**Exam Number** __ __ __ __ __

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|---|---|---|
| **Instructor** | : | **Professor Thaddeus Mason Pope** |
| **Course Title** | : | **Health Law: Quality & Liability** |
| **Section** | : | **Law 9322, Section 1** |
| **Format** | : | **Take Home - Final Exam** |
| **Date** | : | **Self-scheduled from TWEN** |
| **Total Time for Exam** | : | **48 hours (from download to upload)** |
| **Total Number of Pages** | : | **15 pages** |

## Reference Materials Allowed

Open Book (all reference materials allowed)

## Take-Home Exam Instructions

1. Please know your **correct Fall 2014 final exam number** and include this number at the top of each page of your exam answer (for example, in a header). To locate your exam number, go to www.hamline.edu and follow the steps below. A graphic guide to locating your exam number is attached to these instructions.
   Click on Logins in the header.
   Go to Piperline
   Log in to the secure area
   Enter your Student ID and PIN
   Click Student Services
   Click Registration
   Click Student Detail Schedule
   Select the appropriate term from the drop down menu
   Exam Numbers are listed below Total Credit Hours at the top of the page

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 TWEN site any time after 12:01 a.m. on Thursday, December 4, 2014. All exams must be submitted WITHIN 48 hours of download. But, in any case, all exams must be submitted by the end of the final exam period, i.e. by 5:00 p.m. on Wednesday, December 17, 2014. Therefore, you will want to download your exam no later than 5:00 p.m. on December 15, to ensure that you have the full allowed 48 hours to complete your exam.

4. Write your answers to all three parts of the exam in a word processor.

5. Save your document as a **single PDF file** before uploading to TWEN.

6. Use your exam number as the file name for your PDF file.

## Instructions Specific to This Examination

**GENERAL INSTRUCTIONS:**

1. **Honor Code**: While you are taking this exam, you are subject to the Hamline University Code of Conduct. You may not discuss it with anyone until after the end of the entire exam period. It is a violation of the Honor Code to share the exam questions. Shred or delete the exam questions immediately upon completion of the exam. They will be reposted after the end of the exam period.

2. **Competence**: Accepting this examination is a certification that you are capable of completing the examination. Once you have accepted the examination, you will be held responsible for completing the examination.

3. **Exam Packet**: This exam consists of **15 pages**, including this cover page. Please make sure that your exam is complete.

4. **Identification**: Write your exam number on the top of each page of your exam answer, ideally in the header. **Failure to include your correct exam number will result in a 5-point deduction.**

5. **Anonymity**: The exams are graded anonymously. Do **not** put your name or anything else that may identify you (except for your exam number) on the exam.

6. **Total Time**: Your completed exam is due within 48 hours of downloading it. If your exam is uploaded more than 48 hours after downloading the exam, your exam grade will be **lowered by one point** for every minute in excess of the 48 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 48-hour limit by more than 30 minutes, the situation may be referred for a Code of Conduct investigation and potential discipline. Please save sufficient time to successfully upload your exam.

7. **Timing:** The exam has been written as a three-hour exam. A student could write basically complete answers to all the questions in 3 hours. But since this is a take-home exam, you will want to take some extra time (perhaps two hours) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps two hours) to revise and polish your answers, such that you will not be submitting a "first draft." In short, while this is a 48-hour take home, you really need not spend more than around seven hours on this exam.

8. **Scoring**: There are 150 total points on the exam. The final exam comprises 50% of your overall course grade, 150 of the 300 total course points.

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

10. **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, BNA, reference materials) to answer the exam questions.

11. **Format**: The exam consists of three parts:

| | |
|---|---|
| PART ONE: 30 multiple choice questions worth 2 points each | 60 |
| PART TWO: two short answer questions worth 20 points each | 40 |
| PART THREE: one essay question worth 50 points. | 50 |
| **TOTAL** | **150** |

12. **Grading**: All exams will receive a raw score from zero to 150. The raw score is meaningful only **relative** to the raw score of other students in the class. Your course letter grade is computed by summing the midterm, final, and quiz scores. I will post an explanatory memo and a model answer to TWEN 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 30). Next to each number type the letter corresponding to the best answer choice for that problem.

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 (i) identify the ambiguity or problem in the question and (ii) reveal what your answer would be for all possible resolutions of the ambiguity. I do not expect this to be necessary.

**SPECIAL INSTRUCTIONS FOR PARTS TWO AND THREE:**

1. **Submission**: In your exam document create clearly marked separate sections for each of the three problems:
   - Part 2- Short Answer 1
   - Short Answer 2
   - Part 3 - Essay

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 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. **Citing Statutes & Regulations**: Most appellate health law cases are illustrative of general legal principles but are not directly controlling in any given jurisdiction. In contrast, federal statutes and regulations control in all U.S. jurisdictions. Accordingly, if a provision of a statute or regulation will materially impact your analysis, please cite it.

7. **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.

8. **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.

9. **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.

10. **Fatally Flawed Theories**: A legal theory may be fairly implicated by the facts, yet be fatally flawed because a necessary element is not satisfied or because an affirmative defense applies. Err on the side of analyzing such theories, even though identification of the fatal flaw could be seen as a threshold issue warranting no further analysis.

**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

- 30 questions worth 2 points each = 60 total points.
- Mark the letter of the **best** answer in a vertical list in your exam document.

**1. EMTALA was enacted to address the problem of "patient dumping," economically motivated transfers of patients to other facilities. Generally, proof of such an economic motivation is required where the plaintiff's allegation is:**

A. Failure to screen
B. Failure to stabilize
C. Both A and B
D. Neither A nor B

**2. Hospital A has screened patient and found an emergency medical condition that requires specialized psychiatric capabilities that Hospital A does not have. Consequently, Hospital A wants to transfer patient to Hospital B. Hospital B has these specialized capabilities but does not have a dedicated emergency department. Must Hospital B accept this transfer?**

A. Yes, if it has capacity
B. Yes, even if it lacks capacity
C. No
D. No, even if the patient arrives on Hospital B's property

**3. The following are reasons for refusing to accept a patient. Which is the LEAST likely to be a legal violation?**

A. Patient's inability to speak English
B. Patient's inability to pay for treatment
C. Patient's religious beliefs require her to refuse blood transfusions or blood products.
D. Patient is deaf.

**4. Patient, who is 53 years old, refuses to get a pap smear. What is the preferred course of action for the physician?**

a. Explain the risks of not getting a pap smear.
b. Do nothing. The probability of Patient getting cervical cancer is low.
c. Have Patient sign a statement that she refused to get a pap smear.
d. Terminate the relationship because Patient is a noncompliant patient.
e. Do nothing. Pap smears are risk-free procedures, so no informed consent is necessary.

**5. A surgical item is retained in a patient's body in approximately every 6000 surgeries. These items can cause significant harm beyond pain and suffering: additional surgeries, abscesses, intestinal fistulas, obstructions, and visceral perforations. The average cost of removing one of these items is over $50,000. Traditionally, hospitals have had perverse financial incentives with respect to retained surgical items, because they earn more money from patients with complications. Which of the following new Medicare programs MOST effectively changes these incentives?**

A. Hospital Readmissions Reduction Program
B. Never events
C. Value Based Purchasing Program
D. False Claims Act

**6. Generally, a hospital is LEAST likely to be liable for the negligence of a:**

A. Janitor
B. Nurse
C. Resident
D. Attending physician
E. Hospitalist

**7. Bars a patient's medical malpractice claim within 1 year after the patient's injuries are discovered.**

A. State of repose
B. Statute of limitations
C. Equitable estoppel
D. Waiver
E. Laches

**8. Patient continued to suffer severe pain after his knee replacement operation. Subsequent surgery showed that the surgeon had put the knee replacement joint in completely backwards. What kind of an expert does plaintiff need to show a deviation from the standard of care?**

A. Orthopedic surgeon
B. General surgeon
C. Surgeon who has practiced or taught for 4 of the past 6 years
D. No expert is needed

**9. Which of the following is NOT an element of a medical malpractice lawsuit?**

A. Duty owed to plaintiff
B. Breach of a duty that is owed to plaintiff
C. Injuries that were proximately caused by the breach of duty
D. Damages
E. Intent to breach a duty owed to plaintiff

**10. Across the United States, a surgeon leaves a foreign object inside a patient's body around 40 times each week. These are usually sponges, towels, broken parts of instruments, stapler components, needles, and other objects. The most common root causes for these errors include incomplete staff education and the absence of policies and procedures. Consequently, the MOST appropriate theory of liability is:**

A. Vicarious liability
B. Direct liability
C. EMTALA
D. ERISA

**11. Patient goes to the doctor for treatment of a sore throat. Patient opens his mouth to allow doctor to see his throat. Which of the following terms describes the TYPE of consent given?**

A. Express
B. None
C. Implied
D. Informed

**12. At Patient's request. Physician is going to remove a small mole from Patient's cheek. Must Physician get informed consent?**

A. No, because there are no known, recognized material risks to the procedure
B. Yes, because Physician could make a mistake in removing the mole
C. Yes, because consent must be in writing
D. Yes, because the mole may be malignant

**13. Which of the following is NOT necessary for a patient to give informed consent?**

A. Literacy
B. Decision-making capacity
C. Knowledge of risks, benefits, alternatives
D. Voluntariness

**14. A "hernia" is a weakness or tear in abdominal muscles. As the hernia progresses, contents of the abdominal cavity, such as the intestines, can descend into the hernia and run the risk of being pinched within the hernia, causing an intestinal obstruction. Hernias can be repaired using surgery to push the bulge back into place and strengthen the weakness in the abdominal wall.**

**During the course of an operation to repair a bilateral hernia, surgeon removed Patient's left testicle. Does the following clause in the consent form signed by Patient cover this additional procedure?**

> **"I consent to the performance of operations and procedures in addition to or different from those contemplated, whether or not arising from presently unforeseen conditions, which the above named physician or his associates or assistants may consider necessary or advisable in the course of the operation."**

A. Yes, because the consent form covers every potential contingency
B. Yes, because Patient signed the consent form
C. No, because Patient was not aware the surgeon was going to remove his left testicle
D. No, because it is a blanket consent form
E. Yes, because it was medically advisable to do the additional procedure

**15. The HIPAA Privacy Rule does not prohibit covered entities from engaging in common and important health care practices, as long as reasonable precautions have been taken to protect a patient's privacy. Which of the following practices would MOST likely violate HIPAA?**

A. Displaying patient care signs, such as "high risk of fall" on hospital room doors without identifying information
B. Identifying the purpose of the patient's visit on patient sign-in sheets.
C. Placing patient charts outside exam rooms with identifying information facing the wall
D. Using in-patient status logs, such as a whiteboard, at a nursing station where it is not visible to the public
E. Angling computer screens with patient information away from public view

**16. HIPAA does not prohibit health care providers from talking to each other and their patients even if they may be overheard, as long as reasonable safeguards are taken. Which of the following is a MOST likely a violation of the HIPAA Privacy Rule?**

A. Discussing lab test results with a patient or other provider in a joint treatment area
B. Discussing a patient's condition or treatment regimen in the patient's semi-private room
C. Discussing a patient by name in a crowded elevator with another treating physician
D. Discussing a patient's condition during training rounds in an academic or training institution
E. Discussing a patient's condition over the phone with the patient, a provider, or a family member

**17. Under the HIPAA Privacy Rule, the minimum necessary standard does NOT apply to:**

A. Disclosures for treatment purposes
B. Disclosures for payment purposes
C. Disclosures for health care operation purposes
D. Disclosures for marketing purposes

**18. The minimum necessary standard applies to:**

A. Disclosures or requests by a health care provider for treatment purposes
B. Uses or disclosures that are required by other law.
C. Disclosures to the individual who is the subject of the information
D. Uses or disclosures made pursuant to the individual's authorization
E. None of the above

**19. Unless HIPAA defers to state law, HIPAA takes priority, except:**

A. When state law is contrary to HIPAA, and no exemption is obtained
B. When state law protects a patient's privacy more stringently than HIPAA
C. When state law existed prior to the enactment of HIPAA
D. When state law specifically states that it takes precedence over HIPAA

**20. Which of the following are "Health Care Providers" for purposes of HIPAA?**

A. Dentists
B. Physicians
C. Hospitals
D. Pharmacists
E. All of the above

**21. For which of the following uses of PHI must a covered entity obtain consent for release?**

A. Quality assessment and improvement activities
B. Case management and care coordination
C. Reviewing the competence or qualifications of health care professionals
D. All of the above
E. None of the above

**22. Swarthmore Hospital does NOT have an emergency department. But last year, more than 50% of the patients treated in its maternity ward arrived in active labor and delivered their babies without prior referrals from staff physicians.**

A. Swarthmore must comply with EMTALA.
B. Swarthmore Hospital must comply with EMTALA only to the extent that it has specialized treatment capabilities.
C. Swarthmore does not need to comply with EMTALA.

**23. Connie wanted to help her ill grandfather by donating a kidney. Connie was deemed a compatible match. The operation took place in June 2014 at Hamline Hospital. Clinicians there did not know that grandfather was dying from terminal cancer that had not been properly diagnosed before the transplant operation. Grandfather had been admitted to Mitchell Hospital in March 2014, complaining of headaches. Medical checks revealed an elevated blood pressure. A CT scan was ordered, and the radiologist noted the presence of temporal bone irregularities, often a signal of multiple myeloma (a cancer originating in the blood's plasma cells, or another metastatic disease process). In September 2014, Hamline Hospital doctors discovered that grandfather was terminally ill with multiple myeloma. Grandfather died in November 2014. Connie filed a lawsuit against Mitchell Hospital clinicians, arguing that since her grandfather's CT scan had suggested cancer, she should never have had the transplant operation. Connie contends that the operation was useless in the face of fatal illness. Connie's best theory is:**

A. Medical malpractice
B. Battery
C. Informed consent
D. Abandonment
E. None of the above

**24. In December 2014, Dr. Drake was driving at night on a two lane road in Roseville, Minnesota, when a car came speeding towards her. Dr. Drake swerved out of the way and the other car crashed into a ditch. Dr. Drake had no flashlight, no medical kit, and no mobile phone. So, she did not check on the occupants of the car. Instead, she drove to a police station several minutes away.**

A. Dr. Drake had a legal duty to stop and help.
B. Dr. Drake had a legal duty to stop and help, because she is a Minnesota licensed physician.
C. Dr. Drake did not have a legal duty to stop and help.

**25. Ruti is a Hmong immigrant to Minnesota. In her native country, she was a highly respected doctor. After she immigrates to the Minnesota, Ruti observes that many of her fellow immigrants lack access to decent health care. So, without going through the requirements to get an American medical license, Ruti advertises her services, in Hmong, in a church newsletter. She offers patients basic check-ups for only a nominal charge. Ruti's intentions are entirely good. She wants to provide low-cost health services to people who need them.**

A. Ruti can be prosecuted for unauthorized practice of medicine only if she had a profit incentive.
B. Despite her intentions, Ruti can be prosecuted for unauthorized practice of medicine.
C. Ruti can be prosecuted for unauthorized practice of medicine only if her "patients" have been harmed or injured.

**26. Which of the following is an appropriate person with whom to share PHI, even if the patient has NOT specifically authorized the release?**

A. A former physician of the patient who is concerned about the patient
B. A healthcare provider who needs information about the patient to provide proper care
C. A friend of the patient
D. A pharmaceutical salesman who is offering a fee for a list of patients to whom he could send a free sample of his product

**27. When Roz was three years old, she fell on a stick in the woods while hiking. Under the family's managed care plan (obtained through Roz's mom's job with Best Buy), the hospital pumped Roz up with steroids and sent her away with a growing brain abscess. Roz's parents had asked for a CAT scan because they knew Roz was not well. But the hospital refused to provide one when the MCO denied prior authorization. Two days later, Roz came back to the hospital comatose. Medical expert declarations establish that had Roz received the $900 CAT scan, which would have detected a growing brain mass, she would still have her sight and be perfectly healthy today. Which of the following is MOST likely true?**

A. Roz can recover personal injury damages from the MCO.
B. Roz can recover personal injury damages from the MCO, only if it "forced" the hospital to deny the CAT scan.
C. Roz cannot recover personal injury damages from the MCO.

**28. Lisa's employer-provided health insurance company refused to pay for physical therapy treatments prescribed by her physician. Lisa's claims against the insurance company are probably:**

A. Preempted by ERISA
B. Not preempted by ERISA

**29. Jan's employer-provided health insurance company required her to select a physician from a list that it provided of "high quality" in-network providers. Jan selected Dr. Green. Jan alleges that Dr. Green negligently treated her skin cancer, permitting it to spread. Jan's claims against the health insurance company are probably:**

A. Preempted by ERISA
B. Not preempted by ERISA

**30. New father and attorney Dovi wanted to buy a $1 million life insurance policy for his family. MN-Life, Inc. wanted to protect against adverse selection and make sure that Dovi was not already terminally ill. So, it arranged for Dovi to have some tests with Dr. Ter-Ek. In most jurisdictions, Dovi could MOST likely bring which type of claim?**

**A.** Negligent misdiagnosis
**B.** Informed consent
**C.** ADA
**D.** None of the above

# Short Answer Questions

- 2 Questions worth 20 points each
- Limit each response to 750 words.

1. This year, the U.S. government has again recovered billions of dollars in healthcare fraud.[1] In order to qualify for payment by government health care programs (like Medicare), health care services, treatments, diagnostic tests, medical devices and pharmaceuticals must be "medically necessary." Healthcare providers must document the medical necessity of the treatment or services for which they are seeking reimbursement.[2]

   One common type of fraud has been for providers to submit claims for services, treatments, diagnostic tests, and medical devices that are not medically necessary. Typically, in these types of cases, the provider administers treatment that the patient does not really need (*e.g.* a stent when there is no arterial blockage or occlusion; *e.g.* chemotherapy for a patient without cancer; *e.g.* performing pulpotomies and implanting steel crowns on patients with healthy teeth). Typically, the lack of medical necessity can be determined physiologically. The services provided (and billed for) simply do not address any medical need or condition of the patient.

   But much of medicine is "preference-sensitive." There is no one obvious choice. Instead, there are significant tradeoffs affecting the patient's quality and/or length of life. For example, surgical options for the treatment of early stage breast cancer usually include mastectomy (complete removal of the breast) or lumpectomy ("breast-sparing surgery," a local excision of the tumor). The impact on survival is about the same for both approaches. But other outcomes are quite different. The consequences for women who choose mastectomy include the loss of the breast and, for some, using a prosthesis or undergoing reconstructive surgery. For women who choose breast-sparing surgery, the consequences can include having radiation and/or chemotherapy and living with the risk of local recurrence, which will require further surgery. Which treatment is "right" for a given patient depends on that patient's values and preferences.

   Determining whether preference sensitive medicine is medically necessary is more difficult. While a given intervention may have a physiological basis, it may not have been wanted by the patient. A mastectomy for a woman without cancer is clearly not medically necessary. But what about a woman with breast cancer? Is it medically necessary for her? Suppose the clinician offers only this option (and not lumpectomy) and the patient consents. Suppose, that published studies show that 57% of women presented with both options choose lumpectomy. If the patient can make out an informed consent claim, does the administration of the mastectomy constitute healthcare fraud?

   **Assess and evaluate how a clinician's failure to obtain a patient's informed consent before administering treatment is healthcare fraud.**

[1] http://www.justice.gov/opa/pr/justice-department-recovers-nearly-6-billion-false-claims-act-cases-fiscal-year-2014.
[2] 42 U.S.C. § 1320c-5(a)(1); 42 U.S.C. § 1395y(a)(1).

2. Dot arrived at the Ferguson Hospital emergency room at 10:40 p.m., after sustaining several gunshot wounds. FH personnel completed triage on Dot at 10:55 p.m. At 11:05 p.m., the emergency room at the Missouri Medical Center accepted the transfer of Dot to its facilities, but an ambulance was never dispatched and Dot remained in the FH emergency room. She was never moved or discharged.

   At FH, Dot was not treated to avoid hemorrhagic shock, was not administered blood to replace the deficit caused by her bleeding, and was not given intravenous liquids to treat her hypotension. FH did not provide the surgical and radiological consultations and treatments that Dot's condition required. FH did not follow its protocols for patients with gunshot wounds. Consequently, Dot suffered a cardiac/respiratory arrest at 11:50 p.m. and was declared dead at 12:10 a.m.

   **FH probably violated its EMTALA screening duties. You do not need to analyze that. But did FH violate its stabilization duties? Assess and evaluate a stabilization claim against FH. Use the statute and regulations. You may but need not also use any relevant cases that we read in class.**

# Essay Question

- 1 Question worth 50 points
- Limit response to 1500 words.

**Milo's Polyps**

Milo worked for the Ramsey County (Minnesota) Parks Department and had health insurance through the County's plan with Consolidated Coverage Company. Last month, Milo's CCC out-of-network gastroenterologist, Gene, informed her that she had a very large and possibly cancerous polyp in her colon. Gene recommended removing the polyp during a colonoscopy in his office. This entails inserting a snare through the colonoscope, encircling the polyp like a lasso, and cutting it off. But CCC refused to approve that procedure.

**Milo's Surgery**

Despite repeated appeals by Gene, CCC would only authorize surgery at Hamline Hospital (in-network for CCC). Surgery entailed removing the part of the colon with the polyp and reattaching the two adjacent ends of the colon. Gene made a referral to a gastroenterology surgeon. Late last month, Milo had the surgery with surgeon Scott (in-network for CCC). The surgery went well. But like any surgery entails certain inherent risks. These risks are different from, but generally greater than, those involved with the colonoscopy procedure.

**After Surgery**

After surgery, Milo was taken to the hospital's recovery room. While there, Milo had individual nursing care from nurse Nedra, who was charged with taking care of issues with Milo's heart, lungs, blood pressure, and recovery from sedation. Upon arriving in the recovery room, Milo had a lowered level of oxygen saturation. Later, her blood pressure began to lower, and she complained to Nedra of chest pain. The ordinary response to such a complaint is to immediately order an EKG. But apparently Hamline Hospital had failed to adequately train the nursing staff with respect to its adopted chest pain protocol, just as it had failed (according to the *Pioneer Press*) to adequately train its staff on some other protocols in both 2011 and 2012.

Eventually, later that afternoon, Nedra updated surgeon Scott, who was also the attending physician, about Milo's worsening condition. Scott told Nedra that he would have a hospitalist see Milo immediately. Thereafter, Scott spoke by phone with hospitalist Hank. Scott told Hank that he had a patient who had surgery and was having low oxygen saturations and chest pain. Scott asked Hank to see Milo in the recovery room.

**Hospitalist**

Hank was a hospitalist physician and employed by HH Corporation, which is a hospitalist group. Hank and his hospitalist group do not have a traditional office; instead, the hospital is their practice site. Hank's hospitalist group provides hospitalist care to only those hospital patients whose primary care physician had previously agreed to let the hospitalist group care for the PCP's patients while these patients were in the hospital. In other words, once a PCP agreed to pass or defer the hospital care of his/her patients to the hospitalist program, the PCP would defer hospital care of all his/her patients to the hospitalist group and would no longer go to the hospital to see his or her patients while they were in the hospital. At the time of Milo's surgery, Milo's PCP, Peter, had not deferred hospital care of his patients, including Milo, to the hospitalist group.

Hank went into the recovery room. Once he checked Milo's chart and saw that PCP Peter had not authorized the hospitalist group to treat the Peter's patients, he told Milo that he could not treat her because she was not a hospitalist patient. Nedra's notes indicate:

> NOTES: Hank at bedside to see Pt upon questioning Pt, Hank states he cannot see pt - primary Dr. not contracting with hospitalists. Paged Scott and he returned page updated on condition, and Hank unable to treat Pt

Hank did not examine or treat Milo and did not submit a billing charge for Milo. Hank then informed Scott that he would not be able to see Milo "based on the protocol" because Milo's PCP wanted to see his own patients at the hospital and did not want the hospitalists to see them. Hank told Scott that he would need to contact Peter. Unfortunately, Peter was camping near the Minnesota Boundary Waters and was unavailable. Scott determined that he would have to check on Milo himself. But he was over an hour away in Minnetonka.

**Milo's Death**

By the time Scott arrived at the Hospital, Milo had died. The autopsy report listed the cause of death as a postoperative infection in the abdominal cavity that involved retention of a surgical instrument.

**Civil Discovery**

After filing her lawsuit, Milo's family discovered that Scott made 12 malpractice payments between 1999 and 2012 for a total payout of $2.6 million. The reasons included: failure to diagnose, improper performance, improper management, improper technique, and performing an unnecessary procedure. Three of the cases involved the death of a patient. Milo's husband also discovered that Nedra did not begin working at Hamline Hospital until late 2013. Her nursing license had been suspended from 2009 to 2011 for cocaine use.

**Lawsuit**

**Identify and evaluate ALL the reasonable claims that Milo's family can make against ANY party. What sorts of experts must Milo's family retain to make these claims?**

# END OF EXAM