Instructor	**Professor Thaddeus Mason Pope**
Course Title	**Health Law: Quality & Liability**
Format	**Midterm Exam, Fall 2020**
Total Time	**Four (4) hours**
Total Pages	**17 pages**

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Fall 2020 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 Wednesday, September 30, 2020 and before 11:59 p.m. on Tuesday, October 6, 2020.

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 Tuesday, October 6, 2020. Therefore, the latest time by which you will want to download the exam is 7:59 p.m. on Tuesday, October 6, 2020. 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 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 seventeen **(17) 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 Tuesday, October 6, 2020.

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 two hours. That means you should be able to write complete answers to all the questions in two 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 two main parts:

    Part One 36 multiple choice questions
    Worth 1½ points each, for a combined total of 54 points
    Estimated time = 54 minutes (1½ minutes each)

    Part Two 2 essay questions
    Worth 23 points each, for a combined total of 46 points
    Estimated time = 80 minutes (40 minutes each)

    That adds up to just over two 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 36). 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 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:

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 36 multiple choice questions.
- Each question is worth 1½ points for a combined total of 54 points.
- Recommended time is 54 minutes (1½ minutes each).

1. During COVID-19, a new patient arrived for her appointment for an aerosol generating procedure (like open suctioning of airways or cardiopulmonary resuscitation). But physician refused to attend to the patient because of inadequate available personal protective equipment (PPE). Does patient have an viable abandonment claim?

A. Yes, because the physician refused to see the patient.
B. No, because the physician did not "fire" the patient and remained prepared to attend to patient as soon as PPE could be obtained.
C. No, because the physician had a good reason for refusal.
D. No, because physician had no duty to treat patient in the first place.

2. Some health insurance plans deny claims for legitimate emergency department visits based on a patient's FINAL diagnosis, rather than on the patient's PRESENTING symptoms (e.g. when chest pain that might be a heart attack turns out not to be a heart attack after all). This conduct:

A. Violates EMTALA because it deters patients from going to the ED.
B. Violates EMTALA because patients must be screened based on their known PRESENTING symptoms.
C. Violates EMTALA because the whole point of going to the ED for s screening is to determine whether the condition is an emergency medical condition.
D. Does not violate EMTALA.

3. Some health insurance companies require PRE-AUTHORIZATION before a patient can seek emergency care. Failure to obtain prior authorization results in denied payment. This conduct:

A. Violates EMTALA because it deters patients from going to the ED.
B. Violates EMTALA because patients must be screened based on their known PRESENTING symptoms.
C. Violates EMTALA because the whole point of going to the ED for s screening is to determine whether the condition is an emergency medical condition.
D. Does not violate EMTALA.

4. Hospital has reason to believe that it received an individual who was transferred in an unstable emergency medical condition from another hospital in violation of EMTALA. Must the receiving hospital REPORT the transferring hospital?

A. Yes
B. Yes, so long as the patient is uninsured
C. No, if the receiving hospital has specialized capabilities for treating this patient's condition that the transferring hospital does not
D. No

5. Tracy presented to Dakota Hospital with a penetrating stab wound in her head. But the on-call neurosurgeon refused to come to the hospital. The neurosurgeon:

A. Did not violate EMTALA because he was not on hospital property at the time.
B. Violated EMTALA and can be sued.
C. Violated EMTALA and is subject to civil monetary penalties.
D. Both B and C.

6. In the previous question, Dakota Hospital:

A. Did not violate EMTALA, because the neurosurgeon did not violate EMTALA.
B. Violated EMTALA and can be sued.
C. Violated EMTALA and is subject to civil monetary penalties.
D. Both B and C.

7. Termination of care before completing care or without assuring the continuation of care at the same or higher level (such as at a hospital) is known as:

A. Abandonment
B. Assault
C. Battery
D. Negligence

8. Consent in an emergency from a patient who is unconscious is known as what type of consent?

A. Informed consent
B. Statutory consent
C. Implied consent
D. Written consent
E. Consent can never be assumed but must always be obtained from the patient or her legally authorized substitute decision maker

9. If proper consent is not obtained before treatment, then the clinician leaves herself open to liability most obviously on what ground?

A. Negligence
B. EMTALA
C. Abandonment
D. Battery
E. Informed consent

10. What is the therapeutic privilege?

A. The privilege of a physician to break confidentiality if it would benefit the patient.
B. The privilege of a patient to sue the physician for damages if the physician is negligent.
C. The privilege of a patient to sue the physician for damages if he or she was not adequately informed about the side effects of a treatment.
D. The privilege of a physician to withhold information when the physician believes it will be harmful to the patient.
E. The requirement that a physician disclose what similarly situated colleagues would have disclosed in similar circumstances.

11. Which of the following is an accurate statement of the professional standard?

A. It requires that the physician disclose information that will help the patient to follow the treatment regime more effectively.
B. It requires that a physician withhold information that would lead to the patient terminating the treatment.
C. It requires that the physician disclose what similarly situated colleagues would have disclosed in similar circumstances.
D. It requires that a physician withhold information that the physician believes will be stressful to the patient.
E. It requires that physicians disclose what the individual patient would want to know or find significant.

12. When deciding how much information must be disclosed for consent to be adequately informed, the Minnesota physician bases her decision on:

A. The physician's assessment of what information will benefit the patient.
B. What colleagues similarly situated would consider adequate information.
C. The physician's assessment of what information this patient would personally find meaningful
D. What a reasonable patient would want to be told or find significant

13. A physician who removes a patient's appendix, without permission, during a surgical procedure for a hysterectomy (surgical removal of the uterus) for which he or she had permission commits:

A. Disability discrimination
B. Battery
C. Abandonment
D. Breach of informed consent
E. None of the above

14. Patient with suspected COVID-19 has just arrived in Hospital's parking lot. May Hospital tell patient that she must go to a COVID-approved treatment facility before being evaluated?

A. Yes, because Hospital lacks specialized capabilities to treat COVID
B. Yes, because patient is not yet on Hospital property
C. Yes, because Hospital does not yet "know" whether patient has an emergency medical condition – only that she has COVID
D. No, Hospital must at least screen patient

15. Hospital emergency department is on diversion for neurology. Patient arrives at Hospital with a possible stroke. May Hospital immediately transport patient without an evaluation to another facility?

A. Yes, because Hospital lacks resources to treat stroke.
B. Yes. Since Hospital is on diversion, patient should not have been brought here.
C. No, Hospital's physician must assess the patient and justify any transfer in writing.
D. No, hospitals can never transfer patients with un-stabilized emergency medical conditions.

16. Physicians must obtain informed consent for all the following EXCEPT:

A. Chemotherapy
B. Electroconvulsive therapy
C. Minor surgery
D. Organ donation
E. Informed consent must be obtained for all of these.

17. Informed consent means:

A. A physician must tell the patient about the risks of having a procedure.
B. A physician must tell the patient about the risks of NOT having the procedure.
C. A physician must tell the patient about alternatives to the procedure.
D. A and B
E. B and C
F. A and C
G. A, B, and C

18. EMTALA regulations (codified in the C.F.R.) are rules made by:

A. Federal judges
B. State judges
C. A federal agency
D. Congress
E. Constitution of the United States

19. When may a physician legally withdraw care from a patient:

A. Never so long as the patient still needs care.
B. Only when the physician has a compelling reason.
C. Generally, when the physician provides adequate notice.
D. At any time, so long as the reason for withdrawal is not because of the patient's age, sex, gender identity, race, color, national origin, or disability

20. To take a blood sample without the consent of the patient, except in the case of an emergency, is

A. Disability discrimination
B. Battery
C. Abandonment
D. Breach of informed consent
E. None of the above

21. When may a physician REFUSE to treat a prospective patient at her primary care clinic?

A. Never so long as the patient needs care
B. At any time UNLESS the patient care needs are urgent
C. When the physician has a compelling reason for refusal
D. At any time

22. The primary investigating and enforcement entity for violations of ACA Section 1557 is:

A. U.S. DHHS Office of Inspector General
B. U.S. DHHS Office of Civil Rights
C. U.S. Department of Justice
D. U.S. Department of Homeland Security

23. Dr. Baker is the on-call physician for cardiology. She is called into the ED but discovers that the patient is one who previously assaulted her at her private clinic. In fact, Dr. Baker has a Ramsey County District Court restraining order against this patient. Under EMTALA, must Dr. Baker evaluate the patient?

A. Yes
B. No, because of the restraining order
C. No, if in addition to the restraining order, Dr. Baker had already properly terminated the physician-patient relationship
D. No, physicians never have a duty to treat patients they do not want to treat

24. A doctor-patient relationship can be created when:

A. Physician renders professional medical services to an individual who accepts those services
B. Physician expressly agrees to treat an individual
C. When a physician gives medical advice to an individual, even if communicated through another healthcare professional
D. A and B
E. A, B, and C

25. A Minnesota patient contracts COVID-19 after coming in for a scheduled physician office visit. If patient's informed consent suit fails because of her inability to establish DUTY, this is MOST likely because:

A. The reasonable physician typically does not disclose the risk of COVID-19 transmission from an office visit.
B. The reasonable patient does not deem the risk of COVID-19 transmission from an office visit to be important.
C. The reasonable patient would make the office visit even if she knew of the risk of COVID-19 transmission.
D. The emergency exception

26. Suppose on the previous problem, that the patient's reason for making the clinic visit were for an essential life-saving service (like dialysis). In this case, patient would likely make the visit EVEN IF physician disclosed the risks. In this case, patient will be LEAST able to establish:

A. Duty
B. Breach
C. Causation
D. Injury

27. Mid-Minnesota Cancer Care will not assist patients with mobility disabilities in transferring from wheelchairs to examination tables or other diagnostic equipment necessary for complete and effective treatment. Rather, MMCC's written policy requires patients with disabilities to bring their OWN equipment to help facilitate transfers and to bring their own friends, family, or attendants—trained in body mechanics and transfer techniques—to help facilitate transfers. This policy:

A. Violates the ADA
B. Does not violate the ADA, so long as the patient is not denied care altogether.
C. Does not violate the ADA, so long as the patient gets transferred and, therefore, does not receive less complete care than non-disabled patients
D. Does not violate the ADA because that statute does not impose affirmative duties. It only imposes a negative prohibition on discrimination

28. While patient was taking psychotropic medications that her Wisconsin psychiatrist Dr. Frasier Crane had prescribed for her, she was driving and hit a bicyclist. Will the bicyclist success in an informed consent action against Dr. Crane on the theory that Dr. Crane should have warned (but did not warn) patient not to drive under the influence of the medication?

A. Probably, because the reasonable patient would want to know that information
B. Probably, because the reasonable physician customarily discloses that information
C. No, because everyone already knows not to drive when taking any medications
D. No

29. While patient was taking psychotropic medications that her Minnesota psychiatrist Dr. Niles Crane (Frasier's brother) had prescribed for her, she was driving and hit a bicyclist. Will the bicyclist succeed in an informed consent action against Dr. Crane on the theory that he should have warned (but did not warn) patient not to drive under the influence of the medication?

A. Probably, because the reasonable patient would want to know that information
B. Probably, because the reasonable physician customarily discloses that information
C. Probably not, because plaintiff cannot establish causation
D. Definitely not

30. After physician performed surgery on a patient's left leg, he performed surgery on the patient's right leg, even though he had received patient's consent only to operate on her left leg. The extension of the operation was not due to an emergency. The patient did not suffer any harm and was even benefitted. If the patient subsequently brings an action against the physician, will the patient recover?

A. No, because the operation resulted in no harm.
B. No, because the patient consented to surgery.
C. Yes, the patient may recover at least nominal damages.
D. Yes, the patient may recover on a theory of negligent informed consent.
E. Both C and D

31. Becker was a healthy 45-year-old, when he went to the Rosedale Center shopping center Allina urgent care clinic for respiratory issues including a cough lasting about a week. As the respiratory issues exacerbated during the visit, a doctor at the clinic advised that Becker should be transported to the closest emergency room (which was in a Fairview system hospital). At this point, Minneapolis Fire Department EMTs were called. Which of the following is correct?

A. Once the Allina clinic had screened the patient and identified an emergency medical condition, it could transfer the patient only by making a certification and getting consent from the receiving hospital.
B. Becker is on hospital "property" as soon as he is placed inside the ambulance.
C. The Fairview hospital has no duty to see Becker because they have no treatment relationship with him.
D. The Fairview hospital had no duty to see Becker because the transfer was inappropriate.
E. Both A and D.
F. There is no EMTALA violation.

32. Your client is a primary care physician. She has a patient to whom she had been prescribing Prozac monthly. She last saw the patient three months ago, when she gave him a one-month prescription as usual. After she did that, the patient became uncooperative and then said that he did not want another appointment. The physician has not heard from the patient since. The pharmacy that the patient listed with her office says that patient has not filled a prescription since the last one that she gave him. Patient has not contacted physician's office about wanting a prescription. If physician sends this "difficult" patient a formal termination letter:

A. She must give the patient time (usually 30 days) to find a new provider.
B. She must include (or at least offer to include) a prescription to "bridge" the patient until he can transition care to a new provider.
C. Both A and B.
D. Neither A nor B.

33. A Wisconsin ER physician treating a patient suffering from chest pain contacted a cardiologist. The ER physician reported the patient's cardiac enzymes were elevated. The cardiologist told the ER physician that the symptoms did not suggest an emergent problem. Because the ER physician was looking for "instructions" and not just general advice or a coarse opinion, he relied upon the cardiologist's assessment and released the patient. Unfortunately, the patient suffered a myocardial infarction (heart attack) a few hours later at home. If the diagnosis and treatment in this case were negligent, patient's estate may have a medical malpractice claim against:

A. ER physician
B. Cardiologist
C. Both ER physician and cardiologist
D. Neither ER physician nor cardiologist

34. **A Minnesota ER physician treating a patient suffering from chest pain contacted a cardiologist. The Minnesota ER physician's questions were basic and did not require consulting a chart or reading studies. The cardiologist was not drawn into specifics unique to this patient's case. After speaking to the cardiologist, the ER physician released the patient. Unfortunately, the patient suffered a myocardial infarction (heart attack) a few hours later at home. If the diagnosis and treatment were negligent, patient's estate may have a medical malpractice claim against:**

A. ER physician
B. Cardiologist
C. Both ER physician and cardiologist
D. Neither ER physician nor cardiologist

35. Noel was a 77-year-old male with a history of hyperlipidemia, peripheral vascular disease, gastritis, and diabetes mellitus. He also had a history of chronic cigarette and alcohol use On August 24, 2020, due to the intensity of the abdominal and chest pain that the Noel was complaining about, his wife called 911 for assistance. Upon arrival, City of Saint Paul Fire Department paramedics evaluated Noel and determined that he had "abdominal pain and irregular heart rate." Paramedics then transported Noel by ambulance to Regions Hospital. Noel later died. His wife alleges that the paramedics' failure to follow their regular diagnostic protocols was responsible. Wife's EMTALA claim on this ground:

A. May succeed against the paramedics
B. May succeed against Regions Hospital
C. Both A and B
D. Neither A nor B

36. In the previous question, suppose that AFTER Noel arrived at Regions Hospital, clinicians there did not activate or follow the Regions protocols for chest pain and/or acute coronary syndrome. Therefore, an EKG (electrocardiogram) was not ordered within 10 minutes of Noel's arrival; nor was he provided any type of antianginal, antiplatelet, or anticoagulant therapy which are all part of the procedures required in this hospital's emergency room. Instead, Regions diagnosed Noel with non-emergent epigastric tenderness rather than with the emergency heart condition that he had. Nevertheless, Regions argues that Noel fails to state a valid claim under EMTALA both (1) because he was not "dumped" onto another hospital and/or discharged by a hospital that did not want to treat him and (2) because Noel was not "an uninsured, underinsured, and/or and indigent patient."

A. Noel has an EMTALA screening claim against Regions
B. Noel has an EMTALA stabilization claim against Regions
C. Both A and B
D. Neither A nor B

Essay Question 1

- This question is worth 23 points
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 40 minutes.

Telehealth has been around for years in the United States. But it was not until the COVID-19 pandemic that it became regularly used. Because of social distancing guidelines, there has been a dramatic increase in the utilization of telehealth services. But as the following case illustrates, telehealth is not a complete substitute/replacement for in-person healthcare. Perhaps analogously, you might judge that Zoom law school is not a complete substitute for in-person law school.

On August 12, 2020, Jon Ettinger has a telemedicine visit with his physician in Grand Rapids, Minnesota. Ettinger was 67 years old, obese, with a recent ankle injury. During the visit, Ettinger reported new swelling in his leg. Two weeks ago (at the end of July), Ettinger had visited an emergency department, where he underwent surgery and had a cast applied. During the August 12, 2020 telemedicine visit, the physician advised Ettinger to elevate his leg and see an orthopedist within 36 hours.

But Ettinger never made it to the orthopedist appointment. He became unresponsive and went into full arrest hours later. A review of the case shows that the physician failed to diagnose Ettinger's deep venous thrombosis and immediately refer him to care during the video visit.

The subsequent review of the case shows that by evaluating Ettinger remotely, the physician failed to appreciate the often-subtle nuances of the patient's clinical presentation. These nuances could have been more accurately assessed in the office setting and that would probably have led to more urgent evaluation and intervention, thereby likely preventing the otherwise avoidable result. At least with respect to this type of condition, there is a significant potential to miss things when a "typical" exam is not done, and the physician cannot lay hands on and directly observe the patient. But the physician did not tell Ettinger about any of these diagnostic limitations of telehealth. Of course, an office visit, at this time of COVID-19, is not itself a risk-free option, particularly for this patient.

Ettinger's family has hired you to bring an informed consent action in his name. Can this claim succeed? Evaluate and assess the merits of this claim.

Essay Question 2

- This question is worth 23 points
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 40 minutes.

At the end of September 2020, President Trump issued an *Executive Order on Protecting Vulnerable Newborn and Infant Children.* In relevant part, this Order directs DHHS to enforce EMTALA with respect to very premature babies:

> Despite these laws, some hospitals refuse the required medical screening examination and stabilizing treatment or otherwise do not provide potentially lifesaving medical treatment to extremely premature or disabled infants, even when parents plead for such treatment.[1] Hospitals might refuse to provide treatment to extremely premature infants — born alive before 24 weeks of gestation — because they believe these infants may not survive, may have to live with long-term disabilities, or may have a quality-of-life deemed to be inadequate. Active treatment of extremely premature infants has, however, been shown to improve their survival rates. And the denial of such treatment, or discouragement of parents from seeking such treatment for their children, devalues the lives of these children and may violate Federal law.

For context on this Executive Order, pregnancy lasts for about 280 days or 40 weeks. A preterm or premature baby is delivered before 37 weeks of pregnancy. Extremely preterm infants are born before week 28. Premature babies born at 23 weeks gestation are called micro-preemies. They weigh just over a pound and measure about 8 inches long from their head to their bottoms. Yet, over half of premature babies born at 23 weeks of pregnancy will survive delivery and live to see life outside the neonatal intensive care unit (NICU). Even one-third of babies born at 22 weeks can survive.

Note that the 2002 Born Alive Infant Protection Act (BAIPA) provides that any infant of the species *homo sapien* who is born alive at any stage of development is a "person," "human being," "child" or "individual" as those terms are used in federal law.

Focus on the "some hospitals" to which President Trump refers. The offices of general counsel in these hospitals apparently support their neonatologists' refusal to treat these extremely premature babies. Is this a defensible position? Evaluate and assess their claim that EMTALA does not require treating these extremely premature infants.

[1] Professor Pope note: Extremely preterm infants will not survive without resuscitation. Often this means helping the baby breathe by inserting a tube into his or her airway. Steps may also be taken to start the baby's heart.