

Health Law Quality & Liability - Professor Pope

Final Exam Scoring Sheet – Spring 2021

Multiple Choice (2 points each)						
1. B	5. D	9. C	13. C	17. C	21. G	25. C
2. B	6. B	10. B	14. A	18. E	22. C	
3. A	7. A	11. D	15. B	19. C	23. A	
4. B	8. C	12. B	16. D	20. D	24. C	
TOTAL						50

Essay 1 (20 points)		
Clarity	Roadmap	1
	Organization, headings, paragraphs, white space	1
ADA	PTF is disabled because her Tourette’s limits 1 or more major life activities.	2
	Even if PTF is not disabled, DEF treated her as if she were disabled. That is sufficient (“regarded as having”).	2
	DEF denied PTF treatment because of her disability.	2
	PTF was otherwise qualified for the denied service. While her Tourette’s is related to the procedure, it did not make the procedure totally non-indicated. PTF got (and benefitted from) that same service by another physician.	2
Informed Consent	Duty – In Minnesota DEF must disclose information that the reasonable patient in PTF’s position would deem significant.	1
	Duty – The reasonable patient would want to know about the denied option.	2
	Breach – DEF did not disclose the option of repairing the TRC.	1
	Injury – PTF had to have TRC repair with a second surgeon. That meant: (1) extra time, (2) extra expense, (3) extra recovery time, and (4) delay in having the problem fixed.	2
	Causation – PTF herself would have consented to the undisclosed procedure. After all, she later sought and obtained that same procedure.	1
	Causation – The RP likely would have consented to the undisclosed procedure. But we do not know the precise risks and benefits of alternative option.	1
	Causation – If DEF had disclosed the option and PTF obtained it (from DEF or another surgeon), this likely would have averted the injuries above.	2
TOTAL		20

Essay 2 (20 points)		
Clarity	Roadmap	1
	Organization, headings, paragraphs, white space	1
EMTALA	Triggered – PTF is on hospital property seeking treatment. She is not already an inpatient or outpatient.	1
	Screening – It is unclear whether screening was disparate. But it seems likely given the prior visits.	3
	Screening - Moreover, it is likely screening includes taking an accurate history from the patient. This was not done due to LEP.	2
	Stabilization – DEF did not know about an EMC. Therefore, DEF had no duty to stabilize an EMC. This is true even if there were an EMC. It is true even if DEF ignorance was due to its own faulty screening.	2
	Penalties – There are two type of sanctions: (1) Private COA against hospital. (2) CMP against hospital and physician.	1
Section 1557	DEF must (but did not) use a qualified interpreter.	3
	Emergency exception - Regulations allow deviations in emergencies when there is no time to get an interpreter. But it appears the hospital had an available service. It was just not functioning appropriately.	2
	This is not an ADA issue because PTF is not disabled. Failing to provide access to an LEP patient is discrimination on national origin. Failing to provide access to a hearing-impaired patient is discrimination on disability.	--
Informed Consent	Since DEF was unable (because of LEP) to effectively communicate with PTF, DEF likely did not disclose information that DEF had a duty to disclose. Disclosure might have permitted PTF to avert or mitigate her injuries.	3
TOTAL		20
Essay 3 (10 points)		
Clarity	Roadmap	1
	Organization, headings, paragraphs, white space	1
Battery	This was a non-consensual touching, especially if this was unrelated to the reason the patient sought treatment. Consent for X is not consent for Y. It is also especially problematic if the exam was only for training and not for patient's healthcare at all.	3
	It does not matter that patient did not “feel” it or was not physically harmed by the exam.	--
	Patient's consent may have been provided on the general form the patient signed on admission.	2
Informed consent	Duty - DEF did not disclose that the pelvic exam would be part of the procedure. Since clinicians customarily do not disclose this, there is no duty in most states. But there is likely a duty in reasonable patient states.	2
	Causation & Damages - With disclosure many PTF would decline. But it is unclear whether the PTF suffers physical injuries.	1
TOTAL		10