

Professor Pope – Health Law: Quality & Liability (Fall 2015) Midterm Exam Feedback

Multiple Choice

1. E	6. D	11. C	16. B
2. G	7. A	12. C	17. C
3. C	8. A	13. E	18. D
4. C	9. C	14. C	19. E
5. C	10. C	15. C	20. D
1.5 points each = 30 total			

Short Answer 1

Prima facie, it looks like this hospital has no EMTALA duties, because EMTALA applies only to “hospitals with emergency departments.” 42 U.S.C. § 1396dd(a); 42 C.F.R. § 489.24(a). If this hospital has no ED, then it seems that it has no EMTALA duties (except possibly as a transferee facility, if it has specialized capabilities).	2
But “hospital with an emergency department” is a defined term in the regulations. 42 C.F.R. § 489.24(b). Therefore, even hospitals without an ED can operate such that they will be legally deemed to have a “dedicated emergency department” for purposes of triggering EMTALA duties.	2
It is possible, even probable, that this hospital must comply with EMTALA, because pregnant women in active labor regularly arrive (“lots of babies”) on an urgent basis (to deliver) without a previously scheduled appointment.	2
If EMTALA, applies, then do does the duty to stabilize here. Active labor is an EMC.	2
If the hospital has actual knowledge of a patient’s EMC on hospital property, then it must stabilize that EMC.	2
TOTAL	10

Short Answer 2

It looks like Kris either has already been screened or has presented with what is already obviously an EMC (“serious allergic reaction”).	--
Kris is on hospital property with an EMC of which the hospital has actual knowledge. Therefore, the hospital must stabilize it.	2
While the hospital did ultimately stabilize the EMC, it delayed the stabilizing treatment while it confirmed payment information. This delay is specifically prohibited. 42 C.F.R. § 489.24(d)(4)(i).	5
Moreover, the delay may mean that the hospital did not provide “necessary stabilizing treatment” medically appropriate (temporally) to Kris’ condition.	2
Kris may also have a “mini-EMTALA” state law statutory or common law claim.	1
TOTAL	10

Long Answer

Treatment relationship	
The surgeon actually operated on Arden, and thus entered into a physician-patient relationship.	--
Informed Consent - Duty	
This is Minnesota. The reasonable patient (material risk) standard applies.	1
A reasonable patient in Arden's position would want to know about the compression stockings. There are several reasons: (1) The risks at stake are very significant both in severity and probability;	2
(2) Compression stockings are recommended by two leading medical professional societies, and/or	2
(3) Arden has a special vulnerability to this risk.	2
On the other hand, if the actual efficacy (marginal extra benefit) of the stockings in this situation is low (thus the treating physician's judgment to omit them), then it is less likely that a reasonable patient would find the option important or material.	1
Moreover, even if there were a duty, an exception applies. Since Arden has a previous related problem, he may already know all about compression stockings.	3
Informed Consent - Breach	
The surgeon did discuss the risks of DVT and PE generally. But the surgeon did not specifically disclose the option of using compression stockings as one way to reduce those risks.	2
Informed Consent – Injury	
Arden has died	2
Informed Consent - Causation	
The choice, here, is not really between "TKR" and "no TKR." It is between "TKR without CS" (what Arden actually had) and "TKR with CS" (what Arden claims he would have chosen had he been made aware of that option). We do not know why the surgeon decided not to recommend compression stockings. But that was a medically reasonable decision. Therefore, it is unclear whether or not these CS offered a net additional benefit on top of the measures already taken. This fact question is relevant to all 3 parts of the causation analysis.	3
(1) Had the surgeon disclosed the risks and benefits of compression stockings, it is unclear whether Arden would have used them. But they seem like a relatively simple precaution to further reduce the risk of PE.	2
(2) Had the surgeon disclosed the risks and benefits of compression stockings, it is unclear whether the reasonable patient in Arden's position would have used them. But they seem like a relatively simple precaution to further reduce the risk of PE.	2
(3) Had Arden used the stockings, it is unclear whether they would have probably prevented the PE. They "help" prevent blood clots and "help" promote circulation. Plus, Arden was already highly susceptible to this risk.	3
TOTAL	25