

Instructor	Professor Thaddeus Mason Pope
Course Title	Health Law: Quality & Liability
Format	Midterm Exam, Spring 2021
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 Spring 2021 exam number** and include this number at the top of each page of your exam answer (for example, in a header).
2. Confirm that you are using and have typed the **correct exam number** on your exam document.
3. You may **download** the exam from the course Canvas site any time after 12:01 a.m. on Wednesday, March 10, 2021 and before 11:59 p.m. on Friday, March 19, 2021.
4. You must **upload** (submit) your exam answer file to the Canvas site within four (4) hours of downloading the exam.
5. You must **upload** your exam answer file no later than 11:59 p.m. on Friday, March 19, 2021. Therefore, the latest time by which you will want to **download** the exam is 7:59 p.m. on Friday, March 19, 2021. Otherwise, you will have less time to write your answers than the full permitted four hours.
6. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to Canvas.
7. Use your exam number as the **file name** for the PDF file that you upload.

Instructions Specific to This Examination

GENERAL INSTRUCTIONS:

1. **Honor Code:** While you are taking this exam, you are subject to the Mitchell Hamline Code of Conduct. You may not discuss it with anyone until after the end of the entire **midterm exam period**. It is a violation of the Code to share the exam questions. (There may be an accommodation student taking this exam at a different time.) Shred and delete the exam questions immediately upon completion of the exam. Professor Pope will repost the exam after the end of the midterm exam period.
2. **Competence:** By downloading and accepting this examination, you certify that you can complete the examination. Once you have accepted (downloaded) the examination, you will be held responsible for completing the examination.
3. **Exam Packet:** This exam consists of 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 Friday, March 19, 2021.
7. **Time Penalty:** If you upload your exam answer file more than four (4) hours after downloading the exam, then Professor Pope will lower your exam grade **by one point** for every minute over the 4 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 4-hour limit by more than 20 minutes, then Professor Pope may refer the situation for a Code of Conduct investigation and potential discipline. Please save enough time after editing to upload your exam.
8. **Timing:** Professor Pope has designed this exam for completion in 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 15% 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 25 multiple choice questions
 Worth 2 points each, for a combined total of 50 points
 Estimated time = 50 minutes (2 minutes each)

Part Two 3 essay questions
 Worth 20, 20, and 10 points each, for a combined total of 50 points
 Estimated time = 40, 40, and 20, for a combined total of 100 minutes

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 25). 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:
 - Essay Question 1
 - Essay Question 2
 - Essay Question 3
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 2 points for a combined total of 50 points.
- Recommended time is 50 minutes (2 minutes each).

1. In January 2021, Medscape published a survey asking physicians on capitated payment plans whether they would “weed out” patients who cost more. “Capitated payment” means the physician or practice gets a fixed amount per patient, per month from the managed care insurance organization whether the patient uses zero resources or uses enormous resources.

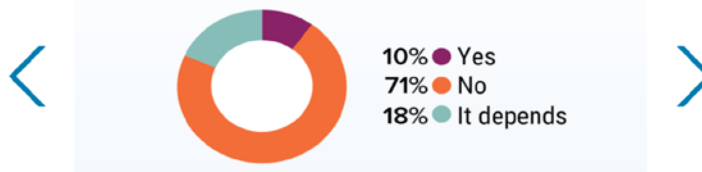
Medscape Internal Medicine Ethics Report 2020

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If Your Medical Practice Has a Capitated Plan or Profit Sharing, Would You Weed Out Patients With Many Comorbid Conditions or Those Who Overuse Resources?



The physicians who would “weed out” high resource patients may:

- A. Not do so
- B. May do so only if they give patients sufficient notice to obtain care elsewhere
- C. May so do only if they have a valid reason (other than resource intensity)
- D. Both B and C

2. In the same survey discussed in the previous question, physicians report that they would **LIMIT** the number of their Medicaid patients, if their current patients lost their employer-provided private health insurance and then became eligible for Medicaid.

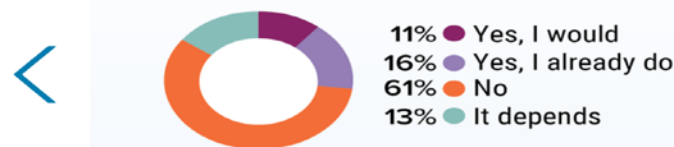
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< 1.

If Your Patients Lost Employer Insurance Due to COVID and Had to Go on Medicaid, Would You Limit Your Number of Medicaid Patients?



The physicians who would limit the number of their Medicaid patients may:

- A. Not do so
- B. May do so only if they give patients sufficient notice to obtain care elsewhere
- C. May so do only if they have a valid reason (other than Medicaid being the patient's source of insurance coverage)
- D. Both B and C
3. Consider the poll in the previous question. If instead of limiting the number of **CURRENT** patients with Medicaid, suppose instead the physicians limited the number of **NEW** patients they would accept with Medicaid.
- A. They may do this.
- B. They may do this only if they have a valid reason.
- C. They may do this only if those prospective patients can obtain care elsewhere.
- D. They may not do this.
4. After an auto accident like Tiger Woods' recent auto accident, 33-year-old Jen was taken to the hospital. She was not seen by any clinicians. Instead, the hospital front desk staff asked for a \$1000 deposit in advance before they would treat. Because Jen did not have \$1000, she was transferred to a county hospital where she received treatment several hours later. The delay cost Jen her leg. Does Jen have an EMTALA claim against the hospital?
- A. Yes, because hospital failed to stabilize her emergency medical condition.
- B. Yes, because hospital failed to provide a medical screening exam.
- C. No, because Jen was transferred to a hospital, thereby assuring continuity of care.
- D. No, because Jen is not a Medicare patient.
- E. More than one of the above.
- F. None of the above

5. **Patient arrives at the hospital seeking emergency treatment. But patient parks at the wrong wing of the building and enters the Childhood Development Research Center. The staff direct him to go left around the building to the ED.**
- A. This is an EMTALA violation because patient was already on hospital property.
 - B. This is an EMTALA violation because this was a “transfer” from one unit to another unit of the hospital.
 - C. Both A and B.
 - D. Neither A nor B.
6. **Patient sued Regional Medical Center, claiming that the hospital’s emergency staff revived her despite her “do not resuscitate” (DNR) order after she went into cardiac arrest. As a result of being revived, Patient continues to experience severe pain, disability, and limitations. Plus, she will incur extensive expenses throughout the remainder of her life. Patient’s best cause of action is**
- A. EMTALA
 - B. Battery
 - C. Informed consent
 - D. Abandonment
7. **Patient with a BMI of over 100 went to Saint Margaret Medical Center with complaints about lower back pain, fever, chills, and elevated pulse and blood pressure levels. The physician who treated Patient ordered an MRI but then realized that Patient would not fit into the scanner. So, the physician sent him home. Patient was later admitted to another hospital where he received an MRI. Patient was diagnosed with a low thoracic epidural abscess and taken into emergency surgery. He now has permanent paraplegia. SMMC has committed:**
- A. EMTALA violation because patient did not get an appropriate medical screening exam
 - B. EMTALA violation because patient was transferred with an un-stabilized emergency medical condition
 - C. Both A and B.
 - D. No EMTALA violation because SMMC screened patient to the extent it was able

8. **Siena Health System terminated the employment of oncologist Dr. Puddle for a variety of complicated business reasons. Contractually Dr. Puddle's cancer patients were patients "of" Siena Health System. With Dr. Puddle's departure, these patients had no other ways to get cancer treatment from Siena. To avoid charges of abandonment, Siena should:**
- A. Hire locum tenens ("temp") oncologists to replace Dr. Puddle until they can recruit Dr. Puddle's replacement.
 - B. Refer Dr. Puddle's patients to nearby competitors who have the competence and capacity to provide the treatment that Dr. Puddle had been providing.
 - C. A or B
 - D. None of the above are necessary because Siena did not "fire" a patient. It fired Dr. Puddle.
9. **You arrive at the emergency room. Your neck has been causing you problems and you have been experiencing dizziness, including a spinning sensation, difficulty sleeping, nausea, vomiting, and a headache that worsens with movement. You have been seeing a chiropractor for the last year and believe those visits led to your injuries. The ER doctor treats you and notes that your symptoms include high blood pressure, elevated white blood cell count, the presence of red blood cells in urine, the presence of a fever, and dizziness with a worsening headache. You receive no further imaging, tests, or other diagnostic studies. The ER doctor prescribes you medicine and tells you to "take it easy." You are discharged.**
- You learn later that your symptoms were consistent with vertebral dissection, which is known to result from excessive chiropractic manipulation of the neck. Yet, the ER doctor did not screen you for that condition. Since your discharge, your symptoms have worsened, and you have a stroke. You are considering filing an EMTALA claim in your local U.S. District Court.**
- A. You have no private cause of action against the hospital.
 - B. You have a claim if you have expert witnesses who can establish the screening fell below the nationwide standard of care.
 - C. You have a claim if you can establish that other patients at this hospital presenting with similar conditions were screened for vertebral dissection.
 - D. None of the above
10. **Generally, to establish a violation of EMTALA's screening requirement, a plaintiff must establish:**
- A. Improper motive (such as wanting to avoid uninsured patients)
 - B. Departure from standard screening procedures
 - C. Both A and B
 - D. Neither A nor B

11. Biden went to the ER and complained of severe chest pain and pneumonia-like symptoms. After his examination, the physicians gave him three prescription medications and discharged him. A few days later, Biden's sister brought him to a different ER. The doctors at this ER confirmed that Biden was suffering from bacterial endocarditis. Biden died a few days later from the infection. Even after civil discovery, Biden's lawyers found no evidence that the first ER deviated from its standard screening procedures. Biden's EMTALA claim against the first hospital will:
- A. Succeed because it failed to diagnose bacterial endocarditis.
 - B. Succeed because it failed to stabilize Biden's emergency medical condition (bacterial endocarditis).
 - C. Both A and B
 - D. Neither A nor B
12. Nolan's teenage son was complaining of cramps and vomiting. Nolan took his son to the ER. The doctors diagnosed him with influenza and discharged the teen three hours later. But the doctors' diagnosis was incorrect; the teen was suffering from intussusception, a condition that occurs when a part of the intestine telescopes within itself. In less than 48 hours, he suffered from cardiac arrest and died. What sort of evidence does Nolan's father need to bring an EMTALA claim against this hospital?
- A. Evidence on the standard of care, how other hospitals would have diagnosed the patient
 - B. Evidence on how THIS hospital typically screens patients like Nolan's son
 - C. Both A and B
 - D. Neither A nor B
13. Relatives of Brenda King sued Milwaukee Medical Center (Wisconsin), alleging that doctors did not do enough to treat Brenda's mental illness before she fatally shot her husband, four children, and herself. According to the lawsuit, Brenda went to the MMC emergency room, MMC urgent care, and an MMC clinic several times to get help for depression and anxiety. But MMC did not take Brenda's severe, overwhelming, and rapidly worsening illness seriously enough. MMC has moved for summary judgment, arguing that whether it breached any duty or whether any such breach caused Brenda any injuries are both irrelevant, because it owed no duty to Brenda. The court should:
- A. Grant the motion because MMC was not in a treatment relationship with Brenda
 - B. Grant the motion because the existence of a treatment relationship is irrelevant
 - C. Deny the motion because MMC was in a treatment relationship with Brenda
 - D. Deny the motion because the existence of a treatment relationship is irrelevant

14. On the same facts as the previous question, MMC has moved for summary judgment, arguing that whether it breached any duty or whether any such breach caused Brenda's family any injuries are both irrelevant, because it owed no duty to Brenda's family. The court should:
- A. Grant the motion because MMC was not in a treatment relationship with Brenda's family
 - B. Grant the motion because the existence of a treatment relationship is irrelevant
 - C. Deny the motion because MMC was in a treatment relationship with Brenda's family
 - D. Deny the motion because the existence of a treatment relationship is irrelevant
15. On the same facts as the two previous questions, assume that some of the healthcare services were provided through telehealth during the COVID-19 pandemic and some of those services were provided from and/or to Minnesota, Therefore, Minnesota law may apply. If so, this may change the duty analysis with respect to:
- A. Brenda
 - B. Brenda's family
 - C. Both A and B
 - D. Neither A nor B
16. Mrs. W. is a 74-year-old Pakistani with limited English language proficiency. She came to the United States, where her children live, to have masses in her neck and armpit evaluated. Physical examination and subsequent biopsies revealed an aggressive B-cell lymphoma, a hematologic malignancy uniformly fatal without chemotherapy. Even though Mrs. W. had decision making capacity, clinicians relayed this diagnostic and prognostic information to Mrs. W.'s English-speaking eldest son rather than to Mrs. W. In turn, he told Mrs. W. that the masses were not cancer, aiming to protect Mrs. W., believing she could neither emotionally cope with her diagnosis nor physically tolerate lymphoma treatment. Clinicians appear to have violated their duties related to:
- A. Section 1557
 - B. Informed consent
 - C. The ADA
 - D. A and B
 - E. A and C
 - F. B and C
 - G. A, B, and C
 - H. None of the above

17. **A provider may satisfy its federal law obligations to patients with limited English proficiency by using:**
- A. A professional in-person medical interpreter
 - B. A professional video remote medical interpreter
 - C. Either A or B
 - D. Neither A nor B
18. **We saw that curbside (informal) consults will generally: (a) not involve contact between the consultant and patient, (b) not result in creation of a written report, and (c) not result in payment to the consultant. But which of the following additional factors would also tend to convert a curbside consult into a formal consult?**
- A. Moving from basic questions to questions requiring consulting a chart
 - B. Moving from general comments to comments about specifics unique to this case
 - C. Moving from a short discussion to a long, drawn-out conversation
 - D. Moving from a single call to multiple follow up calls about the same patient
 - E. All the above
19. **A common measure of the physician’s duty to disclose information to a patient focuses on what an objective, reasonable “prudent person” in the patient’s shoes would want to know. This standard is not dictated by whatever “custom” physicians in the relevant medical community follow when making disclosures. This standard is followed in:**
- A. Indiana
 - B. Wisconsin
 - C. Washington, DC
 - D. Vermont
20. **Physician argues that a signed consent form is “conclusive proof” that informed consent was obtained. Therefore, she argues, it is unnecessary to examine the substance of discussions between the physician and patient. This is the rule in:**
- A. Jurisdictions like California, Minnesota, and Washington DC
 - B. Jurisdictions like Indiana, Vermont, and Wisconsin
 - C. Both A and B - in almost all jurisdictions
 - D. Neither A nor B – in almost no jurisdiction

21. **Maria gave birth to a baby boy with cerebral palsy due to oxygen deprivation during vaginal childbirth. Her physician knew of the risk of oxygen deprivation due to Maria's large size and Type I diabetes. But Maria's physician did not tell her about the option of a caesarean section delivery. Assuming the physician breached a duty of disclosure, to win an informed consent action, Maria must also establish:**
- A. That she would have consented to the cesarean
 - B. That the reasonable patient in her situation would have consented to the cesarean
 - C. That a cesarean delivery (as opposed to a vaginal delivery) probably would have avoided the cerebral palsy
 - D. A and B
 - E. A and C
 - F. B and C
 - G. A, B, and C
22. **Patient's primary care physician referred him to Lakeville Surgical Associates for bariatric surgery to address her high blood pressure and diabetes. However, LSA refused to fully evaluate patient for bariatric surgery or to provide her with the surgery due to her HIV status. This likely constitutes a violation of LSA's duties under:**
- A. The ADA
 - B. Section 1557
 - C. Both A and B
 - D. Neither A nor B

USE THIS FACT PATTERN FOR QUESTIONS 23 AND 24

A few years ago, the Oklahoma Board of Medical Licensure and Supervision promulgated amendments to its regulations pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act. The Board redefined "physician/patient relationship" as:

a relationship established when a physician agrees by direct or indirect contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community. The physician/patient relationship shall include a medically appropriate, timely-scheduled or an actual face-to-face encounter with the patient . . . The act of scheduling an appointment, whether by a physician or by a physician's agent, for a future evaluation will not in and of itself be considered to establish a physician/patient relationship.

The Board also added the following to the types of "unprofessional conduct" that would warrant the Board taking disciplinary action against a licensee: "Failure to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment, except in a clearly emergent, life threatening situation."

23. **This Rule deviates (or seems to deviate) from common law rules on treatment relationships because it apparently:**
- A. Requires IME physicians to enter a treatment relationship
 - B. Does not require IME physicians to enter a treatment relationship
 - C. Prohibits IME physicians from entering a treatment relationship
 - D. Prohibits IME physicians from terminating treatment relationships
24. **This Rule deviates (or seems to deviate) from common law rules on treatment relationships because it:**
- A. Provides that scheduling an appointment does not create a treatment relationship.
 - B. Requires formation of a treatment relationship prior to treatment rather than permitting formation concurrent with treatment.
 - C. Both A and B
 - D. Neither A nor B
25. **Around 20% of EMTALA violations result from emergency department nurses. This can range from incorrect transfer documentation to innocent advice on where to get faster care. In such cases:**
- A. Nurses can be liable.
 - B. Nurses can be subject to civil monetary penalties.
 - C. Hospitals can be liable for nurses' conduct.
 - D. A and B
 - E. B and C
 - F. A, B, and C
 - G. None of the above

Essay Question 1

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

In late 2020, Hoover's primary care physician referred her to Dr. Bone at Oakdale Orthopedic Center in Minnesota for consultation about right shoulder pain. Hoover's pain began after a fall at home in 2019. This pain had not resolved with physical therapy or other conservative forms of pain management.

Hoover has suffered from Tourette's Syndrome for many years. Tourette's is a neurological disorder characterized by repetitive, stereotyped, involuntary movements and vocalizations called "tics." Hoover's condition causes her to have repeated vocal and motor tics, including occasional arm movements and pointing. Specifically, Hoover's Tourette's causes (among other things) frequent, uncontrollable, "punching" movements of her right upper extremity.

Dr. Bone's treatment plan for Hoover was a right shoulder arthroscopy, subacromial decompression, and open distal clavicle excision, to be performed on November 15, 2020. During the pre-operative office visit, Dr. Bone noticed Hoover's vocal and motor tics and treated her in a disrespectful, rude, and insulting manner. Among other things, Dr. Bone moved his seat across the room to create significant distance between himself and Hoover, stating: "I don't want you to hit me," referencing her tics.

During the November 2020 surgery, Dr. Bone discovered that Hoover had a full-thickness rotator cuff tear with 2 cm of retraction. Dr. Bone performed debridement of the area. But he did not repair Hoover's rotator cuff tear. Dr. Bone based this decision not to repair the rotator cuff tear found in surgery solely on the presumed effect Hoover's Tourette's Syndrome would have on her likelihood of recovery. Dr. Bone and/or his staff later explained to Hoover that her shoulder could not be repaired during surgery because she would "just tear it again" when she woke up from surgery, referencing moving her shoulder during uncontrollable motor tics. Had there been a pre-operative discussion of how Tourette's would impact Dr. Bone's treatment plan, Hoover would have gone forward with a surgeon who would repair the problem upon finding it.

Hoover later sought care from another clinician. That clinician repaired her rotator cuff tear during surgery, followed by a shoulder immobilizer to address any concern of involuntary movement of her shoulder. Like many orthopedic surgeons, this surgeon used the "Ultra-sling" immobilizing device to prevent the patient's arm from rotating away from their body following rotator cuff repair.

Your law firm has been hired by Oakdale Orthopedic Center because Hoover has notified OOC that she intends to "take action." While OOC has not yet received a demand letter or complaint, it wants to be prepared. Describe and assess any liability and other legal risks that OOC might face from Dr. Bone's interactions with Hoover.

Essay Question 2

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

Dr Matthias is a third-year emergency department resident physician at Des Moines Hospital. During an unusually busy shift, Dr. Matthias sees Mila, a 12-year-old girl, accompanied by her father. This is their third visit to the ED this week. Mila, rubbing her belly, appears somewhat uncomfortable but in no apparent distress. After 20 minutes of fumbling with an interpreter via iPad and phone, Dr Matthias, realizing how many patients are waiting, proceeds with the examination. The three navigate a broken English dialogue that seems to reveal that, for four days, Mila has had decreased appetite and abdominal pain. It was most severe yesterday and since then has improved.

Dr Matthias' physical examination of Mila reveals mild, diffuse, nonspecific abdominal tenderness that seems most consistent with acute gastroenteritis. Dr Matthias leaves Mila's room and confers with Dr Nathaniel about a treatment plan. Dr Matthias returns to Mila, suggesting she take acetaminophen for pain, and arranges for Mila's discharge from the ED before moving onto another patient. Two days later, Mila returns to the ED with an abdominal abscess from a ruptured appendix, in septic shock, and requiring urgent surgical intervention.

Mila's father has notified Des Moines Hospital that he intends to "take action." While Des Moines Hospital has not yet received a demand letter or complaint, it wants to be prepared. It has hired your firm to identify and assess liability and other legal risks arising from Dr. Matthias' treatment of Mila.

Essay Question 3

- This question is worth 10 points
- Limit your response to 750 words. This is only a limit, not a target or suggested length.
- Recommended time is 20 minutes.

In a 2019 survey of medical students, 92% said that they had performed a pelvic exam on an anesthetized female patient. Of those, 61% did so without explicit patient consent or permission. For example, a woman at the hospital for stomach surgery might (unknowingly) get a pelvic exam unrelated to that procedure because anesthetized patients are easier for novices to work on.

A pelvic exam involves placing two fingers into the vagina while a second hand is placed on the patient's abdomen to feel for ovaries, masses, and uterine mobility. Pelvic exams, a regular part of gynecological visits, are necessary before gynecological surgery, as they allow physicians to examine anatomy before performing procedures like hysterectomies and fibroid removals. At teaching hospitals, where medical students are involved in patient care, students regularly perform these exams for educational training. They are often the third or fourth person to conduct the procedure, after an attending physician and one or two residents.

Some argue that patients implicitly give consent when they walk through the doors of a teaching hospital. So, if patients want to avoid such exams, they can go to a non-teaching hospital. Others argue that since the anesthetized patient cannot feel what was going on, it should not matter.

Despite these arguments, the trend seems to be against the practice. As of March 2021, an increasing number of states (including California, Hawaii, Illinois, Iowa, Maryland, New York, Oregon, Utah, and Virginia) have outlawed nonconsensual pelvic exams.

While most states do not have specific laws, the laws in virtually all states may already prohibit nonconsensual pelvic exams. Describe and assess how generally accepted patient care laws already prohibit nonconsensual pelvic exams.