

Health Law Quality & Liability - Professor Pope

Midterm Exam Scoring Sheet – Fall 2021

Multiple Choice (2 points each)							
1. D	5. D	9. D	13. E	17. F	21. G	25. C	29. D
2. D	6. D	10. D	14. C	18. D	22. D	26. A	30. B
3. A	7. D	11. E	15. C	19. B	23. E	27. C	
4. D	8. B	12. A	16. C	20. B	24. B	28. A	
TOTAL							60

Essay 1 (10 points)		
Clarity	Organization, headings, paragraphs, white space	1
Battery #1	The first drug was provided without consent.	3
	But it was an emergency and patient sought treatment for it. Therefore, DEF had implied consent.	
Battery #2	The second drug was provided without consent.	3
	This was NOT an emergency, but a forward-looking prophylactic measure.	
Informed consent	There was no harm from either drug.	3
	Injury is an essential element of all negligence claims.	
	The emergency exception would apply to the first drug, so PTF cannot establish duty.	
	PTF would likely be unable to establish causation for either drug.	--
EMTALA	The facts do not suggest that this UCC was a FED. If it were, then EMTALA would apply. But there does not appear to be any violation.	--
TOTAL		10

Essay 2 (10 points)		
Clarity	Organization, headings, paragraphs, white space	1
Abandonment	Refusing to see/treat an existing patient without notice.	3
Battery	Treating a patient “roughly” may exceed the scope of consent for that intervention.	3
Inf. Consent	Failing to offer therapy alternatives that the patient would likely choose.	3
Section 1557	Refusing to accept patients or firing existing patients because of their gender identity constitutes prohibited sex discrimination. There may be state analogs.	3
TOTAL		10

Essay 3 (20 points)		
Clarity	Organization, headings, paragraphs, white space	1
Duty	DEF and PTF were in a treatment relationship, though that is not required in MN.	--
	Minnesota is a reasonable patient, material risk jurisdiction.	1
	A reasonable patient would find a 1 in 10 risk of death differential to be important in deciding where to get surgery. It is a big number and costs close to nothing (in terms of time/cost/risk) to get that benefit.	3
Breach	DEF did not disclose the less risky alternative.	2
	DEF disclosed to R, not L. But L likely lacked capacity at this time.	--
Injury	PTF died from the surgery.	2
Causation	Had PTF known of the alternative, he probably would have chosen it, because the alternative entails lower risk for the same benefit.	3
	Had the reasonable patient in PTF’s position known of the alternative, he also probably would have chosen it – for the same reasons.	3
	Had PTF chosen the alternative, he probably would have avoided death.	4
TOTAL		20