

HOFSTRA UNIVERSITY SCHOOL OF LAW

Medical Malpractice

Spring 2019 (2 Credits)

Thursdays, 6:10-8:00 PM

Room 242

Instructor: Steven L. Sachs

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Office Hours: By appointment

- I. **Course Overview:** The course will provide an immersive and step-by-step analysis of medical malpractice litigation in New York. In doing so, students will learn about the litigation process in New York from inception to resolution, including discussion of relevant case law and statutes, as well as the practical concerns facing medical malpractice litigators. Supplementary course materials will include documents from “real world” cases that have been litigated. The course will also explore the myriad issues surrounding tort reform movements.

- II. **Course Materials:** The course materials will consist of reported cases, statutes, peer reviewed medical literature and other authoritative publications.

- III. **Course Expectations:** The class will meet each Thursday from 6:10 PM- 8:00 PM. All students are expected to attend each class and arrive on time. Each student should arrive at class prepared and ready to participate in a substantive discussion of the assigned materials. Students shall be required to fully participate and contribute. Students are expected to keep abreast of any

changes or updates to the syllabus, any scheduling changes and any other information that may be provided.

IV. Course Grading:

End of Term Final Exam - 50% of final grade

Written Assignment(s)* - 35% of final grade

Attendance & participation - 15% of final grade

* All Written assignments are to be submitted in hard copy at the beginning of class **and** electronically via email by 4:00 PM on the date they are due.

V. Anticipated Course Schedule:

CLASS 1

NO ASSIGNMENT

Class Content:

Class introduction and overview. Introduction to medical malpractice and concept of tort reform.

CLASS 2

Assigned viewing in anticipation of class discussion:

Hot Coffee - A documentary feature film by Susan Saladoff

https://www.youtube.com/watch?v=KmEYWCg0J7Q&has_verified=1

Assigned reading in anticipation of class discussion:

-Joseph Treaster & Joel Brinkley, [Behind those Medical Malpractice Rates](#), NY Times, Feb. 22, 2005.

- Multiple Factors Have Contributed to Increased Premium Rates
GAO-03-702, Jun 27, 2003. <http://www.gao.gov/products/GAO-03-702> Read “WHAT GAO FOUND,” “RESULTS IN BRIEF” and “CONCLUSION” (or more if you’d like!)

-Kohn L T, Corrigan J M., Donaldson MS (Institute of Medicine) To err is human: building a safer health system. Washington, DC: National Academy Press, 2000. **Read only the executive summary:**
http://www.amsa.org/AMSA/Libraries/Initiative_Docs/To_err_is_human_executive_summary.sflb.ashx

Class Content:

Discussion of assigned materials.

CLASS 3

Assigned viewing in anticipation of class discussion:
FACT PATTERN

Class Content:

Introduction of the fact pattern of the case we will work through for the remainder of the semester

CLASS 4

Assigned reading in anticipation of class discussion:

Stukas v. Streiter, 83 A.D.3d 18 (2d Dep’t 2011)

Mduba v. Benedictine Hospital, 52. A.D.2d 450 (3d. Dept. 1976)

Hill v. St. Clare's Hospital, 67 NY2d 72 (1986)

New York State Public Health Law Sec. 2805(d)

Class Content: the class will examine the necessary elements which must be established in a meritorious medical malpractice action and informed consent cause of action. The discussion will include information concerning both individual physician's and institutional liability.

CLASS 5

NO ASSIGNMENT

Class Content:

The initial client intake from plaintiff's side. What do you need to know before deciding to investigate the case?

CLASS 6

Assigned reading in anticipation of class discussion:

TBA

Class Content:

Discussion concerning the approach to thoroughly investigating a potential medical malpractice case. The discussion will include an analysis of issues including defendant selection, venue selection and other relevant issues. Be prepared to answer questions about these issues based upon the fact pattern and the discussion from last week.

CLASS 7

Assigned reading in anticipation of class discussion:

TBA

Class Content:

Discussion concerning drafting of pleadings and Bills of Particulars in medical malpractice actions from both a plaintiff's and defendant's perspective.

CLASS 8

Assigned reading in anticipation of class discussion:

- CPLR §§ 3101, 3120, 3122, 3124
- EPTL § 5-4.3
- Education Law § 6527(3)
- Estate of Carroll v. St. Luke's Hospital, 91 A.D.2d 674 (2d Dept 1982)
- Public Health Law § 2805-1
- Koump v. Smith, 25 N.Y.2d 287 (1969)
- Allen v. Crowell-Collier Publishing Co., 21 N.Y.2d 403 (1968)
- Scalone v. Phelps Memorial Hosp. Center, 184 A.D.2d 65 (2d Dep't 1992)
- Kantor v. Kaye, 114 A.D.2d 728 (1st Dep't 1985)
- Gill v. Mancino, 8 A.D.3d 340, 341 (2nd Dep't 2004)
- Herbst v. Bruhn, 106 A.D.2d 546 (2d Dept 1984)
- Scharlack v. Richmond Memorial, 102 A.D.2d 886 (2d Dept 1984)

- Yetman v. St. Charles Hosp., 112 A.D.2d 297 (2d Dep't 1985)
- Wiener v. Memorial Hospital for Cancer & Allied Diseases, 114 Misc. 2d 1013
- Arons v. Jutkowitz, 9 NY3d 393
- Shefer v. Tepper, 73 A.D.3d 447 (1st Dept 2010)

Class Content:

Discussion concerning document discovery in medical malpractice actions. The discussion will review the relevant legal standards for discoverability as well as the types of documents and materials that should be obtained in malpractice litigation.

CLASS 9

Assigned reading in anticipation of class discussion:

To be assigned.

Class Content:

Discussion concerning the taking and defending of depositions. The issues discussed will include plaintiff's and defendants' perspectives for both the preparation and questioning of witnesses. It is anticipated that a guest speaker will join us for the class.

CLASS 10

Assigned reading in anticipation of class discussion:

- Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986)
- Napierski v. Finn, 229 A.D.2d 869 (3d Dept 1996)

- Winegrad v. New York University Medical Center, 64 N.Y.2d 851 (1985)
- Wallenquest v. Brookhaven Mem. Hosp. Med. Ctr., 28 A.D.3d 538 (2d Dep't 2006)

Class Content:

Discussion concerning summary judgment motions. The discussion will analyze the standards applicable to parties moving for summary judgment and the party opposing such motions. The discussion will also include practical considerations applicable to such motions.

CLASS 11

Assigned reading in anticipation of class discussion:

To be assigned.

Class Content:

Discussion concerning appropriate preparation techniques in anticipation of trial. The discussion will also address issues relevant to jury selection in medical malpractice cases.

CLASS 12

Assigned reading in anticipation of class discussion:

To be assigned.

Class Content:

Discussion concerning preparation for the questioning of witnesses at trial. The discussion will include preparation and questioning techniques relevant to both lay witnesses and expert witnesses. It is anticipated that a guest speaker will join us for the class.

CLASS 13

Assigned reading in anticipation of class discussion:

To be assigned.

Class Content:

Discussion concerning trial summations. The discussion will include summation goals and techniques. It is anticipated that a guest speaker will join us for the class.

*The Law School has adopted a “Credit Hour Policy.” A “credit hour” is an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction (calculated as 50 minutes of classroom time) and two hours (120 minutes) of out-of-class student work per week for fifteen weeks (including one week for final exams), or the equivalent amount of work over a different amount of time. These requirements apply equally to all courses taught in the Law School, including distance education courses.