

<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, Fall 2019</b>
<b>Total Time</b>	<b>Four (4) hours</b>
<b>Total Pages</b>	<b>14 pages</b>

#### Reference Materials Allowed

Open Book (all reference materials allowed)

#### Take-Home Exam Instructions

1. Please know your **correct Fall 2019 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 Canvas site any time after 12:01 a.m. on Friday, October 4, 2019 and before 11:59 p.m. on Friday, October 11, 2019.
4. You must **upload** (submit) your exam answer file to the Canvas site within four (4) hours of downloading the exam.
5. You must **upload** your exam answer file no later than 11:59 p.m. on Friday, October 11, 2019. Therefore, the latest time by which you will want to download the exam is 7:59 p.m. on Friday, October 11, 2019. Otherwise, you will have less time than the full permitted four hours.
6. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to Canvas.
7. Use your exam number as the **file name** for the PDF file that you upload.

## 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 final 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 final exam period.
2. **Competence:** By downloading and accepting this examination, you certify that you can complete 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 fourteen (14) 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 24 hours of downloading it, but in no case later than 11:59 p.m. on Friday, October 11, 2019.
7. **Time Penalty:** If you upload your exam answer file more than 4 hours after downloading the exam, then Professor Pope will lower your exam grade **by one point** for every minute over 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 enough time after editing to upload your exam.
8. **Timing:** Professor Pope has designed this exam for completion in 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.”
9. **Scoring:** This midterm exam comprises 20% of your overall course grade. While the scoring includes 100 points, these points will be weighted.
10. **Open Book:** This is an OPEN book exam. You may use any written materials, including, but not limited to: (a) any required and recommended materials, (b) any handouts from class, (c) PowerPoint slides, class notes, and (d) your own personal or group outlines.

11. **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.
12. **Format:** The exam consists of three parts:
- Part One**      20 multiple choice questions  
Worth 2 points each, for a combined total of 40 points  
Estimated time = 20 minutes (1 minute each)
- Part Two**      2 short essay questions  
Worth 15 points each, for a combined total of 30 points  
Estimated time = 50 minutes (25 minutes each)
- Part Three**    1 long essay question  
Worth 30 points  
Estimated time = 50 minutes
- That adds up to only two hours. Remember, you have 4 hours to complete this exam. Therefore, you have time to revise, polish, and proofread.
13. **Grading:** All exams will receive a raw score from zero to 100. 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 Canvas a few weeks after the exam.

### SPECIAL INSTRUCTIONS FOR PART ONE

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 20). Next to each number type the letter corresponding to the best answer choice for that problem. For example:
1. A
  2. D
  3. B . . .
2. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why immediately after your answer choice. Your objection must both (a) Identify the ambiguity or problem in the question and (b) Reveal what your answer would be for all possible resolutions of the ambiguity. I do not expect this to be necessary.

**SPECIAL INSTRUCTIONS FOR PARTS TWO AND THREE**

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:
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

## MULTIPLE CHOICE QUESTIONS

- Below are 20 multiple choice questions.
- Each question is worth 2 points for a total of 40 points.
- Recommended time is 20 minutes.

1. **Congress designed EMTALA to protect patients against denial of care based on:**

- A. Nationality
- B. Financial issues
- C. Race/ethnicity
- D. Limited English proficiency

2. **According to EMTALA, who can determine that an emergent medical condition is occurring?**

- A. A layperson
- B. Only an ED attending physician
- C. Only a licensed ED provider
- D. A hypothetical reasonable patient with the patient's condition

3. **For a patient to satisfy the EMTALA requirement of “coming to the emergency department” for emergency care, the patient must enter:**

- A. The emergency department
- B. The hospital campus
- C. Within a 250-yard radius of the hospital campus
- D. Anywhere on hospital property

4. **With regard to emergency care, which facilities and providers are bound by EMTALA?**

- A. Only those that opt in
- B. All medical facilities
- C. All medical facilities that receive Medicare reimbursement
- D. All medical facilities that receive any federal funding

5. **The two main obligations created in the EMTALA statute include screening and:**
- A. Stabilization
  - B. Referral
  - C. Follow-up
  - D. Treatment
6. **According to EMTALA, what requirement must be met when transferring a patient with an emergency medical condition?**
- A. It must be at the patient's request
  - B. It must be medically necessary
  - C. It must be within 20 miles of the patient's home
  - D. Transfers are never allowed when the patient still has an EMC
7. **To comply with EMTALA and complete the transfer arrangements, the facility to which the patient is being transferred must normally:**
- A. Arrange for transportation
  - B. Have an inpatient bed available
  - C. Accept the transfer
  - D. Report the transferring hospital to the DHHS OIG
8. **Civil monetary penalties for violation of EMTALA may cost up to:**
- A. \$10,000 per infraction
  - B. \$25,000 per infraction
  - C. \$50,000 per infraction
  - D. \$100,000 per infraction
9. **The regulations (sometimes referred to as the "Healthcare Rights Law") that implement Section 1557 of the Affordable Care Act became effective in:**
- A. 2010
  - B. 2016
  - C. 2019
  - D. They are not yet effective

10. **Outside the EMTALA context, facilities and clinicians are generally prohibited from discriminating against patients on the basis of all the following EXCEPT:**
- A. Age
  - B. Sex
  - C. Gender identity
  - D. Ability to pay
  - E. Race
  - F. Disability
11. **You are a Chinese-only speaking patient. You make an appointment with a cardiologist. They tell you to bring an interpreter. This violates:**
- A. EMTALA
  - B. ADA
  - C. Section 1557
  - D. Both A and C
  - E. Both B and C
  - F. None of the above
12. **You are a Chinese-only speaking patient. You pick-up a prescription at Walgreens. The pharmacist explains the precautions only in English. When you look confused, the pharmacist asks another Chinese customer to translate. This violates:**
- A. EMTALA
  - B. ADA
  - C. Section 1557
  - D. Both A and C
  - E. Both B and C
  - F. None of the above
13. **Experts estimate that 30% of ED visits are potentially unnecessary, costing hospitals nearly \$10 billion. Can hospital EDs categorically refuse to treat some specified conditions and direct patients to a less expensive outpatient setting?**
- A. Yes, if the condition could not possibly be an EMC
  - B. Yes, if the condition is probably not an EMC
  - C. No, hospitals must screen all arriving patients to determine if the presenting condition might be an EMC
  - D. No, hospitals must not only screen but also must treat patient's chronic non-emergency conditions like COPD and diabetes

14. **Mother consented to surgery on her daughter's spine provided that the clinicians used only family-donated blood for any necessary transfusions. The patient was transfused with non-family blood from an HIV-positive donor and became HIV-positive. The patient's best legal theory against the clinicians is**
- A. Informed consent
  - B. Battery
  - C. Abandonment
  - D. EMTALA
  - E. ADA
15. **In summer 2019, Kaiser Health New reported that the University of Virginia Health System had sued more than 36,000 of its patients over six years for unpaid bills for more than \$100 million. To collect on judgments, UVA seizes tax refunds and send thousands of patients into bankruptcy. Many of the debts are from ED visits by uninsured patients.**
- A. This violates EMTALA, because the hospital must screen and stabilize without regard to payment.
  - B. This violates EMTALA, because while billing is fine, aggressive debt collection is not.
  - C. This does not violate EMTALA.
16. **A Wisconsin physician examined an individual to determine whether her injuries were covered by her employer's worker's compensation insurance. The physician determined that the patient's therapy did not need therapy. Therefore, therapy was not covered by worker's comp. In fact, the patient's condition worsened. If the physician's diagnosis was erroneous, then the patient can probably successfully:**
- A. Sue the physician for medical malpractice
  - B. Sue the physician for breach of informed consent
  - C. Sue the physician for abandonment
  - D. More than one of the above
  - E. None of the above

17. Patient was suffering neck pain and went to a chiropractor in Roseville, Minnesota. The chiropractor administered neck manipulation treatment. It did not work, so the chiropractor administered more forceful neck manipulation treatment. This caused vertebral artery dissection, resulting in blurry vision and dizziness. The chiropractor called 911 and the patient was subsequently diagnosed with a stroke. In an informed consent action against the chiropractor, the evidence most relevant and useful to the patient is
- A. Chiropractors customarily disclose the risk of vertebral artery dissection.
  - B. There was another treatment for the patient's condition that did not present a risk of stroke.
  - C. Forceful neck manipulation treatment is common.
  - D. Patients are generally aware that head and neck injuries might result from chiropractic procedures.
18. When patients are diagnosed with transient ischemic attack (TIA) or stroke, they have a higher risk of having another stroke within 48 hours. It takes time and energy to make a correct diagnosis, particularly in the early stages of stroke or TIA. Doctors and stroke teams aren't willing to make that investment and, instead, downplay, ignore, and discharge patients with intermittent or transient stroke/TIA symptoms that come and go or have a shorter duration. Patient went to the ED immediately after developing sudden symptoms of vertigo (dizziness). Consistent with hospital protocol, yet without ordering a CT or MRI scan, or doing much of an evaluation at all, the ED physician concluded that patient's symptoms were temporary and innocuous and sent him out the door. Patient returned the next day experiencing a massive stroke that could have been avoided. Patient's best claim against hospital is
- A. Violation of EMTALA screening requirement
  - B. Violation of EMTALA stabilization requirement
  - C. Both A and B
  - D. Neither A nor B

19. A 66-year-old woman presents to the ED with hematemesis (vomiting of blood) shortly after midnight. The ED physician suspects the patient has acute gastrointestinal bleeding and telephones the on-call gastroenterologist to come and evaluate the patient. The gastroenterologist says that he is tired and has a full day of procedures tomorrow. She says, "If the patient is really that ill, then you need to send her to the university hospital," then hangs up. On these facts, the following might be successful actions:
- A. Plaintiff sues gastroenterologist under EMTALA
  - B. Plaintiff sues hospital under EMTALA
  - C. DHHS fines gastroenterologist under EMTALA
  - D. DHHS fines hospital under EMTALA
  - E. All of the above
  - F. B and D
  - G. A, C, and D
  - H. A, B, and C
  - I. None of the above, because there is no EMTALA violation
20. A 53-year-old man presents to a small, rural hospital ED with acute respiratory failure secondary to a flare-up of interstitial lung disease (that causes scarring or fibrosis or stiffness of the lungs, making it difficult to breathe). The ED physician requests a transfer to a tertiary hospital for a higher level of care. The on-call physician at the tertiary hospital refuses, saying that there are other, closer hospitals that should be called instead.
- A. No EMTALA violation, because patient is not yet on the property of the tertiary hospital
  - B. No EMTALA violation, because hospitals may not transfer patients until they have been stabilized
  - C. No EMTALA violation, because the transferring facility has not sent the patient's records or made the transfer with appropriate personnel
  - D. EMTALA violation

## Short Essay Question 1

- This question is worth 15 points
- Limit your response to 600 words. This is only a limit, not a target or suggested length.
- Recommended time is 25 minutes.

Hennepin County EMS is an urban/suburban 911 Emergency Medical Services agency that handles more than 80,000 calls for service each year. It is based at the Hennepin County Medical Center (HCMC) in downtown Minneapolis, across the street from U.S. Bank Stadium where the Vikings occasionally win a football game. HCMC is a Level I trauma center and the primary safety net hospital in Minneapolis. HC-EMS serves 14 municipalities, covering 266 square miles, and a population of over one million visitors and residents. HC-EMS has about 40 ambulances.

In a recent review of its records, HC-EMS determined that many of its 80,000 service calls, last year, involved transporting senior citizens to hospital EDs for relatively minor conditions. This is because when an assisted living facility or a nursing home calls 911, that is where ambulances have always automatically taken the patient. But a review of HC-EMS records shows that a large percentage of these service calls involved patients with conditions that did not require the expertise or resources of a hospital ED.

HC-EMS has developed a new transportation protocol. To reduce the load on hospital EDs and to keep people out of the ED when they don't really need to be there, HC-EMS now plans to have its ambulances transport many of these patients either to urgent care centers or to doctor's offices, rather than to a hospital ED. This program is based on the "Emergency Triage, Treat, and Transport (ET3)" model that allows first responders to triage and direct people to "alternative" destinations based on their medical needs.

**You are a law clerk for the Hennepin County Attorney's Office, which represents HC-EMS. The County Attorney has asked you to identify and assess any legal risks associated with the proposed ET3 plan.**

## Short Essay Question 2

- This question is worth 15 points
- Limit your response to 600 words. This is only a limit, not a target or suggested length.
- Recommended time is 25 minutes.

Joelle was eating a burrito at Chipotle when she suddenly realized that she was suffering from an asthma attack. So, Joelle drove herself to the local hospital. She parked near the large, lighted, red sign with white lettering that reads “EMERGENCY,” and she headed in.

But when Joelle reached the double glass sliding doors, she found, to her surprise, that they were locked. Joelle stared through a plate-glass window, across a long foyer, and into the emergency room waiting area. But she could not get in. Joelle banged on the glass doors, but nobody in the waiting room was close enough to the doors either to see or to hear her.

Joelle then noticed a small sign on the locked double glass sliding doors that directed patients to another, different door on the East side of the building. Unfortunately, Joelle never made it there. While walking around the hospital building to the other door, Joelle collapsed. She was able to call 911 as she lay on the ground. Unfortunately, help did not arrive in time. Joelle died.

**You are a law clerk for the hospital’s Office of General Counsel. The GC has asked you to identify and assess the hospital’s exposure to legal financial risk for Patty’s death.**

## Long Essay Question

- This question is worth 30 points
- Limit your response to 1600 words. This is only a limit, not a target or suggested length.
- Recommended time is 50 minutes.

Patty developed complications after giving birth to her first child. Patty's physicians at downtown Saint Paul's Regions Hospital feared that Patty's condition could be a life-threatening urinary tract obstruction. So, they ordered a diagnostic procedure called an intravenous pyelogram (IVP) to diagnose Patty's condition.

An IVP is basically an x-ray examination of the kidneys, ureters and urinary bladder that uses iodinated contrast material injected into veins. When the contrast material is injected into a vein in the patient's arm, it travels through the blood stream and collects in the kidneys and urinary tract, turning these areas bright white on the x-ray images. An IVP allows the radiologist to view and assess the anatomy and function of the patient's kidneys, ureters and the bladder.

There is no dispute that an IVP was the most appropriate procedure to diagnose Patty given the very specific, serious complications with which she presented. Indeed, Patty's IVP identified a life-threatening urinary tract obstruction that probably would not otherwise have been detected until after it had already caused Patty irreversible (and probably life-threatening) kidney damage.

Unfortunately, while just a minimally invasive diagnostic procedure, the IVP has side effects such as hives, nausea, trouble breathing, a severe drop in blood pressure, and death. The chance of death from an IVP is 1 in 100,000 to 1 in 150,000. The Regions physician did not inform Patty about the possibility of death, although she did inform Patty of the other risks.

The Regions physician also failed to inform Patty that, in 2017, she had been reprimanded by the Board of Medical Practice for engaging in sexual relations with another patient. This information is available using the Board's search tools (<https://mn.gov/boards/medical-practice>) to find a practitioner's disciplinary actions.

Unfortunately, Patty died from the IVP. Her husband has sued Regions. The parties have been litigating this case for about 14 months. Most recently, the Regions attorney filed a motion for summary judgment.

The Regions attorney makes three arguments for why the court should grant this motion. First, she argues that plaintiff failed to present expert testimony on whether the doctors deviated from the standard of care when they failed to inform Patty of the risk of death. Second, the Regions attorney argues that the Regions physician had no duty to disclose the risk in any case. Third, the Regions attorney argues that there is no genuine dispute as to any material fact on causation and the court should, therefore, rule for Regions as a matter of law.

**You are a law clerk to the Ramsey County District Court judge to whom this case has been assigned. Prepare a bench memo for the judge that assesses how she should rule on Region's motion for summary judgment.**