

Syllabus

Health Care Fraud and Abuse - Fall 2019

Redstone Building, Room 417; Wednesdays 10:40 a.m.-12:40 p.m.

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- 1. Course description:** Fraud in the health care system is pervasive. Billions of taxpayers' dollars are lost each year to fraud and abuse in the nation's health care system. Why? What are people trying to do about it? Are these efforts working? Can they be improved upon? We will explore these questions in a seminar that meets once a week, where we will cover the substantive basics of anti-fraud law in the health care field, but with a particular focus on problem-solving – trying to understand the perspectives of prosecutors, defense lawyers, medical providers, and corporate compliance personnel as they attempt to navigate this increasingly complex landscape. The hope is to keep the seminars lively and interactive, with students coming to class ready to participate and discuss the materials as if they were the decision-makers or the advisors to the decision-makers. You will draft short written memos and may do presentations on particular topics. Some of the work may be in teams.

2. Course Objectives and Assessment Methods

OBJECTIVES Upon successful completion of this course, students should be able to:	ASSESSMENTS Students will be assessed on these learning objectives through:
Enumerate and describe the fundamental procedural and substantive aspects of the primary anti-fraud enforcement laws in the health care fraud and abuse sector: The False Claims Act; the Anti-Kickback Act, Stark I and II, the Food Drug and Cosmetic Act, and the laws relating to exclusion, debarment, and corporate integrity agreements.	Active participation in class discussions that focus on analysis of the relevant statutes, regulations, and policies covered each week. Short writing assignments that require students to apply the law they have learned in the readings. (see full description of short writing assessments in the Assessment section below) Final examination (see description below)
Identify issues and interested parties within complex fact patterns that may arise in the health care setting:	Short writing assignments that require students to apply the law they have learned in the readings. (see full description of short

<p>What laws may this implicate? Who would have an interest in this question? Where would one look for guidance on this question?</p>	<p>writing assessments in the Assessment section below)</p> <p>Final examination (see description below)</p>
<p>Take the next step and analyze</p> <ul style="list-style-type: none"> (a) The potential legal outcomes; (b) How a lawyer should advise a client; and/or (c) how a lawyer’s approach to that fact pattern will vary depending on the role they have (e.g., prosecutor, defense lawyer, whistleblower lawyer, in-house counsel, or internal compliance officer), 	<p>Active participation in class discussions that will include role plays and/or consideration of the perspectives of each interested party, as well as the class sessions in which outside lawyers present their views and experiences in this field. NOTE: <i>By listening and participating in these sessions, students will gain an appreciation for the different ways in which lawyers operate in this field, depending on whom they represent. How would a prosecutor look at this? How would a defense attorney deal with this? What should a compliance officer do about this? Should a whistleblower attorney take on this case?</i></p> <p>Short writing assignments that require students, among other things, to think creatively about how they would deal with the kinds of problems that come up in this area of the law, from the perspective of a particular type of attorney. (see full description of short writing assessments in the Assessment section below)</p> <p>Final examination (see description below)</p>
<p>Recognize and explain the different perspectives of the interested parties in this sector: regulated industry, law enforcement personnel, defense counsel, compliance personnel, whistleblowers and their lawyers, and patients.</p>	<p>Short writing assignments that require students, among other things, to think creatively about how they would deal with the kinds of problems that come up in this area of the law. (see full description of short writing assessments in the Assessment section below)</p>
<p>Identify and summarize the roles of the relevant government agency players and their roles in this sector, including: Health and Human Services Office of Inspector General, the Center for Medicaid and Medicare Services, the Food and Drug Administration; the National Association of Medicaid Fraud Control Units, and the F.B.I.</p>	<p>Active participation in class discussions as we cover the roles each entity plays.</p> <p>Final examination (see description below)</p>

2. **Books:**

- a. No textbook, but selected excerpts from Loucks & Lam, Prosecuting and Defending Health Care Fraud Cases, 2nd ed. (2006) (with 2009 supplement) will be included in your materials and posted on Blackboard. We have ordered a copy for the library should you need to consult the full text.
- b. Most readings will be posted in advance on Blackboard. These will consist of a wide variety of materials: case opinions, Department of Justice “Statements of Interest,” articles, HHS/OIG guidance, etc.

3. **Reading List:** The reading list is below and will be on Blackboard. At the start of the course it contains the readings for the first several sessions. We will be adding to it over the course of the semester and, even then, *it may continue to be modified or supplemented over the semester as we progress*. Accordingly, please check this regularly – as the semester goes along, there may be cases coming down and/or settlements being announced that may be of interest to us, which may get posted on short notice.

4. **Attendance:** The seminar is scheduled to meet 13 times over the semester. You should attend and be prepared for no fewer than 11 classes. Attendance and participation in the class will be significant portions of your grade, so please take seriously the requirement to show up ready to go. I will note absences through a sign-in sheet, and through timely submission of any written projects due at the time of class. If you must miss a class, please let me know in advance if at all possible.

5. **Preparation and Class Discussion:** If you come to class having read and thought about the materials, you will learn more and find the seminar more interesting (and your grade will be higher). If you are unprepared, we prefer that you come to class nonetheless, but we would appreciate your telling us in advance that you have not been able to prepare, either by email or by phone. We do not expect to do all of the talking in the class, so come prepared to discuss the materials, and to answer questions from me or from any other participant in the seminar.

One component of the class will be working in teams on particular projects. Usually these will be teams of two or three, where you will be asked to come to class having prepared some specific topic to help guide the discussion. We will also be assigning on a regular basis short writing assignments (like a young lawyer would be asked to do for a more senior lawyer) to help focus your work. These will not be onerous or lengthy, but you should pay careful attention to the instructions with respect to timeliness, length, and scope (most of these will be short and time-sensitive, as they would be in your future practices). If we’re successful, these short assignments should be fun as well as substantive.

Electronics: We discourage use of laptops during the seminar, given the discussion nature of the class, except to access course content. Please shut down other applications if you are unable to resist the temptation or otherwise need to use your laptop. Take notes the

old fashioned way. All the materials will be available electronically to us, and you should print out any materials to which you'd like to have access during the discussion. Turn your phones off before class and leave them off during class. We are, of course, open to accommodations as needed.

6. **Communication:** The class website will be on Blackboard. Supplemental course materials will be posted there. If you are experiencing problems with the class, or if other issues are impinging upon your class performance, please contact us. Email and cell phone are the quickest ways to reach us. We are happy to set up “office hours” for individualized meetings if needed; the times and locations of these will be flexible depending on our schedules and yours. As a general matter, meeting with one of us right after class will be a reliable time.

7. **Evaluation and Assessment:** Your grade will be based upon:

a. **attendance and preparation;**

b. **written assignments and presentations; and**

Over the course of the semester, we will assign several short writing assignments that ask students to apply the law they have learned in the readings: e.g., a client asks if a particular course of action is legal or not, or a prosecutor must make a decision whether or not to bring charges against a person or entity under investigation. In these written assignments, which parallel closely the kinds of questions asked on the final examination, students are asked to think creatively about how they would deal with the kinds of problems that come up in this area of the law. The professors will return these papers with comments, usually by the next class, so that students can see what they did well and what they might have missed.

c. **an open-book take home examination at the end of the course.**

The final examination will allow you to show what you have learned, how readily you can identify the issues that are presented by a set of facts, and to outline what you think could or should result from the facts. Questions sometimes ask for a clear review of legal principles and often ask for the student's thinking about an appropriate course of action, based on the facts and the law.

Questions on the final examination will often be similar in format to the written exercises done during the course, e.g., they involve a fact pattern that implicates laws and policies that have been discussed in the course, and students are asked to identify the relevant issues and analyze the situation, usually from the perspective of a practitioner in this field.

8. **Office Hours:** As adjunct professors, we do not have an office at BU, but we are available to meet with students on reasonable notice by email or phone call. Our office and Bob's home are relatively close by, so this is not inconvenient and a significant benefit to us of teaching this course is the connections with the great diversity of students at BU Law. Our commitment is to be as available to you as needed and as our circumstances permit.