

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

**HEALTH LAW  
FINAL EXAM**

**Adjunct Professor Bunnell**

**Fall 2005**

**INSTRUCTIONS**

This is a closed book exam.

The total time for the exam is 2 hours.

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

Please put your answers in the blue books and make sure 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, please try to write legibly. I won't be able to give credit for that which I can't read.

If you find yourself running out of time, 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:

Shortly after moving to Concord in May 2004, June Cleaver made an appointment to see Dr. George Foreman, a board-certified family physician. June had sickle cell anemia, a chronic disease, and John and June Cleaver were eager for June to have a regular physician. Dr. Foreman saw June twice between May and November.

At about 6:15 a.m. on November 19, June woke John and told him that she was not feeling well. John felt June's body and noticed that June was extremely warm. He took June's temperature and discovered that she had a fever of 104.3 degrees. After giving June two tablespoons of pain medication that had been prescribed by Dr. Foreman, John drove June to the Capital Medical Center ("CMC") emergency room.

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

Coincidentally, Dr. Foreman was in the hospital that morning attending to another patient. Dr. Foreman was often present at CMC 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 John Cleaver speaking with Dr. Smith. He asked Mr. Cleaver why he was there, and John explained the situation. June was resting just a few feet away. Dr. Foreman poked his head into June'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 June, nor did he discuss June's care with Dr. Smith. Altogether, he was present in the emergency room for no more than three minutes. Before he left, he said to Mr. Cleaver, "You're in good hands with Dr. Smith. Do whatever she tells you." Dr. Foreman left, relieved that he didn't have to deal with the situation any further.

Shortly after Dr. Foreman left, Dr. Smith told John Cleaver that he could take June home. Dr. Smith reasoned that, if June's situation warranted a hospital admission, Dr. Foreman, as June's primary physician, surely would have said something. Dr. Smith gave John an additional supply of pain medication, and instructed him to return to the emergency room if June's condition got worse.

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

Mr. Cleaver 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 June was suffering (and ultimately died) from a severe sickle cell episode caused by acute infection. In addition, had Dr. Smith or Dr. Foreman provided June with appropriate 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.

## QUESTION 2:

A pandemic bird flu virus (H5N1) has struck the United States. The virus is subject to human to human transmission, is contagious and is potentially fatal. Worldwide experience indicates that the virus is fatal in one in fifteen individuals who contract it. In a period of four weeks, 19 persons residing in and around New York City have died from the virus; another 253 New York residents are known to be infected and contagious. Officials from the United States Surgeon General's Office and the federal Centers for Disease Control indicate that health care providers are recording other human infections in cities and towns up the eastern seaboard to Massachusetts. There are no cases of infection or death yet reported in New Hampshire.

Three weeks ago, the New Hampshire legislature called an emergency session and passed a bill, signed by the Governor and effective immediately, requiring all New Hampshire residents to be vaccinated for the H5N1 virus within 14 days. About a year ago, in a move questioned by many lawmakers, New Hampshire's Commissioner of Health used State dollars to purchase and stockpile the H5N1 vaccine. The Commissioner has distributed the vaccine, via New Hampshire's community hospitals, to primary care doctors and practices throughout the state.

The newly-enacted bill provides that any New Hampshire resident who refuses to be vaccinated, after an expedited notice and hearing in State District Court, may be subject to quarantine and/or daily fine.

Roxanne Jones is the owner of a small but successful business in Nashua, and a respected officer in the local chamber of commerce. She is a devout Christian Scientist and, for religious reasons, is opposed to any vaccination or other invasion of her bodily integrity. She and a group of her fellow Christian Scientists from the Nashua community notified the Commissioner that they are refusing to submit to the vaccination requirement. After notice and an expedited hearing in District Court, Roxanne has received notice from the District Court judge that she has 3 days to submit to the vaccination or she will be quarantined.

Roxanne wants to challenge the District Court's order and the constitutionality of the new State law. Our law firm has agreed to represent her. The senior partner has assigned you to prepare a memo that: identifies any issue categories presented; specifies any available claims and 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 any claim.