

Instructor	Professor Thaddeus Mason Pope
Course Title	Health Law: Quality & Liability
Format	Final Exam, Spring 2021
Total Time	Twenty-Four (24) hours
Total Pages	21 pages

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Spring 2021 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 4, 2021 and before 11:59 p.m. on Monday, May 17, 2021.
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 Monday, May 17, 2021. Therefore, the latest time by which you will want to **download** the exam is 11:59 p.m. on Sunday, May 16, 2021. 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 **midterm exam period**. It is a violation of the Code to share the exam questions. (There may be an accommodation student taking this exam at a different time.) Shred and delete the exam questions immediately upon completion of the exam. Professor Pope will repost the exam after the end of the midterm exam period.
2. **Competence:** By downloading and accepting this examination, you certify that 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 twenty-one (**21**) pages, including these instructions. Please make sure that your exam is complete.
4. **Identification:** Write your exam number on the top of each page of your exam answer.
5. **Anonymity:** Professor Pope will grade the exams anonymously. Do **NOT** put your name or anything else that may identify you (except for your exam number) on the exam. **Failure to include your correct exam number will result in a 5-point deduction.**
6. **Total Time:** Your completed exam is due within twenty-four (24) hours of downloading it, but in no case later than 11:59 p.m. on Monday, May 17, 2021.
7. **Time Penalty:** If you upload your exam answer file more than twenty-four (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 final exam comprises 40% of your overall course grade. While the scoring includes 100 points, these points will be weighted.

10. **Open Book:** This is an OPEN book exam. You may use any written materials, including, but not limited to: (a) any required and recommended materials, (b) any handouts from class, (c) PowerPoint slides, class notes, and (d) your own personal or group outlines.
11. **Additional Research:** While you may use any materials that you have collected for this class, you are neither expected **nor are you permitted** to do any online or library research (e.g. on Lexis, Westlaw, Google, reference materials) to answer the exam questions.
12. **Format:** The exam consists of two main parts:

Part One 40 multiple choice questions
 Worth 1.5 points each, for a combined total of 60 points
 Estimated time = 60 minutes (1.5 minutes each)

Part Two 3 essay questions
 Worth 15, 15, and 10 points each, for a combined total of 40 points
 Estimated time = 50, 50, and 30, for a combined total of 130 minutes

That adds up to just over 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. Professor Pope will post an explanatory memo and a model answer to Canvas a few weeks after the exam.

SPECIAL INSTRUCTIONS FOR PART ONE

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 40). 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:
 - Essay Question 1
 - Essay Question 2
 - Essay Question 3
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 40 multiple choice questions.
 - Each question is worth 1.5 points for a combined total of 60 points.
 - Recommended time is 60 minutes (1.5 minutes each).
1. **A recently published survey of more than 300 transplant programs shows that 71% would automatically disqualify an adult with an IQ under 35, which is considered severe intellectual disability. This may not constitute prohibited disability discrimination if the transplant program can also show:**
- A. The patient has co-occurring medical conditions that would make transplant dangerous.
 - B. The patient is unable to comply with post-transplant requirements, such as taking immunosuppressive drugs.
 - C. The transplant program need not make any additional showing as in A and B. Organs are scarce and it would be inefficient and inappropriate to allocate them to individuals with such profound mental challenges whose lives are less valuable.
 - D. A or B
 - E. A or B or C
2. **Evidence shows a pattern that a transplant center is denying organ transplants to people with intellectual and neurodevelopmental disabilities like Down's syndrome or autism. That conduct:**
- A. Is not illegal under the Americans with Disabilities Act because these individuals are not disabled.
 - B. Is not illegal under the Americans with Disabilities Act, so long as the transplant center is uniform and consistent in its selection of candidates. For example, the transplant center categorically and always excludes these individuals and makes no exceptions.
 - C. Is necessarily illegal under the Americans with Disabilities Act.
 - D. Is possibly illegal under the Americans with Disabilities Act.
3. **It is permissible to deny organ transplants to individuals with physical or mental disabilities, without evaluation, based on assumptions that:**
- A. Their lives are less worthy.
 - B. They are incapable of complying with posttransplant medical requirements.
 - C. They lack adequate support systems to ensure compliance with posttransplant medical requirements.
 - D. Any of the above
 - E. B or C
 - F. None of the above

4. In March 2019, Dr. Lam provided medical services to Christine at Saint Paul Medical Spa. These services included liposuction and stem cell transfer procedures. Within days of the procedures, Christine contacted SPMS with concerns regarding the procedures, her wound, and postoperative wound care. Unsatisfied with the response, Christine sought a second opinion and began treating with Minneapolis Wound Clinic from April to August 2019. In May 2021, Christine filed suit against SPMS. This jurisdiction has a two-year statute of limitations and a four-year statute of repose.
- A. The claim is barred by the statute of limitations.
 - B. The claim is barred by the statute of repose.
 - C. Both A and B.
 - D. Neither A nor B.
5. Plaintiff knew on October 31, 2019 that her surgeon had wrongly positioned screws during a previous spine surgery. This jurisdiction has a one-year statute of limitations and a two-year statute of repose. Plaintiff filed a claim against surgeon before October 31, 2020. But she now (in May 2021) seeks to file a claim against the hospital that employed the surgeon, arguing that she only recently discovered that she has a vicarious liability claim against the hospital related to the wrongly positioned screws.
- A. The claim is barred by the statute of limitations.
 - B. The claim is barred by the statute of repose.
 - C. Both A and B.
 - D. Neither A nor B.
6. Plaintiff is a 35-year-old woman with a rare, congenital, and potentially lethal form of muscular dystrophy known as Nemaline Rod Myopathy. Plaintiff is what is known as a “high technology patient.” She is wheelchair bound, quadriplegic, and unable to breathe on her own. She relies on a ventilator and tracheostomy to breathe, a gastrostomy tube for nutrition, and a catheter to empty her bladder. Plaintiff cannot move her body against gravity. She required the implantation of a suprapubic catheter through a hole in her lower abdomen. She depends on others to utilize an ambu-bag as a hand-held resuscitation device while they attempt to clear occlusions in her ventilator that must be addressed expertly and quickly, or she can die within moments. She lives with a humidifier attached to the ventilator and trach to provide sufficient moisture for her to breathe.

A nurse must expertly monitor, and act quickly 24/7 so that these issues do not become life-threatening. A nurse must reposition Plaintiff’s head frequently to prevent her from choking on her own saliva. Plaintiff is incapable of moving any part of her body against gravity; and can only operate the wheelchair she requires to move with the one finger she has use of. Plaintiff’s litany of daily health challenges requires constant monitoring by a skilled nurse, which is why her treating physicians have and continue to order 24/7 nursing care.

Plaintiff is a participant beneficiary of the CIGNA's Medical PPO by virtue of her husband who is a member of the Teamsters Union Local 166 and is also a beneficiary under the Plan. If Plaintiff can show that CIGNA wrongfully terminated her life-sustaining private duty nursing care, she can recover:

- A. Economic damages
- B. Non-economic damages
- C. Both A and B
- D. The value of the denied nursing care

7. Plaintiff sued physician for removing a mass from his scrotum and penis without adequate consent. The removal caused permanent injuries including impotence and a total loss of feeling in the penis. The form of damages plaintiff will probably recover will likely be:

- A. Economic
- B. Non-economic
- C. Punitive
- D. Nominal
- E. Capped by statute despite what amount the jury determined appropriate
- F. A and E
- G. B and E
- H. C and E
- I. D and E

8. Plaintiff consented to have a small mass removed from his scrotum. He did not consent to physician performing any surgery involving his penis. The most appropriate cause of action is

- A. Medical malpractice - because the surgery performed was like the procedure to which plaintiff provided consent.
- B. Battery - because the surgery performed was a substantially different treatment than the one to which plaintiff consented.
- C. Informed consent - because physician did not explain the procedure that she would be performing.

9. Sentinel events are also known as never events because they are considered basic patient safety lapses that should never occur. As in past years, this year, one of the top 10 sentinel events was wrong-site surgery. According to The Joint Commission's statistics, at least 3,400 wrong-site surgeries likely occurred in the United States in 2020. If patient was injured from wrong-site surgery, she may be able to sue for:
- A. Battery
 - B. Medical malpractice using *res ipsa*
 - C. Both A and B
 - D. Neither A nor B
10. Your client is a clinician in office practice. A stranger leaves a message on her personal voice mail saying that a mutual friend suggested they call you. The caller has abdominal pain and does not know what to do. Is the clinician obligated to call them back?
- A. Yes
 - B. Yes, but only if this might be an emergency medical condition
 - C. Yes, but only if this is definitely an emergency medical condition
 - D. No
11. Continuing the scenario from the previous question, assume that your client calls back the individual who left the voicemail. Is the clinician now obligated to follow up?
- A. Yes, because the physician called back
 - B. Yes, if the clinician offered recommendations or advice
 - C. Yes, but only if the clinician charged for her services
 - D. No
12. Generally, some medical mistakes just do not matter. Near misses do not cut it. There must be a real discernible injury. When a patient is almost killed from negligent conduct but recovered from the medical mistake with no injury or damages, there is no case.
- A. True
 - B. False

13. In 1988, the Florida legislature enacted the Birth-Related Neurological Injury Compensation Association. NICA responded to obstetricians' complaints that their malpractice insurance premiums were too high. The law bars parents from pursuing lawsuits against doctors and hospitals when a baby is born with catastrophic, even fatal, brain damage from oxygen deprivation or asphyxia during childbirth. Even in cases where the doctor or hospital may have made a glaring error, parents must accept the program's compensation, which is a \$100,000 settlement upfront, and "medically necessary" and "reasonable" health care for the duration of the child's life.

For some parents, NICA, a no-fault program, cannot provide what they want most: accountability. Plus, as compared to a medical malpractice lawsuit, NICA most obviously deprives parents of:

- A. Economic damages
 - B. Non-economic damages
 - C. Punitive damages
 - D. B and C
 - E. None of the above
14. Plaintiff alleges that physician failed to timely diagnose and treat his pancreatic adenocarcinoma. Specifically, plaintiff claims that a pancreatic mass/ neoplasm was visible on (a) a non-contrast chest CT scan performed March 12, 2020; (b) a second non-contrast chest CT scan performed June 11, 2020; (c) a third non-contrast chest CT scan performed October 30, 2020; and (d) a contrast abdominal/pelvic CT scan performed on January 18, 2021.

Plaintiff claims that, on each of these four occasions, an immediate referral for a pancreatic protocol contrast abdominal CT/MRI should have been made. Plaintiff claims that, on each occasion, this would have confirmed the diagnosis of pancreatic adenocarcinoma. Plaintiff further claims that, on each occasion, had a proper diagnosis been made, plaintiff should have been referred for clinical/interventional care and treatment regarding this diagnosis of pancreatic cancer.

Plaintiff claims that departures from good and accepted medical care and treatment caused the pancreatic mass to remain untreated, increase in size and metastasize to his liver and lungs. This deprived him of a chance at modalities of medical treatment (including oncological, chemotherapy, radiation, and surgical modalities) that would likely have arrested and aggressively treated the malignancy. If this jurisdiction has a three-year statute of repose, plaintiff must file his lawsuit concerning the March failure to refer by:

- A. Three years from discovery of this failure to refer
- B. March 12, 2023
- C. January 18, 2024
- D. None of the above

15. On the facts of the previous question, assume that plaintiff has evidentiary challenges regarding the earlier failures to refer. So, he focuses on the October and January events. But by this time, his cancer had already progressed and was less treatable. In most U.S. states (as of 2021), it will be sufficient that plaintiff can introduce the following expert testimony into evidence:
- A. “With timely referral, the cancer probably could have been treated successfully”
 - B. “With timely referral, the cancer might have been treated successfully”
 - C. “With timely referral, the cancer possibly could have been treated successfully”
 - D. A or B
 - E. A or B or C
16. On the facts of Question 14, if plaintiff can establish \$1 million in damages and that the defendant’s failure to refer made it 30% less likely plaintiff’s cancer could be successfully treated, then in most U.S. jurisdictions (as of 2021) plaintiff may recover:
- A. Nothing
 - B. \$1 million
 - C. \$700,000
 - D. \$300,000
17. One type of “bad baby” case is when a child is born with catastrophic brain damage due to oxygen deprivation during delivery. These cases are worth millions if the child is living, and potentially worthless if the child dies. This is counterintuitive. One might expect “death” to be a worse outcome that would merit higher damages. What is the main reason the outcome of death makes the case worth less?
- A. Lower economic damages
 - B. Lower non-economic damages
 - C. Lower (or no) punitive damages
 - D. Lower nominal damages

18. **The American Society for Healthcare Engineering and other similar organizations have recommended steps for healthcare facilities in response to COVID-19. The measures include: (a) adding protective barriers to potential interaction spaces; (b) making patient flow changes to promote social distancing; and (c) reducing seating inpatient areas. If a patient catches COVID-19 in a facility that failed to take these measures, in most jurisdictions, that patient could establish breach by:**
- A. Introducing ASHE and other guidelines as evidence of best practices
 - B. Introducing expert testimony on what a reasonable U.S. facility does
 - C. Introducing expert testimony on what a reasonable facility in the defendant's community or a community like the defendant's community does
 - D. Introducing expert testimony on what a reasonable facility in the defendant's state does
19. **Staffing levels have played a critical role in determining the health outcomes of nursing home residents during the COVID-19 pandemic. Sufficiently staffed facilities are not only more prepared to stop the spread of COVID-19 and treat infected residents; they can also reduce loneliness and isolation by providing residents with care and services that they need. But nearly 85% of U.S. facilities fail to meet the CMS minimum of 4.10 total care staff hours per resident day. A facility failing to meet staffing levels is most likely subject to:**
- A. Direct liability
 - B. Vicarious liability
 - C. Regulatory sanctions
 - D. Loss of board certification
20. **In early February 2021, Plaintiff met with a local insurance agent for Prudential, to apply for life insurance policy. As part of the application process, the Agent informed Plaintiff that she would need to undergo a blood test. On February 20, a registered nurse came to Plaintiff's home to draw blood for testing. Plaintiff provided written consent to blood test results. But she did not understand that or specifically authorize that an HIV test would be performed. Plaintiff's informed consent claim against Prudential:**
- A. May succeed only if Plaintiff can establish that she would not have consented if she knew an HIV test would be performed
 - B. May succeed only if Plaintiff can establish that a reasonable person in her position would not have consented if she knew an HIV test would be performed
 - C. May succeed only if Plaintiff can establish that a reasonable person would not understand a blood test to include an HIV test
 - D. A and B
 - E. A and B and C
 - F. Will not succeed

21. Plaintiff visited his doctor and discussed, among other things, his symptoms of depression. His doctor prescribed bupropion, an antidepressant medication, and explained that he should start with a three-week dose of 150 milligrams once a day. Then, if Plaintiff responded positively, he would take an increased dose of 300 milligrams once a day. But physician transmitted only the 300-milligram prescription to the pharmacy. Twelve days after starting the medication, Plaintiff experienced suicidal thoughts. He felt extreme anxiety and had the urge to jump from a moving car. He later loaded a shotgun and considered how to position the gun so he could pull the trigger. Only then, did he discover he had been taking the wrong dose. Plaintiff:
- A. Must prove there was no possibility he would have suffered any harm from the ingestion of the 150 mg dosage.
 - B. Will lose if the evidence shows the same adverse drug event can occur at lower doses of a medication.
 - C. Both A and B
 - D. Neither A nor B
22. Using the same fact scenario from the previous question, Plaintiff can succeed in a malpractice claim against physician, if he can establish that:
- A. His side effects “were accentuated” by the higher dose
 - B. Higher daily doses of Bupropion “are associated with the greater prevalence” of adverse effects
 - C. The 300-milligram dose “clearly was a substantial contributing factor” to Plaintiff’s adverse reaction.
 - D. Two of the above would be sufficient
 - E. Any of the above would be sufficient
 - F. None of the above
23. A teenager committed suicide. She was unemployed at the time of her death, so had no earnings history. She had not yet completed her education. After finding the defendant healthcare provider negligent in handling the mental health care of this minor patient, the jury awarded \$2.2 million to the parents for expected future income based on testimony that the teen was planning to go to both college and law school. If this jurisdiction (like many) caps non-economic damages at \$250,000, the judge should award:
- A. \$0
 - B. \$250,000
 - C. \$2,200,000

24. **On the fact scenario in the previous question, assume that undisputed expert evidence established that the teen might still have committed suicide even if she had been appropriately treated. This evidence would mean that the judge:**
- A. Should grant JMOL to defendant because a reasonable jury could not have found but for causation.
 - B. Should reduce the verdict by a reasonable amount (like 50%) - if this jurisdiction recognizes lost chance causation.
 - C. Should let the verdict stand

25. **Ally, a freelance Uber driver, purchased Aetna insurance on the individual market. But based on its medical director's report, Aetna refused to pay for Ally's son to receive Zolgensma, a gene therapy designed to slow the progression of spinal muscular atrophy. SMA is a rare childhood disease that can lead to rapid muscle deterioration and loss of breathing function.**

Aetna explained that it denied coverage because Ally's son needs mechanical assistance to breathe and uses a feeding tube. But Novartis, the manufacturer of Zolgensma, indicates that its drug reduces progressive and irreversible damage to motor neurons even for patients on permanent ventilation and patients unable to swallow. If Ally can show the Aetna medical director's judgment was misinformed or otherwise negligent, then she may have a claim against the medical director individually based on:

- A. Medical malpractice
 - B. Abandonment
 - C. Both A and B
 - D. ERISA
 - E. None of the above
26. **Some states recognize the tort of bad faith to pay insurance benefits, under which a plaintiff may collect damages if an insurer knowingly or maliciously refuses to pay a legitimate insurance claim. Winona is a free-lance Uber driver and a beneficiary under her husband's long-term disability plan through his employer. She injured her back lifting heavy packages for Uber passengers and sought permanent LTD benefits. But the plan's insurer terminated benefits after only 13 months. Winona brought a claim under Minnesota's law of bad faith based on improper claims processing.**
- A. Winona's claim may proceed because she seeks not only just reimbursement of the denied benefits but also consequential and punitive damages.
 - B. Winona's claim may proceed because this is not her own employee benefit but her husband's.
 - C. Winona's claim is preempted, and she has no remedy.
 - D. Winona's claim is preempted, and she may bring a claim under ERISA section 502.

27. A young boy was scheduled to have three fillings done while under general anesthesia, due to his inability to cooperate with staff and procedures. The mother agreed to the plan. Dentist did 12 tooth restorations on the patient, including the use of stainless-steel crowns. Is this conduct that the state dental board should investigate?
- A. Yes
 - B. No, because the board does not investigate conduct that is already actionable through tort law.
 - C. No, because unlike other healthcare professionals, dentists are not licensed by the state.
 - D. No, if the dental treatment was paid by Medicaid, because then state regulation is preempted by federal regulations.
28. With respect to a healthcare facility like a hospital, “certification” refers to:
- A. The right to participate in the government payment systems like Medicare
 - B. The right to operate that facility legally in the state
 - C. Recognition of meeting quality standards set by private organizations
 - D. None of the above
29. On January 22, 2020, plaintiff underwent carpal tunnel surgery and shoulder surgery. Early the next morning, she became paralyzed. The same physician performed a spinal decompression surgery on February 10, 2020, but plaintiff did not recover a substantial amount of function. If this jurisdiction has a 2-year statute of limitations and a 4-year statute of repose, then plaintiff must file a malpractice claim concerning the carpal tunnel surgery and shoulder surgery by:
- A. January 22, 2022
 - B. January 22, 2024
 - C. February 10, 2022
 - D. February 10, 2024
30. The harm resulting from medical treatment may not always be objectively appreciable to the layperson. Since the harm may not affect activities of daily living, it may not unambiguously manifest. This truth affects application of the:
- A. Statute of limitations
 - B. Statute of repose
 - C. Both A and B
 - D. Neither A nor B

31. In various situations, a physician's treatment may affect the patient's driving ability. For example, the physician may prescribe or administer medication, the effects of which may impair driving ability. Or the physician may perform an outpatient procedure requiring sedation, the effects of which may impair driving ability. Suppose the patient then operates a motor vehicle, causes an accident, and injures a previously unidentifiable nonpatient victim. Generally, the injured individual may:
- A. Bring a medical malpractice action against physician because she is a foreseeable victim
 - B. Bring a medical malpractice action against physician in Minnesota because she is a foreseeable victim
 - C. Not bring a medical malpractice action
 - D. A and B
 - E. B and C
32. Nursing Regulatory Bodies are jurisdictional governmental agencies in the 50 states, the District of Columbia and four US territories that are responsible for the regulation of nursing practice. More than 100 years ago, state and territorial governments established NRBs to protect the public's health and welfare by overseeing and ensuring the safe practice of nursing. NRBs achieve this mission by outlining the standards for safe nursing care and issuing licenses to practice nursing. Once a license is issued, the NRB's job continues by monitoring licensees' compliance to jurisdictional laws and taking action against the licenses of those nurses who have exhibited unsafe nursing practice. Which of the following is most accurate?
- A. A nursing license is essential to being a nurse
 - B. A nursing license is desirable because employers want to hire licensed nurses
 - C. A nursing license is important only if one wants to bill Medicare for the nurse's services
 - D. None of these is accurate

33. As part of a plaintiff's medical malpractice case, Attorney retained an expert who opined that the failure to order an EKG under the circumstances amounted to negligence. The hospital retained Dr. Defense to present expert testimony countering this position. Dr. Defense offered his opinion that, given the totality of the information that Defendant had that morning, the fact that he did not order an EKG did not fall below the appropriate standard of care and that if he were in the same position, he would not have ordered the test.

Attorney researched Dr. Defense's background. On cross-examination, Attorney asked Dr. Defense: "Isn't it true that you charge your clients \$750 per hour for pretrial services and \$1,000 per hour for trial testimony?" The attorney for the hospital objected. The court should:

- A. Overrule the objection
 - B. Sustain the objection
 - C. Sustain the objection because this information is irrelevant and prejudicial
 - D. Sustain the objection because this information is relevant to whether the expert is qualified to opine on the defendant
34. On the same facts as in the previous Question, Attorney now asks: "Isn't it true that you have testified only one time in favor of a plaintiff during medical malpractice litigation and have testified over 400 times on behalf of the defense?" The attorney for the hospital objected. The court should:
- A. Overrule the objection
 - B. Sustain the objection
 - C. Sustain the objection because this information is irrelevant and prejudicial
 - D. Sustain the objection because this information is relevant to whether the expert is qualified to opine on the defendant

NOTE: The final six multiple-choice questions require a quick bit of research and analysis.

35. Go to the California Board of Registered Nursing (<https://www.rn.ca.gov/>). Approximately how many nurses are licensed in California?
- A. 100,000
 - B. 200,000
 - C. 500,000
 - D. 1,000,000

36. **Approximately how many types of nursing licenses does California issue?**
- A. One
 - B. Five
 - C. Ten
 - D. Twenty
37. **Go to the Joint Commission (<https://www.jointcommission.org/>). Approximately how many hospitals and healthcare organizations are accredited by the Joint Commission?**
- A. 5000
 - B. 10,000
 - C. 20,000
 - D. 50,000
38. **Go to the Federation of State Medical Boards (<https://www.fsmb.org/>). Approximately how many physicians were disciplined in 2019?**
- A. 1000
 - B. 8000
 - C. 20,000
 - D. 33,000
39. **Physicians represent approximately what portion of the U.S. population?**
- A. 1 in 100
 - B. 1 in 300
 - C. 1 in 500
 - D. 1 in 1000
40. **Approximately what percent of physicians were disciplined in 2019?**
- A. 1%
 - B. 5%
 - C. 10%
 - D. 15%

Essay Question 1

- This question is worth 15 points
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 50 minutes.

As of May 2021, most U.S. states have promulgated executive orders or enacted legislation that grants immunity from civil liability to long-term care facilities and their individual providers. These laws cover assisted living, residential care, continuing care retirement communities, and nursing homes. But they most saliently apply to 1.3 million residents living in around 15,000 nursing homes. These laws bar actions alleging ordinary negligence. So, the only actions that could still proceed must allege intentional, willful, or wanton conduct.

These laws would probably immunize LTC facilities in two common scenarios:

1. COVID has exacerbated understaffing challenges. A resident with dementia, diabetes, incontinence, and limited mobility does not receive the care she needs. She is at risk of pressure ulcers. The facility fails to assist her with eating and drinking, does not keep her clean and dry, and does not reposition her regularly. She becomes malnourished, dehydrated, and develops severe pressure ulcers, which become infected, resulting in sepsis. She is hospitalized and dies from the infection.
2. A resident is living in a facility that failed to properly train staff in infection control techniques. Consequently, staff do not follow appropriate hand hygiene protocols and improperly use PPE. The facility also fails to properly screen staff for COVID. The resident contracts COVID and dies.

The immunity laws have at least two immediate consequences in these scenarios. First, the families of these and other residents will not get compensation. Second, LTC facilities will have one less incentive to provide quality care.

Assume that these immunity laws are not a naked political favor for the LTC industry but have some public health and safety justification. First, identify two ways in which these laws arguably protect LTC residents. Second, assess those explanations or arguments.

In doing this, analogize to the statutes of repose that we discussed. Those laws are analogous in that they similarly effectively immunize certain negligent conduct. Were statutes of repose designed solely to protect healthcare providers? Or were they also designed to protect patients?

Essay Question 2

- This question is worth 15 points
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 50 minutes.

Adrian Owen is a neuroscientist who has demonstrated that we can communicate with patients who have long been unconscious. He describes his research in this five-minute video: <https://youtu.be/JbWHAIDHUQ4>. Often, a traumatic event like a car accident leaves these patients alive but unresponsive. They languish for years (and often decades) in what neurologists refer to as a chronic vegetative state.

In research first conducted around ten years ago, Owen put these patients into a functional magnetic resonance imaging (fMRI) machine and started asking them questions. Incredibly, the patients provided answers. A change in blood flow to certain parts of the patient's injured brain showed that the patient was conscious and able to communicate. fMRI measures brain activity by detecting changes associated with blood flow. This technique relies on the fact that cerebral blood flow and neuronal activation are coupled. When an area of the brain is in use, blood flow to that region also increases.

To answer "yes," the patient was told to think of playing tennis. Since that is a motor activity, it activates one part of the brain. To answer "no," the patient was told to think of wandering from room to room in his home, visualizing everything that he would expect to see there. Since that is about spatial awareness, it activates another part of the brain. To confirm the responses were deliberate and not random, Owen's team required that the patient give correct answers to a long series of questions. Owen also asks the patient to imagine tennis or wandering for 30 seconds at a time, ten times in a row to provide 100% confidence that the person is responding.

Owen's research has since been replicated in other laboratories around the world. Given the equipment needed and the sophisticated technique of identifying and understanding brain patterns, only a limited number of centers can do this work. But at these centers, clinicians can put these patients into an fMRI machine, and they can demonstrate that the patients understand instructions, have functioning memory to remember what tennis is, and have attention intact.

Arguably, these patients are much like those with locked-in syndrome. They are conscious but trapped in an inert body. While this is not true of all CVS patients, it is true of a substantial fraction. Many have functioning minds yet are trapped in bodies over which they have no control.

Your client has several chronic vegetative patients in its healthcare facilities. It has asked you whether it must offer tools to try communicating with these patients in the same way that it must work with deaf patients. Assess whether your client has a duty to offer such communication tools and resources.

Essay Question 3

- This question is worth 10 points
- Limit your response to 500 words. This is only a limit, not a target or suggested length.
- Recommended time is 30 minutes.

The attached form is one used in Los Angeles for a receiving hospital to report EMTALA violations of the transferring hospital. Review this form and suggest improvements.

Is the form underinclusive? Specifically, are there potential types of violations that could/should be separately enumerated with checkboxes to prompt users of this form to check them when applicable?



LOS ANGELES COUNTY
DEPARTMENT OF HEALTH SERVICES



PROBLEM TRANSFER/EMTALA REPORTING

TODAY'S DATE: _____

Instructions:

This form may be used by DHS Acute Care Facilities to report intra-County or inpatient (**Non-EMTALA**) transfer issues to the Emergency Medical Services (EMS) Agency for incidents that involved the inappropriate transfer arrangements of a patient to DHS facility and that resulted in or had the potential to result in an adverse patient outcome. Please complete this form and include as much pertinent clinical information or attachments to demonstrate the patient's medical condition, specific treatment concerns and other details relevant to the patient transfer arrangement. The Problem Transfer report and attachments are to be submitted to the **Medic Alert Center (MAC)** attention to John Quiroz for review and follow up.

This form may also be used by Department of Health Services (DHS) Acute Care Facilities to report a non-County facility to Health Facilities Investigation Division for incidents that involved the inappropriate transfer or discharge arrangement of a patient to a DHS facility which may have violated an element of the Emergency Medical Treatment and Active Labor Act (**EMTALA**) and may have resulted in an adverse outcome. Please complete this form and include as much pertinent clinical information or attachments to demonstrate the patient's medical condition, specific treatment concerns and other details relevant to the patient transfer arrangement. The Problem Transfer report and attachments are to be submitted to the **Health Facilities Investigation Division** within 72 hours of the transfer. Your facility Chief Executive Officer and Chief Medical Officer should be involved in this reporting.

John Quiroz, Program Manager
Emergency Medical Services Agency
Medic Alert Center
10100 Pioneer Blvd., Suite 200
Santa Fe Springs, CA 90670
Tel: (562) 378-1512
Fax: (562) 906-4300
Email: jquiroz@dhs.lacounty.gov

PROBLEM TRANSFER REPORT: Complete when a transfer into a DHS facility requires further review and or follow up. Submit directly to John Quiroz, MAC.

Lisa Parker-Willis, Supervisor ICF-IID & Clinic DO
Los Angeles County Department of Public Health
3400 Aerojet Ave., Suite 323
El Monte, CA 91731
Tel: (626) 312-1161
Fax: (626) 927-9842
Email: lisa.parkerwillis@cdph.ca.gov

EMTALA VIOLATION: Submit form directly to Health Facilities Division within 72 hours. Submit copy to John Quiroz, MAC.

NAME OF HOSPITAL: _____

DEPARTMENT: _____

CONTACT PERSON: _____ TELEPHONE # _____

ALTERNATE: _____ TELEPHONE # _____

BEST TIME TO CONTACT: _____



LOS ANGELES COUNTY
DEPARTMENT OF HEALTH SERVICES



PROBLEM TRANSFER/EMTALA REPORTING

DATE/TIME OF OCCURRENCE: ___ / ___ / ___ AM/PM

PATIENT'S NAME: _____ HOSPITAL TELEPHONE #: _____

ED to ED TRANSFER: ED to INPATIENT:

SENDING FACILITY: _____ CONTACT # _____

SENDING PHYSICIAN: _____ CONTACT # _____

RECEIVING FACILITY: _____ CONTACT # _____

RECEIVING PHYSICIAN: _____ CONTACT # _____

THIS CASE IS BEING REFERRED FOR THE FOLLOWING REASONS: (Check all that apply)

PROBLEM TRANSFER:

- Transfer without Medical Alert Center involvement
- No physician to physician communication
- Patient sent to receiving facility without prior notification
- Patient sent to receiving facility without acceptance/authorization
- Delay in transfer with adverse outcome
- Patient is a lateral transfer and represented as needing a higher level of care
- Failure of on-call physician at sending facility to respond
- Patient was discharged, instructed to self-transport to alternate hospital and required higher level of care

DIAGNOSIS/TREATMENT:

- Admitting diagnosis differs from reason for transfer
- Patient's clinical condition differs from information given on the phone
- Adequate treatment for stabilization could/should have been done prior to transfer
- Inappropriateness of treatment at sending facility
- Patient transferred from another licensed facility that appeared ill treated

TRANSPORTATION:

- Delay in transportation with adverse outcome
- Patient sent without medical records (including labs and x-rays)
- Patient transported without appropriate personnel
- Patient transported without appropriate equipment
- Refusal to accept patient transfer with an Emergency Medical Condition
Name of Refusing Physician: _____
- Other (explain): _____

DESCRIPTION OF PROBLEM/OCCURRENCE: