

INTRODUCTION TO HEALTH LAW
PROFESSOR PORTER
SPRING, 2014

FINAL EXAM

Use your ID number on your examination booklet – NOT your social security number. Your ID number is the last six digits of your social security number plus the numbers “59”. So the social security number 123-45-6789 becomes 45678959.

Write legibly and coherently.

Your knowledge of the subject matter and ability to analyze the issues should be clear from the manner in which you express your thoughts on this exam. Provide citation to applicable cases and statutes from your handouts and the text to support your responses.

I. SECTION 1: DEFINITIONS (10). (approximate time: 1 hour, 40 minutes; 50 points).

Please define the following terms and phrases. Describe their significance in the context of health care. Include in your definition and description the applicable statutory provisions, case law, exceptions (if any), and other relevant material discussed this semester to the concept being described.

Provide your response to the terms in the order they appear on this exam sheet.

1. confidentiality
2. duty to warn
3. mandated reporting
4. HIPAA
5. informed consent
6. right to refuse treatment
7. physician duty to non-patient 3rd party
8. EMTALA
9. medical malpractice action in Massachusetts. Cite and describe governing statute; the process; briefly describe any relevant Massachusetts case law.
10. substituted judgment

II. SECTION II: SHORT ESSAY (1). (approximate time: 30 minutes; 20 points).

Health care proxy and guardianship. Compare and contrast.

III. SECTION III: HOSPITAL ADMISSION FACT PATTERN (1).
(approximate time: 50 minutes; 30 points)

Please review the fact pattern in its entirety before you begin your responses to each question. Remember to provide an answer to each component of every question.

Mental health admission fact pattern:

I. On Monday, September 1, 2014, John Doe was at a convenience store where he was acting bizarrely. The store manager called the police. Officer Johnson responded to the call. Officer Johnson observed Mr. Doe mumbling to himself, pacing, invading others' personal space, making wild hand gestures, and carrying on conversations with someone who was visible only to him. At this point, Officer Johnson took Mr. Doe into custody even though he was not alleged to have committed any crime. Although Mr. Doe did not want to be hospitalized, Officer Johnson applied for his involuntary admission that day.

Q: what is the governing provision of the Massachusetts General Laws pertaining to the application for the patient's admission? Can a police officer apply for a person's involuntary psychiatric admission?

Q: What is the standard required in order to appropriately apply for a person's involuntary psychiatric admission?

II. Mr. Doe was brought to Andover Hospital ("AH"), a general hospital with a psychiatric unit. For two days Mr. Doe remained against his will in the emergency room of AH while staff searched for a bed in an appropriate psychiatric facility. He was not admitted to the AH psychiatric unit.

Q: Is that legal? Provide statutory authority for your answer. If this is permissible, for how long may AH retain Mr. Doe against his will in the emergency room under these circumstances?

III. During this period, Mr. Doe informed staff he had a health care proxy. On Wednesday, September 3, 2014, the health care proxy is activated; the health care proxy agent signs an application for his conditional voluntary admission to the psychiatric unit of AH; psychiatric staff accepts the application and Mr. Doe is admitted that day to the AH psychiatric unit as a conditional voluntary patient.

Q: Can a health care proxy agent consent to his psychiatric admission?

Q: Under these circumstances, for how long is the hospital authorized to retain the patient once he is admitted? If the patient were an involuntary patient instead of a voluntary one, what if any impact would that have on how long the hospital is authorized to retain him?

IV. On the same day as his admission, Mr. Doe again changed his mind about being at AH. He indicates to the psychiatric unit staff that he now wants to leave.

Q: Can Mr. Doe immediately leave the psychiatric unit at this point?

Q: What must Mr. Doe do to indicate he wants to leave?

Q: If the patient believed there was an abuse or misuse of the admission process, as a conditional voluntary patient, what is he entitled to do? Would his rights regarding an alleged abuse or misuse of the admission process be altered if he were an involuntary patient pursuant to G.L. c. 123, § 12(b)?

Q: If the AH psychiatrist treating Mr. Doe wanted to extend the hospitalization on the unit beyond Wednesday September 3 for further treatment, what must the facility do in order to retain Mr. Doe?

V. Monday September 8, 2014 is Labor Day. The facility files a petition for Mr. Doe's commitment in Andover District Court on Tuesday, September 9.

Q: What is the governing statutory authority regarding the filing of a petition for civil commitment?

Q: Is the petition timely filed?

Q: What is the last date the court may permissibly schedule a commitment hearing on a petition filed on Tuesday, September 9?

Q: who has the burden of proof in a commitment hearing? What is the governing legal standard? What are the necessary elements for a petitioner to prevail in a commitment case?

VI. Mr. Doe took no medication while at the facility, even though his attending psychiatrist believed antipsychotic medication was clinically indicated. As a result, he experienced no improvement in his symptoms.

Q: does the hospital have the right to involuntarily administer antipsychotic medication by virtue of the patient's commitment to the psychiatric facility? Why or why not? Provide the legal support for your position.

VII. Mr. Doe was committed after hearing. He believed the judge got it all wrong and should have denied the petition.

Q: For how long may AH permissibly retain Mr. Doe in the facility based on the order of commitment?

Q: What, if any, appellate rights exist for Mr. Doe?

VIII. **extra credit** (up to 4 points): Mr. Doe believed that his treating psychiatrist was high on drugs and also mentally ill while providing treatment to him. What regulations (not statute) exist that govern physician conduct and the practice of medicine in Massachusetts for which Mr. Doe could address his complaint? What state entity is responsible for receiving and investigating complaints of this nature? What other different types of physician misconduct are appropriate subject matter for complaint and investigation?

INTRODUCTION TO HEALTH LAW
PROFESSOR PORTER
SPRING, 2012

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Write legibly and coherently.

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I. SECTION 1: DEFINITIONS ⁴(5). (approximate time: 1 hour; 35 points).

Please define the following terms and phrases. Describe their significance in the context of health care. Include in your definition and description the applicable statutory provisions, case law, exceptions (if any), and other relevant material discussed this semester to the concept being described.

Provide your response to the terms in the order they appear on this exam sheet.

1. Medical malpractice process in Massachusetts
2. Right to refuse treatment
- 3 ~~4~~ Substituted judgment
- 4 ~~5~~ Informed consent (include a description of the duty to disclose)

II. SECTION II: SHORT ESSAYS (3). (approximate time: 1 hour, 10 minutes; 35 points).

1. **Doctor patient relationship**. Include in your short essay a description of what constitutes the formulation of the relationship; rights and responsibilities of the parties to the relationship; termination vs. abandonment; doctor’s duty, if any, to non-patient 3rd parties.

2. **Alternative decision-makers**. Describe when a physician may (or must) obtain consent to treat from one other than the patient. Include the various types of alternative decision-makers; the differences between them as well as their similarities. Note the

statutory bases for the inclusion of a non-patient in a treatment decision, as well as any applicable cases discussed in class.

3. **Confidentiality; privilege; mandated reporting; duty to warn.**

- a. Identify then differentiate between confidentiality and privilege.
- b. Identify then differentiate between mandated reporting and duty to warn.
- c. Compare and contrast confidentiality with mandated reporting.

III. SECTION III: HOSPITAL ADMISSION FACT PATTERN (1). (approximate time: 50 minutes; 30 points)

Please review the fact pattern in its entirety before you begin your responses to each question. Remember to provide an answer to each component of every question.

I. Mary Potter is a 30 year-old married mother of a four year-old daughter, Alice. She was diagnosed as suffering from bipolar disorder with psychotic features several years ago. She is prescribed antipsychotic medication to manage the symptoms of her illness. Mary had secretly stopped taking medication to treat her mental illness, and began to develop symptoms of mania and psychosis. On Friday, April 20, 2012, however, her husband Robert left for a business trip. Mary's symptoms immediately got worse. She heard voices of people who were not present; she began to experience visual hallucinations; and she developed extreme paranoia. Ultimately, Mary came to believe that Alice was out to harm her, so she locked her daughter in the basement, where she remained without food or running water. When Robert Potter returned home 4 days later, Mary told him that their daughter was trying to contact the space aliens, and so she had to lock the girl in the basement to protect herself. He immediately called 911. EMTs and Andover Police Officer Johnson responded to the call. Officer Johnson believed that that if Mary is not hospitalized, that she would continue to act in ways that would endanger Alice. On Tuesday, April 24, Officer Johnson did not arrest or charge her with a crime, but instead took Mary against her will to Andover General Hospital ("AGH").

QUESTION: 1) Does the law grant Officer Johnson the authority to do this? Provide the legal basis for your position.

II. At AGH, Mary is evaluated by Alvin Chase, M.D., a staff psychiatrist. In Dr. Chase's opinion, Mary needs to stay in a hospital for treatment as well as to prevent any further harm. The psychiatric unit at AGH, however, is filled to capacity that night. He restrains Mary in the Emergency Room and begins a search of area hospitals to apply for her psychiatric admission.

QUESTION: 2) Is Dr. Chase permitted to do this? What is Mary's 'legal status' at this point? For how long can she remain on this legal status?

III. On Thursday, April 26, two days after she was brought to the hospital and over her stated objection, Mary is admitted to the psychiatric unit of AGH.

QUESTION: 3) What is the legal criteria for her admission? Where is the standard found in Massachusetts law?

IV. Immediately after her admission on the psychiatric unit, Mary wants to challenge the validity of her admission circumstances.

QUESTION: 4) Does she have the right to make such an emergency challenge? On what legal basis? What must she allege? What is the appropriate subject matter of such a challenge? What must the court do when it receives her request?

V. On Tuesday May 1, eight days after she was first brought to the AGH Emergency Room, and six days after she was admitted to the psychiatric unit, the unit's medical director filed a petition for her commitment.

QUESTION: 5) What is the statutory framework that governs AGH's filing of the petition for civil commitment? What must the petition allege?

VI. After the petition is filed, counsel is appointed to represent Mary. Mary's lawyer immediately files a Motion to Dismiss the petition for lack of timely filing.

QUESTION: 6) What is the legal framework that governs the time in which a facility must file petitions for the commitment of patients? What is the likelihood of Mary's lawyer being successful in his motion?

VII. The court, upon receipt of AGH's petition, scheduled a civil commitment hearing to commence on Friday, May 11. Mary's lawyer files another separate Motion to Dismiss for failure to conduct the hearing within the statutory timeframe.

QUESTION: 7) What is the likelihood of Mary's lawyer being successful on this second motion? Why or why not? What is the Massachusetts SJC case that speaks to this issue? Apply the case and provide the most likely outcome on the ruling on the Motion to Dismiss.

VIII. Robert Potter, who is Mary's health care proxy, comes to AGH and signs an application for her voluntary admission. Earlier in the admission, Dr. Chase had made a written notation in Mary's medical record that she lacked capacity to make competent treatment decisions.

QUESTION: 8) Can Mary, or in this case, someone on her behalf, sign a conditional voluntary application for admission at this stage in the proceedings? What if Mary still objects to the hospitalization? What if she changed her mind and now wishes to remain in the hospital for care and treatment of her mental illness?

IX. The court denies Mary's motions to dismiss. The court also denies her ability to sign a conditional voluntary.

QUESTION: 9) What, if any, appeal rights does Mary have? What law governs? Who bears the burden of proof at the appeal?

X. Mary remained in the hospital for a period of time, improved, and Dr. Chase was about to discharge her. Mary stated directly to Dr. Chase that if she went home, in order to protect herself, she would have to lock up her daughter Alice in the basement again. Dr. Chase decides not to discharge Mary after all.

QUESTION: 10) Does Dr. Chase have a duty to warn? Explain.

INTRODUCTION TO HEALTH LAW
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SPRING, 2010

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I. **SECTION 1: DEFINITIONS (5).** (approximate time: 45 minutes; 30 points).

Please define the following terms and phrases. Describe their significance in the context of health care. Include in your definition and description the applicable statutory provisions, case law, exceptions (if any), and other relevant material to the concept being described.

Provide your response to the terms in the order they appear on this exam sheet.

1. Emergency medical treatment
2. Health care proxy
3. Substituted judgment
4. Medical malpractice process in Massachusetts
5. Physician liability to non-patient third party

II. **SECTION II: SHORT ESSAYS (3).** (approximate time: 1 hour 30 minutes; 40 points).

1. **Doctor patient relationship.** Include in your short essay a description of what constitutes the formulation of the relationship; rights and responsibilities of the parties to the relationship; termination vs. abandonment.
2. **Informed consent.** Describe the concept; how is informed consent impacted by a patient’s incompetency; what are the disclosure standards in Massachusetts for informed consent; the rights and responsibilities that apply; discuss a patient’s right to refuse treatment.

3. **Confidentiality; privilege; mandated reporting; duty to warn.**

- a. Identify then differentiate between confidentiality and privilege.
- b. Identify then differentiate between mandated reporting and duty to warn.
- c. Compare and contrast confidentiality with mandated reporting.

III. SECTION III: HOSPITAL ADMISSION FACT PATTERN (1). (approximate time: 45 minutes; 30 points)

Please review the fact pattern in its entirety before you begin your responses to each question. Remember to provide an answer to each component of every question.

I. John House is a 30 year-old male who lives with his parents. He has no history of suffering symptoms of psychosis. For the past month, however, he has experienced increasingly disturbing (to him) and bizarre thoughts. For example, he began to believe that messages from the television and radio were directed to him at the exclusion of everyone else. He then began to hear voices of people when he was by himself. Last, he began to feel unsafe at home because of a new-found belief that his parents did not like him; that they sought to harm him; and that he believed that he had to kill them in order to protect himself. On Thursday, May 6, 2010, he voluntarily sought evaluation and treatment at the psychiatric unit of Andover General Hospital (“AGH”).

QUESTION: 1) Can Mr. House do this? Why or why not? What is the governing legal framework?

II. Mr. House was evaluated by a psychiatrist in the emergency room at AGH. He told the doctor why he thought he needed help. The doctor agreed that Mr. House should remain in the hospital. He requested the opportunity to apply for a conditional voluntary admission. But before he signed the application, Mr. House changed his mind and he decided to leave the emergency room. The doctor had him restrained against his will to prevent him from leaving the hospital.

QUESTION: 2) Can the doctor do this? Why or why not? What is the standard for involuntary hospitalization at this stage? Provide the legal authority for your response.

III. Mr. House was admitted to the AGH psychiatric unit on May 6, the same day he came to the hospital seeking help.

QUESTION: 3) Based on the information provided, what specific statutory authority governs his legal status at this stage?

IV. Upon admission to the unit, Mr. House was given a psychiatric examination by a designated physician immediately after he was received on the unit; he was informed that, if he wished, AGH would inform the Committee for Public Counsel Services (“CPCS”) of his presence on the unit; and that he had the right to request an emergency hearing. AGH notified CPCS, which immediately assigned Lawrence Lawyer, Esq. to

represent Mr. House. Attorney Lawyer met with Mr. House. Mr. House filed a request for an emergency hearing.

QUESTION: 4) what is an “emergency hearing” in this context? What is the appropriate subject matter of an emergency hearing? What must a district court do when it receives such a request? What do you think is the most likely result of Mr. House’s request? Why?

V. On Tuesday, May 11, the superintendent of AGH filed a petition to commit Mr. House for up to six months. The court received the petition and scheduled a commitment hearing to take place on Thursday May 20.

QUESTION: 5) what, if any, legal significance is attached to the dates in the fact pattern (sections III and V)? Explain

VI. AGH, in addition to filing a petition for civil commitment, files a petition for determination of incompetency of Mr. House. The court scheduled a hearing for this petition on the same day as the hearing for civil commitment.

QUESTION: 6) Which party bears the burden of proof in these two hearings? What is the legal standard (i.e., what are the “elements”) in the commitment hearing? What are the elements to be proven in the treatment hearing? Does it matter which hearing takes place first?

VII. In the time between the filing of the petitions and the date of the hearings, Mr. House decides that he wants to stay voluntarily in the hospital after all. He wants to stop the hearings from going forward.

QUESTION: 7) Can he do this? How? If he can stop the commitment hearing from going forward, what impact would it have on the treatment petition that is also before the court?

VIII. Mr. House’s psychiatric condition improves, is stabilized, and is ready for discharge in the opinion of his AGH psychiatrist.

QUESTION: 8) Does the AGH physician have a Duty to Warn Mr. House’s parents? Why or why not?

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SPRING, 2009

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I. SECTION 1: DEFINITIONS (6). (approximate time: 1 hour; 30 points).

Please define the following terms and phrases. Describe their significance in the context of health care. Include in your definition and description the applicable statutory provisions, case law, exceptions (if any), and other relevant material to the concept being described.

Provide your response to the terms in the order they appear on this exam sheet.

1. Right to refuse treatment.
2. Medicaid and Medicare programs
3. Psychotherapist privilege
4. HIPAA
5. Physician liability to non-patient third party
6. substituted judgment

II. SECTION II: SHORT ESSAYS (2). (approximate time: 1 hour; 30 points)

1. Confidentiality and mandated reporting. Compare and contrast.
2. Health care proxy and guardianship. Compare and contrast.

III. SECTION III: HOSPITAL ADMISSION FACT PATTERN (1). (approximate time: 1 hour; 40 points)

Please review the fact pattern in its entirety before you begin your responses to each question. Remember to provide an answer to each component of every question.

I. Peter Patient had a long history of suffering from mental illness. His diagnosis is Schizoaffective Disorder. He had been seeing a psychiatrist, Diana Doctor, on an outpatient basis. On Tuesday, May 19, 2009, Mr. Patient came to see Dr. Doctor at her office. He indicated that he stopped taking his antipsychotic medication a few weeks prior to the appointment. He also told Dr. Doctor that he was not getting along with his live-in girlfriend, Giselle, and wanted to kill her because the aliens were sending signals to him through her. Mr. Patient also believed that the government was spying on him, and that Giselle worked for the FBI, the CIA, and Homeland Security (which in fact she did not work for any of them, much less all three simultaneously). The psychiatrist was concerned that her patient could follow through on the threat of harm due to his extreme paranoia and his current unmedicated state. She sought his emergency psychiatric hospitalization. Dr. Doctor arranged for Mr. Patient to be brought to Andover General Hospital ("AGH") against his will. He was evaluated in the emergency room of AGH that night, and subsequently admitted to the psychiatric unit of AGH at 2:00 a.m. on Wednesday, May 20.

QUESTION: 1) What is the governing legal provision for Dr. Doctor's actions? Did she act in an appropriate way clinically and legally? Why or why not (include the specific governing law and applicable legal and/or clinical standards.)

II. The emergency room psychiatric evaluation at AGH was performed not by clinical staff but by Larry Lawyer, the attorney for AGH. Attorney Lawyer did not believe Mr. Patient was really dangerous but authorized the admission to the psychiatric unit in any event. Once onto the unit, Mr. Patient was admitted, but was not provided further psychiatric evaluation. He was offered the opportunity to apply for a conditional voluntary admission. He did apply for conditional voluntary admission, and his application was accepted by the hospital. He immediately submitted a "3-day letter". Mr. Patient then requested an emergency hearing in Andover District Court. The court denied his request.

QUESTIONS: 2) Did AGH conduct a proper admission process here? Why or why not. 3) what is a "3-day letter"? 4) what is an "Emergency Hearing" in this context?; Did the District Court appropriately deny Mr. Patient's request?

III. On May 26, 2009, AGH filed a petition for civil commitment of Mr. Patient. The court scheduled a hearing on the petition to take place on June 3, 2009.

QUESTIONS: 5) what, if any, legal significance is attached to the dates in the fact pattern (sections I and III)? Explain

IV. AGH, in addition to filing a petition for civil commitment, files a petition for determination of incompetency of Mr. Patient. The court scheduled and conducted a hearing for this petition on the same day as the hearing for civil commitment.

QUESTIONS: 6) Which party bears the burden of proof in these two hearings? 7) What is the legal standard (i.e., what are the "elements") in each of the two hearings? 8) Does it matter which hearing takes place first?

V. Mr. Patient improves, is stable, and is about to be discharged from AGH.

QUESTION: 9) Does Dr. Physician have a Duty to Warn Mr. Patient's girlfriend Giselle? Why or why not?