

Instructor	Professor Thaddeus Mason Pope
Course Title	Health Law: Quality & Liability
Format	Final Exam, Fall 2021
Total Time	Twenty-four (24) hours
Total Pages	18 pages

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Fall 2021 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 Thursday, December 2, 2021, and before 11:59 p.m. on Wednesday, December 15, 2021.
4. You must **upload** (submit) your exam answer file to the Canvas site within twenty-four (24) hours of downloading the exam.
5. You must **upload** your exam answer file no later than 11:59 p.m. on Wednesday, December 15, 2021. Therefore, the latest time by which you will want to **download** the exam is at 7:59 p.m. on Tuesday, December 14, 2021. Otherwise, you will have less time to write your answers than the full permitted twenty-four 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 you 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 eighteen **(18) 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 twenty-four (24) hours of downloading it, but in no case later than 11:59 p.m. on Wednesday, December 15, 2021.
7. **Time Penalty:** If you upload your exam answer file more than twenty-four (24) hours after downloading the exam, then Professor Pope will lower your exam grade **by one point** for every minute over the 24 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 24-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 4 hours. That means you should be able to write complete answers to all the questions in 4 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 final exam comprises 40% 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. **Format:** The exam consists of three main parts:
- Part One** 30 multiple choice questions
Worth 1½ points each, for a combined total of 45 points
Estimated time = 60 minutes (2 minutes each)
- Part Two** 3 short essay questions
Worth 10 points each, for a combined total of 30 points
Estimated time = 90 minutes (30 minutes each)
- Part Three** 1 long essay question
Worth 25 points
Estimated time = 60 minutes
- That adds up to less than 3½ hours. Remember, you have twenty-four hours to complete this exam. Therefore, you have time to revise, polish, and proofread.
13. **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 30). 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 PARTS TWO & THREE

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:
 - Short Essay Question 1
 - Short Essay Question 2
 - Long Essay Question
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 30 multiple choice questions.
 - Each question is worth 1½ points for a combined total of 45 points.
 - Recommended time is 60 minutes (2 minutes each).
1. **Milwaukee Hospital adopted a policy denying gender-dysphoria treatments such as counseling, hormone therapy, and surgical care. This policy PROBABLY:**
 - A. Violates Section 1557.
 - B. Does not violate Section 1557, because that law applies only to race, color, national origin, sex, age, and disability.
 - C. Does not violate Section 1557 unless the denied patient is a Medicare beneficiary.
 - D. Does not violate Section 1557.

 2. **Pursuant to EMTALA, emergency department physicians are required to administer services to any patient who presents to the emergency department, UNLESS:**
 - A. The patient is uninsured.
 - B. It is later determined that the patient's medical needs were "non-emergent."
 - C. Either A or B.
 - D. Neither A nor B.

 3. **Upon arrival at Waconia Hospital, a deaf patient requested auxiliary aids and services to effectively communicate. She received them during her emergency room stay. But during her five-day inpatient stay, the patient was not provided an interpreter or video remote interpreting services at critical points of care. So, she relied on hand-written notes to communicate with doctors and staff. This worked effectively and patient was safely discharged. With respect to the ADA, Waconia Hospital:**
 - A. Violated the ADA.
 - B. Did not violate the ADA since patient was able to communicate.
 - C. Did not violate the ADA since patient was not harmed.
 - D. Did not violate the ADA because patient was an inpatient at the time.

4. Which of the following statements **BEST** describes Section 1557 of the Affordable Care Act?
- A. Section 1557 introduced completely new concepts of civil rights protections on the basis of age and disability.
 - B. Section 1557 incorporates earlier civil rights protections in regard to race, color, national origin, disability, age and sex.
 - C. Section 1557 introduced completely new concepts of civil rights protections on the basis of race and sex.
 - D. Section 1557 incorporates earlier civil rights protection in regard to race, color, and national origin but does not incorporate protections against discrimination based on age and disability
5. With respect to Limited English Proficiency individuals, under ACA Section 1557, a health care provider:
- A. Cannot deny treatment to LEP individuals and is required to provide language assistance to them, but at the individual's cost.
 - B. Cannot deny treatment to LEP individuals but is NOT required to provide language assistance to them.
 - C. Can deny treatment to LEP individuals.
 - D. Cannot deny treatment to LEP individuals AND is required to provide language assistance to them, free of charge.
6. In **DECREASING** order of prevalence, what are the **TYPES** of damages awarded to medical malpractice plaintiffs?
- Non-Economic Damages - emotional trauma, loss of consortium, loss of enjoyment of life, PTSD, anxiety, depression, pain and suffering, wrongful death, etc.
 - Punitive Damages - punish the defendant by increasing the amount of money owed to the plaintiff, the amount depending on the defendant's financial assets, type of misconduct, and the level of overall plaintiff damages.
 - Economic Damages - medical expenses, lost wages, loss of earning capacity, rehabilitation costs, physical therapy bills, medication expenses
- A. Non-economic → punitive → economic
 - B. Punitive → Economic → Non-economic
 - C. Economic → Non-economic → Punitive
 - D. Economic → Punitive → Non-economic

7. Utah has a 2-year statute of limitations and a 4-year statute of repose. A surgical item was left inside the patient during surgery in March 2017. Patient discovered this in September 2020. What is the latest date by which plaintiff must file her medical malpractice action to avoid a time bar?
- A. The claim is already barred
 - B. September 2022
 - C. March 2023
 - D. September 2024
8. Which of the following is a LEGAL requirement to practice medicine?
- A. Board certification in the specialties the physician practices
 - B. License
 - C. Both A and B
 - D. Neither A nor B
9. An 11-year-old boy died of suffocation from sponges left inside his nasopharynx following tonsilladenoidectomy surgery. The sponges used during the surgery did not have strings attached so that they could easily be retrieved, even though that product was available. The surgeon presented uncontroverted evidence at a bench trial that it was common practice NOT to use sponges with strings. Following generally accepted practices in medical malpractice adjudication, the trial judge should:
- A. Grant JMOL to the defendant.
 - B. Grant JMOL to the plaintiff.
 - C. Allow the case to proceed to the jury which can find that the surgeon took an unnecessary risk by failing to use an available method.
 - D. Allow the case to proceed to the jury which can find breach of the standard of care.
10. A 62-year-old man entered a hospital to have his RIGHT leg cut off below the knee due to a diabetes-related circulatory disease. After a series of mistakes, though, the man's LEFT leg was removed. He later had the proper leg removed at another hospital and ultimately learned to walk using prosthetics. If the man has failed to designate an expert witness by the deadline, then:
- A. His case must be dismissed because he cannot establish the standard of care
 - B. His case must be dismissed because accidents happen.
 - C. His case may proceed
 - D. None of the above

11. An EMTALA regulation on which we did not focus states:

when a physician has agreed to be on-call at a particular hospital during a particular period of time, but also has scheduled elective surgery or an elective diagnostic or therapeutic procedure during that time as permitted by hospital policy, that physician and the hospital must have planned back-up in the event the physician is called while performing elective surgery and is unable to respond to an on-call request in a reasonable time.

A large tertiary care institution with multiple vascular surgeons may be able to assure such availability. But at smaller hospitals, vascular surgeons may be on call every third night or even every night. To survive financially, many of these surgeons schedule elective procedures when on call in the ER without arranging backup coverage. Suppose a patient is injured when the surgeon fails to come to the ER when summoned. That patient has an EMTALA cause of action for damages against:

- A. Hospital
 - B. Surgeon
 - C. Both
 - D. Neither
12. A few weeks ago, mass media outlets reported the case of Leilani Lutali. She has stage 5 kidney disease that puts her at risk of dying without a new kidney. But her hospital refused to approve the transplant surgery because Lutali has NOT been vaccinated for COVID-19. Transplant recipients who contract COVID have a much higher mortality rate. In an ADA case against the hospital, Lutali will probably:
- A. Succeed because they are in a treatment relationship
 - B. Success because she is disabled
 - C. Fail because she is not disabled
 - D. Fail because she is not otherwise qualified
13. For which type of non-ER physicians is a hospital MOST likely vicariously liable?
- A. Private physicians with staff privileges
 - B. Full-time salaried physicians directly employed by the hospital
 - C. Both A and B
 - D. Neither A nor B

14. **In 2005, Medicare paid hospitals primarily through what type of reimbursement method?**
- A. Fee-for-service (negotiated or pre-specified unit prices for services, without any regard to quality or value)
 - B. Value-based payment (fee-for-service payment with some linkage to quality, value, or infrastructure such as bonuses and penalties.)
 - C. Alternative payment models (advanced forms of value-based payment, in which providers take on substantial financial risk to deliver high-quality care at lower cost)

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16. **In 1998, Congress passed the American Medical Assistance Act, which offers immunity to physicians who assist in an in-flight emergency unless the physician acts with gross negligence or willful misconduct. While a suit against a Good Samaritan is remote, litigation risks do exist.**

Dr. Ryan was on a Delta flight from MSP to CDG when another passenger apparently has some cardiac event. The crew asks, "Is there a doctor on board?" Dr. Ryan does not respond. If the patient later sues Dr. Ryan, the patient can probably establish that Dr. Ryan:

- A. Had a duty to assist because it was an obvious emergency.
 - B. Had a duty to assist because the passenger needed to be examined to determine whether she had an emergency.
 - C. Had a duty to assist if the flight was in airspace in a jurisdiction where she was licensed.
 - D. Had no duty.
17. **Patient is injured during a failed ovarian cyst operation. She is unable to collect documentary or deposition evidence about what happened during the operation. But the patient retains an expert witness who authored a study demonstrating that of every 1000 ovarian cyst operations that fail, 860 are due to negligence. Plaintiff's medical malpractice lawsuit will **PROBABLY**:**
- A. Fail, because she has no evidence of breach.
 - B. Fail, because she has no evidence of the standard of care.
 - C. Fail, because she has no evidence of causation.
 - D. A, B, and C.
 - E. None of the above.

18. During a gallbladder surgery, a surgeon mistakenly cut the patient's common bile duct. In a bench trial the trial judge found that the surgeon used the proper technique. Nonetheless, she concluded that the defendant breached the standard of care. The trial judge came to that conclusion by relying on her "common sense" to find that current generally accepted surgical techniques were inadequate. Using customary principles for adjudicating medical malpractice disputes, the appellate court should:
- A. Affirm because breach is a question of fact.
 - B. Affirm because the defendant obviously committed medical error.
 - C. Affirm because the finder of fact is charged with determining what the reasonable physician should do.
 - D. Reverse
19. Patient with colon cancer underwent surgical resection and then went to Oncologist for follow-up chemotherapy. But Oncologist administered abnormally low doses of chemotherapy, and patient died. Plaintiff showed that since the tumor was caught early before it spread, patient had a 70% chance of 5-year survival had proper chemotherapy been provided. In a medical malpractice action against Oncologist, plaintiff can probably establish:
- A. But for causation.
 - B. Only lost chance causation, since plaintiff cannot exclude alternative causal factors and might not have survived even without negligence.
 - C. Only lost chance causation since his pre-treatment chance of success was less than 100%.
 - D. None of the above.
20. Dr. Bronson is a brain and spine surgeon who owns Minnesota Brain and Spine Surgery, located across from Mississippi River Medical Center. Patient underwent spinal surgery performed by Dr. Bronson at MRMC. Dr. Bronson performed an anterior cervical discectomy with fusion and a microscopic lumbar laminectomy. Patient experienced significant pain and was unable to lift her left leg following the surgery. Four days after the surgery, Dr. Bronson reoperated on her lower back and performed a lumbar decompressive laminectomy with decompression of the nerve roots. Patient was discharged three days later but continued to experience serious sequelae following the procedures.
- In a lawsuit against MRMC, Patient discovers that Dr. Bronson had been sued for medical malpractice on numerous occasions including in 2008, 2009, 2010, 2011, 2012, 2018, and 2019 due to concerns about competence. During the pendency of the lawsuit, Dr. Bronson retired due to Parkinson's which affected the steadiness of his hands during surgery. Patient's BEST theory against MRMC is:
- A. Respondeat superior
 - B. Apparent agency
 - C. Negligent credentialing
 - D. Non-delegable duty doctrine

21. In a recent medical malpractice verdict, the jury awarded:

- \$1.63 million for past pain, suffering, and mental anguish
- \$535,000 for medical bills and expenses
- \$334,000 for required care and services
- \$3000 for funeral costs

If this jurisdiction, like many, has a \$250,000 cap on non-economic damages, then the trial court should REDUCE this \$2,502,000 award to:

- A. \$2,502,000
- B. \$2,252,000
- C. \$2,217,000
- D. \$1,122,000

22. In the previous question, in MOST jurisdictions, if the jury found that the plaintiff's non-adherence to the treatment plan negligently contributed to her injuries by 20%, then the damages should be:

- A. \$0, because the doctrine of contributory negligence bars recovery by negligent plaintiffs
- B. \$1,009,800
- C. \$1,995,300
- D. \$2,026,800
- E. \$2,251,800
- F. \$2,502,000

23. A recent 2021 article examined whether Beethoven's death was the result of medical malpractice. In March 1827, his physician administered treatment that contained lead acetate. Beethoven apparently died from toxic lead poisoning. If this physician were sued under U.S. law, then he:

- A. Likely committed malpractice if the risks of lead outweighed any therapeutic benefits
- B. Likely committed malpractice if the reasonable physician in 1827 Vienna or the United States would not have used lead
- C. Likely did not commit malpractice if he exercised his medical judgment in good faith
- D. Likely did not commit malpractice if his good intent was to cure.

24. Assume a jury found that the patient originally had a 40% chance of cure and that the physician's negligence reduced the chance of cure to 25%. Further assume that the total damages proved were \$1,000,000. In Minnesota, the damages awarded would **LIKELY** be:
- A. \$0
 - B. \$150,000
 - C. \$250,000
 - D. \$400,000
 - E. \$1,000,000
25. Attorneys require at least 90 days to investigate and draft a complaint. Plaintiff realized on January 1, 2021, that she may have been harmed from a procedure on December 1, 2019. If this jurisdiction has a 2-year statute of repose and a 1-year statute of limitations, plaintiff must see (or have seen) an attorney by:
- A. September 1, 2020
 - B. October 1, 2020
 - C. September 1, 2021
 - D. October 1, 2021
 - E. September 1, 2022
 - F. October 1, 2022
26. Your physician client has a patient who has been in her practice for about 10 years and has faithfully made regular visits but has not been compliant with her medical regime for taking hypertension medications. The physician has repeatedly explained the risks of nonadherence, and physician rescued the patient on many occasions with emergent medications, usually in the local emergency department over a weekend. Physician is convinced that the patient understands but stubbornly refuses to comply. Physician may terminate the relationship:
- A. Immediately
 - B. With 30 days of notice
 - C. May not terminate unless patient agrees
 - D. May not terminate until the patient's medical need ends

27. A new patient has made an appointment with your client physician's office for an examination concerning a persistent cough. Before the appointment, the patient experienced an unusually long wait in your office because of physician's need to address an urgent situation. The office personnel explained the delay to those in the waiting room. But this new patient reacted by becoming loud and abusive, insulting the registration person, and shouting, "My time is just as valuable as that of the physician." Physician does not want to see this patient, nor does she not want to open herself to liability. What is the safest course of action that best meets her objectives?
- A. Physician may refuse to examine the patient because (1) a treatment relationship has not yet been formed and (2) the physician need not form a treatment relationship
 - B. Physician should conduct the exam and then provide notice of termination effective in 30 days.
 - C. Physician must accept screen the patient for an emergency medical condition, since he is already on the premises.
 - D. None of the above.
28. Barcode Medication Administration (BCMA) assures that patients get the correct medication. By scanning both the medication and the patient's wristband, clinicians can make sure there is a "match" between what is ordered and what is administered. This helps assure the 5 rights: (1) right patient, (2) right medication, (3) right time, (4) right dose, and (5) right route. If patient is mis-medicated at a hospital that does NOT use BCMA, the best evidence for her direct liability negligence case is:
- A. The effectiveness of BCMA
 - B. The low cost of BCMA relative to its significant benefits
 - C. The widespread use of BCMA at other hospitals
 - D. Other pending lawsuits against this hospital for not using BCMA
29. For this question, consult the Federation of State Medical Boards (FSMB). ROUGHLY what percent of U.S. licensed physicians receive ANY form of discipline from a state medical board in a year?
- A. 0.1%
 - B. 0.4%
 - C. 1%
 - D. 5%
 - E. 10%
30. Using the same source as the previous question, ROUGHLY what percent of licensed physicians receive the most severe penalty, REVOCATION of their license?
- A. 0.02%
 - B. 0.05%
 - C. 0.7%
 - D. 1.3%

Short Essay Question 1

- This question is worth 10 points
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 30 minutes.

Minnesota has over 140 hospitals. But only around 120 of these hospitals have licensed emergency rooms. You have been retained by one of the twenty Minnesota hospitals without an emergency department.

The general counsel of this hospital has been reading about growing EMTALA enforcement especially given the new, higher civil monetary penalty amounts. This has her concerned. Therefore, she asked you to assess the extent to which this hospital must comply with EMTALA. Like virtually all U.S. hospitals, this hospital participates in the Medicare program.

Must this hospital comply with EMTALA? Why or why not?

Short Essay Question 2

- This question is worth 10 points
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 30 minutes.

An “urgent care” clinic is an outpatient clinic that offers limited services to keep non-emergent cases from clogging up the hospital ER waiting room. They are NOT intended to be an ER replacement. In fact, the Allina System carefully clarifies: “Medical conditions that are appropriate for treatment at urgent care are ones that are NOT considered emergencies but still require care urgently.” Moreover, if a real emergency case showed up that the urgent care clinic couldn’t handle, the patient would be redirected to an ER anyway.

In November 2021, at an Allina freestanding urgent care clinic (off the hospital’s main campus) in Minnesota, an NP refused to treat an individual with sinusitis and ear infection because she was not vaccinated for COVID-19. Given the rural location of this facility, the individual managed to travel to Duluth only later in the week. By that time, the patient’s condition had worsened.

You work for a private PI firm. The partner for whom you work is investigating this family’s claim against Allina. She has asked you to assess whether the individual has a claim under EMTALA. She has also asked you to assess claims under state law that this individual might reasonably assert.

Short Essay Question 3

- This question is worth 10 points
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 30 minutes.

Minnesota Methodist Hospital entered a contract with Catfish Catering, a business owned and operated by Guy Fioni, to provide on-site meal service to patients, staff, and visitors.

Recently, the Chief Executive Officer of MMH, received a series of anonymous email messages that threatened to carry out “a massive attack” on the hospital. That threat was credible. Already, in 2021, there have been other area hospital or clinic shootings, including one at an Allina clinic in Buffalo, Minnesota, roughly 40 miles northwest of Minneapolis. Therefore, in response to these threats, the CEO reassigned a security guard from patrolling the kitchen area to patrolling the lobby and entrance area to the hospital. The CEO did not share information concerning these threats with anyone else at the hospital.

Several days later, Proust, a former patient, entered the hospital kitchen shortly before lunch and mixed peanut powder into an industrial serving tray of mashed potatoes. Neither Guy nor any of his employees were present in the kitchen at the time because they had all left to use the restroom. Longstanding custom, practice, and guidelines all require that food served in a hospital never be left unattended before, during, or after meal service to prevent contamination or tampering.

At lunchtime, Abraham, a patient, consumed the mashed potatoes. Abraham, who had a serious allergy to peanuts, suffered severe injuries. Abraham sued both Fioni and MMH. Fioni settled separately for an undisclosed amount.

Identify and assess the claims that Abraham might reasonably assert against MMH.

Long Essay Question

- This question is worth 25 points
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 60 minutes.

Eight months ago, in April 2021, Rudd had abdominal surgery at Hennepin Hospital (in Hennepin County, Minnesota) to remove an ulcerated section of his large intestine. Dr. Ferrell, an employed physician at this hospital, performed the surgery. Afterwards, Dr. Ferrell told Rudd that there were no problems with the surgery and assured Rudd that he would not have any problems with his abdomen in the future. In fact, Dr. Ferrell knew that one of the surgical clamps had been left inside Rudd's abdomen and would likely cause future problems.

Two weeks ago, Rudd experienced severe abdominal pains and went to the emergency room of Ramsey Hospital (in Ramsey County, Minnesota). The emergency room doctor, Dr. Clooney, was an independent contractor working for the company that staffed the Ramsey Hospital ER. Dr. Clooney immediately performed emergency abdominal surgery and removed an old surgical clamp. The old surgical clamp had caused a massive infection in Rudd's abdomen.

One week after the surgery performed by Dr. Clooney, when Rudd was recovering in the post-surgical wing of Ramsey Hospital, it was discovered that his lungs had been permanently damaged by a post-surgery pulmonary embolism (a blood clot that forms after surgery and travels through the bloodstream to the lungs). Dr. Clooney told Rudd that both he and the hospital's pulmonology iatrogenic response team reviewed Rudd's chart. He explained that the chart clearly indicated that Ramsey Hospital's nurses should have discovered the embolism three days earlier than they did. Had they done so, Rudd's lungs would not have been damaged.

When Rudd asked the nurses about this, they defensively explained that Dr. Clooney had left no orders to look for a pulmonary embolism. And, in any case, they were too understaffed to monitor post-surgery patients closely enough to detect such things even had they been ordered or instructed to look for them.

In preparing his lawsuit, Rudd has been able to retain only a single expert witness, Nathaniel Deuce, MD, who, for fifteen years, has directed and managed the Dakota Hospital surgical intensive care unit (SICU), a multispecialty medical care center for critically ill patients who are recovering from surgery.

Identify and assess both (1) the claims that Rudd might reasonably assert and (2) the parties against whom he might assert them.