

INSTRUCTIONS

This is one of two parts to your *Health Law Quality & Liability* final exam. This part consists of 30 multiple choice questions.

TIME: You have a total of 90 minutes to complete these 30 questions (3 minutes each).

WEIGHT: Each question is worth 1 point. So, this part of the final exam is worth 30 of the 100 total points on the final exam.

REST OF THE EXAM: The second part of the final exam consists of essay questions. You have a total of 23 hours to complete that part of the final exam.

(1) A physician operated on the wrong site of Terrance's body, causing an unnecessary operation and delaying a needed procedure. After the incorrect surgery, Terrance never felt well enough to return to his job. It is unclear, however, to what extent his post-surgery ill health stemmed from the physician's negligence versus Terrance's ongoing drug and alcohol abuse. Both likely contributed. Which of the following correctly reflects the law in most jurisdictions?

- (A) Terrance cannot recover if he is even partially at fault for his post-surgery ill health.
- (B) Terrance can likely recover for his post-surgery ill health and any contribution his behavior made is irrelevant, given the physician's negligence.
- (C) Terrance can likely recover for his post-surgery ill health, but fault will be apportioned and damages reduced proportionally.**
- (D) None of the above

(2) Plaintiff obtained a favorable damages-only verdict in a premises liability case against Hospital for the plaintiff's trip-and-fall accident over an exposed and protruding bolt on the pavement at the hospital entrance. Alleged injuries included three-level disc herniations in the cervical spine requiring anterior fusion surgery at C4-5 and disc replacement at C5-6; torn labrum and arthrodesis/non-union at the acetabulum requiring hip replacement surgery. The jury awarded a total of \$4 million. This is comprised of \$1 million in medical expenses and lost wages (\$500,000 past and \$500,000 future), and \$3 million in pain and suffering damages (\$1M past and \$2M future). If this jurisdiction has a statutory non-economic damages cap of \$250,000, then the court must adjust the damage award to:

- A. 3,250,000
- b. \$3,000,000
- c. 1,250,000**
- d. 500,000
- e. 250,000

(3) Which of the following best describes the legal significance of consent in medical procedures?

Consent is only required for high-risk procedures

Consent must be informed, voluntary, and given by a competent individual

Consent can be implied in all circumstances

Consent is not required if the medical professional deems the procedure necessary

(4) Plaintiff sued a dental clinic alleging failure to diagnose squamous cell carcinoma of the tongue. After seven visits to the dental clinic in 2018 and 2019, the plaintiff, a 38-year-old high school track coach and math teacher with a newborn baby, was diagnosed with Stage 3 tongue cancer in 2022. He then had half his tongue removed, received radiation therapy, and was given a poor future prognosis with a low survival rate. The plaintiff claimed he had reported a non-healing lesion on his tongue at every dental visit but that his complaints were brushed off, and he was never given a referral to an oral surgeon or for a biopsy. If this jurisdiction has a five-year statute of repose and a two-year statute of limitations, then malpractice claims against the clinic:

- A. are definitely barred by the statute of repose
- b. are definitely barred by the statute of limitations
- c. might be barred by the statute of repose

- d. might be barred by the statute of limitations
- e. both a and b
- f. both c and d**

(5) Plaintiff claimed her face was burned, scarred, and left disfigured following a non-invasive cosmetic procedure, fibroblast. Defendants filed a motion for summary judgement as a matter of law based on a waiver of liability signed by the plaintiff, which waived, released, and discharged defendants from all claims for liability, including personal injury arising out of negligence. The court should:

- a. grant summary judgment
- b. grant summary judgment only if defendants are using the waiver to show plaintiff was injured by a side effect that she recognized might occur**
- c. deny summary judgment because assumption of risk is never a permissible affirmative defense in medical malpractice litigation
- d. deny summary judgment because such waivers are contrary to public policy

(6) What is the threshold for establishing a breach of the standard of care in medical negligence cases?

- a. The defendant violated a statutory duty
- b. The actions of the defendant were not consistent with a reasonably competent medical professional**
- c. The defendant intended to cause harm
- d. The patient suffered harm while in the care of the defendant

(7) What role do medical records play in proving medical negligence?

Medical records are irrelevant to negligence claims

They are the sole piece of evidence required to prove negligence

They provide crucial evidence of the treatment provided and the professional's decision-making process

They can only be used as evidence if signed by the patient

(8) Under what circumstances can a hospital most definitely be vicariously liable for the negligent acts of its staff?

When the staff are acting outside the scope of their employment

Only when the negligent acts occur off the hospital premises

When the staff are independent contractors

When the staff are acting within the scope of their employment

(9) Why is expert testimony often crucial in medical negligence cases?

To prove that the medical professional had malicious intent

To demonstrate the patient's lack of understanding of medical procedures

To establish the standard of care and whether it was breached

To confirm that the hospital policies were followed

(10) What is required for a patient's consent to be considered legally valid in the context of risk disclosure?

The patient was aware of all possible outcomes

The patient consented to the treatment after being informed of significant risks, benefits, and alternatives

The patient's family consented on their behalf

The medical professional believed the patient understood the risks

(11) In every U.S. jurisdiction the following proof is sufficient for plaintiff to establish causation in a medical negligence claim?

The medical professional was the sole cause of the harm

The harm would not have occurred 'but for' the medical professional's negligence

The medical professional's actions were the most significant cause of the harm

The harm was a foreseeable consequence of the medical professional's specialty

(12) How is contributory negligence assessed in the context of medical negligence?

It is never considered in medical negligence cases

It applies when a patient's actions contribute to the harm suffered

It is only relevant if the patient refuses treatment

It applies when the patient does not pay for medical services

(13) What does the doctrine of res ipsa loquitur involve in the context of medical negligence?

The defendant must prove the negligence did not occur

The plaintiff must demonstrate specific negligent acts

The circumstances of the injury must be such that negligence is inferred

The plaintiff must prove a breach of statutory duty

(14) In many malpractice cases the defense argues that even if there were negligence, the injury complained of was not caused by that conduct, but instead was caused by the patient. Blaming the patient takes many forms, including that the patient was too fat, or too thin, or had unusual internal anatomy, was a smoker, a drinker, a drug abuser, or did not take their medicine as prescribed, or failed to tell the doctor something the patient should told them, or the patient failed to return to the office or for tests as instructed. Typically, such a defense will:

a. completely absolve the defendant of liability

b. get the jury to divide responsibility between the patient and the doctor, which might lower the size of the verdict

c. get the jury to divide responsibility between the patient and the doctor, which might lower the size of the verdict – but only if (1) the patient engaged in the conduct voluntarily and (2) knew it enhanced the risk of injury

d. none of the above

(15) Which of the following would likely NOT fall under a hospital's "direct" duty of care?

(A) Wife is visiting husband in the hospital and wife trips on a loose board on a stairwell and is injured.

(B) Delusional patient ends up jumping out of the hospital window because hospital policy was vague or not followed regarding use of restraints.

(C) Patient is injured as a result of surgery performed by a physician who has been sued for malpractice in excess of five times.

(D) Patient is injured when physician performing surgery accidentally cuts liver duct and bile pours into the abdomen unbeknownst to the nursing staff. Patient is discharged before signs and symptoms appear.

(16) How is 'loss of chance' legally recognized in medical negligence claims?

As a full claim for the ultimate physical harm suffered

As a separate head of damage where the plaintiff's outcome is worsened

It is not recognized in medical negligence claims

Only if the plaintiff can prove complete certainty of a better outcome

(17) In August 2022, Sebastian visited his doctor complaining of fatigue, abdominal pain, and diarrhea. Based on Sebastian's medical history and a physical exam, his physician diagnosed him with irritable bowel syndrome and recommended a high fiber diet, regular exercise, and meditation. Sebastian followed the physician's advice, but a year later, his symptoms remained and he also suffered from rectal bleeding, so Sebastian sought a second opinion. The second doctor performed a colonoscopy, biopsied abnormal tissue, and diagnosed advanced stage colorectal cancer. Sebastian was told he had only an 12% chance of five-year survival.

Sadly, Sebastian died in early 2024. Sebastian's estate hired an expert who opines that Sebastian's first diagnosis was a misdiagnosis and that if his cancer had been properly detected in 2022, Sebastian would have had a 40% chance of five-year survival. If the first physician negligently misdiagnosed Sebastian, would his estate be able to state a claim for a survival action for his death in the majority of jurisdictions?

(A) No, because a medical malpractice claim does not survive the death of the patient.

(B) No, Sebastian's estate may not recover because, even in August 2022, it was more likely than not that colon cancer would cause Sebastian's death.

(C) Yes, Sebastian's estate likely may recover under the loss of chance doctrine.

(D) Yes, Sebastian's estate likely may recover under the loss of chance doctrine, although the damages will likely be reduced because, even in August 2022, it was more likely than not that cancer would cause Sebastian's death.

(18) Which of the following is NOT considered when determining vicarious liability?

- a) The relationship between the parties
- b) The nature of the act committed
- c) The personal beliefs of the defendant**
- d) Whether the act was committed during the course of employment

(19) Medical negligence is primarily determined by:

- a) The doctor's experience
- b) The cost of the procedure
- c) The deviation from the standard of care**
- d) The patient's opinion of the care received

(20) Informed consent should be obtained from:

- a) The patient's spouse
- b) The patient's employer
- c) The patient themselves, if they are competent to give consent**
- d) The patient's healthcare provider

(21) State X has a 2-year statute of limitations and a 5-year statute of repose. Patient received a breast cancer screening in March 2022. But the radiologist negligently misread the scan. A subsequent treating clinician identified this error in February 2023. But by then, the patient's cancer was too advanced to treat as effectively. By when must the patient file a malpractice claim?

- a. February 2025**
- b. March 2027
- c. February 2028
- d. The claim is already time barred.

(22) Unlike State X in the previous problem, state W has a 5-year statute of limitations and a 2-year statute of repose. Patient received a breast cancer screening in March 2022. But the radiologist negligently misread the scan. A subsequent treating

clinician identified this error February 2023. But by then, the patient's cancer was too advanced to treat as effectively. By when must the patient file a malpractice claim?

- a. February 2025
- b. March 2027
- c. February 2028
- d. The claim is already time barred.**

(23) To establish an EMTALA screening violation, the plaintiff may carry their burden by showing:

- a. Hospital refused to screen
- b. Hospital failed to follow its own standard screening procedures
- c. Differences between the screening examination that the patient received and examinations that other patients with similar symptoms received at the same hospital
- d. Hospital offered such a cursory screening that it amounted to no screening at all.
- e. Negligence in the screening process or providing a faulty screening or making a misdiagnosis
- f. three of the above
- g. four of the above**
- h. all the above

(24) To meet its stabilization requirement under EMTALA, a hospital must

- a. get the patient to a point that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer from the facility.**
- b. alleviate completely the health problem causing the emergency medical condition
- c. treat the patient consistent with its OWN policies and procedures for that condition
- d. refrain from affirmatively exacerbating the patient's emergency medical condition

(25) Ryan and his minor son presented to the emergency room because son had been experiencing nausea and vomiting. Son stated that “his main reason for presenting was a rash on his penis. He stated that his appetite was normal and denied any nausea or vomiting. Following the standard checklist, ED physician diagnosed Son with a yeast infection and prescribed him a nystatin topical cream to treat Son’s genital rash and yeast infection. A second set of vital signs were performed. All were improved and stable within the normal limits for a healthy 12-year-old boy. ED physician discharged Son around 8:27 p.m. Son later died from diabetic ketoacidosis. In an EMTALA claim, plaintiff can establish Hospital:

- a. Violated its stabilization duty because it discharged patient with an un-stabilized emergency medical condition.
- b. Violated its screening duty because it failed to diagnose patient’s emergency medical condition
- c. both A and B
- d. Neither A nor B**

(26) On the facts of the prior question, now assume both (1) that the ED physician and the patient were in a treatment relationship and (2) that it was negligent to fail to diagnose the diabetic ketoacidosis. On family’s EMTALA claim they can establish that:

- a. Violated stabilization duty because discharged patient with an un-stabilized emergency medical condition.
- b. Violated screening duty because failed to diagnose patient’s emergency medical condition
- c. both A and B
- d. Neither A nor B**

(27) Patient requested an in-person interpreter for an upcoming pre-surgery education class since she is deaf and can only communicate through American Sign Language (ASL). The hospital’s in-person ASL interpreter was unavailable, so the hospital deployed a Video Remote Interpreter (VRI). Due to connection issues, Patient was left without an interpreter. The instructor wore a clear face shield so that Patient could lip read, but despite these efforts, Patient was unable to understand what the instructor was saying and left the class confused about her upcoming surgery. Does Patient have a claim under Section 1557?

- A. no because Section 1557 does not afford a private cause of action
- b. no because hospital employed its best efforts to accommodate patient

- c. no because this was only for a class and not for medical treatment
- d. yes because hospital failed to accommodate patient in the way she requested/needed**

(28) In January 2021, Dovi, a 32-year-old male with a high body mass index (BMI), began to experience severe pain in his lower right abdomen. He went to the emergency room where he had an emergency appendectomy. Before surgery began, a nurse counted 22 surgical sponges. After the procedure, the nurse counted 21 sponges, but neither an x-ray nor search of Dovi revealed the missing sponge. The surgical team assumed that the initial count had been a miscount, as sometimes happens, and did not mention the issue to Dovi. Dovi recovered well from the appendectomy and returned to normal life. However, in June 2023, Dovi began experiencing abdominal pain. After many tests, in September 2023, doctors determined that a retained surgical sponge from his appendectomy had migrated to his intestine, causing permanent digestive issues and requiring another surgery to remove it. If Dovi files a medical malpractice suit in October 2024 in a state that follows the discovery rule and has a two-year statute of limitations and a four-year statute of repose, is his suit timely?

- (A) No, because the alleged malpractice that injured Dovi occurred more than two years prior to the filing of suit.
- (B) No, because Dovi should have discovered his injury and filed suit sooner.
- (C) Yes, because Dovi filed suit within four years of when he discovered or reasonably should have discovered his injury.
- (D) Yes, because Dovi filed suit within four years of his appendectomy and within 2 years of when he discovered or reasonably should have discovered his injury.**

(29) Patient had sought Dr. Lowe's therapy after suffering panic attacks during consensual sex after being sexually abused as a child. Dr. Lowe opened his first "wellness clinic" in 2022. He has sex with a patient after telling her that his penis was "like a laser beam" that would "burn up trauma." If Patient understood the nature of the therapy and agreed, then her best legal claim is:

- a. battery
- b. informed consent**
- c. ADA
- d. vicarious liability

(30) Hospitals are facilities where patients go to receive treatment for their various ailments. While hospitals are associated with healing and recovery, they're also places where patients contract various infections. These hospital-acquired infections (HAIs) can occur due to exposure to pathogens in the hospital environment even when the hospital follows recommended protocols and best practices. HAIs often complicate recovery and sometimes lead to severe health issues or even death. One common infection is Methicillin Resistant Staphylococcus Aureus (MRSA), a type of bacteria resistant to many antibiotics. MRSA can lead to skin infections, bloodstream infections, or pneumonia. If a patient suffered from MRSA in Idaho or Virginia, in a lawsuit against the hospital, then the LEAST expensive and burdensome way to prove her case would be to:

- A. Proceed without an expert because hospitals are strictly liable for infections caused during the patient's stay
- b. proceed without an expert on the basis of res ipsa
- c. proceed with an expert from anywhere in the United States
- d. Proceed with an expert familiar with the standard of care for infection control in the relevant locality**