

Instructor	Professor Thaddeus Mason Pope
Course Title	Health Law: Quality & Liability
Format	Midterm Exam, Fall 2021
Total Time	Four (4) 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 Tuesday, October 5, 2021, and before 11:59 p.m. on Saturday, October 16, 2021.
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 Saturday, October 16, 2021. Therefore, the latest time by which you will want to **download** the exam is at 7:59 p.m. on Saturday, October 16, 2021. Otherwise, you will have less time to write your answers than the full permitted 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 four (4) hours of downloading it, but in no case later than 11:59 p.m. on Saturday, October 16, 2021.
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 less than 2½ hours. That means you should be able to write complete answers to all the questions in 2½ 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.
12. **Format:** The exam consists of three main parts:
- Part One** 30 multiple choice questions
Worth 2 points each, for a combined total of 60 points
Estimated time = 60 minutes (2 minutes each)
- Part Two** 2 short essay questions
Worth 10 points each, for a combined total of 20 points
Estimated time = 40 minutes (20 minutes each)
- Part Three** 1 long essay question
Worth 20 points
Estimated time = 40 minutes
- That adds up to less than 2½ hours. Remember, you have 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
 3. B . . .
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 2 points for a combined total of 60 points.
- Recommended time is 60 minutes (2 minutes each).

- 1. In which of the following cases is the patient's claim for BATTERY the weakest?**
 - A. The patient consented to having her left leg removed and the doctor removed the right leg.
 - B. The patient consented to have Dr. A. perform her surgery and Dr. B. performed the surgery instead.
 - C. A person pretending to be a physician operated on the patient.
 - D. The physician did not tell the patient that she had a financial interest in the medicine he prescribed for her.

- 2. Which of the following pieces of information might a Minnesota physician have a duty to disclose to avoid negligence?**
 - A. That her nurse was a recovering addict.
 - B. That the procedure would be performed by another physician.
 - C. That she had a financial interest in the medicine she prescribed for patient.
 - D. All the above.

- 3. An 88-year-old woman is having surgery. One risk of that surgery is that it causes infertility. In an informed consent action in Minnesota, would the woman have a DIFFICULT time establishing duty?**
 - A. Yes, because an 88-year-old woman would not find that risk important to consider.
 - B. Yes, if the custom and practice of physicians performing this type of surgery is NOT to disclose that risk
 - C. No, because a hypothetical reasonable patient getting this surgery would find that risk important to consider even if this specific patient would not.
 - D. No, if the custom and practice of physicians performing this type of surgery is to disclose that risk

4. **Minnesota Memorial Hospital's Child and Adolescent Psychiatric Unit (MMHCAPU) is one of two secure psychiatric units in Minnesota that admit children under the age of eleven. In July 2021, MMHCAPU's patient census was lower than normal. Yet, the intake department denied two requests to transfer children experiencing acute psychiatric symptoms to the MMHCAPU from hospital emergency rooms in other parts of Minnesota. This conduct:**
- A. Probably does NOT violate EMTALA because these patients had not yet reached MMH property.
 - B. Probably does NOT violate EMTALA because neither original treating hospital may transfer a patient unless and until first stabilizing their emergency condition.
 - C. Probably does NOT violate EMTALA because MMHCAPU has not yet formed a treatment relationship with these individuals.
 - D. Probably violates EMTALA.
5. **During the afternoon of September 10, 2021, paramedics rushed Randee to the hospital after she complained of being unable to support her weight. She arrived at Minneapolis Methodist Hospital, a designated acute-stroke-ready hospital, with her husband and children. Finding Randee at risk of a stroke, the hospital admitted Randee as an inpatient to its intensive care unit. Four days later, Randee suffered a stroke. Her condition deteriorated quickly, and she was put on life support. Over the next few days, the family expressed concern about the adequacy of care at MMH and sought to transfer Randee to another facility. But other hospitals declined those requests for insurance reasons. Randee died a few days later. Has MMH violated EMTALA?**
- A. Yes, because it failed to stabilize Randee's emergency medical condition.
 - B. Yes, because it failed to transfer Randee to a better hospital.
 - C. Yes, if the family can establish that the quality and scope of the treatment Randee received was inadequate.
 - D. No.
6. **Health insurance providers, UnitedHealthcare and Anthem Blue Cross, are considering new policies that would deny payment for emergency department visits that they retrospectively deem "unnecessary." But this is tricky for patients. For example, the symptoms of an ovarian cyst resemble emergency medical conditions like ovarian cancer, appendicitis, diverticulitis, and an infected gall bladder. But sometimes the same symptoms might just be menstrual pain. Since patients cannot know which, the coverage policy would likely deter patients from seeking emergency care. Does this violate EMTALA?**
- A. Yes, because the policies deter patients from going to the ED.
 - B. Yes, because patient should have access to EDs without financial concerns.
 - C. Both A and B.
 - D. No.

7. Finn has been receiving a course of treatment as an outpatient at Minnesota Lutheran Hospital on Tuesdays. On a Friday (when he is not receiving that treatment), Finn presents on hospital property seeking treatment for an emergency medical condition. The ED staff refuse to provide a medical screening exam. Has MLH violated EMTALA?
- A. Yes, because all patients presenting on hospital property seeking treatment must be given an MSE.
 - B. Yes, if it was apparent to hospital staff that Finn had an emergency medical condition.
 - C. No, unless Finn presented at the hospital's dedicated emergency department.
 - D. No
8. Martin presented to the emergency department at Saint Matthias Hospital in Duluth, Minnesota following a suicide attempt. Martin had attempted suicide earlier in the day and expressed that he was looking for other ways to kill himself. Martin's attending physician recognized that Martin required greater psychiatric care than SMH could provide and arranged to transfer Martin to the University of Minnesota Neuropsychiatric Institute with UMN's agreement. Martin's suicidal condition was never stabilized prior to his transfer.
- Pursuant to Saint Matthias' arrangements, Martin was later transferred to UMN, approximately 154 miles away. Martin was transferred by private vehicle without a person trained or qualified to manage a suicidal patient. Martin was not restrained during the transfer, nor was the private vehicle outfitted with means to do so. Martin was not sedated. During the transfer, Martin again attempted suicide by jumping out of the private vehicle as it was traveling on US-35 at a speed of approximately 70 miles per hour. As a result of this suicide attempt, Martin suffered several substantial injuries. Did Saint Matthias violate EMTALA?
- A. Yes, by transferring Martin prior to stabilization.
 - B. Yes, by transferring Martin in the way it did.
 - C. Both A and B
 - D. No, because UMN has specialized capacities that Saint Matthias did not have.
 - E. No, because a private vehicle is not hospital property.

9. **Individuals receiving treatment for Opioid Use Disorder are generally considered disabled. In Wisconsin, a patient being treated with buprenorphine, a medication used to treat Opioid Use Disorder, sought full-joint replacement from Minneapolis Metropolitan Orthopedics surgeons. But MMO referred the patient elsewhere, because the surgeons were not comfortable with the post-operative pain management protocol needed for patients prescribed buprenorphine. Did MMO violate the ADA?**

- A. No, physicians may refuse to treat patients for any reason.
- B. No, because a treatment relationship had not yet been formed.
- C. No, because the patient was transferred, and continuity of care was assured.
- D. Yes

10. **Christy is a 46-year-old woman who is HIV positive. She began experiencing significant back pain, and her primary doctor recommended that she undergo breast reduction surgery. Christy scheduled a consultation for a breast reduction surgery at Minnesota Metropolitan Plastic Surgery. She arrived and completed intake paperwork including a medical history sheet. On the medical history sheet, she indicated that she was HIV positive.**

MMPS plastic surgeon, Dr. Bosse met Christy in the patient room with a nurse. Dr. Bosse explained to Christy that he would not perform the surgery because of the possible risk to her, herself, and the surgical team due to Christy's HIV status. Christy got the surgery from another plastic surgery practice. Has MMPS violated the ADA?

- A. No, because Christy is not disabled.
- B. No, because Christy was not discriminated against because of an actual or perceived disability.
- C. No, because Christy is not otherwise qualified for the surgery.
- D. Yes.

11. **Which of the following is NOT required by EMTALA?**

- A. Provide an appropriate medical screening examination.
- B. Provide necessary stabilizing treatment for emergency medical conditions and labor.
- C. Not delay the screening exam to inquire about the patient's insurance or payment status.
- D. Accept appropriate transfers of patients with emergency medical conditions if the hospital has the specialized capabilities not available at the transferring hospital and has the capacity to treat those individuals.
- E. These are all required.

12. **Alec is a transgender male diagnosed with gender dysphoria, the clinically significant distress that results from the dissonance between an individual's gender identity and sex assigned at birth. But Alec's local clinic denied hormone replacement therapy and surgery for the treatment of gender dysphoria even though this clinic provides this same therapy to cisgender individuals (people whose gender identity matches their sex assigned at birth). The clinic's refusal is:**
- A. Legally prohibited.
 - B. Legally permitted if Alec is not yet a patient of this clinic.
 - C. Legally permitted if Alec is not yet on clinic property.
 - D. Legally permitted, since any discrimination is because of gender identity, not race, color, national origin, sex, age, or disability,
13. **The developer and owners of a nursing home that receives no federal money (no Medicare and Medicaid payments, no grants, no contracts) failed to build the property with accessible features (like ramps) for people with disabilities. Does this violate the ADA?**
- A. No, because the nursing home did not intentionally deny services to an individual with disabilities.
 - B. No, because the nursing home receives no federal money.
 - C. No, because the ADA imposes only negative prohibitions on discrimination, not positive requirements.
 - D. No, because the developer and owners are not themselves healthcare providers.
 - E. Yes
14. **Investigators later discovered that clinicians working at the same nursing home in the previous question (#13) refused care to some residents and subjected them to verbal or physical abuse specifically because those residents were transgender. Has the nursing home violated Section 1557?**
- A. Yes.
 - B. Yes, because the nursing home is a place of public accommodation.
 - C. No, because the nursing home receives no federal money.
 - D. No, because the nursing home is not a place of public accommodation.
15. **Saint Croix River Hospital categorically denies coverage for gender dysphoria treatments like counseling, hormone therapy, and surgical care. This policy MOST likely violates:**
- A. ADA
 - B. EMTALA
 - C. Section 1557
 - D. None of the above

16. Which of the following is NOT an example of patient abandonment?
- A. Doctor refuses to treat an existing patient at a critical stage because the patient has failed to pay his or her medical bill.
 - B. Doctor is unavailable to an existing patient for an unreasonable amount of time – and during this time the patient suffers harm.
 - C. Doctor refuses to treat a prospective patient with urgent treatment needs because of patient's inability to pay.
 - D. Doctor does not assist a patient in establishing care at another facility when she can no longer provide care due to doctor's age.
 - E. These are all examples of patient abandonment.
17. In which of the following situations may a physician legally refuse to take on a new patient?
- A. Patient is not vaccinated against COVID-19
 - B. Patient is a smoker
 - C. Patient has an unhealthy diet
 - D. Patient refuses to take their blood pressure medication
 - E. Two or three of the above
 - F. All the above
 - G. None of the above
18. Many medical emergencies occur outside of the umbrella “medical setting” or “clinical environment,” for example, on airplanes and in sports arenas. If the victim is unconscious or unresponsive, then legally a physician:
- A. Must treat the victim, at least to ascertain whether she has an emergency medical condition.
 - B. Must treat the victim if she obviously has an emergency medical condition.
 - C. Must NOT help the victim unless she gets consent from the patient or from the patient's substitute decision maker.
 - D. May treat or not treat as she wishes.
19. A Minnesota surgeon does not inform her patient that a complex procedure involves an inherent 35-percent risk of losing a limb. Patient loses a limb. On the patient's subsequent malpractice claim the surgeon:
- A. Will probably NOT be liable if the operation was done perfectly.
 - B. Will probably NOT be liable if the procedure was so important that the reasonable patient would have still proceeded if informed of the risks.
 - C. Will probably be liable even if the procedure was so important that the reasonable patient would have still proceeded if they had been informed of the risks.
 - D. Will probably be liable ONLY if the operation was performed negligently.

20. The following informed consent duty best represents the law in _____.
“Any chiropractor who treats a patient must inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of those treatments. The reasonable chiropractor standard is the standard for informing a patient. The reasonable chiropractor standard requires disclosure only of information that a reasonable chiropractor would know and disclose under the circumstances.”
- A. Minnesota
 - B. Wisconsin
 - C. Either Minnesota or Wisconsin
 - D. Neither Minnesota nor Wisconsin
21. Which of the following TYPES of disability are protected by the ADA? Substantial limitations in _____.
- A. Mobility
 - B. Cognition
 - C. Hearing
 - D. Vision
 - E. Self-care (dressing, bathing)
 - F. Three of the above
 - G. All the above
22. When Tyler decided to pursue gender-affirming surgery, Minnetonka Memorial Hospital near Tyler’s home and community was the natural hospital choice because Tyler had already been receiving care there for unrelated conditions. After Tyler’s doctor (who had staff privileges at MMH) had trouble scheduling the surgery, Tyler drove to the hospital to schedule the surgery in person. The hospital staff misgendered Tyler and denied Tyler gender-affirming surgery. Tyler felt humiliated and dehumanized. MMH may have violated:
- A. EMTALA screening duty
 - B. EMTALA stabilization duty
 - C. Both
 - D. Neither

23. Imagine that you are a U.S. Navy veteran. A few years ago, you left your home, your friends, and your family to risk your life in service to your country in Afghanistan. You survived, but your health is not the same. Now, you are back home in La Crosse, Wisconsin. Even though you have a job as a civilian, you rely on the U.S. Department of Veterans Affairs for cost-free health care. You suffered a knee injury during your active-duty service that continues to bother you. Your military records show you received treatment when the injury occurred. Since you have been home, you have discussed your knee injury with your doctor at the local VA medical center. Your doctor has diagnosed you and prescribed treatment, but it still causes you problems, especially since your civilian job requires you to be on your feet most of the day.

You decide to apply for VA disability compensation for your knee condition. The VA sends you to an appointment called a Compensation and Pension Examination. A private La Crosse doctor contracted by the VA and whom you have never met before conducts this exam. This doctor asks you about your knee, performs some tests, and sends you on your way in about thirty minutes. Months later, you receive a letter in the mail from VA. Your claim is denied. If this doctor was negligent in her diagnosis, can you sue her for malpractice?

- A. Yes- because she agreed to examine you.
 - B. Yes - because she examined you.
 - C. Yes - because you relied upon this diagnosis in your benefits application.
 - D. More than one of the above.
 - E. No.
24. A transgender woman from Bloomington, Minnesota with a significant family history of breast cancer had to struggle with her local clinic at length, on multiple occasions to obtain a breast cancer screening. Which of the following is MOST correct?
- A. DHHS OIG may enforce Section 1557 here.
 - B. DHHS OCR may enforce Section 1557 here.
 - C. DHHS OIG may not enforce Section 1557 here because it prohibits discrimination only because of sex, not sexual orientation nor gender identity.
 - D. DHHS OCR may not enforce Section 1557 because it prohibits discrimination only because of sex, not sexual orientation nor gender identity.

25. **Patient broke her foot and went to physical therapy. But the PT staff wouldn't respect her pronouns. They changed her to many new/different physical therapists. They switched her around because they were tired of Patient telling them to use the right pronouns. They would change Patient to different people because they didn't want to deal with respecting her pronouns. Patient stopped going to PT and now her foot hurts badly. The PT clinic is most likely liable under:**
- A. Patient abandonment
 - B. ADA
 - C. Section 1557
 - D. EMTALA
 - E. More than one of the above
 - F. All the above
26. **Many ED patients present with an opioid overdose, alcohol intoxication or poisoning, or injuries and infections associated with substance use. Screening and diagnostic assessment are the essential first steps to identify whether such a patient has a substance use disorder. If a plaintiff can show that a hospital has failed to use generally accepted and expert recommended screening tools for SUD, with such evidence plaintiff:**
- A. Probably cannot establish an EMTALA violation
 - B. Probably can establish an EMTALA violation
27. **Suppose with screening and diagnostic assessment the ED identifies a patient with SUD. But the ED does not offer to administer buprenorphine to treat withdrawal and suppress opioid cravings. Nor does the ED provide a facilitated referral to treatment, along with a naloxone prescription. This conduct:**
- A. Violates EMTALA only if it offers that therapy to other SUD patients.
 - B. Violates EMTALA only if that therapy would be offered by the reasonable ED in this situation.
 - C. Violates EMTALA if that therapy is required to prevent the material deterioration of the patient's condition post-discharge.
 - D. None of the above.

28. Milo, a young adult with a cocaine use disorder has experienced multiple overdoses and is brought by his parents to the ED while suffering from severe agitation, chest pain, and hallucinations. The parents request treatment for Milo's symptoms, fearing that continued cocaine use will result in a fatal cocaine/fentanyl overdose. The ED physician conducts a physical examination and takes a history of Milo's substance use based on the DSM-5 criteria. Relying on Milo's responses, the physician diagnoses Milo with cocaine use disorder and notes possible fentanyl use in his chart. This screening violates EMTALA if:
- A. It is not uniformly implemented for individuals with Milo's condition.
 - B. It is not optimally designed to diagnose an emergency medical condition.
 - C. It fails to diagnose Milo's emergency medical condition.
 - D. More than one of the above.
29. Peachy arrives at the ED with a broken leg and other physical injuries following a car crash. Hospital procedure requires the ED to administer the NIAAA quantity and frequency alcohol use disorder screening for all patients presenting after an accident or injury, once alert and able to respond, and do a diagnostic assessment for patients with at-risk alcohol use. After setting her leg and treating the other injuries, the physician asks Peachy whether she drinks alcohol often, but does not conduct the screening protocol. Peachy says yes, and, as part of her discharge instructions, the physician tells her to cut back her alcohol use and stop driving after drinking. Peachy leaves the ED, purchases alcohol, resumes drinking, walks into oncoming traffic, and sustains life-threatening injuries. Has the hospital violated EMTALA?
- A. No, because she got a screening exam.
 - B. No, because no emergency medical condition was diagnosed.
 - C. No, because the hospital had no prior relationship with patient.
 - D. Yes, because it failed to conduct a proper screening exam.
 - E. Yes, because it failed to stabilize her emergency medical condition (alcohol use disorder).
30. In the previous question, whom may the patient sue?
- A. Physician
 - B. Hospital
 - C. Both A and B
 - D. Neither A nor B

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 20 minutes.

Kate was working in her backyard garden on a warm September day in Saint Paul, when she got stung by a wasp. Kate's face started swelling. And swelling. So, Kate got in her car and drove to the urgent care center that was just a few minutes away from her house. Kate parked and made it inside to the check-in desk. But Kate collapsed just as she spurted out "wasp sting." Thump.

While Kate was unconscious, Dr. Pearson injected Kate with two new drugs that are standardly used in this urgent care clinic. One drug was designed to reduce the swelling. The other drug was designed to reduce the likelihood that Kate would suffer such a bad reaction to a future wasp sting.

After Kate woke up and discovered that she had been given new drugs instead of the drugs that were traditionally used, she was upset. While she suffered no adverse consequences from the drugs, Kate later discovered that a possible side effect of both drugs was seizure syndrome. Kate was angry and claimed that she should not have been given the drugs without her consent.

Kate plans to sue. Your law firm has been hired by the urgent care center. Describe and assess claims that Kate may likely assert.

Short Essay Question 2

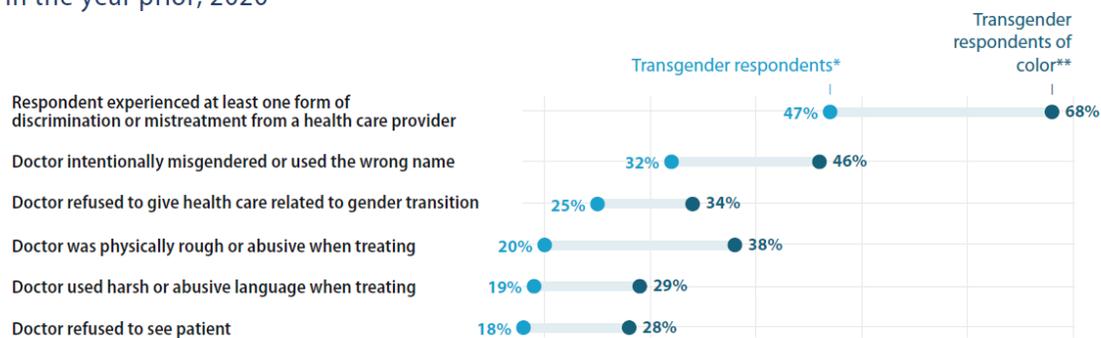
- This question is worth 10 points
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 20 minutes.

A new report on healthcare for transgender communities was released just weeks ago. It shows that many transgender adults have had negative experiences with a healthcare provider. You already know that this conduct may violate federal non-discrimination laws. But please address whether and how the conduct described in the figure below might create liability risk under STATE law.

FIGURE 13

Nearly half of transgender adults report having negative or discriminatory experiences with a health care provider

Shares of transgender adults who reported discrimination in the health care industry in the year prior, 2020



Long Essay Question

- This question is worth 20 points
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 40 minutes.

Nora Oliver, MD, PhD, is the chief of neurosurgery at a well-respected community hospital in Maplewood, Minnesota. A retired couple, Reina and Larry, arrive at the emergency room. Larry is complaining of the worst headache of his life. A brain scan reveals that he is suffering from a large aneurysm that requires surgery within 24 hours or he will likely die.

An aneurysm occurs when the wall of a blood vessel becomes thin and bulges or balloons out. The goals of treatment are to reduce the risk of complications from aneurysms. The major risk for untreated aneurysms is rupture, a bulging blood vessel in the brain that tears open. That can lead to stroke, brain damage, and death. Especially with a larger aneurysm like Larry's, pressure from blood leaking into the brain from a ruptured aneurysm can build up quickly. If the pressure becomes too high, death can occur.

Dr. Oliver tells Reina that as with all surgeries, brain aneurysm repair involves risks and potential complications. Those complications may become serious and life threatening in some cases. Complications can develop during surgery or recovery. Reina asks Dr. Oliver: "what exactly is the success rate is for the surgery?" Dr. Oliver tells her, truthfully, that 81% of her patients survive the procedure.

Dr. Oliver knows that at larger hospitals, tertiary referral hospitals, in downtown Saint Paul, only 20 minutes away by ambulance, other doctors, have surgical survival rates of 92 to 98%. That is a function of the unsurprising rule that centers performing more aneurysm surgeries per year have lower death rates than centers performing fewer surgeries. But Reina does not ask about other physicians or other hospitals and Dr. Oliver does not bring this up either.

Unfortunately, Larry is part of the 19%. He dies shortly after the operation at the community hospital.

Identify and assess the strongest claims that Reina might bring against the hospital.