Instructor	**Professor Thaddeus Mason Pope**
Course Title	**Health Law: Quality & Liability**
Format	**Take Home Midterm Exam, Fall 2018**
Total Time	**Four (4) hours**
Total Pages	**15 pages**

Reference Materials Allowed

Open Book (all reference materials allowed)

Take-Home Exam Instructions

1. Please know your **correct Fall 2018 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 Sunday, October 7, 2018 and before 11:59 p.m. on Sunday, October 14, 2018.

4. You must **upload** (submit) your exam answer file to the Canvas site within four (4) hours of downloading the exam.

5. You must **upload** your exam answer file no later than 11:59 p.m. on Sunday, October 14, 2018. Therefore, the latest time by which you will want to download the exam is 7:59 p.m. on Sunday, October 14, 2018. Otherwise, you will have less than the permitted 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 **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 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 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 **fifteen (15) 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 4 hours of downloading it but in no case later than 11:59 p.m. on Sunday, October 14, 2018. If you upload your exam more than 4 hours after downloading the exam, then Professor Pope will lower your exam grade **by one point** for every minute over the 4 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 4-hout limit by more than 20 minutes, then Professor Pope may refer the situation for a Code of Conduct investigation and potential discipline. Please save sufficient time after editing to upload your exam.

7. **Timing:** Professor Pope has designed this exam for completion in under 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 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, polish, and proofread your answers, such that you will not be submitting a "first draft."

8. **Scoring**: The midterm exam comprises 20% of your overall course grade. While the scoring includes 100 points, these points will be weighted.

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 parts.

    Part One is 20 multiple choice questions worth 40 points (estimated 40 minutes).
    Part Two is an essay question worth 25 points (estimated 50 minutes).
    Part Three is an essay question worth 35 points (estimated 70 minutes).

    That adds up to less than 3 hours. Remember, you have 4 hours to complete this exam. Therefore, you have time to proofread.

12. **Grading**: All exams will receive a raw score from zero to 100. The raw score is meaningful only relative to the raw score of other students in the class. Professor Pope computes your course letter grade by summing the midterm, final, and quiz scores. He will post an explanatory memo and a model answer to Canvas a few weeks after the exam.

SPECIAL INSTRUCTIONS FOR PART ONE

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 20). Next to each number type the letter corresponding to the best answer choice for that problem. For example:

    1. A
    2. D . . .

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:

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

MULTIPLE CHOICE QUESTIONS

- Below are 20 multiple choice questions.
- Each question is worth 2 points for a total of 40 points.

1. A surgeon operates beyond a patient's consent. The most appropriate claim that the patient can bring is

A. Informed consent
B. Abandonment
C. Battery
D. EMTALA
E. ADA

2. Physician leaves the patient's case without notice and before the patient has recovered. The most appropriate claim that the patient can bring is

A. Arbitration
B. Abandonment
C. Battery
D. Informed consent
E. EMTALA

3. In Washington, DC, a physician's duty of informed consent is based on:

A. What the reasonable physician would consider necessary to tell the patient
B. What the reasonable patient would want to know
C. What a standardized, state-approved chart determines the patient should be told based on the diagnosis
D. All of the above

4. Information required for informed consent generally includes all the following EXCEPT:

A. Diagnosis (and any other possible diagnosis)
B. Anticipated charges for treatment
C. Alternative options for treatment
D. Significant risks and benefits of a recommended treatment plan

5. Patient presents at the hospital emergency department with a sudden onset of scrotal pain and a swollen testicle. The ultrasound examination is equivocal and does not provide the emergency physician with a definite diagnosis. The emergency physician believes that an on-site examination by the on-call urologist is necessary. If the urologist fails to provide this examination, then:

A. The hospital has violated its screening duty
B. The hospital has violated its stabilization duty
C. Both A and B
D. Neither A nor B

6. A 37-week pregnant woman presents to the emergency department with obvious labor pains. The woman is neither registered nor triaged in the emergency department. Instead, hospital staff transfer the woman from the ED directly to labor and delivery to monitor the labor and assist the birth. Which of the following is TRUE?

A. The hospital has violated its screening duty
B. The hospital has violated its stabilization duty
C. Both A and B
D. Neither A nor B

7. A patient presents to the emergency department with a laceration on the back of the hand and an obvious tendon injury. The emergency physician calls the orthopedic physician on call who correctly points out that tendons do not need to be repaired immediately. The orthopedic physician tells the emergency physician to close the wound loosely, apply a splint, and send the patient to the off-campus orthopedic office the next day. The emergency physician cleans, loosely sutures, and splints the wound. She discharges the patient and refers him to the orthopedic physician. Which of the following is TRUE?

A. The hospital has violated its screening duty
B. The hospital has violated its stabilization duty
C. Both A and B
D. Neither A nor B

8. A 4-year-old girl presents to the emergency department with a fever and an earache. The emergency physician performs a standard complete examination for these symptoms and finds an otitis media, a supple neck, and minimal temperature. The child is awake, happy and playful. Therefore, the physician diagnoses otitis media and discharges the child on antibiotics for that condition. The next day the patient presents to the same emergency department with meningitis, and is severely brain injured as a result. Which of the following is TRUE?

A. Because the child must have had meningitis on the first day, she could not have been stable for discharge. This is an ETMALA violation.
B. This was an adequate screening exam. Because no emergency medical condition was identified, EMTALA no longer applied.
C. This is a *per se* violation of EMTALA.
D. This is both medical negligence and a violation of EMTALA.

9. A 35-year-old male patient presents to a small rural hospital by ambulance with head trauma following a tractor accident. The CT scan reveals an epidural bleed. The hospital has no neurosurgical services. Therefore, the emergency physician contacts the local regional referral center that has a specialty neurosurgical unit. Although there are beds available, the resident on call refuses the transfer. Which of the following is TRUE?

A. EMTALA does not apply to residents, only to attending physicians.
B. Under EMTALA, the local regional referral center is obligated to take this patient.
C. The small rural hospital is in violation of EMTALA for not having neurosurgical services.
D. EMTALA has no relevance in this situation, because the patient is not on the "hospital property" of the regional referral center.

10. A patient presents to Hospital physical therapy for an outpatient visit. During PT, the patient develops chest pain and is rushed to Hospital's emergency department. Under EMTALA:

A. Hospital has an obligation to screen.
B. Hospital has an obligation stabilize this patient, if an emergency medical condition is identified.
C. Both A and B.
D. Neither A nor B.

11. Negligent misdiagnosis is not a relevant consideration in determining whether there has been an EMTALA violation.

A. True
B. False

12. The EMTALA statute and regulations contain a requirement whereby hospitals with special capabilities have a duty to accept patients in transfer if the hospital has the beds and staff (*i.e.* the capacity) to treat the individual.

True
False

13. All of the following statements regarding EMTALA is true EXCEPT:

A. Once a patient is admitted as an inpatient, EMTALA no longer applies.
B. A hospital owned ambulance may comply with regional EMS protocols without violating EMTALA.
C. The term "dedicated emergency department" now defines the scope and reach of EMTALA.
D. Triage nurses may now perform screening examinations on non-urgent patients without becoming qualified medical providers.

14. Clinicians may treat unconscious patients because the law holds that rational patients would consent to treatment if they were conscious; this principle is known as:

A. Expressed consent
B. Implied consent
C. Informed consent
D. Actual consent

15. A person whom the signer of an advance directive document names to make health-care decisions in case the signer is unable to make such decisions for himself or herself is called a:

A. Proxy
B. Health care agent
C. Guardian
D. Conservator

16. Leaving a patient after care has been initiated, yet before the patient has been transferred to someone with equal or greater medical training is known as:

A. Battery
B. Proper termination of the treatment relationship
C. Abandonment
D. Breach of the physician's duty to aid all in need whether or not they are her "patients"

17. Brett died October 1, 2018, after his car was struck head-on by a car driven by Christine. Brett's family sued CVS, alleging that a pharmacist failed to advise Christine about side effects of the drug. That drug, they alleged, caused Christine to suffer symptoms that led to the crash.

A. Brett's family may be able to make out a case of negligent informed consent.
B. Brett's family may be able to make out a case of negligent informed consent, if they can establish that the crash probably would not have happened had the pharmacist had warned of the side effects.
C. Brett's family cannot sue for breach of informed consent duties.
D. Brett's family can sue for abandonment

18. Physicians found in violation of EMTALA may be:

A. Fined
B. Lose the right to participate in the Medicare Program
C. Sued for money damages
D. A and B
E. A and C
F. A, B, and C

19. Hospitals found in violation of EMTALA may be:

A. Fined
B. Lose the right to participate in the Medicare Program
C. Sued for money damages
D. A and B
E. A and C
F. A, B, and C

20. A physician may refuse to treat a potential new patient with HIV because the patient is unable to pay:

A. True. Physicians have almost complete freedom to determine whom they will accept as patients
B. True, but only if the patient has another source of treatment
C. True, but only if the physician helps the patient find another source of treatment
D. False. This would violate the ADA

Essay Question 1

- This question is worth 25 points
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 50 minutes.

Ruth (age 24) and Mary (age 62) have each received lab results from Winona Women's Heath in Winona, Minnesota. The lab results indicate cervical cancer. The 5-year survival rate for women with cervical cancer is 60%. WWH physician, Dr. Kutt, has separately recommended a hysterectomy to Ruth and to Mary.

A hysterectomy is surgery to remove a woman's uterus or womb. The uterus is the place where a baby grows when a woman is pregnant. After a hysterectomy, a woman no longer has menstrual periods and cannot become pregnant. Sometimes the surgery also removes the ovaries and fallopian tubes. Each year in the United States, nearly 500,000 women get hysterectomies. A hysterectomy is the second most common surgery among women in the United States. The most common surgery in women is childbirth by cesarean delivery (C-section). Surgery that preserves the possibility of becoming pregnant is sometimes an option, if the patient has very early-stage cervical cancer without lymph node involvement. Radiation therapy is also a treatment option that permits women to preserve their eggs before treatment starts.

While infertility seems to be a logical and necessary side effect of a hysterectomy, not every woman "connects the dots" on their own. Perhaps assuming their knowledge or perhaps due to an oversight, Dr. Kutt does not disclose the risk of infertility either to Ruth or to Mary. Both Ruth and Mary underwent the procedure. Both are now infertile. Dr. Kutt also failed to disclose that hysterectomies have sexual side such as vaginal dryness, pain during sex, and decreased sex drive.

Compare and contrast the informed consent claims of Ruth and Mary. Note that because at least one pre-surgery meeting for each patient occurred via Skype, is presently unclear whether Minnesota or Wisconsin law applies.

Essay Question 2

- This question is worth 35 points
- Limit your response to 1500 words. This is only a limit, not a target or suggested length.
- Recommended time is 70 minutes.

You are the law clerk for a magistrate judge on the U.S. District Court for the District of Minnesota. The following Complaint (edited for exam purposes) was recently filed. The defendant has moved to dismiss all claims. Because the Complaint was filed *pro se,* the plaintiff may not have stated his claims as clearly as possible. Therefore, the judge has asked you to identify and assess the claims asserted.

1. On October 3, 2018, Brett Cavino was going out to dinner in Saint Paul, Minnesota when he exited the car and experienced sudden weakness and blurriness in his left eye.

2. Brett tried to stand on his right leg, but it went completely numb and he fell to the ground, disoriented.

3. Brett recognized that he was having a stroke and asked to be driven to Mississippi River Hospital. He had slurred speech and trouble moving his right hand *en route* to the hospital.

4. Brett presented to the Emergency Department of Mississippi River Hospital around 8:20 pm on October 3, 2018.

5. Mississippi River Hospital immediately initiated the standard acute stroke protocol and ordered a non-contrast CT scan of the head.

6. Shortly after Brett arrived in the ED, Mississippi River Hospital had him sign a form stating that he would be placed in "Outpatient Observation" status, rather than admitted as an inpatient.

7. The results of Brett's CT scan, which ruled out intracranial hemorrhage and showed no evidence of acute infarct, were called in to the ED attending physician at 9:06 pm.

8. At the time Brett's CT scan results were called in to Mississippi River Hospital's ED excluding an intracerebral hemorrhage, he was last known well within the past 3 hours.

9. Mississippi River Hospital failed to stabilize Brett by giving him intravenous tissue plasminogen activator (tPA).

10. Mississippi River Hospital did not prescribe any medication for Brett while he was in the ED.

11. Brett does not have any contraindications against the use of tPA in acute stroke patients.

12. By 9:30 pm, still within three hours of when he was last known well, Brett continued to experience partial visual hemianopia, and right leg drift, as well as continuous headache and dizziness.

13. Brett's stroke symptoms improved, but did not entirely resolve, after he presented to the ED.

14. Around 10:00 pm, while he was still in "outpatient observation" status, Brett suffered a recurrence of his stroke symptoms, which lasted for approximately 15 minutes, with right sided hand clenching, and leg and arm weakness "similar to his initial complaint."

15. Upon information and belief, Mississippi River Hospital is not a certified primary or comprehensive stroke center.

16. Mississippi River Hospital was not capable of treating Brett's persistent stroke symptoms.

17. When Brett's stroke symptoms recurred, it should have been clear to Mississippi River Hospital that Brett required urgent transfer to a primary stroke center capable of assessing whether he was a candidate for endovascular therapies or other treatment for ischemic stroke.

18. When Brett's stroke symptoms recurred, instead of transferring Brett to a stroke center capable of treating his persistent symptoms, or even apprising him of this option, Brett's primary care physician, Dr. Hatch, admitted him to Mississippi River Hospital at 11:03 pm, and entered an order for an MRI/MRA of the brain.

19. Although Dr. Hatch entered admission orders at 11:03 pm, she did not complete Brett's admission history and physical until the morning of October 4, 2018, when the Assessment and Plan was: "Stroke, with fluctuating symptoms." Dr. Hatch noted that Brett continued to show "slightly decreased finger appositions," as well as ongoing headache.

20. Brett's admitting diagnosis was "trans cerebral ischemic attack" (a stroke).

21. Dr. Hatch did not order a stat MRI/MRA of the brain at the time of admission, even though Brett had persistent stroke symptoms.

22. Brett's MRI/MRA of the brain was performed on October 4th for "acute stroke symptoms." The results showed an acute ischemic infarct/stroke in the watershed area of the brain "between the ACA and MCA."

23. The results of the MRI/MRA were called into Dr. Hatch at 1:05 pm on October 4, 2018, which was more than 16 hours after Brett presented to the ED of Mississippi River Hospital with acute stroke symptoms.

24. During the time that he was in "outpatient observation" status at Mississippi River Hospital, the hospital too rigidly stuck to its inadequate protocols, causing Brett not to receive full and appropriate medical screening examinations to determine the severity of his emergency medical condition, or whether transfer to a primary stroke center was necessary.

25. Brett's MRI/MRA on October 4th showed an "apparent absent flow-void in the distal extracranial portion of the left ICA, just proximal to the petrosal segment, which I suspect may be artifactual, as flow appears to be normal just proximal distal to the area. A CT angiogram could be performed for more complete evaluation, however."

26. By the time Mississippi River Hospital received the results of Brett's MRI/MRA on October 4th, Mississippi River Hospital knew that Brett was likely suffering from left internal carotid artery stenosis, which required urgent transfer to a receiving hospital capable of providing endovascular therapies or other treatment for ischemic stroke.

27. Brett had a neurology consult with Dr. Milo following his MRI/MRA on October 4, 2018, which confirmed "acute stroke in the left frontoparietal area," likely due to "embolic phenomena." Dr. Milo recommended a carotid Doppler study, 2D echo with bubble, and telemetry, but his consultation note does not mention the option of transferring Plaintiff to a primary stroke center.

28. On October 5, 2018 at 7:47 am, Dr. Hatch entered an order with a priority level of "routine," for a CT angiogram of Brett's neck, with contrast.

29. By that time, Brett had been told he would be discharged from Mississippi River Hospital. In the middle of the day on October 5, 2018, Mississippi River Hospital performed a CT angiogram of Brett's neck and found a possible dissection injury of his left internal carotid artery, which warranted further evaluation.

30. In addition, the CT angiogram showed "occlusion or a high-grade stenosis at the level of the petrous portion of the left internal carotid artery."

31. The above CT angiogram results were called in to Dr. Hatch at 12:45 pm and reviewed with consulting neurologist Dr. Milo in person.

32. After Dr. Hatch received the results of Brett's CT angiogram at 12:45 pm on October 5, 2018, she did not arrive at Mississippi River Hospital to discuss Brett's treatment plan for over forty hours, until 8:00 am on October 7, 2018.

33. On the days in question (October 5-7, 2018), Dr. Hatch was either going on or returning from vacation.

34. Once Dr. Hatch arrived at Mississippi River Hospital on October 7, 2018, she signed an order to transfer Brett to Mayo Clinic.

35. On October 7, 2018, Dr. Hatch's patient transfer order stated that Brett needed: "further evaluation of LIC abnormality, possible stenting." Dr. Hatch checked off: "Obtain level of care not available at this facility."

36. Brett had another stroke while waiting at Mississippi River Hospital to be transferred to Mayo Clinic.

END OF EXAM