

CERTIFIED SPECIALIST PROGRAM

HEALTH LAW DEVELOPMENTAL PHASES AND LEARNING CRITERIA

I. HEALTH LAW – ADVOCACY

Advocacy -Malpractice

ESSENTIAL

Knowledge

Familiarity with:

- Rules of procedure and practice directions of courts
- The law of evidence relevant to health care negligence
- Legal research and legal research techniques in health care litigation
- The statutes, regulations and common law relevant to health care negligence
- The jurisprudence dealing with duty of care, standard of care, and causation as issues in health care negligence
- The statutory and common law of informed consent
- Appropriate proceedings and forum for resolution
- Structured settlements
- The elements of health care negligence and the steps that are involved in resolving a dispute, through litigation or alternative dispute resolution, including:
 - motions
 - discoveries
 - cross examinations
 - mediations
 - settlement conferences/pre-trials
 - summary judgments
 - trials
 - assessments and fixing of costs
 - leaves to appeal
 - appeals
- The *Limitations Act*
- Implementation and enforcement of judgments and orders
- The relevance of vicarious liability in health care negligence
- The statutory and common law relevant to expert witnesses
- Damage claims including: general, special, aggravated, exemplary, punitive, past and future care, past and future income loss and past and future *Family Law Act* claims
- Work up of damages in including: general, special, aggravated, exemplary, punitive, past and future care, past and future income loss and past and future *Family Law Act* claims
- Subrogated claims

Skills

General

- Identify legal and factual issues in a case of health care negligence
- Develop an appropriate theory to advance or defend a claim of malpractice
- Identify necessary parties, including those under a disability or for whom another party is vicariously liable
- Marshal the necessary factual evidence to advance or defend a claim including interviewing witnesses, identifying and obtaining relevant documents, including documents in the possession of a third party such as health care providers and demonstrative evidence
- Marshal the necessary opinion evidence from health care experts to advance or defend a claim
- Identify and deal with basic pre-trial or pre-hearing issues: need for subpoenas, demands for particulars and production of documents, serving medical reports
- Draft retainers
- Draft bills of costs

Pleadings

- Draft pleadings:
 - Statement of Claim
 - Statement of Defence
 - Statement of Defence and Crossclaim
 - Statement of Defence and Counterclaim and Crossclaim
 - Third Party Claim
 - Defence to Third Party Claim
 - Reply
 - Jury Notices
- Draft documents of moderate complexity: Legal memoranda
 - Opinion letters
 - Reporting letters to the client
 - Questions for written examinations
 - Letter confirming instructions
 - Documents for minors' settlements
 - Settlement closing documents, including directions on settlement and releases
- Identify appropriate causes of action in any given case and the full range of remedies available including:
 - Damages, including general, special, aggravated, exemplary and punitive, subrogated claims

Affidavits of Documents

- Draft Affidavits of Documents

Interviewing

- Prepare clients and witnesses for trial or other examinations
- Prepare statements and affidavits based on interviews

Investigation

- Review documentary evidence for the case and apply the findings to the case
- Follow-up to examinations for discovery
- Review transcripts and effectively use them for trial preparation
- Conduct research into scientific issues relevant to facts

Examinations for Discovery

- Conduct two-party examinations for discovery

Motions

- Draft Notices of Motion, Affidavits, Facta and Orders
- Cross-examine on Affidavits
- Conduct third party examinations
- Argue procedural motions on notice and without notice (e.g., seeking order for answers to undertakings; amending pleadings; security for costs)

Mediation/Pretrials

- Draft Statements of Issues for Mediations and pretrials
- Assist in the mediation of a dispute
- Attend mediation in two-party settings

Negotiations

- Negotiate simple settlements
- Draft minutes of settlement

Trials

- Draft notices under the *Evidence Act*
- Draft Requests to Admit
- Prepare document briefs
- Assist in the preparation of witnesses for trial
- Assist in the preparation of cross-examinations of expert witnesses
- Identify and prepare law relevant for motions at trial
- Prepare opening and closing statements

- Prepare written and oral argument

Appeals

- Prepare notice of appeal
- Prepare review transcripts of evidence
- Prepare appellate facts
- Undertake oral argument

INTERMEDIATE

Knowledge

Working Knowledge of:

- Rules of procedure and practice directions of courts
- The law of evidence relevant to health care negligence
- Legal research and legal research techniques in health care litigation
- The statutes, regulations and common law relevant to health care negligence
- The jurisprudence dealing with duty of care, standard of care, and causation as issues in health care negligence
- The statutory and common law of informed consent
- Appropriate proceedings and forum for resolution
- Structured settlements and revisionary clauses
- The elements of health care negligence and the steps that are involved in resolving a dispute, through litigation or alternative dispute resolution, including:
 - discoveries
 - cross examinations
 - mediations
 - settlement conferences/pre-trials
 - summary judgments
 - trials
 - assessments and fixing of costs
 - leaves to appeal
 - appeals
- The *Limitations Act*
- Implementation and enforcement of judgments and orders
- Relevance of vicarious liability in health care negligence
- Comprehensive knowledge of the statutory and common law relevant to expert witnesses
- Damage claims including: general, special, aggravated, exemplary, punitive, past and future care, past and future income loss and past and future *Family Law Act* claims
- Work up of damages including: general, special, aggravated, exemplary, punitive, past and future care, past and future income loss and past and future *Family Law Act* claims
- Subrogated claims

Skills

General

- Identify legal and factual issues in a case of health care negligence
- Develop an appropriate theory to advance or defend a claim of malpractice
- Identify necessary parties, including those under a disability or for whom another party is vicariously liable
- Marshal the necessary factual evidence to advance or defend a claim including interviewing witnesses, identifying and obtaining relevant documents, including documents in the possession of a third party including health care providers and demonstrative evidence
- Marshal the necessary opinion evidence from health care experts to advance or defend a claim
- Identify and deal with basic pre-trial or pre-hearing issues: need for subpoenas, demands for particulars and production of documents, serving medical reports
- Draft retainers
- Draft bills of costs

Pleadings

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 - Statement of Defence and Counterclaim and Crossclaim
 - Third Party Claim
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 - Reply
 - Jury Notices
- Draft documents of moderate complexity:
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 - Opinion letters
 - Reporting letters to the client
 - Questions for written examinations
 - Letter confirming instructions
 - Documents for minors' settlements
 - Settlement closing documents, including directions on settlement and releases
- Identify appropriate causes of action in any given case and the full range of remedies available including:
 - Damages, including general, special, aggravated, exemplary and punitive

Affidavits of Documents

- Draft Affidavits of Documents

Mediation

- Draft Statements of Issues for Mediations and pretrials
- Participate in the mediation of a dispute
- Attend mediation in two-party settings

Interviewing

- Prepare clients and witnesses for trial and other examinations
- Prepare statements and affidavits based on interviews

Investigation

- Review documentary evidence and apply the facts to the case
- Follow-up to examinations for discovery
- Review transcripts and effectively use them for trial preparation
- Conduct research into scientific issues relevant to facts

Examinations for Discovery

- Conduct multiple party examinations for discovery

Motions

- Draft notices of motion, affidavits, facta and orders
- Cross-examine on Affidavits
- Conduct third party examinations
- Argue procedural motions on notice and without notice (e.g., seeking order for answers to undertakings; amending pleadings; security for costs)

Negotiations/Pretrials

- Negotiate simple settlements
- Draft minutes of settlement

Trials

- Draft notices under the *Evidence Act*
- Draft Requests to Admit
- Prepare document briefs
- Prepare witnesses for trial
- Prepare cross-examinations of expert witnesses
- Identify and prepare law relevant for motions at trial
- Prepare opening and closing statements

- Prepare written and oral argument

Appeals

- Prepare notices of appeal
- Review transcripts of evidence
- Prepare appellant facts
- Prepare oral argument

ADVANCED

Knowledge

Advanced Knowledge of:

- The law of causation in complex health care negligence issues
- Basic anatomy, physiology and pharmacology as it is encountered in health care negligence
- The principles of radiographic images i.e. CT scanning, MRI imaging, x-rays
- The organization of health care records both hard copies and computerized records
- The organizational structure of health care facilities and multi-disciplinary teams
- The scientific research methods useful in health care negligence
- Damage claims including: general, special, aggravated, exemplary, punitive, past and future care, past and future income loss and past and future *Family Law Act* claims
- Work up of damages in including: general, special, aggravated, exemplary, punitive, past and future care, past and future income loss and past and future *Family Law Act* claims
- Subrogated claims

Skills

Affidavits of Documents

- Draft Affidavits of Documents

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Interviewing

- Prepare clients or witnesses for trial or other examinations
- Prepare statements or affidavits based on interviews

Investigation

- Review documentary evidence for the case and apply the findings to the case
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- Conduct two-party examinations for discovery

Motions

- Draft Notices of Motion, Affidavits, Facta and Orders
- Cross-examine on Affidavits
- Conduct third party examinations
- Argue procedural motions on notice and without notice (e.g., seeking order for answers to undertakings; amending pleadings; security for costs)

Mediation

- Draft Statements of Issues for Mediations and pretrials
- Attend mediation
- Effectively utilize complex scientific facts to establish or refute causation in health care negligence
- Organize findings in a health care record to challenge an expert at trial
- Cross-examine health care experts within the health care experts' field of expertise by reference to articles, textbooks and other scientific materials
- Argue scientific findings succinctly
- Reduce complex medical and scientific issues for the benefit of a jury

Advocacy-Administrative

ESSENTIAL

Knowledge

Familiarity with:

- Relevant health care legislation including: *Regulated Health Professions Act, 1991*; *Statutory Powers Procedures Act*; and *Personal Health Information Protection Act, 2004*
- Relevant limitation periods for administrative proceedings
- Relevant health care facility by-laws
- The rules of procedure relevant for health care tribunals referable to individual Health Care Colleges
- The *Coroners Act* and regulations
- Confidentiality of health care records, including the *Personal Health Information Protection Act, 2004*

Skills

- Prepare a Notice of Hearing
- Obtain or provide disclosure
- Assist in preparing legal analysis
- Assist in identifying and evaluating issues relevant to the administrative hearing

- Assist with negotiations and/or proceedings including any pre-hearing conference
- Deal with any administrative tribunal staff, and independent counsel on procedural matters
- Review disclosure
- Assist with the proceedings, including preliminary motions
- Provide an opinion to client
- Prepare witnesses, including experts
- Conduct all levels of procedural and preliminary matters
- Draft applications for administrative relief
- Cross-examine health care experts
- Identify the goals for your client at an administrative hearing
- Prepare application for judicial review

INTERMEDIATE

Knowledge

Working knowledge of:

- Relevant health care legislation including: *Regulated Health Professions Act, 1991*; *Statutory Powers Procedures Act*; and *Personal Health Information Protection Act, 2004*
- Relevant limitation periods for administrative proceedings
- The relevant to health care facility by-laws
- The rules of procedure and policies relevant for health care tribunals referable to individual Health Care Colleges
- The *Coroners Act* and regulation
- Confidentiality of health care records, including the *Personal Health Information Protection Act, 2004*

Skills

- Prepare a Notice of Hearing
- Obtain or provide disclosure
- Prepare legal analysis
- Identify and evaluate issues relevant to the administrative hearing
- Participate in negotiations and/or proceedings including any pre-hearing conference
- Deal with any administrative tribunal staff, and independent counsel on procedural matters
- Review disclosure
- Represent party proceedings, including preliminary motions
- Prepare application for judicial review
- Provide an opinion to client
- Prepare witnesses, including experts
- Conduct all levels of procedural and preliminary matters
- Draft applications for administrative relief
- Cross-examine health care experts
- Identify the goals for your client in the administrative hearing

ADVANCED

Knowledge

Advanced knowledge of:

- Relevant health care legislation including: *Regulated Health Professions Act, 1991*; *Statutory Powers Procedures Act*; and *Personal Health Information Protection Act, 2004*
- Specific legislation relative to your health care practice
- Relevant to health care facility by-laws
- The rules of procedure for health care tribunals referable to individual HC Colleges
- The Coroner's Act and regulations
- Confidentiality of health care records, including the *Personal Health Information Protection Act, 2004*

Skills

- Deal effectively with witnesses whose mental competency is subject to challenge
- Integrate information contained in a clinical record to advance the position of the client
- Demonstrate to health care professionals an understanding of the challenges of health care delivery in particular populations i.e., the mentally ill, mentally incompetent or minors

II. HEALTH LAW – GENERAL COUNSEL

Corporate Commercial

ESSENTIAL

Knowledge

Familiarity with:

- Basic corporate / commercial legislation
- Basic corporate / commercial law
- Contractual precedents for common transactions
- Major Ontario health legislation relevant to a corporate / commercial practice including: the *Public Hospitals Act*, *Personal Health Information Protection Act, 2004 (PHIPA)*, *Health Insurance Act*
- Major federal health legislation relevant to a corporate / commercial practice including: the *Personal Information Protection and Electronic Documents Act*, *Food and Drugs Act*

Skills

- Assist in drafting basic agreements involving health care professionals, institutions and agencies.
- Draft/revise health law related clauses in transaction documentation for transactions involving health issues, including working from precedents for simple, smaller transactions
- Assist in due diligence investigations for proposed transactions
- Assist in preparation of disclosure schedules for transaction documentation

- Assist in completion of health care related transaction
- Assist in drafting medical/administrative by-laws
- Assist in drafting corporate materials (e.g., resolutions, board policies, Committee Charters, board orientation and education materials)
- Complete original organization of corporation including by-laws and resolutions

INTERMEDIATE

Knowledge

Working Knowledge of:

- Corporate / commercial legislation
- Corporate / commercial law including corporate governance obligations
- Contractual precedents for a wide range of business agreements
- Major Ontario health legislation relevant to a corporate / commercial practice including: the *Public Hospitals Act*, *Personal Health Information Protection Act, 2004 (PHIPA)*, *Health Insurance Act*
- Major federal health legislation relevant to a corporate / commercial practice including: the *Personal Information Protection and Electronic Documents Act*, *Food and Drugs Act*

Skills

- Ability to draft and negotiate a wide range of business agreements involving health care professionals, institutions and agencies, based on client's instructions
- Provide advice regarding establishment/organization of health related business structures
- Provide advise regarding health related business re-organizations
- Organize, supervise and direct due diligence investigations for proposed transactions
- Draft medical/administrative by-laws
- Draft corporate materials (e.g., resolutions, board policies, Committee Charters, board orientation and education materials)
- Provide advice regarding directors and officers' liability and conflict of interest
- Provide advice regarding charities issues (e.g., revenue generation) and implications of charitable status

ADVANCED

Knowledge

Advanced knowledge of:

- Corporate / commercial legislation
- Corporate / commercial law including corporate governance obligations
- Contractual precedents for a wide range of business agreements
- Successful negotiation strategies
- Major Ontario health legislation relevant to a corporate / commercial practice including: the *Public Hospitals Act*, *Personal Health Information Protection Act, 2004 (PHIPA)*, *Health Insurance Act*

- Major federal health legislation relevant to a corporate / commercial practice including: the *Personal Information Protection and Electronic Documents Act*, *Food and Drugs Act*

Skills

- Draft relevant provisions in complex business agreements
- Establish business structures for health care professionals such as family health networks, incorporations, partnerships, associations, joint ventures, cost-sharing arrangements, alternative payment plans
- Establish the legal framework for health care institutions such as long-term care facilities, nursing homes, hospitals, community care access centres, independent health facilities, health care clinics, diagnostic facilities, rehabilitation companies, local health integration networks, government agencies, boards, transfer payment organizations, non-share corporations, charities
- Direct complex transactions related to health care facilities and agencies such as purchase and sale of health care facilities, amalgamation of health care facilities, implementation of restructuring initiatives including the devolution of government services, transfers of services between health care facilities, strategic alliances between health care facilities, health care buying groups, wind-up/dissolution of health care facilities, public/private partnerships
- Advise board of directors, various committees of the board or special committee in respect of major transactions or issues, including fiduciary obligations of board members

Opinions and Advice

ESSENTIAL

Knowledge

Familiarity with:

- Major Ontario health legislation including *Health Care Consent Act*, *Substitute Decisions Act*, *Mental Health Act*, *Regulated Health Professions Act*, *Coroners Act*, *Public Hospitals Act*, *Personal Health Information Protection Act, 2004 (PHIPA)*, *Health Insurance Act*, *Health Protection and Promotion Act*
- Major federal health legislation including: *Personal Information Protection and Electronic Documents Act*, *Food and Drugs Act*, *Quarantine Act*, *Assisted Human Reproduction Act*
- Case law regarding health issues and interpreting relevant legislation

Skills

- Review regulatory obligations of a health care professional or institution
- Review and analyze basic issues facing health care professionals and health care institutions and recognize unusual situations that require additional experience
- Provide advice regarding well established areas of health law

INTERMEDIATE

Knowledge

Working knowledge of:

- Major Ontario health legislation including: *Health Care Consent Act, Substitute Decisions Act, Mental Health Act, Regulated Health Professions Act, Coroner's Act, Public Hospitals Act, PHIPA, Health Insurance Act, Health Protection and Promotion Act*
- Major federal health legislation including: *Personal Information Protection and Electronic Documents Act, Food and Drugs Act, Quarantine Act, Assisted Human Reproduction Act*
- Case law regarding health issues and interpreting relevant legislation
- Corporate governance in health care setting
- Substantive areas of a health law practice including: hospital appointments/privileges, licensing and regulation of health professions, licensing and regulation of laboratories, drugs, medical devices; quality of care issues; occupational health and safety for health professionals, health information, malpractice liability, institutional liability, product liability; public health, health care funding, insurance for health professionals and institutions
- Medical/legal/ethical issues, including matters related to consent and capacity, community treatment orders under the *Mental Health Act*, conduct of clinical trials, decision-making by research ethics board, end-of-life decision-making, resource allocation, tissue/organ donation, reproductive health, patient disclosure/duty to warn, access to health care

Skills

- Provide legal opinions or advice on substantive areas of health law practice
- Analyze decision-making of health care professionals and institutions to assess risk and liability
- Engage health care professionals to provide technical opinions needed as basis for legal advice
- Assist in reviewing and updating procedures related to due diligence
- Provide assistance to clients regarding investigations by regulators
- Review and interpret insurance coverage for health care professionals and institutions

ADVANCED

Knowledge

Advanced knowledge of:

- Major Ontario health legislation including: *Health Care Consent Act, Substitute Decisions Act, Mental Health Act, Regulated Health Professions Act, Coroner's Act, Public Hospitals Act, PHIPA, Health Insurance Act, Health Protection and Promotion Act*
- Major federal health legislation including: *Personal Information Protection and Electronic Documents Act, Food and Drugs Act, Quarantine Act, Assisted Human Reproduction Act*
- Case law regarding health issues and interpreting relevant legislation
- Corporate governance in health care setting
- Substantive areas of a health law practice including: hospital appointments/privileges, licensing and regulation of health professions, licensing and regulation of laboratories, drugs, medical devices; quality of care issues; occupational health and safety for health professionals, health information,

malpractice liability, institutional liability, product liability; public health, health care funding, insurance for health professionals and institutions

- Medical/legal/ethical issues including matters related to consent and capacity, community treatment orders under the Mental Health Act, conduct of clinical trials, decision-making by research ethics board, end-of-life decision-making, resource allocation, tissue/organ donation, reproductive health, patient disclosure/duty to warn, access to health care

Skills

- Provide advice and/or provide legal opinions on full range of health law matters, including in emergency situations
- Develop new procedures related to due diligence, corporate governance, compliance, or general reduction of legal risk
- Provide assistance to clients during investigations/audits by regulators
- Analyze decision-making by health-care professionals and institutions in various situations to assess risk and liability, and provide advice liability exposure and risk mitigation

Substantial Contribution to the Development of Health Law
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ESSENTIAL

Skills

- Draft position paper regarding proposed health care related legislation
- Draft and/or present conference paper on basic issues in health law
- Participate in professional organization related to health law

INTERMEDIATE

Skills

- Assist in drafting proposed health care related legislation or contribute to submission to Government re proposed legislation
- Provide guest health law lectures at an accredited post-secondary institution
- Conduct research and publish papers regarding health law issues in academic or industry journals
- Deliver health law presentations to legal and health sector professionals
- Participate as an active member of professional organizations related to health law

ADVANCED

Skills

- Draft, or provide advice with respect to, healthcare related legislation
- Prepare and deliver submission to Government re proposed legislation
- Teach health law at an accredited post-secondary institution
- Conduct original research and make significant contribution to health law literature

- Make frequent presentations to conferences and continuing education programs in the area of health law to lawyers and health sector professionals
- Contribute to the public's understanding of health law matters through public education, including oral presentations and the development of written materials
- Participate as an active member on health sector boards or tribunals, or on the executive of an organization related to health law
- Participate as an active member on research ethics boards