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531 Health Law

Semester I, 1999-2000

UNM School of Law
Final Examination
Three Credit hours

Professor R.L. Schwartz
Saturday, December 11, 1999
Friday, December 17, 1999
9:00 a.m. to 11:00

INSTRUCTIONS

You have two hours to complete this exam, which consists of one fact pattern giving rise to several different questions, each of which is weighted equally. Organize your thoughts carefully, budget your time, and write your answers clearly. Please write on only one side of each blue book page. This is an open book exam; you may have with you anything that does not speak. You are required to address ANY FIVE (it's your choice) of the seven issues raised by the General Counsel. **YOU ARE NOT REQUIRED TO ADDRESS EVERY ONE OF THESE SEVEN ISSUES**, and you will not be given any credit for addressing more than five of the issues. You will be amply rewarded for creativity.

[The Examination Begins on the Next Page]

Congratulations on your appointment in the office of the General Counsel of St. Agatha Memorial Hospital (SAM-H), which was founded a century ago by the Sisters of St. Agatha, who appoint all members of the Board of Directors. SAM-H, which is organized as a not-for-profit corporation under the laws of New State for the purpose of "providing medical care to those in need of that care within the Newville Community, without regard to religion," is qualified as a tax exempt corporation under section 501c3 of the Internal Revenue Code and its hospital facilities are exempt from state and local property tax under state law because it is a "charitable" institution. SAM-H is the only large hospital in Newville, New State, and it is the only hospital to offer a number of specialties, include various surgery specialties. Your appointment comes at a very exciting time in the history of SAM-H, and that usually makes for a great deal of legal work.

Almost two years ago the Board of Directors of SAM-H decided to enter into a joint venture with Family Docs, a limited liability company owned together by most of the family doctors in Newville, to establish a fully integrated health care system. Family Docs supplies all of the necessary primary care, and SAM-H provides all other services, virtually all of them through the existing hospital. The joint venture, St. Agatha Memorial System (SAM-S), is a for profit corporation to which SAM-H has contributed "all necessary hospital and related services," and to which the physicians have contributed their expertise and, in addition, capital equal to about a third of the market value of the hospital's contribution. The additional capital thus brought into SAM-S has been used to improve outpatient services. The Board of Directors of SAM-S appoints 55% of the Board of Directors of SAM-S, and Family Docs appoints the rest. All profits of SAM-S are equally divided between SAM-H and Family Docs. The joint venture expires two years after its formation unless SAM-H, in its sole discretion, decides that it should be continued for an additional fifteen years. SAM-S has signed a contract with SAM-H, in which SAM-H has agreed to do all administrative work, including all utilization review, for SAM-S, in return for a predetermined (and reasonable) annual fee.

SAM-S has recently won a contract to provide "all necessary health services," as employee benefits, to the employees of Vast Desert Widgets and the dependents of those employees. SAM-S is responsible for all aspects of the provision of health care under this contract, and for administration of the Vast Desert Widgets' employee benefit health plan, which is an ERISA plan. Vast Desert Widgets is the largest employer in New State, and it accounts for 35% of the employed people in Newville. SAM-S has signed similar contracts with a few other, smaller, employers, also.

1. The General Counsel would like to know whether the SAM-S joint venture puts the hospital's tax exempt status under Internal Revenue Code section 501c3 at risk, and whether the hospital's property tax exempt status under state law might also be at risk.

2. One Vast Desert Widgets employee claims that he was injured when a SAM-H employee denied authorization for a physician's proposed prescription of the antibiotic acronyx-3 until a trial of the older and much cheaper antibiotic acronyx-1 had proven ineffective in the course of treatment for an infection. The employee's physician told his patient that he "might as well give the other a try" after the SAM-H employee denied authorization. The SAM-H employee was acting consistently with the plan administration manual, which is based on published outcomes research that shows that in 85% of the cases in which acronyx-3 is prescribed, acronyx-1 would be equally effective without any additional adverse side effects. The General Counsel would like to know whether SAM-H might be liable under these circumstances, what legal theories might be available to the patient, and what defenses might be available to SAM-H.
3. SAM-H has established a for-profit subsidiary, St. Agnes Memorial Financial (SAM-F), to collect bills that are due to the hospital. The SAM-H Board appoints all of the directors of SAM-F, which also markets its bill collecting services to hospitals in neighboring cities. SAM-H (and the contracting hospitals) provide SAM-F with a detailed bill for hospital services for each past due account, and SAM-F uses all legal means, including litigation if necessary, to collect as much of the bills as is possible. The General Counsel wants to know if there is any problem with this arrangement, with regard to accounts from SAM-H or from other hospitals.
4. SAM-F has convinced SAM-H to approve a policy that provides that any person with a hospital account that is more than 30 days past due will receive a notice, by certified mail, that says, "You are hereby notified that St. Agnes Memorial Hospital is discontinuing its provider-patient relationship with you, and that, except in cases of emergencies when you seek care from our emergency department, St. Agnes Memorial will not provide you any additional care under any circumstances until your past due account is paid in full. We provide you with this notice so that you can make other appropriate arrangements to receive any care you may need. **DO NOT RETURN TO ST. AGNES MEMORIAL HOSPITAL FOR TREATMENT UNTIL YOUR BILL IS PAID.** If you have paid your bill and believe that you have received this letter in error, please contact St. Agnes Memorial Financial immediately." The General Counsel wants to know if this letter will be effective in ending the provider-patient relationship, and whether there might be any adverse consequences to SAM-H in sending this letter.
5. The last two cardiologists at SAM-H have announced their intention of moving from Newville to Dallas, where they will be able to develop more lucrative and satisfying practices. In an effort to attract a cardiology group from a nearby city to provide cardiology services at SAM-H, SAM-H is thinking of offering that group (a) an exclusive contract to provide cardiology services at the hospital, (b) free office space at the hospital to conduct their practice, and (c) an annual "coverage" fee of \$100,000 to assure that there will always be a cardiologist on call for SAM-H patients. The

cardiology group would delegate one member of the group to be "on call" each day, and would send one member of the group to the hospital for consultation on Mondays, Wednesdays and Thursdays. The General Counsel wants to know if any legal problem could arise out of this arrangement.

6. SAM-H has about 50 physicians who are employees (including primarily pathologists, anesthesiologists and emergency room doctors), although most physicians working at the hospital are independent physicians with staff privileges there. The employee-physicians have begun organizing a union, the Amalgamated Doctors. The General Counsel would like to know whether this union could be certified under the National Labor Relations Act, and what difference it would make if it were.
7. Dr. Cindy Apple, a primary care physician who is a member of Family Docs, has strongly opposed the creation of SAM-S, and has argued in speeches to the Rotary, Kiwanis, Lions Club, and American Legion that SAM-H has "sold out" the Newville community to a cruel and insensitive health care system. Last year she was informed that her staff privileges at SAM-H would be removed for "a practice style incompatible with that of the hospital," one of the grounds for removal of staff privileges under the staff by-laws. The procedure provided in the by-laws was followed scrupulously and her privileges were terminated by majority vote of the credentialing committee, and this decision was subsequently approved by a unanimous vote of the Board of Directors. She has been removed from the list of SAM-S participating physicians because the SAM-S operating manual provides that all SAM-S physicians must have staff privileges at SAM-H. She has not been removed as an owner of Family Docs, and, as such, she retains her ownership interest in SAM-S. Her practice, however, has dwindled to less than one-third of what it had been when she was a member of the SAM-H clinical staff. The General Counsel would like to know if Dr. Apple will be able to challenge the loss of her SAM-H staff privileges in court, and what the likely result of such a challenge will be.

Write a memo to the General Counsel addressing ANY FIVE OF THESE ISSUES. You will not receive credit for addressing more than five of the issues, so you should not do so. You need not repeat any of the facts. Assume that New State has adopted the common law position on all relevant issues, and that it has no relevant statutory law.

[END OF EXAMINATION]