

Business C750
Ethical and Legal Issues in Health Care
Winter 2022 Course Outline
Health Policy and Management Area
DeGroote School of Business, McMaster University

COURSE DESCRIPTION

Health care systems and the delivery of services operate within a maze of ethical and legal ambiguities and complexities. Through the discussion of real-life situations, this course will provide students with the knowledge and critical thinking skills needed by managers to navigate and prioritize interrelated ethical and legal issues in healthcare. The course will examine topics such as: consent and capacity to make healthcare decisions; living wills and substitute decision-makers; physician-assisted death; privacy and confidentiality; regulation of health professionals; risk management strategies; civil liability and medical malpractice; public health issues (e.g. tobacco control, mandatory vaccinations of health care workers); research ethics; and other topics of practical importance to managers.

INSTRUCTOR AND CONTACT INFORMATION

Course Time: Wednesdays 7:00 pm- 10:00 pm (January 12, 2021 - April 13, 2021)

Course Location: Ron Joyce Centre (RJC), room 263

Instructor: Daniel L. Ambrosini, LLB/BCL, MSc, PhD
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Teaching Assistant: Shawn Baldeo, JD, MD
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Course Website: <http://avenue.mcmaster.ca>

COURSE ELEMENTS

Avenue:	Yes	Leadership:	Yes	IT Skills:	Yes	Global view:	Yes
Participation:	Yes	Ethics:	Yes	Numeracy:	Yes	Written skills:	Yes
Evidence-based:	Yes	Innovation:	Yes	Group work:	Yes	Oral skills:	Yes
Experiential:	Yes	Guest speaker(s):	Yes	Final exam:	No		

COURSE OBJECTIVE

The objective of this course is to expose students to a wide range of ethical and legal issues within the health sector in Canada. The course has been designed to assist current and future health care managers in making well-informed decisions as they navigate the numerous ethical and legal issues that arise. The various topics selected for the course can generally be grouped into four general ethical/legal themes:

- (1) Canadian health care system (e.g. legal framework, ethical considerations)
- (2) Patient rights (e.g. informed consent, mental health)
- (3) Employer obligations (e.g. workplace, risk management, regulated professions)
- (4) Public health and emerging topics (e.g. physician assisted death; research ethics)

LEARNING OUTCOMES

Upon completion of this course students should be able to:

- Understand and identify the wide range of ethical and legal issues that surface for managers working in various sectors of the health care market;
- Develop the ability to think critically about ethical or legal issues in health care and to understand how to mitigate risk when making management decisions;
- Demonstrate the ability to understand and weigh competing perspectives in making health care decisions as they influence individuals, institutions, or the community.

REQUIRED COURSE MATERIALS AND READINGS

Textbook: Erdman, J., Gruben, V., & Nelson, E. (2017). *Canadian Health Law and Policy*, 5th edition, LexisNexis.

(available through McMaster University Bookstore)

\$135.00

Additional materials or links to the materials will be provided online through McMaster's Avenue to Learn system (<http://avenue.mcmaster.ca>)

FREE

EVALUATION

Learning in this course results primarily from in-class lectures, discussion, and participation of the legal cases as they impact business decisions as well as out-of-class analysis. All work will be evaluated on an individual basis except in certain cases where group work is expected. In these cases, group members will share the same grade adjusted by peer evaluation. Your final grade will be calculated as follows:

Components and Weights

Participation	Students are expected to attend and participate during all classes, including discussions with any guest speakers and during other class member's presentations.	30%
Class Case Presentation	Requirements are detailed on page 4.	30%
Final Paper	Final paper (5% is allotted for Proposal due February 16, 2022, and 35% for the Final Paper due April 6, 2022).	40%

Communication and Feedback

Students who may be uncomfortable with directly approaching the instructor regarding a course concern may choose to send a confidential and anonymous email to the respective Area Chair at: <http://www.degrotee.mcmaster.ca/curr/emailchairs.aspx>.

Students who wish to correspond with instructors directly via email must send messages that originate from their official McMaster University email account. This protects the confidentiality and sensitivity of information as well as confirms the identity of the student.

Conversion

At the end of the course your overall percentage grade will be converted to your letter grade in accordance with the following conversion scheme.

LETTER GRADE	PERCENT	LETTER GRADE	PERCENT
A+	90-100	B+	75-79
A	85-89	B	70-74
A-	80-84	B-	60-69
		F	00-59

Assignments & Participation

Name cards are used to help give credit for your participation. You should have a name card with your **full first and last name** clearly written and displayed in front of you for every in-class session. **Students are expected to post their photograph on the Avenue to Learn system during the first week of class.** Instructors may cold-call on anyone at any time. Hence, it is imperative that you prepare for each and every case and reading.

Participation will **NOT** be graded by counting each contribution a student makes. Instead, participation will be graded by examining the quality of contributions each week. Students are expected to thoughtfully engage in all discussion, including any guest presentations and student presentations, and to add value to such discussions. The goal is to develop skills in identifying

ethical and legal issues, particularly those that are not patently obvious, and to be able to assess the implications from a variety of perspectives in order to develop the ability to apply this process on a day-to-day basis in health care management.

When individual or group assignments are required to be submitted, students should do so using the appropriate Dropbox on the course A2L site by midnight (EST) of the due date. All assignments are to be submitted as Word documents. Late assignments will be penalized at a rate of 5% per day (or part thereof) that the assignment is late.

Please note that should there be any problems with the A2L site that limits students' ability to participate in discussions or submit assignments, all deadline times/dates will be extended.

If a student has conducted a project or assignment for another course on a similar topic to the one they propose to do for this course they are required to obtain instructor permission in advance of proceeding with the topic. This is to ensure that projects or assignments are sufficiently different from one another. If in doubt, please contact your instructor.

Class Case Presentation

Students will be assigned to present a “legal case” in groups of 2 or 3 (depending on class size). The cases selected tend to be the most germane, relevant, or timely to the topic. Students will have an opportunity to present the case as they understand it, but then will be expected to detail key ethical, business, management, and economic considerations. For the presentation, at a minimum, students will be expected to:

- Provide a summary of the legal case (listed in the Course Schedule);
- Identify the key ethical/legal issues and provide a counterpoint to the issues;
- Discuss potential business and management issues that may flow from the case;
- Facilitate a class discussion that explores the ethical/legal and related business/management implications that arise from the legal case (taking into account perspectives of various stakeholders);
- Submit to the appropriate Dropbox on A2L (by 12:00 pm on the day of class) a one-page summary of the key points raised in the presentation along with any PowerPoint slides used in the presentation (this may be submitted by one individual per group).

Groups will be given approximately 20-30 minutes for the actual presentation, followed by 20-30 minutes of discussion by the class. Presentations should be detailed enough to cover the main issues raised in the legal case, including any relevant background information, key ethical issues, and business/management ramifications. Additional material beyond the legal case can be included where appropriate. Groups will be graded on their ability to identify ethical/legal issues and to facilitate a non-judgmental discussion (ideally using a unique and/or innovative approach). The goal is not necessarily to identify the correct answer or to present the issue in an overly legal manner, but instead to ensure the main issues are covered in a fair, comprehensive, and interdisciplinary approach.

Final Assignment

Students will be required to provide a final written assignment. As such, students will provide a brief (half page maximum) proposal for a topic to pursue as part of their final paper. The topic

does not have to be one discussed in class, but should be related to an ethical and legal issue arising in health care. Proposals are due by February 16, 2022 (to be submitted through Avenue). The purpose of the proposal is to ensure that students have selected an appropriate and feasible topic. Approval of proposals will be provided before February 23, 2022. Where a student chooses to write on a topic covered in class, they should attempt to cover a new and/or distinct area of the topic. The proposal should identify the healthcare topic and an analysis of ethical and legal considerations, as well as analysis of the management and/or business issues germane to the issue.

Final papers should include the following:

- Be 2,500 - 3,000 words maximum (10-12 pages)
- Double spaced, 1" margins, with page numbers
- Times New Roman font (12 font size)
- Be consistent with the approved proposal
- Contain between 15-25 academic references
- References should be in APA format (see Avenue)
- Contain a separate title page (not included in the page count): indicate the title of the assignment, the course name and number, instructor's name, the names of all team members, and the date submitted.

ACADEMIC DISHONESTY

It is the student's responsibility to understand what constitutes academic dishonesty. Please refer to the University Senate Academic Integrity Policy at the following URL:

<http://www.mcmaster.ca/policy/Students-AcademicStudies/AcademicIntegrity.pdf>

This policy describes the responsibilities, procedures, and guidelines for students and faculty should a case of academic dishonesty arise. Academic dishonesty is defined as to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. Please refer to the policy for a list of examples. The policy also provides faculty with procedures to follow in cases of academic dishonesty as well as general guidelines for penalties. For further information related to the policy, please refer to the Office of Academic Integrity at:

<http://www.mcmaster.ca/academicintegrity>

In this course we will be using Turnitin.com or the OriginalityCheck function within Avenue2Learn which are plagiarism detection services. Students will be expected to submit their work electronically to either Turnitin.com or OriginalityCheck so that it can be checked against the internet, published works and Turnitin's database for similar or identical work. If a student refuses to submit his or her work to Turnitin.com or OriginalityCheck, he or she cannot be compelled to do so and should not be penalized. Instructors are advised to accept a hard copy of the assignment and grade it as per normal methods. The assignment can be subjected to a Google search or some other kind of search engine if the instructor wishes.

To see guidelines for the use of Turnitin.com, please go to:

<http://www.mcmaster.ca/academicintegrity/turnitin/students/index.html>

To see guidelines for the use of OriginalityChecker, please go to:

https://avenue.cllmcmaster.ca/d2l/lp/inlineHelp/75806/help?titleTerm=Framework.PopupHelp.le HowTIIwork&descriptionTerm=Framework.PopupHelpDesc.le_HowTIIwork

USE OF AVENUE TO LEARN SYSTEM

In this course we will be using Avenue to Learn. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Students should avoid using the Avenue email system and instead use your McMaster email accounts for communicating with instructors or TA. Avenue to Learn is currently configured to provide users with an email account that they can use to send and receive email from other users within Avenue only. Users cannot receive emails from external email accounts. Avenue to Learn Mail settings have been expanded to include the ability for users of Avenue to set their own Reply-To settings. Please review the documentation for information about: Configuring the Reply-To Settings in Avenue Mail. For any questions or concerns, please contact support.avenue@cll.mcmaster.ca or ext. 22911.

STUDENT ACCESSIBILITY SERVICES

Student Accessibility Services (SAS) offers various support services for students with disabilities. Students are required to inform SAS of accommodation needs for course work at the outset of term. Students must forward a copy of such SAS accommodation to the instructor normally, within the first three (3) weeks of classes by setting up an appointment with the instructor. If a student with a disability chooses NOT to take advantage of an SAS accommodation and chooses to sit for a regular exam, a petition for relief may not be filed after the examination is complete. The SAS website is: <http://sas.mcmaster.ca>.

POTENTIAL MODIFICATIONS TO THE COURSE

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check their McMaster email and course websites weekly during the term and to note any changes.

COURSE SCHEDULE

Business C750
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WEEK	DATE	TOPICS – READINGS – ASSIGNMENTS
1	Wed. Jan 12	<p>Topic: Class Outline, Schedule, Participation, Courseware</p> <p>Read: Chapter 2 - Alana Klein, “Jurisdiction in Canadian Health Law”</p>
2	Wed. Jan 19	<p>Topic: Ethical Theories & Frameworks</p> <p>Read 1: Chapter 14 - Louise Belanger-Hardy, “Informed Choice in Medical Care”</p> <p>Read 2: Beauchamp, (2004). “Does Ethical Theory Have a Future in Bioethics,” <i>Journal of Law, Medicine & Ethics</i>, 32, 209-217.</p> <p>Read 3 (case): <i>Malette v. Shulman</i>, 72 O.R. (2d) 417 ONCA (25 pgs.)</p>
3	Wed. Jan 26	<p>Topic: Legal Principles, Processes, & Rules</p> <p>Read 1: Chapter 3 – Colleen Flood et al., “The Rise and Fall of Canadian Medicare & the Role of Law”</p> <p>Read 2: Department of Justice Canada, Canada’s Court System (18 pgs.)</p> <p>Read 3 (legislation): <i>Canada Health Act</i>, R.S.C., 1985, c. C-6 (18 pgs.)</p>

4	Wed. Feb. 2	<p>Topic: Civil Liability/Medical Malpractice</p> <p>Read 1: Chapter 13 – Lorian Hardcastle, “Medical Negligence Law”</p> <p>Read 2: Koury & Iokheles, (2009). “Factual Causation and Healthcare-Associated Infections,” 17 <i>Health Law Journal</i>, 195-227.</p> <p>Read 3 (case: team presentation and class discussion): <i>Tarasoff v. Regents of University of California</i>, 17 Cal.3d 425, 131 Cal. Rptr. 14, 551 P.2d 334 (1976) (duty to warn)</p>
5	Wed. Feb. 9	<p>Topic: Workplace Health: Human Resources & Employer Obligations</p> <p>Read 1: Gouveia, (2007). “From Laissez-Faire to Fair Play: Workplace Violence & Psychological Harassment,” 65 <i>University of Toronto Faculty of Law Review</i>, 37-166.</p> <p>Read 2: Moore, A.D. (2011). “Drug Testing and Privacy in the Workplace,” 29 <i>J. Marshall Journal of Computer & Information Law</i>, 463-492.</p> <p>Read 3: Shain, M. (2010). “Tracking the Perfect Legal Storm,” Mental Health Commission of Canada Report (28 pgs.)</p> <p>Read 4 (case: team presentation and class discussion): <i>ADGA Group Consultants Inc. v. Lane et al.</i>, Ontario Superior Court of Justice, 91 O.R. (3d) 649 (mental health in workplace)</p>
6	Wed. Feb. 16	<p>Topic: Mental Health Law</p> <p>Read 1: Chapter 15 – Joan M. Gilmour, “Legal Capacity and Decision-making” and Chapter 16 – Jennifer Chandler, “Mental Health Law”</p> <p>Read 2: Verdun-Jones, S.N. & Lawrence, M.S., (2013). “The Charter Right to Refuse Psychiatric Treatment: A Comparative Analysis of the Laws of Ontario and British Columbia Concerning the Right of Mental Health Patients to Refuse Psychiatric Treatment,” 46 <i>University of British Columbia Law Review</i>, 489-527.</p> <p>Read 3 (case: team presentation and class discussion): <i>Starson v. Swayze</i>, [2003] 1 SCR, 722 (mental capacity and right to refuse psychiatric treatment)</p>

7	Wed. Feb. 23	Mid-Term Recess (No Class)
8	Wed. Mar. 2	<p>Topic: Privacy and Confidentiality</p> <p>Reading 1: Chapter 9 – Elaine Gibson, “Health Information: Privacy, Confidentiality and Access”</p> <p>Reading 2: Information and Privacy Commissioner of Ontario, “Frequently Asked Questions: Personal Health Information Protection Act” (September 2015) (54 pgs.)</p> <p>Reading 3 (case: team presentation and class discussion): <i>Hopkins v. Kay</i>, 2015 ONCA 112 (breach of health information)</p>
9	Wed. Mar. 9	<p>Topic: Hospital Risk Management</p> <p>Reading 1: Litman, M., (2007). “Fiduciary Law in the Hospital Context: The Prescriptive Duty of Protective Intervention,” 15 <i>Health Law Journal</i>, 295-352.</p> <p>Reading 2: Osode, P.C., (1994). “Canadian Law and the Liability of the Modern Hospital for Negligence (Part 2)” 13 <i>Medicine and Law</i>, 95-104.</p> <p>Reading 3: Hardcastle, L., (2007). “Governmental and Institutional Tort Liability For Quality of Care in Canada,” 15 <i>Health Law Journal</i>, 401-439.</p> <p>Reading 4 (case: team presentation and class discussion): <i>Rosenhek v. Windsor Regional Hospital</i>, 2010 ONCA 13 (doctor-hospital conflict)</p>
10	Wed. Mar. 16	<p>Topic: Public Health Law, Ethics, and Policy</p> <p>Reading 1: Chapter 20 – Barbara von Tigerstrom, “Public Health Law and Infectious Diseases”</p> <p>Reading 2: Gostin, L.O., (2002). “Public Health Law: A Renaissance” 30 <i>Journal of Law, Medicine & Ethics</i>, 126-140.</p> <p>Reading 3: Gostin, L.O. (2010). “Mapping the Issues: Public Health, Law and Ethics,” <i>Georgetown Public Law and Legal Theory Research Paper</i>, (16 pgs.)</p> <p>Read 4 (case: team presentation and class discussion): <i>R. v. Smith</i>, 2015 SCC 34 (medical marijuana and public health)</p>

11	Wed. Mar. 23	<p>Topic: Regulation of Health Care Professionals</p> <p>Reading 1: Chapter 7 – Amy Zarzeczny, “The Role of Regulation in Healthcare – Professional and Institutional Oversight”</p> <p>Reading 2: Ries, N.M. & Fisher, K.J., (2013) “The Increasing Involvement of Physicians in Complementary and Alternative Medicine: Considerations of Professional Regulation and Patient Safety,” 39 <i>Queen's Law Journal</i>, 273-299.</p> <p>Reading 3 (case: team presentation and class discussion): <i>Hanif v. Ontario College of Pharmacists</i>, 2015 ONCA 640 (revocation of license and sexual abuse)</p>
12	Wed. Mar. 30	<p>Topic: Constitutional Issues and Healthcare</p> <p>Reading 1: Chapter 4 – Martha Jackman, “Charter Review of Health Care Access”</p> <p>Reading 2: Chapter 18 – Jocelyn Downie, “End of Life Law and Policy”</p> <p>Reading 3 (case: team presentation and class discussion): <i>Carter v. Canada (Attorney General)</i>, [2015] 1 SCR 331 (physician-assisted death)</p>
13	Wed. Apr. 6	<p>Topic: Pharmaceutical Law and Research Ethics</p> <p>Reading 1: Chapter 8 – Matthew Herder, “Pharmaceutical Regulation” and Chapter 9 – Gordon Duval, “The Regulation of Health Research Involving People”</p> <p>Reading 2: Fischer, B.A., (2006). “A Summary of Important Documents in the Field of Research Ethics,” <i>Schizophrenia Bulletin</i>, 32:1, 69-80.</p> <p>Reading 3 (case: team presentation and class discussion): <i>Halushka v. University of Saskatchewan</i>, 1965 Saskatchewan Court of Appeal (medical research)</p>

14	Wed. Apr. 13	<p>Topic: Emerging Technologies (Neurolaw/Reproductive Rights)</p> <p>Reading 1: Chapter 11 – Ian Kerr et al., “Robots and Artificial Intelligence in Healthcare”</p> <p>Reading 2: Kerr I., Binnie M., & Aoki, C., (2008). “Tessling on My Brain: The Future of Lie Detection and Brain Privacy in the Criminal Justice System,” 50 <i>Canadian Journal of Criminology and Criminal Justice</i>, 367-387.</p> <p>Reading 3 (case: team presentation and class discussion): <i>State of Maharashtra v. Aditi</i>, 2008, India (lie detection and brain science)</p>
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