

# Health Law Quality & Liability - Professor Pope

## Midterm Exam Scoring Sheet - Fall 2019

| <b>Multiple Choice (2 points each)</b> |           |            |            |            |  |
|--|-----------|------------|------------|------------|--|
| 1. B 100%                              | 5. A 100% | 9. B 60%   | 13. A 30%  | 17. B 70%  |  |
| 2. C 70%                               | 6. B 70%  | 10. D 90%  | 14. B 100% | 18. D 50%  |  |
| 3. D 0%                                | 7. C 100% | 11. C 100% | 15. C 100% | 19. F 40%  |  |
| 4. C 100%                              | 8. D 10%  | 12. C 60%  | 16. E 80%  | 20. D 100% |  |
| TOTAL                                  |           |            |            |            |  |

| <b>Short Essay 1 (15 points)</b>   |  |    |
|------------------------------------|--|----|
| <b>EMTALA applies</b>              | HCMC is a hospital. It has a DED. And it most probably participates in Medicare. Therefore, HCMC must comply with EMTALA.  | 1  |
| <b>Hospital property</b>           | Since these ambulances are owned by HCMC, the individuals it transports are on “hospital property” as soon as they get in the ambulance.   | 2  |
| <b>Screening duty</b>              | The hospital’s duty to screen is triggered as soon as the individual gets in the ambulance.  | 2  |
| <b>Violation of screening duty</b> | The plan seems to violate the hospital’s screening duty for three reasons. First, the plan seems to call for transport without any screening at all. Instead, it calls for immediate transfer off hospital property to a private physician’s office.                                 | 2  |
|                                    | Second, the ambulance staff are not medical professionals who are qualified to do a screening (even if one was being done).  | 2  |
|                                    | Third, any screening (if any) done in the ambulance may not be uniform and consistent with the screening for the same presenting condition done at the ED.   | 2  |
|                                    | HCMC might be able to staff the ambulance so that a proper screening could be done (for these calls) without transport to the ED.  | 2  |
| <b>Stabilization requirement</b>   | This is not triggered. Without a screening, HCMC was never aware of an EMC.  | -- |
| <b>Section 1557</b>                | It appears that all or most of the patients diverted from the ED to other facilities are older patients. They are not diverted because of their age as much as because of the seemingly innocuous nature of the complaint. But the disparate impact may raise discrimination issues. | 2  |
| TOTAL                              |  | 15 |

| <b>Short Essay 2 (15 points)</b> |   |    |
|----------------------------------|---|----|
| <b>EMTALA applies</b>            | This hospital has an “emergency” sign and thus probably a DED. It probably also participates in Medicare. Therefore, it must comply with EMTALA.    | 2  |
| <b>Hospital property</b>         | While PTF never made it inside the DED, she was on hospital property. She was within 250 yards (and indeed within 1 yard) of the main building.     | 2  |
| <b>Request for help</b>          | PTF was clearly seeking treatment from the hospital both (1) by her condition (struggling to breathe) and (2) by her conduct (banging on the door). | 3  |
| <b>Duty to screen</b>            | Hospital had a duty to screen patients on hospital property who are requesting or in obvious need of attention.                                     | 3  |
|                                  | Hospital was not actually aware of PTF. But it should have been aware. PTF detrimentally relied on the poor signage.                                | 3  |
| <b>Penalties</b>                 | PTF’s family can sue the hospital for personal injury money damages.  | 1  |
|                                  | DHHS can fine the hospital up to \$100,000.   | 1  |
| TOTAL                            |   | 15 |

- This problem is based on the Laura Levis case which was widely covered in the mass media in late 2018.

| <b>Long Essay (30 points)</b> |   |           |
|-------------------------------|---|-----------|
| <b>Treatment relationship</b> | PTF and DEF were in a treatment relationship because she was being treated.   | <b>2</b>  |
|                               | In any case, since this is Minnesota, a treatment relationship is not required for a medical malpractice action.  | --        |
| <b>Expert witnesses</b>       | Deny the motion for summary judgment on this ground. It is no problem that PTF lacks expert witnesses. Minnesota follows the “reasonable patient” standard. The jury can determine the duty to disclose without knowing the customary standard of care among physicians.  | <b>5</b>  |
| <b>Duty to disclose</b>       | The reasonable patient would likely not deem such a small risk to be material or significant in making this treatment decision.   | <b>3</b>  |
|                               | On the other hand, since the severity of the risk is death, even low probabilities of that risk might be material.  | <b>3</b>  |
|                               | Note that at least a dozen courts have ruled as a matter of law that no reasonable juror could find such statistically improbable risks material. These courts have granted motions for summary judgment.   | --        |
| <b>Causation</b>              | It is improbable that PTF would have made a different decision with disclosure. The IVP was “the most appropriate procedure” and the baseline risks were high. PTF could testify otherwise, but this strains her credibility.   | <b>5</b>  |
|                               | Even if PTF might have chosen otherwise, it is improbable that a reasonable patient in her situation would have made a different decision with disclosure. This was “the most appropriate procedure” and the baseline risks were high. No reasonable patient would assume significant (>50%) risks of death to avoid a <0.001% risk of death.     | <b>5</b>  |
|                               | Even if the IVP were not used, it is improbable that death would have been avoided, since there was a high baseline risk of death. But the facts are not precise enough to rule on this at summary judgment.  | <b>5</b>  |
|                               | It is possible that a juror could find that a reasonable patient “might” have declined the IVP if they knew of the risks. But causation requires not possibility but probability. On summary judgment, the question is “Could a reasonable juror find that a reasonable patient “probably” would have declined the IVP if they knew of the risk.” | --        |
| <b>Organization</b>           | Points for overall clarity  | <b>2</b>  |
| <b>TOTAL</b>                  |   | <b>30</b> |

| <b>Total of 100 points weighted to 20% of course grade</b> |                |                |              |
|--|----------------|----------------|--------------|
| <b>MC</b>  | <b>Essay 1</b> | <b>Essay 2</b> | <b>Total</b> |
|  |                |                |              |

**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.