

EXAM # \_\_\_\_\_

**HEALTH LAW  
FINAL EXAM**

**Adjunct Professor Bunnell**

**Fall 2006**

**INSTRUCTIONS:**

This is an open book exam with two (2) questions. You may bring in your textbook and any written outline that you deem helpful.

The total time for the exam is two (2) hours.

Brevity and precise analysis will be rewarded; rambling answers are discouraged.

Please put your answers in the blue books and make sure that your exam number is on each. Write only on **one side** of the page and use ink. Given my own penmanship, I am clearly not the one to ask this, but please try to write legibly. I won't be able to give credit for that which I cannot read.

Finally, it will be helpful to try to budget your time between the two (2) questions appropriately. If you find yourself running out of time on either question, please try to outline the remainder of your answer.

Good luck, and thank you for a semester that I enjoyed and during which I learned a great deal from your participation.

## **QUESTION 1:**

In August of 2006, for the purpose of addressing an exponential growth in the HIV/AIDS infection rate among city teens, the City of Nashua passed a public health ordinance that requires all students at the city's high schools to undergo a yearly HIV/AIDS blood test at the school. Nashua's collected health department data indicates that the skyrocketing infection rate is due largely to unprotected sex being engaged in by teen boys and girls. Under the public health ordinance, the individual test results are provided to each teen and his/her parents. All infected teens must be offered an opportunity for counseling at school, and all infected teens are required to enroll in an after-school safe sex education course. Under the terms of the ordinance, any student that refuses to submit to the HIV/AIDS test shall be expelled from school.

June Cleaver is the single mother of Ward, a 16 year old honor roll student at Nashua's Central High School. June is the owner of a small but successful business in the city, and a respected officer in the local chamber of commerce. She and her son are devout Christian Scientists and, for religious reasons, are opposed to any blood test or other invasion of Ward's bodily integrity. In September of 2006, Ward refused to submit to the HIV/AIDS blood test requirement and, in early December - after written warning, a contentious meeting between June, Ward, and school officials, and a post-meeting opportunity to comply - was expelled from Central High School for failure to do so.

June, on Ward's behalf, wants to challenge the constitutionality of the City's requirement and/or actions. If at all possible, Ward and June would like him to be able to return to school at Central High, where he has thrived. Our law firm has agreed to represent them. The senior partner has assigned you to prepare a memo that: identifies any issue categories presented; specifies any available claims and the elements of each claim; indicates applicable standards of review; discusses public policy considerations, if any; and provides a reasoned opinion on the projected outcome of each claim and the likelihood of achieving our client's stated goals.

**- QUESTION 2 is on the Following Page -**

## QUESTION 2:

Shortly after moving to Portsmouth with her husband Barney in April 2005, Betty Rubble made an appointment to see Dr. Fred Slate, a board-certified family physician. Betty had aplastic hemopathy (AH), a chronic disease, and she and Barney were eager for Betty to have a regular physician. Dr. Slate saw Betty twice between May and November.

At about 6:15 a.m. on November 21, Betty woke Barney and told him that she was not feeling well. Barney felt Betty's body and noticed that Betty was extremely warm. He took Betty's temperature and discovered that she had a fever of 104.3 degrees. After giving Betty two tablespoons of pain medication that had been prescribed by Dr. Slate, Barney drove Betty to the Portsmouth Medical Center ("PMC") emergency room.

At the emergency room, Dr. Nora Jones, a specialist in emergency medicine, gave Betty some Ibuprofen, put her on intravenous fluids, and ordered a series of standard lab tests. By 8:55, Betty's temperature had gone down to 101.9 degrees, but Betty remained drowsy and complained that she still did not feel well.

Coincidentally, Dr. Slate was in the hospital that morning attending to another patient. Dr. Slate was often present at the PMC in the mornings, because he had admitting privileges at the hospital and spent most mornings checking on his patients. As he passed by the emergency room, he happened to notice Barney Rubble speaking with Dr. Jones. He asked Mr. Rubble why he was there, and Barney explained the situation. Betty was resting just a few feet away. Dr. Slate poked his head into Betty's cubicle to say hello. Out of habit, he glanced briefly at the lab report on test results, although he didn't read the report very carefully. He did not examine Betty, nor did he discuss Betty's care with Dr. Jones. Altogether, he was present in the emergency room for no more than three minutes. Before he left, he said to Mr. and Mrs. Rubble, "You're in good hands with Dr. Jones. Do whatever she tells you." Dr. Slate left the emergency department, relieved that he didn't have to deal with the situation any further.

Shortly after Dr. Slate left, Dr. Jones told Barney Rubble that he could take Betty home, and Barney gratefully complied. Dr. Jones reasoned that if Betty's situation warranted a hospital admission, Dr. Slate, as Betty's primary physician, surely would have said something. Dr. Jones gave Barney an additional supply of Ibuprofen for Betty, and instructed him to return to the emergency room if her condition got worse.

A few hours later, Betty was rushed back into the emergency room in cardiac arrest. The medical staff was unable to resuscitate Betty, and she died in the emergency room.

Mr. Rubble has hired our law firm to represent him in a lawsuit that can be brought based on the facts described above. According to our expert witness, the hospital lab report results indicated that Betty was suffering (and ultimately died) from a severe AH episode caused by acute infection. Our expert also indicates that had Dr. Jones or Dr. Slate provided Betty with appropriately aggressive antibiotic medication before she was released from the hospital, it would have saved her life.

The senior partner has assigned you to prepare a memo that: identifies the issue categories presented; specifies the available claims and elements of each claim, including any applicable duties of care and burdens of proof; discusses public policy considerations, if any; and provides a reasoned opinion on the projected outcome of each claim.