

Health Law Quality & Liability - Professor Pope

Midterm Exam Score Sheet - Spring 2023

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

Essay 1 (10 points)		
Clarity	Organization, headings, paragraphs, white space	1
Treatment relationship	Physician and Patient are in a treatment relationship. Not only has Physician been treating Patient but has also formally agreed to treat Patient.	1
Notice already given	Through their registration paperwork, Patient has already agreed to termination after two no-shows. So, arguably notice has already been given. But it seems unlikely that Patient would recall this unless reminded after the first no-show that they would be terminated after the second.	2
Terminate with notice	Physician may terminate Patient with sufficient notice for Patient to find a new provider. The fact that Physician has a “good reason” is unnecessary. Nor does it affect the analysis. Note that Physician must ensure Patient understands the importance of timely treatment, or she may breach informed consent duties.	3
Continuing duty to treat	While Physician can terminate, Physician may have an ongoing duty to treat Patient given her time-sensitive need for treatment. While Patient may be able to find a new provider, she may be unable to secure an appointment in time to treat her condition.	3
TOTAL		10

Essay 2 (15 points)		
Clarity	Organization, headings, paragraphs, white space	1
Treatment relationship	APRN and Patient are in a treatment relationship. Not only has APRN been treating Patient but APRN has also formally agreed to treat Patient.	1
Duty	Given this clinic’s location, it is unclear which jurisdiction’s law applies to this APRN. Therefore, you must analyze duty under both standards.	--
	Under the reasonable patient standard, there is likely a duty to disclose because a patient would find it significant that their “doctor” is not an M.D. or D.O., because that is the typical understanding of “doctor.” Plus, it increases risk of misdiagnosis.	2
	Under the reasonable physician standard, there is likely no duty to disclose because APRNs generally do not disclose that they are not “doctors.” The fact that some states had to pass laws to regulate this conduct suggests many were representing themselves as “doctor.” In any case, Patient will need an expert witness to establish the custom standard of care among APRNs.	2
	Arguable exception to duty because patient already knew the APRN status from the website or paperwork.	--
Breach	APRN did not disclose that she was not a “doctor.” Note that this is a breach only if there was a duty to disclose.	2
Injury	Patient’s cancer is now less treatable.	1
Causation	Had Patient known that APRN was not a physician, he would have sought treatment elsewhere (from a Board-certified dermatologist) because that is safer and more effective. Note that whether this claim is credible depends on the availability of such clinicians.	2
	Had a reasonable patient in Patient’s shoes known that APRN was not a physician, they would have sought treatment elsewhere because that is safer and more effective.	2
	Had Patient obtained treatment from a Board-certified dermatologist, Patient probably would not now be injured.	2
Battery	Arguably, what Patient got was fundamentally different than what Patient consented to get.	--
TOTAL		15

Essay 3 (25 points)		
Clarity	Organization, headings, paragraphs, white space	3
EMTALA applies	Patient arrived on hospital property seeking treatment.	1
	This hospital has an ED and most probably participates in Medicare.	
Physician defendant	The Complaint names not only the hospital but also one of its physicians. But EMTALA provides no private cause of action against physicians.	2
Screening	Hospital administered what was apparently a standard screening.	1
Stabilization	The Complaint is not elegantly drafted. But indicates (§§ 4, 16) that Patient had an emergency medical condition, and that Hospital knew of the EMC.	3
	Hospital therefore had a duty to (1) stabilize the EMC, (2) transfer the patient according to pre-stabilization transfer rules, or (3) admit the patient.	
	Whether or not the patient had an EMC, if Hospital did not know about it, it had no duty to stabilize it.	
Admission	Hospital admitted Patient as an inpatient. Therefore, whether there was an EMC and/or whether Hospital stabilized the EMC is not relevant. EMTALA does not apply to inpatients if the admission was in good faith.	3
Good Faith	The admission looks like good faith given how long the patient was admitted (a week) before Hospital tried to transfer.	4
	On the other hand, Hospital admitted patient knowing that it lacked the very resources needed to assess or stabilize Patient's condition.	4
Report Duty	Normally hospitals with specialized capabilities must accept transfers for such capabilities when they have capacity.	2
	But this duty does not apply when the patient has already been admitted to the referring hospital. Therefore, Hospital must report recipient hospital's refusal only if its own admission was not in good faith (and this not a valid admission triggering the duty to accept transfers exception).	2
Penalties	For any of the above violations, Hospital faces liability on this suit but also CMP because the OIG may learn of this suit.	--
Informed Consent	Hospital may have had a duty to disclose (1) its own limitations compared to other hospitals with respect to this condition, and (2) alternative treatment options. Had Patient been so informed, Patient probably would have obtained a better outcome (by making her own transfer).	--
TOTAL		25