

Sturm College of Law
L4444: Medical Malpractice Law & Litigation

Course Syllabus

INSTRUCTOR INFORMATION:

Instructor: Jennifer L. Keel

You may contact me via email or telephone at my office. Email is preferred and will usually result in a faster reply because I travel quite a lot and am not always in the office.

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SCHEDULE OF CLASSES:

Mondays and Wednesdays from 4:15 to 5:30, Frank H. Ricketson Law Bldg. room 170

COURSE SCOPE & OBJECTIVES:

This course is divided into 15 weeks, of 2 class sessions per week, and is organized to give students a broad context within which to study the unique aspects of medical malpractice litigation. Because the course is a survey, it will out of necessity cover each topic with a broad brush.

Students will demonstrate a basic competence in the important concepts of medical malpractice litigation, including but not limited to:

- Burdens of proof in MM claims;
- Prima Facie elements of a MM claim;
- Evaluating standard of care;
- Vicarious liability, hospital/facility liability
- Calculating the statute of limitations and other critical deadlines, exceptions that alter these deadlines;
- Case selection process;
- Identifying defendants and causes of action;
- Location and retention of experts;
- Special statutes that may apply to medical malpractice claims;

- Damages, damage caps, governmental immunity for certain defendants

COURSE MATERIALS:

Medical Liability & Treatment Relationships Edition: 3rd
Author: Hall
ISBN: 9781454805335
Copyright Year: 2013
Publisher: Aspen Publishers, Incorporated

EVALUATION PROCEDURES:

Final Exam	60%
Homework	20%
Attendance & Participation	20%

Attendance & Participation. We will meet only 28 times this semester. You, your peers, and I will all benefit by your attendance and participation, and accordingly, it is worth a valuable portion of your grade. Please come to class. If you cannot come to class, please let me know when and why you will be out. If the absence is excused, it will not count against your grade. If I do not hear from you before class, I will assume you just are not that interested.

Homework. You will have 1 homework assignment worth 20% of your grade. Think of this as a gift to you, rather than one more thing to do. It is *in lieu of* a “midterm,” which would have to be much harder and more comprehensive to be given that label, and is designed to improve your grade on the final. It will be an opportunity to correct problems that will hurt your performance on the final exam, in a setting where the consequences are much smaller for an error. I do not love grading papers, so I keep this assignment short. I do not dispense with it, however, because I have found over the years in teaching this course that students do a much better job on the final exam when they have a chance to test a bit of their knowledge beforehand.

Final Exam. The final exam will be an essay exam in which students are provided a case file and asked to discuss various aspects of a potential medical malpractice claim evident therein. Students may use any of the materials used or created in class, including notes, texts, C.R.C.P., and handouts to complete the examination. NO collaboration with other people is permitted, however, and this is considered cheating. We will spend some time toward the end of the course discussing the final in more detail.

CITATION AND REFERENCE STYLE:

Legal citations should adhere to Bluebook format for any written work product. Citations to medical information need not adhere to any specific reference style, but should be consistently done and need to provide sufficient information for the professor to locate the cited material.

WRITTEN WORK PRODUCT:

You will be lawyers – some of you are in your final year of school now. Words, and your ability to artfully utilize them, are the primary tools in the trade you have chosen. You will have but 2 documents to write and hand in for me – your homework assignment, and your final examination.

Please know that I will read your written work product...every word of it. You are graduate students, so I expect you to write at a graduate level. That means you demonstrate the ability to employ proper grammar, punctuation, and correct spelling throughout your organized thoughts and persuasively written prose. You will have strict page limits, which will require that you write concisely. Form and content are both important here. Please do not discount the value and importance of the time you spend proofreading and refining your work.

ACADEMIC HONESTY:

Students are asked to review their academic responsibilities as outlined in the Student Handbook, with particular attention to the Code of Academic Conduct, which may be accessed on the Law School's Website, at:

<http://www.law.du.edu/index.php/student-handbook/student-handbook/personal-responsibilities#code>

COURSE SCHEDULE:

You may obtain copies of relevant reading materials via email, in your text for this course, or via WestLaw using citations provided for you. Additional materials may be distributed in class throughout the semester, emailed to you, or posted on TWEN. (Keep your eyes peeled!)

The assignments listed below will be covered on the date listed unless you are notified of a schedule change. Students are expected to come to class *having already read, and prepared to discuss* the assignment for that day.

Jan 11: Advance assignment (med mal factbook) and discussion, opening announcements

Jan 13: Text: 30-37 (introduction to med mal issues), 67-85 (treatment relationship, duty to treat; stop before section IIC re EMTALA)

Jan 18: no class

Jan 20: Text: finish 67-85; 85-91 (EMTALA)

Jan 25: Text: 105-119 (forming the treatment relationship)

Jan 27: Text: 119-130 (limiting and terminating the treatment relationship)

Feb 1: Text: 169-182 (confidentiality ad HIPAA)

Feb 3: Auditing activity in electronic medical records; **Handouts:** ASTM Audit and Disclosure Logs for use in Health Information; Trial Magazine Article May 2014: Follow the Audit Trail

Feb 8: Text: 172-182, 384-386 notes 1-5 (electronic health records and confidentiality); 45 CFR 164.312, 45 CFR 170.210

Feb 10: Text: 197-221, skim notes on pp 221-226 (informed consent)

Feb 15: Text: 308-321, 324-341 (standard of care)

Feb 17: Text: 308-321, 324-341 (standard of care) continued

Feb 22: Text: 387-404 (Alternate theories of liability, vicarious liability)

Feb 24: Text: 392-398 (vicarious liability & Captain of the Ship); also please read *Adams v. Leidholdt*, 38 Colo. App. 463; *Beadles v. Metayka*, 135 Colo. 366

Feb 29: Text: 343-350 (Res Ipsa Loquitur & negligence per se)

Mar 2: Text: 464-481 (Hospital liability) – **HOMEWORK ASSIGNMENT GIVEN**

Mar 7: Nursing Negligence & hospital liability

Mar 9: Text: 414-423 (causation and loss of chance doctrine) – **HOMEWORK ASSIGNMENT DUE**

Mar 14: no class, spring break

Mar 16: no class, spring break

Mar 21: Text: 414-423 (causation); for further reading: *Rupert v. Clayton Brokerage Co.*, 737 P.2d 1106 (See HN7 re substantial contributing cause); *Sharp v. Kaiser Foundation*

Health Plan, 710 P.2d 1153 (substantial factor); *Schafer v. Hoffman*, 831 P.2d 897 (thin-skull doctrine); *Stephens v. Koch*, 192 Colo. 531 (pre-existing condition)

Mar 23: Text: 423-431 (statute of limitations); for further reading: CRS § 13-80-102.5 re SOL; *Elgin v. Bartlett*, 994 P.2d 411 (SOL / tolling); *Smith v. Boyett*, 908 P.2d 508 (SOL); we will also discuss conditions precedent to suit including medical review panels and GIA claim notices

Mar 28: Medical records and medical lingo

Mar 30: Text: 431-437 (Affirmative defenses)

April 4: Discovery and depositions – privilege logs, discovery requests, discovery disputes and motion practice

April 6: Text: 359-372, 372-380 (Qualification of medical experts, tactics & techniques)

April 11: Selecting & working with experts; for further reading: *Melville v. Southward*, 791 P.2d 383 (requirement for expert witnesses); *Estate of Ford v. Eicher*, 250 P.3d 262 (expert testimony requirements); *People v. Ramirez*, 155 P.3d 371 (expert testimony requirements)

April 13: Text: 446-451 (damages and settlement), 7A Colo Prac., Personal Injury Torts and Insurance § 38.13: Subrogation (2nd ed) (subrogation)

April 18: Damages, life care planning, settlement considerations

April 20: Course wrap-up & final exam tips

April 25: Course wrap-up & final exam tips

NOTE TO STUDENTS:

Being a trial lawyer means you have to be prepared, organized, and, at the same time, able to change your plans and go with whatever happens in the courtroom. I am a full-time trial lawyer, not a full-time professor. This means I have a full case load, and at the present time, nearly all of my clients and filed cases are in other states. There are times when I have to travel for court appearances and depositions. I will make every effort to schedule those things around this course, but there may be times when that is impossible to do.

Therefore, I ask you to please be flexible – a skill you will need in your real lives as trial lawyers as well. Do not panic if the schedule gets a little off – I have built in time to accommodate in case we get behind schedule. I will not include things on the final exam for

which you have not been fairly prepared. In short: relax, come prepared to learn, and we'll all have fun.

We may also have guest lecturers during the course of the semester, which may include, depending on their availability, representatives from the defense side of medical negligence cases, a presiding local judge, one or more physicians and/or nurses. These people are all full-time professionals who, if they are available, and as a favor to me, have agreed to donate their time to come and visit with you, to augment your experience in this course and provide you with a wider variety of viewpoints. In some cases, we will have to adjust our class schedule to accommodate our guest speakers when they can be available to us. We ask that you make every effort to be present in class and up to date on your reading assignments, in order to make the most of our guest speakers' time and experience.