

Syllabus

CONTACT DETAILS

Instructor: Keegan Warren-Clem, JD, LLM

O. Fridays 12p-2p via Zoom | C. provided | E. KWarren-Clem@Law.UTexas.edu

COURSE DETAILS

Term: Fall 2021, Wednesday, August 18, 2021—Monday, December 6, 2021

Term Finals Period: December 9-15, 2021; Course Final Deadline: Saturday, December 11, 2021, at 5p

Title/Credits: LEB 334M, Healthcare Law and Policy (Unique 03355); 3 Units

Meeting Days/Times/Location: Mondays & Wednesdays at 2p—330p via synchronous in-person sessions in GSB 2.122 consistent with the published course schedule with supplemental asynchronous lectures

Required Textbook: Joshua Perry & Dale Thompson, *Law and Ethics in the Business of Health Care* (2017), ISBN: 978-1-63460-484-0; Elizabeth Tobin-Tyler & Joel B. Teitelbaum, *Essentials of Health Justice: A Primer* (2018), ISBN: 978-1284152074; other texts as assigned.

N.b.: This class is not the equivalent of LEB 323.

Descriptive Statement: The purpose of this course is to introduce students to the legal and policy environment in which the U.S. health care system operates. Few industries are more significantly regulated and shaped by governmental policy decisions and legal proceedings at both the state and federal levels. From Medicare and Medicaid to the Patient Protection and Affordable Care Act to state laws protecting doctors from malpractice actions, the legal and policy environment of health care industry is a rich area for study.

Restrictions: There are no prerequisites for this course. Upper-level standing is required.

Justification: Healthcare in the U.S. accounts for a larger percentage of GDP than manufacturing and employs more than 12 million people. This class provides students interested in a career in this multifaceted industry with basic knowledge of the policy, legal, and ethical environment that shapes health in the United States.

Course Website: Canvas

LEARNING OBJECTIVES & GOALS

The goals of this course are several:

- 1) To learn about Health Law and Policy in terms of Substance, Process, Skills and Values.
 - a) *Substance* means a deep understanding (mastery) of the history, legislation, public policy purpose and implications, rationale, stakeholders, trends, challenges and opportunities facing the health care system. A deep understanding occurs only if there is a working understanding of the legal elements, explanations, examples, exceptions, and comparisons of the rules of law, relevant public policy arguments, and regulatory framework governing those laws and policies.
 - b) *Process* means the way the public policy and legal rules work to achieve public policy goals, avoid disputes and, once disputes occur, to generate effective dispute resolution. Procedure includes an examination of law and policy in both theory and practice.
 - c) *Skills* refer to various intellectual, professional, and performance competencies, including critical reading, thinking, writing, effective verbal communication, collaboration, advocacy, and leadership. Critical reading means being able to distinguish and highlight facts, rules, public policy views, and other

aspects of texts. Critical thinking has different cognitive levels, from rote knowledge, to understanding, to issue spotting, to problem solving, to synthesis. Critical writing means to express oneself in an organized manner clearly, concisely, and persuasively in a highly transparent style. Effective verbal communication is the ability to synthesize one's thoughts and effectively communicate a position clearly and succinctly. Collaboration is the ability to bring together disparate persons and viewpoints and build consensus in furtherance of a noble aim. Leadership skills involve influencing others positively to execute a plan and accomplish a shared goal; it includes several components: executive self-management (self-awareness; awareness of impact of actions on others); and management of professional relationships.

- d) *Values* are ethical guideposts for you as a person and professional, including preparation, professionalism, judgment, respect, community, and advocacy. There should be intentionality about utilizing, adhering to, and promoting values, both for their intrinsic benefit and for the instrumental effect of better practices.
- 2) To learn substantive material in a variety of applicable contexts, including ethics, philosophy, business and economics, law, policy, politics, public opinion, the national regulatory environment, international norms and global health challenges, biomedical and health sciences, technology, etc., stressing the integration of theory, public policy, legislation, and practice.
- 3) To fully participate, be engaged, and contribute to the cumulative group learning process, and to create sustainable good learning practices.
- 4) To learn from classmates and others during class discussion, from listening, and respecting different learning styles, values, positions, and other techniques.
- 5) To have fun in an environment conducive to an active exchange of knowledge.

At the end of this course students should be able to, in both oral and written format:

- Demonstrate understanding and knowledge about the history and evolution of select national and international rules, regulations, institutions, and systems pertaining to health care law and policy;
- Understand the complexity of the health care delivery system and the corresponding socio-economic, public opinion, political, and transnational challenges that make difficult identifying and agreeing on a national solution;
- Evaluate the soundness of current national and state laws and identify the underlying policy issues that led to the creation of each, along with the intended and unintended effects and outcomes; and
- Evaluate comparative approaches to health and well-being, care delivery, patient engagement, and the role of the state therein.

COURSE POLICIES

Diversity and Inclusion

It is the professor's intent that students from all diverse backgrounds and perspectives be well-served by this course, that students' learning needs be addressed, and that the diversity that students bring to this class can be comfortably expressed and be viewed as a resource, strength, and benefit to all students. Please take any concerns to the professor at any time.

Classroom Safety and COVID-19

To help preserve our in person learning environment, the university recommends the following:

- Adhere to [university mask guidance](#).
- [Vaccinations are widely available](#), free and not billed to health insurance. The vaccine will help protect against the transmission of the virus to others and reduce serious symptoms in those who are vaccinated.
- [Proactive Community Testing](#) remains an important part of the university's efforts to protect our community. Tests are fast and free.
- Visit protect.utexas.edu for more information

Recordings

Lectures are not to be recorded by any form of recording device or application. The only exception is for students who must record class sessions due to a disability. For students who have a disability necessitating the recording of class sessions, arrangements must first be made with the Disability Services Office.

To the extent that it is necessary and appropriate, online class recordings may be reserved by the instructor only for students in this class and only for educational purposes. These records are protected under the federal educational privacy law known as FERPA. As described more fully below, the recordings should not be shared outside the class in any form. Violation of this restriction could lead to Student Misconduct proceedings.

Cell Phone Use

Students should silence their cell phones prior to entering the classroom, whether virtual or in-person. In the exception of an emergency where a student needs to leave their cell phone powered on, the phone should be in vibrate or silent mode, and the student should leave the classroom to answer the phone call.

Sharing of Course Materials is Prohibited

No materials used in this class, including, but not limited to, lecture hand-outs, videos, assessments (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, and additional problem sets, may be shared online or with anyone outside of the class unless you have the instructor's explicit, written permission. Unauthorized sharing of materials promotes cheating. It is a violation of the University's Student Honor Code and an act of academic dishonesty. The instructor is well-aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.

TEACHING METHODS

Classroom Methodology & Course Pedagogy

- Synchronous interactive lecture and presentations;
- Synchronous and asynchronous videos and lectures;
- Synchronous and asynchronous student presentations;
- Field trips, including professional shadows, observation, and/or experiential learning;
- After-class chats; emails; discussion board postings;
- Student discussion leaders;
- Small-group work;
- Guest speakers;
- Out-of-class assignments –researching, writing, interviewing, experiencing;
- Midterm and Final Exam (online);
- And/or any other, as deemed appropriate by the professor.

Approach to Learning

The casebook and primer will form the foundation of the course and should be available during all classes, along with any supplemental cases and research or journal articles posted on Canvas. The classes will involve a discussion of required reading and exploration of the assigned readings, additional material as appropriate, and other independent and/or group activities and/or assignments. N.b.: All assigned material is examinable.

This course uses the Case Method, also known as the Socratic Method, an approach to the study of law commonly used in law school courses. To study each topic, you should:

- work through the course materials, including briefing all cases;
- access relevant resources on the course website, textbook website, other websites, and within the library;
- prepare for, attend, and participate/engage in all classes; and
- complete all exercises and assignments to the best of your ability.

COURSE REQUIREMENTS, EVALUATION, ASSESSMENT & GRADING

Class Attendance/Absence and Participation

Class attendance is required. "Attendance" means logging in before class begins and logging off after class ends. Attendance during online sessions may be taken at the professor's discretion based on logins into the given class session and participation in the Daily Attendance Challenge. Logging on as another person is a serious contravention of the Honor Code.

More than two (2) unexcused absences may result in a lowered grade at the discretion of the professor; the same consequence may result if a student is unprepared-for, or late to, or inattentive in more than two classes. The same consequence may also result if a combination of the aforementioned exists. If a student's absences become excessive he or she may, at the professor's discretion, be dropped from the course. Absences of greater than the two classes may be excused in exceptional circumstances, such as personal illness or the illness of a parent/child or other close person, subject to proper documentation and required additional work.

In the event that a student is unable to attend a class, he or she is to provide notification as a matter of courtesy to the professor either by [email](#) prior to the class that will be missed. It is a student's responsibility to obtain class notes/assignments if he or she is absent. Students may see the professor to discuss the materials that he or she has missed, but the professor will not supply any notes other than handouts that were given to all students during class.

Active participation in class is required. Students are required to have undertaken the designated reading and exercises prior to each class. This class will use an "on call" system, through which assigned students will be expected to proactively contribute to the learning environment and respond to questions when called upon during a designated set of classes. For full participation credit, students are expected to contribute significantly to class discussions using legal and policy support for their views, not merely personal opinion as to current events. At times this may also include working in groups. Passes are not permitted to be used on the days the student is on call.

It is recognized that due to exceptional circumstances, students may be unable to prepare for a class. Therefore, a Pass System has been adopted for this class whereby each student is provided with two passes for use during the semester. This means that a student is able to request that they be excused from being called upon in class by placing a written note to this effect on the lectern prior to the commencement of the class. As this is a "2-Pass System", students may exercise this option only two times during the semester. Non-attendance is equal to using a pass.

Please note that attendance and participation are evaluative and assessment measures that are factored into the student's final grade. Noteworthy contributions, as determined solely at the discretion of the professor, may result in additional points being awarded; such bonus, if any, is based on particularly high-quality, consistent, voluntary, thoughtful, and meaningful class participation that is relevant to class discussion.

Notification Regarding Recruiting Conflicts

Conflicts occasionally arise between classes and the search for employment. The professor understands how important the job search process is to you, and McCombs provides many resources in support of career exploration and search. However, UT is first and foremost an educational institution, and your degree will be the credential that certifies your education. As such, education will take precedent whenever such a conflict arises. All companies that recruit at McCombs are informed of this fact. Should a conflict arise, the following steps are recommended:

- Check the syllabus to see if an exception is provided that would allow you to satisfy class obligations while still attending the job event (e.g., paper instead of quiz, allowed quiz drops, etc.).
- Note that a job-related conflict, whether a current job or a potential one, is usually not an acceptable

reason for missing an exam or taking a make-up, and may not be acceptable in other circumstances either. If any doubt exists, check with the professor.

- If no exception is provided, inform the company that an academic conflict exists and request an accommodation.
- If no accommodation is provided, contact BBA Career Services and request their assistance in resolving the situation.

Note that while the university does have influence with the companies that recruit at McCombs, not all conflicts can be resolved, and it has little or no influence with companies that do not recruit through the Recruit McCombs system. Finally, be aware that it is not unreasonable for an employer to expect you to go to some lengths to show your interest in them. In a recent example, several students completed an exam at 9 pm and were expected to attend an on-site interview in Houston the next morning at 8 am. A 5:30 am flight from Austin was available, and the students were expected to be on it.

University of Texas Honor Code (<http://deanofstudents.utexas.edu/sjs/conduct.php>)

The core values of The University of Texas at Austin are learning, discovery, freedom, leadership, individual opportunity, and responsibility. Each member of the University is expected to uphold these values through integrity, honesty, trust, fairness, and respect toward peers and community.

Policy on Scholastic Dishonesty

The McCombs School of Business has no tolerance for acts of scholastic dishonesty. The responsibilities of both students and faculty with regard to scholastic dishonesty are described in detail in the BBA Program's Statement on Scholastic Dishonesty at <http://my.mcombs.utexas.edu/BBA/Code-of-Ethics>. By teaching this course, the professor has agreed to observe all faculty responsibilities described there. By enrolling in this class, you have agreed to observe all student responsibilities described there. If the application of the Statement on Scholastic Dishonesty to this class or its assignments is unclear in any way, it is your responsibility to ask the professor for clarification. Students who violate University rules on scholastic dishonesty are subject to disciplinary penalties, including the possibility of failure in the course and/or dismissal from the University. Since dishonesty harms the individual, all students, the integrity of the University, and the value of our academic brand, policies on scholastic dishonesty will be strictly enforced. You should refer to the Student Judicial Services website at <http://deanofstudents.utexas.edu/sjs/> to access the official University policies and procedures on scholastic dishonesty as well as further elaboration on what constitutes scholastic dishonesty. You may wish to review and make sure you understand the plagiarism policy at http://deanofstudents.utexas.edu/sjs/scholdis_plagiarism.php.

Additionally, all assignments in this course may be processed by TurnItIn, a tool that compares submitted material to an archived database of published work to check for potential plagiarism. Other methods may also be used to determine if a paper is the student's original work. Regardless of the results of any TurnItIn submission, the professor will make the final determination as to whether or not a paper has been plagiarized.

Value of Accessibility, Inclusivity, and Compliance

The university is committed to creating an accessible and inclusive learning environment consistent with university policy and federal and state law—and so is your instructor. Please let the instructor know if you experience any barriers to learning so that she can work with you to ensure you have equal opportunity to participate fully in this course. If you are a student with a disability, or think you may have a disability, and need accommodations please contact Services for Students with Disabilities (SSD). Please refer to SSD's website for contact and more information: <http://diversity.utexas.edu/disability/>. If you are already registered with SSD, please deliver your Accommodation Letter to me as early as possible in the semester so we can discuss your approved accommodations and needs in this course.

Religious Holy Days

By UT Austin policy, you must notify the professor of your pending absence at least fourteen days prior to the date of observance of a religious holy day. If you must miss a class, an examination, a work assignment, or a project in order to observe a religious holy day, you will be given an opportunity to complete the missed work within a reasonable time after the absence.

Absence for Military Service

A student is excused from attending classes or engaging in other required activities, including exams, if he or she is called to active military service of a reasonably brief duration.

Use of E-Mail for Official Correspondence to Students: <http://www.utexas.edu/its/policies/emailnotify.php>

Writing Center: <http://www.uwc.utexas.edu>

Examinations: <http://catalog.utexas.edu/general-information/academic-policies-and-procedures/examinations>

Campus Safety

Please note the following recommendations regarding emergency evacuation, provided by the Office of Campus Safety and Security, 512-471-5767, <http://www.utexas.edu/safety>:

- Occupants of buildings on The University of Texas at Austin campus are required to evacuate buildings when a fire alarm is activated. Alarm activation or announcement requires exiting and assembling outside.
- Familiarize yourself with all exit doors of each classroom and building you may occupy. Remember that the nearest exit door may not be the one you used when entering the building.
- In the event of an evacuation, follow the instruction of faculty or class instructors.
- Students needing assistance in evacuation should inform the instructor by email in the first week of class.
- Do not re-enter a building unless given instructions by the following: Austin Fire Department, The University of Texas at Austin Police Department, or Fire Prevention Services office.
- Behavior Concerns Advice Line (BCAL): 512-232-5050 (or <https://operations.utexas.edu/units/csas/bcal.php>).
- Further information regarding emergency evacuation routes and emergency procedures can be found at: <http://www.utexas.edu/emergency>.

Student Evaluation: The evaluation of students will be based on:

- (1) Preparedness for class as demonstrated through attendance, class participation, asking and answering questions (especially when “on call”), assignments, etc.;
- (2) Discussion leadership and presentation of timely relevant topic;
- (3) Interview of an insurance participant;
- (4) Community health law or regulation hearing/debate attendance and presentation;
- (5) Memorandum re Notice of Proposed Rule;
- (6) A mid-semester assessment, which includes a take-home component;
- (7) A final examination, which includes a take-home component; and
- (8) Possible additional tasks that may involve diagnostic and formative assessment of student performance.

Details of each learning opportunity are available on the course website.

Grade Distribution

Letter grades are assigned based on your weighted course average score and your performance relative to the rest of the class (commonly called a “curve”). This course uses the target distribution established by the Healthcare Certificate Program Committee as a guideline for establishing final grades, with a median grade between 3.2 and 3.4. Plus (except A+) and minus grades will be used for final class grades.

Grade Breakdown (subject to change at the professor's discretion, with notice to students):

#	Activity/Experience	Window/Deadline	Value
1	Attendance, Preparedness, & Participation	Throughout	20%
2	Insurance Interview*	U, 10/10 @4p	10%
3	Discussion Leader	As assigned	15%
4	Midterm*	R, 10/14 @8a – M, 10/18 @8p	15%
5	Rulemaking Comment	U, 11/7 @4p	10%
6	Community Health Field Assignment	U, 11/21; U, 11/28; U, 12/5 @4p	15%
7	Final Examination*	T, 12/7 @8a – S, 12/11 @5p	15%
*requires course passcode			TOTAL 100%

SCHEDULE OF CLASSES AND READING ASSIGNMENTS

Below is the “big picture” that unites the individual topics we will explore. In general, the readings are designed to provide a broad overview of the various laws and policies that give shape to the healthcare system. Reading assignments for the semester, subject to update, are provided separately on the Schedule of Classes.

- 1) Upstream Health Law
 - a) Introduction to Health & Health Care, and Law & Policy
 - b) The American Legal System as Health Determinant
 - c) Health Equity
 - d) Health-Supporting Legal Programs
 - e) The Patient Protection and Affordable Care Act
 - f) Health Care Delivery Systems Change
- 2) Downstream Health Law
 - a) Contracts
 - b) Individual Torts
 - c) Institutional Torts
 - d) Information Management
 - e) Intellectual Property
 - f) Fraud and Abuse
- 3) Community Health

The Case Method

The coursework contains references to and/or summaries of many cases, and students are responsible for all assigned material. For convenience, a list of select judicial opinions—generally those assigned to be read in full or substantial part—that are central to the above themes is alphabetically provided here:

1. *Anesthesia Med. Grp. v. Buras*
2. *Brownsville Med. Ctr. v. Gracia*
3. *Buchanan v. Warley*
4. *Canterbury v. Spence*
5. *Castle Rock v. Gonzales*
6. *Consumer Health Info. v. Amylin Pharms.*
7. *Cooper v. Sisters of Charity*
8. *Darling v. Charleston Comm’y Memorial Hosp.*
9. *DeShaney v. Winnebago Co. Dep’t of Soc. Svcs.*
10. *Downer v. Veilleux*
11. *Elam v. College Park Hosp.*
12. *Ennix v. Stanten*
13. *Helling v. Carey*
14. *Henderson v. Mason*
15. *Hurley v. Eddingfield*
16. *Jacobson v. Mass.*
17. *Jew Ho v. Williamson*
18. *Liebeck v. McDonalds*
19. *Martin v. Hixenbaugh*
20. *Mayo Collaborative Svcs. v. Prometheus Labs.*
21. *Miller v. Johnson*
22. *Nicholson v. Memorial Hosp. System*
23. *North Broward Hosp. Dist. v. Kalitan*
24. *Prof’l Beauty Fed’n Cal. v. Newsom*
25. *Raglin v. HMO Illinois*
26. *Randi A.J. (Anon.) v. Long Island Surgi-Center*
27. *River Park Hosp. v. BlueCross BlueShield of Tenn.*
28. *Roberts v. Ohio Permanente Med. Grp.*
29. *Schloendorff v. Soc’y of New York Hosp.*
30. *Shilkret v. Annapolis Emergency Hosp. Assoc.*
31. *Sloan v. Metropolitan Health Council*
32. *Steinberg v. Chicago Med. School*
33. *Tarasoff v. Regents of Univ. of Calif.*
34. *U.S. & Elin Baklid-Kunz v. Halifax Hosp. Med. Ctr.*
35. *U.S. v. Greber*
36. *U.S. v. Krizek*
37. *WellSpan Health v. Bayliss*
38. *Welsh v. Bulger*
39. *Whalen v. Roe*
40. *Wickline v. Calif.*
41. *Wilson v. Blue Cross of S. Calif.*
42. *Wilmington General Hosp. v. Manlove*