

# Health Law Quality & Liability - Professor Pope

## Midterm Exam Scoring Sheet – Fall 2018

<b>Multiple Choice (2 points each)</b>					
1. C	5. A	9. B	13. C	17. C	
2. B	6. D	10. D	14. B	18. D	
3. B	7. D	11. TRUE	15. B	19. F	
4. B	8. B	12. TRUE	16. C	20. A	
<b>TOTAL</b>					

<b>Essay 1</b>		
<b>Ruth duty</b>	WI – Ruth needs expert evidence to establish that the relevant SOC is to disclose infertility as a side effect of a hysterectomy.	<b>1</b>
<b>Exception</b>	MN – The reasonable patient in Ruth’s position would find these risks material, especially if there are fertility preserving treatment options. Given her age, Ruth is likely considering or planning to bear children.	<b>2</b>
	Even if there were a duty, DEF may argue that the reasonable patient already knows that a hysterectomy entails infertility given the very nature of the procedure. Infertility is not just a “risk.” It is a 100% probability entailed consequence.	<b>1</b>
<b>Ruth breach</b>	DEF did not disclose risks and alternatives.	<b>1</b>
<b>Ruth injury</b>	Ruth is now infertile.	<b>1</b>
<b>Ruth causation</b>	[A] With disclosure, Ruth herself probably would not have consented to the hysterectomy.	<b>1</b>
	[B] With disclosure, the reasonable patient in Ruth’s position probably would not have consented, especially because a 24-year-old likely plans to bear children. But the alternative to a hysterectomy may be a quicker death. Therefore, whether the reasonable patient would probably decline a hysterectomy depends on the effectiveness and side effects of alternative procedures to address Ruth’s cervical cancer. Those options may be superior in terms of fertility. But they may be inferior in other important respects.	<b>2</b>
	[C] Without the hysterectomy, Ruth probably would not be infertile.	<b>2</b>
<b>Mary duty</b>	WI – Mary needs expert evidence to establish that the applicable SOC is to disclose infertility as a side effect. It is possible that the SOC would be to disclose to Ruth but not to Mary.	<b>1</b>
	MN – The reasonable patient in Mary’s position might not find the risks material. Given her age, Mary is either already infertile or not planning children.	<b>2</b>
<b>Exception</b>	Even if there were a duty, DEF may argue that the reasonable patient already knows that a hysterectomy entails infertility given the very nature of the procedure. There is not just a “risk” of this side effect. It is a 100% probability consequence.	<b>1</b>
<b>Mary breach</b>	DEF did not disclose risks & alternatives.	<b>1</b>
<b>Mary injury</b>	Mary is now infertile.	<b>1</b>
<b>Mary causation</b>	[A] With disclosure, Mary would not have consented to the hysterectomy.	<b>1</b>
	[B] With disclosure, the reasonable patient in Mary’s position probably would still have consented. Infertility for a 62-year-old seems an insignificant consideration relative to the mortality risks of cervical cancer.	<b>2</b>
	[C] Without the hysterectomy, Mary might have still been infertile anyway.	<b>2</b>
<b>Other side effects</b>	Ruth or Mary could also establish elements for the other (sexual) side effects. While establishing duty in MN may be possible, causation may be difficult unless the other procedures were equally effective and did not have these side effects.	<b>3</b>
<b>TOTAL</b>		<b>25</b>

Essay 2		
EMTALA screening	Brett arrived on MRH property seeking care. Compl. ¶ 4. That triggered MRS's duty to screen.	2
	MRH administered the "standard" protocol for the symptoms with which Brett presented. Compl. ¶ 5. Indeed, Brett concedes that MRS "rigidly stuck" to its protocols. Compl. ¶ 24. That is all EMTALA requires of screening exams.	3
EMTALA stabilization	<b>Between 8:20 and 10:00PM:</b> While MRH did not administer tPA, it did not know that Brett had an EMC requiring such stabilizing treatment. There is no duty to stabilize EMCs that one has not discovered.	3
	<b>At 10:00PM:</b> At this time, MRH knew that Brett had an EMC. Therefore, MRS now has a duty to stabilize this EMC.	3
	<b>Inpatient Admission:</b> While it did not stabilize the EMC, it admitted him for the purpose of stabilization. Compl. ¶ 18. Any duty to stabilize dissipated on inpatient admission.	3
	<b>Good faith:</b> Given the delays in the orders and records (Compl. ¶¶ 19 & 21), it is unclear whether the admission was in good faith. In that case, inpatient status is not an exception to MRH's duty to stabilize an EMC.	3
	<b>Transfer:</b> If Brett was an inpatient admitted in good faith, then the transfer is not covered by EMTALA. If not, then this is a pre-stabilization transfer. While the benefits may outweigh the risks, it is unclear if the certification and other elements have been satisfied.	2
Abandonment	Dr. Hatch was in a treatment relationship with Brett, because he was actually treating him.	2
	Dr. Hatch was unavailable during a time period that Brett needed services. It seems that Hatch did not get anyone to timely cover.	2
Informed consent	<b>Duty:</b> The reasonable patient would want to know that MRS was "not capable" of treating his condition (Compl. ¶ 16) and that another facility could provide better care for stroke (the MN standard).	3
	<b>Breach:</b> Dr. Hatch did not apprise Brett of this option. Compl. ¶ 18.	2
	<b>Injury:</b> Brett has suffered injuries from his stroke.	2
	<b>Causation: (1)</b> Had Brett been apprised of the better resources at the alternative facility, he probably would have consented to a quicker transfer. <b>(2)</b> Unless the transfer itself entailed greater risks, the reasonable person also would have probably consented. Who would not want a better risk/benefit tradeoff? <b>(3)</b> It seems probable that had Brett received timely and more appropriate stroke treatment, he would not be injured.	5
<b>TOTAL</b>		<b>35</b>

Total of 100 points weighted to 20% of course grade			
MC	Essay 1	Essay 2	Total

**Note:** I use the above tables to tally scores. Your answer should be structured to address these issues and should include some macro organization with headings and paragraphs. But your answers should be written in the format of a memo or brief and not in a table.