

<b>Instructor</b>	<b>Professor Thaddeus Mason Pope</b>
<b>Course Title</b>	<b>Health Law: Quality &amp; Liability</b>
<b>Format</b>	<b>Take Home Final Exam</b>
<b>Total Time for Exam</b>	<b>48 hours</b>
<b>Total Number of Pages</b>	<b>18 pages</b>

### Reference Materials Allowed

Open Book (all reference materials allowed)

### Take-Home Exam Instructions

1. Please know your **correct Fall 2016 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 TWEN site any time after 12:01 a.m. on Wednesday, December 1, 2016. All exam answers must be submitted within 48 hours of download. But, in any case, all exam answers must be submitted by the end of the final exam period, i.e. by 11:59 p.m. on Wednesday, December 14, 2016. Therefore, you will want to download your exam no later than 11:59 p.m. on December 12, to ensure that you have the full allowed 48 hours to complete your exam.
4. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to TWEN. Use your exam number as the name for the PDF file.

### 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 exam period. It is a violation of the 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 **18 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.
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. **Failure to include your correct exam number will result in a 10-point deduction.**
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 15 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 three hours. But since this is a take-home exam, you will want to take some extra time (perhaps one-half hour) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps one-half hour) 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 five (5) 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, reference materials) to answer the exam questions.
11. **Format:** The exam consists of three (roughly equal) parts:
  - PART ONE** comprises twenty-two multiple choice questions.  
These are worth 2 points each, for a combined total of 44 points.
  - PART TWO** comprises two short answer questions.  
These are worth 15 points each, for a combined total of 45 points.
  - PART THREE** comprises one long answer question.  
It is worth 61 points.

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 22). 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 five problems. You do not need to “complete” the exam in order. But your exam answer document must be structured in this order:
  - Short Answer 1
  - Short Answer 2
  - Long Answer
2. **Statutory Appendix:** Use the statutory appendix when a provision there is relevant to the analysis. The statutes in the Appendix preempt any other law that we may have discussed in the course. On issues not addressed by the statutes, Minnesota common law and the rules and principles discussed in the course apply.
3. **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

# PART ONE

## Multiple Choice Questions

- 22 Questions worth 2 points each
- Worth a combined total of 44 points

1. **Generally, a hospital is LEAST likely to be liable for the negligence of which of the following people:**

- A. Janitor
- B. Nurse
- C. Resident (house staff) physician
- D. Attending physician

2. **Physician sees patients at a reduced fee. She spends very little time with each patient.**

**Which of the following is MOST LIKELY true?**

- A. No malpractice, because the standard of care is lower when fees are waived
- B. No malpractice, because there was no “full” treatment relationship
- C. Malpractice, if physician does not spend the time that a reasonable prudent physician would spend
- D. Malpractice, because physicians should spend more time with patients

3. **This TERM describes the situation in which a physician informally asks for another Physician’s opinion about a patient’s symptoms or test results, and the second physician does not actually examine the patient.**

- A. Malpractice
- B. Curbside consultation
- C. Breach of confidentiality
- D. Second opinion

4. **Patient has been Physician’s patient for 11 years, but is considering changing physicians. Which of the following statements most accurately reflects Patient’s obligations to Physician?**

- A. Patient is legally obligated to notify Physician that she has been dismissed.
- B. Patient must give Physician at least a 30-day notice that she will be dismissed.
- C. Patient can dismiss Physician for any reason without notification.
- D. Patient can dismiss Physician for any reason so long as the reason is not illegal.

5. Which of the following is the legally LEAST legally risky advice for a physician?
- A. Protect terminally ill patients from emotional stress by giving them inaccurate information about their illness.
  - B. To avoid causing emotional distress, never discuss the possible risks and benefits of no treatment, UNLESS the patient asks.
  - C. If a patient refuses treatment, give the patient information about the possible consequences of not having treatment.
6. Linda accidentally cut off her finger while dining at Applebee. Linda called out, “Is there a doctor in the house?” Physician quickly approached the table. Upon seeing the severed finger, Physician quickly and casually said, “I’d call 911 pronto, if I were you.” Physician then promptly returned to her meal, rendering no assistance. Linda made it to a hospital, but clinicians there were unable to reattach her finger. Linda sued Physician for negligence.
- A. Linda wins because Physician gratuitously rendered aid to her.
  - B. Linda wins because Physician left her in a worse position when she withdrew her aid.
  - C. Physician wins because she did not render aid to Linda.
  - D. Physician wins because her advice was not necessary for Linda’s protection.
7. Patient was injured due to a medical error. Although Physician was negligent, he shows that Patient did not comply with treatment recommendations.
- Which of the following legal concepts is most likely either to bar or to reduce Patient’s award?
- A. Contributory negligence
  - B. Mitigation of damages
  - C. Comparative negligence
  - D. Assumption of the risk
  - E. Non-compliance

8. Patient was injured in an automobile accident, causing profuse bleeding and unconsciousness. When Nurse arrived at the scene she decided that an immediate transfusion of blood was necessary. Once at the hospital, Nurse discovered that (through no fault of hers) the blood had been contaminated, leading to serious injury. When Patient regained consciousness, he informed the hospital that he had religious objections to blood transfusions and would not have consented to the previous transfusion.

**Can Patient recover from Nurse?**

- A. Yes, if he can show that he really would have refused the transfusion even at the risk of his own life
  - B. Yes, because a reasonably prudent person with his religious beliefs would have refused the transfusion
  - C. No, because a reasonably prudent person would have consented to the blood transfusion
  - D. No, because Patient's consent would be implied
9. If Patient can show that she was not aware that Physician was going to perform the procedure or that she did not authorize it, which of the following legal claims does she **MOST LIKELY** have?
- A. Medical malpractice
  - B. Medical battery
  - C. Simple negligence
  - D. Breach of contract
  - E. Breach of fiduciary duty
10. Patients have the right to know about their healthcare team. But they are **LEAST** likely to have the right to information about Physician's:
- A. Experience
  - B. Marital status
  - C. Years of practice
  - D. Education and board certification status

11. Patient suffered a severe adverse reaction to anesthesia during surgery that caused an interruption to Patient's oxygen supply resulting in massive brain trauma and death. At trial, Patient's expert testified that he personally would have pre-oxygenated Patient before surgery.

Which of the following words best describes this expert testimony from a legal perspective?

- A. Conclusive
  - B. Circumstantial
  - C. Hindsight
  - D. Direct
  - E. Irrelevant
12. Patient consents to a procedure on his left ear. After the patient is anesthetized Physician discovers that the right ear is in greater need of surgery.

What should Physician do?

- A. Perform the procedure on the right ear, if it is clear that is more necessary
  - B. Wake the patient up and seek consent for a different procedure
  - C. Seek a second opinion from another surgeon and proceed with the more necessary procedure
  - D. Perform the procedure on both ears
13. A 41-year-old man comes to Physician's office for his regular visit. He has seemed severely depressed for some time but refuses to discuss either his feelings or treatment options of any kind. He does not want to use antidepressant medications. His only medications are vitamins. Physician's relationship with him is excellent but Patient just will not confront his feelings of depression although he firmly denies suicidal ideation. Physician prescribes a serotonin reuptake inhibitor for him and tells Patient that it is a vitamin. Over the next several months, Patient's mood markedly improves and he feels much better.

Which of the following most appropriately characterizes Physician's action toward Patient?

- A. Physician's action is appropriate, because it benefited Patient.
- B. Physician's action is appropriate, because there were no side effects.
- C. Physician's action is not appropriate, because she treated Patient without consent.
- E. Physician's action is appropriate because she is sincerely trying to help Patient.
- F. Physician's action is acceptable so long as she informs Patient now that he is feeling better.

14. A 61-year-old Spanish-speaking woman has arrived for the first day of a clinical trial of chemotherapy for breast cancer. Physician suddenly remembers the need for signing a consent form. Physician asks a medical student to “get her consent.” Student walks up to the patient and says in English, “Sign this.” Patient signs. The woman completes the trial but her hair falls out and she files suit against Physician for improper informed consent.

**WHY will this lawsuit be successful?**

- A. The risks of the treatment were not explained.
  - B. The explanation was not in a language that Physician was sure she could understand.
  - C. Patient experienced harm from the study medication.
  - D. All of the above.
15. A 71-year-old man sees you in follow-up after a radical prostatectomy. He had been fully informed about the risk of the procedure such as incontinence and impotence. Neither of these (or any other) adverse effects occurs. While searching on the Web he finds that there is treatment without surgery involving the implantation of radioactive seeds or pellets in the prostate. Patient files suit against you because of an improper informed consent.

**What will be the MOST likely outcome of the suit?**

- A. He will lose, because there were no adverse effects.
- B. He will lose, because all the risks of the surgery were explained to him before he signed consent.
- C. He will lose, because radical prostatectomy is a standard procedure.
- D. He will win, because Physician did not inform him of the risks and benefits of alternative therapy to surgery.

16. A medical resident (hospital house staff) admits Patient overnight with uncontrolled blood pressure. Resident means to write an order for the angiotensin receptor blocker *Diovan* at 10 mg once a day. Because of his sloppy handwriting the nurses and pharmacy administer *Digoxin* at 10 mg a day. This is a drug that is rarely used at a dose above 0.5 mg a day. Three days later, Patient develops a hemodynamically unstable rhythm disorder that Resident very sincerely tries to decipher but is unable to until Patient later transfers to the intensive care unit. At this point they discover the overdose of Digoxin. Patient and the family never discover the overdose.

Which of the following **MOST** accurately describes this situation?

- A. There is no liability for Resident because the overdose was unintentional.
  - B. There is no liability for Resident because the pharmacy should have detected the error.
  - C. No liability exists because the error is unknown to Patient.
  - D. No liability exists because it was an accident.
  - E. Resident and hospital are both liable for harm to the patient.
  - F. No liability exists because there was no permanent harm to Patient.
17. Physician explained the risks and benefits of bone marrow transplantation (BMT) versus chemotherapy to Patient with leukemia. This was part of an IRB-approved trial. Physician told Patient that the transplant has the highest chance of cure of the disease but also the highest risk of immediate death. Patient understood what Physician said and signed the consent for transplantation. Patient dies as a result of the bone marrow transplant and his wife sues you for wrongful death.

What will be the **MOST** likely outcome?

- A. Wife loses the lawsuit because BMT is the standard of care for Patient's age and disease.
- B. Wife wins because Patient was not informed.
- C. Wife wins because chemotherapy has less risk of death.
- D. Wife loses it because Patient was fully informed about the risks and benefits of both alternatives.
- E. Wife loses because the trial was IRB-approved.

18. A 63-year-old corporate executive comes to the emergency department with an ST segment elevation myocardial infarction. She receives thrombolytics but has persistent chest pain, worsening left ventricular function, and a new S3 gallop. Patient asks Physician about the risks and benefits of angioplasty. Physician tells her that she could have a hematoma or a coronary rupture as an adverse effect of the angioplasty balloon. Physician tells Patient that the benefit will be that it stops the chest pain. Patient opts for further medical management without angioplasty because of fear of adverse effects. Patient dies and her estate sues Physician.

What will be the MOST likely outcome?

- A. Physician wins, because Physician fully informed Patient of the adverse effects of the procedure.
  - B. Physician wins, because Patient refused the treatment offered.
  - C. Physician loses, because patients cannot refuse lifesaving therapy.
  - D. Physician loses, because Physician should have done the angioplasty before the thrombolytics.
  - E. Physician loses, because Physician did not inform the patient of the serious consequences of forgoing angioplasty.
19. An 88-year-old woman is admitted to the hospital with gastroenteritis and dehydration. There are indications in the chart of her having dizziness. She also informs the nurses of her dizziness. She asks to be brought to the bathroom. She is left alone on the toilet when she becomes lightheaded, faints, and hits her head against a wall sustaining a laceration. Patient and her family subsequently file suit against the hospital for negligence.

What will be the MOST likely outcome?

- A. She wins, because the hospital is variously liable for negligence of the nurses.
  - B. She wins, because the hospital is variously liable for negligence of the physicians.
  - C. She wins, if she has sustained significant brain damage.
  - D. She loses, because there was no significant injury.
20. Physician in a busy inner-city environment has developed her practice over the years to the point where she no longer needs to solicit new patients. She does not want to expand her hours of work, so she decides to limit her practice. Physician instructs her office staff to begin refusing to accept new patients.

Which of the following MOST appropriately describes Physician's action?

- A. It is legal.
- B. It is legal, so long as she arranges transfer of care to another physician.
- C. It is illegal.

21. Physician have a patient who has recently been diagnosed with myeloma and he is discussing treatment options. Physician is the full-time employee of an outpatient facility run by a managed-care plan and Physician has recently received written instructions not to bring up subjects such as bone marrow transplantation in myeloma with patients. The reasoning was that they are outrageously expensive and do not cure the disease, although it may extend survival. The data that they extend survival are not entirely conclusive. In addition, in a private meeting with the medical director, Physician has been told that the expenditures per patient load of care of each of the physicians would be examined yearly to determine which physician would be promoted.

What should Physician do?

- A. Fully inform Patient about the risks and benefits of bone marrow transplantation.
  - B. Inform Patient about bone marrow transplantation, only if he asks about it.
  - C. Give Patient treatment with melphalan or thalidomide which are both acceptable therapy.
22. Patient was suffering from chronic kidney disease and was transferred to hospice care at Minnesota Health Center. Upon arrival, Physician added an order of morphine sulfate, delivered through a syringe placed against the inside of his cheek, every hour. However, the order was incorrectly transcribed onto Patient's record, causing the patient to receive a dose 10 times larger than the amount prescribed. The man, whose name was not disclosed, died two hours after the medication error. The Department of Health found that the facility failed to have adequate policies in place to ensure that medications were transcribed accurately and then administered correctly.

In a civil lawsuit against the facility, the family can probably successfully litigate theories of:

- A. Vicarious liability
- B. Direct liability
- C. Both A and B
- D. Neither A nor B

## PART TWO

### Short Answer Questions

- 3 Questions worth 15 points each
- Worth a combined total of 45 total points.
- Please use the Exam Statutory Appendix when it is relevant. Otherwise, Minnesota common law applies.
- Please limit each response to 2000 words.

1. Professional football players undergo frequent medical evaluations. These evaluations can really affect their careers. For example, at the preseason, pre-draft, or free-agency stage players have an interest in obtaining a favorable medical report from the team physician. Similarly, these evaluations materially matter during the regular season too. Players who believe that they have a minor injury want to be cleared to play. On the other hand, players who believe that they have a more serious injury than the team physician believes, want the opposite result. These players do not want to play, if doing so jeopardizes their careers or future health. And they do not want to be pressured into playing before they have recovered.

Player was injured during a game against the Minnesota Vikings. Team Physician cleared Player to play. So, despite some pain, Player continued in that game and in subsequent games. But in a later visit with another physician, Player discovered that the original injury had been far more serious and now the condition has been seriously exacerbated.

**Assess Player's claims against Team Physician.**

2. In May 2013, Patient had surgery with employed physicians at Minneapolis Memorial Hospital to remove part of her seventh rib because of a precancerous lesion. But instead, physicians removed part of her eighth rib. This is surprising, because the correct rib had been marked before surgery with metal coils and dye. Patient discovered the mistake in October 2016, when after complaining of pain, an X-ray was performed. Patient had to undergo a second surgery to remove the correct portion.

Patient has just hired a prominent Canadian surgeon from the University of Toronto as her only expert, and is planning to file a complaint next week. The Toronto expert will testify that the Minneapolis Memorial Hospital surgeons should have realized their mistake because they never removed the marking coils. Moreover, they should have done an X-ray immediately after the procedure to make sure it had been done correctly.

**Assess Patient's claims against Minneapolis Memorial Hospital.**

3. Tracey has EMCARE insurance coverage from her employer, Target Corporation. In September, her physician recommended an MRI to better diagnose her symptoms. But EMCARE utilization review staff would not approve that procedure. Despite her strong professional judgment that an MRI was important, Tracey's physician readily complied with this denial of coverage. She did not make the referral or otherwise order the MRI. In other words, without protest, Tracey's physician acquiesced with a decision that she knew was medically inappropriate.

Several months later, Tracey was diagnosed with a serious and advanced condition that could have been more readily treated had it been diagnosed in September. Had an MRI been administered in September it is probably that a radiologist would have identified that condition and that oncologists could have successfully addressed it.

**Assess Tracey's claims BOTH against her physician and against EMCARE.**

## PART THREE

### Long Answer Question

- 1 Question worth 66 points.
- Please use the Exam Statutory Appendix when it is relevant. Otherwise, Minnesota common law applies.
- Please limit your response to 3500 words.

Between April 2013 and July 2015, Patient saw her 3MCare in-network primary care physician (Physician) about her headaches. (Patient thinks that these are the right dates. She is still collecting all her records for you to review.) Physician prescribed various drugs and diet changes. While this seemed to somewhat ameliorate and mitigate Patient's symptoms, these treatments were not particularly effective. On one of her final office visits, Patient requested help getting into her vehicle. Nurse, an employee of Physician, took Patient in a wheelchair to her vehicle and attempted to transfer Patient from the wheelchair to the vehicle. The attempt was unsuccessful and Patient ended up on the ground, suffering injuries to her Achilles tendon and foot.

After the summer of 2015, Patient's condition was getting worse. Finally, in July 2016, things got extremely bad. So, with the pre-authorization of 3MCare, patient went to the emergency department at Saint Paul Central Hospital (SPCH). There, Patient was diagnosed with a brain tumor. Patient had emergency surgery at SPVH the next day.

Patient has already consulted with partners at your law firm where you are an associate. Patient wants to file a civil lawsuit by the end of 2016. To evaluate whether to take the case, the partners hired a local consulting expert, Professor Apple. While a pharmacist by training, Professor Apple has hundreds of publications on brain tumor diagnosis by primary care physicians. He has been training clinicians on this at UM-Duluth, since 1988. Apple has opined that Patient's tumor should have been detected in 2013. Moreover, back then it was smaller and more treatable. Instead, by 2016, the tumor was so large that the SPCH surgeons had to sever Patient's cranial nerves to remove it. This resulted in loss of vision, deafness, facial paralysis, and sexual dysfunction.

On the other hand, Professor Apple concedes that removing any brain tumor at any stage already entails these same sorts of risks. It is just an inherently risky procedure. Still, smaller tumors generally entail lower risks. Professor Apple is confident that earlier diagnosis would have yielded a fifty-fifty chance of better recovery. A second consulting expert, Professor Pachado in Cuba, has also reviewed Patient's records on behalf of the firm. Professor Pachado opined that with a timely diagnosis and treatment, more likely than not Patient would have wound up with a better result.

Professor Apple has testified against Physician in other medical malpractice cases. He recalls that Physician used to work for Target-Care before its Medical Quality Committee concluded that his diagnostic error rate was too high and that he was performing tens of thousands of examinations per year, well in excess of the average workload of a typical full-time physician. Physician was never terminated by Target-Care, nor did the state Board of Licensure take any action on the investigation it started. But Physician did resign at around the time of the Committee's investigation, and began working for 3MCare shortly thereafter.

As you learn more about Patient's case, you discover that in addition to the delayed diagnosis Patient may have been further injured at SPCH. While clinicians were using a laser on Patient, she broke wind. All SPCH equipment was operating normally, leading everyone to conclude that Patient's gas ignited the laser. Methane and hydrogen in a person's gas makes it potentially flammable. When the patient's intestinal gas leaked into the space of the operation room, it ignited with the irradiation of the laser. The burning spread, eventually reaching the surgical drape and causing a fire. The resulting fire burned much of Patient's body. Patient told your firm, though not the SPCH clinicians, that she had consumed a large quantity of Brussel sprouts and beans the day before surgery, even though she had been advised against doing that.

Unfortunately, the brain tumor surgery was not the end of Patient's problems. After surgery, Patient acquired an infection in the SPCH surgical ICU. Based on the discovery documents that your firm has from another case, you are not surprised. Patient may not have been monitored as closely as necessary. SPCH has a lower nurse to patient ratio than other Minnesota hospitals. Moreover, many of the SPCH nurses are less credentialed.

This is notable, because a recent published study shows that a bedside care workforce with a greater proportion of professional nurses is associated with better outcomes for patients. Reducing nursing skill mix by adding nursing associates and other categories of assistive nursing personnel without professional nurse qualifications may contribute to prevent preventable deaths and erode quality and safety of hospital care. In the hospitals that participated in the study, there were an average of six caregivers for every 25 patients, four of whom were professional nurses. Substituting one nurse assistant for a professional nurse for every 25 patients (like SPCH had done) is associated with a 21% increase in the odds of dying.

**Assess what claims Patient can bring against what parties.**

# 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 discovery of the facts constituting the health care liability or discovery of the facts 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.

## **Exam Stat. 400**

Except as provided in Exam Stat. 200 & 300, the following actions shall be commenced within three years of discovery or be barred: An action to recover damages for injuries to the person, including an action to recover damages for injuries to the person caused or sustained by or arising from an accident involving a motor vehicle.

## **Exam Stat. 500**

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. 600**

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. 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.

**END OF EXAM**