

## **Heath Care and the Law: PSC236 and PH236**

### **Course Syllabus**

University of Rochester  
Political Science Department

Spring 2011

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

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**Office hours:** Tuesdays and Thursdays 11:20 – 12:20

Or by appointment.

**Credit hours:**

4 credit hours

**Time:**

Tuesdays and Thursdays 12:30-1:45

**Place:**

Dewey 2162

### **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; First Amendment rights and obligations in the promotion of health and commercial advertising of products affecting health; and rights and obligations in medical decision-making.

**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.

I will post material presented in class on Blackboard each Friday.

**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 medical 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.

**Rewrites:**

Students who have turned in their assignment on time will have the option to rewrite the assignment (once). Rewrites must be arranged within 1 week of students receiving their initial grade and submitted by a date agreed upon by the student and instructor. The original assignment and grading sheet must be submitted with the re-write. The grade received will be an average of the original and rewritten submission. Students who are late turning in an original assignment will not have the option of rewriting the assignment.

The instructor will return assignments that are poorly written (e.g., incorrect grammar, spelling, sentence structure, format, etc.) to the students neither read nor graded. Under those circumstances, students are expected to resubmit a revised readable document for evaluation on a set date. If the set date is after the original due date, the policy on late assignments will apply.

**Late Assignments:**

The late assignment policy does not apply to in class assignments. Students must complete in class assignments in class and hand them in before leaving the room. If an assignment will be late, the student must notify the instructor at least one day before the date that the assignment is due, explain the reason for lateness, and negotiate a new due date. In all other cases, late assignments will be graded down 5% for each day late.

**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 = 93-100 (Superior)	B- = 80-82 (Satisfactory)
A- = 90-92 (Excellent)	C = 70-79 (Poor)
B+ = 87-89 (Very Good)	E <70 (Failure)
B = 83-86 (Good)	

**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/>>.

### **Course Assignments**

<u>Due Dates</u>	<u>Assignments</u>	<u>% of Grade</u>
Ongoing	Class participation	25%
Jan. 20	Biographical statement	5%
February 10	Case brief	10%
March 3	Midterm	25%
March 31	Case brief II	10%
April 21	Final class participation assessment	
May 4 <sup>th</sup> , 7:15 pm	Final	25%

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

1. Class participation (25%) ongoing with a self-assessment due April 21, 2010.

Reading and lectures are designed to complement each other rather than to repeat or review the same material. Reading and class attendance are required. Informed class participation and attendance are worth 25% of the final grade. During the last ten minutes of many class sessions, each student will write and turn in an answer to a question posed at the end of the discussion and list any questions about the material not answered during the lecture and class discussion. This assignment may ask the students to link the reading to the lecture and discussion. You may refer to the readings to answer the questions. Students may drop two of these assignments over the course of the semester.

At the conclusion of the course, each student must write a self-assessment about his or her participation in the course. The minimum length is one page. The maximum length is two pages. The assignment is intended 1) allow each student the opportunity to demonstrate the ability to present a reasoned argument, 2) to encourage self-reflection, and 3) to supplement my data concerning each student's participation. Students may earn up to 2 additional points for constructive commentary about how to improve the course.

5 points: Papers that are free of grammatical errors, have a coherent structure, and contain relevant content.

- 4 points: Papers that are virtually free of serious grammatical errors, that are purposefully organized and a coherent pattern of ideas, and contain relevant content.
- 3 points: Papers that are relatively free of grammatical errors, have a generally unified structure without serious transitional gaps, and contain relevant content.
- 2 points: Papers that contain grammatical errors, have a structure that wanders, and contain some relevant content.
- 1 point: Papers that contain grammatical errors, little structure, and little relevant content.

2. Biographical statement (5%) due January 20, 2011.

Assignment:

Write a biographical statement that describes your reason(s) for taking the course, including any future educational or career interests (if known), and details any relevant prior educational experience. What questions do you hope the material in this course answers?

The minimum length is one page. The maximum length is two pages. The biographical statement is intended 1) to give me an opportunity to learn something about each student, 2) to provide information about each student's relevant educational background and reasons for taking the course, and 3) to allow me a preliminary assessment of each student's abilities. Please list any relevant previous coursework and/or educational experience. I will use the information to decide how much time to spend on certain topics. For example, an important skill in health and legal professions is the ability to evaluate an argument. Knowing whether students previously took PHL 105 would influence the time I spend on that topic.

- 5 points: Papers that are free of grammatical errors, have a coherent structure, and contain relevant content.
- 4 points: Papers that are virtually free of serious grammatical errors, that are purposefully organized and a coherent pattern of ideas, and contain relevant content.
- 3 points: Papers that are relatively free of grammatical errors, have a generally unified structure without serious transitional gaps, and contain relevant content.

2 points: Papers that contain grammatical errors, have a structure that wanders, and contains some relevant content.

1 point: Papers that contain grammatical errors, little structure, and little relevant content.

3. Case brief (10%) due February 1, 2011.

Assignment:

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

10 points: Briefs that are free of grammatical errors, include a comprehensive list of briefing categories as well as accurate and sufficient detail in each category.

8 points: Briefs that are virtually free of serious grammatical errors, include a comprehensive list of briefing categories as well as accurate detail in each category.

6 points: Briefs that are relatively free of grammatical errors, include most briefing categories as well accurate information in each category.

4 points: Briefs that contain grammatical errors, include some briefing categories, and incomplete information in each category.

1 point: Briefs that contain grammatical errors, do not utilize briefing categories and little accurate information.

4. Midterm (25%) March 3

5. Case brief (10%) due March 31, 2011.

Assignment:

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

10 points: Briefs that are free of grammatical errors, include a comprehensive list of briefing categories as well as accurate and sufficient detail in each category.

8 points: Briefs that are virtually free of serious grammatical errors, include a comprehensive list of briefing categories as well as accurate detail in each category.

6 points: Briefs that are relatively free of grammatical errors, include most briefing categories as well accurate information in each category.

4 points: Briefs that contain grammatical errors, include some briefing categories, and incomplete information in each category.

1 point: Briefs that contain grammatical errors, do not utilize briefing categories and little accurate information.

6. Final (25%) May 4<sup>th</sup>, 7:15 pm

**Schedule of topics and readings:**

The schedule is tentative. Readings are available on Blackboard.

Part I: Introduction and definitions

January 13: Introduction: Administrative matters

January 18-20: Foundations of Health Law

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 the enumerated recommendations, but you are not required to read the accompanied text for each recommendation: 72-163.

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

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

January 25-27: Governance Overview: duties and powers

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

February 1-3: Health and the Legal System

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

February 8-10 Pubic health and protections of individual rights: physical and biological interventions to control infectious disease

- February 15-17  
Assignment: Jacobson v. Massachusetts, 197 U.S. 11, 12 (1905).  
Public health regulation of property and the professions  
Assignment: Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926).
- February 22-24  
Medical professionals: licensure, certification and accreditation  
Assignment: Look online for physician profiles. Read “A Guide to the Essentials of Modern Medical Practice Act, Tenth Edition.” Approved by the House of Delegates of the Federation of State Medical Boards of the United States, Inc., as policy April 2003.
- March 1-3  
Medical malpractice and liability and **MIDTERM**  
Assignment: Pike v. Honsinger, 155 N.Y. 201, 209, 49 N.E. 760; 1898 N.Y. LEXIS 860.
- March 8-10  
SPRING BREAK
- March 15-17  
The operation and regulation of hospitals and health care facilities  
Assignment: The executive summary of “A Plan to Stabilize and Strengthen New York’s Health Care System,” Final Report of the New York State Commission on Health Care Facilities in the 21<sup>st</sup> Century, December, 2006.
- March 22-24  
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).
- March 29-31  
Access, discrimination and the right to health care, including public and private insurance

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

April 5-7

Public and private insurance

Assignment: Odin W. Anderson, “Compulsory Medical Care Insurance, 1910-1950,” *Annals of the American Academy of Political and Social Science*, Vol. 273 (1951), pp. 106-111.

April 12 -14

Privacy, surveillance and public health research

Assignment: *Whalen v. Roe*, 429 U.S. 589 (1977).

April 19-21

Health promotion: Education, persuasion and free expression

Assignment: *44 Liquormark, Inc., et al. v. Rhode Island et al.* 517 U.S. 484 (1996).

April 26

Restrictions of the person: civil confinement and criminal punishment

Assignment: “Quarantine of Typhoid Carrier Upheld,” *Public Health Reports (1896-1970)* Vol. 37, No. 21 (May 26, 1922): 1253-1259.