Instructor	**Professor Thaddeus Mason Pope**
Course Title	**Health Law: Quality & Liability**
Format	**Final Exam, Spring 2025**
Total Time	**Twenty-four (24) hours**
Total Pages	**17 pages**

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Spring 2025 exam number** and include this number at the top of each page of your exam answer (for example, in a header).

2. Confirm that you are using and have typed the **correct exam number** on your exam document.

3. You may **download** the exam from the course Canvas site any time after 12:01 a.m. on Wednesday, May 7, 2025, and before 11:59 p.m. on Tuesday, March 20, 2025.

4. You must **upload** (submit) your exam answer file to the Canvas site within twenty-four (24) hours of downloading the exam.

5. You must **upload** your exam answer file no later than 11:59 p.m. on Tuesday, May 20, 2025. Therefore, the latest time by which you will want to **download** the exam is at 11:59 p.m. on Monday, May 19, 2025. Otherwise, you will have less time to write your answers than the full, permitted twenty-four (24) hours.

6. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before you upload it to Canvas.

7. Use your exam number as the **file name** for the PDF file that you uploaded.

Instructions Specific to This Examination

GENERAL INSTRUCTIONS:

1. **Honor Code**: While you are taking this exam, you are subject to the Mitchell Hamline Code of Conduct. You may not discuss it with anyone until after the end of the entire **midterm exam period**. It is a violation of the Code to share the exam questions. (There may be an accommodation student taking this exam at a different time.) Shred and delete the exam questions immediately upon completion of the exam. Professor Pope will repost the exam after the end of the midterm exam period.

2. **Competence**: By downloading and accepting this examination, you certify that can complete the examination. Once you have accepted (downloaded) the examination, you will be held responsible for completing the examination.

3. **Exam Packet**: This exam consists of seventeen **(17) pages**, including these instructions. Please make sure that your exam is complete.

4. **Identification**: Write your exam number on the top of each page of your exam answer.

5. **Anonymity**: Professor Pope will grade the exams anonymously. Do **NOT** put your name or anything else that may identify you (except for your exam number) on the exam. **Failure to include your correct exam number will result in a 5-point deduction.**

6. **Total Time**: Your completed exam is due within twenty-four (24) hours of downloading it, but in no case later than 11:59 p.m. on Tuesday, May 20, 2025.

7. **Time Limit**: Canvas automatically locks exam submission 24 hours after download. So, please save enough time after editing to upload your exam.

8. **Timing:** Professor Pope has designed this exam for completion in less than 4 hours. That means you should be able to write complete answers to all the questions in under 4 hours. Yet, since this is a take-home exam, you will want to take some extra time (perhaps 45 minutes) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps 45 minutes) to revise, polish, and proofread your answers, such that you will not be submitting a "first draft."

9. **Scoring**: This final exam comprises 40% of your overall course grade. While the scoring includes 100 points, these points will be weighted.

10. **Open Book**: This is an OPEN book exam. You may use any written materials, including, but not limited to: (a) any required and recommended materials, (b) any handouts from class, (c) PowerPoint slides, class notes, and (d) your own personal or group outlines.

11. **Additional Research**: While you may use any materials that you have collected for this class, you are neither expected **nor are you permitted** to do any online or library research (e.g., on Lexis, Westlaw, Google, reference materials) to answer the exam questions unless specifically directed to do so.

12. **Generative AI**: All answers to this exam must be fully prepared by the student. The use of generative AI tools for any part of your work will be treated as plagiarism.

13. **No Multiple Choice**: While Professor Pope's midterm and final; exams for this class have consistently included multiple choice questions for twenty years, there are no multiple choice questions on this exam.

14. **Format:** This exam consists of two main parts:

Part One 11 short answer questions
Worth 5 points each, for a combined total of 55 points
Estimated time = 110 minutes (10 minutes each)

Part Two 2 short essay questions
Worth 7.5 points each, for a combined total of 15 points
Estimated time = 40 minutes (20 minutes each)

Part Three 1 long essay question
Worth 30 points
Estimated time = 80 minutes

That adds up to less than 4 hours. Remember, you have 24 hours to complete this exam. Therefore, you have time to revise, polish, and proofread.

14. **Summary:**

Short Answer (11 5-point questions)	55
Short Essay (2 7½-point questions)	15
Long Essay (1 30-point question)	30

15. **Grading**: All exams will receive a raw score from zero to 100. The raw score is meaningful only relative to the raw score of other students in the class. Professor Pope computes your course letter grade by summing the midterm, final, and quiz scores. Professor Pope will post an explanatory memo and a model answer to Canvas a few weeks after the exam.

SPECIAL INSTRUCTIONS FOR PART ONE

1. **Answer in Sequence.** Number your answers. Provide these in the sequence on the exam, starting with number 1.

2. **Use Instructions for Parts Two and Three**. While your answers in this part of the exam will be relatively shorter, you might still consider organizing some of them per the instructions for the long essays in Part Two of the exam.

SPECIAL INSTRUCTIONS FOR PART TWO AND THREE

1. **Submission.** Create clearly marked separate sections for each problem. You do not need to "complete" the exam in order. Still, structure your exam answer document in this order: Essay Question 1, Essay Question 2.

2. **Outlining Your Answer.** I strongly encourage you to use at least one-fourth of the allotted time per question to outline your answers on scrap paper before beginning to write. Do this because you will be graded not only on the substance of your answer but also on its clarity and conciseness. In other words, organization, precision, and brevity count. If you run out of insightful things to say about the issues raised by the exam question, stop writing until you think of something. Tedious repetition, regurgitations of law unrelated to the facts, or rambling about irrelevant issues will negatively affect your grade.

3. **Answer Format**. This is very important. **Use headings and subheadings.** Use short single-idea paragraphs (leaving a blank line between paragraphs). Do not completely fill the page with text. Leave white space between sections and paragraphs.

4. **Answer Content**. Address all relevant issues that arise from and are implicated by the fact pattern and that are responsive to the "call" of the question. Do not just summarize all the facts or all the legal principles relevant to an issue. Instead, apply the law you see relevant to the facts you see relevant. Take the issues that you identify and organize them into a coherent structure. Then, within that structure, examine issues and argue for a conclusion.

5. **Citing Cases**. You are welcome but not required to cite cases. While it is sometimes helpful to the reader and a way to economize on words, do not cite case names as a complete substitute for legal analysis. For example, do not write: "Plaintiff should be able to recover under A v. B." Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?

6. **Cross-Referencing.** You may reference your own previous analysis (e.g., B's claim against C is identical to A's claim against C, because __." But be very clear and precise what you are referring to. As in contract interpretation, ambiguity is construed against the drafter.

7. **Balanced Argument**. Facts rarely fit rules of law perfectly. So, recognize the key weaknesses in your position and make the argument on the other side.

8. **Additional Facts**. If you think that an exam question (fairly) nraises an issue but cannot be answered without additional facts, state clearly those facts (reasonably implied by, suggested by, or at least consistent with, the fact pattern) that you believe to be necessary to answer the question. Do not invent facts out of whole cloth.

Exam Misconduct

The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted by the exam or proctor, prohibited conduct includes:

- Discussing the exam with another student
- Giving, receiving, or soliciting aid
- Referencing unauthorized materials
- Reading the questions before the examination starts
- Exceeding the examination time limit
- Ignoring proctor instructions

Part One: Short Answer Questions

- These 11 questions are worth 5 points each, for a combined total of 55 points.
- Limit your responses to under 250 words each. This is an outside limit not a requirement., Many of these questions can be answered in far fewer words.
- Recommended time is 10 minutes each.

Use the following fact pattern for Short Answer Questions 1 to 7.

A pregnant woman who is deaf presents at an obstetrics and gynecology doctor's office, seeking prenatal care, during the office's "walk-in" hours. The patient is a Medicaid beneficiary, and this doctor accepts Medicaid funds. The patient is accompanied by her father who interprets for her. When the doctor realizes that the patient is deaf, almost immediately upon entering the exam room, he refuses to treat her, saying all deaf patients are "high risk." The doctor indicates that he does not treat high risk patients in his office and recommends that she go to a different provider.

The patient's father then informs the doctor that the patient is suffering from a high fever and asks for the doctor to examine and stabilize her before they seek care elsewhere. The doctor refuses and leaves the exam room. He does not take the patient's medical history. He does not perform any examinations during this time.

The father follows the doctor out of the exam room and requests the doctor to reconsider. The father indicates that she believes his daughter might have a kidney infection. He also explains that his daughter's deafness is a result of a genetic disorder, a condition which might influence other aspects of the woman's health while pregnant. The doctor repeats that he will not take on the patient, referring to the genetic condition and the kidney infection as two conditions with which he lacks familiarity or expertise.

1. Is the doctor likely a covered party under civil rights laws? Why or why not?

2. Which law(s) might the patient use to allege discrimination?

3. What is the protected trait(s)?

4. What case would you make that the doctor is discriminating against the patient?

5. If you were the lawyer for the doctor, how might you best defend against any likely civil rights claims?

6. If you were the judge, who ultimately would prevail?

7. Apart from civil rights, is the doctor subject to any other legal risk for his conduct?

Use the following fact pattern for Short Answer Questions 8 and 9.

Gavin had extreme abdominal pain and went to the Metro Milwaukee Hospital Emergency Room because he had seen billboards that said, "Metro Milwaukee Hospital can handle all of your surgical emergencies." When Gavin arrived, there was a large sign in the ER that said, "Anesthesia services are provided by All American Anesthesiologists, Inc. (AAA). AAA is a separate entity from Metro Milwaukee Hospital and will send you a separate bill for their services."

Dr. Noah Wylie was the anesthesiologist from AAA who administered anesthesia to Gavin during Gavin's emergency appendectomy. Unfortunately, Dr. Wylie failed to properly monitor Gavin's vital signs during surgery. More specifically, Dr. Wylie missed the drop in Gavin's levels of oxygen saturation. This caused hypoxia, which caused brain damage to Gavin. You are Gavin's attorney. Answer the following questions regarding Gavin's possible claims against Metro Milwaukee Hospital.

8. Will Gavin will be UNLIKELY to succeed in any legal claim against Metro Milwaukee Hospital because of the disclaimer sign that AAA is a separate entity from Metro Milwaukee Hospital?

9. If Gavin signed a disclaimer negating apparent authority and the court is prepared to enforce this disclaimer, will Gavin be UNLIKELY to succeed in a legal claim against Metro Milwaukee Hospital alleging the Hospital failed to routinely supervise and confirm the competence of the AAA anesthesiologists.

Use the following fact pattern for Short Answer Questions 10 and 11.

Walt is in a car accident in a rural area due to a malfunction of his vehicle. Fortunately, another motorist stopped and called an ambulance. Walt was taken to the closest hospital, Minnetonka Memorial Hospital. Minnetonka Memorial is a small, rural hospital, but proudly offers emergency medicine services for the surrounding areas. Walt was treated by Dr. Flowers, a doctor that Minnetonka Memorial contracted with to provide medical services. Dr. Flower's contract with Minnetonka Memorial dictates that he is an independent contractor.

Dr. Flowers examined Walt and ordered an x-ray for Walt. X-ray was really the only option. Minnetonka Memorial did not have a CT scanner or an MRI machine. This irritated Dr. Flowers. Minnetonka Memorial had money, but it kept the money in what it called a "rainy day" fund instead of using it to purchase the most up to date equipment for doctors to use to diagnose patients. Returning to Walt, the x-ray did not show any broken bones or other detectable internal injuries. Dr. Flowers ordered that Walt be kept for observation for any neurological issues. When no issues arose within the next three days, Walt was discharged.

What the x-ray did not (and could not) detect was that Walt had a brain injury. Three days later when he was home, Walt was swimming laps early one morning in his pool. Walt had a seizure and drowned. Had Walt's brain injury after the car accident been detected, the standard of care would have dictated prescribing anti-seizure medications as the risk of seizure increases after traumatic brain injury. Walt's family hires you to determine if they have an actionable tort claim.

10. If expert testimony shows that most physicians would have used an MRI or CAT scan, rather than an x-ray, can Walt establish breach in his case against Dr. Flowers?

11. Suppose that Dr. Flowers did not commit malpractice because he used only an x-ray. Does his conduct expose Dr. Flowers to any other liability?

Part Two: Short Essay Questions

- These 2 short essay questions are worth 7½ points each, for a combined total of 15 points.
- Limit your responses to under 500 words each. This is an outside limit not a requirement.
- Recommended time is 20 minutes each.

Short Essay Question 1 of 2

Abby had been seeing Dr. Peach for many years. Unfortunately, despite blood tests in 2020 and 2022 that threw up red flags for diabetes, Dr. Peach failed to diagnose that ailment. Later, in April 2023, Abby went to Dr. Peach complaining of a severe headache and other symptoms. The next day, April 29, 2023, she went to a local hospital with worsening symptoms and was found to have diabetic ketoacidosis.

Diabetic ketoacidosis is a serious, potentially life-threatening complication of diabetes that occurs when the body produces high levels of blood acids called ketones. After receiving this diagnosis and a hospital determination that she had been suffering from diabetes for at least five years, but before she was discharged on May 3, 2023, Abby remarked to hospital staff that she thought Dr. Peach had not treated her appropriately. To confirm this, in August 2023, Abby obtained her medical records from Dr. Peach, and another physician reviewed these records and confirmed that Dr. Peach failed to diagnose diabetes clearly indicated in 2020 and 2022.

On May 6, 2025, Abby sued Dr. Peach, accusing him of failing to properly diagnose her diabetes, which caused her to suffer diabetic ketoacidosis, requiring a stay in an intensive care unit. This jurisdiction has a two-year statute of limitations and a three-year statute of response.

Address whether Abby's claims against Dr. Peach are time-barred.

Short Essay Question 2 of 2

Dora-Daisy was nonverbal and had a history of seizures. She aspirated food while at a care facility. She soon showed signs of respiratory distress, such as coughing, foaming at the mouth, raspy breathing, weakness, and pale complexion. Staff contacted their supervisor who concluded with the nurse that Dora-Daisy may have aspirated. Despite her signs of respiratory distress, staff did not immediately call 911, per their protocol. Instead, staff transported Ms. Dora-Daisy to an urgent care clinic that accepted her insurance. But they did this only after first searching for in-network clinics.

By the time Dora-Daisy arrived at the urgent care clinic, her condition had already deteriorated So, she was immediately transferred to a hospital where she was diagnosed with acute respiratory distress syndrome (ARDS), septic shock, and aspiration pneumonia. It was now two hours since Dora-Daisy first showed signs of respiratory distress at the care facility. Despite receiving antibiotics and treatment at the hospital, her condition continued to worsen, and she died.

Dora-Daisy's family obtained an expert who testified:

> The delay in obtaining emergency care for Amy Dora-Daisy and failure to provide all relevant medical information to other decision-makers and medical personnel probably caused her rapid clinical deterioration and subsequent ARDS, septic shock, multi-system organ failure, and death.
>
> Had Amy Dora-Daisy's change in clinical status been immediately acted on with rapid evaluation and treatment, in all likelihood, her condition never would have deteriorated to ARDS, septic shock, multi-system organ failure, and ultimately her death.

The care facility obtained an expert who testified:

> Even if the care facility had called 911, it is unclear that Dora-Daisy would have been immediately transported, evaluated, properly diagnosed, and promptly treated with antibiotics. The chain of causation contains too many gaps.

Assume that the care facility breached its duty. Evaluate whether Dora-Daisy's family can establish that this breach caused her death.

Part Three: Long Essay Question

- This question is worth 30 points.
- Limit your response to 2000 words. This is only a limit, not a target or suggested length.
- The recommended time is 80 minutes.
- The law in the Statutory Appendix applies to the case in this long essay question. To the extent the statutory appendix does not address a legal question, that question is governed by federal law or by generally accepted healthcare standards.

Medical Background on Vasectomies

When discussing reproductive health choices, one procedure has been gaining attention, especially since the fall of *Roe v. Wade*, for its effectiveness: the vasectomy. As individuals and couples explore long-term contraception options, vasectomies have emerged as a popular choice for those seeking a permanent solution. Rates have increased by 25% over the past decade. Today, over 600,000 vasectomies are done each year in the United States. With its relatively low risks and high success rates, this procedure is reshaping conversations about family planning.

Vasectomy is a surgical procedure for male sterilization or permanent contraception in which the *vas deferens* are cut and tied or sealed to prevent sperm entering the urethra and thereby preventing fertilization through sexual intercourse. A vasectomy blocks the *vas deferens*, the tubes that are the highway for sperm between the testes and penis. Typically, one small cut will be made in the skin on each side of the scrotum. The *vas deferens* will be pulled through the openings. The tubes will then be cut. A small piece of the tubes may also be removed. The ends of the tube will be sealed off with stitches, clips, or an electrical pulse. The *vas deferens* will then be placed back into the scrotum. The incision will be closed with stitches.

The vasectomy procedure is not fool proof. Most failures happen in the first few months after the procedure when live sperm may still be in the man's semen. Vasectomy can fail, for example, if the doctor misses the *vas deferens* during the procedure or where the cutting and closure of the tubes is not effective, and the *vas deferens* grows back (re-canalization). After the procedure, it is extremely important that there are repeat sperm assays over an extended period to ensure that there is no sperm in the semen. Clinical practice guidelines and generally accepted healthcare standards advise doctors to counsel patients on the necessity of repeat sperm assays.

Allen Gets a Vasectomy

Allen Musk is 39 years old. His wife, Beverly, is 35 years old. They have four children under age seven. In early 2021, Allen and his wife decided that they did not want any additional children. Among other things, Beverly wanted to resume her career, as her professional advancement had slowed while taking care of the four children. So, in March 2021, Allen went to West Dakota Urology for a vasectomy.

Dr. Snip, an employee and equity partner in West Dakota Urology, performed the procedure. But rather than using the traditional incisional technique with a scalpel, Dr. Snip used an alternate technique. Dr. Snip did not use a scalpel and did not make a scrotal incision. Instead, he used a high-pressure jet injector. Systematic reviews of published randomized controlled trials show that the high-pressure jet injector is an increasingly popular alternative and reduces the risks of intraoperative bleeding, perioperative pain, and postsurgical infection.[1]

After the procedure, Dr. Snip advised Allen to return for a semen test. Dr. Snip further advised Allen to continue using contraceptives until he got the results of this test. Allen returned about eight weeks later, in May 2021. At that time, West Dakota's Nurse Nancy advised Allen that his test was negative. In fact, the test was positive.[2] But based on the communicated (negative) test results, Allen and Beverly resume having unprotected sex.[3] Having received this "clearance," Allen never returned for the subsequent semen analysis recommended in the "patient visit summary" papers that Allen received both at the vasectomy and at the visit with Nurse Nancy.

Vasectomies Are Not 100% Effective.

A vasectomy is a minor surgical procedure, which is aimed at eventually achieving permanent birth control. The procedure involves the surgical interruption of a tube called the *vas deferens*. The *vas deferens* is the tube that drains sperm from the testicle outwards and a man typically has two of them, one on each side. The idea is to interrupt these tubes and then allow enough time for the sperm to wash out that at the time of the vasectomy was already beyond the vasectomy site. The procedure usually takes about 20–30 minutes. One or two small cuts are made in the scrotum with a scalpel or no-scalpel instrument. The *vas deferens* are cut and tied or sealed with heat. The skin may or may not be closed with sutures.

There is a risk of failure. Even if done properly by an experienced physician, vasectomies could fail. This is not necessarily due to surgical error which is a possibility. Studies that show potential reconnection can happen. So, vasectomy would never provide a 100% guarantee. The only way to reach a 100% guarantee of no pregnancy is simply to avoid sexual intercourse altogether. Even after a man gets a vasectomy and later gets a semen test that will show no sperm cells in the semen, there is still a very small risk for an unwanted pregnancy in the future. While Dr. Snip did not "promise" perfect success, neither did he convey this failure risk to Allen.

Even if perfectly performed, a vasectomy is not *immediately* effective. If you imagine a tube through which sperm is passing, the vasectomy basically occludes that tube, so sperm does not pass through anymore. But there are still sperm that was already on the other side of that tube.

[1] While this approach is supported by both peer-reviewed evidence and widespread practice, Dr. Snip may use this approach because he is a paid consultant for the company that manufactures the injector device.
[2] To be sure, there is a risk of false negative results. But this test result was positive for sperm. The test result was not accurately communicated to Allen. West Dakota Urology apparently never trained its non-physician staff on how to read and record these test results.
[3] At this time, Allen also resumed having unprotected sex with his mistress, a promiscuous woman with whom he worked. Coincidentally, that woman also became pregnant - in March 2023.

All that old sperm must be cleared out for men to become sterile. So, clinicians check a post-vasectomy semen analysis about three months after the procedure to make sure all that old sperm has been cleared out. This is "azoospermia," the condition where no sperm are present in a man's ejaculate. Sometimes men may take longer. So, it can take up to six months or so to clear out all the old sperm.

Allen's Wife Beverly Gets Pregnant.

In April 2025, Beverly discovered that she was thirteen weeks pregnant. Allen immediately returned to West Dakota Urology for another semen test. It was positive. Allen and Beverly were distressed by this pregnancy. After all, Beverly had just moved into a new career position, since her other children are in kindergarten or grade school. Allen and Beverly must bear the expenses of prenatal care, childbirth, and raising another child. And Beverly must undergo the discomfort associated with another pregnancy and delivery (which is now expected in October 2025).

Informal Discovery about West Dakota Urology

Because Allen and Beverly have not yet filed a lawsuit, they have not yet obtained any formal discovery (e.g., documents, interrogatories, RFAs, depositions). But the senior partner at your law firm has obtained information from other lawyers who have asserted other claims against West Dakota Urology for other parties.

For example, Nurse Nancy is longer employed by West Dakota Urology. Her colleagues reported that since at least 2019, Nurse Nancy regularly smelled like alcohol at work and missed or was late to work more than 25 times within a four-month period. Both Nurse Nancy's peers and supervisors raised concerns that she struggled to pay attention to details such as scanning information into the correct patient's chart and renewing prescriptions according to protocol. But Nurse Nancy continued working at West Dakota Urology until early 2022, when she quit, explaining that her job caused her to become sick and have anxiety.

Informal discovery further indicates that physicians at West Dakota Urology did not review their patient's post-vasectomy results even though that is customary practice in West Dakota. This task was left to the nurses or other staff. Nor did West Dakota Urology have an adequate tracking system in place to have results reviewed and relayed to patients. Most medical practices that provide vasectomies have more safeguards against reporting errors.

Assess Allen and Beverly's Potential Lawsuit.

Allen and Beverly have come to your law firm because they want to hold healthcare providers accountable. And they want compensation. **The senior partner has asked you to identify and to assess all claims that Allen and Beverly might bring against any party.** Based on this analysis, the senior partner may then ask you to draft a complaint to be filed and served by the end of May 2025.

West Dakota Statutory Appendix

Exam Stat. 100

This state rejects the existence of any "limited" treatment relationship as has been recognized in some jurisdictions, *e.g. Bazakos v. Lewis* (N.Y. 2009). Physicians either are in a treatment relationship with an individual, or they are not in a treatment relationship with that individual.

Exam Stat. 200

An action for health care liability must be brought within one year of when the cause of action accrues. Such action does not accrue until there has been either (a) discovery of the facts constituting the health care liability or (b) discovery of the facts that are sufficient to put a person of ordinary intelligence and prudence on an inquiry which would lead to such discovery.

Exam Stat. 300

A claimant must bring a health care liability claim not later than four years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose so that all claims must be brought within four years, or they are time barred.

NOTE: As in many other states, the constitutionality of this statute is being challenged in the appellate courts of West Dakota.

Exam Stat. 400

Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others. The court shall specifically review the punitive damages award and shall make specific findings.

Exam Stat. 500

The following are necessary elements of proof that an injury or death resulted from the failure of a health care provider to follow the accepted standard of care:

(a) Such failure was a proximate cause of the injury or death; *or*

(b) The health care provider's failure to follow the accepted standard of care deprived the patient of a chance of recovery or increased the risk of harm to the patient which was a substantial factor in bringing about the ultimate injury to the patient, the plaintiff must also prove, to a reasonable degree of medical probability, that following the accepted standard of care would have resulted in a greater than twenty-five percent chance that the patient would have had an improved recovery or would have survived.

Exam Stat. 600

(a) The following are necessary elements of proof that injury resulted from health care in a civil negligence case or arbitration involving the issue of the alleged breach of the duty to secure an informed consent by a patient or his or her representatives against a health care provider:

(1) That the health care provider failed to inform the patient of a material fact or facts relating to the treatment
(2) That the patient consented to the treatment without being aware of or fully informed of such material fact or facts
(3) That a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts
(4) That the treatment in question proximately caused injury to the patient.

(b) Under the provisions of this section a fact is defined as or considered to be a material fact, if a reasonably prudent person in the position of the patient or his or her representative would attach significance to it deciding whether to submit to the proposed treatment.

Exam Stat. 700

In a civil action for damages, the plaintiff's contributory negligence, if any, which is 50% or less of the total proximate cause of the injury or damage for which recovery is sought, does not bar his recovery. However, the total amount of damages to which he would otherwise be entitled is reduced in proportion to the amount of his negligence. This is known as comparative negligence. If the plaintiff's contributory negligence is more than 50% of the total proximate cause of the injury or damage for which recovery is sought, the defendant[s] shall be found not liable.

Exam Stat. 800

In any case, claim or action for damages due to injury to or death of any person, brought against any physician and surgeon or other provider of health care, including, without limitation, any dentist, physicians' assistant, nurse practitioner, registered nurse, licensed practical nurse, nurse anesthetist, medical technologist, physical therapist, hospital or nursing home, or any person vicariously liable for the negligence of them or any of them, on account of the provision of or

failure to provide health care or on account of any matter incidental or related thereto, such claimant or plaintiff must, as an essential part of his or her case in chief, affirmatively prove by direct expert testimony and by a preponderance of all the competent evidence, that such defendant then and there negligently failed to meet the applicable standard of health care practice of the community or a community substantially similar to the one in which such care allegedly was or should have been provided, as such standard existed at the time and place of the alleged negligence of such physician and surgeon, hospital or other such health care provider and as such standard then and there existed with respect to the class of health care provider that such defendant then and there belonged to and in which capacity he, she or it was functioning.

Exam Stat. 900

This jurisdiction recognizes an action for wrongful conception where conception would not have occurred but for negligent provision of medical care.