Exam Number __ __ __ __ __

Instructor	:	**Professor Thaddeus Pope**
Course Title	:	**Health Law: Quality & Liability**
Section	:	**Law 9322, Section 1**
Format	:	**Take Home Midterm Exam**
Total Time for Exam	:	**6 hours**
Total Number of Pages	:	**15 pages**

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Fall 2014 midterm exam number** and include this number at the top of each page of your exam answer (for example, in a header). To locate your exam number, go to www.hamline.edu and follow the steps below. A graphic guide to locating your exam number is attached to these instructions.
   Click on Logins in the header.
   Go to Piperline
   Log in to the secure area
   Enter your Student ID and PIN
   Click Student Services
   Click Registration
   Click Student Detail Schedule
   Select the appropriate term from the drop down menu
   Exam Numbers are listed below Total Credit Hours at the top of the page

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 TWEN site any time after 12:01 a.m. on Monday, October 13, 2014. All exams must be submitted WITHIN 6 hours of download. But, in any case, all exams must be submitted by the end of the midterm exam period, i.e. by 10:00 p.m. on Friday, October 24, 2014. Therefore, you will want to download your exam no later than 4:00 p.m. on October 24, to ensure that you have the full allowed 6 hours to complete your exam.

4. Write your answers to all three parts of the exam in a word processor.

5. Save your document as a **single PDF file** before uploading to TWEN.

6. Use your exam number as the file name for your PDF file.

Instructions Specific to This Examination

GENERAL INSTRUCTIONS:

1. **Honor Code**: While you are taking this exam, you are subject to the Hamline University Code of Conduct. You may not discuss it with anyone until after the end of the entire exam period. It is a violation of the Honor Code to share the exam questions. Shred or delete the exam questions immediately upon completion of the exam. They will be reposted after the end of the exam period.

2. **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.

3. **Exam Packet**: This exam consists of **15 pages**, including this cover page. 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**: 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. **Failure to include your correct exam number will result in a 5-point deduction.**

6. **Total Time**: Your completed exam is due within 6 hours of downloading it. If your exam is uploaded more than 6 hours after downloading the exam, your exam grade will be **lowered by one point** for every minute in excess of the 6 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 6-hout limit by more than 15 minutes, the situation may be referred for a Code of Conduct investigation and potential discipline. Please save sufficient time to successfully upload your exam.

7. **Timing:** The exam has been written as a 90-minute exam. A student could write basically complete answers to all the questions in 90 minutes. But since this is a take-home exam, you will want to take some extra time (perhaps one hour) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps one hour) to revise and polish your answers, such that you will not be submitting a "first draft." In short, while this is a 6-hour take home, you really need not spend more than 3.5 hours on this exam.

8. **Scoring**: There are 75 total points on the exam. The midterm exam comprises 25% of your overall course grade, 75 of the 300 total course points.

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.

10. **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.

11. **Format**: The exam consists of three parts:

PART ONE: 31 multiple choice questions worth 1 point each	31
PART TWO: three short answer questions worth three points each	9
PART THREE: one essay question worth 35 points.	35
TOTAL	75

12. **Grading**: All exams will receive a raw score from zero to 75. 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. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 31). Next to each number type the letter corresponding to the best answer choice for that problem.

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 (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 AND THREE:

1. **Submission**: In your exam document create clearly marked separate sections for each of the four problems:
   - Part 2- Short Answer 1
     Short Answer 2
     Short Answer 3
   - Part 3 - Essay

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 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.

9. **Fatally Flawed Theories**: A legal theory may be fairly implicated by the facts, yet be fatally flawed because a necessary element is not satisfied or because an affirmative defense applies. Err on the side of analyzing such theories, even though identification of the fatal flaw could be seen as a threshold issue warranting no further analysis.

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

- 31 Questions worth 1 points each = 31 total points.
- Mark the letter of the best answer in a vertical list in your exam document.

1. The father of a pediatric patient has a prison record and a swastika tattoo. The father made racist remarks and demanded that no Hispanic nurses provide care to his child.

A. The hospital must comply else it would be a battery.
B. The hospital must not comply, because of the ADA.
C. The hospital must not comply, because of Title VI.
D. The hospital must not comply, because of EMTALA.

2. Expert medical testimony is NORMALLY required to support a medical malpractice case.

A. True
B. False

3. In medical malpractice actions, PUNITIVE damages are:

A. Never recovered
B. Always recovered
C. Rarely recovered

4. 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 the patient, as a condition of having been granted a license and the privilege to practice medicine.
D. Dr. Smith has a duty to treat the patient, because the patient has an unmistakable emergency medical condition.
D. Dr. Smith has a duty to treat the patient, because she had treated the patient for an unrelated condition just a few months earlier.

5. Which of the following is THE MINIMUM sufficient conduct and interaction to give rise to a treatment relationship?

A. Patient makes a general appointment with physician.
B. Patient calls physician and relates her symptoms. Physician says nothing.
C. Physician relates no specific diagnosis or prognosis, but tells patient "not to worry" about the pain in her chest.
D. Physician provides a physical exam and prescribes a drug.

6. Homer sues Dr. Hibbard for medical malpractice. Dr. Hibbard denied a physician-patient relationship. If Hibbard is correct, this means that Dr. Hibbard:

A. Has a duty to act as a reasonable patient would expect
B. Has a duty to act as a prudent physician would act
C. Has a duty to act as Homer would reasonably expect
D. Owes no duty to Homer

7. Homer sues Dr. Hibbard for medical malpractice. Dr. Hibbard denied a physician-patient relationship. If Hibbard is INCORRECT, this means that Dr. Hibbard:

A. Has a duty to act as a reasonable patient would expect
B. Has a duty to act as a prudent physician would act
C. Has a duty to act as Homer would reasonably expect
D. Owes no duty to Homer

8. Physician provides treatment (CPR) that the patient previously decided against by signing a do not resuscitate order (DNR). Patient's best cause of action is

A. Informed consent
B. Malpractice
C. Battery

9. An eight year old boy arrived in the emergency room with nausea and vomiting. The child was seen by a physician shortly after his arrival, and the physician determined the boy most likely had a virus. The physician ordered several lab tests, including a complete blood count (CBC). However, when the CBC results were available for the physician's review, the white cell differential test results (a subset of the total white cell count) were not yet available. Without having seen those particular test results, the physician discharged the child.

If the physician had seen the white blood cell differential results, he would have noticed the level was extremely high, indicating the child likely had a bacterial infection. The next morning, the child's condition worsened substantially and a physician who treated him that day believed he had pneumonia or sepsis. As a result of various treatment complications, the child eventually spent several weeks in the hospital recovering from septic shock which caused organ injury and resulted in ongoing treatment and therapy.

Does the patient have a good EMTALA stabilization claim against hospital?

A. Yes, because patient actually did have an emergency medical condition when he was discharged.
B. No, because patient did not have an emergency medical condition when he was discharged.
C. No, because hospital was not actually aware that patient had an emergency medical condition when he was discharged.

10. Hospital failed to diagnose a child's serious bacterial infection in the emergency room and discharged child. Patient can establish with expert witnesses that hospital has a low proficiency in accurately diagnosing this type of illness.

A. EMTALA violation, because the screening was deficient and below the standard of care
B. EMTALA violation, because the hospital failed to stabilize the child before discharge
C. No EMTALA violation without evidence that the child was treated differently from other patients with similar symptoms

11. A hospital failing to comply with EMTALA may be subject to:

A. Civil monetary penalties (OIG)
B. Termination from the Medicare program (CMS)
C. Private lawsuits for damages
D. A and B
E. All of the Above

12. A physician failing to comply with EMTALA may be subject to:

A. Civil monetary penalties (OIG)
B. Termination from the Medicare program (CMS)
C. Private lawsuits for damages
D. A and B
E. All of the Above

13. In some states, the formation and termination of treatment relationships is not left wholly to the common law, but rather is addressed by statue or regulation. The medical licensing board in Ohio, for example, has promulgated Rule 4731-27-01: "Termination of the Physician-Patient Relationship: A physician-patient relationship is established when the physician provides service to a person to address medical needs, whether the service was provided by mutual consent or implied consent, or was provided without consent pursuant to a court order. Once a physician-patient relationship is established, a person remains a patient until the relationship is terminated."

"[I]n order to terminate a physician-patient relationship, a physician shall comply with the following requirements: (1) Mail to the patient via regular mail and certified mail, return receipt requested, a letter containing the following information: (a) A statement that the physician-patient relationship is terminated; (b) A statement that the physician will continue to provide emergency treatment and access to services for up to thirty days from the date the letter was mailed, to allow the patient to secure care from another licensee; and (c) An offer to transfer records to the new physician upon the patient's signed authorization to do so. (2) For each letter sent in accordance with paragraph (A)(1) of this rule, the physician maintains in the patient record a copy of the letter, the original certified mail receipt, and the original certified mail return receipt."

"A physician's termination of a physician-patient relationship other than in accordance with the provisions of this rule, as determined by the state medical board of Ohio, shall constitute a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

You need not pull the Ohio rules or any other materials. In which case did the physician more closely comply with the Ohio rule?

A. Ricks v. Budge
B. Payton v. Weaver

14. The Ohio rule provides that "A physician-patient relationship is established when the physician provides service to a person to address medical needs, whether the service was provided by mutual consent or implied consent, or was provided without consent pursuant to a court order." Suppose that the Ohio rule applies. And suppose that your physician client did not terminate using the proper procedure. Under the facts of which case would you have the best argument that the Ohio rule did not apply because no treatment relationship had even been formed in the first place?

A. Adams v. Via Christi
B. Clanton v. Von Haam
C. Lyon v. Grether
D. Ricks v. Budge
E. Tunkl v. Regents U. Calif.

15. Physician's negligence causes death of patient. In valuing damages, the jury may consider:

A. Lost future wages
B. Lost past wages
C. Pain and suffering
D. Past medical expenses
E. Future medical expenses
F. All of the above

16. Philip Seaton is suing doctors after claiming he did not give surgeons consent to cut off his penis. Surgeons at the hospital in Kentucky said they had to take the drastic action after discovering a life-threatening cancer. Mr. Seaton is suing after claiming he suffered "mental anguish, pain, and has lost the enjoyment of life." Mr. Seaton said two doctors amputated his penis without his consent. The lawsuit states doctors had consent to "perform a circumcision and only a circumcision" but that Mr. Seaton did not consent to his penis being removed. Mr. Seaton said the surgeons should not have acted so quickly. "Sometimes you have an emergency and you have to do this, but he could have very easily closed him up and said, 'Here are your options. You have cancer.' The family would have said 'We want a second opinion. This is a big deal.'" Seaton's best cause of action is:

A. Informed consent because the amputation was not disclosed as a potential risk or consequence of circumcision
B. Battery
C. Abandonment
D. None of the above because no treatment relationship had been formed between Seaton and the defendant doctor

17. This term describes the situation where a physician INFORMALLY asks for another physician's opinion about a patient's symptoms or test results, and the second physician does not examine the patient or look at the patient's medical record.

A. Malpractice
B. HIPAA violation
C. Curbside consultation
D. Breach of confidentiality
E. Second opinion

18. Patient has been Physician's patient for nine years, but is considering changing physicians. Which of the following statements most accurately reflects PATIENT'S obligations to Physician?

A. Patient is legally obligated to notify Physician that he has been dismissed.
B. Patient must give Physician at least a 30-day notice that he will be dismissed.
C. Patient can dismiss Physician for any reason without notification.
D. Patient can dismiss Physician for any reason except race or disability.

19. Which of the following is NOT an acceptable method for terminating the physician-patient relationship?

A. Physician and patient agree to end the relationship.
B. Patient unilaterally decides to receive his medical care from another physician.
C. Physician informs a noncompliant patient that physician will no longer see him as a patient.
D. A consulting physician signs off in the medical chart when his services are no longer needed.
E. Physician sends a letter to patient giving him 30 days to find another health care provider.

20. The attending physician asks the nurse to obtain the patient's informed consent. Nurse does not completely understand the procedure and fails to mention that a recognized material risk of the procedure is death. Patient dies. If Patient's family sues, who is the one most likely to be held responsible for failing to obtain informed consent?

A. The attending physician
B. The nurse
C. Both the attending physician and the nurse
D. The hospital
E. No one because Patient signed the consent form.

21. Patient was injured due to a medical error. Although physician was negligent, he shows that Patient did not comply with treatment recommendations. Which of the following legal concepts is most likely either to bar or to reduce Plaintiff's award?

A. Contributory negligence
B. Mitigation of damages
C. Comparative negligence
D. Assumption of the risk
E. Noncompliance

22. If a patient can show that she was not aware that the physician was going to perform a specific procedure or that she did not authorize it, which of the following legal claims does she have?

A. Medical malpractice
B. Medical battery
C. Simple negligence
D. Breach of contract
E. Breach of fiduciary duty

23. Bars a patient's medical malpractice claim within 1 year after the patient's injuries are DISCOVERED.

A. State of repose
B. Statute of limitations

24. Employee, who works with asbestos, is evaluated by Physician each year for asbestos-related illnesses. Physician is hired by Employer, and Physician sends his report to Employer stating that Employee has a suspicious spot on his lung. Physician does not report this to the patient. The patient suffers harm from a delay in diagnosis.

A. Physician owes no duty to Employee because there is no physician-patient relationship.
B. Physician may be liable for informed consent.
C. Physician may be liable for medical malpractice.
D. Both B and C.

25. On August 7, 2007, Surgeon failed to remove a sponge from Patient's body cavity during surgery. On January 13, 2013, Patient began to experience symptoms that later turned out to be associated with the sponge left in his body. On March 4, 2014, exploratory surgery revealed the sponge, and it was removed. This jurisdiction has a one year statute of limitations and a seven year statute of repose. When is Patient's claim for malpractice against the original surgeon first BARRED?

A. August 7, 2008
B. January 13, 2014
C. August 7, 2014
D. March 4, 2015
E. January 13, 2020
F. March 4, 2021

26. Two doctors, a family practitioner and a cardiologist are having lunch. The family practitioner says, "I just saw a patient with abdominal pain." The cardiologist says, "It's probably just indigestion." The patient later goes into cardiac arrest and dies. The patient's widow sues the cardiologist?

A. The widow can sue the cardiologist for malpractice. There was a treatment relationship, because the cardiologist offered medical advice relating to the patient's treatment.
B. The widow cannot sue the cardiologist for malpractice. There was no treatment Relationship, because the cardiologist did not speak directly to the patient.
C. The widow cannot sue the cardiologist for malpractice. There was no treatment Relationship, because this was an informal consult.

27. Physician consults a medical textbook and uses the information therein to devise a treatment plan. Patient dies. Patient sues the M.D. author of the textbook.

A. There is a duty, because there is a treatment relationship. The author should know that doctors would rely upon her advice and that patients in turn would rely upon those doctors.
B. There is no duty, because there is no treatment relationship. The author was just providing recommendations contributing to the body of information available.

28. A 20-month infant was admitted to the hospital for fever, overall weakness, and repeated vomiting. The treating physician attempted to obtain a consult with pediatrician. The pediatrician said he was at a charity event, not "on call" and was unavailable to accept the consult. The baby dies the next morning. The parents sued the pediatrician for "failure to come to the hospital in response" to the treating physician's request for consultation.

A. The pediatrician had a duty, since his consult was requested.
B. The pediatrician had a duty, since his consult was requested AND it was an emergency.
C. The pediatrician had no duty, since he had no relationship with this patient, refused to form one, and did nothing to form one.

29. Over the past year, Big University Hospital refused to accept four transfers from Little University Hospital of individuals with unstable emergency medical conditions. These patients required the stabilizing specialized capabilities available at Big U's "Helen Graham" unit, a 32-bed psychiatric unit. Has Big U probably violated EMTALA?

A. No, EMTALA obligations are triggered only once a patient is on hospital property. These patients were not on Big U property.
B. No, a hospital has no duty to accept a transfer of patient with an unstabilized emergency medical condition.
C. Yes

USE THIS FACT PATTERN FOR THE NEXT TWO PROBLEMS

Thomas Eric Duncan, 42, was the Ebola patient who died earlier this month in Dallas. Duncan arrived at the emergency room of Texas Health Presbyterian Hospital on September 25. But the staff erroneously sent him home while ill with the disease. The doctors and nurses treating Duncan failed to act on his report of coming from Liberia, West Africa, where the disease is raging. Duncan ultimately returned to the hospital on September 28, after his symptoms became worse. He was admitted and kept in isolation. On October 4, he began receiving the experimental medicine brincidofovir. But Duncan died at the hospital on October 8.

30. Which of the following is the MOST true?

A. The hospital probably violated EMTALA by failing to stabilize Duncan's condition AFTER September 28.
B. The hospital probably violated EMTALA by transferring Duncan from the emergency room to an inpatient isolation ward while his emergency medical condition was not stabilized.
C. Both A and B.
D. The hospital probably did not violate EMTALA.

31. Experts have opined that because Ebola is so deadly, a few days delay in Duncan's diagnosis probably made no difference in how he fared. Assume that the delayed diagnosis were negligent. And assume that Minnesota law applied. Could Duncan's family establish liability?

A. No, because the plaintiff cannot establish "but for" causation.
B. Yes, if the delay made it less likely that Duncan would recover from Ebola and the pre- and post-negligence chances can be calculated.
C. Yes, if the delay made it less likely that Duncan would recover from Ebola, even if pre- and post-negligence chances cannot be calculated.

Short Answer Questions

- 3 Questions worth 3 points each = 9 total points.
- Limit each response to 200 words.

1. A Virginia patient was receiving 82% oxygen during a bovie cauterization as part of a tonsillectomy. (A bovie is a medical device that cuts and seals, or cauterizes, tissues and blood vessels by way of a direct electrical current.) Patient suffers an airway fire. In a subsequent malpractice lawsuit, plaintiff's first expert testifies that the reasonably prudent U.S. physician would have used just 30% oxygen. Plaintiff's second expert testifies that had the defendant used 30% oxygen, the airway fire probably would not have occurred.

   Based on this evidence, can plaintiff establish liability?

2. Mother presented to hospital for induction of labor at term. Mother was obese and had a large baby, 9 pounds, 10 ounces. During delivery, there were some troubling indications on the electronic fetal monitor. The baby was not descending down the birth canal. But the clinicians forged on with the induction instead of offering a Cesarean section. The baby's shoulder got caught under the mother's public bone (shoulder dystocia), resulting in paralysis of the arm.

   Can the mother establish CAUSATION in an informed consent action?

3. In February 2012, plaintiff was involved in a car accident. She went to Dr. Hall complaining of pain in her neck radiating down to her arms. Dr. Hall ordered an MRI on April 2, 2012. Dr. Hall testified that she read and relied on the radiologist's report, but did not personally review plaintiff's MRI scan. The radiologist's report, which Dr. Hall received on April 3, 2012, stated that plaintiff had four herniated or bulging discs in her neck. There report contained no indication that the MRI showed a tumor in plaintiff's spine.

   In July and August 2012, over six visits, Dr. Hall again treated plaintiff for complaints of neck pain and bilateral hand numbness. During these visits, Dr. Hall adjusted plaintiff's neck; however, she did not order another MRI. From February 2012 through April 2014, plaintiff was also seeing various physicians with complaints of hyperthyroidism, high blood pressure and cholesterol, as well as yearly well-care visits with her primary physician. Plaintiff did not tell any of these physicians about her back and neck pain, and hand tingling and numbness. She testified that she considered Dr. Hall her physician for treatment of those issues. In September 2014, plaintiff saw an orthopedic surgeon who advised her that she had an advanced tumor in her spine.

   If this jurisdiction has a 1-year statute of limitations and a 3-year statute of repose, BY WHEN must plaintiff file a negligent diagnosis malpractice suit against Dr. Hall?

Essay Question

- 1 Questions worth 35 points
- Limit response to 2000 words.

Ryan was a 51-year-old man who had undergone cardiac catheterization, in 2006, from Dr. Cohen, a board-certified Minnesota cardiologist. For eight years after the procedure, Ryan continued to receive care from Dr. Cohen. On April 7, 2014, Ryan began to experience chest pain, shortness of breath, diaphoresis (perspiring profusely), indigestion, and fatigue. Ryan reported these symptoms to Dr. Cohen by phone, noting further that nitroglycerin was ineffective in alleviating his symptoms. Ryan also reported a history of hiatal hernia (protrusion of the upper part of the stomach into the thorax through a tear or weakness in the diaphragm) and prior treatment for gastritis (inflammation of the lining of the stomach). Dr. Cohen referred Ryan to his family doctor without conducting a physical examination, without taking a detailed history, or without requesting any further testing.

Later that night, Ryan arrived at the emergency room of Hamline University Hospital. The emergency room physician, Dr. Maynard, a third year ("senior") emergency medicine resident, followed the hospital's standard chest pain screening procedures, which were last updated in 2003. After following those processes, like Dr. Cohen, Dr. Maynard diagnosed hiatal hernia and gastritis symptoms, and sent Ryan home to follow up with his family doctor. Early the next morning, Ryan died from a myocardial infarction (heart attack) caused by three blocked arteries.

Three experts and the defendant were deposed. Dr. Tash testified that the standard of care in Dr. Cohen's community required Dr. Cohen to physically evaluate the patient and treat for coronary artery disease, especially in light of Ryan's known history of cardiac disease and the strong presentation of cardiac symptoms.

Dr. Blake is not a physician but a 1974 Ph.D. in biology and physiology of the heart at M.I.T. He spent almost his entire academic career and extensive work experience dealing with cardiac treatment and with making recommendations to physicians on how to identify signs and symptoms of imminent cardiac infarction. Dr. Blake testified that neither Dr. Maynard nor Dr. Cohen followed a logical process in a thoughtful manner to rule in or rule out Ryan's various medical conditions. Dr. Blake testified that based on his extensive consulting work from Boston, to Chicago, to San Diego, physicians would have immediately ordered cardiac testing for a patient like Ryan based both on his medical history and on the symptoms relayed on the April 7 call (and presumably also in the emergency department).

Dr. Blake further testified that had Ryan been properly diagnosed (by either Dr. Cohen or by Dr. Maynard) on the afternoon or evening of April 7, Ryan might have avoided his fatal myocardial infarction. Specifically, on cross-examination Dr. Blake testified:

Q: Your bottom-line opinion is that because of the events on April 7, Ryan's heart condition was accelerated? Is that what you're saying?
A: Or promoted. Ryan eventually would have died anyway from his cardiac condition. But he had a promotion of his disease process.
Q: And you can't state, as we sit here today, how much his heart disease was promoted or accelerated. Is that correct?
A: I can't give you a mathematical figure. But I would say it was significant and was related to his death.
Q: Other than being significant, and ultimately, contributing to her death, you can't go any farther than that?
A: No, I don't think I can.

Dr. Cohen contended that the plaintiff's symptoms were similar to hiatal hernia and gastritis symptoms, so he did not think additional testing or intervention was warranted at that time. Chest pain often has not a cardiac cause but a respiratory or gastrointestinal cause. Finally, Dr. Dallas testified that additional screening is controversial, because cardiac testing is expensive, and subsequent follow-up tests lead to anxiety, pain, and complications. He pointed to a recent professional society guideline warning about overly aggressive testing. Dr. Dallas explained that for 75% of patients, these follow-up tests are negative. Therefore, 3 out of 4 patients with Ryan's symptoms would be unnecessarily screened. Dr. Dallas testified that a considerable number of physicians in communities like Dr. Cohen's would not have screened Ryan unless he had reported more serious symptoms than those he actually reported.

Evaluate any and all claims that Ryan's family can plausibly assert against any party.

END OF EXAM