

# Health Law Quality & Liability - Professor Pope

## Midterm Exam Scoring Sheet – Fall 2020

Multiple Choice (1½ points each)							
1. A	6. D	11. C	16. E	21. D	26. C	31. F	36. A
2. D	7. A	12. D	17. G	22. B	27. A	32. D	
3. D	8. C	13. B	18. C	23. A	28. D	33. C	
4. A	9. D	14. D	19. C	24. E	29. A	34. C	
5. C	10. D	15. C	20. B	25. B	30. C	35. D	
<b>TOTAL</b>							<b>54</b>

Essay 1 (23 points)		
<b>Treatment relationship</b>	No treatment relationship is required in Minnesota. But there was one in any case both because DEF booked the appointment and because DEF actually treated PTF.	--
<b>Duty</b>	In Minnesota DEF must disclose all treatment risks, benefits, and alternatives that a reasonable patient would deem significant.	3
	A reasonable patient (especially one with high DVT risk) would want to know that telehealth materially limits diagnostic accuracy (risk) and that in-person visits offer more accuracy (benefit).	3
	The diagnostic limitations of telehealth might be obvious, common knowledge and thus an exception to the duty to disclose. But the patient may not appreciate the probability and severity of risk. Indeed, many systems are now making specific telehealth disclosures.	3
<b>Breach</b>	DEF did not disclose the risks of telemedicine.	3
<b>Injury</b>	PTF is dead.	2
<b>Causation</b>	If PTF knew the risks, he probably would have made an in-person visit instead. After all, he visited the ED recently. But we might need to compare DVT risk to COVID risk.	3
	If a reasonable patient in PTF's position knew the risks, they probably would have made an in-person visit, because the risk of DVT is more serious than the small risk of COVID (at least when using PPE). On the other hand, PTF is COVID high risk because he is obese and old.	3
	If the PTF had received an in-person exam rather than a telehealth exam, DEF probably would have corrected diagnosed DVT and arranged corrective therapy.	3
<b>TOTAL</b>		<b>23</b>

Essay 2 (23 points)		
<b>Screening</b>	When the baby is born it "arrives" on hospital property.	4
	Both because the baby is in apparent need of medical attention and because baby's parents are asking for treatment, the hospital must screen for an EMC.	4
<b>Stabilization</b>	Babies this premature probably have an EMC (probably multiple EMCs).	4
	Once the hospital identifies this EMC, it has a duty to stabilize the EMC.	4
	The hospital can admit the baby (if in good faith) or transfer if it does not have a neonatal intensive care unit (NICU). But it cannot simply refuse to stabilize a patient's known EMC. Student might (but need not) cite Baby K.	4
<b>Inpatient exception</b>	Note that the baby and not the mother is the relevant patient. Even if the mother were admitted, that does not mean the baby was admitted.	--
<b>CBO exception</b>	Some noted that clinicians could assert a conscience-based objection. But the federal regulations that might allow this are currently enjoined and on appeal in several circuits.	--
<b>Clarity</b>	Macro organizational structure and presentation.	3
<b>TOTAL</b>		<b>23</b>

**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.