

**WIDENER UNIVERSITY SCHOOL OF LAW**  
**HEALTH LAW I** **FINAL EXAM**

**Professor Pope**

**Fall 2007**

**GENERAL INSTRUCTIONS:**

1. **Honor Code:** While you are taking this exam, you may not discuss it with anyone.
2. **Competence:** Accepting this examination is a certification that you are capable of completing the examination. Once you have accepted the examination, you will be held responsible for completing the examination.
3. **Exam Packet:** This exam consists of 21 pages, including this cover page. Please make sure that your exam is complete.
4. **Identification:** Write your exam number in the space provided in the upper-right hand corner of this page. Mark your exam number on the Scantron form for Part One. And write your exam number on the cover of each Bluebook (or your ExamSoft file) that you use for Parts Two and Three.
5. **Anonymity:** The exams are graded anonymously. Do not put your name or anything else that may identify you (except for your student number) on the exam.
6. **Timing:** This exam must be completed within three (3) hours. Time will commence *after* everyone has completed reviewing the instructions.
7. **Scoring:** There are 180 points on the exam, one per minute. Thus, you should allot a twenty (20) point question approximately twenty (20) minutes.
8. **Open Book:** This is an OPEN book exam. You may use *any* written materials, including, but not limited to: the Hall-Bobinski-Orentlicher casebook, other required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines. You may not use a computer other than in its ExamSoft mode.
9. **Format:** The exam consists of three (3) parts which count toward your grade in proportion to the amount of time allocated.

**PART ONE** comprises twenty-five (25) multiple choice questions worth a combined total of 50 points. The suggested completion time is 50 minutes.

**PART TWO** comprises three (3) short essay questions worth a combined total of 50 points. The suggested completion time is 50 minutes.

**PART THREE** comprises one long essay question worth eighty points. The suggested completion time is 80 minutes.

10. **Grading:** All exams will receive a raw score from zero to 180. The raw score is meaningful only relative to the raw score of the other students in the class. The raw score will be converted to a scaled score, based on the class curve. For example, if the highest raw score in the class were 110 of 180, then that student would typically receive an "A." I will post an explanatory memo and/or a model answer to TWEN a few weeks after the exam. L.L.M. and M.J. students are curved separately.
11. **Special Instructions:** Instructions specific to each section are printed immediately below.

### **SPECIAL INSTRUCTIONS FOR PART ONE:**

1. **Format:** This Part contains twenty-five (25) multiple choice questions, worth a combined total of 50 points. This part has a suggested completion time of 50 minutes. Please note that the questions vary in both length and complexity.
2. **Identification:** Please fill in your Student ID on the Scantron form.
3. **Fill-in the Circles:** Using a number two pencil, please fill in *the best answer* for each question on the appropriate line of the *Scantron scoring form*. Answers on this exam booklet will *not* be considered.
4. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, explain why in a separate, clearly-labeled section of your Bluebook or ExamSoft file. Your objection must identify the ambiguity or problem in the question and 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:** Write your answers in your Bluebook examination booklets or ExamSoft file. I will not read any material which appears only on scrap paper.
2. **Legibility:** Write legibly. Please write only on one side of the page. I will do my best to read your handwriting, but must disregard (and not give you points for) writing that is too small to read or otherwise illegible.
3. **Outlining Your Answer:** You are strongly encouraged to use one-fourth of the allotted time per question to outline your answers on scrap paper *before* beginning to write in your exam booklet or ExamSoft file.

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.

4. **Answer Format:** This is important. *Use headings and subheadings.* Use short single-idea paragraphs (leaving a space between paragraphs). Much less important, but sometimes helpful, are introductory roadmaps.
5. **Answer Content:** Answer all (but only) relevant issues that arise from the fact pattern. 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.
6. **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 substitute for stating the law. For example, do *not* write: "Plaintiff should be able to recover under *Canterbury*." Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?
7. **Cross-Referencing:** You may reference your own previous analysis. But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
8. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize key weaknesses in your position and make the argument on the other side.
9. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (implied by or at least consistent with the fact pattern) that you believe to be necessary to answer the question.

**STOP !**

**DO NOT TURN THIS  
PAGE UNTIL THE  
PROCTOR SIGNALS**

# **PART ONE**

**25 questions worth 2 points each = 50 points/minutes**

- 1. In the pending case of *Gustafson v. Pierce*, the court is considering the claim of Gustafson that the physician had used a procedure in operating on a hernia that he had not described to Gustafson in seeking his consent for the surgery. The defendant physician argues that her failure to explain the procedure does not establish informed consent liability. Under *Canterbury*, which of the following arguments would support the defendant's position?**
  - A. A reasonable person would not consider the information material
  - B. A reasonable person would have proceeded with the surgery even had had known about the procedure
  - C. A reasonably prudent physician would not have described the procedure to the patient under the circumstances
  - D. Both A and B
  - E. All of the above

2. **David Case has completed an advance directive pursuant to the Delaware Health Care Decisions Act. His advance care plan indicates that if he has an end-stage illness, then he does not want tube feeding. Case's advance care plan also appoints Steve Mulroy as agent. If Case later has an end-stage illness and Mulroy demands that tube feedings be continued, then**

- A. The hospital should comply with Mulroy since he is the duly-appointed agent, authorized to make health care decisions for Case
- B. The hospital should comply because Mulroy's demand is a reasonable interpretation of the advance directive and the hospital can comply in good faith
- C. The hospital should not comply with Mulroy unless Case has been determined to lack capacity
- D. The hospital should not comply with Mulroy even if Case has been determined to lack capacity
- E. Both A and B
- F. Both C and D

3. **Under the Delaware Health Care Decisions Act, health care providers must:**

- A. Always comply with a patient's advance directive
- B. Always comply with a reasonable interpretation of a patient's advance directive made by an agent
- C. Both A and B
- D. Neither A nor B

**4. Informed consent refers to:**

- A. Patient's right to be apprised of the effectiveness of proposed treatment options
- B. Patient's right to grant permission to treat
- C. Patient's right to refuse treatment
- D. A and B
- E. All of the above

**5. The November 7, 2007 *Chicago Tribune* reported the following about a Marion, Illinois hospital:**

**Nine patients died in surgery from October 2006 to October 2007. That was more than four times the expected rate. Dr. Jose Veizaga-Mendez, a surgeon with a troubling professional history, was operating on patients at the hospital for more than a year after surrendering his license in Massachusetts during a disciplinary proceeding. Officials linked some of those nine surgery deaths to Veizaga-Mendez, whose medical license was suspended indefinitely last month by the State of Illinois. Veizaga-Mendez agreed to stop practicing medicine in Massachusetts in April 2007 after a state licensing board there accused him of "grossly substandard care" leading to serious complications and deaths. The surrender was dubbed "voluntary" and "non-disciplinary," but Veizaga-Mendez remained licensed in Illinois and continued to work at the Marion hospital until resigning in August.**

**If your client was one of the patients who died during surgery, your best theory of liability against the hospital would be:**

- A. Vicarious liability for malpractice of Veizaga-Mendez - respondeat superior
- B. Vicarious liability for malpractice of Veizaga-Mendez - ostensible agency
- C. Direct liability – negligent selection
- D. Direct liability – negligent retention
- E. Strict liability

6. **Dr. Andrew Wyeth was in the restaurant when a fellow diner choked on his steak. The doctor did not provide first-aid, and the diner subsequently died. A lawsuit against Dr. Wyeth for failure to render emergency aid would succeed because:**

- A. A reasonable person would come to the aid of someone in distress
- B. A reasonable doctor would come to the aid of a stranger in distress
- C. All doctors have a duty to treat in an emergency situation
- D. But for the doctor's negligent failure to treat, the patient would have survived
- E. None of the above

7. **A patient developed severe headache and neck stiffness which the clinic physician diagnosed as a viral infection. Her condition did not improve, so her husband called the doctor who did not return the page. The call was transferred to the emergency department (ED) physician who asked some questions but did not encourage re-evaluation, as the ED was extremely busy at the time. The patient's condition was subsequently diagnosed as a subarachnoid bleed and she later expired.**

**Her husband sued the clinic physician, the ED physician, and the hospital for malpractice. The clinic physician, a hospital employee, is a medical resident just out of medical school. The ED physician works as an independent contractor and derives no direct salary or fringe benefits from the hospital. A prominent sign at the entrance features these words: "Hospital Emergency Services: Physician on duty 24 hours."**

- A. The clinic physician is not liable because he met the standard of care expected of a physician at his stage of training
- B. The ED physician is not liable because there was no doctor-patient relationship
- C. The hospital is vicariously liable for clinic physician's conduct but not ED physician's conduct
- D. More than one of the above
- E. None of the above

8. **During her hospital stay, an elderly patient noticed abrasions and burn marks on her extremities. She believed they resulted from the use of wrist and ankle leather restraints but could not prove it.**

- A. This is a case of res ipsa loquitur, analogous to the leaving of surgical instruments in the abdomen
- B. If an unexpected adverse event occurs in the hospital, a good case of res ipsa loquitur can be made because the hospital team is in full control of the patient
- C. This is not a case of res ipsa, as the injuries may have resulted from excessive rubbing on the bed-sheets
- D. Res ipsa is good circumstantial evidence and the plaintiff will no longer need a medical expert to prove her case
- E. None of the above

9. **Giant-size fibroids were discovered during a routine diagnostic laparoscopy. The gynecologist proceeded with a total hysterectomy because two other colleagues agreed that this was the definitive treatment and the patient was already under general anesthesia.**

- A. Gynecologist did right as he was thinking of his patient's best interest
- B. Gynecologist did right as there was an implied consent for the hysterectomy
- C. Gynecologist was merely applying the principle of therapeutic privilege
- D. Gynecologist should have discussed the situation with the patient at a later date and obtained specific informed consent before proceeding with the hysterectomy
- E. None of the above

- 10. You operate a for-profit medical website that displays clinical summaries of the latest in diagnosis and treatment. You also answer personal medical questions from subscribing viewers via e-mail. There is a disclaimer that you are not providing medical advice, and visitors to your website are encouraged to consult their own personal physicians. A viewer, in reliance on your information, suffers harm.**
- A. No doctor-patient relationship is formed in cyberspace, so there is no duty of due care.
  - B. The disclaimer effectively immunizes you against any lawsuits.
  - C. You may be liable for breach of privacy or confidentiality if the e-mail messages are intercepted or read by someone else.
  - D. More than one of the above
  - E. None of the above
- 11. Dr. House, a general practitioner (GP), saw his patient on two separate occasions for fever and myalgia. Patient then suddenly experienced the sensation of a curtain covering her left eye. The doctor suspected retinal detachment (an ophthalmologic emergency), and advised her to seek specialist attention, but did not insist on immediate attention as it was Christmas Eve. The patient waited 36 hours without improvement in her vision, and then went to the emergency department, where the rare condition of Klebsiella endophthalmitis was made. She subsequently lost the vision in that eye.**
- A. A plaintiff sees a GP at her own peril, and assumes the risk of GP missing rare or difficult eye diagnoses
  - B. Dr. House told the patient to see a specialist, and therefore legally discharged his duty.
  - C. Dr. House's failure to obtain an immediate eye consult once he suspected retinal detachment is probably a breach of the standard of care.
  - D. In order to win the lawsuit, the plaintiff must prove that the 36-hour delay caused her blindness.
  - E. Both C and D

12. **A pathologist came to the aid of a woman who had collapsed in the shopping mall. The woman wore a Medic-Alert bracelet indicating that she suffered from anaphylaxis, and that she carried adrenaline in her purse. The doctor performed CPR but did not administer the drug because he had not given an injection in over 30 years. The patient died and expert testimony indicated that had the adrenaline been given, the patient would have survived.**

- A. No doctor-patient relationship was formed.
- B. Doctors are legally bound to treat those who are in need of emergent assistance.
- C. No liability attaches since the doctor did not breach the standard of care expected of a pathologist under the circumstances of the case.
- D. More than one of the above
- E. None of the above

13. **PROVIDENCE, R.I., Nov. 27 (UPI) -- A Rhode Island hospital has been fined \$50,000 by state regulators for its third wrong-site surgery this year. The most recent incident at Rhode Island Hospital in Providence involved an 82-year-old patient in the neurosurgical intensive care unit, where a resident physician began drilling into the wrong side of the patient's head during a bedside procedure Friday to stem internal bleeding. This latest incident is the hospital's fourth wrong-site surgery in six years, all involving brain procedures, The *Boston Globe* reported Tuesday. "We are extremely concerned about this continuing pattern," said Dr. David Gifford, director of the state Department of Health, in a statement. "We have not seen an adequate response in the hospital's system and protocols since the last order was issued." After a similar error occurred earlier this year, officials ordered the hospital to overhaul its pre-surgical procedures, including having a second physician review the site for surgeries.**

**If the R.I. hospital fails to implement new neurosurgical procedures, it may be grappling with legal ramifications regarding:**

- A. Certification
- B. Licensure
- C. Accreditation
- D. Direct malpractice liability
- E. All of the above

14. **In 1998, Nathan Burney had a spot on his left cheek removed under the treatment of Dr. Alexandra. No biopsy was performed on the spot. Four years later, the spot returned. At that time, another physician at a different practice diagnosed Burney with malignant melanoma, which ultimately caused his death on May 7, 2003. On May 4, 2005, Burney’s estate filed a medical malpractice suit against Dr. Alexandra. The relevant jurisdiction has a five-year statute of repose and a four year statute of limitations.**
- A. Burney’s action is barred by the statute of repose
  - B. Burney’s action is barred by the statute of limitations
  - C. Both A and B
  - D. Neither A nor B
15. **You are a general practitioner. You open a private practice office in an office park on Concord Pike. One day, a woman rushes into your office clutching her abdomen and screaming “I really need to see the doctor. Like right now!” She has no appointment and has never been your patient. If you refuse to see her, you may be liable under:**
- A. EMTALA
  - B. *Wilmington v. Manlove*
  - C. Medical malpractice law
  - D. Tortious abandonment law
  - E. None of the above

**16. Sam is unemployed and has no health insurance. He has been having a terrible side ache. Sam's friend Quinn says "Call my doctor. Here's her card." Sam is a little embarrassed to call, so he sends an email: "Dear Doctor, I am HIV+. I have had a terrible ache in my side for two weeks and there is blood in my stool. I reckon it will go away after awhile. But please tell me if I need to go to the ER." Sam sends the email return receipt and gets a pop-up letting him know that his email was delivered and opened. The doctor never emails or calls Sam. The reasonably prudent physician would advise a patient with Sam's symptoms to get to the ER immediately. Sam may be successful in an action against Quinn's doctor under the following:**

- A. Medical malpractice
- B. Tortious abandonment
- C. ADA
- D. EMTALA
- E. None of the above

**17. The patient's course of treatment requires three office visits. After the second visit, the physician discovers that the patient has lost her health insurance, and refuses to continue to see the patient. The physician's conduct:**

- A. Violates EMTALA
- B. Constitutes tortious abandonment unless the patient had an adequate opportunity to find an alternative provider
- C. Constitutes tortious abandonment even if the patient had an adequate opportunity to find an alternative provider
- D. More than one of the above
- E. None of the above

**18. The patient's course of treatment requires three office visits. After the second visit, the physician discovers that the patient has lost her health insurance. But (in contrast to Qu.17) the physician sees the patient for the third visit and then terminates the treatment relationship. In fact, contrary to the physician's expectations and current diagnosis, the course of treatment has not gone as planned. Patient actually needs at least two more visits for additional follow-up. The physician's conduct:**

- A. Violates EMTALA
- B. Violates the ADA
- C. Constitutes tortious abandonment unless the patient had an adequate opportunity to find an alternative provider
- D. Constitutes medical malpractice
- E. More than one of the above

**19. Dr. Drake is an on-call physician in Delaware Hospital's ER. A patient presents with a cough. After the standard exam, Dr. Drake diagnoses a sore throat, gives patient over-the-counter lozenges, and sends her home. In fact, the patient had a rapidly deteriorating tuberculosis and asthma problem. Plaintiff sues, attaching an expert affidavit to her complaint stating that the patient's symptoms would have indicated an emergency to the reasonably prudent ER physician. Plaintiff may proceed on:**

- A. EMTALA against Drake
- B. EMTALA against Delaware Hospital
- C. Both A and B
- D. Neither A nor B

**20. On the facts in Question 19, the plaintiff may proceed on:**

- A. Medical malpractice against Drake
- B. Medical malpractice against Delaware Hospital
- C. Both A and B
- D. Neither A nor B

21. **Avian Flu is highly contagious. You are a doctor in the “Little Thailand” section of New York City. You have diagnosed a patient in your office as having Avian Flu. You have a duty to warn at least:**
- A. The patient
  - B. The patient and her spouse
  - C. The patient but not her spouse because you have no patient-provider relationship with the spouse, and thus no duty
  - D. The patient but not her spouse because that would require the disclosure of confidential patient medical information
  - E. More than one of the above
22. **You are about to undergo a procedure in a *Canterbury* jurisdiction. R1, R2, R3, and R4 are all the risks that a reasonable person undergoing this procedure would consider material. Your physician tells you about risks R1, R2, and R3. If you had known about R4, you would have declined the procedure. The physician executes the procedure and R3 materializes. The physician:**
- A. Has informed consent liability
  - B. Has no informed consent liability because there was no duty
  - C. Has no informed consent liability because there was no breach
  - D. Has no informed consent liability because there was no causation
  - E. More than one of the above
23. **Expert witnesses are always necessarily required in an informed consent cause of action where the disclosure standard is determined by:**
- A. Customary practice standard
  - B. Material risk standard
  - C. Objective reasonable patient standard
  - D. Subjective patient standard
  - E. More than one of the above

24. **Gwen Roark was bitten by a brown recluse spider. The bite damaged the skin, muscle, and bone in her left leg, requiring antibiotics, three skin graft operations, and two surgeries to create “free flaps” over her wound. In 1997, Roark began using a vacuum-assisted closure device (“VAC”) to circulate blood to the skin's surface and quicken healing. Each day, a nurse came to Roark's home and spent two hours scraping the wound with a scalpel; Roark wore the VAC the other 22 hours of the day. In 1998, Humana Insurance delayed the VAC treatments and home nursing several times. The primary care physician repeatedly told Humana that without the VAC and the home nursing case, Roark could lose her leg. Humana, nevertheless, periodically delayed VAC and home nursing treatment, until December of 1998, when it was discontinued altogether. Two months later, Roark developed a serious infection which required amputation. While convalescing, Humana again denied her VAC treatment, and, in January of 2000, the doctors performed additional amputation.**

**Ms. Roark filed suit against Humana in Texas state court under the Texas Health Care Liability Act, the Texas Deceptive Trade Practices Act, the Texas Insurance Code, and breach of contract.**

- A. The breach of contract claim is preempted by ERISA because the answer to the claim turns on interpreting the plan's language
- B. The breach of contract claim is preempted by ERISA only if her Humana Insurance is provided as an employee benefit
- C. Both A and B
- D. None of Roark’s claims are preempted since she actually suffered a physical injury from medical care

25. **Had Ms. Roark filed a medical malpractice claim against Humana:**

- A. The claim would be barred under *Wickline*
- B. The claim would not be barred under *Wickline*
- C. The claim would be preempted by ERISA
- D. Both A and C
- E. Both B and C

----- **END OF PART ONE** -----

## **PART TWO**

**3 essay questions worth a cumulative 50 points = 50 points/minutes**

### **SHORT ESSAY ONE:**

**(10 points/minutes)**

This action arises from a kidney transplant procedure, recommended and performed by the defendants, Phillip Ayvazian, M.D. (“Dr.Ayvazian”) and Jeffrey Stoff, M.D. (“Dr.Stoff”). Alleging that the transplant was unnecessary, Anne Montalto (“Montalto”), the transplant recipient, and Joseph Francis (“Francis”), the volunteer donor, brought medical malpractice claims against Drs. Ayvazian and Stoff.

In 1990, Montalto underwent a cadaveric kidney transplant. Around 1999, the cadaveric kidney began to show signs of failure. The plaintiffs claim that this failure was due to cyclosporine nephrotoxicity. That is, the anti-rejection medication that Montalto was taking was poisoning her kidney. Montalto was eventually taken off cyclosporine and put on another anti-rejection drug, and her kidney function allegedly began to improve. However, the plaintiffs contend that the defendants failed to recognize this improvement, and negligently advised Montalto that she needed another kidney transplant.

Based on the defendants' advice, Francis voluntarily donated one of his kidneys to Montalto. The transplant occurred on July 23, 2001. One team of doctors, not party to this suit, performed Francis' extraction surgery, which was completed without complication. Another team of doctors, namely Drs. Ayvazian and Stoff, took the extracted kidney and transplanted it into Montalto. The transplant was ultimately unsuccessful and the new kidney was removed on August 14, 2001. Despite removal of the new kidney, the function of Montalto's cadaveric kidney continued to improve, and she survived on that kidney alone. The core of the plaintiffs' claims is that the defendants' negligence caused them both to undergo unnecessary and dangerous surgeries.

You represent Dr. Ayvazian. Make your strongest argument in support of a motion for summary judgment on Francis' claims.

**SHORT ESSAY TWO:**

**(10 points/minutes)**

Virtually all malpractice damages are paid by malpractice insurers rather than by physicians themselves. Moreover, malpractice premiums are not experience-rated. So, physicians with more malpractice liability pay the same rates as physicians with zero liability.

Does this mean that the malpractice system provides no incentives to physicians to reduce negligent care? Describe two ways in which malpractice liability still gives incentives for physicians to provide quality care.

**SHORT ESSAY THREE:**

**(30 points/minutes)**

In May 2006, David Hanson, a 20-year-old artist, was celebrating with Paris, his girlfriend. It was Paris' birthday. Both of them decided to take a short drive. Both David and Paris had been drinking and smoking marijuana. The two left in Paris' car with Paris driving. Paris collided with another vehicle. Her car rolled over. Paris was only minimally hurt, but David's right hand – the one he uses for his art work – was crushed between Paris' car and a tree.

David was taken to the emergency room at Washington, DC's George Washington University Hospital, where his worried mother also immediately arrived. The ER doctor called a surgeon because of the injuries to David's hand. David was still under the influence of alcohol and marijuana when he was asked to sign a preprinted consent form. He was told the surgeon would discuss his injuries with him when the surgeon, Dr. Mancini, arrived at the hospital. David remembers having signed the form with his left hand. He does not remember that anyone ever explained what sort of treatment Dr. Mancini was likely to provide.

Dr Mancini arrived at the hospital after David signed the hospital's consent form. Dr. Mancini's written orders indicate that he asked the nurse to add the following language to the consent form that David had signed: "possible amputation of fingers right hand." There is no evidence that David was told that the surgeon was contemplating amputation. David does remember saying to Dr. Mancini: "I am an artist. You need to save my fingers."

Dr Mancini operated on David within the hour. He amputated the fingers on David's right hand. In the year since, David has tried to learn to write and do some simple drawings with his left hand. He is improving, but has not been able to return to serious art work and may never be able to do so.

Davis is thinking about bringing a suit against Dr. Mancini and has retained you for purposes of an initial case consultation. It does not seem that Dr. Mancini was negligent (in execution of the operation). However, David is beginning to gather evidence that there might have been a few options in addition to amputation. The options were extraordinarily risky (high rates of morbidity and/or mortality), but David says he would have done anything to avoid the amputation.

Evaluate the strengths and weaknesses of David's potential claims against Dr. Mancini.

----- **END OF PART TWO** -----

## **PART THREE**

### **LONG ESSAY:**

**(80 points/minutes)**

Delaware Hospital has employment contracts with its nurses, nurse practitioners, and a few administrative physicians, but does not have employment contracts with other individual physicians. Delaware Hospital has a contract with a ER-R-US Company that provides emergency room physicians to the hospital. Delaware Hospital recently began an advertising campaign that emphasizes the clinical excellence of all the physicians and staff that work at Delaware Hospital.

Barack is an employee of Wadener University that provides a health plan for all its employees. Wadener University arranges the administration of this health plan by Scooby Doo Insurance. The health plan has contracts with Delaware Hospital and all physicians who have staff privileges with Delaware Hospital to provide care on a managed care basis. All care is subject to utilization review that is monitored through Scooby Doo Insurance.

Barack saw his primary care physician, Dr. Frood, at his office. Dr. Frood has staff privileges at Delaware Hospital and maintains an office practice two blocks away from Delaware Hospital. Barack complains of recurrent stomach discomfort. After Dr. Frood evaluates Barack, she recommends to Barack that he go immediately to the emergency room at Delaware Hospital because of possible appendicitis. After Barack leaves Dr. Frood's office, his stomach discomfort goes away. Barack does not go to the emergency room, but instead goes home.

Three days later, Barack again develops stomach discomfort. He then goes to the emergency room at Delaware Hospital where he is evaluated by a nurse practitioner and by an emergency room physician. They test Barack using an abdominal ultrasound machine and then tell Barack that he can go home to rest because he has viral gastritis. It turns out that the abdominal ultrasound machine is defective and therefore fails to diagnose that Barack actually has a ruptured gallbladder. Furthermore, if the nurse practitioner had been following the clinical protocols provided by the hospital, she would have made a correct and timely diagnosis.

After Barack goes home, he becomes even sicker and is eventually taken back to Delaware Hospital. Dr. Jung is the surgeon on call at the hospital and performs life-saving surgery on Barack. While Barack is in the post-op recovery ward, however, he develops a severe infection. It turns out that the nurses caring for him there did not use sterile technique and caused this infection. As a result, Barack needs to stay hospitalized for an extended time period during which he is cared for by Dr. Jung.

Five days after Barack's surgery, Scooby Doo Insurance informs Delaware Hospital and Dr. Jung that Barack's health plan will make no further reimbursements for care provided during the rest of Barack's hospital stay because of the lack of medical necessity. Scooby Doo's decision is based on treatment protocols widely accepted in the medical community.

On the same day that he is informed about this reimbursement decision, Dr. Jung writes orders to discharge Barack. Barack later dies because of complication from his post-operative infection. He would have lived if he had been allowed to stay in Delaware Hospital for another two days.

The estate of Barack initiates lawsuits against: (i) Delaware Hospital, (ii) Scooby Doo Insurance, (iii) Dr. Frood, (iv) Dr. Jung, and (v) the nurse practitioner who worked in the emergency room of Delaware Hospital. Describe the potential legal claims that may be made by Barack's estate and the likely outcome of these lawsuits.

----- **END OF PART THREE** -----