

# Health Law Quality & Liability - Professor Pope

## Midterm Exam Scoring Sheet - spring 2018

Essay 1		
<b>EMTALA screening</b>	UMD Hospital followed its own protocols (“consistent . . . policy”). That is sufficient to discharge its screening duty, even if the screening is inaccurate.	5
	While Hospital followed its screening procedure for complaint A, it may not have followed it for all other patient complaints (B & C).	+
	Hospital’s deviation from the SOC and state laws is not relevant to an EMTALA screening analysis.	5
<b>EMTALA stabilization:</b> Hospital did not actually know about any EMC from the screening. Therefore, Hospital had no duty to stabilize one. It does not matter that there really might have been an EMC.		5
<b>Tortuous abandonment:</b> Even if Hospital complied with EMTALA, it may have terminated its relationship with the patient without adequate notice when she still had non-EMC healthcare needs. <i>Ricks</i> .		5
<b>Consent defense:</b> The patient may have declined healthcare services that Hospital offered. If voluntary, this would excuse Hospital from any duties under state law or federal law.		5
<b>TOTAL</b>		<b>25</b>

Essay 2		
<b>EMTALA screening:</b>	MMM Hospital followed its own policy (“standard procedures”). That is sufficient even if the screening turns out to be inaccurate. <i>Torretti</i> .	12.5
<b>EMTALA stabilization:</b>	Hospital did not know about any EMC from the screening. Therefore, Hospital had no duty to stabilize. It does not matter if there really was an EMC.	12.5
Note that unlike Essay 3, Essays 1 and 2 ask about “any” legal sanctions not only about a claim that the patient can assert. Therefore, any EMTALA sanctions could also include DHHS fines and penalties.		
<b>TOTAL</b>		<b>25</b>

Essay 3		
<b>Jackson: Tortuous abandonment</b>		
	Jackson had no pre-existing duty to treat this non-patient. <i>Hurley</i> .	3
	Jackson made the patient an appointment for a specific time and purpose. This is sufficient to form a relationship even if he never saw the patient, because it induces the patient to rely detrimentally upon this physician. <i>Lyons</i> .	3
	After formation, Jackson refused to see the patient without any notice. <i>Lyons; Ricks</i> .	3
	Consent defense: Patient may have agreed to the “late” policy.	3
<b>CVS: Tortuous abandonment</b>		
	CVS had no pre-existing duty to treat this non-patient.	3
	CVS has no duty under EMTALA, since it is not part of a hospital.	
	CVS did not take any action to form a treatment relationship.	
<b>Hospital: EMTALA</b>		
<b>Screening</b>	WWH Hospital followed its screening policy. That is sufficient.	3
	While hospital may have followed its policy in HOW it administered the screening, it probably violated it in terms of WHEN it did the screening. Hospital took too long to do a screening - or at least a triage.	4
<b>Stabilization</b>	While Hospital failed to stabilize the EMC for a substantial time, it had no duty to stabilize until it knew about the EMC.	3
	After identifying the EMC after screening, Hospital made a pre-stabilization transfer. It appears to have followed the multiple safeguards and requirements.	
<b>TOTAL</b>		<b>25</b>

Essay 4		
Argument 1: Informed consent		12.5
Argument 2: Informed consent		12.5
<b>TOTAL</b>		<b>25</b>