**Health Law I: Law 6930** **Fall 2020**

**COURSE SYLLABUS: August 7, 2020**

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Class Time: Mon: 4:10-5:35PM & Thurs. 4:40-6:05PM

Class Location: Room MLAC 213A, HH 355D Remote

# Introduction to the August 8, 2020 Syllabus:

Welcome to Health Law! I’m really glad you are taking this class. This syllabus contains information about the course’s policies, learning objectives, content, the exam format, and the material we will be using. Everything you will need to know about this class will be available on Canvas. So the first thing you need to do is register for the class Canvas page. Going forward, the one thing we can depend on in these unusual times is we cannot fully predict external events which may affect the structure and organization of this class. This syllabus contains the information you need to get started. If we have to make changes, I promise that I will give you as much notice as possible and on anything where we have discretion, make you part of the process.

# COURSE DESCRIPTION:

This course provides a broad survey of the fundamental legal issues surrounding the delivery of healthcare in the United States. Topics will include private and public health insurance systems; state and federal regulation of medical professionals and institutions; common law and statutory duties to treat; anti-discrimination law in healthcare settings; the structure of healthcare delivery; and healthcare fraud and abuse regulations.

# Course Mission:

To prepare future lawyers develop the skills they need to become competent, ethical, and effective lawyers committed to justice, zealous client advocacy, and the rule of law by helping them develop an understanding of the major categories of legal regulation necessary to represent a healthcare provider, a Medical Practice or a Hospital and to improve their ability to find the answers to their future clients legal questions and convey them clearly and succinctly in both oral and written form.

# Overview

There has never been a more interesting and exciting time to study health law. The Covid-19 Pandemic presents opportunities for us to study how health law works under pressure. The scope of the sickness and death from the Pandemic has also changed the perspectives of everyone involved in creating or enforcing health laws to the extent that will leave its mark for many years to come. It has also made visible cracks and flaws in the system. The health care system, and health law, is marked by systemic racism and a variety of other biases that reflect the imperfect society in which we live.

We never had a situation in the U.S. when so many otherwise healthy people became seriously ill at the same time. It is very unlikely that anything about the healthcare system will return to “normal” and therefore it is important that as we learn the law as it is now, we also pay attention to the direction where it is going.

**A few preliminary words on Zoom/Online**

We are starting out as a hybrid with some students in a classroom with me at the law school and some students joining the class virtually through Zoom. As the semester progresses, it is very possible that any of us who started face to face will have to transition to online. If the reason for that is that any of us were exposed to Covid-19 and must quarantine, then this will not change the structure of the course for anyone. Those who were face to face can join us via Zoom. But if the reason is because we ourselves are sick and cannot comfortably attend class even virtually, then that will require adjustments.

On the theory that the less time spent in large groups the better, we will be reducing the amount of time anyone spends in class by transferring activities like student presentations and guest speakers onto Zoom.

It is always my practice in a class this size to meet with students in smaller units and we will do the same this year--although these meetings will have to take place on Zoom.

In this time of pandemic, we will all need to be flexible. My promise to you is that I am deeply committed to your learning, will always seek your input on anything that may affect you and will make any necessary decisions based on fairness and compassion for the situation in which we find ourselves. I know that in return you will take your learning seriously and act with professionalism and kindness towards each-other, me, those who will be supporting our class with IT and other assistance, and most of all yourselves.

# LEARNING OUTCOMES:

Each unit of this course has specific learning outcomes related to its content. Successfully achieving these unit level learning outcomes will result in the student being able to:

* By the end of this course, you will have an understanding of the major categories of legal regulation necessary to represent a healthcare provider, a Medical Practice or a Hospital.

Having developed this understanding, you will be able to:

* Recognize the impact that law has on issues of healthcare quality, access, cost, and choice, including the powers, rights, and duties of healthcare providers, institutions, insurers, regulators, and individuals.
* Use that knowledge and framework to find specific answers to legal questions that arise in the day to day practice of health law.
* Convey in both oral and written form the answers to both general and specific questions about the areas of health law covered in the class to clients, colleagues, the public, or employers.
* Identify and distinguish between legal issues with healthcare delivery, payment, and other determinants of individual and population health. and those raising economic, ethical, managerial, and political.
* Develop your identity as professionals by adhering to professional standards of behavior while in the class as a whole and when working in small groups.

**Course Materials and Required Casebook**

All assignments will be posted on Canvas. Specific assignments and learning objectives for each class will be posted on Canvas at least every three weeks. You will also find specific instructions for each assignment as well as specific information about the final exam

* Furrow, et al., Health Law: Cases, Materials and Problems, (8th ed., 2018). ISBN 978-1-68328-864-0
* Materials on the course webpage (which may include slides, class recordings, and practice materials)

# HONOR CODE:

# This class is subject to the UF Student honor code which can be found at Ch. 5 of the Student Handbook posted here.

# ACCOMMODATIONS:

UF LAW is committed to diversity through accessible programs, services, and an inclusive campus environment. 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.

### FORMS OF ADDRESS

My goal is for each student in class to feel that they are treated with respect and equality. My understanding is that the convention here at the law school is for students to use first names in class. Along those lines, I will be asking you each to let me know what name you prefer to be called and what pronouns you prefer.

It is also my understanding that the convention here at the law school is to call professors by their last names, so please call me “Professor Bard” and my pronouns are she/her/hers. I usually default to “they” when referring to someone whose preferences I don’t know. Feel free to let me know anytime if your preferred name or pronouns change.

# Evaluation, Policy, and Procedures:

**CLASS ATTENDANCE:**

Attendance and class participation are mandatory. Class participation includes preparation for class, participation in class, and completion of all in-class and out-of-class problems and exercises. Students who are present and prepared and who contribute positively to the discussion make a valuable contribution to the class, and a wide range of views is welcome and invited.

School of Law policy, informed by the Standard of Accreditation of the ABA, requires regular and punctual attendance. We will have a “no touch” attendance check-in at least once every class and no student may check-in for another. I reserve the right to lower the final grade by one full letter grade any student who misses more than five (5) classes or to exclude from the final exam any student who misses more than seven (7) classes. Contact me if you foresee an issue with attendance.

# Workload/class preparation and the 2:1 out of class/in class requirement (ABA Standard 310)

Students should expect to spend, on average, approximately two hours preparing for every hour of class. Assignments are posted on the “Modules” link on the Canvas site.

CLASSROOM NORMS

This year, whether you are in the classroom or online it’s important for everyone to stay focused. In general, for most people, most of the time, all electronic devices must be muted and put into airplane mode before class begins. You are welcome to take notes use any device you like. But I’m asking you to imagine our classroom as an airplane without Wi-Fi and to shut off the outside world while we are together.

I know that social conventions are tilting against this. But as of Fall 2020, it is still considered rude in a legal professional setting to be engaged in a conversation, whether or online or in person, while in class. On my end, I will try to make class interesting enough and provide enough opportunities to engage in different kinds of learning that you will not find it this rule overly burdensome. Since this is a long class, we will also have a brief “catch up” break for anything you need to respond to or can’t wait.

## What if I have personal responsibilities that require me to be available to others while I am in class?

I appreciate that some of you will have occasions where you feel you must be available to others even if you are in class.

### What if I want to look up something that’s relevant to the class material?

The advantage to learning in a group, as opposed to alone, is lost when everyone gets online and goes in different directions. We will be stopping regularly to discuss the material, raise questions, and go online. But unless we are doing a group activity, it is distracting and unnecessary.

## What is Your Policy Regarding Respect for Others?

We will, of course, comply with all university and law school anti-discrimination policies and all applicable laws [summarized here](https://www.law.ufl.edu/why-uf-law/diversity-at-uf-law) on the Law School’s website.  You will also find the full text on our Class Canvas Page. In addition to that, I require that students treat each other with the respect and courtesy appropriate for colleagues.  Since discussion will be an important part of this class, it is inevitable that you will have different points of view.

If you wish to say something, raise your hand (actually or on Zoom) and I will call on you.  For these purposes, please consider yourself as in a court room.  Unless we have broken into small groups for discussion, it is not appropriate to directly respond to another student without raising your hand.  It is also not acceptable for more than one person to be speaking at once.  Regardless of what you may see on TV, the key to being a successful lawyer is to be able to disagree without being disagreeable or (worse) disrespectful.

## What if Something We Are Covering Makes Me Uncomfortable?

Health Law raises all the difficult social and political issues of classes like Con Law & Criminal Law with the added layer of our own personal experiences with illness, injury, disability, and death. Everyone, including experienced health professionals, research scientists, law professors, and practicing attorneys, has issues to which they are more sensitive because of their life experience. We all share the challenge of discussing these issues with openness and rigor without causing inadvertent pain to others. It is also likely that some of the health conditions that come up as we discuss legal issues are ones with which many of you are unfamiliar. Although the story of medical students and hypochondria is probably a [myth](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4012647/), everyone can find it distressing to hear about threats to their health before they develop a sense of relative risk. We will be talking in class about what are (and are not) reliable sources of information about the topics we discuss.

The best approach to potentially uncomfortable or even distressing is to remain aware of your feelings and respectful of other people’s feelings. Sometimes it is helpful if you prepare yourself to be uncomfortable about something we will be covering without sharing that with anyone else. Equally, if there is anything you would like me to know in advance about your previous experiences that may affect your perception of our class, please let me know either in the introduction assignment or anytime you think its relevant. If you find a discussion too painful to sit through, you are welcome to leave the class for a few minutes and discuss the issue with me afterwards. If you are concerned with anything involving the class—in the reading, during class, or otherwise, let me know.

**If there is something or someone making you uncomfortable that I can fix “in real time” don’t hesitate to let me know.**

# EVALUATION AND GRADING:

This Class follows the Law School’s usual grading policy which is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>

Your final grade will reflect your participation in assigned activities including completion of a short-written client letter, a short presentation of that letter, a practice essay question and five practice multiple choice questions. Each of these activities have a point value.

Class Participation

For each class session, all students are expected to have read and prepared the materials assigned for that class.

You will receive an assignment sheet for each class day that details what will be required to be prepared to attend that day. This will include reading the assigned material, answering the accompanying questions (either as assigned in the Casebook or included in the assignment sheet. Every student will be asked to engage with the material every day.

We will have some kind of “assigned panel of experts” system for each class, but I’d like to discuss this further with you when we have a better idea of logistics.

Opportunities to improve learning during the semester (“formative assessment”) may include in-class participation; quizzes; in- or out-of-class exercises; and one or more short writing assignments. These assessments will be mandatory but not graded and will include specific feedback.

**COMPONENTS OF FINAL GRADE**

Each of you will accumulate points based on your own, individual work. You will get full points for the four assignments during the semester if you complete it in good faith and submit it on time. Your points on the final exam will depend on the number of questions you get correct.

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| --- | --- | --- | --- | --- |
| Class Participation | Client Letter Project | Practice Essay | Practice MC questions | Final Exam |
| We will have frequent polls, surveys, and short assessments posted on Canvas. You will receive 1 point for completion of each such assignment up to a maximum of ten points for the whole semester | 2-page Client Letter, 5-minute Client Power point Presentation, and Engagement with the Letters and Presentations of Others | 1 bar exam style Practice Essay Completion  10 Points | 10 Practice bar exam style Multiple Choice Questions Completion 10 points | Open-Book Final Exam 60 Points  As scheduled by the law school |
| 10 points | 40 points | 10 points | 10 points | 100 points |

Final Exam

The final exam will be a three-hour, open book exam administered through the law school on the date set for our final exam. You will receive a memo guiding you on the format and topics of the final exam.

**STUDENT DROP-IN TIMES (OFFICE HOURS) AND COMMUNICATION**

I look forward to spending time with all of you individually during the semester. As you know, for the fall all out-of-class contact will be via Zoom. The first week of class, I will send out a survey to identify blocks of time that are likely to work well for most students. I am sure you will have questions and comments throughout the semester, and I look forward to hearing them.

For the first two weeks (until we identify the times that are the best for most people) I will be available on Zoom from Mondays 2-3 and Thursdays 2-3. Please feel free to drop in. <https://ufl.zoom.us/j/93915260850>.

If those times do not work for you, please email me so we can make an appointment. My email is [Jennifer.Bard@ufl.edu](mailto:Jennifer.Bard@ufl.edu).

I check email frequently and unless I have an out-of-office message will always reply within one business day, usually much sooner. If you ever do not get a response from me by then, PLEASE try again—it is very likely caught up in some kind of filter. My alternate email is Jennifer.bard1@gmail.com

COVID-19 PROCEDURES

We will apply with all Federal, State, County, City, University, and Law School rules passed in response to the COVID-19 virus. In specific, we will follow the following procedures set out by the law school:

We will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions:

* You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
* This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
* Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
* Follow your TA’s guidance on how to enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.
* If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return too campus. <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.
* Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.<https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>.

**Canvas**

Pursuant to university policies, we will be using the Canvas *for at least the following purposes: distributing and storing the course syllabus along with any syllabus updates, maintaining student grades (to the extent professors grade assignments other than the final exam), and regular communication with students.* I will also use Canvas for posting announcements, providing access to course materials, and scheduling Zoom meetings.

**In-Class Assistant (“TA”)**

The law school will be providing an in-class assistant to help make our hybrid classroom experience run smoothly. Our assistant/TA *will help with a new student-initiated attendance protocol and oversee compliance with classroom safety protocols. They will not, however, be providing instruction or tutoring.*

**In-Class Assistant’s role in administering classroom safety protocols:**

If a student is not wearing a mask, the TA will provide a mask to the student. If the student still refuses to wear a mask, the TA will ask the student to leave campus. Likewise, if a student is exhibiting any cold or flu symptoms, the TA will ask the student to leave campus and ensure that we alert UF Health. Students who fail to wear masks or follow other safety protocols will be referred to the university Office of Student Conduct and Conflict Resolution and will no longer be permitted on the UF campus. We will also report their noncompliance to the relevant state board of bar examiners.

If you cannot wear your mask in class, of course you cannot be in class. I reserve the option to *take noncompliance into account when grading students or determining if a student may remain in a course.*

**Being on Video**

We all have moments when we do not want to be on video. What I ask is that you make a good faith effort to keep your camera on and that you always keep the class audio feed on. I know it isn’t anyone’s intention to log on and walk away. But when you are home, things happen—the doorbell rings, the dog barks, a baby cries, the smell of smoke wafts in from the kitchen. Please make your best effort to set aside the time we are in class for class, minimize distractions in advance, and be prepared to participate in check-ins throughout the class period. If you are having connection difficulties, you will be able to reach out to the teaching assistant any time so that we can get you back online.

**Chat Function**

Please remember that both the class and the chat are being recorded! So, although there is a “private” feature, nothing is really private. Please don’t write anything you wouldn’t want anyone other than the person for whom it was intended to see. Also, please respect how easy it is to get distracted from what’s going on in the main class if you’re having a conversation with someone else. I want to get your questions as we go along--whether you are in person or on Zoom--and I will check Chat periodically during class.

**Law School Policy on Prohibition on Student Recording and Photography and Social  Media  Posting**

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the university’s Office of Student Conduct and Conflict Resolution. Professors and TAs also may not take, circulate, or post photos or videos of class beyond the recording discussed below.

**Recording of Class Discussions**

If you have an ADA accommodation or are required to miss class because of illness, please contact Dean Inman about getting permission to access the recording of the class.

**II. Roadmap of Class Topics**

This section of the August 8th, 2020 syllabus contains the assignments for the first week and then a week by week overview of the topics we will cover. You will receive detailed instructions of what to prepare for class three weeks in advance of the class date. We will begin assignments in the casebook in week 2. For this the first week, all your assignments are available on the internet or will be posted on Canvas.

## Week 1, August 24 and 27

Both days sessions will be offered in person and on Zoom. You will all receive a link through Canvas. Please be prepared to log into Zoom even if you are attending in person so that we can all be connected.

Over-all Question?

Who has power to make laws affecting health?

**Learning Goals for the week:**

Students will be able to:

(a) distinguish between federal and state powers

(b) Identify the ability of individual stakeholders to invoke the power of the law in case of perceived harm (who can sue who).

### Monday, August 24

Both the federal government and the government of the individual states have been involved in addressing the Covid-19 outbreak. We will be using Covid-19 examples to get an understanding of the division of authority between the federal government and the individual states when it comes to matters of health.

ASSIGNMENTS:

To Do:

* Subscribe to Kaiser Health News “What the Health” Podcast, <https://khn.org/news/tag/what-the-health/> and listen to the most recent broadcast for the purpose of identifying this week’s hot topics (Thursday August 20, 2020) We will be listening to the broadcast every Thursday and discussing it on Monday.
* Complete the introduction assignment on Canvas, due no later than the start of class on August 27th.
* Read:

*Federal Authority to Lift or Modify State and Local Covid-19 “Stay at Home” Orders*

<https://crsreports.congress.gov/product/pdf/LSB/LSB10469>

*Jacobson v. Massachusetts* (as edited by Prof. Bard, posted on Canvas)

*Epidemics and the Law*

<https://yalereview.yale.edu/law-salus-populi>

Consider answers to these questions:

Where does the state’s power to issue public health orders come from?

What power does the federal government have?

What are the pros and cons of leaving issues like “Stay at Home” orders and masks to the states?

### Thursday, August 27

Goal: To Better Understand the scope of federal and state liability by examining documents that ask individuals to waive their legal rights if infected with Covid-19.

Question to answer:

Both the federal government and states are talking about reducing liability for Covid-19 claims. What is the difference between the source of the federal government’s power and that of individual states?

To Do:

* Prepare for the discussion by going on the internet and find a Covid-19 waiver of liability that you will be able to share with your group when we get to class. Be prepared to describe the terms of the waiver and under what law it will be reviewed (specific state, federal govt?) Based on what you have read so far, do you think it is enforceable? What will be the relevant factors that determine whether the entity which is requiring it will be able to enforce it against a person who claims that they caught Covid-19? What would the person have to prove if the waiver of liability is not enforceable?
* If you have not yet completed the introduction assignment on Canvas, please do so.
* Read:

*Covid-19 and Liability Limitations for the Health Care Sector* <https://crsreports.congress.gov/product/pdf/LSB/LSB10508>

*Ike Devji, Will a Waiver Protect Me from Covid-19 Infection Claims?*

* <https://www.physicianspractice.com/view/will-a-waiver-protect-me-from-covid-19-infection-claims>

# Week 2, August 31 and September 3

*Paying for Healthcare*

Readings on Canvas and from Chapter 2

# Week 3, September 7 (Labor Day Holiday) and 10

*Paying for healthcare*

Readings on Canvas from Chapter 7

## Week 4, September 14 and 17

*Paying for Healthcare*

Readings on Canvas and from Chapters 6 and 7

Guest Speaker Scheduled, Julie Rovner, Kaiser Health News

## Week 5, September 21 and 24

# Self-Assessment Multiple Choice Questions Due Sept 24th by start of class.

*Medicaid and Medicare*

Readings on Canvas and from Chapter 8

# Week 6, September 28 (No Class) and October 1

*Discrimination and Unequal Treatment in Health Care*

Readings on Canvas and from Chapter 5

## Week 7, October 5 and 8

*Discrimination and Unequal Treatment in Health Care*

Readings on Canvas and from Chapter 5

**Week 8, October 12 and 15**

**Practice Essay Question Due**

Fraud and Abuse

Readings on Canvas and from Chapter 12

## Week 9, October 19 and 22

Fraud and Abuse

Readings on Canvas and from Chapter 12

## Week 10, October 26 and 29

## All client letters, client presentations, and comments on the letters and presentations of others should be completed and posted on Canvas and by the start of class.

*Privacy and Cyber Security*

Readings on Canvas and Chapter 10

## Week 11, November 2 and 5

Quality Control Regulation and Healthcare

Readings on Canvas and from Chapters 3 and 4

## Week 12, November 9 and 12

Licensing and Accreditation

Readings on Canvas and from Chapters 3, 4, and 9

## Week 13, November 16 and 19

## Buying and Selling Healthcare Entities

Readings on Canvas and from Chapters 10, 11, and 13

## Week 14, November 23 Last Class

*Wrap up and Review*