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| **Instructor** | **Professor Thaddeus Mason Pope** |
| **Course Title** | **Health Law: Quality & Liability** |
| **Format** | **Midterm Exam, Spring 2026** |
| **Total Time** | **Four (4) hours** |
| **Total Pages** | **17 pages** |

**Reference Materials Allowed**

Open Book (all reference materials allowed)

**Take-Home Exam Instructions**

1. Please know your **correct Spring 2026 exam number** and include this number at the top of each page of your exam answer (for example, in a header).

2. Confirm that you are using and have typed the **correct exam number** on your exam document.

3. You may **download** the exam from the course Canvas site any time after 12:01 a.m. on Wednesday, March 4, 2026, and before 11:59 p.m. on Wednesday, March 11, 2026.

4. You must **upload** (submit) your exam answer file to the Canvas site within four (4) hours of downloading the exam.

5. You must **upload** your exam answer file no later than 11:59 p.m. on Wednesday, March 11, 2026. Therefore, the latest time by which you will want to **download** the exam is at 7:59 p.m. on Wednesday, March 11, 2026. Otherwise, you will have less time to write your answers than the full permitted four (4) hours.

6. 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. Use your exam number as the **file name** for the PDF file that you upload.

**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 student 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 seventeen **(17) 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 (e,.g., in a header).

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 11, 2026.

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 about 2.5 hours. That means you should be able to write complete answers to all the questions in 2.5 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 two parts:

**Part One** 20 multiple choice questions
Worth 2 points each, for a combined total of 40 points
Estimated time = 40 minutes (2 minutes each)

**Part Two** 4 essay questions
1 essay question worth 10 points (20 minutes)
1 essay question worth 10 points (20 minutes)
1 essay question worth 10 points (20 minutes)
1 essay question worth 30 points (60 minutes)
Estimated time = 160 minutes

That adds up to under 3 hours. Remember, you have four hours to complete this exam. Therefore, you have time to revise, polish, and proofread.

14. **Grading**: All exams 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 after the exam.

## SPECIAL INSTRUCTIONS FOR PART ONE

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 20). 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

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, regurgitation 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 reference. 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 20 multiple choice questions.
- Each question is worth 2 points, for a combined total of 40 points.
- Recommended time is 40 minutes (2 minutes each).

**1. In Georgia a woman went to the hospital ED after preterm premature rupture of her membranes (her "water broke"). But after diagnosing this condition, the hospital ED sent her home just 30 minutes later, because of new restrictions on abortion. She predictably almost died just hours later, after losing significant blood when the miscarriage predictably occurred in her home bathroom.**

**This Hospital probably:**

A. Did not violate EMTALA's stabilization requirement because state law prohibits the stabilizing treatment (abortion).
B. Did not violate EMTALA's stabilization requirement because she was "admitted" to the hospital ER when she was discharged home.
C. Did not violate EMTALA's stabilization requirement because Hospital had the right to refuse to form a treatment relationship.
D. Violated EMTALA's stabilization requirement.

**2. Physician has a comprehensive discharge policy. Patient received and signed this policy. It specifies behavioral and compliance expectations that list the types of patient conduct or circumstances that may lead to termination of the treatment relationship.**

**Which of the following is MOST accurate?**

A. Physician can terminate effective immediately, even if Patient has not breached this policy.
B. Physician can terminate effective immediately, if Patient has breached this policy.
C. Physician can terminate but must provide a written notice to Patient detailing the reason for discharge, the date of termination, an offer to continue care for at least 30 days following the termination, and assistance in finding a new provider.
D. Physician cannot terminate if Patient has ongoing healthcare needs that are the subject of this treatment relationship.

**3. Hospital A does not participate in Medicare. Under federal law, may Hospital DENY treatment for financial reasons to an individual who has just arrived and is not already receiving any outpatient services at this hospital?**

A. Yes, even in an emergency case, if refusal is because Individual does not have insurance.
B. Yes, but only in a non-emergency case, if refusal is because Individual does not have insurance.
C. No, Hospital must at least screen all individuals who arrive at Hospital.
D. No, Hospital must Individual, if they have an emergency medical condition.

**4. Hospital B participates in Medicare. Individual has just arrived and is not already receiving any outpatient services at this hospital. Because Individual is exhibiting a psychiatric disability, the ED staff is getting uncomfortable?**

**May Hospital DENY treatment to Individual?**

A. No, because of EMTALA.
B. No, because of Section 1557
C. No, because of the ADA
D. A and B
E. B and C
F. A and C
G. A and B and C

**5. You are an EMT pulling into the ambulance bay at a local hospital. On board, you have Patient with behavioral problems who continually (every few days) seeks treatment at this hospital. This is known as a "frequent flier." Before Patient can be unloaded, the physician comes out and states that the patient must be taken to another hospital.**

**This conduct PROBABLY:**

A. Violates the EMTALA screening requirement.
B. Violates the EMTALA stabilization requirement.
C. Both A and B.
D. Neither A nor B.

**6. Patient abandonment can occur when a doctor, nurse, institution, or other health care provider ENDS the treatment relationship:**

A. Without reasonable notice.
B. Without a reasonable excuse.
C. Either A or B.
D. Both A and B.

**7. Hegseth suffers a medical emergency. Her physician's office is 8 miles away and the closest hospital is 5 miles away. But another doctor's office is only 1 mile away. Hegseth arrives at this closest office and requests treatment.**

**This closer doctor's office:**

A. Must provide at least stabilizing treatment Hegseth because has an apparent medical emergency.
B. Must at least provide a screening to confirm whether Hegseth has a medical emergency.
C. Must provide treatment because Hegseth is on clinic property and this clinic participates in Medicare.
D. None of the above.

**8. Hospital may transfer Patient without completing a transfer "benefits outweigh risks" certification form WHEN:**

A. No emergency medical condition - Patient has received a medical screening exam, but Patient does not have an emergency medical condition.
B. Stable – Patient's screening showed an emergency medical condition, but the condition is now stable such that no material deterioration is likely to result from (1) a transfer to another facility or (2) discharge with instructions for appropriate follow-up care.
C. Either A or B.
D. Neither A nor B.

**9. Patient leaves Hospital against medical advice (AMA). They discharge themselves despite recommendations from medical professionals to stay for stabilizing treatment. Patient does this because of their personal obligations and financial concerns.**

**Hospital has PROBABLY:**

A. Violated EMTALA's stabilization requirement
B. Committed patient abandonment
C. Both A and B
D. Neither A nor B

**10. Individual with a history of dementia and psychiatric conditions is brought to the Hospital ED following a psychiatric incident. But Patient was left unsupervised and allowed to leave without any assessment of their condition. Individual was later found dead on the property of a local rehabilitation facility.**

**Hospital has PROBABLY violated EMTALA's:**

A. Screening requirement
B. Stabilization requirement
C. Both A and B
D. Neither A nor B

**11. Specialist Behavioral Hospital refused twenty-four appropriate transfers of individuals experiencing unstable psychiatric emergency medical conditions from rural community hospital EDs. The SBH CEO had directed staff to deny these transfers citing uninsured status as a reason.**

**Assuming capacity, the SBH:**

A. Must accept these transfers
B. Must accept these transfers only once the patients are on SBH property
C. Has no duty to accept patients from other hospitals
D. Has no duty to accept any transfers with whom it does not wish to form a treatment relationship

**12. EMTALA applies to and protects WHICH of the following individuals who arrive on hospital property:**

A. Only Medicare beneficiaries
B. Only U.S. citizens (whether Medicare beneficiaries or not)
C. Only U.S. citizens who are also Medicare beneficiaries
D. Only those with emergency medical conditions
E. All individuals

**13. Hospitals may refuse treatment solely for financial reasons because a patient in their ED is uninsured or cannot pay WHEN:**

A. Patient has an emergency medical condition, stabilization of which would constitute an "undue financial burden" on the hospital
B. Patient seeks non-emergency care such as elective surgery
C. Either A or B
D. Neither A nor B

**14. There are an estimated 1800 retail health clinics in 44 states that provide basic services on a walk-in or limited appointment basis. Data shows that 25% of children and almost 30% of adults received care through outlets in stores like CVS, Walgreens, and Target where shorter wait times, convenient hours, and lower out-of-pocket costs are driving demand.**

**Can these outlets legally refuse new patients because they are uninsured and unable to pay?**

A. No, if patient is already on clinic property
B. No, if patient is on clinic property AND has an emergency medical condition
C. No, because that would be discrimination prohibited by Section 1557
D. Yes

**15. Patient made and canceled multiple appointments in your client's medical practice - 17 over the 3-month span since they had been seen last, with a recommendation at that time for close follow-up to better get control on some medical conditions that had gotten out of hand. It seems that nearly every week they were calling up, scheduling an appointment for a routine follow-up, and then calling up and "rescheduling" on the morning of the appointment. At other times, this "rescheduling" occurred after the appointment time had already come and gone (e.g., cancelling a 9:00 appointment at 10:00). This constitutes a waste of resources and a missed opportunity, not only for this patient's healthcare, but for many others who are told that there is no availability on the schedule.**

**For this Patient, your client wants to implement its policy when there is a pattern of more than a few no-show appointments: (1) send a warning letter, (2) close out the patient from the practice, (3) not offer any future appointments.**

**Is this plan PROBABLY legally complaint?**

A. Yes, if there is a sufficient time gap between the warning letter and the close out.
B. Yes, because clinicians can terminate patients at any time for any reason.
C. No, because missing a few appointments is an insufficient reason to terminate.
D. No, if the patient has ongoing healthcare needs that this practice was treating.

**16. Physician treating Husband for infertility negligently harmed Husband's reproductive capacity. This meant that Wife had to undergo in vitro fertilization procedures for nothing since she now had no chance of parenthood with Husband.**

**Can Wife PROBABLY bring a medical malpractice action against Physician?**

A. Yes, because they were in a treatment relationship.
B. Yes, because harm to wife was foreseeable.
C. No because they were not in a treatment relationship.
D. No, because harm to wife was not foreseeable.

**17. Physician treating Husband in MINNESOTA for infertility negligently harmed Husband's reproductive capacity. This meant that Wife had to undergo in vitro fertilization procedures for nothing since she now had no chance of parenthood with Husband.**

**Can Wife PROBABLY bring a medical malpractice action against Physician?**

A. Yes, because they were in a treatment relationship.
B. Yes, because harm to wife was foreseeable.
C. No because they were not in a treatment relationship.
D. No, because harm to wife was not foreseeable.

**18. There has been an explosion of "second opinion medicine" firms that will "double check" your physician's work during a Zoom telehealth visit. These firms market themselves to patients as the ultimate solution for peace of mind. "Second opinions + top specialists." When recruiting physicians to offer these second opinions to patients, they promise "zero malpractice liability." The explanation is that the treating physician remains in charge and the consults are advisory only.**

**Is there REALLY "zero malpractice liability"?**

A. Yes. Because these are informal, curbside consults, the patient and the Second Opinion physician are not in a treatment relationship
B. Yes, because the Second Opinion physician does not meet the patient in person.
C. Yes, because the Second Opinion physician does not intend to form a treatment relationship.
D. No

**19. In the United States, in 2026, the average wait time to see a healthcare provider in a medical clinic is 38 days. In contrast, patients with strep throat, urinary tract infections, pink eye, or other minor illnesses and injuries can access care in clinics tucked into their favorite big box stores or retail pharmacies (e.g., Target, Walmart, CVS) in less than 20 minutes.**

**How does this new healthcare landscape affect ability of a primary care physician to terminate a treatment relationship when treating patients for one of these conditions.**

A. It has no effect, because the physician still needs a valid reason to terminate.
B. It has no effect because physicians cannot terminate a treatment relationship when they are still treating the patient.
C. It has no effect, because physicians must always provide 30 days of notice when terminating a treatment relationship.
D. It can permit termination with a shorter amount of notice to the patient.

**20.** **An elderly man with a history of cardiovascular issues, arrived at Hospital ED for symptoms indicative of a potential heart condition. Almost immediately, Patient began experiencing chest pain and shortness of breath, which hospital staff identified as requiring immediate cardiology consultation. The ED attending physician contacted the on-call interventional cardiologist by phone to discuss Patient's condition. During the call, the attending physician described Patient's symptoms and sought guidance on whether intervention by the cardiologist was necessary. The cardiologist declined to come to the hospital and explained that Patient's condition did NOT require immediate care.**

**Patient was discharged. In fact, Patient did have an emergency medical condition. He experienced a cardiac arrest and died within hours.**

**Did this Hospital violate EMTALA?**

A. Yes, because it failed to stabilize Patient's emergency medical condition
B. Yes, if cardiac screenings at this Hospital require in person examination by the cardiologist
C. Both A and B
D. Neither A nor B

# Essay Question 1 of 4

- 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.

Kristi Gnome had generalized anxiety disorder. She was faced with eviction due to the presence of animals in her apartment in violation of her rental lease. Gnome asked her doctor, Maurice Woof, a board-certified OB/GYN, for a letter to support her use of her animals as service animals to treat her anxiety disorder.

Woof provided Gnome with several letters indicating that Gnome needed her "certified" service dog Bonkers to help her control her anxiety. As a basis for this certification, Woof discussed both Gnome and Bonkers with Dr. Kay Nine, a combination behavioral health specialist and veterinarian. While Dr. Nine never met Gnome or Bonkers, Woof conveyed detailed information about both.

Six months after the service animal letters were written, two-year-old Declan entered a restaurant with his parents. Gnome was also at the restaurant with her dog Bonkers who was wearing a vest marked "Service Animal." Bonkers attacked Declan without provocation and severely injured Declan. Declan's parents sued both Gnome and the restaurant. Gnome wants to implead both Dr. Woof and Dr. Nine, in hopes of shifting responsibility and liability to them.

Declan's parents also sued Woof for negligence. They did not criticize Woof's diagnosis of Gnome with anxiety disorder nor Woof's opinion that a service animal could assist Gnome. Instead, Declan's parents criticized the content of Woof's letters that specifically represented or implied that Bonkers was certified as a service animal and appropriately trained to behave in public while never taking the appropriate steps to assess and determine Bonkers's temperament. Meanwhile Gnome has stated that she would not have taken Bonkers out in public if he had not been certified and she felt safe and secure to do that.

**You work for the medical malpractice insurance company that covers both Dr. Woof and Dr. Nine. Your supervisor has asked you to answer the following two questions. Your supervisor does not want you to assess the merits of these claims, only whether they can even be asserted at all.**

1. **Assess whether Declan's parents can bring a medical malpractice lawsuit against Dr. Woof for the injuries to Declan.**

2. **Assess whether Gnome can bring a medical malpractice lawsuit against Dr. Nine?**

# Essay Question 2 of 4

- 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.

Mr. Willis is a 55-year-old drill press operator. He had not been seeing well for the previous five months and went to Dr. Aye for help. Dr. Aye found normal acuity in both eyes but elevated intraocular pressures with glaucomatous damage to both optic nerves (severe in the right and moderate on the left) and marked visual field loss.

In the absence of other ocular abnormalities, Dr. Aye diagnosed primary open-angle glaucoma. He explained to Mr. Willis the nature of glaucoma in detail and why the intraocular pressure should be reduced if vision were to be preserved. He also described several forms of treatment, stating that eye drops are commonly used first and that surgery is subsequently employed if medical treatment (eyes drops) is not sufficient to control the disease. This discussion took 10 minutes.

When Mr. Willis asked, "What do you think I should do," Dr. Aye prescribed timolol 0.5% twice a day and instructed Mr. Willis to return in a week.[1] Dr. Aye neglected to ask Mr. Willis whether he had any history of heart or respiratory problems.

At the second visit, Mr. Willis' intraocular pressures were significantly lower, but Mr. Willis complained that on six recent occasions he had experienced severe shortness of breath and was worried about his asthma returning, even though he had not experienced similar episodes for a long time.

When Dr. Aye listened to Mr. Willis' chest, he instructed him to discontinue the timolol without other comment. It was now clear to Dr. Aye that Mr. Willis had a history of asthma. Dr. Aye had failed to mention asthma as a potential contraindication to the recommended drug therapy and to disclose the consequences of that omission. Mr. Willis now suspects that he had had an adverse reaction to the prescribed medicine.

**Identify and assess any legal claims that Mr. Willis might assert against Dr. Aye.**

[1] Timolol eye drops are used alone or together with other medicines to treat increased pressure in the eye that is caused by open-angle glaucoma or a condition called ocular (eye) hypertension. This medicine is a beta-blocker. Timolol may cause heart failure in some patients.

# Essay Question 3 of 4

- 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.

Bahd Bunyee was suffering a variety of significant medical conditions including, but not limited to, a perforated bowel, chronic myelomonocytic leukemia, atherosclerotic and hypertensive cardiovascular disease, diabetes mellitus, and a respiratory syncytial virus infection. Mr. Bunyee regularly received treatment at the Big Beautiful Medical Center (BBMC). On February 19, 2026, Mr. Bunyee went to BBMC Emergency Department. He was then admitted to BBMC.

Between February 19, 2025 and February 25, 2025, while an inpatient at BBMC, Mr. Bunyee was suffering from infections. On the morning of February 25, 2025, a BBMC doctor told Mr. Bunyee he was going to be discharged. Several hours later, BBMC employees told Mr. Bunyee that he had to leave the hospital. Mr. Bunyee, who was having difficulty speaking, made clear to BBMC employees that he wished to remain in the hospital. But employees of BBMC told Mr. Bunyee he had to leave. A BBMC employee put Mr. Bunyee in a wheelchair and pushed him to the exit/entrance of BBMC. Mr. Bunyee did not move.

At approximately 2:39 p.m. on February 25, 2026, an employee of the hospital called the City Police Department (CPD) and asserted that Mr. Bunyee had been discharged and was "trespassing" by failing to leave the hospital grounds. Officers could not communicate with Mr. Bunyee. BBMC employees told CPD officers that Mr. Bunyee was "faking it" and "pretending to not talk because he did not want to leave." CPD officers lifted Mr. Bunyee from the wheelchair. They held Mr. Bunyee's arms and walked him to his automobile in the BBMC parking lot.

Mr. Bunyee drove away, but his car hit at least two other cars while leaving the BBMC parking lot.Minutes later, CPD officers found Mr. Bunyee's car in ditch about four blocks away. Emergency Medical Technicians not employed by BBMC arrived at the scene. One EMT found Mr. Bunyee "hot to touch," and said he showed "signs of profound shock." The EMT concluded that Mr. Bunyee was septic, a life-threatening condition that occurs when the body's immune system reacts to infection.

The EMTs transported Mr. Bunyee back to BBMC and pushed his gurney into the hospital. Mr. Bunyee was "writhing in pain" and able say little more than "help." But BBMC employees told the EMTs that they could not bring Mr. Bunyee from the entryway into the Emergency Department. One BBMC employee asserted that Mr. Bunyee was "faking it." BBMC healthcare providers refused or failed to provide medical care to Mr. Bunyee. He died around 5:00 p.m., about one hour and twenty minutes after his return to the hospital.

**Identify and assess any EMTALA claims that Mr. Bunyee's estate might assert.**

# Essay Question 4 of 4

- This question is worth 30 points.
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 60 minutes.

Melania, a 26-year-old law student, visited the emergency room of Dixie Hospital while experiencing cramping, dizziness and continuous bleeding. Dixie Hospital is located near the New Mexico border of a southern state bordering New Mexico. While New Mexico is very protective of abortion, the southern state in which Dixie Hospital is located is very restrictive.

Even though Melania's symptoms suggested an ectopic pregnancy, staff at the Dixie emergency room discharged Melania after being unable to locate an intrauterine pregnancy. Even though they are standard practices at Dixie Hospital, staff neither measured Melania's pregnancy hormone human chorionic gonadotropin (hCG) levels with a blood test nor performed an ultrasound.

After continuing to experience serious symptoms, Melania returned to the emergency room of Dixie Hospital. This time, vaginal ultrasound and blood tests performed at the Dixie Hospital ER showed that an ectopic pregnancy was likely. Among other things, the ultrasound revealed a two-centimeter "rounded structure" bump on Melania's right fallopian tube.

An ectopic pregnancy is one where a fertilized egg implants in a fallopian tube, instead of in the uterus. An ectopic pregnancy is never a viable pregnancy. If not treated promptly, it can be deadly for the pregnant patient. A tubal ectopic pregnancy's growth can cause the fallopian tube to rupture. Rupture can cause major internal bleeding and/or death. In fact, ectopic pregnancy is the leading cause of maternal mortality in the first trimester, accounting for 11% of all pregnancy-related deaths in the United States.

An ectopic pregnancy cannot move or be moved to the uterus. So, it always requires treatment. There are two methods to treat ectopic pregnancy: (1) medication and (2) surgery. Several weeks of follow-up are required with each treatment. The medication approach is less invasive. The most common drug used to treat ectopic pregnancy is methotrexate. This drug stops cells from growing, which ends pregnancy. The pregnancy then is absorbed by the body over 4 to 6 weeks. This does not require the removal of the fallopian tube. But if the ectopic pregnancy is not detected early and has grown too large to be treated with methotrexate, the pregnancy must be surgically removed from the fallopian tube.

Melania's ED physician consulted with the on-call OB/GYN who advised methotrexate to end the pregnancy. After all, Melania's fallopian tube could rupture at any moment. This would destroy the fallopian tube and even cause death. Nevertheless, the hospital did not provide methotrexate. Instead, Melania was sent home with instructions to return in two days.

Despite the serious and probable danger in this approach (well known to the Dixie Hospital ED clinicians, but not to Melania), the hospital apparently wanted to ensure that it complied with state law. State law prohibits abortions except when necessary to save the life of the mother. Prescribing methotrexate to end the pregnancy would most probably constitute an illegal

abortion under state law. Therefore, prescribing methotrexate would be a felony unless necessary to save Melania's life.

The state abortion law includes a statutory safe harbor. But Melania's clinicians were unsure as to the meaning and scope of this "save the mother's life" exception on the state's abortion law. For example, is it enough that abortion is "probably" necessary to save the life of the mother? Does abortion need to be "definitely" necessary to save the mother's life? No caselaw or guidance documents provided confidence or certainty as to how the abortion statute should be interpreted. So, to be safe, the Dixie Hospital clinicians determined they could prescribe methotrexate only when the threat to Melania's life was even more imminent and severe than it already was.

Melania planned to return to Dixie Hospital two days later, as instructed. But the next day, Melania experienced sudden, blinding pain on her right side. She began bleeding and almost passed out. Melania returned to the Dixie Hospital ER. Clinicians determined that the ectopic pregnancy was rupturing: a life-threatening condition. But they did not have the staff or resources to treat such a serious condition. So, they transferred Melania to Bucksnort Hospital (located in the same state as Dixie).[2] Clinicians there told Melania that she was bleeding out. Bucksnort clinicians removed Melania's right fallopian tube to save her life.

After the surgery, Melania was overwhelmed by the horror of the ordeal. The removal of her fallopian tube will likely impact her ability to have a child in the future. In addition to the physical toll, this experience caused Melania significant psychological harm.

**You are Melania's lawyer. Identify and assess ALL viable claims that Melania can assert against ANY party.**

[2] Melania was transferred in an appropriately equipped ambulance with appropriate clinicians, her medical records, and a certification that transfer was in her best interests. In addition, Dixie contacted Bucksnort ahead of time. But when nobody answered, they left a message that Melania was coming to them.