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**593-038 AIDS & the Law
Fall Semester 2004**

**UNM School of Law
Final Examination
Two -Three Credits**

**Professor Suzuki
Tuesday, December 14, 2004
1:30- 4:30 p.m. (3 hours)**

Examination Format

1. **Laptop** computer users: Start the Securexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, & date of exam. Make sure to number each bluebook in order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

Professor's Instructions:

The examination questions are on pages 3 through 11. The examination has two sections. Section One consists of 15 multiple choice questions. It is recommended that you spend no more than 30 minutes on Section One, which translates to two minutes per question. Section Two consists of 4 essay questions. It is recommended that you spend 40 minutes each on the first two essay questions, 50 minutes on the third essay question, and 20 minutes on the fourth essay question. Point values for the examination will be apportioned roughly equal to the recommended time allotments.

The appendix is contained on pages A1 through A59. The appendix contains some New Mexico statutes: the HIV Test Act; the Immunization Act, the Uniform Health Care-Decisions Act; the Kinship Guardianship Act; and parts of the Probate Code (parts of power of attorney and guardianship of minors).

This final exam follows a modified open-book exam policy. Each student is allowed the course book, AIDS Cases and Materials; all handouts distributed in class during the semester; course notes taken by the student herself; and any course outlines prepared by the student. You are encouraged to refer to these sources in answering the examination questions.

Answer all multiple choice questions on the Scantron answer sheet provided. Use the number 2 pencils provided to fill in the answer sheet, and be sure to **fill in your EXAM NUMBER** as shown in the example below. **Do not fill in any other identifying information on the answer sheet.** Mark the Scantron sheet carefully. If you must erase, make it as clean as possible.

For Section Two, the essay questions:

- If there are any ambiguities as to law or fact, please state your assumptions and proceed with your analysis.
- You may cite relevant case law of jurisdictions outside of the jurisdiction in which the question is set.
- You will be evaluated for the precision, thoroughness, organization and creativity of your answers. The conclusions you reach are less important than the strength of your analysis.
- **If you use bluebooks, please use a separate bluebook for each question.** Use as many bluebooks as you need to answer a question.
- **If you type, please start each question at the top of a page. To start a new page in SecurExam, use the same method as in Word (Ctrl + Enter).**

Section One: Multiple Choice Questions (30 minutes total recommended)

1. A scientist at the Pasteur Institute, the French laboratory which is widely known for its research team which co-discovered the causative agent of AIDS, has developed a new drug that is as effective as the multiple anti-HIV drugs used in HAART, highly active anti-retroviral therapy, but without the side effects that lead many patients to inconsistent adherence to the regimen. Until There Is A Cure, a federally recognized non-profit organization in the United States that pools the resources of people living with HIV/AIDS to purchase drugs abroad that are not yet licensed for use in the U.S., has obtained a supply of the new French drug and is selling it “at cost” to patients in the U.S. Ned Millet, an HIV-positive resident of New Mexico whose income is disability benefits from the Department of Veterans Affairs (VA), can receive reimbursement for these drugs from which of the following programs?
 - A. VA’s Health Care System
 - B. Medicaid
 - C. Medicare
 - D. New Mexico Medication Assistance Program
 - E. None of the above

2. Which of the following is **NOT TRUE** about the Harm Reduction/Syringe Exchange program in Albuquerque?
 - A. It does not increase drug use among current users in Bernalillo County.
 - B. It does not increase the number of new drug users in Bernalillo County.
 - C. It educates its clients about safer drug injection techniques.
 - D. It issues syringe exchange program membership cards with the client’s name on it so that the client can be identified as a participant in a New Mexico Department of Health authorized syringe exchange program.
 - E. It limits enrollment in its program to current injection drug using citizens of New Mexico who are at least 18 years old.
 - F. It allows the clients of any syringe exchange program authorized by the New Mexico Department of Health to participate in one of its syringe exchange sessions.

3. How is SSI funded?
 - A. FICA
 - B. Worker’s Compensation Fund
 - C. General tax revenues
 - D. Social Security Insurance
 - E. ADAP

4. Nate Madden is a twenty-year-old HIV-positive resident of Sandoval County in New Mexico. He works as a stockperson at night in a “big box” warehouse-like store where he is paid an hourly wage but no health insurance benefits. He has a life insurance policy that he purchased through his motor club association. Because he is behind in his payments for telephone bills and rent, Nate is considering viaticating his life insurance policy. What information must be disclosed to him if he applies to enter into a viatical settlement?
- A. Nate has a right to rescind the contract within fifteen calendar days after receiving viatical settlement proceeds.
 - B. The viatical settlement proceeds may adversely affect Nate’s Medicaid eligibility.
 - C. The accelerated death benefits, if any, available under Nate’s life insurance policy.
 - D. Creditors may try to file claims for Nate’s viatical settlement proceeds.
 - E. All of the above.
5. Which funding initiative emphasizes abstinence as a global HIV prevention approach?
- A. The Emergency Plan for AIDS Relief
 - B. The Ryan White Comprehensive Resources Emergency Act
 - C. The Global Fund to Fight AIDS, Tuberculosis, and Malaria
 - D. The Minority AIDS Initiative
 - E. UNAIDS
6. Which test detects proteins that attack HIV?
- A. PCR
 - B. Western Blot
 - C. Viral load
 - D. ELISA
 - E. B and D
7. What is reported by the N.M. Department of Health to be the largest category of current HIV-positive individuals in New Mexico?
- A. Women who have sex with men who have sex with men.
 - B. Children under 13 years old from mother-to-child transmission.
 - C. Men who are injection drug users who have sex with men.
 - D. Men who are not injection drug users who have sex with men.
 - E. Women who have sex with men who are injection drug users.

8. Where do most HIV-positive people live?
- A. The United States
 - B. India and China
 - C. China and the former Soviet Union
 - D. The Caribbean
 - E. Sub-Saharan Africa
9. The Centers for Disease Control and Prevention estimate that of the 950,000 people in the United States living with HIV, what percentage do not know they are HIV-positive?
- A. Less than 1 %
 - B. 10%
 - C. 25%
 - D. 35%
 - E. 50%
10. In New Mexico, which racial/ethnic group is the most disproportionately infected with HIV?
- A. Whites
 - B. Hispanics
 - C. American Indians
 - D. Blacks
 - E. Asians/Pacific Islanders
11. What are the most common routes of HIV transmission in the United States currently?
- a. Unprotected penetrative intercourse with someone who is infected.
 - b. Organ transplants taken from someone who is infected.
 - c. Transfusion of contaminated blood or blood products.
 - d. Sharing of unsterilized injection equipment that has been previously used by someone who is infected.
 - e. Mother-to-child transmission at birth.
- A. a, b, and c.
 - B. a, d, and e.
 - C. b, c, and d.
 - D. b, c, and e.
 - E. c, d, and e.

12. Alma Arnold is a chef at the Burger Joint in Los Lunas, New Mexico. She is living with HIV and is prescribed HAART therapy. In September 2004, Alma misses two weeks of work because the HAART regimen was causing her to feel nauseated and to vomit. During her leave, Alma makes an appointment with her treating physician, who makes some changes to the medications that Alma is prescribed. Upon her return to work in October, Alma is fired. She is told that she has been replaced and that her services are no longer needed. Alma suspects that the Burger Joint's manager must think she is HIV-positive because she did the AIDS bicycle ride fundraiser in New York last year and was just out sick for two weeks. She decides to sue the Burger Joint. In her suit under the Rehabilitation Act of 1973 and the Americans with Disabilities Act, Alma will have to prove:

- a. She became infected because of a work-related injury.
- b. She is living with a disability that causes a substantial limitation on a major life activity.
- c. She was fired from her job as chef at the Burger Joint because she is HIV-positive.
- d. Any significant risk that her HIV status poses to the health and safety of restaurant patrons can be eliminated by reasonable accommodation.

- A. a and b only.
- B. b and c only.
- C. c and d only.
- D. b, c, and d only.
- E. a, b, c, and d.

13. Sandy Impala, a forty-year-old single woman from Kansas, had been a ticket taker at the Madstone Theater in Albuquerque, New Mexico. She stopped working at the Madstone because she was having trouble at work. Sandy started to have trouble reading the tickets that patrons handed to her. Also, sometimes her hand would go numb and she couldn't move her fingers in order to take the tickets. Sandy's treating physician told her that as a person living with AIDS, she is more likely to get cytomegalovirus (CMV) retinitis, a sight-threatening disease. Also, she may have peripheral neuropathy, a muscle weakness in the hands that is fairly common in people living with HIV. Alma's doctor recommends that she apply for SSI. In order to prove she is eligible for SSI, Sandy must show:

- A. She has worked five of the last ten years.
- B. There are no jobs as ticket taker available in Albuquerque, especially since the Madstone Theater closed down.
- C. Her cytomegalovirus alone is disabling.
- D. She has limited income and resources.
- E. The Madstone Theater management told her that there was no other job at the theater for which she was qualified.

14. What is the largest source of federal spending for HIV care and treatment?
- A. Medicare
 - B. Medicaid
 - C. SSDI
 - D. SSI
 - E. ADAP
15. Treatment for which of the following infections, which costs eleven dollars for one patient, along with HIV testing and treatment for HIV and AIDS, is one of the most cost-effective ways of keeping HIV-positive patients alive in Africa?
- A. Tuberculosis
 - B. Hepatitis C
 - C. Malaria
 - D. Pneumonia
 - E. Cytomegalovirus

Section Two: Essay Questions

Question 1 (40 minutes recommended)

Boyd and Gert are in love. They are both seventeen years old, and they work as barristas at a local coffee shop that provides health care benefits for employees who have been working for at least a year. Boyd and Gert decide to move in together and live in an apartment in southeast Albuquerque. Down the street from the coffee shop is a non-profit community health clinic that provides testing and counseling for HIV and other sexually transmissible diseases. They go into the clinic and the community health counselor, Connie, provides counseling on safer sex, risk/harm reduction, and responsible choices. Boyd and Gert get tested for HIV. They are told to come back in two weeks for the results.

The specimens are tested. Boyd tests positive for the HIV antibodies. Gert tests negative for the HIV antibodies. They do not come in for their test results.

Six months later, Gert walks into the community health clinic to see Connie. She says that Boyd has moved temporarily to Colorado to be a ski instructor for the winter because it pays more than the coffee shop. They are really going to need the money now, since Gert is pregnant.

Connie calls up the lawyer who does work for the clinic on a pro bono basis, Ally Tallent. Ms. Tallent happens to be at the coffee shop down the street and comes in to speak with Connie. Connie shows Ally a form that Gert brought in. There is a New Mexico “Statutory Power of Attorney,” signed by Boyd. Gert told Connie that Boyd filled it out so that she could take care of the rent and other matters while Boyd is away. Ally sees that Boyd has initialed part 17, the section that grants power of attorney to Gert for “all of the above powers, including financial and health care decisions.” Ally sees that above part 17 on the form is part 15, which grants power of attorney for “decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, institutionalization in a nursing home or other facility and home health care.” Boyd did not initial part 15.

Connie wants to know whether she should tell Gert that Boyd tested positive for HIV. What are the considerations in favor of informing Gert? What are the considerations against informing Gert? Analyze the issue looking at the law in regard to powers of attorney and HIV tests. What should Ally advise Connie to say to Gert?

Question 2 (40 minutes recommended)

The New Mexico Department of Health has recently deemed Bigpox to be dangerous to the public health. As a result, Bigpox has been added to the list of immunizations required for children attending school in New Mexico.

You are an associate at a small law firm in New Mexico. Annie Mather comes to see you about a problem she is having enrolling her six-year-old daughter, Daisy, in school. The principal of the public school in which Ms. Mather would like to enroll Daisy has refused to allow Daisy in school until she is immunized for Bigpox.

Ms. Mather tells you that she is living with HIV. She told her doctor, Dr. Duncan, about the required Bigpox immunization. Her doctor informed her that the Bigpox immunization is a “live” vaccine that uses a weakened form of the germ. Daisy, who is HIV-negative, might get a mild case of the disease from the immunization, but then her immune system would kick in to protect her against a severe case. However, Dr. Duncan said that Ms. Mather might not respond as well to a live vaccine, and that if Daisy were to be vaccinated for Bigpox, Ms. Mather would be exposed to Bigpox. The vaccine could cause side effects to Ms. Mather and perhaps even the disease that the immunization is designed to prevent. Dr. Duncan said that if Daisy gets the immunization, Ms. Mather should avoid contact with her for two to three weeks after the vaccination.

Ms. Mather recently moved to Albuquerque from the east coast and doesn't have any friends in New Mexico. Daniella has never spent a night away from Ms. Mather.

Ms. Mather wants to know what her options are. What do you tell her? Is Daisy entitled to an exemption from immunization? What ideas do you have for helping her? What do you recommend? Refer to the New Mexico Immunization Act and your other resources.

Question 3 (50 minutes recommended)

You are a legal aid lawyer in Albuquerque, New Mexico. You are called to UNM Hospital by a caseworker in the Infectious Disease department, in order to interview a patient living with AIDS who has some legal questions. When you get there, you meet Marlene Martinez, a thirty-five-year-old mother of a five-year-old, HIV-positive daughter, Daniella. Marlene is due to be transferred from UNMH to a nursing home in Albuquerque whose facilities are appropriate for patients with AIDS.

Marlene tells you that she entered UNMH about three months ago. Before then, she had been living in an apartment with Daniella. Marlene had been receiving SSDI. Marlene had always been relatively healthy, with occasional periods of sickness from opportunistic infections. In the early fall, Marlene fell sick with Bigpox. She thinks she contracted it from the boy next door who had been immunized for Bigpox at the beginning of the school year. When Marlene first entered UNMH, Daniella went to live with Joyce, Marlene's girlfriend of two years. Joyce lives in a house on the Westside and is a certified public accountant in Rio Rancho. While Joyce works during the day, Daniella stays with Marlene's mother, Ginnie, who lives near UNM. Ginnie does not really like Marlene's "lifestyle," but has been civil toward Joyce.

Marlene's doctor thinks that she will need to be in the nursing home only a few months before she is well enough to return home. She wants you to help her to make sure that while she is unable to care for Daniella, that Joyce is raises her. She wants her plans in writing so that Ginnie doesn't try to take over. Marlene has other concerns. What happens if she gets sicker while she is there? If something happens to her health, she wants the doctors to do everything possible to save her. She knows that Ginnie would make sure that would happen, but she is not so sure about her mother. What happens if she is in the nursing home for longer than her doctor expects? What will happen to Daniella? And what happens if Daniella's father, whom Marlene hasn't seen in years, comes back? Can he take Daniella away from Joyce?

What are Marlene's options? What do you advise Marlene to do?

Question 4 (20 minutes recommended)

The Centers for Disease Control and Prevention estimate that for every 100 HIV-infected persons identified, 20 new infections can be prevented through confidential testing and risk reduction counseling linked to partner notification programs. The estimated cost of a partner notification program in the United States to reach one infected person is over \$3,000.

Some New Mexico legislators are considering sponsoring a bill that if enacted into law, would institute partner notification in the state. Through partner notification, New Mexico residents would be informed of their exposure or possible exposure to pathogenic agents such as HIV. What are the possible benefits of partner notification, including to the individual and to the state? What are the possible negative consequences of a partner notification law to the individual and the state? Who would you mandate to perform the activity of partner notification? What, if any, training would you mandate for these individuals who do the partner notification?