

## **Health Care and the Law: PH236 and PSC236 Syllabus**

**Instructor:** Margie Hodges Shaw, JD, MA (philosophy), Ph.D. (education)

**Office:** Room G11110A MRBX Building

**Phone:** 275-0174 (Medical School office)

**E-mail:** Margie\_Shaw@urmc.rochester.edu (preferred method of communication)

**Office hours:** By appointment.

**Credit hours:**

4 credit hours

**Time:**

Tuesdays and Thursdays 9:40 – 10:55

**Place:**

CSB 209

**Course Description**

This course provides an introduction to the legal foundations of health care in America. It is the responsibility of the American government to promote and protect the health and welfare of the public while respecting the interests, and upholding the rights, of the individual. The content of this course addresses how the law balances these collective and individual rights. The material covers a broad range of legal issues in health care, including autonomy, privacy, liberty, and proprietary interests, from the perspective of the provider(s) and the patient.

Topics include laws related to physical and biological interventions to control infectious disease; regulation of medical services, medical professionals, and standards of care; medical malpractice and liability; access to health care, including public and private insurance; reproductive rights; rights and obligations in medical decision-making; institutional liability, and intellectual property.

**Course Objectives:**

Upon completion of this course students will have a general understanding of the role of governments and law in promoting and protecting health, including the functions of courts, legislatures, and administrative agencies in relation to health care law and policy; understand the relationship between the legal system, health care providers, and patients; be able to identify and analyze legal issues in health care; and be able to effectively communicate, both orally and in writing, the interpretive understanding of a case, statute, and complex regulatory scheme.

Specific learning objectives include the ability to:

1. Distinguish and discuss the role of the federal government and the various state governments in promoting and protecting the health of citizens;

2. Identify, distinguish, and discuss the relationship between community health issues and individual health issues;
3. Identify and analyze legal issues in health care; and
4. Communicate the interpretive understanding of a case or statute, or a complex regulatory scheme, both orally and in writing.

**Enrollment:**

Cap of 40 students.

**Prerequisites:**

Not open to freshmen.

**Course Materials:**

Required texts: None

Selected articles: All required reading material is available on the Blackboard site for this class either as a PDF file or as a link.

**Course Policies and Procedures:**

Class will begin and end promptly.

Class attendance is required and participation is expected. Attendance and informed participation in discussions and group work provide me with evidence that you completed assigned readings in advance and are engaged in the materials.

**People often have strong responses to legal, ethical, and policy issues in health care. Disagreements are common. An important skill in legal and health professions is the ability to discuss various viewpoints in an appropriate manner. Class comments and discussions must be relevant and respectful of others.**

In addition, as a courtesy to fellow students and me, please note that pagers and cell phone must be turned to a silent mode during class. Please limit in class computer use to note taking. Checking mail and surfing the web are examples of behavior that are not courteous and may distract other students. Behaviors that distract others will result in decreased participation points.

**Academic Integrity:**

Written work must be original and students must cite all reference sources according to the Chicago Manual of Style. Academic integrity is expected. For guidance on academic integrity and plagiarism, please refer to the College Academic Honesty Website at <http://www.rochester.edu/College/honesty/>. If you have any questions about academic honesty, please do not hesitate to contact me.

**Late Assignments:**

Students must complete short answer assignments prior to class and hand them in before the class begins on the date they are due. These assignments are intended to help direct the reading of the assigned material and facilitate class discussion. Assignments turned in

late will not be graded. To address unexpected events, I will drop the two lowest short answer assignment grades. If a student anticipates an absence, I will accept an assignment early.

### **Final Grade Scale**

Grades for assignments for this course are assigned a numerical value. The final grade is comprised of the cumulative points earned.

A	=	96-100	(Superior)
A-	=	92-95	
B+	=	89-91	
B	=	85-88	(Above Average)
B-	=	81-84	
C+	=	78-80	
C	=	74-77	(Minimum Satisfactory Grade)
C-	=	70-73	
D+	=	67-69	
D	=	64-66	
D-	=	61-63	(Minimum Passing Grade)
E	<	60	(Failure)

### **Americans with Disabilities Act (ADA):**

The University of Rochester is committed to providing equal educational and employment opportunities for individuals with disabilities, in accordance with state and federal laws and regulations, including the Americans with Disabilities Act (ADA) of 1991 and Section 504 of the Rehabilitation Act of 1973. To ensure equality of access for students with disabilities, the University provides reasonable accommodations, including auxiliary aids and modifications to courses, programs, services, activities or facilities. Exceptions will be made in those situations where the accommodation would fundamentally alter the nature of the program, cause undue hardship on the school, or jeopardize the health or safety of others. Accommodations must specifically address the functional limitations of the disability.

The process of receiving accommodations begins with self-identification. When a student chooses to self-identify a disability, documentation should be sent to Learning Assistance Services, see, <<http://www.rochester.edu/College/las/>>.

### **Evaluation criteria and learning activities**

1. Participation 10%
2. Weekly short answer assignments 65%
3. Final exam 25%

### **Schedule of topics, readings, and assignments**

August 30: Introduction to the course

Assignment: Annas George J. "Doctors, Patients and Lawyers – Two centuries of Health Law," *New England Journal of Medicine* 2012; 367: 445-450.

September 4: What is health?

Assignment: Gostin, Lawrence. "A Theory and Definition of Public Health Law," *Journal of Health Care Law & Policy* 10 (1) (2007): 1-12.

September 6: What is law?

Assignment: 42 U.S.C. § 1395DD "Examination and Treatment For Emergency Medical Conditions and Women in Active Labor"

Glaspell, Susan. "A Jury of Her Peers" available online at <http://learner.org/interactives/literature/story/fulltext.html>.

September 11: Duties and powers of government

Assignment: A More Perfect Union: The Creation of the U.S. Constitution. The U.S. National Archives & Records Administration, <[www.archives.gov](http://www.archives.gov)>.

The Constitution of the United States: A Transcription. The U.S. National Archives & Records Administration, <[www.archives.gov](http://www.archives.gov)>.

September 13: An introduction to legal thinking

*Katskee v. Blue Cross/Blue Shield of Nebraska*, 245 Neb. 808, 515 N. W.2d 645.

September 18: Government and public health

Assignment: Shattuck, Lemuel. "Report of the Sanitary Commission of Massachusetts, 1850:" ii-16. Stop at footnote 16. Scroll through the rest of the document. Read all the enumerated recommendations. You are not required to read the accompanied text for each recommendation: 72-163.

Optional: Gawande, Atul. "Big Med: Restaurant chains have managed to combine quality control, cost control, and innovation. Can health care? *New Yorker*, August 13 & 20, 2012.

September 20: What is a health care professional?

Assignment: Broyard, Anatole. Part Three, "The Patient Examines the Doctor" in *Intoxicated by my Illness*. New York: Clarkson N. Potter, Inc., 1992.

Klass, Alan, MD. "What is a profession?" *Canad. M.A. J.* September 16, 1961, Vol. 85.

*Miller ex rel. Miller v. HCA, Inc.*, 118 SW 3d 758 (2003).

Optional: Buckwalter, J. Galen. "The good patient." *New England Journal of Medicine* 357; 25 (December 20, 2007).

September 25: Regulation of Health Care Professions

Assignment: Gawande, Atul. *Annals of Medicine*, "When Doctors Make Mistakes," *The New Yorker*, February 1, 1999.

Gawande, Atul. *Annals of Medicine*, "Good Doctors Go Bad," *The New Yorker*, August 7, 2000.

September 27: Medical malpractice

Assignment: *Pike v. Honsinger*, 155 N.Y. 201, 209, 49 N.E. 760; 1898 N.Y. LEXIS 860.

October 2: Institutional liability

Assignment: *Darling v. Charleston Community Memorial Hospital*, 33 Ill.2d 326, 211 N.E.2d 253, 14 A.L.R.3d 860 (Ill. Sep 29, 1965).

October 4: The operation and regulation of hospitals and health care facilities (Guest Lecture: Laura Wilson, J.D.)

Assignment: TBA

October 11: Intellectual Property (Guest Lecture: Brian Shaw, J.D.)

Assignment: TBA

October 16: Private Health Insurance

Assignment: Names "Dr. A. H. Doty as Medical Director: Bell System Creates a Special Health Department for All Its Employees," *New York Times*, 27 January 1913.

Mariner, Wendy. "Health Reform: What's Insurance Got to Do With It? Recognizing Health Insurance as a Separate Species of Insurance" 36 *Am. J. L. and Med.* 436 (2010).

October 18: Government Health Insurance

Assignment: TBA

October 23: Human Research

Assignment: Department of Health, Education, and Welfare. 1979. *The Belmont report: Ethical principles and guidelines for the protection of human subjects of research*. Washington, DC: OPRR Reports.

October 25: Access, discrimination and the right to health care

Assignment: *In The Matter Of Baby "K"*, 16 F.3d 590; 1994 U.S. App. Lexis 2215; 3 *Am. Disabilities Cas. (BNA)* 128.

Oct. 30: Transplantation (Guest Lecture: Rich Demme, M.D.)

Assignment: TBA

Nov. 1: Decision Making in Health Care

Assignment: N.Y. Public Health Law Section 2994-A Article 29-CC Family Health Care Decisions Act.

November 6: Physical and biological interventions to control infectious disease

Assignment: *Jacobson v. Massachusetts*, 197 U.S. 11, 12 (1905).

November 8: Public health and the regulation of property

Assignment: *The Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

November 13: Death and dying

Assignment: In the Matter of Karen Quinlan. 70 N.J. 10; 355 A.2d 647 (1976).

November 15: Death and dying

Assignment: Quill, Timothy. "Death and Dignity: A case of individualized decision making." New England Journal of Medicine. Sounding Board, March 7, 1991.

November 20: Reproductive rights

Assignment: Sections I, II, and V - X in Justice Blackmun's opinion in Roe v. Wade, 410 U.S. 113 (1973).

November 22: Reproductive rights

Assignment: Excerpt of Planned Parenthood v. Casey, 505 U.S. 833 (1992).

November 27: State and federal control over decisions affecting health

Assignment: People v. Lochner, 177 N.Y. 145; 69 N.E. 373; 1904 N.Y. LEXIS 918.

November 29: State and federal control over decisions affecting health

Assignment: Lochner v. New York, 198 U.S. 45; 25 S. Ct. 539; 49 L. Ed. 937; 1905 U.S. LEXIS 1153.

December 4: The Patient Protection and Affordable Care Act

Assignment: National Federation of Independent Business et al. v. Sebelius, 567 U.S. \_\_\_ (2012), Opinion of Chief Justice John G. Roberts, pp. 1-17.

December 6: The Patient Protection and Affordable Care Act

Assignment: National Federation of Independent Business et al. v. Sebelius, 567 U.S. \_\_\_ (2012), Opinion of Chief Justice John G. Roberts, pp. 17-33.

December 11: The Patient Protection and Affordable Care Act

Assignment: National Federation of Independent Business et al. v. Sebelius, 567 U.S. \_\_\_ (2012), Opinion of Chief Justice John G. Roberts, pp. 33-59.