

Pope, Health Law: Quality & Liability: Fall 2013 Midterm Exam

Essay 1 Loosely based on *Stewart-Graves v. Vaughn*, 170 P.3d 1151 (Wash. 2007)

EMTALA – Tracy	
She arrived at the hospital.	1
She was properly (uniformly) screened .	1
She had an EMC : active labor.	2
That EMC was stabilized (by birth).	2
Alternatively, she was admitted as an inpatient for surgery for the purpose of stabilization. EMTALA does not apply to hospital inpatients.	1
EMTALA – Lucas	
He “arrived” at the hospital, when born.	2
He was screened and discovered to have EMCs (Apgar score).	2
Those EMCs were not stabilized . Continuing resuscitation past 10 minutes might have restored his circulation and respiration.	2
Per <i>Baby K</i> , the fact that stabilization would be outside the standard of care has no relevance to a stabilization duty under EMTALA.	3
Unlike his mother, Lucas was not admitted, so no exception applies.	2
EMTALA – can be asserted against hospital only	1
Informed Consent – Cesarean	
Duty – a reasonable patient would deem at least some of these risks material.	2
Emergency exception – there was a rush (“precipitous,” “quickly”) and arguably no time to disclose.	2
Common knowledge exception – while the procedure is common, it is unclear whether knowledge of the risks can be imputed.	--
Breach – material risks were not disclosed.	1
Injury – there may be side effects from the cesarean. But it seems that the main injury is to Lucas, not to Tracy.	1
Causation – it seems that Lucas’ injuries would have happened either with or without a cesarean. Plus, the RPP would probably have consented to the cesarean even with disclosure, because of the urgent need for delivery.	3
Informed Consent – Resuscitation	
Duty – the RPP would want to know the risks and alternatives to continuing the resuscitation beyond 10 minutes.	2
Emergency exception – there was a rush and arguably no time to disclose.	--
Therapeutic privilege – arguably the parents could not make a rational decision.	--
Breach – no information was disclosed.	1
Injury – Lucas is dead.	1
Causation – even with disclosure, the RPP would probably have consented to stopping, because of the low probability of success and the high risks. Tracy herself might not have consented but causation is objective. Moreover, resuscitation efforts probably was not going to work.	3
TOTAL POINTS	35

Essay 2

Loosely based on *Lopez v. Contra Costa Med.* (N.D. Cal. 2012)

Christy arrived at the hospital.	2
The hospital apparently did a uniform screening . It discovered 2 EMCs.	2
Stabilization	
The active labor EMC was stabilized through birth.	2
But the other EMC (XYZ syndrome) was not stabilized.	2
Inpatient Exception – Christy was admitted to the hospital. EMTALA does not apply to inpatients.	6
Good faith	
The inpatient exception applies only if the admission was in good faith . This admission could not have been for the purpose of stabilization, since it was not to an ICU, the only place sufficient for stabilization.	6
The hospital’s good faith is also in question, since by this time, it had ascertained that Christy was not insured .	4
EMTALA can be asserted against only the hospital.	1
TOTAL POINTS	25

Essay 3

Loosely based in *Wallace v. Kam*, 2013 HCA 19

Duty	
The RPP would deem the risk of paralysis material, because it is a major life-limiting side effect.	4
It is far less clear that the RPP would deem the FNN risk material, because of its low probability, low severity, and limited duration. On the other hand, given his low functional baseline, a RPP in this patient’s circumstances might want to know the additional marginal risk per <i>Wilson v. Merritt</i> .	2
Breach	
Neither risk was disclosed.	1
Injury	
PTF has FNN.	1
PTF is not paralyzed. So, the nondisclosure of that risk is not actionable.	1
Causation	
The FNN injury came from the procedure itself.	2
But given the low severity and probability of that side effect versus the seriousness of the underlying illness, the RPP would probably still have consented even with disclosure. Brendan cannot establish that “but for” the breach (nondisclosure) he would not be injured.	4
TOTAL POINTS	15

TOTAL EXAM POINTS

75