Health Law Quality & Liability - Professor Pope
Midterm Exam Scoring Sheet – Spring 2020

Multiple Choice (2½ points each)					
1. D	3. A	5. G	7. C	9. C	
2. C	4. A	6. C	8. E	10. C	
TOTAL					**25**

Short Answer 1 (12½ points)	"Identify and assess … key risks"	
EMTALA screening duty applies here	The screening duty is triggered, because these individuals are already on hospital PROPERTY (even if not in the ED itself). These individuals are within 50 feet of the front door.	**4**
	The screening duty is triggered, because these patients are SEEKING treatment.	
Violation of EMTALA duty	The hospital provides no screening to some individuals. Instead, the hospital turns away some individuals (those who "look" healthy).	**4**
	If the visual exam purports to be a screening itself, it is not a valid one with a QMP.	
	Note that a rather cursory screening (with a QMP) "might" legitimately be this hospital's protocol for ILI, so long as the hospital applies it uniformly.	
Sanctions	DHHS OIG can impose CMP of up to $100,000 per violation. Given the cumulative number of patients turned away, this could add up quickly.	**4.5**
	DHHS OIG can threaten Medicare decertification.	
	Individuals turned away could file lawsuits, if they were injured as a result of no screening.	
TOTAL		**12.5**

Short Answer 2 (12½ points)	"identify and assess … BEST cause of action"		
Battery	Dr. Jacobs acted OUTSIDE the scope of patient consent. Patient consented to treatment on her right eye today. Dr. Jacobs treated the left eye today.		**6.5**
Battery Counterargument	But patient ALREADY consented to treatment on BOTH eyes. Patient consented to the very same thing that Dr. Jacobs did – treatment of her left eye. Dr. Jacobs did NOT change WHAT was done. She only changed WHEN it was done.		**6**
Informed consent	The battery claim is hard enough. The IC claim is even harder.		**--**
	There may not even be a duty to disclose. Would the RPP even want to know about the change in sequence?		
	Causation is even more difficult to establish.		
		It seems unlikely that THIS patient would withdraw consent to treatment had she been informed of the proposed change in sequence.	
		It seems unlikely that the REASONABLE patient would withdraw consent to treatment had she been informed of the proposed change in sequence.	
		Even if patient refused consent to change the sequence, this very SAME injury would PROBABLY (even definitely) have happened when Dr. Jacobs got to the left eye.	
		If disclosure would probably not have changed the treatment plan and averted the injury, then there is no "but for" causation	
TOTAL			**12.5**

Short Answer 3 (12½ points)	"Assess whether reasonable tortious abandonment claim"	
Patient v. Anthem	Anthem is just an insurance company. Anthem is not in a treatment relationship with patients. Anthem does not treat patients. It just pays for clinicians to provide treatment. Therefore, Anthem did not (and cannot) wrongly terminate a treatment relationship.	**6**
Patient v. Physicians	The physicians did not terminate the relationship. The only conduct here was taken by Anthem, not by the physicians.	**6.5**
	The physicians would like to KEEP these patients. If a patient moved to new doctors, that was the patient's own decision (based on her desire to stay within the newly redesigned network). If the relationship was terminated, it was terminated by the patient. Since the physicians did not even terminate a relationship, they did not wrongly terminate a treatment relationship.	
TOTAL		**12.5**

Short Answer 4 (12½ points)	"Why … risk of informed consent …low"	
IC duty	It is unclear that the RPP would deem such a low risk (1 in 3400) to be material or significant.	**4**
	Courts have ruled as a matter of law (on summary judgment) that no reasonable juror could find statistically very low risks are material.	
IC breach	If there is no duty, then there can be no breach.	**--**
IC causation	It seems unlikely that any given patient would decline surgery (unless it were cosmetic) because of such a small risk, if that surgery were clinically indicated. Forgoing surgery would create HIGHER risk. A reasonable patient would choose the path where benefits outweigh the risks.	**4**
	It seems unlikely that any RPP would decline surgery (unless it were cosmetic) because of such a small risk, if that surgery were clinically indicated.	
IC injury	It is statistically improbable that a patient will be injured.	**4.5**
	Therefore, on top of the fact that any given cause of action is likely to be unsuccessful, your client would be unlikely to even see any such lawsuits.	
TOTAL		**12.5**

Essay (25 points)	"violations and the potential penalties"	
Saint Paul Hospital	SPH has a patient that it knows has an EMC. SPH transferred the patient to SCH without stabilization and without asking the transferee. Probably no civil liability. But DHHS can impose CMP.	**9**
Minneapolis Hospital	MH must accept transfers when both (1) the patient needs its specialized capabilities and (2) MH has capacity. MH had a duty but refused to accept the transfer from SPH (lying or fudging on capacity). Probably no civil liability unless patient can show delay caused injury. But DHHS can impose CMP.	**8**
Saint Cloud Hospital	SCH knew that the transfer from SPH was in violation of transfer rules. SCH had a duty but did not report the bad transfer. Probably no civil liability. But DHHS can impose CMP.	**8**
TOTAL		**25**

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.