

Instructor	Professor Thaddeus Mason Pope
Course Title	Health Law: Quality & Liability
Format	Midterm Exam, Spring 2024
Total Time	Four (4) hours
Total Pages	19 pages

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Spring 2024 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 Friday, March 1, 2024, and before 11:59 p.m. on Monday, March 11, 2024.
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 Monday, March 11, 2024. Therefore, the latest time by which you will want to **download** the exam is at 7:59 p.m. on Monday, March 11, 2024. Otherwise, you will have less time to write your answers than the full permitted four (4) hours.
6. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to Canvas.
7. Use your exam number as the **file name** for the PDF file that you upload.

Instructions Specific to This Examination

GENERAL INSTRUCTIONS:

1. **Honor Code:** While you are taking this exam, you are subject to the Mitchell Hamline Code of Conduct. You may not discuss it with anyone until after the end of the entire **midterm exam period**. It is a violation of the Code to share the exam questions. (There may be an accommodation student taking this exam at a different time.) Shred and delete the exam questions immediately upon completion of the exam. Professor Pope will repost the exam after the end of the midterm exam period.
2. **Competence:** By downloading and accepting this examination, you certify that 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 nineteen (**19**) pages, including these instructions. Please make sure that your exam is complete.
4. **Identification:** Write your exam number on the top of each page of your exam answer.
5. **Anonymity:** Professor Pope will grade the exams anonymously. Do **NOT** put your name or anything else that may identify you (except for your exam number) on the exam. **Failure to include your correct exam number will result in a 5-point deduction.**
6. **Total Time:** Your completed exam is due within four (4) hours of downloading it, but in no case later than 11:59 p.m. on Monday, March 11, 2024.
7. **Time Penalty:** If you upload your exam answer file more than four (4) hours after downloading the exam, then Professor Pope will lower your exam grade **by one point** for every minute over the 4 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 4-hour limit by more than 20 minutes, then Professor Pope may refer the situation for a Code of Conduct investigation and potential discipline. Please save enough time after editing to upload your exam.
8. **Timing:** Professor Pope has designed this exam for completion in about 2 hours. That means you should be able to write complete answers to all the questions in 2 hours. Yet, since this is a take-home exam, you will want to take some extra time (perhaps 45 minutes) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps 45 minutes) to revise, polish, and proofread your answers, such that you will not be submitting a “first draft.”
9. **Scoring:** This midterm exam comprises 20% of your overall course grade. While the scoring includes 100 points, these points will be weighted.

10. **Open Book:** This is an OPEN book exam. You may use any written materials, including, but not limited to: (a) any required and recommended materials, (b) any handouts from class, (c) PowerPoint slides, class notes, and (d) your own personal or group outlines.
11. **Additional Research:** While you may use any materials that you have collected for this class, you are neither expected **nor are you permitted** to do any online or library research (e.g., on Lexis, Westlaw, Google, reference materials) to answer the exam questions unless specifically directed to do so.
12. **Generative AI:** All answers to this exam must be fully prepared by the student. The use of generative AI tools for any part of your work will be treated as plagiarism.
13. **Format:** The exam consists of three main parts:

Part One 25 multiple choice questions
 Worth 1.6 points each, for a combined total of 40 points
 Estimated time = 50 minutes (2 minutes each)

Part Two 4 essay questions
 Two are worth 10 points each. Two are worth 20 points each.
 The combined total points for all 4 essays are 60 points.
 Estimated time = 110 minutes

That adds up to less than 3 hours. Remember, you have four hours to complete this exam. Therefore, you have time to revise, polish, and proofread.
14. **Grading:** All exams will receive a raw score from zero to 100. The raw score is meaningful only relative to the raw score of other students in the class. Professor Pope computes your course letter grade by summing the midterm, final, and quiz scores. Professor Pope will post an explanatory memo and a model answer to Canvas a few weeks after the exam.

SPECIAL INSTRUCTIONS FOR PART ONE

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 25). Next to each number type the letter corresponding to the best answer choice for that problem. For example:
 1. A
 2. D

2. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why immediately after your answer choice. Your objection must both (a) Identify the ambiguity or problem in the question and (b) Reveal what your answer would be for all possible resolutions of the ambiguity. I do not expect this to be necessary.

SPECIAL INSTRUCTIONS FOR PART TWO

1. **Submission:** Create clearly marked separate sections for each problem. You do not need to “complete” the exam in order. Still, structure your exam answer document in this order:
 - Essay Question 1
 - Essay Question 2
 - Essay Question 3
 - Essay Question 4
2. **Outlining Your Answer:** I strongly encourage you to use at least one-fourth of the allotted time per question to outline your answers on scrap paper before beginning to write. Do this because you will be graded not only on the substance of your answer but also on its clarity and conciseness. In other words, organization, precision, and brevity count. If you run out of insightful things to say about the issues raised by the exam question, stop writing until you think of something. Tedious repetition, regurgitations of law unrelated to the facts, or rambling about irrelevant issues will negatively affect your grade.
3. **Answer Format:** This is very important. **Use headings and subheadings.** Use short single-idea paragraphs (leaving a blank line between paragraphs). Do not completely fill the page with text. Leave white space between sections and paragraphs.
4. **Answer Content:** Address all relevant issues that arise from and are implicated by the fact pattern and that are responsive to the “call” of the question. Do not just summarize all the facts or all the legal principles relevant to an issue. Instead, apply the law you see relevant to the facts you see relevant. Take the issues that you identify and organize them into a coherent structure. Then, within that structure, examine issues and argue for a conclusion.
5. **Citing Cases:** You are welcome but not required to cite cases. While it is sometimes helpful to the reader and a way to economize on words, do not cite case names as a complete substitute for legal analysis. For example, do not write: “Plaintiff should be able to recover under A v. B.” Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?

6. **Cross-Referencing:** You may reference your own previous analysis (e.g., B’s claim against C is identical to A’s claim against C, because __.” But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
7. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize the key weaknesses in your position and make the argument on the other side.
8. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (reasonably implied by, suggested by, or at least consistent with, the fact pattern) that you believe to be necessary to answer the question. Do not invent facts out of whole cloth.

Exam Misconduct

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

- Discussing the exam with another student
- Giving, receiving, or soliciting aid
- Referencing unauthorized materials
- Reading the questions before the examination starts
- Exceeding the examination time limit
- Ignoring proctor instructions

MULTIPLE CHOICE QUESTIONS

- Below are 25 multiple choice questions.
- Each question is worth 1.6 points for a combined total of 40 points.
- Recommended time is 50 minutes (2 minutes each).

1. **The common law tort basis for claims regarding inadequate consent for medical treatment is BEST described as:**

- A. Battery
- B. Negligence
- C. Battery when the provider breaches their disclosure duty, proximately causing harm to the patient, and negligence when the patient did not provide any consent to the specific medical intervention
- D. Battery when the patient did not provide any consent to the specific medical intervention, and negligence when the provider breaches their disclosure duty, proximately causing harm to the patient

NOTE: Use the following facts for Questions 2, 3, and 4:

Nikki visits Doctor because Nikki has been experiencing lower back pain. Doctor diagnoses Nikki with degenerative disk disease. There are three treatment alternatives: spinal fusion surgery, physical therapy, and non-treatment. Spinal fusion surgery has six known risks: 1, 2, 3, 4, 5, and 6. Physical therapy has 3 known risks: 7–9. The potential benefit of surgery and physical therapy is that each may decrease Nikki's back pain. Surgery is most likely to provide the longest lasting relief. None of the treatments is guaranteed to be effective. Non-treatment risks that Nikki's back pain may continue or even become worse, but back pain sometimes resolves on its own over time.

Most physicians consider risks 1, 2, and 3 of surgery to be material under the circumstances and would disclose them. Most patients would also want to know about risk 4 in deciding whether to undergo surgery, although few physicians disclose this potential risk since it is so rare. Nikki really cares about bruising, which implicates risk 5, although most patients would not consider this risk relevant, and such is arguably not a reasonable concern.

Doctor was in the bottom 10% of Doctor's medical school class and initially failed the medical licensing exam. Unlike most patients, Nikki would not authorize spinal surgery performed by a physician who struggled in medical school and on the licensing exam, but Nikki is unaware of these facts. Nikki does not ask, and Doctor does not volunteer them.

2. In a physician-based disclosure state (like NY WI), which of the following BEST describes the scope of required disclosures under the facts provided?
- A. Diagnosis and prognosis, nature of each treatment alternative (including non-treatment), anticipated benefits of each, and material risks of each (including 1, 2, and 3)
 - B. Diagnosis and prognosis, nature of each treatment alternative (including non-treatment), anticipated benefits of each, and material risks of each (including 1, 2, 3, and 4)
 - C. Diagnosis and prognosis, nature of each treatment alternative (including non-treatment), anticipated benefits of each, and material risks of each (including 1, 2, 3, 4, and 5)
 - D. Diagnosis and prognosis, nature of each treatment alternative (including non-treatment), anticipated benefits of each, material risks of each (including 1, 2, 3, and 4), and Doctor's medical school and licensing exam performance
3. In a patient-based disclosure state (like MN CA IA DC), which of the following BEST describes the scope of required disclosures?
- A. Diagnosis, nature of each treatment alternative (including non-treatment), anticipated benefits of each, and material risks of each (including 1, 2, and 3)
 - B. Diagnosis, nature of each treatment alternative (including non-treatment), anticipated benefits of each, and material risks of each (including 1, 2, 3, and 4)
 - C. Diagnosis, nature of each treatment alternative (including non-treatment), anticipated benefits of each, and material risks of each (including 1, 2, 3, 4, and 5)
 - D. Diagnosis, nature of each treatment alternative (including non-treatment), anticipated benefits of each, and material risks of each (including 1, 2, 3, and 4), and Doctor's medical school and licensing exam performance
4. Assume Doctor discloses ONLY risks 1 and 4 prior to Nikki's surgery. Which of the following describes a possible result if Nikki brings an informed consent case against Doctor?
- A. Liability if Nikki is harmed by risk 1
 - B. Liability if Nikki is harmed by risk 6
 - C. Liability for non-disclosure of risk 3, regardless of harm
 - D. Liability if Nikki is harmed by risk 3

5. Which of the following provides a legally valid EXCUSE for a physician's failing to obtain informed consent from a patient?
- A. A nurse obtained the patient's informed consent.
 - B. An emergency where the patient cannot consent and delay to obtain consent would increase risk to the patient
 - C. The patient is of limited means and cannot afford to pay for the additional time associated with informed consent.
 - D. There is never a legally valid excuse for a doctor to forego informed consent.
6. Which element of an informed consent claim is MORE likely to require expert proof in a physician-centered state than in a patient-centered state?
- A. The scope of the physician's duty of disclosure
 - B. The breach of the physician's duty of disclosure
 - C. The physician's non-disclosure proximately caused the patient to select surgery instead of another treatment approach.
 - D. The physician's non-disclosure proximately caused the patient to select surgery instead of another treatment approach and a non-disclosed, material risk injured the patient, resulting in damages.
7. To prevail on an informed consent claim, a plaintiff MUST establish:
- A. Decision-causation (that if a proper disclosure had been timely made, a reasonable patient would have made a different decision regarding the procedure)
 - B. Injury-causation (that the physician's failure to disclose caused the plaintiff to suffer harm)
 - C. Both A and B
 - D. Neither A nor B (it is sufficient to establish that the physician failed to disclose information that the physician had a duty to disclose)
8. MOST states require a plaintiff on an informed consent to establish that:
- A. The physician's failure to disclose resulted in a different decision regarding the course of treatment than a reasonable patient in the plaintiff's position would have made with the required disclosure.
 - B. The physician's failure to disclose resulted in a different decision regarding the course of treatment than this plaintiff would have made with the required disclosure.
 - C. Both A and B
 - D. Neither A nor B

NOTE: Use the following facts for Questions 9, 10, 11, and 12:

Mirranda has a rare and life-threatening cancer. Mirranda wants to see the world-renowned expert who specializes in Mirranda's condition, Dr. Trump. Dr. Trump is currently accepting new patients at their private practice, but the doctor refuses to take Mirranda as a patient because Mirranda's only health insurance is Medicaid. Medicaid has low physician reimbursement rates. Dr. Trump is the only provider in the state with expertise in treating Mirranda's condition, and Mirranda is expected to die within the year without treatment. Mirranda goes to Dr. Trump's office in hopes of seeing the physician.

9. Which of the following is **CORRECT** regarding Dr. Trump's legal obligation to Mirranda?
- A. Dr. Trump is obligated to treat Mirranda because Mirranda is likely to die without such treatment and Dr. Trump is the only physician reasonably available that could meet Mirranda's needs.
 - B. Dr. Trump is obligated to treat Mirranda because a physician may not refuse to accept Medicaid patients.
 - C. Dr. Trump is obligated to treat Mirranda at least until Mirranda is stable because Mirranda has an emergency medical condition.
 - D. Dr. Trump is not obligated to treat Mirranda under the circumstances.
10. If Dr. Trump never expressly agreed to undertake Mirranda's care but physically examined Mirranda and provided Mirranda with a diagnosis, was a physician-patient relationship formed?
- A. No, because formation of a physician-patient relationship requires express consent.
 - B. No, because formation of a physician-patient relationship requires written agreement.
 - C. Yes, because a physician-patient relationship is formed if a physician manifests consent by affirmative acts such as providing services that meet the patient's medical needs.
 - D. Yes, because a physician-patient relationship is formed whenever a patient presents at the physician's office seeking medically necessary treatment.

11. **If Dr. Trump had instead declined to treat Miranda because Miranda is deaf, which of the following would be CORRECT regarding Dr. Trump's legal obligation to Miranda?**
- A. Dr. Trump may refuse to treat Miranda for any reason.
 - B. Dr. Trump may generally refuse to treat Miranda for any reason, but Dr. Trump may not refuse based on Miranda's disability if reasonable accommodation is possible.
 - C. Dr. Trump may refuse to treat Miranda because physician's offices are not considered places of public accommodation under the ADA.
 - D. Dr. Trump is obligated to treat Miranda.
12. **Assume that Miranda and Dr. Trump did in fact form a physician-patient relationship. Which of the following is NOT an appropriate basis for Dr. Trump to terminate the relationship?**
- A. Miranda's cancer is cured.
 - B. Miranda terminates the relationship.
 - C. Dr. Trump terminates the relationship upon learning of patient complaints with services.
 - E. Dr. Trump terminates the relationship, but only after notice and a reasonable opportunity for Miranda to find another provider.
13. **Once a physician-patient relationship is formed, which of the following is NOT a duty owed by the physician to the patient?**
- A. Reasonable charges
 - B. Reasonable care
 - C. Continuing attention
 - D. Confidentiality of health information
14. **Which of the following limits on the physician-patient relationship is MOST likely to be void as against public policy, even if mutually agreed?**
- A. Limited duration (i.e., relationship limited to only 1 visit)
 - B. Limited scope (i.e., relationship limited to diagnosis)
 - C. Exculpatory clauses (i.e., no malpractice liability)
 - D. Forum selection clauses (i.e., limiting where any litigation can be brought)

NOTE: Use the following facts for Questions 15 and 16:

Dr. Hilton, a board-certified internal medicine doctor, began her career at a large private practice—a common route for many medical professionals. However, she soon became disheartened by the impersonal nature of mainstream health care, the time-consuming administrative tasks, and the constant pressure to maintain a high volume of patients, all while grappling with the limitations of primary care reimbursements.

Feeling these constraints and challenges, Dr. Hilton made the decision to depart from the standard health care model, opting to build a unique practice that emphasized direct and personalized patient access to health care. Dr. Hilton’s new health care approach ultimately became what is now commonly known as “concierge medicine.”

This membership-based health care model provides an alternative to traditional primary care. Its primary objective is to foster stronger patient-physician relationships by enabling physicians to practice without the complications brought by insurance-related issues and bureaucratic constraints. Concierge medicine also enables physicians to maintain more control over their practice and manage their patient load more effectively by reducing patient volume without sacrificing revenues. A concierge physician sees 6 to 8 patients per day, compared with 20 to 24 patients for the typical primary care physician.

Under the concierge medicine model, patients pay a periodic subscription fee, typically monthly or annually, in exchange for more personalized and direct access to medical services. Although concierge practices may still accept insurance and its reimbursements in addition to membership fees, it is the membership fees that help physicians alleviate the burden associated with complex insurance billing and collection procedures.

- 15. Many of Dr. Hilton’s current patients are either unwilling or unable to pay concierge fees. With respect to these patients:**
- A. Dr. Hilton can terminate them from her practice because they are not complying with her new policies and procedures.
 - B. Dr. Hilton can terminate them from her practice with sufficient notice for them to find alternate care.
 - C. Dr. Hilton cannot terminate them from her practice, so long as they have ongoing healthcare needs.
 - D. Dr. Hilton cannot terminate them from her practice because that would be discrimination because of the ability to pay.

16. **Some patients who received Dr. Hilton's concierge fee schedule were shocked by the new expense. They sought alternate care arrangements and had their records transferred to the other clinic. With respect to these patients:**
- A. Dr. Hilton's treatment relationship with them may terminate immediately.
 - B. Dr. Hilton's treatment relationship with them may terminate once Dr. Hilton agrees to end the treatment relationship.
 - C. Dr. Hilton's treatment relationship with them may terminate once Dr. Hilton gives them at least 30 days' notice.
 - D. Dr. Hilton's treatment relationship with these patients may not end until cure or end of the health condition that Dr. Hilton was treating.
17. **Commonly used by defendants in personal injury lawsuits, these clinical evaluations are conducted by doctors who are not involved in a plaintiff's medical treatment. The physician reviews medical records and conducts an in-person physical exam to provide an opinion.**
- A. Formal consult
 - B. Informal consult
 - C. Independent Medical Exam (IME)
 - D. Medical Screening Exam (MSE)
18. **Jaxson was taken to Minnesota Medical Center after he attempted suicide and reported having thoughts of hanging himself with a bedsheet. After two days, he was properly transferred for inpatient treatment at Saint Paul Hospital. At MMC, Jaxson had various safety measures to prevent self-harm. A sitter was assigned to watch him; he was placed in a patient room with the door kept open, across from the nursing station, for additional monitoring; and his personal articles of clothing were removed and replaced with paper scrubs.**
- However, at SPH, Jaxson was placed in a corner room, out of view of the nursing station, and he had no roommate or sitter. The room had two beds that were fully made with bedsheets, and he was observed at 15-minute intervals. During his 12 hours at SPH, he was not seen by the on-duty treating psychiatrist. Jaxson was found hanging by a noose made from a bedsheet, affixed to the room's heavy wooden door. If Jaxson had a psychiatric emergency medical condition at SPH, then SPH:**
- A. Violated EMTALA by failing to stabilize it.
 - B. Violated EMTALA by failing to screen for it.
 - C. Both A and B.
 - D. Neither A nor B.

19. **Two hospitals conduct medical screening exams for the same condition in different ways. Hospital A consistently conducts a focused and often short history and physical examination designed to detect an emergency medical condition. Hospital B (like most hospitals) conducts a lengthy examination involving laboratory examinations, diagnostic imaging, consultations, and procedures. Based on these facts:**
- A. Hospital A is probably violating its screening duty.
 - B. Because Hospital A's screening is more cursory, it is probably failing to detect some emergency medical conditions and is therefore probably violating its stabilization duty.
 - C. Both A and B.
 - D. Hospital A is probably NOT violating its screening duty.
20. **Which of the following statements about EMTALA is NOT true?**
- A. Every person, regardless of legal status and citizenship, is covered under EMTALA for emergency care.
 - B. EMTALA does not prevent uninsured patients from being billed after receiving care and can financially cripple patients who sought medical care.
 - C. EMTALA does not provide primary care and ongoing health maintenance for the underinsured and uninsured.
 - D. All these statements are true.
21. **Which of the following is NOT an example of a situation where a qualified interpreter may be required when communicating with a deaf patient:**
- A. Determining a patient's history or description of ailment or injury
 - B. Obtaining informed consent or permission for treatment
 - C. Explanation of procedures, tests, treatment, treatment options or surgery
 - D. Explaining the administration and side effects of medications, including side effects and food or drug interactions
 - E. Discharge instructions or planning
 - F. An interpreter may be required in all these situations.

22. Plaintiff parents allege that doctors failed to inform them of the risks associated with an imaging technique performed on their one-year-old son, which caused blood clots that ultimately necessitated amputation of the child's foot. In addition to the radiologist who performed the imaging, a neurologist was involved in the child's care. The parents know this because the radiologist's notes indicate that she called the neurologist. During this call, the neurologist confirmed that the imaging was appropriate even though she never saw the child, never spoke to the parents, never billed for their time, and did not perform the imaging. Can parents sue the neurologist for malpractice?
- A. Yes, because the radiologist was involved in the patient's care.
 - B. Yes, because the radiologist provided a formal consult.
 - C. No, because the radiologist provided only a curbside consult.
 - D. No, because the radiologist provided only an IME.
23. Under Model Rule of Professional Conduct 1.16, a lawyer may withdraw from representing a client if ANY ONE of these conditions is met:
- (a) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (b) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services
- Compare this to physicians and patients. Physicians may withdraw when:
- A. Either (a) or (b)
 - B. Both (a) and (b)
 - C. Neither (a) nor (b)
 - D. Only (a)
24. A teenage victim of gang violence presented within one-half city block from an ED in Chicago, Illinois. Emergency department staff instructed the teen's friends to call 911 to await an ambulance response instead of sending someone to respond to patient themselves, as was initially requested. The patient died within minutes of entering the ED. This hospital:
- A. Probably violated EMTALA because the victim was on hospital property
 - B. Probably violated EMTALA because ED staff offered medical advice to the victim's friends.
 - C. Probably did not violate EMTALA because the victim did not request treatment himself
 - D. Probably did not violate EMTALA because the victim was not on hospital property

25. Which of the following might be required accommodations for a patient with a disability at a medical facility?
- A. Interpreter or other auxiliary service
 - B. Wheelchair accessible space or equipment
 - C. Written materials in alternate formats
 - D. Accompaniment by a service dog
 - E. All the above

Essay Question 1

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

A psychiatrist saw a patient being treated with Xanax, transferred from their primary care physician who had previously prescribed Xanax.¹ The patient was initially friendly and polite.

On February 22, 2024, the patient left the psychiatrist a voicemail stating that they self-increased their Xanax, doubling the dose. The psychiatrist called the patient back and said they will run out if they take double their dose, and that she would not refill early if that happened. The patient angrily told the psychiatrist that they were firing her and would no longer like to see psychiatry. The patient said: "I'll just get their Xanax from my PCP." The psychiatrist replied: "Ok, if that's what you want, I won't stop you."

The psychiatrist placed a one-month refill of Xanax, and asked the primary care physician to verify with the patient that they would no longer see her (the psychiatrist).² The PCP confirmed this in their appointment (less than a week later). The psychiatrist then wrote a discharge note in the chart with an overview of treatment and the circumstances leading to discharge.

On or about March 2, 2024, the patient started sending the psychiatrist MyChart messages telling her that she should have doubled their dose. The patient wrote "you're a terrible doctor, if you don't prescribe the higher dose." The psychiatrist responded once stating that she prescribed one month of the lower dose (the dose the patient had been on for years), and the patient would need to follow up with their PCP. Angry messages continued. The psychiatrist ignored further messages, including demands that she explain why she wouldn't let the patient double their dose.

Does the psychiatrist ignoring those messages constitute patient abandonment?

¹ Xanax is a brand-name oral tablet used to treat anxiety disorders and anxiety caused by depression. Xanax is also used to treat panic disorders with or without a fear of places and situations that might cause panic, helplessness, or embarrassment.

² The refill began March 10 (and the end of the current refill) and would last the patient until April 9.

Essay Question 2

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

On or about February 13, 2024, Mississippi River Hospital, without warning, notice, or plans for ensuring continuity of care, stopped providing medically necessary surgeries for the treatment of gender dysphoria.³ Gender dysphoria is a diagnosis unique to transgender patients.⁴ Although MRH had been a trusted provider of such medically necessary surgeries to transgender people, it adopted its change of policy effective immediately, with no prior notice to the public or to its patients whose procedures were scheduled or awaiting scheduling.

MRH now categorically refuses to provide these procedures to transgender patients when medically necessary to treat their gender dysphoria but continues to offer the same procedures to patients for other medical or non-medical purposes. MRH cancelled all MRH transgender patients' scheduled and anticipated surgeries to treat their gender dysphoria. These included surgeries that were in midst of the consultation process and surgeries scheduled as soon as the next day.

Kent is 18 years old and is transgender and began receiving care at MRH in 2022 when he was 16. He was diagnosed with gender dysphoria in early 2023. Later in 2023, MRH doctors determined that chest masculinization surgery was medically necessary for Kent and that he was a good candidate for that procedure.⁵ Kent had secured the last authorization he needed to be scheduled for surgery at MRH when it abruptly reversed its existing policy and, as a result, terminated his care plan.

Identify and assess claims that Kent may have against MRH.

³ Gender dysphoria is a medical condition unique to transgender people. It is characterized by the clinically significant distress associated with incongruence between a person's gender identity and assigned sex at birth. Gender dysphoria is recognized by the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-V) as its own diagnostic class.

⁴ The term transgender is used to describe individuals like Kent whose gender identity, or internal sense of gender, differs from the sex they were assigned at birth. The term cisgender is used to describe individuals whose gender identity aligns with their sex assigned at birth. Kent was assigned female at birth, but he has a male gender identity.

⁵ Although hormone therapy improved Kent's symptoms, it did not fully alleviate his gender dysphoria. He continued to experience significant distress that was exacerbated by the misalignment of his secondary sex characteristics with his gender identity. He began binding his chest—a method of flattening the chest with clothing to have a more masculine appearance. Chest masculinization surgery is highly effective in reducing gender dysphoria, specifically in young transgender men.

Essay Question 3

- This question is worth 20 points.
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 30 minutes.

This question concerns the intersection of EMTALA and state criminal abortion laws (newly enacted in around fifteen states).

After the *Dobbs* decision, the Biden administration issued guidance that EMTALA's protections extend to pregnant women with obstetrical emergencies. This guidance clarified that EMTALA may require abortions because some women have conditions with a fetal heartbeat, yet without a pregnancy termination, they may suffer loss of fertility, loss of other organs, loss of fertility, and severe pain.⁶ Sometimes this is due to pregnancy complications like early incomplete miscarriage, or preterm premature rupture of the membranes (PPROM). Other times, this is due to other conditions exacerbated by the pregnancy (like cancer, heart failure).

The Biden administration further clarified that EMTALA may require abortions even though those abortions are criminal under state law.⁷ The Supremacy Clause in Article VI of the constitution

This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

After this Biden/DHHS guidance was announced, some southern state Attorneys General declared, "We're not going to allow left-wing bureaucrats in Washington to undo the will of our citizens and legalize abortion."

Explain how the statement by the Attorneys General is not accurate (or at least too broad and sweeping) in describing the impact of EMTALA and the Biden administration guidance.

NOTE: EMTALA preemption cases have recently been adjudicated by the U.S. Courts of Appeal for the Fifth and Ninth Circuits. Those cases are now scheduled for argument before the U.S. Supreme Court in April 2024. But you need not consult any of that. This question is not about those states' laws or about the preemptive effect of EMTALA. You may assume that EMTALA preempts conflicting state laws. How are the Attorneys General mischaracterizing the impact and effect of this preemption?

⁶ "Abortion" means the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child.

⁷ While some state criminal abortion laws include exceptions to protect the health of the mother, others do not. Assume that the laws at issue in this problem contain no exceptions and that the prohibitions are categorical.

Essay Question 4

- This question is worth 20 points.
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 30 minutes.

On February 20, 2024, Ivanka visited Minneapolis Regional Medical Center Emergency Department, requesting examination and treatment of infected sores on her left index finger and left thigh, accompanied by chills, nausea, and a fever. She also reported a previous ‘severe MRSA infection. Ivanka’s medical records show that her sores had erythema (red inflammation) and fluctuance, which is pus that has accumulated under the skin. The Hospital recorded her “visit diagnosis” as “abscess of finger of left hand” and “abscess of left leg.” The ED attending physician performed an incision, drainage, and debridement of the abscesses in Ivanka’s finger and on her left leg. He reported “bloody and purulent” (the material removed from the abscess contained and/or consisted of pus).

Ivanka alleges that the “normal” screening examination for the infection-producing abscesses containing purulent pus is to obtain specimens from the infected areas and perform a bacteria culture to identify the bacteria that is causing the infection. Further, Ivanka asserts that “the normal method of stabilizing” someone with multiple deep tissue infections “is to administer broad spectrum antibiotics to prevent the progression of the infection and to prevent the onset of life-threatening sepsis.” But because the hospital failed to diagnose Ivanka with deep tissue infections, it neither cultured a specimen from Ivanka’s sores nor gave her antibiotic treatment to stabilize the infections. Ivanka was discharged after two hours in the Emergency Department.

The next morning (less than 24 hours after being discharged from MRMC) Ivanka awoke with severe pain in her left thigh and left knee and was unable to walk. She returned to MRMC, where she further reported yellow drainage from her abscesses, along with chills, nausea, vomiting, coughing, and a fever. The Hospital then diagnosed Ivanka with severe sepsis and left hand and left thigh infections with cellulitis.⁸

Because MRMC is just a smaller community hospital, it sought to transfer Ivanka to a larger more expert hospital. MRMC clinicians called Ramsey County Hospital. But RCH declined the transfer even though it had capacity. So, MRMC transferred Ivanka to the University of Minnesota (with appropriate certification, records, personnel, and She was then transferred to another hospital where she was hospitalized there for 15 days to receive emergency medical treatment. Ivanka has undergone continuing treatment and incurred large medical expenses from the hospitalization and treatment of her infections.

Identify and assess claims that Ivanka has against any party under EMTALA.

⁸ Sepsis is a serious condition in which the body responds improperly to an infection. The infection-fighting processes turn on the body, causing the organs to work poorly. Sepsis may progress to septic shock. This is a dramatic drop in blood pressure that can damage the lungs, kidneys, liver and other organs. When the damage is severe, it can lead to death.