45.00	A
44.00	A
41.00	A
38.00	B+
37.00	B+
37.00	B+
37.00	B+
36.00	B+
35.00	B+
35.00	B+
34.00	B
34.00	B
34.00	B
33.00	B
33.00	B
32.00	B-
31.00	B-
31.00	B-
28.00	B-
20.00	C+
18.00	C+
11.00	C-

Average MC = 14/20
Average Essay = 19/40

Health Law: Quality & Liability
Midterm Exam (Fall 2012)

These are the actual scores from the students in this class. Letter grades are informational only. Raw scores will be added to quiz scores and final exam scores and then curved to produce course letter grades.

Exam #	MC Score	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Total Score
ANSWER KEY -->		E	C	D	D	A	D	C	B	A	C	N/A - Essay	
469	16.00	c	C	D	D	c	D	C	B	A	C		16.00
2014	18.00	d	C	D	D	A	D	C	B	A	C	17	35.00
3028	12.00	c	b	b	D	A	D	C	B	A	a	12	24.00
3085	14.00	c	b	b	D	A	D	C	B	A	C	15	29.00
3118	12.00	b	b	D	D	c	D	C	B	A	a	26	38.00
3205	16.00	E	b	D	D	A	D	C	B	A	a	25	41.00
3847	10.00	c	b	b	D	b	D	C	B	A	a	21	31.00
3874	16.00	c	b	D	D	A	D	C	B	A	C	18	34.00
4153	14.00	c	b	D	D	c	D	C	B	A	C	20	34.00
4342	14.00	c	b	D	D	A	a	C	B	A	C	17	31.00
4621	6.00	E	a	b	b	A	b	b	B	d	e	12	18.00
4885	16.00	c	C	D	D	A	D	C	B	A	a	12	28.00
5377	16.00	c	C	D	D	A	D	C	B	A	a	21	37.00
5977	12.00	c	C	D	D	c	a	b	B	A	C	21	33.00
6127	6.00	c	C	b	D	b	D	b	a	c	a	5	11.00
6424	16.00	c	C	D	D	A	D	C	B	A	a	21	37.00
7069	14.00	c	C	b	D	A	D	C	B	A	a	20	34.00
7855	14.00	c	C	D	D	c	D	C	B	A	a	21	35.00
7954	16.00	c	C	D	D	A	D	C	B	c	C	16	32.00
8512	18.00	E	C	D	D	A	D	C	B	A	a	26	44.00
8677	14.00	c	b	b	D	A	D	C	B	A	C	19	33.00
9082	16.00	E	C	D	D	c	D	C	B	A	a	29	45.00
9292	12.00	c	b	b	D	A	D	C	B	A	a	25	37.00
9658	18.00	c	C	D	D	A	D	C	B	A	C	17	35.00
1735	12.00	E	b	b	D	c	D	C	B	A	a	24	36.00
3148	14.00	E	b	D	D	A	D	C	B	c	a	6	20.00
	13.73											19.18	32.91

Exam ID _____

Pope, Health Law: Quality & Liability
Midterm Exam Scoring Sheet (Fall 2012)

Multiple Choice (2 points each = 20 points)

1	E	4	D	7	C	10	C
2	C	5	A	8	B		
3	D	6	D	9	A		

Essay Problem (40 points)
This problem was adapted from *Liles v. TH Healthcare,* No. 2:11-CV-528-JRG (E.D. Tex. Sept. 10, 2012).

EMTALA applies to BMC		
BMC has an ED.	---	---
BMC probably receives Medicare, because almost all U.S. hospitals do.	---	---
December 28 arrival		
Brendan's arrival on BMC property triggered BMC's duty to screen.	**1**	
The facts do not specifically state or describe the screening that took place. But Brendan was presumably screened, because he was admitted for treatment for several particular medical conditions.	**1**	
December 28-30 attempted transfers		
Attempted transfers (as opposed to actual transfers) do not violate EMTALA.	**2**	
While BMC's motivation for the transfer attempts (Brendan's uninsured status) makes BMC's conduct seem more egregious, it is not legally relevant to analysis of EMTALA liability.	----	---
December 31-January transfer		
This actual transfer/discharge might have violated EMTALA, if Brendan had an EMC about which BMC was actually aware. Hindsight - the fact that Brendan had a heart attack – is not sufficient.	**2**	
Defense: BMC has a pre-stabilization certification. But it is unclear if that was valid.	**1**	
Defense: On the other hand, if the ambulance here (like the one on Jan. 26) was a BMC ambulance, then arguably the discharge was not completed. Brendan never left hospital property. Therefore, this is yet another mere "attempted" transfer. If Brendan was discharged (because it was a non-BMC ambulance), then his reentry to BMC from the ambulance triggered a new duty to screen.	**2**	
January 24 discharge home		
This was definitely an actual discharge/transfer. Discharge with an unstablized EMC is a prima facie violation of EMTALA. This time, BMC does not even have a purported certification.	**2**	
Inpatient Exception		
Defense: None of the above purported violations is actually a violation. Since Brendan was already an inpatient at all the relevant times, EMTALA does not apply. (While Brendan was probably no longer an inpatient at the time he was in the ambulance, he did not then "arrive" on hospital property.)	**4**	
On the other hand, the inpatient exception only applies, if the admission was made in "good faith."	**4**	
Given the hospital's various attempts to discharge Brendan so quickly and so zealously, the admission might have been for the (bad faith) specific purpose of evading its EMTALA obligations.	**4**	
There is no liability for a bad faith admission itself. But, by losing the inpatient exception, the facility may be liable for failing to stabilize a known EMC before discharge/transfer.	**1**	
January 26 ambulance		
Once Brendan entered the BMC ambulance, he was then on BMC property.	**3**	
This triggered BMC's duty to screen Brendan.	**3**	
BMC did not screen Brendan but, instead, immediately transferred him – arguably not only without a screening but also with a known and unstabilized EMC.	**3**	
Furthermore, since BMC knew this patient and the nature of the ambulance call, it may have been actually aware of Brendan's EMC. After all, they "knew" he needed a pulmonologist. Consequently, the transfer may have violated not only the screening requirement but also the stabilization requirement.	**1**	
While BMC might have been able to transfer Brendan with a proper certification, it is unclear that the provided certification was accurate. Notably, since there was no screening, BMC did not actually know whether Brendan was "stable" as stated.	**3**	
Defense: If there were no pulmonologist available at BMC, then that might have been a legitimate basis for pre-stabilization transfer. But it is unclear if (and improbable that) the other pre-stabilization transfer requirements were satisfied.	**3**	
TOTAL	**40**	

Exam Number __ __ __ __

Instructor	:	**Thaddeus M. Pope**
Course Title	:	**Health Law: Quality & Liability**
Section	:	**Law 9322, Section 1**
Format	:	**Open Book, In-class**
Date	:	**October 10, 2012 (Wednesday)**
Total Time for Exam	:	**1 hour**
Total Number of Pages	:	**9**
Exam Password	:	

Reference Materials Allowed

Open Book (all reference materials & notes allowed)

General Instructions

Please count the number of pages. **All** pages are sequentially numbered at the bottom right corner. If you are missing a page, you need a new exam. Contact the Office of the Registrar or your proctor as soon as possible.

Do not write your name on **any** examination materials. Write your four-digit 2012 Fall midterm exam number on the top right corner of the first page of this exam. If you don't know your exam number, get it from Piperline.

If you are using SofTest to write your exam answers, please read the instructions before you start your laptop. You must exit your exam immediately at the end time for the exam. If your laptop becomes inoperative you should start writing in a bluebook immediately. If you choose to restart the laptop you will lose time as **no extra time will be granted to compensate for technical problems**. There is no technical assistance available during the examination.

If you are using a bluebook to write your exam answers, please fully complete the cover information for all bluebooks. Before you turn them in, sequentially number and nestle them so that the first bluebook has any others inside.

At the conclusion of the examination, place all examination materials including scratch paper but not the receipt in the plastic bag, and return it to the proctor. If this is a self-scheduled exam, you must stop at the end of the time allotted for your exam and **immediately** return all exam materials to the Office of the Registrar. You will collect your receipt there.

Instructions Specific to This Examination

GENERAL INSTRUCTIONS:

1. **Read Instructions**: You may read these instructions (the first three pages of this exam packet) ***before*** the official time begins.

2. **Honor Code:** While you are taking this exam, you may not discuss it with anyone.

3. **Competence:** Accepting this examination is a certification that you are capable of completing the examination. Once you have accepted the examination, you will be held responsible for completing the examination.

4. **Exam Packet:** This exam consists of **nine (9) pages**, including this cover page. Please make sure that your exam is complete.

5. **Identification:** Write your exam number on all your exam materials.

6. **Anonymity:** The exams are graded anonymously. Do **not** put your name or anything else that may identify you (except for your exam number) on the exam.

7 **Timing:** This exam must be completed during class time, 1:50 to 2:50 p.m.

8 **Scoring:** There are 60 total points on the exam, approximately one point per minute. The midterm exam comprises 20% of your overall course grade, 60 of the 300 total course points. I realize that, given the time involved in administering the exam, you may actually have less than 60 minutes to write. This should not matter, because the allocated time includes a significant buffer.

9 **Open Book:** This is an OPEN book exam. You may use **any** written materials, including, but not limited to: any required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines. You may not use a computer other than in its ExamSoft mode.

10 **Format:** The exam consists of two parts which count toward your grade in proportion to the amount of time allocated.

> **PART ONE** comprises 10 multiple choice questions worth two points each, for a **combined** total of 20 points. The suggested total completion time is **20 minutes** (2 minutes each).
>
> **PART TWO** comprises one essay question worth 40 points, and has a suggested completion time of **40 minutes**.

11 **Grading:** All exams will receive a raw score from zero to 60. The raw score is meaningful only **relative** to the raw score of other students in the class. Your course letter grade is computed by summing the midterm, final, and quiz scores. I will post an explanatory memo and a model answer to TWEN a few weeks after the exam.

SPECIAL INSTRUCTIONS FOR PART ONE:

1. **Write the Best Answer:** For each question**, type / write** the best answer choice in your ExamSoft document / Bluebook as a numbered list (1 to 10). For example: "1. - A."

2. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why in a separately marked section of your Bluebook or ExamSoft file. Your objection must (i) identify the ambiguity or problem in the question and (ii) 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, & FOUR:

1. **Submission:** Write your **essay** answers in your Bluebook examination booklets or ExamSoft file. I **will not** read any material which appears only on scrap paper.

2. **Legibility:** Write legibly. I will do my best to read your handwriting, but must disregard (and not give you points for) writing that is too small to read or otherwise illegible. **I am serious; write neatly.**

3. **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 in your exam booklet or ExamSoft file. 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.

4. **Answer Format:** This is 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.

5. **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.

6. **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?

7. **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.

8. **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.

9. **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;

Using electronic devices (other than a laptop running SofTest);

Referencing unauthorized materials;

Reading the questions before the examination starts;

Exceeding the examination time limit;

Removing **any** examination materials from the room (including scratch paper); and

Ignoring proctor instructions.

DO NOT READ PAST THIS PAGE UNTIL INSTRUCTED TO DO SO

PART ONE

10 questions worth two points each = 20 points

Suggested time = two minutes each = 20 minutes

1. **A 50-year-old man was receiving antibiotic therapy as an inpatient at the Milo Regional Medical Center, but required a transfer when his condition changed dramatically. He developed a subdural hematoma, a life-threatening situation. This requires immediate neurosurgical evaluation, something Milo does not have.**

   Unfortunately, the Minneapolis hospital which normally accepts Milo's neurosurgery transfers was at capacity, with several people waiting in the emergency room to be admitted to ICU rooms. Milo personnel spent eight hours calling 17 different hospitals, in-state and out, to see, first, if they had neurosurgery capabilities and, secondly, if they had a room. Peach Hospital had a bed and had a neurosurgery service, but refused to take the patient because the patient was uninsured.

   Which of the following are EMTALA violations?

   A. Milo's attempt to transfer the patient.
   B. Milo's failure to stabilize the patient's emergency medical condition.
   C. Peach's refusal to accept the patient despite having specialized capabilities and capacity.
   D. More than one of the above.
   E. None of the above.

2. **Yolli has an extensive family history of breast cancer. Prior to 1981, her mother, maternal grandmother and two maternal aunts all had died from that disease. In 1981, although she had not been diagnosed with breast cancer, Yolli, who was then 22, acted to reduce her cancer risk by undergoing a bilateral mastectomy. In 2005, Yolli underwent an elective partial hysterectomy to remedy a uterine fibroid condition caused by painful, but ordinarily noncancerous, tumors. Physician, who had treated Yolli for the prior twenty years, performed the surgery, which entailed removing Yolli's uterus but not her cervix or ovaries.**

   Approximately one year after the surgery, Yolli was diagnosed with late stage, terminal, ovarian cancer, which had spread to her abdomen. Yolli has sued physician for failure to strongly advise her to have her ovaries removed during the hysterectomy. At the time of her hysterectomy, Yolli did not have ovarian cancer. She established with expert testimony that had her ovaries been prophylacticly removed at that time, she would not have developed the cancer. With respect to informed consent causation:

   A. Yolli has established the causation element.
   B. Yolli needs expert testimony to establish that the reasonable person in her situation would have had her ovaries removed had the defendant made the disclosure.
   C. Yolli has not completely established the causation element but does not need expert testimony to do so.

3. Washington is a state with a material risk standard of disclosure and a statewide standard of care. To establish the duty of disclosure in an informed consent action against a physician in Spokane, WA, a plaintiff:

A. Must get an expert familiar with what the reasonable & prudent physician in Spokane, Washington would disclose under the circumstances.
B. Must get an expert familiar with what the reasonable & prudent physician in Washington would disclose under the circumstances.
C. Must get an expert familiar with what the reasonable & prudent physician in the United States would disclose under the circumstances.
D. May, but need not, introduce expert testimony.

NOTE: Questions 4, 5 and 6 all concern the following fact pattern.

Derek entered the emergency room of Hospital on February 15, 2012. Upon arriving, he told emergency room personnel that he was experiencing chest pain. Unfortunately, the hospital misread the results of Derek's EKG. By failing to notice that Derek was having a heart attack, the hospital failed to avert preventable heart damage and mental distress.

Hospital had a policy entitled "Emergency Department – Standard of Care Manual – Triage Section," directing Hospital personnel to begin treating a patient with chest pains by undertaking an assessment. The assessment entailed giving a patient a physical examination, questioning the patient about her symptoms, screening her for domestic violence, and creating a record that detailed her risk factors. Following the assessment, personnel were to obtain a pulse oximetry reading, immediately triage patients with suspected cardiac symptoms to a treatment area, and alert other staff of the patient's need for immediate treatment.

Hospital provided uncontroverted evidence that it followed its policy in screening Derek. The evidence shows that Derek entered the emergency room at 5:47 p.m., and that he received a physical examination from triage nurse Linda at 5:55 p.m. Nurse Linda asked Derek about the onset of his pain, the severity of his pain, symptoms related to his pain, whether he had attempted self-treatment, and whether he experienced domestic violence. She also created a record that detailed Derek's risk factors, including his blood pressure, tobacco use, and personal and family medical history. She ordered an EKG which was completed by an emergency room technician, but was non-diagnostic. Finally, Nurse Linda obtained a pulse oximetry reading, documented that Derek took aspirin prior to arriving at the Hospital, and classified Derek as a Triage Level III patient.

Other evidence shows that Derek received the same basic screening as other patients who came to the emergency room on February 15 and complained of chest pain. And he received similar treatment in comparison to the 136 Hospital emergency room patients who complained of chest pain between January 15, 2012, and February 15, 2012.

4. In a lawsuit against the emergency room physician, Derek will:

A. Prevail under EMTALA, because his screening was inadequate
B. Prevail under EMTALA, because his emergency medical condition was not stabilized
C. Both A and B
D. Neither A nor B

5. In a lawsuit against the emergency room physician, Derek:

A. Can proceed under a malpractice theory, because there was a treatment relationship
B. Can proceed under a malpractice theory, whether or not there was a treatment relationship
C. Cannot proceed under a malpractice theory, because there was no treatment relationship

6. In a lawsuit against Hospital, Derek:

A. Can establish a violation of the stabilization requirement, because he had an emergency medical (heart attack) condition that Hospital failed to stabilize
B. Can establish a violation of the screening requirement, because Hospital failed to detect his emergency medical condition (heart attack)
C. Both A and B
D. Neither A nor B

7. Hospital screened Ron and found that he was presently suffering from several medical problems, though none of them were such that the absence of immediate medical attention would result in placing his health in serious medical jeopardy. Hospital discharged Ron without addressing any of the medical problems about which he was loudly complaining.

A. EMTALA violation, because Hospital discharged Ron before and without stabilizing his medical problems.
B. EMTALA violation, because Hospital failed to either admit or to transfer Ron after the screening identified (and Hospital had actual awareness of) Ron's medical problems.
C. No EMTALA violation, if Hospital did the standard screening for a patient like Ron
D. No EMTALA obligation, because Hospital had no duty to screen Ron

8. Your client is a local physician. She has a patient who has not been compliant with the physician's recommended regime for taking hypertension medications. The physician has repeatedly explained the issues of noncompliance with the patient. And the physician has rescued the patient on several occasions with emergency medication, usually in the local emergency room over a weekend. The patient understands but stubbornly refuses to comply.

A. The physician may terminate this relationship immediately, because of the patient's non-compliance.
B. The physician may terminate this relationship with adequate notice.
C. The physician can stop seeing this patient immediately. There is no need to terminate a treatment relationship, because in light of the patient's persistent non-compliance, no treatment relationship was even formed in the first place.
D. The physician may not terminate the relationship, so long as the patient has a continuing need for treatment for the same condition physician is treating.

9. A patient arrives at the private medical office of Dr. Smith, bleeding profusely and in urgent need of medical attention.

A. Dr. Smith has no duty to treat the patient.
B. Dr. Smith has a duty to treat, as a condition of having been granted a license and the privilege to practice medicine.
C. Dr. Smith has a duty to treat, because the patient has an emergency medical condition.
D. Dr. Smith has a duty to treat, because she had treated the patient for an unrelated condition just a few months earlier.

10. Plaintiff claims that the defendant, a Harrisburg, PA physician, negligently performed an intervention. This jurisdiction, like Minnesota, follows a same or similar community standard. Plaintiff hires a Houston, TX nurse as her expert witness. Nurse has training and experience regarding both how the reasonably prudent Houston physician and how the reasonably prudent U.S. physician performs the intervention.

A. Nurse is qualified to testify as to the standard of care, if she can show that Harrisburg is substantially similar to Houston.
B. Nurse is qualified to testify as to the standard of care, if she can show that the standard of care in Harrisburg is the same as the national standard.
C. Both A and B.
D. Nurse cannot testify, because she is not from, and has not practiced in, Pennsylvania.
E. Nurse cannot testify, because she is not from, and has not practiced in, Harrisburg.

PART TWO

1 essay question worth 40 points

Suggested time = 40 minutes

On December 28, 2011, Brendan, who is uninsured, came to the Bosse Medical Center emergency room complaining of fever, cough and shortness of breath and was later that day admitted to the hospital as having severe dehydration and lung disease. During the course of Brendan's inpatient treatment at the Bosse Medical Center, it was determined that he suffered from bilateral pneumonia, Adult Respiratory Distress Syndrome ("ARDS"), and significant lung damage.

Over the next several days, while Brendan's condition was at all times unstable, various Doctors and Nurses associated with the Bosse Medical Center attempted to transfer him out of the hospital on eighteen separate occasions because Brendan did not have health insurance. Brendan alleges that on December 31, 2011, two of Brendan's Doctors falsely certified that he was stable for transfer from the hospital. At 3:35 am, on January 1, 2012, EMS personnel arrived to collect Brendan from the Bosse Medical Center. At or near the time he was placed into the ambulance, Brendan went into cardiac arrest. He was resuscitated in the ambulance by EMS personnel and brought back inside the Bosse Medical Center where he was admitted and placed on a ventilator in the ICU.

Brendan remained at Bosse Medical Center until January 24, 2012, at which time he was discharged to his home. It appears that Brendan's condition was unstable at that time. On January 26, 2012, just two days after discharge from the hospital, Brendan's medical condition deteriorated. A Bosse Medical Center ambulance collected Brendan from his home but did not get to the Bosse Medical Center. An ER medical supervisor, in radio contact with the ambulance, refused to treat Brendan on the grounds that there was "no pulmonologist" available to evaluate and treat him at the hospital. This supervisor faxed a document to the ambulance classifying Brendan as "stable." The ambulance then transported Brendan to the University of Minnesota Medical Center.

Upon arriving at UMMC, Brendan was admitted to the ICU and a medical examination uncovered that Brendan was suffering from significant lung damage, and that "[h]is lung has been collapsed to some degree for quite some time…" On January 29, 2012, UMMC physicians performed surgery on Brendan to repair his lung.

You are a law clerk to the general counsel of Bosse Medical Center. Identify and assess all the bases for Bosse Medical Center's liability under EMTALA that Brendan is likely to assert.

END OF EXAM