

Health Law Quality & Liability - Professor Pope

Final Exam Score Sheet - Spring 2022

Multiple Choice (45 points - 1½ points each)							
1. B	5. C	9. F	13. C	17. E	21. B	25. D	29. B
2. C	6. B	10. C	14. A	18. E	22. C	26. D	30. A
3. B	7. C	11. C	15. F	19. D	23. D	27. E	31. B
4. B	8. B	12. C	16. B	20. A	24. D	28. D	
TOTAL							45

Essay 1 (10 points)		
Clarity	Organization, headings, paragraphs, white space	1
Board discipline	State medical boards can discipline physicians for unprofessional conduct even when there is no injury or adverse outcome. Other regulatory bodies also take a preventative approach.	9
Deter adherence	This conduct might destroy trust in the physician, this deterring the patient from adhering to the recommended treatment plan, resulting in adverse outcomes. But this would run into a comparative negligence defense.	
Theories fail	Many students explained why most of the theories of liability that we discussed would NOT apply to this conduct. But some noted NIED. Some argued that this conduct is likely linked to a tendency: to be less attentive and misdiagnose, to be less aggressive, to be biased, and to be less thorough in explaining risks, benefits, and alternatives.	
TOTAL		10

Essay 2 (10 points)		
Clarity	Organization, headings, paragraphs, white space	1
Wisconsin	Clinicians owe no duty to family members since there was no treatment relationship with them. Since no duty is owed, one never reaches "how" to measure the duty.	3
Minnesota	While no treatment relationship with family members, that is not required in Minnesota.	3
	It was foreseeable that negligent treatment of a patient with mental illnesses and harmful tendencies would put that individual's immediate family in danger.	3
TOTAL		10

Essay 3 (35 points)		
Clarity	Organization, headings, paragraphs, white space	3
Wilkins	Duty – It is likely PTF can find a qualified expert to establish that a PA (in this MN city or one like it) would provide better discharge instructions (and/or a better diagnosis).	3
	Causation 1 – The delay from negligence only increased risk from 7 to 14%. The negligence contributed less than 50% of the total risk, insufficient for but for causation.	3
	Causation 2 – Minnesota permits lost chance causation.	2
LLMC	Vicarious – While not employed, Wilkins looks like he is employed, making LLMC liable for his negligence (if established) under apparent/ostensible agency.	3
	Direct – If PTF can establish the SOC is not to rubberstamp, this policy is negligent. A compliant policy probably would be averted the injury. Same causation issues.	3
EPPA	Vicarious – Since Wilkins is employed, EPPA is liable for his negligence (if established)	3
Brodman	Duty – It is likely PTF can get an expert to establish a physician would review PA work.	3
	Causation – same as Wilkins	3
	Vicarious – As the supervising clinician, Brodman may be vicariously liable for Wilkins.	--
Oncologist	Assumption of risk – While the dosage was not SOC, it is what PTF wanted.	3
Insurer	ERISA 1 - This is employer coverage, so PTF's coverage claim be under ERISA.	3
	ERISA 2 - Recovery is limited to the amount of the denied claim. So, causation to the cancer is not relevant. Since coverage has (by now) already been provided, there is no claim.	3
TOTAL		35