Health Law: Quality & Liability

Prof. Thaddeus Pope

ERISA Preemption PROBLEMS

Does PTF have a nonpreempted claim



Betty White denied

Medicare coverage for
procedure. Must she
seek remedy under
ERISA 502?



Law student bought individual plan.
Denied coverage.
Must she proceed under ERISA 502?

May she sue MCO for

Malpractice __

Breach K __

Tort damages __

Problem 3

Prof. Pope works for HU.
HU bought plan from
HealthPartners. HP
denied coverage. Must
Pope seek remedy
under 502?

Any state law claims preempted by 502.

Probably also by 514 (since such law relates to EBP and not insurance)

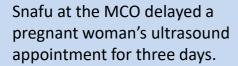
Problem 4

MCO denied approval of hospitalization for pregnant high-risk woman.

During hours when nurse was not present at her home, the fetus went into distress and died. Mother brought a *Wickline* claim.

Problem 5

Problem 6



Before the appointment, she delivered a very large baby with shoulder dystocia.

MD would have done a c-section if ultrasound had been done.

Problem 7

Man with paralysis in extremities is told he needs spinal surgery immediately.

Small hospital transfers him to University Hospital, but MCO won't approve surgery there.

Eventually, another hospital is found, but only after surgery is delayed.

He never recovers use of his limbs.

Problem 8

Assume that a managed care organization covered by ERISA denied a healthcare service **because of** a subscriber's disability.

- (A) Subscriber's **ADA claim** would be preempted by ERISA because subscriber is, in essence, complaining about denial of benefits.
- (B) Subscriber could sue MCO under the ADA.

