

HEALTH LAW, Fall 2011

Exam No. _____

FINAL EXAMINATION

Instructions: Read at Once. Each violation, however trivial, knocks at least 1 point off your grade. Any Honor Code violation will be treated quite harshly, e.g. by a failing grade and a recommendation that the violator is unqualified to be admitted to the bar..

1. When you pick up the exam, write the date and time on the first line of the Certification below. Write your exam # at the top of this page, and at the top of your answer to each part of the exam.

2. Submit your exam answers as an MS Word, Word Perfect, or text document, double-spaced with 12-point type and 1-inch margins, e-mailed to Ms. Audrey Briggs, aabriggs@uark.edu, within 24 hours after you pick up the exam or by Friday, Dec. 16, at 4:30 pm, whichever is earlier.

3. Return these exam questions to Ms. Briggs, in person or by mail, together with your signed Honor Code Certification below. Note the prohibition against copying or saving the questions. The deadline for returning these questions is as follows. (a) If you return the questions in person, you must do so by 4:30 pm the day after you submit your answers or Friday, Dec. 16, whichever is earlier. (b) If you return the questions by mail, the envelope must be postmarked by the first day after you submit your exam answers (or by the next Monday if you submit your answers on a Saturday). Mailed returns are to be sent to Ms. Audrey Briggs, U of A School of Law, 1045 W. Maple, Fayetteville AR 72701.

4. The exam consists of Part I, an essay question counting for 35% of the exam grade; Part II, four short-answer questions of which you are to answer three (one page each max), counting for 30%; Part III, containing two multiple choice questions counting for 10% of the exam grade; and Part IV, an essay question counting for about 25%. Answers to each Part must begin on a separate page, with your exam number written at the top. Number each page. Note the maximum word/page limit for some questions. I will not penalize answers slightly over the limit, but if an answer is significantly overlong, I will give no credit for what is written beyond the limit. So edit long answers.

5. **READ THIS.** (a) You may not copy or save these questions. (b) You may not communicate about any of the course or exam topics (1) with anyone having knowledge of the exam, from the time the exam is made available until Friday, Dec. 16, 4:30 pm, or (2) with any person, from the time you pick up the exam until Friday, Dec. 16, 4:30 pm.

- This silence is the price you pay for your flexibility in the exam's timing.
- Note: The Honor Code requires reporting any known or attempted violation.

HONOR CODE CERTIFICATION

I certify that (1) I picked this exam up at _____ (time) on December ____ (date), and I returned my answers by e-mail at _____ on December ____; (2) I have not violated and will not violate paragraph 5 of these instructions, which I have carefully read; and (3) I have neither made, nor caused or allowed to be made, nor saved in digital form, a copy of the exam or any part of it.

_____ (your signature)

PART I. ESSAY (35%). Maximum limit: 1750 words (5 double-spaced printed pages).

The facts of this question are the facts of the problem “The Birthing Center” at pp. 460-461 of the coursebook. (The problem was part of the assignment for Oct. 31 – Hallowe’en – but we didn’t get around to it in class.) Assume that Hastings Birthing Center and Columbia Hospital are in Arkansas, and that the statute of limitations is not an issue. Assume also that you are working for a plaintiffs’ firm with substantial resources, like Koskoff’s or McDaniel’s firm.

I’m revising the last paragraph of the problem. I’ll ask you to address these questions:

1. What persons and entities should be named as defendants in the complaint? If you decide not to sue some potential defendant, briefly explain your reasons.
2. Set out your theories of recovery against each person and entity you named in [1] as a defendant. Briefly explain the legal grounds (statutory, case law, or both) for each theory. If any of your theories are not well grounded in Arkansas law, explain that.
3. With regard to each theory of recovery you mentioned in [2], briefly outline the defenses you expect to be raised. (You may organize your answer for [2] and [3] to address each theory, claim and defense, in succession; or all claims [2] and then all defenses [3]. Either organization is OK.)
4. State what further facts need to be ascertained, in order to resolve these claims and defenses, and why each further fact is essential to be ascertained. For each further fact, how would you go about ascertaining it? (You may integrate your answer to this into [2] and [3] above, or address it separately.)
5. Now go to the bottom line. Would you advise your firm’s senior partner that it is legally and economically worthwhile to pursue this case, or not? Give your reasons. (If your answer depends on the further facts, explain why that is so.)

PART II. SHORT ANSWER (30%). Respond to three of the following four questions in about 250 words (one printed page) or less per question.

1. Explain the nature and goals of “accountable care organizations” (ACOs). What would be the likely effect on ACOs if PPACA’s individual mandate is struck down as unconstitutional? Why?
2. What are the drawbacks and limitations, theoretical and practical, of releasing provider-specific outcome data to the public? Give two or three examples of how adverse results might happen, and how a public information system might be designed to avoid those drawbacks and limitations..
3. Discuss the problems of proving (or disproving) the causation element in claims alleging lack of informed consent. Which jurisdiction’s approach do you favor on this point, and why?
4. What is the relationship between HIPAA rules and the common-law “invasion of privacy” torts? Are the HIPAA rules an improvement on the common law, or just a waste of paper? Why?

PART III. MULTIPLE CHOICE (10%). Choose one best answer. You will be slightly penalized for a wrong answer. No explanations of your answers are necessary, but if you choose to write a brief explanation, I will read it.

Question 1: Which of the following is not an effect, intended or actual, of scope-of-practice regulation in health care?

- A. Ensuring that practitioners in each field of health care are at least minimally competent.
- B. Ensuring that nursing homes meet quality standards set in state and federal law.
- C. Ensuring that physicians supervise allied health care personnel providing services to the physicians' patients.
- D. Protecting established practitioners from competition by lower-cost rivals.
- E. All of the above are intended or actual effects of scope-of-practice regulation.

Question 2: Which of the following assertions about EMTALA is true?

- A. Since EMTALA's chief aim is to protect patients lacking insurance or resources from being turned away from hospitals when they have a critical need for care, the law provides no assistance for patients whose insurance fully covers the cost of their care.
- B. EMTALA's "appropriate medical screening examination" requirement has the effect of preempting state law regarding the standard of care for medical screening exams, at least with regard to emergency medical treatment and active labor as defined in the federal law.
- C. One reason plaintiffs' attorneys might try to add an EMTALA claim to a standard state-law malpractice claim is that if they are successful on the EMTALA claim, the defendants have to pay the plaintiffs' attorneys' fees.
- D. A defendant hospital can defeat an EMTALA claim that plaintiff has not received an "appropriate medical screening examination" by presenting expert testimony that the screening examination that plaintiff received met the national standard of care.
- E. None of the above is correct.

PART IV. ESSAY (25%). Maximum limit: 1250 words (5 double-spaced printed pages).

Comment on the assertions in the following paragraph, explaining with specificity the basis for your agreement or disagreement with each of them.

"Barry Werth's book *Damages* portrays a medical tort system gone haywire. The *Sabia* case exemplifies what is wrong with medical malpractice law in the United States and why it needs to be radically reformed."

- If you agree with the assertions, also suggest the specific directions that reform ought to take for cases like Little Tony.
- If you disagree with the assertions, also address whether Dr. Benirschke was wrong in his severe assessment of medical tort lawyers. If you think he was wrong, state why, giving examples. If you think he was right, how would you, in the role of any of the lawyers in the book, have acted differently?