

Health Law: Medical Malpractice **LAW 6930 Section 6834**

Instructor: Randall C. Jenkins, Esq.

Telephone: (352) 273-7237

Email: Jenkinsr@ufl.edu

Monday: 4-5:50pm

Office Hours: By appointment before or after class

Course Material:

Course Packet

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:

- **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.
- **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.

Course Policies:

Grading: The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Workload: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

Academic honesty: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Accommodations: Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

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.

<u>Week</u>	<u>Topic</u>	<u>Assigned Material</u>
Week 1 8/13/18	Medical Malpractice Course Introduction: Florida Medical Malpractice Constitutional Amendments: Ballot Summaries and Single Subject Requirement	Course Packet: <ul style="list-style-type: none"> ◆ Patients Right to Know About Adverse Incident Amendment, ◆ Physician Three Strikes Amendment ◆ Patient Right to Compensation Amendments
Week 2 8/20/18	Medical Malpractice: Pre-Suit Requirements and Cases	Course Packet: <ul style="list-style-type: none"> *Florida Statute 766 *Kukral v. Mekras, 679 So.2d 278 * Clare M.D., v Lynch, 2D16-4052, June 21st, 2017 * Weaver v. Myers, 170 So.3d 873, July 21,2015 * Pre-Suit Nuts and Bolts, Carbone
Week 3 8/27/18	How to Determine if Lawsuit is Professional Liability Medical Malpractice Claim or a General Negligence Claim - Pros and Cons for GL vs. PL.	Course packet: <ul style="list-style-type: none"> *<i>Silva v. SW Blood Bank</i>, 601 So.2d 1184 (Fla. 1992) *<i>Joseph v. Univ. Behavioral</i>, 71 So.3d 913 (Fla. 5th DCA, 2011). *<i>Indian River Hospital v. Browne</i>, 44 So.3d, 237 (Fla. 4th DCA 2010) *<i>Buck V. Columbia Hospital</i>, 147 So.3d 604 (Fla. 4th DCA 2014) *<i>Shands v. Lawson</i>, 175 So.3d 327 (Fla. 1st DCA 2015). *<i>National Deaf Academy v. Townes</i>, 242 So.3d 303 (Fl S.C 2018).
Week 4 9/10/18	Basics of a Malpractice Lawsuit and Considerations for Drafting a Complaint: Battle of the experts' qualifications, national vs. local standard of care,	Course packet: <ul style="list-style-type: none"> ● Lake v Clark (533 So. 2d 797) ● Woodson v Go (5th DCA case 5D13-3311, June 26,

	Venue, immunities, and collecting a judgment	2015 <ul style="list-style-type: none"> • Hall v. Hillbun, 466 So.2d 856 (Miss. 1985) • UFBOT v. Morris (975 So.2d 495) • Fl. Statute 768.28(1) • Horowitz v Plantation General Hospital (959 So.2d 176)
Week 5 9/17/18	Answering the Complaint: Defenses to a Malpractice Lawsuit: Statute of Limitations/Repose, Comparative Fault, Clinical Innovation	Course Packet: <ul style="list-style-type: none"> ♦ Florida Statute § 95.11 ♦ <i>Beck v. Holloway</i> (933 So.2d 4) ♦ <i>Vargas v. Glades General Hospital</i> (566 So.2d 282) ♦ <i>Brook v. St. John's Hickey Memorial Hospital, 380 N.E. 2d 72 (Ind. 1978).</i>
Week 6: 9/24/18	Answering the Complaint part 2: Defenses to a Malpractice Lawsuit: Healthcare Professionals and The Good Samaritan Law/ Emergency Services Affirmative Defenses	Course Packet: <ul style="list-style-type: none"> ♦ Florida Statute § 768.13 ♦ <i>Harris v. Soha</i> (15 So.3d 767) ♦ <i>McKenna v. Cedars of Lebanon Hospital</i> (93 Cal App. 3d 282) ♦ <i>Stone v. Shands</i>
Week 7: 10/1/18	Healthcare Organization Vicarious Liability: Apparent Agency and Non Delegable Duty	Course Packet: <ul style="list-style-type: none"> ♦ <i>Shands v. Juliana</i> (863 So.2d 343) ♦ <i>Jones v. Tallahassee Memorial Regional Healthcare</i> (923 So.2d 1245) ♦ <i>Rayburn v. Orange Park Medical Center</i> (842 So.2d 985) ♦ <i>Wax v. Tenet Health System</i>

<p>Week 8: 10/8/18</p>	<p>Healthcare Organization Vicarious Liability Part 2: Apparent Agency and Non Delegable Duty</p>	<p>Course Packet:</p> <ul style="list-style-type: none"> ♦ Kristensen v. Cooney (2010 WL 2675306 Fla. App. 4 Dist.) ♦ Tarpon Springs v. Reth (2010 WL 2696290 Fla. App. 2 Dist.) ♦ Quesada v. Mercy Hospital, July 14th, 2010 3rd DCA.
<p>Week 9: 10/15/18</p>	<p>Medical Malpractice Applied Learnings: Discovery Challenges: Florida Legislature and Florida Courts Response to Medical Malpractice Constitutional Amendments</p>	<p>Enabling Legislation Florida Statute 381.028</p> <ul style="list-style-type: none"> ♦ Notami Hospital of Florida v. Bowen (927 So.2d 139) ♦ Waterman v. Buster (984 So.2d 478) ♦ Benjamin v. Tandem Healthcare (998 So.2d 566)
<p>Week 10: 10/22/18</p>	<p>Medical Malpractice Applied Learnings: Discovery Challenges Part 2: Florida Legislature and Florida Courts Response to Medical Malpractice Constitutional Amendments: What about Work Product and Attorney Client Privilege Protections</p>	<p>Course Packet:</p> <ul style="list-style-type: none"> ♦ Florida Statute § 395.0197 ♦ <i>Amisub North Ridge Hospital v. Sonaglia</i> (995 so.2d 999) ♦ <i>Baptist Hospital of Miami v. Garcia</i> (994 so.2d 390) ♦ <i>Lakeland Regional Medical Center v. Neely</i> (8 So.3d 1268) ♦ <i>Florida Eye Clinic v. GMACH</i> (14 So.3d 1044)) ♦ <i>Columbia Hospital Corporation of South Broward v. Fain</i> (16 So.3d 236). ♦ <i>West Fl. Regional Medical Center v.</i>

		<p><i>See (18 So. 3d 676)</i></p> <ul style="list-style-type: none"> ♦ <i>Baldwin v. Shands (Case No. 1D10-127, 1stDCA)</i> ♦ <i>Edwards v. Thomas, MD, 229 So. 3d 277 (FL SC 2017).</i>
<p>Week 11 10/29/18</p>	<p>Medical Malpractice Damage Considerations and Alternative Dispute Resolution: Before Litigation, Consider Mediation or Arbitration</p>	<p>Course Packet:</p> <ul style="list-style-type: none"> • North Broward Hospital District v. Kalitan, No. FLSC 15-1858, June 8th, 2017 ♦ <i>Franks v. Bowers, 38 Fla. L. Weekly S416 (Fla., June 20, 2013)</i> <p><i>Parham v. Florida Health Sciences Center, Inc. (Fla. 2DCA March 31, 2010)</i></p>
<p>Week 12 11/5/18</p>	<p>Medical Malpractice Applied Learnings: Preparing Witnesses: Ex Parte Communication with Treating Providers Discovery Rules</p>	<p>Course Packet:</p> <ul style="list-style-type: none"> ♦ Acosta Florida Supreme Court ♦ Galen Health ♦ Dannaman ♦ Hasan Florida Supreme Court ♦ Florida Legislation ♦ <i>Weaver v. Myers, 229 So.3d 1118 (FL SC 2017).</i>
<p>Week 13 11/19/18</p>	<p>Medical Malpractice from the plaintiff and/or judiciary perspective</p>	
<p>Week 14 11/26/18</p>	<p>Course Review; 2 hour final exam during exam period</p>	