Health Law: Medical Malpractice
LAW 6725

Instructor: Randall C. Jenkins, Esq.
Telephone: (352) 273-7237
Email: Jenkinsr@ufl.edu
Class: Tuesday 4 – 5:50 pm, Room 270
Office Hours: Tuesday 3 – 4 pm, Room 356
Or by appointment

Course Material:
Course Packet - to be purchased at Target Copy, 1412 W. University

Course Content and Competencies Developed:

This class is designed to provide a general introduction to the legal and ethical environment of healthcare law, specifically medical malpractice. The course will cover a variety of medical-legal issues facing healthcare providers and organizations including a variety of medical malpractice litigation issues ranging from disclosure of adverse incidents, the balancing of patient rights with provider rights, informed consent, hospital and provider individual and corporate negligence, agency, as well as apparent agency, and non-delegable duty theories of healthcare organizational liability. The course will also examine the legal basis for hospital governance, negligent credentialing, healthcare alternative dispute resolution considerations and the principals of health care malpractice insurance. Upon completion of the course the student should demonstrate the following competencies:

1. Students will continually scan and interpret how the legislature, judiciary and executive branches of government individually and collectively through a system of checks and balances influence and respond to current legal trends in the health care environment by interpreting specific judicial responses to legislative and constitutional laws governing the medical malpractice exposure facing healthcare facilities and providers.

2. Students will monitor, comply and demonstrate knowledge of the laws and regulations affecting health care organizations and health care professionals as well as gain exposure through specific case studies to how the legal system operates to ensure patient safety and protect the interests of organizations, providers, patients, and ultimately the public at large.

3. Students will analyze how to improve clinical and organizational performance and how to redesign organizational systems and processes by studying the differing operational structures employed by a variety of healthcare organizations such as nursing homes, small provider practices and large healthcare corporations. Students will analyze and critically identify areas for clinical and organizational
performance improvements after assessing the legal shortcomings which contributed to the instant case medical malpractice lawsuits.

4. Students will be able to articulate, model and promote professional values and ethics in health care business and clinical decision making through analysis and understanding of bioethical and business ethical issues that often prompt patients to bring medical malpractice lawsuits such as a patient’s right to refuse medical treatment and/or disputes among family members and the healthcare organization.

5. Students will develop important professional skills required for health care advocates through the Socratic Method course instruction format that requires students to utilize written, verbal and interpersonal communication skills by analyzing for fellow students the rule of law or judicial reasoning used to defend the court ruling or relevant legal issues for each assigned reading. Students will also have to identify and effectively use appropriate communication vehicles to debate with other students the opposing sides of controversial legal issues through class discussion as well two oral argument assignments throughout the semester.

**Course Requirements:**

1. **Attendance and Participation:** Each class meeting will consist of discussion about the assigned topic, the readings and student opinions. I expect students to engage in discussion and debate with their fellow students. Therefore, it is mandatory that you attend class. Due to the high value I place on participation, class discussion will constitute 10% of your grade. Participation will be based on the quality of your comments during general class discussion as well as on the presentation of any other assignments described below. Quality participation is demonstrated through an understanding of the assigned readings and exercises and contributions to the learning experience of other members of the class.

2. **Final Exam:** A 2 hour in-class closed book exam covering the assigned readings and lecture material. The final exam constitutes 90% of your final grade for the course.

Grading for all assignments will be based on the quality of your reasoning, the coherency of your arguments, and the clarity with which you present your position. Excellent spelling and syntax are also expected.
### Assigned Readings and Class Schedules:

The assigned readings should be completed by the start of class, as the class discussions will build upon the material from the text and require student participation at a level only possible by reading the materials before class.

<table>
<thead>
<tr>
<th>Week</th>
<th>Topic</th>
<th>Assigned Material</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Week 1</strong>&lt;br&gt;Aug 18, 2015</td>
<td><strong>Medical Malpractice</strong>&lt;br&gt;<strong>Course Introduction:</strong>&lt;br&gt;Florida Medical Malpractice Constitutional Amendments: Ballot Summaries and Single Subject Requirement</td>
<td>Course Packet:&lt;br&gt;- Patients Right to Know About Adverse Incident Amendment,&lt;br&gt;- Physician Three Strikes Amendment&lt;br&gt;- Patient Right to Compensation Amendments</td>
</tr>
<tr>
<td><strong>Week 3</strong>&lt;br&gt;Sept 1, 2015</td>
<td><strong>Medical Malpractice</strong>&lt;br&gt;<strong>Alternative Dispute Resolution: Before Litigation, Consider Mediation or Arbitration</strong></td>
<td>Course Packet:&lt;br&gt;- Franks v. Bowers, 38 Fla. L. Weekly S416 (Fla., June 20, 2013)&lt;br&gt;- Parham v. Florida Health Sciences Center, Inc. (Fla. 2DCA March 31, 2010)</td>
</tr>
<tr>
<td><strong>Week 4</strong>&lt;br&gt;Sept 8, 2015</td>
<td><strong>Drafting the Complaint:</strong>&lt;br&gt;Considerations for Suing Healthcare Professionals and/or Healthcare Organizations:&lt;br&gt;- Venue&lt;br&gt;- Immunities&lt;br&gt;- Collecting against a judgment</td>
<td>Course Packet:&lt;br&gt;- University of Florida Board of Trustees v. Morris (975 So.2d 493)&lt;br&gt;- Florida Statute § 768.28(1)&lt;br&gt;- Andrew v. Shands (970 So.2d 887)&lt;br&gt;- Florida Statute 768.28 (9)(a)&lt;br&gt;- Dunn v. Shands (977 So.2d 594)&lt;br&gt;- Horowitz v. Plantation General Hospital (959 So.2d 176)</td>
</tr>
</tbody>
</table>
| Week 5 | Sept 15, 2015 | **Answering the Complaint:** **Defenses to a Malpractice Lawsuit:** Statute of Limitations/Repose, Comparative Fault, Clinical Innovation | Course Packet:  
- Florida Statute § 95.11  
- *Beck v. Holloway* (933 So.2d 4)  
- *Vargas v. Glades General Hospital* (566 So.2d 282)  
|---|---|---|---|
| Week 6 | Sept 22, 2015 | **Answering the Complaint, part 2:** **Defenses to a Malpractice Lawsuit:** Healthcare Professionals and The Good Samaritan Law/ Emergency and Affirmative Defenses | Course Packet:  
- Florida Statute § 768.13  
- *Harris v. Soha* (15 So.3d 767)  
- *McKenna v. Cedars of Lebanon Hospital* (93 Cal App. 3d 282)  
- *Stone v. Shands* |
| Week 7 | Sept 29, 2015 | **Medical Malpractice Insurance Coverage Considerations and Declaratory Judgment Actions** | Course packet:  
- *Pagan v. Sarasota County Public Hospital Board* (884 So.2d 257)  
- *St. Vincent’s Medical Center v. Bennett* (71 So.3d 828) |
| Week 8 | Oct 6, 2015 | **Healthcare Organization Vicarious Liability:** Apparent Agency and Non Delegable Duty | Course Packet:  
- *Shands v. Juliana* (863 So.2d 343)  
- *Jones v. Tallahassee Memorial Regional Healthcare* (923 So.2d 1245)  
- *Rayburn v. Orange Park Medical Center* (842 So.2d 985)  
- *Wax v. Tenet Health System* |
| Week 9 | Oct 13, 2015 | **Healthcare Organization Vicarious Liability Part 2:** Apparent Agency and Non Delegable Duty | Course Packet:  
- Quesada v. Mercy Hospital, July 14th, 2010 3rd DCA. |
| Week 10 | Oct 20, 2015 | **Medical Malpractice from the Plaintiff/Patient Perspective** | No course packet material |
| Week 11: | Oct 27, 2015 | **Medical Malpractice Applied Learnings:** Discovery Challenges: | Course Packet:  
- Text: Enabling Legislation Florida Statute 381.028 |
- Florida Statute §395.0197  
- Amisub North Ridge Hospital v. Sonaglia (995 So. 2d 999)  
- Baptist Hospital of Miami v. Garcia (994 So.2d 390)  
- Lakeland Regional Medical Center v. Neely (8 So.3d 1268)  
- Florida Eye Clinic v. GMACH (14 So.3d 1044)  
- Columbia Hospital Corporation of South Broward v. Fain (16 So.3d 236)  
- West Fl. Regional Medical Center v. See (18 So. 3d 676)  
- Baldwin v Shands (Case No. 1D10-127.1st DCA) |
| Week 13 | Nov 10, 2015 | Medical Malpractice Applied Learnings: Preparing Witnesses: Ex Parte Communication with Treating Providers Discovery Rules | Course Packet:  
- Acosta Florida Supreme Court  
- Galen Health  
- Dannaman  
- Hasan Florida Supreme Court  
- Florida Legislation |
| Week 14 | Nov 17, 2015 | Course Review | No material from course packet |