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INSTRUCTIONS

This exam consists of four questions of equal weight. You have two hours to complete the entire exam, and you should spend about a half an hour on each question. You may have with you the materials used in the class and any other materials that you prepared yourself or with your fellow students.

Please write legibly, and write on only one side of each blue book leaf. Please answer each question in a separate blue book and indicate which question you are answering on the cover of the blue book. If you type, make sure your exam number is at the top of each page of your answer.

You will be amply rewarded for clear and simple writing that is directed to the question, and for suggesting a creative approach to the issues that are raised.

Good luck!

QUESTION 1

Just about a week after being discharged from Holy Help Hospital (HHH) following abdominal surgery, Perry Patient (PP) started feeling terrible. His abdomen was distended and tender, and he was having trouble breathing. Unfortunately, his Teal Shield health coverage had terminated the day after his surgery, because on that day his employer had switched from a Teal Shield indemnity plan to an Edna Health Care managed care plan. He had received notice that he was no longer covered for visits to his Teal Shield primary care physician, Dr. Kind, and Dr. Kind had been informed that PP was no longer his patient “pursuant to any Teal Shield plan or coverage.” Dr. Kind was a member of HHH’s medical staff, which was the only hospital in which he practiced. While PP was supposed to have chosen a new primary care provider from the Edna provider list, he had not yet done that. His surgeon, Dr. Sharp, who was an employee and on the staff of HHH, quit work as a surgeon the day after PP’s surgery, and he is now studying in a monastery in Tibet.

PP didn’t know where to turn. He went back to HHH, and told them that he was in the midst of an emergency. The HHH admitting clerk told him that HHH did not have an emergency room – only an urgent care center, where he would not be covered by his Edna plan (and where, as a consequence, he would be refused care if he requested to be seen). Further, HHH noted that PP still owed \$127 for sundries not covered by Teal Shield during his last admission, and they informed PP that it was HHH policy not to see patients who had not paid for previous care. As he lay writhing on the floor, the HHH admitting clerk asked whether he wanted to be taken to an

emergency room, or to the nearest Edna urgent care center. At this point he could no longer speak, and he died under the HHH admitting window before the ambulance that had been called arrived.

PP's estate wants to commence an action to seek compensation for the improper treatment that contributed to PP's death. Write a short memo describing who could be sued, for what, and what the chances of success might be.

QUESTION 2

In an effort to develop some kind of rational policy that could be easily implemented and that would appropriately restrict access to confidential patient information, Hospital of the Plains (HoP) instituted a medical records and information policy that provides, inter alia, that no medical information relating to any patient may be divulged to any person under any circumstances by HoP or any agent of HoP, except:

- (1) with the formal permission of the patient,
- (2) when necessary within HoP to provide high quality and seamless care (i.e., health care workers in the hospital may give patient information to others when it is necessary for the care of the patients),
- (3) when requested by a court or by a law enforcement officer,
- (4) when requested by a physician licensed to practice medicine within the state,
- (5) when necessary to defend a legal action filed by or against the hospital,
- (6) when necessary to collect a bill due to the hospital, or
- (7) when requested by a health care products company so that useful consumer information may be provided to the patient.

You are HoP's policy lawyer, and paid handsomely for it, too. Draft a brief memorandum describing whether each one of these seven exceptions is legally appropriate.

QUESTION 3

The three major hospitals in Central City, St. Mary's, Mt. Sinai, and Central Islamic, have each lost a great deal on the dialysis services they have been providing over the past few years. All three are religiously affiliated non-profit teaching hospitals, and all provide a very substantial amount of care to the poor. All three are concerned that dialysis services will drain their reserves and divert the donations they receive, making it more difficult for the indigent in Central City to receive care. A study commissioned by the board presidents of all three hospitals found that throughout the United States dialysis services generally are provided more cheaply and efficiently (and perhaps with better quality, too) when several hospitals band together and contract with an independent dialysis provider.

As a consequence of this research, the three hospitals, together with Humongous Dialysis, a for-profit corporation which is the world's largest provider of dialysis services, have

decided to form a joint venture—called Multifith Dialysis (MD), which would be organized as a non-profit corporation—to provide the dialysis services now provided by the three hospitals. The Board of Directors of MD would consist of two members appointed by each of the three hospital boards and two members appointed by the Humongous board, and each of the four partners would put in about \$300,000 in capital. Initially Humongous would have a five-year contract to operate MD and make all day-to-day decisions, and they would be paid an amount that is standard in the industry (initially, about \$750,000 per year) for doing so. After the first five years, the Board could hire a new manager and operator whenever the majority thought it appropriate to do so. The MD Board has also confirmed that the new joint venture would provide “at least as much charity dialysis care” as the hospitals did before. Most dialysis is paid for by Medicare’s End Stage Renal Disease Program or by private third party payers, and less than 5% is uncovered.

As the lawyer hired to represent the joint venture, write a short memorandum explaining whether MD is likely to be recognized as a tax exempt organization, whether the creation of this joint venture could affect the tax status of the three non-profit partners, and what (if anything) can be done to increase the likelihood that the joint venture will be recognized as tax exempt.

QUESTION 4

As physician objections to managed care became more vigorous, the Board of Medical Examiners (the “Board”) of the State of New Texas promulgated a rule that provides as follows:

Any physician who serves as a medical director or administrator of any managed care plan that either

- (1) permits any administrative review that could lead to denial of any medical care ordered by the subscriber’s primary care physician, or
- (2) discourages primary care physicians from recommending that their patients seek care outside of the managed care plan,

shall be subject to sanction, including the revocation of that physician’s license to practice medicine, for unprofessional conduct.

Your client, Dr. Lightweight, has been brought before the Board and accused of unprofessional conduct because she serves as medical director of the General Pneumatic Managed Care Plan (“GPMCP”). GPMCP is a “self insured” health plan owned and administrated by General Pneumatic, a very large employer, to provide health benefits to its employees as part of an ERISA qualified employee benefit plan. As part of the plan, and in accord with generally accepted economic principles in managed care, certain decisions of primary care providers, including decisions to hospitalize patients, are reviewed by physician-managers, who are expected to deny those that are not medically justified. In addition, GPMCP generally does not cover out-of-plan care, and it requires substantial paperwork of its physicians when they tell a patient about any out-of-plan option.

Dr. Lightweight has hired you as her counsel. What arguments are you able to make in her defense, to save her license?