

Instructor	Professor Thaddeus Mason Pope
Course Title	Health Law: Quality & Liability
Format	Midterm Exam, Spring 2025
Total Time	Four (4) hours
Total Pages	19 pages

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. **Identification:** Please know your **correct Spring 2025 exam number** and include this number at the top of each page of your exam answer (for example, in a header).
2. **Identification:** Confirm that you are using and have typed the **correct exam number** on your exam document.
3. **Timing:** You may **download** the exam from the course Canvas site any time after 12:01 a.m. on Wednesday, March 5, 2025, and before 11:59 p.m. on Wednesday, March 12, 2025.
4. **Timing:** You must **upload** (submit) your exam answer file to the Canvas site within four (4) hours of downloading the exam.
5. **Timing:** You must **upload** your exam answer file no later than 11:59 p.m. on Wednesday, March 12, 2025. Therefore, the latest time by which you will want to **download** the exam is at 7:59 p.m. on Wednesday, March 12, 2025. Otherwise, you will have less time to write your answers than the full permitted four (4) hours.
6. **Answer File:** Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to Canvas.
7. **Answer File:** Use your exam number as the **file name** for the PDF file that you upload. Do not otherwise identify yourself on your exam answer document.

Instructions Specific to This Examination**GENERAL INSTRUCTIONS:**

1. **Honor Code:** While you are taking this exam, you are subject to the Mitchell Hamline

Code of Conduct. You may not discuss it with anyone until after the end of the entire **midterm exam period**. It is a violation of the Code to share the exam questions. (There may be an accommodation for students taking this exam at a different time.) Shred and delete the exam questions immediately upon completion of the exam. Professor Pope will repost the exam after the end of the midterm exam period.

2. **Competence:** By downloading and accepting this examination, you certify that can complete the examination. Once you have accepted (downloaded) the examination, you will be held responsible for completing the examination.
3. **Exam Packet:** This exam consists of nineteen **(19) pages**, including these instructions. Please make sure that your exam is complete.
4. **Identification:** Write your exam number on the top of each page of your exam answer.
5. **Anonymity:** Professor Pope will grade the exams anonymously. Do **NOT** put your name or anything else that may identify you (except for your exam number) on the exam. **Failure to include your correct exam number will result in a 5-point deduction.**
6. **Total Time:** Your completed exam is due within four (4) hours of downloading it, but in no case later than 11:59 p.m. on Wednesday, March 12, 2025.
7. **Time Penalty:** If you upload your exam answer file more than four (4) hours after downloading the exam, then Professor Pope will lower your exam grade **by one point** for every minute over the 4 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 4-hour limit by more than 20 minutes, then Professor Pope may refer the situation for a Code of Conduct investigation and potential discipline. Please save enough time after editing to upload your exam.
8. **Timing:** Professor Pope has designed this exam for completion in under 3 hours. That means you should be able to write complete answers to all the questions under 3 hours. Yet, since this is a take-home exam, you will want to take some extra time (perhaps 45 minutes) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps 45 minutes) to revise, polish, and proofread your answers, such that you will not be submitting a “first draft.”
9. **Scoring:** This midterm exam comprises 20% of your overall course grade. While the scoring includes 100 points, these points will be weighted.
10. **Open Book:** This is an OPEN book exam. You may use any written materials, including, but not limited to: (a) any required and recommended materials, (b) any handouts from class, (c) PowerPoint slides, class notes, and (d) your own personal or group outlines.
11. **Additional Research:** While you may use any materials that you have collected for this class, you are neither expected **nor are you permitted** to do any online or library research (e.g., on Lexis, Westlaw, Google, reference materials) to answer the exam questions unless specifically directed to do so.

12. **Generative AI:** All answers to this exam must be fully prepared by the student. The use of generative AI tools for any part of your work will be treated as plagiarism.
13. **Format:** The exam consists of three main parts:
- Part One** 35 multiple choice questions
Worth 1.43 points each, for a combined total of 50 points
Estimated time = 70 minutes (2 minutes each)
- Part Two** 4 essay questions
Three are worth 10 points each. One is worth 20 points.
The combined total points for all 4 essays are 50 points.
Estimated time = 100 minutes
- That adds up to less than 3 hours. Remember, you have four hours to complete this exam. Therefore, you have time to revise, polish, and proofread.
14. **Grading:** All exams will receive a raw score from zero to 100. The raw score is meaningful only relative to the raw score of other students in the class. Professor Pope computes your course letter grade by summing the midterm, final, and quiz scores. Professor Pope will post an explanatory memo and a model answer to Canvas a few weeks after the exam.

SPECIAL INSTRUCTIONS FOR PART ONE

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 35). Next to each number type the letter corresponding to the best answer choice for that problem. For example:
1. A
2. D
2. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why immediately after your answer choice. Your objection must both (a) Identify the ambiguity or problem in the question and (b) Reveal what your answer would be for all possible resolutions of the ambiguity. I do not expect this to be necessary.

SPECIAL INSTRUCTIONS FOR PART TWO

1. **Submission:** Create clearly marked separate sections for each problem. You do not need to “complete” the exam in order. Still, structure your exam answer document in this order:
- Essay Question 1
Essay Question 2
Essay Question 3
Essay Question 4

2. **Outlining Your Answer:** I strongly encourage you to use at least one-fourth of the allotted time per question to outline your answers on scrap paper before beginning to write. 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.
3. **Answer Format:** This is very important. **Use headings and subheadings.** Use short single-idea paragraphs (leaving a blank line between paragraphs). Do not completely fill the page with text. Leave white space between sections and paragraphs.
4. **Answer Content:** Address all relevant issues that arise from and are implicated by the fact pattern and that are responsive to the “call” of the question. 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.
5. **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 complete substitute for legal analysis. For example, do not write: “Plaintiff should be able to recover under A v. B.” Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?
6. **Cross-Referencing:** You may reference your own previous analysis (e.g., B’s claim against C is identical to A’s claim against C, because ____.” But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
7. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize the key weaknesses in your position and make the argument on the other side.
8. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (reasonably implied by, suggested by, or at least consistent with, the fact pattern) that you believe to be necessary to answer the question. Do not invent facts out of whole cloth.

Exam Misconduct

The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted by the exam or proctor, prohibited conduct includes:

- Discussing the exam with another student
- Giving, receiving, or soliciting aid

- Referencing unauthorized materials
- Reading the questions before the examination starts
- Exceeding the examination time limit
- Ignoring proctor instructions

MULTIPLE CHOICE QUESTIONS

- Below are 35 multiple choice questions.
- Each question is worth 1.43 points for a combined total of 50 points.
- Recommended time is 70 minutes (2 minutes each).

1. **WHICH of the following types of patient conduct warrant a clinician terminating the treatment relationship EFFECTIVE IMMEDIATELY for a patient with ongoing healthcare needs?**

- A. Canceling appointments at the last minute
- B. Non-adherence like failing to follow up on referrals to a specialist
- C. Engaging in behavior contrary to what the clinician advised
- D. None of the above

2. **A court reviewing a claim alleging an EMTALA screening violation will PRIMARILY assess:**

- A. Whether the hospital adhered to its own procedures even if those procedures are diagnostically deficient
- B. The adequacy of the hospital's screening procedures, including whether they accord with how U.S. hospitals customarily screen such a patient
- C. Both A and B
- D. Neither A nor B

3. **Suppose a hospital's ED screening results in an INACCURATE diagnosis. This:**

- A. Necessarily violates EMTALA
- B. Might violate EMTALA
- C. Might violate EMTALA only if the patient is harmed as a result
- D. Necessarily does not violate EMTALA

4. **WHICH of the following types of patient conduct warrant a clinician terminating the treatment relationship WITH adequate notice for a patient with ONGOING healthcare needs?**

- A. Canceling appointments at the last minute
- B. Non-adherence like failing to follow up on referrals to a specialist
- C. Engaging in behavior contrary to what the clinician advised
- D. Any of the above are adequate reasons
- E. None of the above are adequate reasons because the patient has ongoing healthcare needs

5. **With sufficient notice, a clinician may NOT terminate a treatment relationship for a patient with ongoing healthcare needs due to the patient's non-adherence WHEN:**
- A. The patient's non-adherence is due to financial issues
 - B. The patient's non-adherence is due to system breakdowns (e.g., limited access to a specialist)
 - C. Both A and B
 - D. Neither A nor B
6. **A dentist is considering ending their relationship with a blind patient who is actively undergoing both orthodontics and a two-phase root canal because the patient has repeatedly failed to pay. The dentist MAY:**
- A. Terminate with adequate notice
 - B. Terminate without notice for good cause
 - C. Not terminate because the patient is in the middle of treatment
 - D. Not terminate because the patient is in a protected class
7. **Elon was visiting SeaWorld when he suffered a head injury and a "partially paralyzed arm." Elon visited a nearby freestanding urgent care clinic UNAFFILIATED with any hospital. But recognizing the DOGE and Tesla leader, the clinic staff refused to examine or provide care to Elon for his injuries. The clinic:**
- A. Violated EMTALA by refusing to screen Elon
 - B. Violated Section 1557 by refusing to screen Elon for political reasons
 - C. Both A and B
 - D. Neither A nor B
8. **Elon was visiting SeaWorld when he suffered a head injury and a "partially paralyzed arm." Elon visited a nearby freestanding urgent care clinic AFFILIATED WITH, OWNED, AND OPERATED BY a local hospital a few miles away. But recognizing the DOGE and Tesla leader, the clinic staff refused to examine or provide care to Elon for his injuries. The clinic:**
- A. Violated EMTALA by refusing to screen Elon
 - B. Violated Section 1557 by refusing to screen Elon for political reasons
 - C. Both A and B
 - D. Neither A nor B

9. **Elon was visiting SeaWorld when he suffered a head injury and a “partially paralyzed arm.” Elon visited a nearby freestanding emergency department AFFILIATED WITH, OWNED, AND OPERATED BY a local hospital a few miles away. But recognizing the DOGE and Tesla leader, the ED staff refused to examine or provide care to Elon for his injuries. The clinic:**
- A. Violated EMTALA by refusing to screen Elon
 - B. Violated Section 1557 by refusing to screen Elon for political reasons
 - C. Both A and B
 - D. Neither A nor B
10. **Dr. Pepper examined Alexander to rate Alexander’s injury for his employer’s insurance carrier in ongoing California worker’s compensation proceedings. Alexander claims he was injured because of Dr. Pepper’s misdiagnosis. Can Alexander sue Dr. Pepper for medical malpractice?**
- A. Yes, because there was a treatment relationship
 - B. Yes, even if there were no treatment relationship
 - C. No, because there was no treatment relationship
 - D. No, because this was just an informal, curbside consultation
11. **Dr. Pepper examined Alexander for a pre-employment physical. Alexander claims he was injured because of Dr. Pepper’s misdiagnosis. Can Alexander sue Dr. Pepper for medical malpractice?**
- A. Yes, because there was a treatment relationship
 - B. Yes, even if there were no treatment relationship
 - C. No, because there was no treatment relationship
 - D. No, because this was just an informal, curbside consultation
12. **Hospitals with a dedicated emergency department that participate in Medicare MUST comply with:**
- A. EMTALA
 - B. Section 1557 regulations
 - C. Both A and B
 - D. Neither A nor B

13. **Freestanding rehabilitation centers that participate in Medicare MUST comply with:**
- A. EMTALA
 - B. Section 1557 regulations
 - C. Both A and B
 - D. Neither A nor B
14. **A physician in their own Medicare-participating single-specialty clinic refuses to treat a prospective new patient, a 63-year-old male, because they “only accept patients under 59.” This policy PROBABLY:**
- A. Violates the physician’s common law duty to treat
 - B. Violates EMTALA
 - C. Violates Section 1557 regulations
 - D. More than one of the above
 - E. None of the above
15. **A New Jersey imaging center denies a mammogram to a patient because she is in a wheelchair. This PROBABLY violates:**
- A. ADA
 - B. Section 1557 regulations
 - C. Both A and B
 - D. Neither A nor B
16. **Dr. Ahmergensay, the on-call ED physician at Wisconsin Hospital, splinted patient’s displaced fracture, effectively preventing the fracture from either placing the patient’s health in serious jeopardy or seriously impairing the patient’s arm. Dr. Ahmergensay then discharged the patient to an off-campus orthopedic surgeon’s office for reduction and further treatment. In an EMTALA failure to stabilize claim, this patient has a PROBABLY successful claim against:**
- A. Dr. Ahmergensay
 - B. Wisconsin Hospital
 - C. Both A and B
 - D. Neither A nor B

17. Dr. Ross is the on-call cardiologist for the ED at Geller Hospital. The ED physician called Dr. Ross to the ED to treat a patient who needs cardiology. But Dr. Ross recognized this patient as one whom Dr. Ross had recently dismissed (with adequate notice) from their practice. Must Dr. Ross treat the patient in the ED?
- A. Yes, because of EMTALA
 - B. Yes, because the patient needs Dr. Ross' services
 - C. Both A and B
 - D. No, because the patient was properly dismissed - unless Dr. Ross forms a new treatment relationship with this patient
18. Dr. Phoebe is the on-call oncologist for the ED at Geller Hospital. The ED physician called Dr. Phoebe to come to the ED to treat a patient who needs oncology. Which of the following reasons would EXCUSE Phoebe from coming to the ED?
- A. My practice is full. I'm not taking new patients.
 - B. I don't accept Medicaid
 - C. I don't participate in that patient's PPO
 - D. I don't take patients from outside the county or from out of state
 - E. I don't accept illegal immigrants
 - F. None of the above
19. Hackman was the operator of a vehicle that was struck from behind by another vehicle while he was stopped in traffic. As a result of the crash, Hackman allegedly sustained injuries to his head, jaw, neck, back, shoulders, arms, hands, spine, tinnitus, which he described as "serious and severe." Hackman's insurance policy provided: "when there is an accident or loss, anyone we protect will at our request, separately submit to physical and mental examination by doctors we choose as often as we reasonably require. We will pay for these examinations."
- The insurance company sent a letter to Hackman, demanding he undergo a medical examination in accordance with this policy. Hackman underwent a medical examination with Dr. Reeves, who determined Hackman required no further treatment for the crash-related injuries. Relying on this assessment, Hackman did not pursue further treatment. If Hackman later determines Dr. Reeve's evaluation was negligently erroneous:
- A. He can assert a medical malpractice claim
 - B. He can assert an EMTALA claim
 - C. Both A and B
 - D. Neither A nor B

20. Milo went to an Oregon urgent care clinic complaining of neck pain, a bug bite on his elbow, and elbow-swelling. He was treated by Dr. Peach for a possible infection. He was eventually diagnosed with a muscular condition, but his symptoms persisted. So, Dr. Peach contacted the on-call physician, Dr. Sabrina by phone, because Dr. Peach did not have admitting authority at the local hospital.

Dr. Peach spoke with Dr. Sabrina for the express purpose of determining whether to hospitalize Milo at the local hospital. Based on Dr. Peach's brief description of the case, Dr. Sabrina did not believe Milo should be admitted. Milo was released from the urgent care clinic. But he later arrived at the hospital ED with respiratory failure and sepsis. Milo subsequently died after being transferred to another hospital. In a subsequent medical malpractice action, Milo could name as defendants:

- A. Dr. Peach
- B. Dr. Sabrina
- C. Both Dr. Peach and Dr. Sabrina
- D. Neither Dr. Peach nor Dr. Sabrina

21. After an orthopedic procedure, Greg began experiencing severe back pain, fever, vomiting, and difficulty moving. He reported these symptoms to his independent orthopedic group clinic but was assured that such complaints were no cause for alarm. Over the next few days Greg's condition continued to deteriorate, and he was unable to move his legs. Greg was transported to North Minnesota Medical Center via ambulance and arrived in the ED at 10:00 PM which was apprised of the orthopedic group clinic's evaluation.

For no apparent reason, after eleven hours in the emergency room, Greg still had not received any treatment other than pain medication. Sometime around 9:30 AM the next morning, an MRI of Greg's spine was ordered for the first time. It revealed spinal epidural abscess and spinal cord compression. Greg was admitted for surgery and had surgery to relieve pressure on his spine. This was the appropriate procedure for his condition. But Greg now suffers from permanent lower extremity paralysis, bowel incontinence, and bladder problems.

- A. Greg may have an EMTALA screening claim
- B. Greg may have an EMTALA stabilization claim
- C. Both A and B
- D. Neither A nor B because Greg was admitted as an inpatient

22. Police forcibly removed Ingus from a Delta flight about to depart from MSP because he had been fighting with another passenger. Police took Ingus to Minnesota Memorial Hospital. Ingus tried to communicate the severity of his pain when Dr. Spock stated: "There will be no x-rays, no observations, no sutures. Take him to jail and treat him there." As she left the room, Dr. Spock stated: "I'll grant a tetanus vaccine." Dr. Spock never treated or examined injuries to Ingus' head, back, shoulder, face, or abdomen. Ingus was discharged after only receiving a tetanus vaccine.

Ingus returned to the jail "in tremendous pain" and with his cheek still bleeding. The next morning, staff expressed concern about Ingus. He was taken to another hospital which sutured the cheek, ordered an MRI, and prescribed pain medications. The results showed a fractured shoulder, three compressed vertebrae, and a herniated disc. Ingus **PROBABLY** has EMTALA claims for:

- A. Failure to screen
 - B. Failure to stabilize
 - C. Both A and B
 - D. Neither A nor B
23. In the **PREVIOUS** problem, Ingus could assert any EMTALA claims against:
- A. Minnesota Memorial Hospital
 - B. Dr. Spock
 - C. Both A and B
 - D. Neither A nor B
24. A patient-care relationship arises when a medical provider manifests an intent to care for a patient **AND**:
- A. The provider initiates care without the patient's objection
 - B. The patient reasonably believes the provider has undertaken to provide care
 - C. The patient reasonably relies on the provider to provide care
 - D. Any of the above
25. Physician "lost" and "forgot" about patient due to a computer glitch. Consequently, the patient was never told to come back for follow-up tests and procedures pertaining to her ongoing treatment. Was this patient **ABANDONED**?
- A. Yes
 - B. No, because there was no intent to abandon the patient
 - C. No, because the patient was never given formal notice of termination
 - D. No, because the patient is still on the books, registered with this practice

26. A physician patient relationship **BEGINS** with:
- A. A signed contract
 - B. Diagnosis or treatment in the medical office setting
 - C. Diagnosis or treatment in any setting
 - D. A or B
 - E. Any of the above
27. Patient arrives at the ED seeking treatment for her cataracts. This is a very slowly progressive eye condition that now has the effect of clouding her vision and makes her unable to drive a car or read. The ED refuses cataract treatment because the patient lacks insurance. This probably:
- A. Violates EMTALA
 - B. Violates ADA
 - C. Both A and B
 - D. Neither A nor B
28. Which of the following **AUTOMATICALLY** terminates a treatment relationship:
- A. Patient fails to pay their medical bill
 - B. Patient fails to show up for three consecutive appointments
 - C. Patient fails to follow doctor's orders (e.g., no smoking, no drinking)
 - D. More than one of the above
 - E. None of the above
29. Suppose the physician tells their patient that they will not schedule the patient's next appointment until the patient pays their overdue bill. Further suppose that the patient needs a next appointment **SOONER** than they can pay the bill. This is probably:
- A. Abandonment because it restricts the patient's access to their doctor without adequate notice
 - B. Not abandonment because the patient has not been terminated
 - C. Not abandonment because only the patient can terminate a treatment relationship
 - D. Not abandonment because the patient has already *de facto* terminated the relationship by failing to pay their medical bill

30. An undocumented woman with no health insurance has end-stage renal failure and is dependent upon dialysis (a type of treatment that helps your body remove extra fluid and waste products from your blood when the kidneys are not able to). Because she has no insurance, this patient arrives at the ED when her need for dialysis has become critical. She then returns every four days when her need for dialysis again becomes acute. This ED must provide dialysis each time the patient returns:
- A. Indefinitely
 - B. For a reasonable time
 - C. After giving her notice of termination, only until she can find a new provider to provide dialysis
 - D. Not at all because this patient is not a Medicare beneficiary
31. Patient arrives at the ED in active labor. Which of the following is permissible/correct?
- A. ED staff says: "We'll get you seen right way. But you should know this is expensive, around \$2000."
 - B. This hospital has no duty to treat unless the pregnancy is high risk.
 - C. Both A and B
 - D. Neither A nor B
32. In which of the following situations does a hospital NOT have an EMTALA duty to stabilize an identified EMC?
- A. Patient develops an EMC during a scheduled outpatient procedure at the hospital.
 - B. Hospital identifies an EMC in the ED, but also determines it was preventable and is treatable in an outpatient setting.
 - C. Duty in both situations A and B
 - D. Duty in neither situation A nor B
33. Physician on call at the 1000+ bed hospital refused to provide necessary stabilizing treatment to an individual with an EMC. No other physician was available to provide such treatment, so the patient was transferred. Total civil monetary penalties in this case could be:
- A. \$266,840 – against both hospital and physician
 - B. \$133,420 – against hospital only
 - C. \$133,420 – against physician only
 - D. \$0 – against neither

34. A Medicare participating hospital has no ED. But it has a maternity ward that delivered 4000 babies last year. 1900 were delivered without a previously scheduled appointment. Must this hospital comply with EMTALA?
- A. Yes
 - B. Yes, but only if the maternity ward is on the main hospital campus
 - C. Yes, but only if the maternity ward is “held out” as an ED
 - D. No
35. For decades, medical students have given intimate exams to patients while unconscious — sometimes even during unrelated procedures, such as a pelvic exam performed during stomach surgery.
- A. This is a medical battery
 - B. This is a medical battery only if the patient was harmed
 - C. This is not a medical battery because the intent was beneficial - to help the patient or train the student

---- END OF MULTIPLE-CHOICE SECTION OF EXAM ----

Essay Question 1

- This question is worth 10 points.
- Limit your response to 800 words. This is only a limit, not a target or suggested length.
- Recommended time is 20 minutes.

RFK injured his left eye while hunting elk in Wyoming with a machete. He sought treatment at the closest hospital in that rural area, Sheridan Regional Medical Center. Unfortunately, SRMC has no eye specialists on staff.

The SRMC ED physician examined RFK with an ophthalmologic scope and ordered a CT scan. The ED physician, who has no training in ophthalmology, was concerned that RFK might have a globe rupture, although that was not visible or apparent. A possible globe rupture was noted in RFK's differential diagnosis.¹ A ruptured globe must be surgically closed as soon as possible to avoid loss of vision.

To supplement the ED physician's examination, and consistent with its protocols, SRMC called in a local optometrist, Dr. Vizon, to examine RFK. Dr. Vizon used a slit lamp to examine RFK's injured eye. An open globe rupture was not visible. Dr. Vizon also performed a Seidel test, a diagnostic procedure used to detect ocular trauma. The results of this test neither detected nor ruled out a possible open globe rupture. Still, after both exams and based on other clinical details and his experience, Dr. Vizon believed RFK did not have a globe rupture. Unfortunately, SRMC did not have the capabilities (either professional expertise or equipment) to surgically explore RFK's eye to definitively confirm a suspected ruptured globe.

The SRMC ED physician told RFK he could be transferred to a larger ED in Billings, Montana, which has more assessment capabilities for further evaluation. But RFK was concerned about the costs of such a transfer because he would then have to pay for not just one but for two ED visits. So, RFK declined. Accordingly, the SRMC ED physician advised RFK to visit the closest ophthalmologic specialist, but did not emphasize the importance of doing so within the next 24 hours. RFK was discharged from SRMC with multiple medications. During his visit with the ophthalmologic specialist, the following week. At that visit, RFK was determined to have a ruptured globe. The specialist conducted surgery. But given the long delay in treating this emergency condition, RFK ultimately lost vision in his injured eye.

RFK has hired your firm to represent him. The partner on the case has asked you, her associate, to identify AND evaluate ALL claims that RFK might assert against ANY party. The partner is especially interested in bringing an EMTALA claim.

NOTE: You have not yet factually investigated the case or conducted formal discovery. So, you must assess the case based on the facts you NOW know and those you might reasonably expect to find.

¹ An open ruptured globe is clearly and readily visible upon examination, while an occult ruptured globe is not obvious and cannot be seen by the naked eye.

Essay Question 2

- This question is worth 10 points.
- Limit your response to 800 words. This is only a limit, not a target or suggested length.
- Recommended time is 20 minutes.

Chandler has started a new friendship with Monica, a family physician in his cycling club. They met three months ago and soon began to socialize outside of club activities. They are both in their 30s. Although Chandler stated that he wanted to take their friendship further, he has not encouraged Monica.

Three weeks ago, Chandler mentioned to Monica that he had pain in his left hip. She thought Chandler might have greater trochanteric bursitis (an inflammation of the bursa, a fluid-filled sac, located at the top and outside of the hip bone). Monica offered to treat Chandler with heated extracorporeal shock wave therapy. Because Chandler has a high copay for insurance, Monica offered to provide treatment at his home. Chandler was initially hesitant, but Monica persisted.

When they were alone in his apartment, Monica asked him to disrobe from the waist down, so she could properly examine his hip and perform the treatment. Monica reassured him that, as a physician, she had seen it all before. He complied and received the treatment.

Chandler now feels awkward around Monica and is confused about the relationship after being exposed in front of her. Is Monica his doctor? His friend? Something more intimate?

Suppose Chandler is injured from what he later determines was Monica's negligent diagnosis and treatment. Can Chandler sue Monica for medical malpractice?

NOTE: You have not yet factually investigated the case or conducted formal discovery. So, you must assess the case based on the facts you NOW know and those you might reasonably expect to find.

Essay Question 3

- This question is worth 10 points.
- Limit your response to 800 words. This is only a limit, not a target or suggested length.
- Recommended time is 20 minutes.

Suppose President Trump issues an Executive Order restricting EMTALA coverage from undocumented immigrants. Further suppose that the U.S. Department of Human Services Office of Inspector General interprets this EO to mean that it will not (and must not) enforce EMTALA duties against a hospital or physician when the individual at issue is an undocumented immigrant.

You are an associate general counsel for a hospital in downtown Los Angeles which has a significant number of undocumented immigrants. Advise your hospital on whether and how the new Executive Order affects the hospital's EMTALA duties.

Because many of these undocumented patients are unable to pay for care that they receive at the ED, EMTALA compliance has been expensive for your hospital. The hospital leadership team is excited because, they think, this new EO could save significant money by turning away undocumented immigrants. The leadership team believes the Executive Order may permit the hospital to modify its EMTALA policy, procedures, and practices. But it wants you first to assess the hospital's liability and other legal risk in doing so.

Essay Question 4

- This question is worth 20 points.
- Limit your response to 1200 words. This is only a limit, not a target or suggested length.
- Recommended time is 40 minutes.

At Minnesota Downtown Hospital, patients who do not have an existing relationship with a physician on staff at MDH are designated “urban call” patients. Recently, MDH implemented a policy providing that all “urban call” patients who report to the Minnesota Downtown Hospital emergency department were to be transferred to other larger medical facilities like Big Bloomington Hospital. The transfers were not because the other facilities have specialized capabilities that the patients needed.

While the transferee facilities have not complained about MDH’s transfers, several patients have complained to the Centers for Medicare and Medicaid Services using its complaint tool (<https://www.cms.gov/priorities/your-patient-rights/emergency-room-rights/complaint-form>). After reviewing MDH records, the U.S. Department of Health and Human Services Office of Inspector General decided to focus on five patients who were subjected to this new policy.

1. Patient A arrived at the hospital and was immediately transferred to Big Bloomington Hospital. That hospital identified an EMC but, by then, was unable to stabilize it.
2. Patient B arrived at MDH and was screened in a cursory manner. MDH clinicians did not identify an EMC. Patient B was transferred to Big Bloomington Hospital which identified an EMC but, by then, was unable to stabilize it.
3. Patient C arrived at MDH and was screened per MDH policies and procedures. MDH identified no EMC and then transferred Patient C to Big Bloomington Hospital which identified an EMC but, by then, was unable to stabilize it.
4. Patient D arrived at MDH and was screened per MDH policies and procedures. MDH identified an EMC and then immediately transferred Patient D to Big Bloomington Hospital which stabilized the EMC.
5. Patient E arrived at MDH and was screened per MDH policies and procedures. MDH identified an EMC and stabilized the EMC. MDH then transferred Patient E to Big Bloomington Hospital for further treatment.

You are a law clerk for the U.S. Department of Health and Human Services Office of Inspector General. For EACH patient, evaluate whether and how MDH or BBH violated EMTALA.

NOTE: You have not yet factually investigated the case or conducted formal discovery. So, you must assess the case based on the facts you NOW know and those you might reasonably expect to find.