

Professor Pope – Health Law: Quality & Liability (Fall 2014)

Midterm Exam Score Sheet

Multiple Choice

1. C	7. B	13. B	19. C	25. C	31. B
2. A	8. C	14. B	20. A	26. C	
3. C	9. C	15. F	21. A or C	27. B	
4. A	10. C	16. B	22. B	28. C	
5. C	11. E	17. C	23. B	29. C	
6. D	12. B	18. C	24. A	30. D	

Short Answer 1

PTF and DEF were in a treatment relationship since PTF was actually being treated by DEF.	--
The DEF is held to a statewide standard. But the only expert evidence concerns a nationwide standard. Without evidence as to the SOC applicable to this DEF, PTF's claim must fail.	2
If the DEF is board certified, then a nationwide standard applies. (Res ipsa is a possible alternative, if the experts can establish this would not happen absent negligence.)	1
The second expert testifies only to causation. Since she is not testifying as to SOC, no geographical constraint applies. If PTF can establish the applicable SOC, she can probably also establish breach, causation, and damages.	--

Short Answer 2

Since the problem focuses on causation, assume breach and injury. Determine if these can be connected. Informed consent analysis has three components.	--
1. With disclosure of the risks of vaginal birth versus the risks of cesarean, PTF probably would have elected cesarean. The risks of the former (for an obese patient) were probably greater than risks of the latter. Moreover, even if the cesarean posed substantial risks, a woman might incur risks to herself to mitigate risks to her fetus.	1
2. For the same reasons, a reasonable patient in the PTF's position probably would have elected cesarean.	1
3. If the baby had been delivered by cesarean rather than by vaginal birth, the baby's shoulder would not have gotten stuck on the way "down."	1

Short Answer 3

The SOL is three years from the date of alleged malpractice (April 2, 2012): April 2015.	1
The claim must be filed by April 2015, unless the continuous treatment doctrine applies and tolls the SOL until the end of the treatment. PTF saw DEF for the same condition through at least August 2012. Therefore, PTF may have until August 2015.	1
The SOL is one year from discovery (Sept. 2014): Sept. 2015. This is irrelevant, since the SOL will run first.	1

Essay Question

Ryan v. Hospital

EMTALA	
Ryan arrived at the hospital, triggering the hospital's screening duty.	1
The hospital staff performed a "standard" screening. It missed the EMC but the test is consistency and uniformity, not success.	2
Since the standard screening procedures have not been updated in some time, Ryan might argue that they were so deficient as to constitute no screening at all. This is difficult and would work better as a theory of direct tort liability against the hospital.	2
Ryan was discharged with an unstabilized EMC. But this did not violate the stabilization requirement, because the hospital did not actually know about the EMC.	--

Ryan v. Cohen

Treatment relationship	
Ryan received care from Cohen into 2014.	1
Even if the prior relationship had ceased, a new relationship was established through the advice that Cohen provided on the telephone.	1
Malpractice - Duty	
Cohen is board certified. Therefore, he is held to a national standard of care.	2
Expert Tash testified only as to a same or similar standard. Therefore, his testimony cannot help PTF establish the SOC applicable to Cohen.	2
Expert Blake is not a cardiologist or even a physician. But he does appear qualified based on experience and training to testify on these matters.	2
Expert Blake testifies as to what appears to be a national standard. Therefore, his testimony can help PTF establish the SOC applicable to Cohen.	2
Malpractice - Breach	
Cohen deviated from the standard articulated by expert Blake.	1
Expert Dallas may establish a school of thought (a second SOC). It is sufficient that Cohen complied with the standard articulated by expert Dallas, even if he failed to comply with the standard articulated by expert Blake.	2
But expert Dallas fails to establish a national SOC. First, he established a SOT only in a same or similar community. Cohen is held to a nationwide standard. Second, Dallas seems to focus only on the number and not on the reputation of the SOT physicians. It is unclear if the “professional society guideline” helps on this prong.	2
Malpractice - Causation	
PTF cannot establish but for causation. Blake says “might.”	2
Minnesota allows lost chance causation.	1
But Blake does not quantify the lost chance (pre- versus post-negligence chances). He could not give a “mathematical figure.”	2
Informed consent	
The reasonable patient in Ryan’s position would want to know that his symptoms could have been heart related and posed a serious risk, even Cohen thought the other diagnosis more probable.	2
DEF did not disclose this information.	1
Had DEF made the disclosure, Ryan and the reasonable person in his position would probably have sought more immediate attention. After all, the risks were extremely serious. But it is unclear whether seeking an earlier intervention would have made any difference.	2

Ryan v. Maynard

NOTE: Analysis is much the same as for Cohen	
PTF and DEF were in a treatment relationship since PTF was actually being treated by DEF.	--
Malpractice – Duty	
Maynard is not board certified. Therefore, the same or similar SOC applies.	2
Expert Blake does not speak to the applicable standard. But Expert Tash does (fairly assuming that Cohen and Maynard are in the same community). Note that while Maynard complied with hospital procedures, those procedures may not themselves comply with the SOC. Following “standard” procedures helps avoid EMTALA liability, not malpractice liability.	2
Malpractice – Breach	
The SOT defense may work better for Maynard, because it is framed in the way that a SOC must be established for Maynard: as a SOT in this or a similar community.	1