

<b>Instructor</b>	<b>Professor Thaddeus Mason Pope</b>
<b>Course Title</b>	<b>Health Law: Quality &amp; Liability</b>
<b>Format</b>	<b>Final Exam, Spring 2022</b>
<b>Total Time</b>	<b>Twenty-four (24) hours</b>
<b>Total Pages</b>	<b>20 pages</b>

#### Reference Materials Allowed

Open Book (all reference materials allowed)

#### Take-Home Exam Instructions

1. Please know your **correct Spring 2022 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 Tuesday, May 3, 2021, and before 11:59 p.m. on Sunday, May 15, 2022.
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 Sunday, May 15, 2022. Therefore, the latest time by which you will want to **download** the exam is at 11:59 p.m. on Saturday, May 14, 2021. Otherwise, you will have less time to write your answers than the full permitted twenty-four (24) 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 twenty **(20) 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 Sunday, May 15, 2022.
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 1.5 points each, for a combined total of 45 points  
Estimated time = 60 minutes (2 minutes each)
- Part Two**      3 essay questions  
Worth 10, 10, and 35 points each, for a combined total of 55 points  
Estimated time = 150 minutes
- That adds up to 3½ hours. Remember, you have twenty-four (24) 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 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
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 1.5 points for a combined total of 45 points.
  - Recommended time is 60 minutes (2 minutes each).
1. In April 2022, after a seven-week-long criminal trial, an Ohio jury found ICU physician William Husel not guilty on 14 counts of murder in connection with patients who died under his care after he prescribed high doses of fentanyl and other pain killers during “terminal extubation.” But Dr. Husel still faces civil suits by the families of these patients. In a medical malpractice action, the **MOST** relevant piece of evidence is:
- A. Husel’s intent was to kill the patients.
  - B. Husel’s dosages of fentanyl were 10 to 20 times higher than the amounts customarily given by other Ohio physicians.
  - C. Husel’s dosages of fentanyl were 10 to 20 times higher than the amounts that peer-reviewed medical literature shows were necessary to control pain.
  - D. Husel’s dosages of fentanyl deviated from evidence-based guidelines published by critical care societies.
2. In April 2022, a Michigan jury awarded \$2.75 million in a dental malpractice lawsuit. A CT scan without contrast of the patient’s jaw revealed a “slightly lobulated apparent soft tissue density mass.” But the oral surgeon did not request additional imaging “despite identification from the radiologist in the CT scan report that the imaging study was not sufficiently detailed and/or defined and that MRI studies with contrast were recommended.” Instead, the oral surgeon removed one of patient’s wisdom teeth and scheduled an “incisional biopsy” for the soft tissue mass (cut made through the skin to remove a sample of abnormal tissue or part of a lump or suspicious area).
- Rather than the incisional biopsy, the surgeon performed an “excisional biopsy” (cut made through the skin to remove an entire lump or suspicious area so it can be checked under a microscope for signs of disease). Patient subsequently suffered a “massive hemorrhage” in his mouth, including injury to his left lingual artery, arterial bleeding, loss of blood, and other injuries.
- The theory of liability **MOST LIKELY** to be successful is:
- A. Informed consent
  - B. Medical malpractice
  - C. Battery
  - D. Abandonment

3. In mid-2022, after nearly fifty years, it looks like the California Legislature will amend the Medical Injury Compensation Reform Act of 1975. The law caps non-economic damages at \$250,000. The amendments would raise the limit to \$350,000 for people who are injured and \$500,000 for the families of people who die. After 2023, those limits would gradually increase over the next decade until 2033, when they reach \$750,000 for injured patients and \$1 million for families of deceased patients. After that, the limits would increase 2% each year to keep up with the cost of inflation.

Suppose plaintiff suffered \$300,000 in lost wages, \$100,000 in medical expenses, and \$500,000 in pain and suffering. Under the new MICRA limits in 2023, HOW MUCH can plaintiff recover?

- A. \$350,000  
B. \$750,000  
C. \$800,000  
D. \$900,000
4. Minnesota wrongful death cases resulting from medical malpractice have a three-year statute of limitations and a six-year statute of repose. Patient underwent a procedure on April 10, 2017. But that procedure was not identified as the cause of the patient's death until autopsy on June 5, 2020. Plaintiff MUST file the wrongful death case by:
- A. The claim is already barred. It should have been filed by April 10, 2020.  
B. April 10, 2023  
C. June 5, 2023  
D. June 5, 2026
5. Assume all the same facts as the previous question except now assume that patient underwent the procedure on April 10, 2018, rather than on April 10, 2017. Plaintiff MUST file the wrongful death case by:
- A. The claim is already barred. It should have been filed by April 10, 2020.  
B. April 10, 2023  
C. June 5, 2023  
D. June 5, 2026

6. **Minnesota wrongful death cases resulting from medical malpractice have a three-year statute of limitations and a six-year statute of repose. In 2007, patient was hospitalized at Mercy Medical Center when a computerized tomography (CT) scan revealed a mass on her right kidney. Negligently, patient was not informed of the mass.**

**In August 2019, patient returned to Mercy's emergency room after she fell and broke her arm. A CT scan revealed the kidney mass. Upon her discharge from Mercy, a nurse mentioned the mass. That was the first time that patient was informed of the situation. Patient was diagnosed with metastatic renal cell carcinoma and, it being far less treatable at this late stage, died from the disease two years later. Plaintiff's wrongful death medical malpractice action:**

- A. Was barred in 2010.
  - B. Was barred in 2013.
  - C. Must be filed by August 2022.
  - D. Must be filed by August 2025.
7. **2020 is the most recent year for which the National Practitioner Data Bank (NPDB) provides complete data on malpractice payment reporting. According to the NPDB, the average settlement for New York medical malpractice lawsuits was \$425,000. In 2020, defendants in New York medical malpractice lawsuits made 1,400 settlements totaling \$606,000,000. Combining these numbers with what we know about medical malpractice litigation, we can conclude:**
- A. All negligently injured patients are getting compensation.
  - B. Most negligently injured patients are getting compensation.
  - C. Most negligently injured patients are NOT getting compensation, because their damages are too low to warrant the transaction costs of litigation.
  - D. None of the above
8. **Economics experts determine that an injured plaintiff's injuries and damages have a value of \$1,000,000. But the jury determines that the plaintiff's OWN conduct was 40% of the cause of her injuries and damages. In most U.S. jurisdictions, the \$1,000,000 would be:**
- A. Unaffected and remain \$1,000,000.
  - B. Reduced by 40% to \$600,000.
  - C. Reduced to nominal damages.
  - D. Reduced to \$0 under the doctrine of contributory negligence.
  - E. Reduced to \$0 under the doctrine of assumption of risk.

9. Which of the following is a type of **ECONOMIC** damages that would **NOT** be typically subject to a statutory damages cap like California's MICRA?
- A. Pain and suffering
  - B. Mental anguish
  - C. Loss of consortium
  - D. Diminished enjoyment of life
  - E. Disfigurement and scar tissue
  - F. None of the above
10. **Credentialing involves verifying a provider's education, experience, and claims history. Primary source verification is the core component of the process. This extremely meticulous task includes collecting licenses, registrations, certifications, training and work histories, insurance information, and more. Appropriate credentialing can prevent unqualified healthcare providers who may have histories of negligence from gaining employment and placing patients at risk of harm.**
- Suppose a hospital's sloppy credentialing results in a poor provider being successfully credentialed and employed. If that provider later negligently injures a patient, the hospital MAY be exposed on theories of:**
- A. Direct liability
  - B. Vicarious liability
  - C. Both A and B
  - D. Neither A nor B
11. **Which of the following are NOT reasonably accurate statements of "but for" causation?**
- A. Plaintiff must establish that it is more probable than not the negligent act was a cause-in-fact of the plaintiff's injury.
  - B. Evidence must be sufficient to allow the jury to infer that in the absence of the defendant's negligence, there was a medical probability that the plaintiff would have obtained a better result.
  - C. Both A and B are accurate statements.
  - D. Neither A nor B is an accurate statement.

12. Under comparative negligence, an injured patient can potentially be awarded damages, even if they are 99% at fault. The plaintiff can recover damages from the defendant minus their percentage of responsibility. If total damages equal \$100,000, the plaintiff who is 99% responsible could theoretically still collect \$1,000. This is an accurate statement of the law in:
- A. All states
  - B. Most states
  - C. Some states
  - D. No states
13. An African American daughter recently published a newspaper op-ed about her mother's inpatient care. The physician explained to the daughter: "You don't have to do what she wants. I can easily give her a DNR. All you must do is ask." In response, the daughter wrote: "I was stunned. I found myself doubting a doctor who wanted to allow a Black woman to die without intervention, contrary to her expressed wishes. His objectivity also seemed questionable because he and the hospital were part of an integrated health system that insured her [through her job]; I feared that his suggestions might have been partly based on saving money."
- To the extent that the decision was based on financial motives and, then the daughter may have a claim against the physician under:
- A. ERISA, since the claim concerns non-provision of an employee benefit
  - B. EMTALA
  - C. Medical malpractice
  - D. None of the above
14. In April 2022, the Physicians Advocacy Institute published a report showing that 74% of physicians are employed by hospitals and health systems. This is way up from just 25% in 2012. This CHANGE will have a material impact on hospital and health system:
- A. Vicarious liability
  - B. Direct liability
  - C. Both A and B
  - D. Neither A nor B

15. In May 2022, the Alabama Vulnerable Child Compassion and Protection Act goes into effect. This law makes it a felony for clinicians to provide gender-affirming care to transgender kids. The governor stated: “If the Good Lord made you a boy, you are a boy, and if made you a girl, you are a girl.” Before this law, **MOST** Alabama clinicians:
- A. Could refuse to accept transgender patients because they were transgender.
  - B. Could NOT refuse to accept transgender patients because they were transgender.
  - C. Could refuse to provide gender-affirming care to current patients because they were transgender.
  - D. Could NOT refuse to provide gender-affirming care to current patients because they were transgender.
  - E. A and C
  - F. B and D
  - G. A and D
  - H. B and C
16. In March 2022, the medical newspaper *STAT* ran a story titled “Doctors Often Turn to Google Translate to Talk to Patients.” Suppose a patient was trying to describe her pain to a physician in her native Taiwanese. If the physician used Google Translate to communicate with this patient, this is **LIKELY** a violation of:
- A. ADA
  - B. Section 1557
  - C. Both A and B
  - D. Neither A nor B
17. Disability under the ADA includes vision and hearing impairments. Does it also probably include these **COGNITIVE** impairments?
- A. Bipolar disorder
  - B. PTSD
  - C. Schizophrenia
  - D. Autism
  - E. All the above

18. Disability under the ADA includes vision and hearing impairments. Does it also probably include these independent living and self-care impairments?
- A. Partial missing limbs
  - B. Completely missing limbs
  - C. Mobility impairment requiring a wheelchair
  - D. Muscular dystrophy
  - E. All the above
19. Disability under the ADA includes vision and hearing impairments. Does it also probably include these DISEASE PROCESS impairments?
- A. HIV
  - B. Diabetes
  - C. Cancer
  - D. All the above
20. Patient had been in remission for ovarian cancer. The patient's cancer recurred, but it was negligently not diagnosed until seven months later than it should have been. The patient died and was survived by three children and a husband. Damages were estimated at \$2,500,000. Expert testimony showed that even with timely diagnosis, only about 10% of recurrent ovarian cancer patients achieve a second remission. Under traditional BUT FOR causation, plaintiff can recover:
- A. \$0
  - B. \$250,000
  - C. \$2,500,000
  - D. None of the above
21. Same facts as the previous question. Under LOST CHANCE causation, plaintiff can probably recover:
- A. \$0
  - B. \$250,000
  - C. \$2,500,000
  - D. None of the above

22. During the COVID-19 pandemic, many states establish triage guidelines for allocating admission to a hospital when demand exceeds supply. The lowest priority is assigned both to those with the worst chance of survival (since they will die anyway) and to those with the best odds of survival (since they will survive anyway). But patients are also excluded in other situations. Which of these classes of patients can guidelines **PROBABLY NOT** categorically exclude?
- A. End-stage organ failure
  - B. Severe burns with <50% chance survival
  - C. Early/middle stage dementia
  - D. Irreversible metastatic cancer
  - E. Guidelines may exclude any of the above patients, since their quality of life is already so low.
23. Jayne, a three-year-old girl, began experiencing intermittent moderate abdominal pain. Jayne's mother brought her to the emergency room at Valley Medical where a doctor ordered the standard appropriate x-rays with two views of Jayne's abdomen. After reviewing the films, the doctor diagnosed Jayne with constipation, prescribed a laxative, and sent the child home with her mother. In fact, Jayne's bowel had been dangerously distended and air-filled. The next day, that gas escaped, reached her heart, and caused an air embolism. Jayne died. In an action against the hospital, Jayne's parents can **PROBABLY** establish:
- A. Breach of EMTALA screening duty
  - B. Breach of EMTALA stabilization duty
  - C. Both A and B
  - D. Neither A nor B
24. Assume all the facts from the previous question. But now also assume that the parents have a qualified expert witness who will testify that the applicable standard of care is to have a radiologist view an x-ray prior to discharging a patient. As described above, Jayne's x-rays were reviewed by only the attending ED physician. The parents' expert opines that a radiologist would have recognized the severity of Jayne's condition. That would have led to remedial steps such as monitoring and transfer for surgery. With this new evidence, in an action against the hospital, Jayne's parents can **PROBABLY** establish:
- A. Breach of EMTALA screening duty
  - B. Breach of EMTALA stabilization duty
  - C. Both A and B
  - D. Neither A nor B

25. Lisa's husband, Richard, died from head trauma after falling on a hard surface while leaving Target Field baseball stadium in Saint Paul. Lisa submitted a claim for benefits to Loon Life, the administrator of two accidental-death policies that Richard had been enrolled in through his employer, Target. The policy required Loon Life to pay Lisa \$200,000 in the event of her husband's accidental death. Loon Life refused to pay, arguing that Richard had been drinking at the baseball stadium. Lisa finds this reason for refusal pretextual, arguing that neither the medical examiner nor the police determined that intoxication had caused or contributed to Richard's accident. Lisa filed a lawsuit in Hennepin County District Court, arguing that Loon Life acted in breach of contract and violated the Minnesota Deceptive Trade Practices Act.

Putting the merits aside, Lisa **PROBABLY** can:

- A. Proceed with her contract claim
  - B. Proceed with her statutory consumer protection claim
  - C. Both A and B
  - D. Neither A nor B
26. A court held that a 15-year statute of repose relating to real property improvements precluded an action against an architect for negligently designing a building in 1999 that collapsed in 2020. Is this consistent with the core concept of a statute of repose?
- A. No, because there was no injury, and therefore no cause of action until the building's collapse.
  - B. No, because there was no discovery or accrual of a claim until the building's collapse.
  - C. Both A and B.
  - D. Yes.

27. **Because Jane is deaf and blind, she communicates through ASL. After a work-related injury, Jane's doctor referred her to River Rehab. But River Rehab refused to provide an interpreter.**
- A. Jane may have a claim only if she can show that she was unable to describe the source of her physical infirmities, ask questions, identify her pain level, or otherwise assist in rehabilitative services.
  - B. Jane may have a claim only if she can show she could not communicate through other methods like notes, lipreading, or gestures.
  - C. Jane may have a claim only if she can show actual damages because her treatment was adversely impacted.
  - D. Jane has no claim.
  - E. None of the above.

28. **In 2021, the *Joint Commission Journal on Quality & Patient Safety* published a study based on responses to this question to 400 physicians:**

**When obtaining the weight of patients with significant mobility limitations who cannot use a standard scale, how often do your staff use a wheelchair accessible scale or a weight scale with a life device?**

**Nearly 40% reported doing neither but instead either using the previous weight in the patient's record or asking the patient how much they weigh. Does this violate the ADA?**

- A. No, because these physicians did not deny care to these patients.
- B. No, because these physicians did the best they could.
- C. No, unless the imprecise measure adversely impacted treatment (e.g., weight management interventions, medication errors where dosages are determined by weight).
- D. Yes.

29. Minnesota MRI is an outpatient diagnostic imaging center, MMRI contracted with Dr. Sword to read MRIs on an independent contractor basis. Dr. Sword read and interpreted these MRIs from his home office, though none of this was disclosed to patients. Patient's primary care physician send him to MMRI which sent the image to Dr. Sword. Unfortunately, Dr. Sword failed to diagnose his arteriovenous fistula resulting in permanent injuries. In a lawsuit against MMRI, Patient can **PROBABLY** proceed on a theory of:
- A. Respondeat superior
  - B. Apparent agency
  - C. Both A and B
  - D. Neither A nor B
30. Employee filed suit, claiming that she was discriminated against and subject to a hostile work environment because of gender. In her amended complaint and discovery responses, the employee alleges details about her emotional distress, including that she has been diagnosed with specific psychological conditions and suffered from ill health effects such as headaches, sleeplessness, and nosebleeds. Because the plaintiff put her mental condition is "in controversy," the defendant has moved pursuant to Federal Rule of Civil Procedure 35 that the plaintiff be evaluated by a psychiatrist. When plaintiff sees this psychiatrist, it is **PROBABLY** accurate to say that:
- A. Employee is NOT in a treatment relationship with this physician.
  - B. Employee is in a treatment relationship with this physician.
  - C. Employee is in a treatment relationship with this physician only if the physician uses her training and expertise to assess the employee.
  - D. Employee is in a treatment relationship with this physician only if the patient voluntarily consents to the encounter.
31. **BONUS --** In connection with the Radonda Vaught case, CMS sent a Notice of Deficiencies letter to Vanderbilt University threatening to terminate its certification because of "the failure of the hospital to mitigate risks associated with medication errors and ensure all patients received care in a safe setting ... placed them in immediate jeopardy and risk of serious injuries or death." If CMS took this action, this would mean that the hospital:
- A. Could not legally operate.
  - B. Could legally operate but could not treat Medicare patients.
  - C. Could legally operate but without a special credential distinguishing it from competitors.

# Essay Question 1

- This question is worth 10 points
- Limit your response to 750 words. This is a limit, not a target or suggested length.
- Recommended time is 30 minutes.

In April 2022, the prestigious medical journal *BMJ* published a study finding that many physicians use language that is belittling, doubting, and blaming when speaking to patients. They also use this language when writing on the patient's chart. With increasing use of OpenNotes and other medical records access, patients often see these notes. Here are some examples:

1. **Blaming:** Some language blames patients for negative outcomes. Patients who have not taken prescribed medication are often called “non-compliant.” Physicians should instead use more neutral language like “adherence.”
2. **Doubting:** Physicians often say things like the patient “denies” chest pain or the patient “claims” this or that symptom. That makes it sound like the patient is being doubted. Physicians should instead use the word “reports.”
3. **Judging:** In managing diabetes and epilepsy, physicians use phrases like “poorly controlled” or “failure to progress” which sounds judgmental.

Consistent with abandonment law, physicians may (with adequate notice) fire patients who engage in conduct that the physicians disapprove. But suppose that does not happen. Suppose the physician keeps treating these patients but continues using language that disrespects them.

**Please assess and explain whether such conduct expose the physician to legal risks?**

## Essay Question 2

- This question is worth 10 points
- Limit your response to 750 words. This is a limit, not a target or suggested length.
- Recommended time is 30 minutes.

Over a period of six weeks, Brenda sought treatment for severe depression from an outpatient treatment center with locations in both Hudson, Wisconsin and Woodbury, Minnesota. These two cities are on opposite sides of the Mississippi River. Among other things, Brenda had been waking up in the middle of the night: (a) in a panic, (b) with an increased heart rate, and (c) sweating. She reported little interest or pleasure in doing things, and reported that on a few days, she had had thoughts that she would be better off dead or of hurting herself in some way.

Brenda visited both treatment center locations multiple times during February and March 2022. Various clinicians (physicians, APRNs, PAs) at both locations prescribed (and adjusted prescriptions for) Zoloft, Xanax, Ativan, and other medications. Unfortunately, before her next appointment in April 2022, Brenda was found dead in her home, having fatally shot her husband, her two children, and herself.

With respect to Zoloft and Brenda's other medications, the drug label warnings, broadly accepted treatment guidelines, and accepted practice advise that patients who are started on antidepressant therapy should be monitored appropriately and observed closely for clinical worsening, suicidality, or unusual changes in behavior. In other words, there is a documented acute safety concern about self-harm and harming family members.

Notwithstanding the warnings and guidelines, the treatment center failed to properly assess evaluate, and treat Brenda's severe depression, departing from established and applicable standards of care. It also failed to inform Brenda's family members. A court-appointed trustee for Brenda's family members wants to file a claim against the treatment center. But because Brenda visited both Wisconsin and Minnesota locations of the treatment center, it is unclear which law applies.

**Putting the merits aside and focusing on only the threshold element of duty, please comparatively assess the trustee's claim under Wisconsin and Minnesota law.**

## Essay Question 3

- This question is worth 35 points
- Limit your response to 1700 words. This is a limit, not a target or suggested length.
- Recommended time is 90 minutes.

Corie Lynch is a manager for the Minnesota-based electronics retailer Best Buy which offers insurance plans through Blue Cross/Blue Shield of Minnesota and UnitedHealthcare. In March 2021, Corie presented to the Long Lake Medical Center emergency department, complaining of a painful lump in her breast. Like many hospitals across Minnesota, LLMC has contracted with Emergency Physicians Professional Association (EPPA) to staff its hospital emergency department with physicians and advanced practice clinicians such as physician assistants and nurse practitioners to provide emergency care.

At the LLMC ED, Corie was triaged by a registered nurse. She was then examined by Wilkins, a physician's assistant according to standard protocols. While Wilkins was wearing an LLMC white coat, his professional ID badge clearly indicated he was a PA, not a physician. Wilkins told Corie that the lump was only a cyst and gave her information about breast cysts and fibrocystic breast changes. Wilkins did not give Corie any discharge instructions. Nor did Wilkins tell Corie to follow up with any specific providers or additional tests. Corie's discharge documents do not provide a treatment plan that includes follow-up to rule out cancer.

Notwithstanding the above, Wilkins claims that Corie's signature on the discharge instructions shows that she met with the nurse and was given discharge information and follow-up instructions. Wilkins explains that according to customary LLMC procedures, the patient's signature is obtained only after just such a discussion. Still, the form itself contains no such information and Corie contends that she was never told to do any follow-up.

On the day of the ED visit, since Wilkins is just a PA, he forwarded Corie's chart to Dr. Brodman to cosign. Again, the chart was deficient in that it failed to indicate Corie was apprised that she needed prompt imaging to rule out a more serious condition like breast cancer. Brodman did not notice this omission because he did not review the chart. Even though U.S. physicians customarily review a PA's work so assure conformity to the standard of care, for the sake of efficiency, at LLMC cosigning a PA's chart is an administrative function of "rubberstamping" the medical records.

In May 2021, Corie visited a primary care physician unaffiliated with LLMC who referred her for an ultrasound. The results of that ultrasound were highly suggestive of malignancy. This physician opines that a reasonable clinician would have detected the malignancy weeks earlier, as early as March 2021. By July 2021, additional examinations and diagnostic tests confirmed that Corie had stage III breast cancer. Apparently because of either the COVID-19 pandemic or a coverage dispute with her insurer, Corie did not begin treatment immediately, as recommended.

By the time Corie later began treatment in January 2022, after getting fully vaccinated, Corie's condition has worsened to stage IV breast cancer. Even then, Corie was not willing to undergo chemotherapy that could cause significant side effects. So, her oncologist prescribed a modified treatment of abnormally low doses that was of longer duration in what proved to be an unsuccessful attempt to reduce any spread of the cancer. Corie died in April 2022.

Since it is typically a progressive disease, cancer is more treatable the earlier it is detected. So, the delay in being diagnosed with breast cancer led Corie to developing a more advanced stage of breast cancer and to reducing her odds of survival. The relative five-year survival rate for stage 2 breast cancer is 93 percent. This is what Corie had in March 2021. The relative five-year survival rate for stage 3 breast cancer is 86 percent. This is what Corie had in May 2021. The five-year survival rate for stage 4 breast cancer is 22 percent. This is what Corie had in January 2022.

**You work at a law firm that has agreed to represent Corie's family. You have not yet completed formal discovery, so do not yet have all the facts or expert evidence. But both the firm and the client want a preliminary evaluation of the case. Accordingly, please identify and assess viable claims that Corie's husband may have against any defendant.**