

ID _____

Triggered by arrival	5	
Duty to screen Probably not uniform	10	
Duty to stabilize Not know EMC from screening But obvious	10	
TOTAL	25	

ERISA apply because employee benefits	5	
502 because nature of claim	8	
514 because “relate to”	8	
Remove and move to dismiss state claims	4	
TOTAL	25	

Battery – consent was conditional	10	
Breach of contract Specific promise	8	
Was in writing	8	
Treatment relationship	5	
Informed consent Side effects might be considered material	5	
Suffered from side effects	5	
Not clear if caused by surgery – preexisting condition	5	
Unclear if would change decision of reasonable person	5	
Medical malpractice Stuart	5	
Salby	5	
Galina	5	
Morris	5	
Alternate standard of care	5	
Causation is clear	5	
Statute of limitations	5	
Other parties Vicarious - maybe Pathologist – but not expert	7	
TOTAL	85	

PART ONE

15 questions worth three points each = 45 points

Suggested time = three minutes each = 45 minutes

1. **The standard of care for medical professionals:**

- A. In most cases is for courts to determine, in keeping with the principles set out in *Helling v. Carey*.
- B. In most cases is derived from clinical practice guidelines established by committees of nationally recognized expert specialists.
- C. Must always be established by testimony from a medical care provider of the same specialty as the defendant.
- D. **None of the above is correct.**

2. Dr. Kronstadt served as patient's physician from 1987 to 2006. During this time, Kronstadt tested patient's PSA levels as part of patient's annual physical exams. PSA tests may reveal evidence of prostate diseases. A normal PSA test is in the 0 to 4 range. Results above 4 may indicate prostate disease. Patient's PSA test results were 3.8 in July 2001, 5.7 in July 2002, 5.2 in July 2003, 5.86 in July 2004, 4.7 in July 2005, and 7.7 in July 2006. After receiving patient's PSA test results in July 2006, Kronstadt referred patient to an urologist. The urologist diagnosed patient with adenocarcinoma of the prostate.

Following this diagnosis, in December 2006, patient obtained all his old PSA test results. On September 14, 2008, patient filed a medical malpractice action against Kronstadt, alleging that Kronstadt violated the applicable standard of care by failing to refer him to an urologist in 2002, 2003, 2004, 2005, and that this failure delayed his diagnosis until after his cancer had spread and his treatment options were limited. The jurisdiction has a three-year statute of repose.

Is patient's claim barred?

- A. Yes, except as to the lack of referral in 2005, because the lawsuit was filed more than three years after the other negligent acts.
- B. Yes, because the last negligent act was performed more than three years before the filing of the lawsuit.
- C. No, because the lawsuit was filed within three years of patient's discovery of Kronstadt's negligence.
- D. **No, because the lawsuit was filed within three years of the end of the course of treatment by Kronstadt.**

USE THIS FACT PATTERN FOR BOTH PROBLEMS 3 AND 4

Patient was a patient of Doctor. Patient had lab work performed in July 1995, May 1997, and October 1998. Each of these tests revealed that Patient has significantly elevated liver enzyme levels. But Doctor did not notify Patient of these abnormalities. After Patient had begun seeing another physician, in December 2008, Patient was diagnosed with liver cancer. On May 21, 2009, Patient filed a complaint against Doctor for medical malpractice. This jurisdiction has a four-year statute of repose.

3. Which of the following is true?

- A. **The claim is barred by the statute of repose.**
- B. The claim pertaining to the 1995 and 1997 tests are barred, but the claim relating to the 1998 test are not.
- C. The claim is not barred by the statute of repose, because it was filed less than one year after the malpractice was discovered.
- D. The claim is not barred by the statute of repose, because of the course of treatment doctrine.

4. What is the latest date on which Jerry could have filed a non-barred lawsuit?

- A. July 1999.
- B. May 2001.
- C. October 2002.**
- D. December 2012.

5. Julie went to see Dr. Creep because she was having hip pain. During the course of the overall medical examination, Dr. Creep penetrated her vagina with his fingers. He did not inform Julie that he would be performing a vaginal exam. He did not wear gloves. He did not use lubrication. He did not make a note of the vaginal exam in the medical record. Julie has sued Dr. Creep because she thinks that the vaginal exam was purely sexually motivated. But she failed to disclose an expert who would testify in her case-in-chief.

Julie may have a successful cause of action for:

- A. Medical malpractice
- B. Battery
- C. Intentional infliction of emotional distress
- D. Breach of contract
- E. A and B
- F. B and C**
- G. More than two of the above (A – D)

6. In 2001, Psychiatrist began treating Bruce, a then 38-year-old, mentally ill patient with a history of violence. In May 2002, Psychiatrist ordered that two of Bruce's medications, Zyprexa and Luvox, be discontinued for six weeks to rule out the possibility that Bruce might be developing neuroleptic malignancy syndrome ("NMS"). About two weeks after Bruce stopped taking Zyprexa and Luvox, he began having nightmares, panic attacks, and bouts of heavy sweating. He also started hearing voices telling him to kill. He brutally attacked his Neighbor. Neighbor has sued Psychiatrist, and has obtained an expert witness to opine that, if Bruce had NMS, which the expert believed he did not, the proper procedure would have been to hospitalize him.

What claim might Neighbor successfully assert against Psychiatrist?

- A. Medical malpractice
- B. Battery
- C. Negligence
- D. Breach of contract
- E. More than one of the above

USE THIS FACT PATTERN FOR BOTH PROBLEMS 7 AND 8

Krissi, a resident of Delaware, suffered from ongoing mental health problems. On the recommendation of her case manager, Krissi consulted with Psychiatrist, a resident of Iowa not licensed in Delaware, through a telepsychiatry research study that he was conducting. Krissi and her case manager expected that Psychiatrist would aid in Krissi's treatment through his expertise. Given the increase in Krissi's angry and aggressive behavior and self-mutilation especially, they were especially eager for recommendations about Krissi's medication.

Psychiatrist was provided with a very recent medical evaluation of Krissi performed by another doctor, which was supplemented by additional information about Krissi from Krissi's treatment team. Krissi also completed a pre-assessment documentation, and participated in a one-time, ninety-minute video-conference session with Psychiatrist in August 2010, in which Psychiatrist performed a psychiatric evaluation of Krissi.

Psychiatrist completed a consultation evaluation that described Krissi and the history of her present illness. The Evaluation also provided a diagnostic impression of Krissi and set forth recommendations for an initial treatment plan. The Evaluation specifically stated that, consistent with the telepsychiatry research protocol, no follow-up services would be provided, and no medication prescriptions would be directly provided. The report further explained that the recommended treatment plan was to be weighed by Krissi's treatment team, for possible implementation. After sending his evaluation, the psychiatrist had no further interaction with plaintiffs, Krissi, or any member of her treatment team. Krissi committed suicide in February 2011.

7. **Can Krissi's estate sue Psychiatrist for medical malpractice?**
- A. Yes, because she and Psychiatrist were probably in a treatment relationship.
 - B. Yes, even if Psychiatrist was only providing an informal, curbside consult.
 - C. No, because at the time Krissi committed suicide, any treatment relationship had already been validly terminated.
 - D. No, because Psychiatrist was only providing an informal, curbside consult.

8. **Psychiatrist might be subject to the WHICH of the following regulatory sanctions.**
- A. Criminal, for practicing in Delaware without a license.
 - B. Sanctions from the Iowa Medical Board for practicing without a license in Delaware.
 - C. Both A and B.
 - D. Neither A nor B, because Psychiatrist was licensed in at least one state.

USE THIS FACT PATTERN FOR BOTH PROBLEMS 9 AND 10

Even if well-performed, a sterilization procedure is not always effective in preventing pregnancy. Plaintiff had a tubal ligation (cutting of fallopian tubes) in October 2008. But in October 2010, she discovered that she was pregnant. She gave birth in June 2011. Plaintiff is now suing the surgeon who performed the sterilization for medical malpractice.

9. **Which of the following is probably true?**
- A. Plaintiff needs an expert to establish the standard of care.
 - B. Plaintiff can use *res ipsa loquitur*, since she was pregnant after a sterilization procedure.
 - C. Plaintiff can also sue for breach of contract, given the implicit promise: the whole point of a sterilization procedure was to prevent pregnancy.
 - D. Both B and C.
10. **If this jurisdiction has a one-year statute of limitations and a one-year statute of repose for all claims against a healthcare provider, then:**
- A. Plaintiff must file by October 2009.
 - B. Plaintiff must file by October 2010.
 - C. Plaintiff must file by October 2011.
 - D. Plaintiff must file by June 2012.

11. In 2005, Madeleine was diagnosed with breast cancer. She had a double mastectomy but declined chemotherapy or radiation treatment. In 2010, Madeleine's condition had deteriorated significantly. She was admitted to the hospital the same day with a diagnosis of metastatic breast cancer with liver and bone metastases. Her cancer had spread to her liver, skull, vertebrae, spleen, lymph nodes, and uterus. Dr. Darr felt Madeleine's condition was grave and she should be admitted to hospice. Dr. Darr ordered palliative care, including medications for pain. He felt that her prognosis was measured in days at the most. Madeline died several days later.

Madeline's husband, Steve, filed a medical malpractice action against Dr. Darr, alleging that Madeline's death was expedited by the over-administration of pain medication. Two experts testified. Dr. Madison testified that Madeleine only had a short time to live and could die at any time, and that the administration of medication could have actually prolonged Madeleine's life. Dr. Tibb opined that Madeleine's death would probably have occurred within the same time frame, regardless of the administration of medication. This is a traditional causation jurisdiction.

- A. Steve should survive summary judgment, because a reasonable jury could find it is **possible** that Madeline's death was hastened by over-medication.
 - B. Steve should survive summary judgment, because a reasonable jury could find that the Dr. Darr deprived Madeline of a chance of surviving longer.
 - C. Summary judgment should be granted in favor of Dr. Darr, because no reasonable jury could find it is **probable** that Madeline's death was hastened by over-medication.
 - D. Summary judgment should be granted in favor of Dr. Darr, because no reasonable jury could find **beyond a reasonable doubt** that Madeline's death was hastened by over-medication.
12. In February 2011, Shane presented to Hospital complaining of chest pain and described a history of cardiovascular disease. At Hospital's emergency department, there are protocols for the classification of patients: "one," which mentions chest pain, is reserved for the most severe cases; "two" for less severe; and "three" for the least severe. The urgency and aggressiveness of the treatment of a patient depends on the triage classification. Shane was classified as a category 3 patient and was not seen for some time. Shane's unstable diagnosis was never diagnosed, because she died from a myocardial infarction before being seen by a cardiologist.
- A. Hospital has violated its EMTALA screening obligation.
 - B. Hospital has violated its EMTALA stabilization obligation.
 - C. Hospital has violated BOTH its screening and stabilization obligations.
 - D. Hospital has violated NEITHER its screening and stabilization obligations.

13. In August 2011, the Centers for Medicare and Medicaid Services (an agency within the U.S. Department of Health and Human Services) sent the following letter to a Texas hospital:

After a careful review of the July 2011 survey report, the CMS has determined that Parkland Health and Hospital System no longer meets the requirements for participation in the Medicare program because of deficiencies that represent an immediate and serious threat to patient health and safety. . . . Unless the serious and immediate threat to patient health and safety is removed, your hospital's Medicare agreement will be terminated on September 2, 2011.

This hospital is at risk of losing its:

- A. License, and can no longer operate
 - B. License, but can still legally operate
 - C. Accreditation, and can no longer operate
 - D. Accreditation, but can still legally operate
 - E. Certification, and can no longer operate
 - F. Certification, but can still legally operate
14. Between January 2011 and June 2011, Dr. Woo, a Pennsylvania physician wrote 127 prescriptions for 7640 tablets of Schedule II and IV controlled substances (an average of 20 prescriptions and 1200 tablets per month) for an Idaho resident without ever conducting a physical examination, without requesting medical records, and without contacting the individual's other treating physicians.

Dr. Woo is probably subject to sanctions from:

- A. The Joint Commission.
- B. The Delaware Medical Board.
- C. The Office of the Inspector General, U.S. Department of Health & Human Services (who brings civil monetary penalties for EMTALA violations)
- D. The U.S. Department of Justice (who sometimes enforces the ADA).

15. Neil was admitted to the Butt Rehabilitation Center (BRC) in 2009, suffering from dementia, hypothyroidism, and COPD. He was at risk of falling and had fallen several times at home. At BRC, Neil fell thirteen times, and ultimately died as a result of complications from the falls. His wife, as representative of his estate, filed a malpractice action against BRC. Each of plaintiff's three expert witnesses testified that BRC breached the nationwide standard of care.

If this claim is governed by the laws of Narnia (see Statutory Appendix), then:

- A. The trial court should grant summary judgment to defendant, since plaintiff has not established the applicable standard of care.
- B. The trial court should grant summary judgment to defendant, since Neil was not in a treatment relationship with BRC.
- C. The trial court should deny defendant's motion for summary judgment, because it is up to the jury to set the standard of care.
- D. The trial court should deny defendant's motion for summary judgment, because plaintiff has submitted sufficient evidence from which the jury might ascertain the applicable standard of care.