

<b>Instructor</b>	<b>Professor Thaddeus Mason Pope</b>
<b>Course Title</b>	<b>Health Law: Quality &amp; Liability</b>
<b>Format</b>	<b>Take Home Midterm Exam</b>
<b>Total Time</b>	<b>Four (4) hours</b>
<b>Total Pages</b>	<b>8 pages</b>

#### Reference Materials Allowed

Open Book (all reference materials allowed)

#### Take-Home Exam Instructions

1. Please know your **correct Fall 2017 exam number** and include this number at the top of each page of your exam answer (for example, in a header).
2. Confirm that you are using and have typed the **correct exam number** on your exam document.
3. You may download the exam from the course Blackboard site any time after 12:00 p.m. on Wednesday, October 11, 2017 and before 11:59 p.m. on Saturday, October 21, 2017. You must submit your exam answer file back to the Blackboard site within four (4) hours of downloading the exam but in no case later than 11:59 p.m. on Saturday, October 21, 2017.
4. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to Blackboard.
5. Use your exam number as the **name** for the PDF file.

#### Instructions Specific to This Examination

##### GENERAL INSTRUCTIONS:

1. **Honor Code:** While you are taking this exam, you are subject to the Mitchell Hamline Code of Conduct. You may not discuss it with anyone until after the end of the entire midterm exam period. It is a violation of the Code to share the exam questions. (There may be an accommodation student taking this exam at a different time.) Shred and delete the exam questions immediately upon completion of the exam. Professor Pope will repost the exam after the end of the midterm exam period.
2. **Competence:** Accepting this examination is a certification that you are capable of completing the examination. Once you have accepted (downloaded) the examination, you will be held responsible for completing the examination.

3. **Exam Packet:** This exam consists of eight (8) **pages**, including these instructions. Please make sure that your exam is complete.
4. **Identification:** Write your exam number on the top of each page of your exam answer.
5. **Anonymity:** Professor Pope will grade the exams anonymously. Do **not** put your name or anything else that may identify you (except for your exam number) on the exam. **Failure to include your correct exam number will result in a 5-point deduction.**
6. **Total Time:** Your completed exam is due within 4 hours of downloading it but in no case later than 11:59 p.m. on Saturday, October 21, 2017. If you upload your exam more than 4 hours after downloading the exam, then Professor Pope will lower your exam grade **by one point** for every minute in excess of the 4 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 4-hour limit by more than 20 minutes, then Professor Pope may refer the situation for a Code of Conduct investigation and potential discipline. Please save sufficient time after editing to upload your exam.
7. **Timing:** Professor Pope has designed this exam for completion within two hours. That means you should be able to write complete answers to all the questions in two hours. Yet, since this is a take-home exam, you will want to take some extra time (perhaps one-half hour) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps one-half hour) to revise, polish, and proofread your answers, such that you will not be submitting a “first draft.” In short, while this is a 4-hour take home, you need not spend more than around two or three hours on this exam.
8. **Scoring:** The midterm exam comprises 10% of your overall course grade.
9. **Open Book:** This is an OPEN book exam. You may use any written materials, including, but not limited to: any required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines.
10. **Additional Research:** While you may use any materials that you have collected for this class, you are neither expected **nor are you permitted** to do any online or library research (e.g. on Lexis, Westlaw, Google, reference materials) to answer the exam questions.
11. **Format:** The exam consists of two parts:
  - PART ONE** comprises five (5) short answer questions.  
These are worth 7 points each, for a combined total of 35 points.
  - PART TWO** comprises one long answer question.  
This is worth 25 points.

12. **Grading:** All exams will receive a raw score from zero to 60. The raw score is meaningful only relative to the raw score of other students in the class. Professor Pope computes your course letter grade by summing the midterm, final, and quiz scores. He will post an explanatory memo and a model answer to Blackboard a few weeks after the exam.

### SPECIAL INSTRUCTIONS

1. **Submission:** Create clearly marked separate sections for each problem. You do not need to “complete” the exam in order. Still, structure your exam answer document in this order:
  - Short Answer 1
  - Short Answer 2
  - Short Answer 3
  - Short Answer 4
  - Short Answer 5
  - Long Answer
3. **Outlining Your Answer:** I strongly encourage you to use at least one-fourth of the allotted time per question to outline your answers on scrap paper before beginning to write. Do this because you will be graded not only on the substance of your answer but also on its clarity and conciseness. In other words, organization, precision, and brevity count. If you run out of insightful things to say about the issues raised by the exam question, stop writing until you think of something. Tedious repetition, regurgitations of law unrelated to the facts, or rambling about irrelevant issues will negatively affect your grade.
3. **Answer Format:** This is very important. **Use headings and subheadings.** Use short single-idea paragraphs (leaving a blank line between paragraphs). Do not completely fill the page with text. Leave white space between sections and paragraphs.
4. **Answer Content:** Address all relevant issues that arise from and are implicated by the fact pattern and that are responsive to the “call” of the question. Do not just summarize all the facts or all the legal principles relevant to an issue. Instead, apply the law you see relevant to the facts you see relevant. Take the issues that you identify and organize them into a coherent structure. Then, within that structure, examine issues and argue for a conclusion.
5. **Citing Cases:** You are welcome but not required to cite cases. While it is sometimes helpful to the reader and a way to economize on words, do not cite case names as a complete substitute for legal analysis. For example, do not write: “Plaintiff should be able to recover under A v. B.” Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?
6. **Cross-Referencing:** You may reference your own previous analysis (e.g. B’s claim against C is identical to A’s claim against C, because \_\_.” But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.

7. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize the key weaknesses in your position and make the argument on the other side.
8. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (reasonably implied by, suggested by, or at least consistent with, the fact pattern) that you believe to be necessary to answer the question. Do not invent facts out of whole cloth.

### Exam Misconduct

The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted by the exam or proctor, prohibited conduct includes:

- Discussing the exam with another student
- Giving, receiving, or soliciting aid
- Referencing unauthorized materials
- Reading the questions before the examination starts
- Exceeding the examination time limit
- Ignoring proctor instructions

# PART ONE

## Short Answer Questions

- 5 Questions worth 7 points each
- Worth a combined total of 35 total points
- Limit each response to 500 words. This is only a limit, not a target or suggested length.
- Recommended time = 75 minutes

### Short Answer Question 1 of 5

The policies and procedures of a hospital provide: “In the event the Medical Screening Examination does not reveal an Emergency Medical Condition: Patient may be consulted by a financial counselor to obtain insurance information and/or to determine the means of payment of any further services the patient’s medical condition requires.”

**Does having this policy or following this policy violate EMTALA? Why or why not?**

### Short Answer Question 2 of 5

After the mass shooting at a Las Vegas hotel, the emergency department at Las Vegas General Hospital was totally overwhelmed. It officially went on diversionary status. This is an accepted procedure. It notifies police and EMS that all available hospital resources are used and that they should transport individuals in need of medical attention to other facilities.

Whether negligently or intentionally, the Las Vegas Fire Department transported three patients to LVGH despite the diversionary status. The LVGH triage nurse tells the LVFD officers: “We are full. Take them to the hospital at the University of Nevada.” The LVFD does that.

**Does this conduct violate EMTALA? Why or why not?**

### Short Answer Question 3 of 5

CC got an annual physical as a condition of her employment. The physician gave her a clean bill of health that allowed CC to continue working. Yet, just seven months later, another clinician diagnosed CC with very advanced lung cancer. CC subsequently died. CC’s family sued the first physician for wrongful death for failure to diagnose her lung cancer or at least failure to apprise her of the diagnosis.

**Assess the defendant’s BEST response to this lawsuit.**

## Short Answer Question 4 of 5

Around 7:15 a.m. on the morning of Thursday, October 5, 2017, Christy called her neighbor who was a physician and told the neighbor that she might be having a heart attack. She was suffering from back pain, was having trouble breathing, and was sweaty. Christy did not call her regular healthcare provider located in another town (but in her PPO network), because she thought this was an emergency. While not a patient, Christy knew her neighbor's medical practice (while outside her PPO network) was only two miles away. The neighbor told Christy "to come over to her office and see her right away" but gave no other advice. Christy arrived at her physician neighbor's medical office late Thursday afternoon. While Christy was sitting in the waiting room, she went into cardiac arrest. Though she was later resuscitated, Christy suffered brain damage from the incident and died three years later. Christy's family sues the neighbor physician for wrongful death caused by medical negligence.

**Assess the defendant's BEST response to this lawsuit.**

## Short Answer Question 5 of 5

Is it "easier" for urban hospitals to comply with EMTALA, because of a temporal element in the definition of "stabilize"? In other words, if the transferee hospital is close (e.g. just blocks away) to the transferor hospital, then the transferor hospital may not need to provide as much treatment "to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer" because the transfer will be accomplished so quickly (e.g. before deterioration). Compare this EMTALA analysis to clinician termination of a treatment relationship. Is it analogously easier for urban clinicians to terminate with less notice?

## PART TWO

### Long Answer Question

- 1 Question worth 25 points
- Limit your response to 2000 words. This is only a limit, not a target or suggested length.
- Recommended time = 45 minutes

On Sunday evening, October 1, 2017, JC arrived at the North Memorial Hospital emergency department in Minneapolis, Minnesota. JC is a 76-year-old retired executive with the U.S. Postal Service. She was complaining of a burned mouth and throat. Because of its location, the North Memorial ED is always very busy. Consequently, before North Memorial screens individuals in its ED, it first triages them.

The lead triage nurse (an RN) examined JC and determined that she only had a sore throat that appeared mildly red. The assistant triage nurse explained: “This lady is saying that her mouth and throat were horribly burned by the ‘Men in Orange.’ She wants us to report her ‘injuries’ to the police. She wants to see a specialist. But I do not see anything wrong with her other than the sore throat. I think this lady is a little ‘funny.’” The lead triage nurse agreed and gave JC a lower priority in the triage queue. JC thanked the triage nurses, and they turned to address the needs of other patients.

Five hours later (at around 1:30 a.m.), JC was ushered into the examination room. Pursuant to North Memorial policy, a registered advance practice nurse (ARPN) arrived to conduct the examination. JC immediately began a vociferous litany of complaints:

“Why have I been sitting here for so long? It's been five hours!”

“My mouth is on fire! Fire! My pain is 10 out of 10!”

“Where the f\*\*\* is the doctor?”

The ARPN introduced herself and told JC that she would be treating her that evening. JC immediately insisted that she wanted to be treated by a specialist, an otolaryngologist (a physician trained in the medical and surgical management and treatment of patients with diseases and disorders of the ear, nose, throat (ENT)).

The ARPN calmly replied, “How about if I just take a look first.” The ARPN then proceeded to administer a standard mouth and throat examination based on JC’s clinical presentation. Based upon this exam, the ARPN determined that JC’s throat was slightly red. She had no other obvious symptoms.

The ARPN told JC:

“It looks like you have a bit of a sore throat. You can gargle with saltwater. I can give you a prescription for something to gargle with that will make you feel better. You could even try some over-the-counter sprays or lozenges. We may have some free samples here at the hospital.”

JC responded: “I don't want a damn prescription. I want to see an ENT specialist. I want someone to look at all the burns in my mouth. I want you to call the police and report these burns.” The ARPN calmly replied, “I am sorry. A specialist is not required here. I cannot see any burns in your mouth.”

JC jumped up, angry, and said, “If this is how this place is going to treat my burns, then forget it.” JC ran out of the examination room and left the ED and the hospital. The ARPN shook her head. Yet, she did not have time to worry about it. There were many other patients waiting.

JC later showed up at the Regions Hospital ED in Saint Paul, Minnesota. There, clinicians diagnosed her with chemical burns to the back of her throat. Regions clinicians further determined that a sort of special mustard/pepper spray had caused the injury. Over the past few months, teen gangs had been spraying such substances in the face of victims whom they mug/rob on the streets of Minneapolis. Regions clinicians determined that the burn was grave because of the likelihood of blistering and infection and because swelling could cause difficulty breathing. This is beyond the capabilities of the ED staff. So, Regions admits JC for “chemical inhalation burn” treatment. Yet, due to a medical records mix-up, JC never receives that treatment. She dies at Regions from complications from the burns.

On Wednesday, October 4, 2017, JC filed a *pro se* lawsuit against the ARPN, against North Memorial Hospital, and against Regions Hospital in the U.S. District Court for the District of Minnesota. The same system owns and operates both hospitals. That system has retained you to represent all three defendants. Because JC is proceeding *pro se*, her complaint is not a model of clarity. Yet, this court typically generously and broadly construes allegations made by *pro se* plaintiffs.

**Draft a memo to your client assessing the strengths and weaknesses of the claims that JC has (probably) asserted.**

## END OF EXAM