

Instructor	Professor Thaddeus Mason Pope
Course Title	Health Law: Quality & Liability
Format	Final Exam, Spring 2020
Total Time	Twenty-Four (24) hours
Total Pages	18 pages

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Spring 2020 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 Tuesday, May 5, 2020 and before 11:59 p.m. on Sunday, May 16, 2020.
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 Sunday, May 16, 2020. Therefore, the latest time by which you will want to download the exam is 11:59 p.m. on Saturday, May 15, 2020. Otherwise, you will have less time to write your answers than the full permitted twenty-four hours.
6. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to Canvas.
7. Use your exam number as the **file name** for the PDF file that you upload.

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 final 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 final exam period.
2. **Competence:** By downloading and accepting this examination, you certify that you 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 eighteen **(18) 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 24 hours of downloading it, but in no case later than 11:59 p.m. on Sunday, May 16, 2020.
7. **Time Penalty:** If you upload your exam answer file more than 24 hours after downloading the exam, then Professor Pope will lower your exam grade **by one point** for every minute over the 24 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 24-hour limit by more than 20 minutes, then Professor Pope may refer the situation for a Code of Conduct investigation and potential discipline. Please save enough time after editing to upload your exam.
8. **Timing:** Professor Pope has designed this exam for completion in three hours. That means you should be able to write complete answers to all the questions in three 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 midterm 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.
12. **Format:** The exam consists of two parts:

Part One 26 multiple choice questions
 Worth 2 points each, for a combined total of 52 points
 Estimated time = 52 minutes (2 minutes each)

Part Two 3 essay questions
 Worth 16 points each, for a combined total of 48 points
 Estimated time = 135 minutes (45 minutes each)

That adds up to three hours. Remember, you have twenty-four hours to complete this exam. Therefore, you have time to revise, polish, and proofread.
13. **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. He will post an explanatory memo and a model answer to Canvas a few weeks after the exam.

SPECIAL INSTRUCTIONS FOR PART ONE

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 26). Next to each number type the letter corresponding to the best answer choice for that problem. For example:
 1. A
 2. D
 3. B . . .
2. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why immediately after your answer choice. Your objection must both (a) Identify the ambiguity or problem in the question and (b) Reveal what your answer would be for all possible resolutions of the ambiguity. I do not expect this to be necessary.

SPECIAL INSTRUCTIONS FOR PART TWO

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:
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 referencing. As in contract interpretation, ambiguity is construed against the drafter.
7. **Balanced Argument:** Facts rarely perfectly fit rules of law. 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 raises 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

MULTIPLE CHOICE QUESTIONS

- Below are 26 multiple choice questions.
- Each question is worth 2 points for a combined total of 52 points.
- Recommended time is 52 minutes (2 minutes each).

1. **In response to the COVID-19 pandemic, some hospitals have published triage rationing plans to determine who gets ventilators when there are not enough for all the patients who need them. Some of these plans use a scoring system that allocates fewer points to people with Downs syndrome, cerebral palsy, and autism.**

If these conditions are unrelated to respiratory function or the effectiveness of mechanical ventilation, then:

- A. This is probably an ADA violation.
- B. This is not an ADA violation, because these individuals are not “disabled.”
- C. This is not an ADA violation, because the ADA does not apply to hospitals.
- D. This is not an ADA violation, because if the hospitals refuse to treat these patients in the first place when they arrive, there is no treatment relationship.

2. **Plaintiff alleges that clinician failed to perform certain imaging tests after patient complained of pain after surgery. Twenty days later, patient had three fingers removed and lost function in her right hand. Plaintiff’s only expert testified: “Defendant should have ordered an arteriogram or CT angiogram. While the problem shown by such scan may not have been correctable, either type of scan probably would have shown some problem because patient lost her hand.**

With this evidence:

- A. Plaintiff can establish but for causation
- B. Plaintiff can establish lost chance causation
- C. Both A and B
- D. Neither A nor B

3. Often, when physicians are sued, they are not surprised by which patients are plaintiffs. (More precisely, the physician's staff is not surprised, because patients are more likely to reveal their "true" selves around employees than around physicians.) Litigant patients are often those who were surly and frequently complained. To reduce such risk in the future, your physician client wants to interview new, prospective patients to screen out those patients who are most prone to filing lawsuits. The physician plans to ask questions such as: "How many physicians have you recently seen?" and "Have you had problems with other practices?" The physician will clarify that individuals are "not considered a patient until they have been advised in writing that they have been accepted."

Your best advice to the physician client is that:

- A. Physician may screen in this way.
 - B. Physician may not screen patients in this way.
 - C. Physician may not screen patients in this way, because that would be tortious abandonment.
 - D. Physician may not screen patients in this way, because physicians have a duty to accept all patients who need their services, so long as they have capacity to serve them.
4. Suppose physician wants to expand the program described in Question 3 from prospective patients to current patients. Physician wants to drop current likely litigious patients without 30-day notice.

This plan:

- A. Poses little or no risk
 - B. Risks a medical board investigation
 - C. Risks lawsuits for patient abandonment
 - D. Risks an OCR investigation if due to race or sex
 - E. B, C, and D
5. Registered nurses are not permitted to order or discontinue medications. Instead, their role is to receive medication orders and make sure that the drugs are administered as ordered (giving the correct drug, in the correct dose, at the correct time). Suppose that a nurse decided to stop an ordered medication **WITHOUT** consulting the patient's doctor.

If the patient was not harmed, the nurse may be:

- A. Liable for malpractice
- B. Liable for not getting informed consent
- C. Subject to discipline by the Board of Nursing
- D. More than one of the above

6. In 2020, OnShift published a survey of 1500 long-term care providers. More than 66% reported that they “sometimes” or “often” staff shifts without enough workers. As you might expect, the risk of error is positively correlated to the staff to patient ratio.

If a patient were injured from understaffing, the most appropriate theory of liability would be:

- A. Apparent agent vicarious liability
 - B. Respondeat superior vicarious liability
 - C. Negligent credentialing direct liability
 - D. Negligent policies and procedures direct liability
7. Many states cap the recoverable amount of non-economic damages at \$250,000. Typically, plaintiff’s attorneys will first subtract the costs of litigation (like expert witness fees) from the recovery. They will then apply and subtract their contingency fee. Plaintiff lost both arms and both legs to a preventable infection. While the jury awarded \$25,000,000 in pain and suffering damages, the judge reduced this to the maximum non-economic recovery. The plaintiff’s attorney had \$50,000 in costs and takes a 40% contingent fee.

In this case the plaintiff will personally receive:

- A. \$250,000
 - B. \$200,000
 - C. \$120,000
 - D. \$80,000
8. Nurse performs a procedure that is exclusively within the scope of practice of physicians.

Nurse is potentially subject to:

- A. Board of Nursing discipline
- B. Board of Medicine discipline
- C. Criminal prosecution
- D. A and B
- E. A and C
- F. B and C
- G. All the above

9. Most hospitals use radiopaque supplies with markers that can be seen on an x-ray. But Franklin Hospital does not use them. The OR nurse lost count of the surgical towels used in patient's surgery, and one got left inside. While not initially problematic, five years later, this towel caused big problems for the patient.

Shortly after experiencing symptoms from the towel and finding the towel, patient files a malpractice lawsuit against Franklin.

- A. The claim is probably barred by the statute of limitations.
- B. The claim is probably barred by the statute of repose.
- C. Both A and B
- D. Neither A nor B

10. Apple Hospital has not trained it employed phlebotomists (healthcare workers who take blood samples) in the same way that other hospitals train them. This has adversely impacted the accuracy of Apple Hospital's lab tests. Inaccurate lab tests cause physicians to misdirect treatment plans.

If patient is injured from phlebotomist negligence, the patient can sue Apple Hospital:

- A. On a theory of vicarious liability
- B. On a theory of direct liability
- C. Both A and B
- D. Neither A nor B, but the patient can sue the phlebotomist individually

11. On the facts from Question 10, can the patient sue the phlebotomist for malpractice?

- A. No, there is no treatment relationship, since the phlebotomist is only a consulting clinician, not a treating clinician
- B. No, the phlebotomist is acting as an IME
- C. Yes, even though there is no treatment relationship
- D. Yes

12. In March and April 2020, some nursing homes have been fined hundreds of thousands of dollars for failing to comply with infection control guidelines.

WHICH regulators may levy such fines?

- A. CMS
- B. State Department of Health
- C. Both A and B
- D. Neither A nor B

13. If CMS terminates a facility from participating in the Medicare and Medicaid programs, legally **MAY** it continue to operate so long as it bills only individuals or private insurers?

- A. Yes
- B. No

14. Most surgeries in the United States are performed at independent surgery centers instead of hospitals. But many of these centers lack infection control practices and use physicians who are not board certified. These centers also heavily rely on certified registered nurse anesthetists. For example, while hospitals have one anesthesiologist per surgery, independent surgery centers often have one anesthesiologist supervise five CRNAs in five different operating rooms.

Even if a patient is not injured from these ISC practices, she **MAY** have a viable informed consent claim in:

- A. Minnesota
- B. Wisconsin
- C. Both A and B
- D. Neither A nor B

15. Independent surgery practices **MOST** probably have a legal duty to disclose the facts in Question 14 to patients in:

- A. Minnesota
- B. Wisconsin
- C. Both A and B
- D. Neither A nor B

16. Mary has United Healthcare coverage through her husband's job at Hallmark Cards. Mary is suffering from lipedema (excessive fat deposits on the legs, thighs and buttocks and upper arms). The only effective treatment for the pain and immobility from this disease is a specialized form of liposuction. United denied coverage, explaining that the procedure is "unproven." This means, per the insurance policy, that the procedure has not been "determined to be effective for treatment and/or not to have a beneficial effect due to insufficient and inadequate clinical evidence from well-conducted randomized trials or cohort studies in the prevailing published peer-reviewed literature."

If Mary can show that specialized liposuction for lipedema is not unproven and is supported by studies, then she MAY have a successful claim under:

- A. Breach of contract
 - B. ERISA section 502
 - C. Both A and B
 - D. Neither A nor B
17. Patient failed to tell her doctor about a previous heart murmur diagnosis. This partially contributed to patient's injury.

In a malpractice suit against the physician, this non-disclosure is MOST PROBABLY:

- A. Irrelevant, because informed consent applies only to the doctor's duty to disclose, not to the patient's duty to disclose
 - B. Irrelevant, if the bad outcome might have occurred even with disclosure
 - C. Relevant to whether the defendant is liable
 - D. Relevant to the amount of the damages for which the defendant is liable
18. Kate saw her doctor for treatment of the same condition on June 5, 2019 and October 2, 2019. On May 2, 2020, Kate discovered that her doctor may have committed malpractice. Kate and her doctor are in a jurisdiction with a 2-year statute of limitations and a 3-year statute of repose.

By WHEN must Kate file before her claim is time-barred?

- A. June 5, 2021
- B. October 2, 2021
- C. May 2, 2022
- D. June 5, 2022
- E. October 2, 2022
- F. May 2, 2023

19. Kate saw her doctor for treatment of the same condition on June 5, 2019 and October 2, 2019. On May 2, 2020, Kate discovered that her doctor may have committed malpractice. Kate and her doctor are in a jurisdiction with a 2-year statute of limitations and a 2-year statute of repose.

By **WHEN** must Kate file before her claim is time-barred?

- A. June 5, 2021
 - B. October 2, 2021
 - C. May 2, 2022
 - D. June 5, 2023
 - E. October 2, 2023
 - F. May 2, 2024
20. Chick underwent two different surgeries in April 2020. The first was with Dr. Brad on April 21 and the second was with Dr. Genoa on April 22. Three days after the second procedure, Chick died. About six months later, Chick's husband filed a claim against Dr. Genoa. About a year after that, during this Dr. Genoa litigation, a consulting expert opined that Dr. Brad may also have been negligent. Chick's husband added Dr. Brad to the suit four weeks later.

If this jurisdiction has a one-year statute of limitations and a two-year statute of repose, then:

- A. The claim is not barred, because it was filed within a year of when the expert opined about Dr. Brad's possible negligence.
 - B. The claim is not time barred, because it was filed within two years of the surgery.
 - C. The claim is time barred because it was filed more than a year after the surgery.
 - D. The claim is time barred because it was within the scope of the plaintiff's initial suspicion of medical negligence.
21. To participate in the Medicare program, a Skilled Nursing Facility must be in "substantial compliance" with the participation requirements in 42 C.F.R. Part 483. Compliance with Medicare participation requirements is verified through onsite surveys performed by state health agencies. CMS may impose enforcement "remedies" on a SNF that is found to be not in substantial compliance. Those remedies may include a Civil Monetary Penalty between \$1,000 and \$10,000 for each "instance of noncompliance."

In one recent case, CMS fined a SNF \$10,000 when one of its nurses failed to administer CPR to a resident found without vital signs. In its defense, the SNF argued that the patient would have survived had the nurse performed CPR. Its expert opined: "Patient would not have benefited from even perfect and immediate CPR – even if he had suffered a witnessed arrest, which he did not. In other words, there is essentially no likelihood that the Resident's unwitnessed arrest could have been reversed by CPR even if the CPR had been procedurally

flawless and immediate.” This argument was unsuccessful in reversing the CMP.

Would this argument and evidence probably be successful in a medical negligence lawsuit?

- A. No, because the failure to perform CPR would still be a breach of the nurse’s duty
- B. No, because the failure to perform CPR would still be a failure to stabilize the patient’s emergency medical condition
- C. Yes

- 22. Some hospital emergency departments post their wait times online. That way, before the leave home, individuals know the wait time and can instead go to another hospital with shorter wait times. Saint Croix Hospital did not post it wait times. Patient arrived at Saint Croix Hospital and waited six hours to be seen. She later discovered that she could have been seen at another hospital in only one hour. Faster intervention would have resulted in a better outcome.**

Does patient have a viable informed consent claim against the hospital?

- A. Yes, in Minnesota, because the reasonable patient would want to know the wait time
- B. Yes, In Wisconsin, because most hospitals post their wait times
- C. Both A and B
- D. Neither A nor B

- 23. Patient suffered a heart attack. Physician placed a stent in patient’s heart to restore blood flow. But patient later began feeling pain and was unable to urinate. Contrary to applicable standards of care, the hospital-employed post-op nurse waited 45 minutes to notify the physician. Consequently, physician was delayed in conducting tests to determine what was wrong. Plaintiff’s only expert testifies that if the physician had been notified sooner, “patient might have avoided some of the complications she suffered.”**

At the close of the plaintiff’s case, the trial judge should:

- A. Grant a directed verdict to nurse
- B. Grant a directed verdict to hospital
- C. Grant a directed verdict to both nurse and hospital
- D. Deny all motions for directed verdict and let the case against nurse and hospital go to the jury

24. When Bethany was 30 years old, she was diagnosed with cervical cancer. She tried traditional chemotherapy treatment, but it was ineffective. So, her physicians recommended proton beam therapy. Moreover, other treatments cause bowel toxicity and damage to bone marrow. Bethany's insurer denied coverage. Nevertheless, Bethany went forward with the proton beam therapy, spending \$93,000 of her own money. She has been cancer-free for three years.

If Bethany is successful in an action under ERISA section 502, she may recover:

- A. Her \$93,000
 - B. Punitive damages if she can show that the insurer denied denial in willful bad faith
 - C. Both A and B
 - D. Neither A nor B
25. Most healthcare is still paid on a fee-for-service model which rewards providers based on the quantity of services provided regardless of quality. This provides perverse incentives. For example, providers may be reluctant to invest in quality, resulting in few patient visits, because that means lost income. Unfortunately, newer quality measures also produce perverse incentives. For example, providers may be unwilling to accept new patients whose conditions require expensive medications or treatments.

May providers refuse to accept patients who will hurt the metrics that affect provider compensation?

- A. Yes
- B. No, refusal to accept these patients is abandonment.
- C. No, providers may not discriminate against patients based on their health condition.
- D. No, providers must accept patients who need their services, so long as they have capacity.

26. In early 2020, the *New York Times* reported that large chain pharmacies (especially CVS) impose such aggressive performance metrics on their employees, that they are making more errors like giving a patient blood pressure medication instead of asthma medication, or like giving a patient chemotherapy drugs instead of antidepressants. One CVS pharmacist worked a 13-hour shift with no breaks for lunch or dinner. She filled over 500 prescriptions, one every 90 seconds, while counseling patients, giving shots, and making calls.

If you were injured from taking the wrong medication, the evidence **MOST** relevant to a corporate/direct liability claim is:

- A. Employee status of the pharmacist
- B. Apparent agency status of the pharmacist
- C. Staff evaluation and incentive standards and metrics
- D. How the reasonable pharmacist would have filled the prescription

Essay Question 1

- This question is worth 16 points
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 45 minutes.

Mrs. Saleh is a 78-year-old widow who emigrated to Minnesota from Yemen a few years ago. She came to live with her son and daughter-in-law, following the death of her husband. Although faltering and hesitant, Mrs. Saleh speaks just enough English for day-to-day tasks like shopping.

Mrs. Saleh has been experiencing several weeks of indigestion and reduced appetite. After she began vomiting, Mrs. Saleh agreed to let her son drop her off at the hospital on his way to his demanding job. Diagnostic tests revealed a diagnosis of stage 3 gastric cancer with evidence of lymph node involvement (a disease in which malignant cancer cells form in the lining of the stomach). Mrs. Saleh's prognosis is guarded. There is a reasonable possibility of cure. But standard treatment for her disease is prophylactic. It involves total gastrectomy (surgical removal of the whole stomach) with adjuvant chemotherapy (drug treatment that uses powerful chemicals to kill fast-growing cancer cells).

It is Thursday afternoon. Mrs. Saleh's physician finds her alone in the exam room and begins the process of delivering the diagnosis and discussing the treatment options. After the physician reveals the diagnosis, however, Mrs. Saleh politely stops her and says: "Doctor, I don't need to know all this. I'll do what you think is best." In response, the physician performs the total gastrectomy later that afternoon.

Mrs. Saleh later learns that she could have avoided the gastrectomy. There was a 40% chance that chemotherapy, radiation therapy, or immunotherapy might have effectively stopped the gastric cancer. She is annoyed to discover that a gastrectomy was not her only (or in her view) best option. She could have avoided the long recovery from surgery as well as the complications of infection, bleeding, and leaking from the stitched area. Furthermore, she could have avoided all the changes to her diet necessitated by the gastrectomy.

Mrs. Saleh has hired you to represent her in a lawsuit against her physician. Identify and assess Mrs. Saleh's plausible claims against the physician.

Essay Question 2

- This question is worth 16 points
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 45 minutes.

A major component of medical malpractice damages is lost wages. These are usually calculated by forensic economists who determine what money the plaintiff probably would have earned but for the injury. These economists usually include the plaintiff's race and gender when making these calculations. For example, an expert economist might determine that a Hispanic individual had a lower chance of obtaining an advanced degree, and thus lower future lost earnings.

In late 2019, U.S. Senators Booker and Gillibrand introduced S.B. 2512, the Fair Calculations in Civil Damages Act of 2019. This bill provides that federal courts may not

award damages to a plaintiff in a civil action using a calculation for the projected future earning potential of that plaintiff that takes into account the race, ethnicity, gender, religion, or actual or perceived sexual orientation of the plaintiff.

If enacted this law would not apply to most medical malpractice actions, since they are litigated in state court. But should the states enact such a law?

Focusing on core rationales for medical malpractice liability, make one argument for and one argument against considering a medical malpractice plaintiff's race or gender when calculating damages.

Essay Question 3

- This question is worth 16 points
- Limit your response to 1000 words. This is only a limit, not a target or suggested length.
- Recommended time is 45 minutes.

In May 2018, Pam was twenty-two years old and pregnant with her first child. Her OB-GYN at the Mississippi River Clinic was Dr. Watrous.

Pam alleges that during her first vaginal examination, on May 12, 2018, Dr. Watrous stuck his fingers in and out of her vagina to what she felt was an excessive amount. Yet, because it was her first pregnancy, Pam was uncertain. Moreover, Dr. Watrous represented that the procedure was for legitimate medical purpose. After this examination, Pam called her husband and told him that she felt violated.

During subsequent vaginal examinations in June and July 2018, Dr. Watrous continued to touch Pam inappropriately and excessively. Also, when Dr. Watrous conducted breast exams, Pam felt that his approach was abnormal because it felt like he was groping and sensually grabbing. Pam delivered her baby in November 2018.

In April 2020, Pam read a story in the Minneapolis *Star Tribune* that described Dr. Watrous's long history of sexual misconduct and MRC's pattern of minimizing patient complaints about Dr. Watrous. Based on this newspaper story, Pam now wants to sue both Dr. Watrous and MRC. This jurisdiction has a 1-year statute of limitations on all healthcare liability claims.

What theories of liability can Pam assert against which parties? Can Pam survive summary judgment.