 4. The Hospital Medical Staff and Legal Issues in Appointment and Privileging-Part I (Week 2)**

- Why the State intervenes in medical staff matters.
- Why adopt medical staff bylaws?
- Conflicting desires, rights, and responsibilities in selecting a medical staff.
- Mechanisms for ensuring quality and helping to prevent quality-related liability in credentialing of the medical staff.
- Pre-screening of applicants.
- Primary source verification and CVO's.
- Ensuring candor of references through releases; institutional obligations in responding to information solicitations.
- Multiple tiers of the credentialing process.
- Proctoring of staff members.
- Permissible credentialing criteria; introduction to economic credentialing.

#### **Module 5. The Hospital Medical Staff and Legal Issues in Appointment and Privileging-Part II (Week 2)**

- Mechanisms for ensuring fairness and helping to prevent related liability in credentialing medical staff.
- Issues related to reporting to the National Practitioner Databank.
- Provider-to-provider disclosures related to physician performance.
- Legal complications involved in “economic credentialing.”
- Approaches to physicians with disruptive behavior.
- Approaches of legislatures and courts to encourage peer review and balance public policy behind peer review protection and fair process for medical staff members.
- Peer review privilege.
- Healthcare Quality Improvement Act.
- Patient Safety and Quality Improvement Act.
- Other hospital medical staff disputes.

#### **Module 6. Patient Rights/Institutional Responsibilities (Week 3)**

- Access to healthcare
- Multiple meanings of “access” in the healthcare context.
- Access under Hill-Burton, the ADA, Title VI, HIPAA, COBRA, and PPACA (aka “Obamacare”).
- Limited situations in which a person has an arguable “right” to healthcare
- EMTALA, its application to healthcare providers, the rights and responsibilities it creates; penalties it imposes for non-compliance.

- State-based statutory initiatives and “community benefit” obligations affecting access to healthcare.
- Consent for treatment
- Informed consent as a process.
- Information required on a consent form to inform the patient about a medical procedure from a legal perspective.
- Express and implied consent.
- Who can consent to care on his/her own behalf and on behalf of others.
- Situations in which consent is not necessary to provide services to a patient.
- HIPAA, healthcare privacy and confidentiality.
- Scope of the privacy/other rights and reciprocal obligations for covered entities and “business associates” under HIPAA and HITECH.
- Exceptions to patient privacy including those relating to risks to others and mandated reporting obligations.
- The enforcers of patient rights and their arsenal of penalties.

### **Module 7. The Organization and Management of a Healthcare Institution (Week 3)**

- Continuum of business entities.
- Sole proprietorship.
- Partnership.
- Limited partnership.
- Corporation.
- LLC.
- Advantages of incorporation and LLC organization.
- For-profit vs. non-profit vs. tax-exempt; public vs. private.
- Shareholder-related duties, disputes and actions-piercing the corporate veil and *Ultra Vires* acts; derivative suits.
- Healthcare institution boards.
- Corporate and board duties and liabilities.

### **Module 8. Midterm (Week 4)**

### **Module 9. Tax-Exemption, Non-profit Status and Related Issues (Week 5)**

- The basic tests for federal 501(c)(3) tax-exempt status of hospitals.
- The “community benefit standard” in qualifying for federal tax exempt status and the obligations related thereto.
- Private benefit and private inurement prohibitions applied to tax exempts.
- The application of the tax laws to common transactions and relationships that arise in healthcare.
- Unrelated business activities and income of tax-exempt entities.
- How tax exemption can affect financing of expenditures by tax-exempt entities.
- Tax advantages and obligations that are part of state tax exempt status.

### **Module 10. Healthcare Fraud and Abuse (Week 5)**

- The Costs of fraud and the enforcement climate with regard to such laws.

- Healthcare fraud or abuse; why it matters; the blurring line.
- The federal anti-kickback statute and its key terms—remuneration, referral, *scienter*, the “One Purpose Rule” under statute and case law.
- Anti-kickback statutory exceptions and safe harbors.
- Penalties for violating statute.
- Advisory opinions, the basic process for obtaining one and the value and limitations on its application for non-parties.
- The “Stark” statute; its underlying purpose and its key terms: Physician, Immediate Family Member, Financial Relationship, Referral, and designated health service.
- The statutory exceptions.
- Penalties for violating statute.
- Evolution of the scope of statute.
- Compliance plans (processes).

### **Module 11. Federal False Claims Statutes, Anti-Mark-up and Other Federal and State Initiatives and The Responsible Corporate Officer Doctrine (Week 5)**

- The Federal False Claims Act statutes.
- Penalties for violating the statutes.
- Enforcers: government and/or private; Qui Tam actions and the “first to file” requirements; conflicts of interest?
- How the scope of the statute has been aggressively expanded to include other deviations from Medicare’s requirements.
- HIPAA, FERA, PPACA and state law initiatives.
- The responsible Corporate Officer Doctrine.

### **Module 12. Healthcare Payors and Related Issues (Week 6)**

- The major public and private payor systems that dominate payments for healthcare.
- The four spheres of Medicare and what each covers.
- The various models under which the delivery of managed care occurs.
- Recent hot issues in managed care from the perspective of both the patient and the provider including “any willing provider” laws and ERISA preemption issues.

### **Module 13. Antitrust (Week 6)**

- The basic antitrust laws and the historical context, general purpose and application of such laws to healthcare.
- Key elements in an antitrust analysis.
- The difference between “per se” and “rule of reason” analysis and the types of conduct to which they are applied.
- Circumstances in healthcare that have been known to result in antitrust claims.
- Sources of guidance and other advice that can help reduce the risk of engaging in anticompetitive conduct.
- Future of collaboration and kinds of integration that withstand antitrust scrutiny.

### **Module 14. Legal Issues in Healthcare Contracting (Week 6)**

- Common issues in contracting; special issues in healthcare.
- Common provisions in contracts; special significance in healthcare.
- Covenants not to compete, corporate practice of medicine and other public policy issues in healthcare contracting.
- Letters of intent.
- Other contracting issues.
- Discussion of any questions regarding material or exam format.

**Module 15: Final (Week 7)**

**Module 16: Healthcare-related guest speakers. Discuss final exam. (Week 8)**