

General Instructions

This is a two-hour open-book exam, worth 30% of your grade.

Identification:

- Use only your assigned Exam Number for this exam.
- Do not use your name or Social Security number.
- Do not provide any identifying information anywhere on the exam.

Exam Submission:

- Please type your exam and submit it through EBB **within two hours of the start time of the exam.**
Late exams will be penalized with a reduction in your grade.

Exam Structure:

- The exam consists of fact patterns with related questions.
- Each fact pattern is worth an identified number of points – for a total of 30 available points for the exam.

Suggested Exam Strategy:

- Read the questions carefully and address all aspects of the question(s) in your response.
- Prepare responses to those questions with which you are more familiar first and then return to those questions you find more challenging.
- Some fact patterns may take longer than others to answer, so budget your time accordingly.
- When drafting your answers, outline your response before you start writing.
- Leave a few minutes to proof read, spell check, and polish your responses.

Test Materials and Resources:

- You are only permitted to use your text book, any *printed* supplemental readings and statutes from the class, any *printed* power point presentations by your classmates and guest speakers in this class, and any *printed* outlines you prepared in anticipation of the examination.
- You are prohibited from using the internet during the examination.
- I will not be present during the exam. If something is unclear, identify it, and explain in your response any assumptions you have made to resolve the lack of clarity.

In grading the exams, I will be reviewing your ability to:

- Identify the legal issue(s) raised by the specific facts;
- Analyze the specific issue(s) raised, rather than discussing general law;
- State and apply relevant legal principles and "rules" to factual situations; and,
- Present your responses in a concise, thoughtful, and organized way.

Writing Tips:

- State any assumptions you make.
- Make and explain reasonable inferences you draw.
- Organize your responses with focused paragraphs – topic sentences, conclusory sentences – for each issue, topic, or argument.
- Explain your answers, decisions, etc. If you conclude there are competing positions that can be taken in a response, acknowledge that, and explain why you picked one over the other(s). Different conclusions are acceptable if the analysis is thorough and effective.
- Ensure minimal errors – typos, grammar, etc. – in your final product.

Good Luck!

Exam Questions

Fact Pattern #1 (10 points)

You provide legal services to Community Hospital located in a rural small town. The Hospital's risk manager informs you that, approximately four weeks earlier, she received a telephone call from a woman named "Betty." Betty reported she had been in the Hospital's emergency department the day before and overheard a physician and nurse, standing at the nurses' station, discussing another patient. They did not use the patient's name but referred to the patient as "she" and described her as having been in the emergency department twice within the last week with a urinary tract infection and discussed the patient's lack of insurance. Betty stated, based on the providers' statements, she identified the patient as her neighbor "Veronica." Betty believed the staff were being disrespectful and "something needed to be done about it."

The risk manager tells you, with some investigation, she was able to confirm:

- Betty had been in the emergency department, as reported.
- Betty had been placed in an exam room which is only ten feet from the nurses' station and could easily have overheard any discussions among providers.
- Veronica had been in the ED twice within the same week for a UTI and had no insurance.
- The nurses and physicians working on the particular day could not recall any of the described discussions about Veronica but state it could have happened.

The risk manager states she reached out to Veronica to speak with her about the incident. Despite several phone messages over four weeks, Veronica did not return her calls. Without any contact from the subject patient, the risk manager wants to know if she has to do anything further or can she just close the matter.

- Was any of the information overheard by Betty protected health information ("PHI") under HIPAA?
- Was the medical providers' conversation an impermissible use or disclosure of PHI? Why or why not?
- If this was determined to be an impermissible disclosure – i.e., a HIPAA breach, what steps is the Hospital obligated to take to comply with HIPAA's notification requirements?
- What risk does the Hospital face if the risk manager chooses to close her file and the patient subsequently files a complaint with the Department of Health & Human Services, prompting an investigation by the Office of Civil Rights?

Fact Pattern #2 (Two-part)

At 10:00 p.m. on December 15, 2016, Joseph presented to City Hospital's emergency department with complaints of chest pain and shortness of breath he had been experiencing for several hours. The triage nurse took his pulse and blood pressure and sent him back to the waiting room. At 11:15 p.m., Joseph went to the check in desk, told the nurse his pain was getting worse, and asked how much longer he had to wait. The nurse told him they were very busy, and he would have to wait his turn. Becoming irritated, Joseph asked the nurse "What if I'm having a heart attack?" to which the nurse replied "I'll see what I can do." Twenty minutes later, Joseph was taken into an exam room where another nurse connected him to an EKG machine. After reviewing the EKG strip, the nurse told Joseph, "There's something weird with your heartbeat, but you're not having a heart attack." Joseph asked the nurse, "Are you the one that's supposed to read those strips? Is someone else going to look at it?" The nurse replied, "The doctor is the one who is trained to read these, but I've been doing this a long time, and I know what I'm talking about. The cardiologist will be tied up with other patients for a while, so you should think about going to South Hospital where their cardiologist could see you sooner."

Exasperated, Joseph drove himself across town to South Hospital at 1:00 a.m. When Joseph pulled into a parking space directly in front of the emergency department, he suffered a heart attack. A few minutes later, a South Hospital employed nurse, leaving at the end of his shift, walked by Joseph's car and noticed him slumped over. The employee knocked on the window and when Joseph did not respond, the employee assumed he was sleeping and walked away. An hour later, a hospital visitor pulled into the parking lot, noticed Joseph in his car, and summoned help. Unfortunately, Joseph had passed away.

Joseph's widow, Mary, is the administrator of his Estate. Mary consults with you as to whether she can bring an action against either hospital or any of their employees for Joseph's death. Mary tells you her sister is a nurse in another state and told her to ask about whether the Hospitals violated EMTALA.

Part 1 (10 points)

- Do the facts support a finding of an EMTALA violation by City Hospital? Consider:
 - Did Joseph receive a timely medical screening examination?
 - Did he have an emergency medical condition?
 - Were the comments by the nurse regarding his options for further evaluation appropriate management / stabilization of his condition?
 - Did Joseph's decision to leave and drive to South Hospital absolve City Hospital of its obligations?
- Could South Hospital's failure to timely respond to Joseph amount to an EMTALA violation? Why or why not?

Fact Pattern #2 (cont)

Part 2 (10 points)

- Does Mary have a cause of action for medical negligence against City Hospital(s) or its individual providers?
 - Identify the potential defendants, the duty they owed, and how that duty was breached.
 - What challenges or defenses could be raised to those claims?
 - What argument can be made that the alleged substandard conduct caused Joseph's death?