**Patient Care: Health Law II: Law 6930 Spring, 2021**

**COURSE SYLLABUS**

**LAW 6930**

Professor Jennifer S. Bard

Wed. 4:45-6:45 pm, Room MLAC 106

Spring 2021

This syllabus contains information about the course’s policies, content, the exam format, and the material we will be using. 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 detailed instructions for each assignment.

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.

# COURSE DESCRIPTION:

There are no pre-requisites for this class. I do not assume that you have covered the material in Health Law 1. In contrast to Health Law I, which primarily considered issues of federal regulation relevant to hospitals and providers, **Health Law II looks at legal issues more likely to be of direct concern to individuals**. It will consider as much state law as federal law since many of the issues we discuss will be subject to individual state jurisdiction.

Topics will include: Informed Consent for Medical Treatment & Biomedical Research, Health Information Privacy and Cyber Security (including Telemedicine), The right to refuse care and the extent of the right to demand care, in situations such as organ donation, implementation of advanced directives. It will address these issues in the context of particular relevance to specific populations such as children, prisoners, detainees, newborns, pregnant women, veterans, populations who experience health disparities because of societal discrimination, nursing home residents, and those who may lack competency.

Although this course will not offer a comprehensive treatment of medical malpractice law, it will cover the elements of negligence in the context of the remedies available to patients who believe they have suffered harm associated with receiving health care.

# Course Mission:

To prepare future lawyers to 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.

# Introduction to the Syllabus:

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 make a decision about taking the class. External factors may require adjustments, and I promise to consult you whenever possible and to give you as much notice as possible if anything has to change.

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. We have never had a situation in the United States when so many otherwise healthy people became seriously ill at the same time. It is doubtful 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.

# 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:

* Develop an awareness of the federal and state framework of statutes and regulations.
* 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.
* By the end of this course, you will have an understanding of the legal issues most commonly faced by those who represent: (a) individuals who claim to have suffered harm associated with receiving health care or (b) the entities who may bear legal responsibility for these harms.

Having developed this awareness, you will be able to:

* Recognize the power of individual Constitutional Rights as factors in legislation intended to regulate the delivery of health care.
* Distinguish between the role that state and federal law play in how individuals receive health care.
* 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 issues that can be resolved through the legal system and those better suited to the application of alternative methods of dispute resolution and application of the principles of non-adversarial decision making such as those advocated by the field of therapeutic jurisprudence.
* Develop their identity as professionals by adhering to professional standards of behavior while in the class as a whole and when working in small groups.

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

# REQUIRED TEXT (Available Free Through Westlaw) :

Health Law is among the fastest-changing fields which makes it difficult to find any single text that can meet all of a student’s needs. Also, many issues in health law are controlled by state law--so it is impossible for any single text to give an accurate account of all relevant health law. On the other hand, there are general principles which can help organize your understanding.

Therefore, this course will rely on David Orentlicher, Health Law in a Nutshell, 3rd Edition (available free through Westlaw’s contract with the Law School) as an outline of general principles and contemporary articles, cases, and practice guides available through either public databases or those to which the University subscribes.

All Materials other than the Nutshell Will be available on Canvas (including slides, class recordings, and practice materials).

Here are the instructions for accessing the Orentlicher Nutshell--

**Access to Orentlicher Nutshell**

UF Law students have the opportunity to create an account (for free) which allows them to take notes, highlight, save favorites, download titles for offline access, and more. Here are the steps:

1. Go to <https://subscription.westacademic.com/>
2. If you are on campus, you can access the account without a login
3. To access off-campus, take notes or highlight, you will need to do the following:
4. Install the UF Virtual Private Network (VPN) to your device, you will need to be connected in order to access your Westlaw Academic account off-campus. You can install the Virtual Private Network (VPN) software using the instructions provided by UFIT at <https://it.ufl.edu/ict/documentation/network-infrastructure/vpn/>.
5. Click “Create an Account” in the upper right-hand corner, and follow the prompts using your UFL email address
6. Wait for an email that says your account has been approved (it should only take a few minutes)
7. Log into your new account on West Study Aids

If you are having difficulty with accessing the account, please reach out to Gail Mathapo, Faculty Services Librarian at [gmathapo@law.ufl.edu](mailto:gmathapo@law.ufl.edu).

# 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.

# Evaluation, Policy, and Procedures:

**CLASS ATTENDANCE:**

This two-credit class meets once a week. Students should be present and prepared for each class session.

More than three absences will put you at risk of being excluded from the class, not being allowed to take the final exam, or having your grade lowered. Please contact me if you anticipate ever missing this many classes.

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 assignments. Please email me at [Jennifer.bard@ufle.du](mailto:Jennifer.bard@ufle.du) after you read this to confirm that you understand this requirement.

School of Law policy, informed by the Standard of Accreditation of the ABA, requires regular and punctual attendance. You verify your attendance by signing the class chart, and no student may sign for another. I reserve the right to lower the final grade by one full letter grade of 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. Reading assignments are posted on the “Modules” link on the Canvas site (located on the left side of the Canvas site).

# 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>

# Components of Final Grade

**Class Participation 30% of Grade**

1. For each class session, all students are expected to have read and prepared the materials for class. “NS” refers to the Nutshell. All other materials for this course will be posted on Canvas.

Every student will be asked to engage with the material every day. But I will also assign groups of “experts” in advance who will have the responsibility of leading break-out group discussions. Each week’s assignments will contain an activity such as questions to answer or research to conduct.

1. We will have a traditional law school on-call system so that individual students will sign up for specific topics and specific class periods. These on-call students will start discussions, but the class will still be open for everyone to participate.
2. We will also have guest speakers with whom you will be engaging. Each of you will be asked to submit questions for the guest speaker at least three days before their scheduled visit.

Final Exam 70% of Final Grade

The final exam will be a two-hour, open book multiple-choice exam administered through the law school on the date set for our final exam. The topics of the exam will track class assignments. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**Health Law Assignments: Overview**

**Professor Bard**

**Spring 2021**

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| --- | --- | --- |
| Class Participation | Final Exam | Grade Total |
|  | Open-Book Final Exam 60 Points  As scheduled by the law school | Combination of Class Participation & Final Exam |
| 30 | 70 | 100 |

# Student Drop-in Times (Office Hours)

I look forward to spending time with all of you individually during the semester and will be scheduling at least one mandatory small group session so we can talk about health law. As you know, all out-of-class contact will be via Zoom. During 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 Personal Link: <https://ufl.zoom.us/my/profbard>

from Mondays 2-4 and Wednesdays 2-3. Please feel free to drop in. If you anticipate wanting a reference at a later date, I really encourage you to drop by or make an appointment so I can learn more about your background and interests.

If you want to make an appointment during those times or another time, please email me, Jennifer.bard@ufl.edu

**Communicating via 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.

**Covid-19 Procedures**

We will comply 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:

**For students who are enrolled in face-to-face instruction:**

* We will have face-to-face instructional sessions to accomplish the student learning objectives of this course. If class is scheduled in person, then those students enrolled in person instruction should bring headphones so we can all communicate.
* If you are enrolled for in-person class, you are free to attend in person or on Zoom as you wish.

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.
* Please take care to maintain social distance as you enter and exit 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/>.

**Mask Wearing**

If you cannot wear your mask in class, of course you cannot be in class. This year, *Professors may also choose to take noncompliance into account when grading students or determining if a student may remain in a course*

**For Remote Learners--Zoom Basics--**

It’s important that we all remember that students attending in Zoom are actually letting the rest of us into their homes—so please let’s all consider ourselves guests and respect each other’s privacy. Treat Zoom Class like regular class—remember that you are not just visiting; you are there to participate.

**If you have any concerns or questions or issues with Zoom, please let me know. These are GENERAL points for everyone who has not talked to me about their individual situation.**

* Any student can attend class on Zoom at any time without prior notice—this is 100% your choice.
* If you are enrolled for in-person class, you are free to attend in person or on Zoom as you wish.
  + BUT if you are enrolled to attend remotely, we need to work with Dean Inman’s office if you want to attend in person (so we can maintain the social distancing numbers).
* It is your responsibility to use the attendance system to confirm your own attendance in class. Being logged into Zoom is not sufficient.
* In addition to attendance, please be prepared for check-ins.
* Being on Camera: 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.
* If you must step away, please turn off your camera and (if relevant) microphone (which may be part of your headphones).
* That means, same clothes you would wear to class, same professionalism within the reality of being home (OK to sit on bed, please don’t spend class in bed; OK to have pets with you, OK to take class outside, please don’t be in a noisy public place).
* You are welcome to bring guests to class—but please let me know whether you are on Zoom or online. It is 99% of the time OK, but you are responsible for your guest knowing the extra privacy concerns of Zoom.

**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. So of course, 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.

**Prohibition on Student Recording and Photography and Social Media Posting –More Important Because of Zoom.**

Remember that because of Zoom, we will all be visitors in people’s homes! 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**

All classes will be available to all students for review, whether in person or on Zoom. However, the fact that everyone will have access to this recording makes it even more important that you respect the privacy and the purpose of recording--this material is recorded to support the learning of students enrolled in this class.

**Course Evaluation**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluera.com/ufl/](file:///C:\Users\rmcilhenny\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\QH37XRU4\ufl.bluera.com\ufl\). Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/)

**Final Statement--**

If you have any questions about this syllabus, please do not hesitate to ask me. In the past, students who read through the whole syllabus until the end during the first week of class find that they have a much less stress semester. I therefore encourage you to email me at [Jennifer.Bard@ufl.edu](mailto:Jennifer.Bard@ufl.edu) to acknowledge that you have in fact read through to the end. Thank you-and I really look forward to learning with you this semester!

**II. Roadmap of Class Topics—specific assignments for day’s class on Canvas**

You will receive detailed assignments each week on Canvas. The outline below will indicate what topics we are doing on which days. Also, each student will be signing up to be on-call. NOTICE--Topics listed for the last four classes may change subject to a survey of student interests during the first two weeks of class.

## Week 1, January 20, 2021

## The Professional-Patient Relationship

Learning Goals for the week:

Students will be able to explain to a client the (a) definition of health care, (b) how it is delivered in the United States, and (c) how the health of any particular individual is affected by the kind of healthcare they can access and (d) how the financial structure of health care in the USA effects the care provided.

**Read:** Samantha Artiga, Kendal Orgera, and Oliva Pham, *Kaiser Family Foundation, Disparities in Health and Healthcare: Five Key Questions and Answers*, March 4, 2020, <https://www.kff.org/racial-equity-and-health-policy/issue-brief/disparities-in-health-and-health-care-five-key-questions-and-answers/>

**Read:** The Commonwealth Fund, *U.S. Health Care from a Global Perspective*, (2019), <https://www.commonwealthfund.org/publications/issue-briefs/2020/jan/us-health-care-global-perspective-2019>

**Read,** Khiara M. Bridges, Implicit Bias and Racial Disparities in Health Care, <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/racial-disparities-in-health-care/>, to be introduced to how issues of race and gender discrimination affect health care access & outcomes in the U.S.

**Listen to Podcast**, An Arm and a Leg, about how the narrative about the health care industry has been characterizing itself. <https://khn.org/news/article/an-arm-and-a-leg-how-a-former-health-care-executive-became-a-health-care-whistleblower/> (you can also read the transcript)

# Week 2, January 27, 2021

# The Professional-Patient Relationship: Informed Consent, the Physician’s Obligations

## Week 3, February 3, 2021

# Liability of Health Care Professionals to Patients

## Week 4, February 10, 2021

## Liability of Health Care Institutions to Patients

## Week 5, February 17, 2021

## Legal Issues Involving Reproduction and Birth

## Week 6, February 24, 2021

# Legal Issues Involving Reproduction

## Week 7, March 3, 2021

# Legal Issues Involving Children and Adolescents

## Week 8, March 10, 2021

**Legal Issues Involving Life and Death Decisions**

## Week 9, March 17, 2021

## Law & Ethics of Requiring, Withholding, and Withdrawing Medical Care

## Week 10, March 24, 2021

## Legal Issues involving Organ Donation

## Week 11, March 31, 2021

## Legal Issues of Prisoners and Detainees

## Week 12, April 7, 2021

## Legal Issues Involving Veterans and Active Duty Military

## Week 13, April 14, 2021

## Biomedical Research in Conjunction with Clinical Care (when an individual is both a patient and a research subject

## Week 14, *Wrap up and Review*