

Health Law Quality & Liability - Professor Pope

Midterm Exam Scoring Sheet – Spring 2019

Multiple Choice (2 points each)			
1. B	3. D	5. A	7. D
2. B	4. F	6. D	8. D
TOTAL			20
Short Answer 1			
Similarity	There is no duty (ethical or legal) in the “absence of a preexisting relationship.”		--
Differences	ACP adds an exception to the general rule when “no other physician is available.” No such exception exists at law. <i>See, e.g. Hurley</i> (you may but need not cite it).		6
	ACP adds an exception to the general rule “when emergency treatment is required.” No such exception exists at law. <i>See, e.g. Hurley</i> (you may but need not cite it).		6
Clarity	Ideally, make a global observation that the ACP is broader and more demanding.		3
Note	The link between ethical and legal duties is often tighter than this question presumes. Many medical practice acts or regulations make violation of an ethical duty (as articulated by AMA or ACP) grounds for discipline.		--
TOTAL			15
Short Answer 2			
Cherry Picking	State the general rule. Physicians have very wide discretion to cherry pick.		4
	There is only one constraint. Refusing a patient because of nonadherence or comorbid disease could constitute refusing because of a disability.		1
Lemon Dropping	State the general rule. Physicians have wide discretion to fire patients.		2
	This is not quite as wide as the discretion to cherry pick. There are two constraints.		2
	First, firing a patient is permitted so long as the physician affords adequate notice.		2
	Second, refusing a patient because of nonadherence or comorbid disease could be constrained by the prohibition on refusing because of a disability.		1
Clarity	Ideally, separate the two issues with headings and make a global observation that lemon dropping is more difficult.		3
TOTAL			15
Short Answer 3			
ADA Satisfied	PTF has a disability.		2
	The defendant has denied the PTF a service because of this disability.		2
ADA Not Satisfied	The disability is relevant to the service at issue. There are medical relevant reasons that impact the PTF’s ability to benefit. <i>See, e.g., Glanz; McElroy</i> (you may but need not cite them).		8
Clarity	Identify which element the DEF can show PTF cannot establish. Several asserted a direct threat defense but this was misplaced without any supporting facts.		3
TOTAL			15
Essay 1			
Treatment Relationship	The physician has treated the PTF. They are in a treatment relationship. Therefore, the physician owes a duty of informed consent.		3
Duty	This is Washington, DC, the same jurisdiction as <i>Canterbury</i> . The reasonable patient standard applies.		3
	The RPP would want to know about the other treatments because they have much higher effectiveness.		5
	Even if the RPP would want to know, there is no duty if an exception applies.		
	First, the PTF asked specifically about the least risky treatment. This could be interpreted as a desire to NOT hear about other options. But this is unlikely a waiver.		--
		Second, the PTF has had this disease for some time and may already be aware of other options. But there are no facts to establish she already knew the range of options.	
Breach	DEF did not disclose the other options or their effectiveness.		3
Injury	PTF has suffered complications.		3
Causation	With disclosure, PTF probably would have chosen a more effective treatment. While she wanted to avoid side effects, she would likely be willing to trade-off small side effects for large gains in treatment effectiveness.		4
	With disclosure, the RPP probably similarly would have chosen a more effective treatment.		4
	A more effective treatment probably would have prevented the fistula and thus the surgery. PTF need not establish that the alternative treatment certainly would have prevented. She can concede up to a 49% chance of fistula even with the more aggressive therapy.		4
Clarity	Separate the elements with headings. Separate discussion within the elements with paragraphs.		3+3
TOTAL			35

Note: I use the above tables to tally scores. Your answer should be structured to address these issues and should include some macro organization with headings and paragraphs. But your answers should be written in the format of a memo or brief and not in a table/chart.