

SECTION IV

MULTIPLE CHOICE QUESTIONS AND ANSWERS

For each of the thirty-five (35) multiple choice questions in this section, one or more answers may be correct. Or all may be wrong. I have provided answers with brief explanations (see pp. 300 to 317).

QUESTION 1

Dr. John Sullivan was in the restaurant when a fellow diner choked on his steak. The doctor did not provide first-aid, and the diner subsequently died. A lawsuit against Dr. Sullivan for failure to render emergency aid would succeed because:

- A. The doctor owes a duty to treat in a jurisdiction that has the Good Samaritan statute.
- B. A reasonable person would come to the aid of someone in distress.
- C. A reasonable doctor would come to the aid of a stranger in distress.
- D. All doctors have taken a vow to treat in an emergency situation.
- E. But for the doctor's negligent failure to treat, the patient would have survived.

QUESTION 2

Unbeknownst to her parents, little Janet, a 3-year-old toddler, accidentally ingested some aspirin pills while mom was away seeing the family doctor for the 'flu.' When she returned, she found that little Janet was sweaty and irritable and was breathing rapidly. She immediately brought the 3-year-old to the doctor, who diagnosed Janet's condition as the 'flu,' similar to her mother's. The doctor prescribed baby aspirin. Twelve hours later, the child died of salicylate poisoning. At trial, the plaintiff's expert testified that the sweating and hyperventilation should have been a tip-off to the doctor that this may have been a case of salicylate poisoning.

- A. The family physician is not negligent because he had no way of knowing that there was an accidental ingestion of aspirin.
- B. But for the mother's carelessness in leaving the child unattended, the poisoning would not have taken place. Thus, the mother is contributorily negligent.
- C. Poisoning is a leading cause of pediatric deaths, and all family physicians are expected to consider this diagnostic possibility.

- D. The plaintiff must prove causation to win the lawsuit.
- E. The doctor is liable as evidenced by the fact that he prescribed aspirin, which is contraindicated in young children because it can cause Reye's syndrome.

QUESTION 3

A general practitioner (GP) delayed hospital admission for a patient with chest pain who later died from a myocardial infarct (MI). A close friend of the family heard the news over the phone several hours later and reacted with extreme grief. She later lapsed into a prolonged depression that required psychiatric treatment.

- A. GP is not liable to the patient because his chances of surviving the massive MI would at best have been improved by 10% had he been hospitalized earlier.
- B. As a general practitioner, GP used his best judgment and should not be held to a higher standard.
- C. GP is not liable to the family friend as there is no doctor-patient relationship.
- D. GP is liable for the friend's injuries because he caused them.
- E. Physical injuries are compensable, but psychiatric ones are not.

QUESTION 4

A patient developed severe headache and neck stiffness which the clinic physician diagnosed as a viral infection. Her condition did not improve, so her husband called the doctor who did not return the page. The call was transferred to the emergency department (ED) physician who asked some questions but did not encourage re-evaluation, as the ED was extremely busy at the time. The patient's condition was subsequently diagnosed as a subarachnoid bleed and she later expired. Her husband sued the clinic physician, ED physician, and hospital for malpractice. The clinic physician, a hospital employee, is a medical resident just out of medical school. The ED physician works as an independent contractor and derives no direct salary or fringe benefits from the hospital. A prominent sign at the entrance features these words: "Hospital Emergency Services: Physician on duty 24 hours."

- A. The clinic physician is not liable because he met the standard of care expected of a physician at his stage of training.
- B. The ED physician is not liable because there was no doctor-patient relationship.
- C. The hospital is vicariously liable for clinic physician's conduct but not ED physician's conduct.
- D. The hospital cannot be liable because it is not a person.
- E. No liability attaches to any of the three parties because their negligence, if any, did not cause the death of the patient.

QUESTION 5

Having lost faith in several of her doctors including her cardiologist, Mrs. Hee decided to seek non-traditional alternative treatment for her heart condition. She received chelation therapy, herbal enemas and megavitamin injections from Dr. Snakeoil, but died after six months of treatment. Dr. Snakeoil is a holistic healer, not a medical doctor, but he is licensed by the State. Mrs. Hee had signed a form stating that she understood the unproven nature of Dr. Snakeoil's treatment methods and she was willing to assume the risks.

Had she taken the advice of her cardiologist, she would have received effective treatment for her cholesterol and blood pressure conditions. Interventional procedures to improve her coronary circulation may have proven beneficial.

In a claim against Dr. Snakeoil, which of the following is (are) true?

- A. Mrs. Hee assumed the risk of unconventional treatment, and this shielded Dr. Snakeoil from liability.
- B. Assumption of risk is only a partial defense.
- C. Dr. Snakeoil had an obligation to refer her to a cardiologist.
- D. Mrs. Hee lost her claim because when asked whether conventional treatment would have been life-prolonging, her expert-cardiologist replied: "That would be speculative."
- E. Dr. Snakeoil will be judged by what a reasonable holistic healer would have done under the circumstances.

QUESTION 6

During her hospital stay, an elderly patient noticed abrasions and burn marks on her extremities. She believed they resulted from the use of wrist and ankle leather restraints but could not prove it.

- A. This is a case of *res ipsa loquitur* or 'the thing speaks for itself,' analogous to the leaving of surgical instruments in the abdomen.
- B. If an unexpected adverse event occurs in the hospital, a good case of *res* can be made because the hospital team is in full control of the patient.
- C. This is not a case of *res ipsa*, as the injuries may have resulted from excessive rubbing on the bed-sheets.
- D. *Res ipsa* is good circumstantial evidence and the plaintiff will no longer need a medical expert to prove her case.
- E. The hospital cannot be liable because the leather restraints were necessary to prevent the patient from thrashing around and posing a risk to herself and others.

QUESTION 7

Mary visited her favorite sister Cecilia in the hospital where she had recently undergone brain surgery. During the visit and in full view of Mary, Cecilia developed *status epilepticus* after a nurse gave her Dilaudid instead of Dilantin. Mary was petrified by the incident and developed insomnia, nightmares and depression.

- A. Cecilia can sue the nurse for medical malpractice.
- B. Mary can sue for the negligent infliction of emotional distress.
- C. The hospital may escape liability because the nurse was an independent contractor from an outside agency.
- D. The doctor will be sued because his illegible handwriting caused the wrong medication to be administered.
- E. The suit will likely fail because seizures are a common post-op event after brain surgery, and the wrongly administered drug may not have been the offending agent.

QUESTION 8

A pathologist came to the aid of a woman who had collapsed in the shopping mall. The woman wore a Medic-Alert bracelet indicating that she suffered from anaphylaxis, and that she carried adrenaline in her purse. The doctor performed CPR but did not administer the drug because he had not given an injection in over 30 years. The patient died and expert testimony indicated that had the adrenaline been given, the patient would have survived.

- A. By coming to the aid of the stranger, a doctor-patient relationship was formed.
- B. Doctors are ethically bound to treat those who are in need of medical assistance.
- C. Doctors are legally bound to treat those who are in need of emergent assistance.
- D. No liability attaches since the doctor did not breach the standard of care expected of a pathologist under the circumstances of the case.
- E. The 'Good Samaritan Doctrine' covers aid to strangers and generally allows for recovery only if gross, rather than simple, negligence is proven.

QUESTION 9

Doctors most prone to lawsuits:

- A. Are busy practitioners.
- B. Have poor interpersonal skills.
- C. Talk down to patients.
- D. Rarely apologize.
- E. Belong in high risk specialties such as neurosurgery and obstetrics.

QUESTION 10

The pharmacist filled the wrong prescription, dispensing Diabinese instead of Dilantin. The patient developed hypoglycemic seizures as a result and suffered permanent brain injury. In an action against the pharmacy, which of the following will be helpful to the defense?

- A. The doctor's handwriting is illegible and the pharmacist did try to page the doctor, but he did not return the call.
- B. The Learned Intermediary doctrine shields the pharmacy from liability.
- C. Hypoglycemia is an intrinsic defect of the drug Diabinese and liability should fall on the manufacturer.
- D. Strict liability rules govern this type of injury.
- E. This was a moonlighting pharmacist not the usual employee of the drug-store.

QUESTION 11

In spotting patients who may be suit-prone, which of the following is (are) true?

- A. Patients who are critical of others.
- B. Poor patients on welfare.
- C. Educated patients who surf the Internet.
- D. Doctor-shoppers.
- E. Those who have sued before.

QUESTION 12

In order to relieve intractable pain in a terminally ill patient, Doctor D had to administer increasing amounts of morphine. This led to respiratory arrest and hastened the patient's death. Doctor D's action is:

- A. A cause in fact but not a legal cause.
- B. A proximate cause.
- C. The intentional tort of assault and battery.
- D. An example of 'double effect.'
- E. Homicide.

QUESTION 13

Mrs. Sonnenberg suffered multiple fractures after her car was struck from behind by a drunk driver. The orthopedic surgeon negligently nicked her femoral artery during surgery, which resulted in profuse hemorrhage

that required six units of packed red blood cells. Although she survived, Mrs. Sonnenberg was left with irreversible renal failure and she now requires lifelong dialysis.

- A. The drunk driver is liable for all injuries that resulted from his negligent driving.
- B. The drunk driver is not responsible for her hemorrhagic complications since he did not cause them.
- C. The surgeon's negligence was a superseding cause and frees the drunk driver from liability.
- D. The surgeon may be sued for malpractice.
- E. If Mrs. Sonnenberg did not survive the operation, both the drunk driver and surgeon would be charged with homicide.

QUESTION 14

Dr. E diagnosed a rare endocrine disorder called MEN Type 1, which is inherited in an autosomal dominant fashion. Genetic measurements confirmed the diagnosis, but Dr. E did not offer to inform or counsel the patient's three siblings and two children. Is there any liability in this instance?

- A. Dr. E's legal duty was only to his patient, and it was entirely the patient's duty to inform her relatives.
- B. He would escape liability because this is a rare and exotic disease.
- C. A reasonable doctor would not have offered family counseling.
- D. A reasonable endocrinologist would have provided family counseling after securing the patient's permission.
- E. Unless injury results, there can be no malpractice action.

QUESTION 15

Although you are a general internist, you regularly obtain and interpret X-rays of your patients instead of having a radiologist read them. What level of accuracy or standard of care will you be held to? Assume that the community standard is for radiologists, not internists, to read X-rays.

- A. Other general internists.
- B. Board-certified radiologist.

- C. Non board-certified radiologist.
- D. A standard between a radiologist and a general internist.
- E. An X-ray technician whose level of expertise in the field of radiology is similar to yours.

QUESTION 16

Your patient tests positive for HIV but he refuses to disclose this to his wife despite your repeated advice. His wife is also your patient.

- A. You should not disclose the diagnosis since the patient has not given you his consent.
- B. You have a legal duty to disclose to his wife.
- C. You have to disclose to the health authorities as required by law.
- D. The patient may sue you if you breach patient confidentiality.
- E. The wife may sue you if you keep silent.

QUESTION 17

Regarding iatrogenic injuries that are medication-related, which of the following is (are) true?

- A. The doctor is liable if the drug was prescribed for a non-indicated condition.
- B. The doctor failed to warn of serious risks.
- C. The doctor failed to warn of a rare complication.
- D. The patient did not ask about the side effects and therefore was contributorily negligent.
- E. Liability will attach to the manufacturer for a “defective product.”

QUESTION 18

Dr. DeSouza, overlooking his patient’s known allergy to penicillin, erroneously prescribed ampicillin, a broad-spectrum penicillin. Fortunately, his patient Tony discovered the error before taking the medication. On his way back to the doctor’s office to obtain a new and different prescription, he was struck by a car and suffered serious injuries.

- A. Had it not been for the doctor's negligence, Tony would not have needed to make the return trip. Dr. DeSouza is therefore liable.
- B. No medical harm came from the initial wrong prescription. 'No harm, no foul,' and therefore no liability.
- C. The accident was most likely a superseding cause, freeing Dr. DeSouza from liability.
- D. The accident was most likely a concurring cause, and Dr. DeSouza remains fully liable.
- E. The proper party to sue is the careless driver who struck Tony.

QUESTION 19

Following thyroidectomy, the patient developed persistent postoperative hoarseness. The surgery also left an ugly scar. The patient did not ask, and you did not specifically warn, of these complications. She was an anxious patient and you did not wish to upset her unnecessarily. However, she did sign, but did not really read or understand, a consent form witnessed by the nurse that detailed these complications. She now sues you for lack of informed consent, claiming that she would not have undergone the surgery had she known of these risks. Which of the following are valid defenses?

- A. She does not have a case because she signed the consent form.
- B. Disclosure of risks is not needed, as this is a particularly anxious patient who would be unduly frightened by the information.
- C. The medical community standard is not to tell patients about horrible complications unless specifically asked, and you are merely following community practice.
- D. Her thyroid condition was a serious one, and surgery was an emergency.
- E. She is unreasonable because she is using hindsight in claiming that she wouldn't have undergone the surgery.

QUESTION 20

Through an oversight, the nurse fails to get the patient's signature for the consent form. However, the surgeon did discuss the procedure and risks and did obtain the patient's oral consent. The surgery was complicated by an infection that prolonged the hospital stay.

- A. Oral consent is not legally valid, so the surgeon faces a malpractice suit or a claim for the intentional tort of battery.
- B. Oral consent is legally valid, and simple backdating can rectify the lack of a signed form.
- C. Oral consent is legally valid; the surgeon should write in the progress notes that he had obtained the patient's informed consent.
- D. It's the patient's word against the doctor's, and usually the latter will prevail in court.
- E. Claims alleging lack of informed consent go hand in hand with claims of substandard care.

QUESTION 21

Giant-size fibroids were discovered during a routine D&C and diagnostic laparoscopy. The gynecologist proceeded with a total hysterectomy because two other colleagues agreed that this was the definitive treatment and the patient was already under general anesthesia.

- A. Gynecologist did right as he was thinking of his patient's best interest.
- B. Gynecologist did right as there was an implied consent for the hysterectomy.
- C. Gynecologist was merely applying the principle of therapeutic privilege.
- D. Gynecologist was merely applying the principle of necessity.
- E. Gynecologist should have discussed the situation with the patient at a later date and obtain specific informed consent before proceeding with the hysterectomy.

QUESTION 22

Emily recently developed diabetes and was started on insulin therapy. Two weeks later, she lost her coordination while driving and struck the car in front of her, seriously injuring its driver. In the emergency room, her blood glucose was found to be in the hypoglycemic range of 40 mg/dl. Her doctor had not warned her of this side effect of insulin.

- A. Emily can sue the doctor for negligence because she was not warned of this risk.

- B. Her lawsuit will fail because informed consent is about surgical or other invasive procedures, not about medications.
- C. She was herself not hurt, and without physical injuries, there can be no malpractice claim.
- D. The driver in the other car can sue her for negligent driving.
- E. A lawsuit against the doctor by the driver in the other car will probably fail because there is no doctor-patient relationship.

QUESTION 23

Ms. Holistica purchased Slim-You, a herbal supplement sold over the counter as a weight loss agent. She asked her primary care doctor about its effectiveness and safety, and he said that it was OK. Another patient had used it and lost weight without apparent complications. Two months later Ms. Holistica developed jaundice, abnormal liver function tests, and liver failure.

- A. The doctor is not liable because he did not prescribe the supplement.
- B. The doctor may be liable because he had given his approval for its use.
- C. Ms. Holistica should sue the drugstore for selling an unsafe drug.
- D. Ms. Holistica should sue the manufacturer for a defective product.
- E. No one is liable unless the plaintiff proves proximate causation.

QUESTION 24

An unconscious man was brought to the Emergency Department in vascular collapse. He had been thrown off his motorcycle and ruptured his spleen. The surgeon recommended emergency surgery but no next-of-kin was readily available to give consent. A card in his wallet indicates that the patient is a Jehovah's Witness, and that he should never receive a blood transfusion.

- A. No consent for the operation is necessary as this is an emergency.
- B. No consent for the blood transfusion is necessary as this is an emergency.
- C. If he desperately needs a blood transfusion, one should be given to him, otherwise he will die.
- D. If his spouse can be located, and she gives consent for the transfusion, then it's okay.
- E. Operate on the patient, but respect his disavowal of blood.

QUESTION 25

Because of a particularly busy and hectic day, your medical charting was incomplete for a patient whom you saw at 8.00 a.m. You had to leave for a hospital emergency and attend to some pressing personal matters. Your patient had complained of chest pain and you did obtain a normal EKG. You later discovered that he collapsed after he left your office and was hospitalized with a myocardial infarct. It is now 11 p.m., and you have not had dinner. What should you do?

- A. Leave the incomplete note as is, and wait until the next day to complete the records when you are less hungry and your mind is fresher.
- B. Complete the records before going home.
- C. Write 'incomplete' and leave the note as is.
- D. Complete the note with an explanation of the interruptions, and include the time of entry of both notes, including the normal EKG.
- E. Medical records are kept for the convenience of the doctor. One should spend more time taking care of the patient and less time taking care of the records.

QUESTION 26

A 38-year-old woman first consulted a board certified surgeon for a breast lump. The surgeon found none on examination, reassured the patient, and asked that she return for follow-up in three months. The patient forgot her three-month appointment. A year passed, and she returned complaining of an enlarging mass. The surgeon was now able to palpate the breast lump and promptly scheduled a biopsy, which the hospital pathologist erroneously read as benign.

Eight months later, the patient developed metastatic breast cancer. The surgeon performed a radical mastectomy, but the disease was too widespread to be cured surgically. Had she known that it was not surgically curable, she would not have consented to surgery.

Which of the following statements is (are) correct?

- A. The surgeon is incompetent in missing the initial breast lump.
- B. The surgeon should have ordered a mammogram.

- C. The pathologist is liable because his error caused her 'the loss of a chance.'
- D. The patient is contributorily negligent because she failed to keep the return appointment.
- E. This is also a case of lack of informed consent.

QUESTION 27

You are treating a patient, a school-bus driver, for cirrhosis and alcoholism. You report both his diagnoses to his employer and he is fired from his job because of the drinking history. He sues you for breach of confidentiality.

- A. You are liable for having breached patient confidentiality.
- B. You have a normal legal duty to report a patient's medical condition to a legitimate employer.
- C. There is a public safety issue here that requires the doctor to breach confidentiality.
- D. The patient will probably win the lawsuit if he is an office clerk instead of a school-bus driver.
- E. If this is a sick-leave note, you should simply write 'off work for medical reasons.'

QUESTION 28

You operate a for-profit medical website that displays clinical summaries of the latest in diagnosis and treatment. You also answer personal medical questions from subscribing viewers via e-mail. There is a disclaimer that you are not providing medical advice, and visitors to your website are encouraged to consult their own personal physicians. A viewer, in reliance on your information, suffers harm.

- A. No doctor-patient relationship is formed in cyberspace, so there is no duty of due care.
- B. The disclaimer effectively immunizes you against any lawsuits.
- C. Negligence claims are more likely to prevail against for-profit medical websites such as yours than not-for-profit educational ones.
- D. You may be liable for breach of privacy or confidentiality if the e-mail messages are intercepted or read by someone else.

- E. Answering your patient's questions via e-mail is like a phone consultation, except that everything is documented.

QUESTION 29

Dr. Moon, a general practitioner (GP), saw his patient on two separate occasions for fever and myalgia. She then suddenly experienced the sensation of a curtain covering her left eye. The doctor suspected retinal detachment, and advised her to seek specialist attention, but did not insist on immediate attention as it was Christmas Eve. The patient waited 36 hours without improvement in her vision, and then went to the emergency department, where the rare condition of *Klebsiella endophthalmitis* was made. She subsequently lost the vision in that eye.

- A. In a suit against Dr. Moon, the plaintiff would prevail because Dr. Moon made the wrong diagnosis, and this is malpractice *per se*.
- B. Dr. Moon told the patient to see a specialist, and therefore legally discharged his duty.
- C. Dr. Moon's failure to obtain a stat eye consult once he suspected retinal detachment is a breach of the standard of care.
- D. In order to win the lawsuit, the plaintiff must prove that the 36-hour delay caused her blindness.
- E. A plaintiff sees a GP at her own peril, and assumes the risk of GP missing rare or difficult eye diagnoses.

QUESTION 30

A 5-year-old boy develops excruciating testicular pain from torsion of the testis. The urologist recommended immediate emergency surgery but both parents refused. What should the surgeon do?

- A. Perform surgery without consent as this is an emergency and consent is unnecessary.
- B. If the boy nods in assent to the proposed surgery, this would constitute valid informed consent under the circumstances.
- C. Acquiesce to the parents, as they are the rightful custodians of the boy's health.

- D. Remind the parents they may be in violation of child abuse statutes if they insist on withholding consent, and proceed to the operating room irrespective of their protest.
- E. Request a court hearing, and treat the boy conservatively in the meantime.

QUESTION 31

When signing out to a colleague prior to going on vacation, which of the following is the most important?

- A. Someone with board certification in your specialty who works in the same hospital.
- B. An emergency room physician who is willing to respond to your patients who may be in need of urgent medical assistance.
- C. A colleague with the best attitude regarding covering on a reciprocal basis.
- D. A new doctor in town who has lots of time to answer patient calls.
- E. It is best to instruct your assistant to refer all calls to the nearest hospital so as to escape liability.

QUESTION 32

For purposes of malpractice risk management, the practitioner is well advised to observe which of the following 'red flags'?

- A. An angry patient.
- B. An overworked doctor.
- C. Careless and aggressive billing practices.
- D. Sketchy record keeping.
- E. Poor bedside manners.

QUESTION 33

You are about to retire, but it was one of those hectic and unbelievable final days. Your clinic assistant broke a hypodermic needle, which lodged in the patient's deltoid. A patient's son tripped and fell in your waiting room and sustained a fracture. And in a heated and angry meeting you voted with others on the peer review committee of your hospital to suspend a 'rotten

apple' doctor. All three victims file suit against you six months into your retirement. What results?

- A. Your malpractice insurance will cover all three incidents. That's what insurance is about — it covers professional liability.
- B. Only the first incident will be covered, because it's the only one that involves allegations of malpractice.
- C. Even the first incident is not covered since your policy covers physician negligence, which does not extend to an employee.
- D. You are retired and are no longer insured, so your retirement assets are now at risk.
- E. Good planning, you have tail coverage.

QUESTION 34

The newly completed Good Neighbor Hospital was hosting its open house for the neighborhood and community doctors. Mrs. Brown, a 60-year-old woman in previous good health, was enjoying the hospital tour when she suddenly collapsed and became unresponsive.

Mr. Passerby, an engineer who had recently completed a Red Cross cardiopulmonary resuscitation (CPR) course, promptly began vigorous external cardiac compression, managing to crack three ribs in the process. Nurse Nightingale, who works as a part-time dermatology assistant, provided mouth-to-mouth resuscitation, although she appeared to be unfamiliar with the procedure. At about the same time, Dr. Goodnight, a retired general practitioner, came to Mrs. Brown's assistance. He tried unsuccessfully to measure her blood pressure and her pulse and did not administer any drugs.

Six minutes later, the hospital Code-500 team arrived.

- A. No one is liable as this is a classic case of immunity under the Good Samaritan statute.
- B. Mr. Passerby is the least likely to be found liable as he is a layperson.
- C. Nurse Nightingale ought to re-certify in basic CPR.
- D. Once a doctor, always a doctor. Dr. Goodnight is negligent.
- E. Six minutes is too slow a response time for a Code-500. The hospital is definitely liable.

QUESTION 35

Your office assistant misfiled a critical lab report showing dangerous hyperkalemia. Unaware of the abnormality, you did not notify the renal patient to promptly return for treatment.

- A. You are not liable as the patient had no complaints when seen three weeks later despite serum K⁺ of 6.5.
- B. You are liable for the death of the patient who developed ventricular fibrillation.
- C. Your office assistant is liable, and so you are liable.
- D. The lab is liable as it failed to call you for the abnormal result.
- E. Misfiled lab and X-ray reports are a common source of errors leading to patient harm and litigation.

ANSWER TO QUESTION 1: NONE CORRECT

There is no legal duty for anyone, even a doctor, to come to the aid of a stranger, even in an emergency. The law does not use the reasonable person standard to determine duty, only to determine what the standard of care ought to be. The ethical responsibility to assist one in an emergency situation is borne by all doctors, but that does not translate into a legal duty. Hence no suit will prevail, even if the failure to treat causes death. The Good Samaritan statute merely immunizes against a lawsuit arising out of negligent aid, but it does not mandate the giving of aid.

ANSWER TO QUESTION 2: C, D

This question deals with the issue of the failure to diagnose. A common reason for a malpractice suit, the case revolves around the proper standard of care. Pediatricians and family doctors who treat infants should know that the accidental ingestion of medications is a leading cause of morbidity in this patient population. The doctor in this case should have inquired into this possibility, even though the presenting signs and symptoms are also compatible with a viral infection. Since the mother was unaware of the infant's overdose, the history here would be unhelpful or even misleading, so the case will turn on whether the physical findings themselves are enough to raise the suspicion of salicylate poisoning.

The plaintiff's expert testified that an aspirin overdose should have been suspected, suggesting that the doctor was practicing below the standard of care. The defense will have to bring in an expert or more likely several experts to testify otherwise, and the jury will evaluate the credibility and logic of the dueling experts in reaching their decision regarding fault.

It is true that without the mother's own negligence in leaving the child unattended, harm would not have come to the child. Strictly speaking, this is not contributory negligence, which applies to the victim's own negligence, and the victim here is the child. However, a separate third party claim can be entered by the defendant against the mother, and she may also face prosecution for child neglect.

Aspirin is contraindicated in young patients because of the risk of Reye's syndrome, a potentially fatal complication. This obviously places the doctor

in a poor light, as it speaks to his overall low quality of care. However, the injury here is death from salicylate poisoning, not Reye's syndrome. Thus the plaintiff must still prove by expert testimony that the doctor's failure to timely diagnose salicylate poisoning was a proximate cause of death. Whether the doctor's prescription of aspirin further aggravated the child's condition and therefore was an additional causative factor depends on whether little Janet was given any of the prescribed aspirin. The facts are silent on this point and she may have been too ill to take any! Choice E is therefore incorrect.

ANSWER TO QUESTION 3: NONE CORRECT

All doctors, including general practitioners, are held to the standard ordinarily exercised by their peers. GPs are not held to the same standard as say, cardiologists, so the plaintiff would have to prove with expert testimony that a GP exercising reasonable care under similar circumstances would have promptly hospitalized the patient. Using one's best judgment may remove the moral culpability but it is not good enough to meet the legal standard. To win, the plaintiff will still have to prove proximate causation, i.e., that the failure to hospitalize was both a factual and legal cause of the patient's demise. Although the risk is reduced by only 10%, many jurisdictions will consider this 'loss of a chance' to constitute sufficient causation.

Answers C, D and E are also incorrect. It is true that there is no doctor-patient relationship between the doctor and the family friend, but this is not required in allegations of negligent infliction of emotional distress. Liability for this tort requires proof of proximity in time and space, and a close relationship to the primary victim. A close relation is usually a family member and physical presence is needed to satisfy the proximity requirement. If these elements are present, there may well be liability even if the injured is a third party with no prior connection to the tortfeasor. The facts in this case do not seem to meet these criteria, so the GP will likely escape liability to the family friend — but not because there was no doctor-patient relationship.

Finally, prevailing case law supports the notion that legitimate psychiatric conditions, such as depression, are compensable without need to show accompanying physical injuries. In the past, emotional injuries were thought to be difficult to define, so the courts insisted that there be simultaneous physical injuries in order for a plaintiff to successfully claim damages.

ANSWER TO QUESTION 4: NONE CORRECT

Whether the clinic physician is liable will depend on whether the original medical history and physical findings were sufficient to raise the diagnosis of a subarachnoid bleed. That he is a medical resident will not in and of itself absolve him of liability. Inexperience is not usually regarded as an adequate defense and most jurisdictions will judge him by the standard expected of a fully qualified doctor.

By talking to the husband and asking questions about the patient, the ED physician had established a doctor-patient relationship. Whether he breached the standard of care by failing to ask the patient to immediately come to the hospital will depend on the questions he asked and the answers he received. Certainly a busy ED is not a good enough reason to keep a patient with a life-threatening condition away.

Any entity, not only a person, can be held liable for civil damages. Hospitals can therefore be asked to pay damages for any number of reasons, e.g., direct negligence, vicarious liability, premise liability, and so on. Although there is still controversy over whether residents are hospital employees, the facts here stipulate an employer-employee relationship, which makes the hospital liable on the basis of *respondeat superior*. That is, the negligence of the servant (employee) is imputed to the master (employer). This is a classic example of what is termed vicarious liability. Since the ED physician is not an employee but an independent contractor, *respondeat superior* does not apply in his case. However, the plaintiff would attempt to cast the ED physician as an ostensible agent of the hospital, and so hold the hospital vicariously liable. As evidence, the plaintiff would point to the hospital sign that the ED doctors are working for the hospital 24-hours a day.

Finally, for the defense to be successful it must counter with expert testimony that the subarachnoid bleed was far too advanced for effective medical intervention, i.e., the disease caused the death, not any delay in diagnosis and treatment. Prompt surgical intervention may be life-saving in a subarachnoid bleed, so the defense faces an uphill fight on the causation issue.

ANSWER TO QUESTION 5: A, D, E

The facts here are clear that Mrs. Hee actively sought the care of Dr. Snakeoil, and had assumed the risk of holistic treatment from a duly licensed

practitioner of holistic medicine. Assumption of risk, unlike contributory or comparative negligence, is a complete bar to recovery.

Whether Dr. Snakeoil is obligated to refer the patient to a cardiologist is subject to the standard of care expected of a reasonable holistic healer. This will be established at trial by an expert in holistic medicine and not by an allopathic medical doctor. It is unlikely there is such a duty to refer, especially since the patient in this case had already visited several conventional doctors including a cardiologist.

Finally, the case was lost after the plaintiff's own expert testified that it was speculative to infer causation. In order to prevail on the issue of causation, the expert must state that it was more probable than not that her life would have been prolonged by conventional cardiac therapy — not that it was possible or worse yet, speculative.

ANSWER TO QUESTION 6: C

For *res ipsa* to be applicable, three conditions must be met: (1) the injury would not have occurred in the absence of someone's negligence; (2) the plaintiff was not at fault; and (3) the defendant had total control of the instrumentality that led to the injury. In some jurisdictions, *res ipsa* shifts the burden of proof to the defendant (normally the plaintiff has the burden of proof), but in most jurisdictions, it is merely circumstantial evidence that is rebuttable, so expert testimony will still be needed. In any case, the plaintiff will need an expert to prove causation and damages. The facts here are insufficient to constitute a clear case of *res ipsa*.

Medical mishaps in the hospital occur under complex circumstances, which is why most courts are reluctant to invoke the *res ipsa* doctrine except in very special situations, e.g., sponge left in peritoneal cavity.

Answer E is incorrect. Use of patient restraints, either physical or chemical, is taboo under current JCAHO standards. Evidence indicates that injuries are more apt to occur, not less so, with their use which literally deprives patients of their physical freedom. Other means of treating the patient must be found, e.g., baby-sitters. Pleading this line of defense is therefore unlikely to prevail.

ANSWER TO QUESTION 7: ALL CORRECT

In this case, Cecilia can sue several parties including nurse, doctor and hospital. Mary also has a cause of action against these co-defendants as her emotional injuries occurred in close proximity to her sister's injury. If the nurse is an independent contractor, presumably with separate insurance coverage, the hospital may be dropped from the action unless there is evidence for an ostensible agency or failure to properly credential, supervise, etc. If the doctor's illegible order is shown to be the reason for the error, then the doctor will clearly be at risk. The nurse still has an independent duty to clarify the order especially if it's for an unusual drug or an unusual dose. Finally, as in all malpractice claims, the plaintiff must prove proximate causation by a preponderance of evidence, i.e., the erroneous drug caused the seizures which were foreseeable. The facts here, i.e., post-op brain surgery, suggest that proving causation will be difficult for the plaintiff(s), but this will depend to some degree on the medication's propensity for inducing seizures.

ANSWER TO QUESTION 8: B, D, E

This case scenario involves a doctor treating a stranger, so there is no formation of the traditional doctor-patient relationship. The law does not require one to come to the aid of strangers. This extends to medical practitioners, although there is an ethical but not a legal duty to do so in the case of an emergency. Thus, choices A and C are incorrect. To encourage aid to strangers, many jurisdictions have enacted statutes to immunize aid-givers against being sued if negligence on their part results in harm. However, if gross negligence is proven, there may still be liability.

The pathologist's failure to administer adrenaline does not amount to gross negligence which usually means reckless disregard of the risks and consequences.

ANSWER TO QUESTION 9: ALL CORRECT

The first four choices speak to poor attitude and communication skills. These predictably get doctors into trouble. The last option is also correct. Here the reason is the catastrophic and tragic injuries arising out of negligent care — often at birth and in patients with complicating brain damage.

ANSWER TO QUESTION 10: A, E

The pharmacist will be judged by the reasonably prudent pharmacist standard. His attempt at paging the doctor may or may not have been enough to satisfy this standard. The plaintiff will surely argue that he should have held off on filling the prescription, attempt to reach the doctor at a later time or try to reach his alternate.

The 'Learned Intermediary' Doctrine is not applicable here. It holds a doctor liable for adverse reactions from the use of medications and shields drug manufacturers from liability.

The hypoglycemic action of Diabinese may be an intrinsic property of the drug but the case here deals with the wrong prescription, not a side effect arising out of a medically indicated prescribed and dispensed drug. The law of strict liability applies to ultra-dangerous activities or defective and unreasonably dangerous products, and is unlikely to apply to Diabinese-induced hypoglycemia.

The drugstore's best defense is the fact that the errant pharmacist was moonlighting and functioned as an independent contractor, not as a store employee. In other words, the drugstore is hoping there will be no finding of vicarious liability.

ANSWER TO QUESTION 11: A, C, D, E

The majority of patients do not sue their healthcare providers even though there may have been a negligent act leading to injuries. Demanding and well-educated patients are more likely to sue, as are those who are already familiar with the legal system and with lawsuits. Watch for the hyper-critical patient. Financial gain is not the usual reason for a malpractice lawsuit. Poor and uneducated patients are less likely to sue as they may not have the medical sophistication to recognize substandard treatment and they usually lack the know-how to seek legal redress.

ANSWER TO QUESTION 12: D

The 'double effect' phenomenon describes the situation where a foreseeable adverse outcome supervenes even though the intent is to provide a

beneficial effect. The principle is clinically invoked to permit the aggressive use of comfort measures such as pain-killers in terminally ill patients — even though they may hasten death. It is cognizable in both law and ethics as legitimate and acceptable practice.

The usual rationalization is to find that the act did not cause the death of the patient (no causation; the underlying terminal disease, not the narcotic, caused the death), or to find no duty to treat where the withholding or withdrawal of life-sustaining treatment is at issue. The very rare prosecution of physicians for homicide under these types of circumstances has never been successful.

Even if we accept there is causation, a civil suit would fail because there is no breach of the standard of care. This is also not an assault and battery, which is an intentional act that causes apprehension of or actual offensive touching without consent. Consent in this clinical setting has usually been explicitly given by the patient or the surrogate decision-maker, or is implied.

ANSWER TO QUESTION 13: A, D

The surgeon's negligence would most likely be construed as a foreseeable event, and therefore it constituted a concurring, not a superseding cause. This makes the drunk driver liable for all injuries including the bleeding and renal failure. Option A is therefore correct.

D is also correct. The surgeon himself may be sued for malpractice and may be found liable for the hemorrhagic complications if the nicking of the artery is shown to be a negligent act. This is by no means a foregone conclusion, as the measure of negligence is what is to be ordinarily expected of a surgeon under the circumstances. There may have been extenuating circumstances such as an obscured surgical field that led to the mishap.

The drunk driver would certainly be charged with homicide if Mrs. Sonnenberg died, as there was gross negligence or reckless disregard (drunk driving). The surgeon, on the other hand, would not be so charged as there was no intention on his part to cause death, and the surgical mishap was at most simple negligence.

ANSWER TO QUESTION 14: D, E

The law requires that one acts reasonably, and for a doctor this means the standard expected of one who has the knowledge, skill and judgment ordinarily possessed by fellow members of the profession. The standard of care in this case would probably require that an endocrinologist offer counseling to a patient with a genetic condition. This would include advising the patient to bring her family members in for screening or to arrange for comparable follow-up with another physician. A non-specialist may or may not be expected to adhere to this standard. The former is likely, as family counseling is regularly emphasized during medical training. Expert testimony would be required to determine whether this is the standard for non-endocrinologists. At the minimum, there is a separate duty to refer to a specialist if the condition falls outside of the treating doctor's ability. The test is not whether the disease is rare and exotic, but what a reasonably prudent doctor would do under the same or similar circumstances.

For a malpractice suit to succeed, the plaintiff must prove causation and damages. If no injuries can be traced to the negligent act, there will be no case. Failure to offer genetic counseling, however, may well lead to subsequent injuries to affected individuals.

ANSWER TO QUESTION 15: B, C

Every doctor is held to the standard of his specialty. However, if one assumes the duties of another specialty, the law will consider you as holding yourself out as one who is capable of functioning at that higher level. If internists do not regularly read their own X-rays and you, an internist, choose to do so, you will be held to the standard of a radiologist. The standard expected of a radiologist, however, is not dependent on board-certification.

ANSWERS TO QUESTION 16: B, C, D, E

Only upon the basis of trust can a patient begin to form a relationship with a doctor. This means the doctor must respect the patient's confidentiality, so without consent, medical information cannot be disclosed.

However, under some circumstances a doctor is obligated to breach confidentiality, as required by law, or because of a higher competing interest. Examples of legally required disclosures are public health hazards such as sexually transmissible diseases, which include HIV infections. The law not only permits such reporting, the law mandates it. Even if there is no regulation on point, a doctor may need to disclose sensitive information to named third parties if actual harm can be prevented through disclosure. Under the facts above, disclosure to the wife is necessary because repeated advice to the patient has gone unheeded and harm is imminent. The fact that the wife is also a patient simply adds to this ethical and legal duty to disclose. Of course the patient may sue the doctor for any breach of confidentiality but the doctor will likely win. There is a much greater risk for a lawsuit from the wife if the doctor fails to disclose and as a result, harm comes to the spouse. In such a lawsuit, the physician would likely lose.

ANSWER TO QUESTION 17: A, B, C

Choice A is correct because prescribing a drug without the proper indication amounts to breaching the standard of care, unless it is for an 'off-label' use, and there is scientific support for using the drug in that manner. The informed consent doctrine requires that physicians discuss all material risks, including rare but serious risks. Patients are assumed to have little or no knowledge of medications and they have no duty to inquire about side effects. The doctor, on the other hand, has an affirmative duty to warn of these side effects. In a malpractice case alleging lack of informed consent, the defense cannot plead contributory negligence. D is therefore incorrect.

The "Learned Intermediary" Doctrine stipulates that the doctor, not the pharmaceutical company, is liable for medication-related injuries as he/she is a learned professional who directly communicates with the patient and who does the actual prescribing. This puts the doctor in the hot seat for a drug reaction, although the drug company is frequently dragged into the lawsuit because it has the deep pocket. In some instances there is a separate duty of the pharmaceutical company to directly warn the consumer, e.g., immunization hazards.

ANSWER TO QUESTION 18: C, E

Strictly speaking, the doctor's negligence was a 'but-for' factual cause of the injuries. That is, without the doctor's negligent prescription in the first place,

the plaintiff would not have suffered the harm. But Answer A is only partially correct, as the doctor will probably escape liability because the accident was an independent third force that intervened between his negligence and the injury, called a superseding cause. This requires the jury to deem the accident and outcome to be unforeseeable. A superseding cause will absolve the original tortfeasor (the doctor) from liability. In other words, Dr. DeSouza's negligence was not a proximate cause of Tony's injuries. C is therefore correct.

On the other hand, in the unlikely event that the accident was felt to be foreseeable, then it becomes a concurring cause and the doctor is liable (Choice D).

Of course the obvious party to sue is the careless driver. But he may be without insurance and unable to pay damages. The doctor, on the other hand, is likely to have substantial malpractice insurance coverage. Yes, the deep-pocket at work!

ANSWER TO QUESTION 19: NONE CORRECT

Informed consent is not the same as a consent form. The former is a process undertaken by the doctor to explain the benefits and risks of harm of a given procedure. It is required by law. The consent form, on the other hand, is merely documentation that such a process had taken place. A signed form where little or nothing was explained to the patient would not constitute informed consent. The patient does not have a duty to ask about risks, whereas the doctor always has an affirmative duty to inform.

Frightening material risks are sometimes withheld from overly anxious patients. This exception to disclosure of risks is called the therapeutic privilege but it should rarely be invoked. The facts must clearly indicate that disclosure would be harmful to the patient's overall well being. This case does not rise to such a level, and the doctor is unlikely to get away with this excuse.

The emergency exception does not apply here as there was time for obtaining consent.

Whether the physician-oriented standard (also called professional or medical standard) or the patient-oriented standard of disclosure will govern depends on the jurisdiction. Increasingly, states are replacing the medical or professional standard with the patient-oriented standard. Under this tough disclosure rule, what a reasonably prudent person in the patient's situation

would have wanted to know will determine what the doctor needs to disclose. Hindsight is not a valid defense. Suits based on lack of informed consent are won where there is evidence of lack of risk disclosure, and where a reasonably prudent person in the patient's position would not have undergone the procedure had such risks been divulged.

ANSWER TO QUESTION 20: C, E

A verbal consent or even one that is implied, is legally valid, but proving that it was given is another matter. At trial, which is typically years down the road, the jurors may be reluctant to take the doctor's word. This is why a signed consent form is vastly preferred, because without documentation the plaintiff can argue that no risks were disclosed. Hence, in this case, entering a note in the chart would be good advice. It's too late to go back and get a signed consent, and backdating is of course a no-no.

Informed consent issues are usually raised in conjunction with alleged substandard treatment that resulted in an otherwise avoidable injury.

ANSWER TO QUESTION 21: E

None of the principles cited are relevant here. Therapeutic privilege is where disclosure of risks may prove detrimental to the patient's overall well being, so the doctor has the privilege to withhold such information. The gynecologist should in fact wait for another time to do the surgery even if it means that the patient will need to be re-anesthetized. The older medical or paternalistic ('doctor knows best') model has given way to the autonomy or self-determination model (patient has the last word). Answer A is attractive, but is no longer an acceptable choice. The 'best interest' approach is applicable only in an emergency situation where consent cannot be obtained in a timely manner. If a patient's wishes are unknown or unknowable, e.g., in a neonate, consent is still required from a legal surrogate decision-maker. Implied consent cannot be assumed unless the circumstances clearly so indicate, e.g., patient extending arm for venipuncture can be said to be giving implied consent for the procedure.

ANSWER TO QUESTION 22: A, D

The doctrine of informed consent requires the healthcare provider to inform patients about procedures, alternatives, and material risks. In order for patient

consent to be meaningful, it has to be an informed one. Disclosure of material risks is an especially important part of informed consent, and this applies equally to surgical procedures as well as prescription medications. Invasive procedures or hazardous drugs warrant a more detailed explanation of the risks of harm. If it is shown that a reasonably prudent person would want to know about the risk of hypoglycemia and its effect on driving, and if the plaintiff can show that had she been warned, she would not have used insulin (or continued to drive), then she will likely prevail in a lawsuit against the doctor. Malpractice damages can be compensatory or punitive, and they can be based on physical injuries as well as emotional ones. Although the plaintiff in this case suffered no apparent physical injury, she can still claim damages for emotional distress, pain and suffering, etc.

The injured driver can of course sue her for negligent operation of a motor vehicle, but he may not prevail if the accident occurred through no fault of hers. This is why it is likely he will sue the doctor instead, the legal theory being that had the doctor warned her about hypoglycemia (and the precautions to take once symptoms begin to develop), she would not have struck his car. The fact that there is no doctor-patient relationship between him and the doctor is immaterial. The case will ultimately rest on whether the doctor owed a duty to him, a third party, independent of the doctor-patient relationship. Case law suggests that there may well be such a duty under the facts of this case and his lawsuit has a reasonable chance of success.

ANSWER TO QUESTION 23: B, C, D, E

This is a case of product liability. To be sure, the doctor did not prescribe it, but he did give his support, and the patient may have relied on his approval in taking the supplement. Just because it's an over-the-counter (OTC) herbal supplement does not altogether absolve the physician from blame since he was providing medical advice in his professional capacity when responding to the patient's question. This will become an increasingly frequent issue in malpractice litigation because of the widespread and growing use of alternative or complementary medicine. Totally unregulated, some of these OTC supplements are bound to result in harmful effects to the consumer. The injured party will naturally sue the manufacturer as well as the drugstore for putting the item into the stream of commerce.

Still, Ms. Holistica will have to prove that the preparation caused the injury, else the defendant will escape liability. Here the facts indicate hepatic failure,

but it remains the plaintiff's burden to produce evidence that it was caused by the use of Slim-You.

ANSWER TO QUESTION 24: A, E

An emergency is an exception to the informed consent doctrine, but only if the next of kin cannot be readily found. Here we have a true emergency and time is of the essence. Performing surgery under the facts of this case is therefore permissible in the absence of consent. Forcing blood into this patient is a different matter. The facts are clear that he does not want blood because of religious beliefs. Denying him blood may lead to an otherwise preventable death but the courts have repeatedly ruled that this is a situation where patient autonomy trumps beneficence. Spousal disagreement is generally insufficient to override a patient's firmly held treatment preference.

ANSWER TO QUESTION 25: B, D

All medical entries should be made contemporaneously. A late or separate entry should be so identified. It is a bad idea to put off charting to another day, as it may be forgotten, and new events have a habit of overtaking the busy doctor. Charting is particularly critical when there is any hint of a malpractice complaint. Note that this case concerns a patient who may have developed a myocardial infarct that was 'missed' in the doctor's clinic. In his defense, the doctor did obtain a normal EKG (which may or may not be enough, depending on the clinical presentation and the patient's risk for a coronary event). If a suit is filed at a later date, the documentation of a normal EKG will serve as a good defense.

Medical records are crucial to defend a doctor from a malpractice claim. Without them, there is virtually no chance of escape. Treat your records as a true friend rather than a nuisance.

ANSWER TO QUESTION 26: C, D, E

Incompetence as applied to physician conduct is not a legal term of art. It may be the case that no nodule was palpable at the first visit, and whether or not the surgeon should have ordered a mammogram would depend on factors including family history, time of menstrual cycle and age. Importantly,

we need to know whether the national guidelines recommend routine mammography in women under the age of 40. Asking the patient to return in three months for a recheck may represent a reasonable standard of care.

That the patient forgot her appointment may make her contributorily negligent, especially if the surgeon had reminded her just before or after the date (a good office practice).

The pathologist's error appears to constitute a substantial factor in her eventual disease spread. This puts the pathologist at serious risk for liability. Many jurisdictions would consider this loss of a chance sufficient proximate cause.

Finally, the doctrine of informed consent requires explanation of the procedure, alternatives including the option of non-treatment, and material risks — increasingly from a prudent person's viewpoint rather than from the doctor's viewpoint. Here, the patient is alleging that both the surgical goals and alternatives were not discussed. This makes a prima facie case for lack of informed consent.

ANSWER TO QUESTION 27: C, D

Breach of patient confidentiality is both a legal and ethical wrong. Privileged medical information cannot be disclosed except under well defined circumstances. In normal circumstances, unconsented disclosure of a patient's diagnoses to the employer is NOT permitted. B is incorrect.

However, patients may consent to the release of confidential information, or may waive confidentiality by putting their medical conditions at issue (records can then be viewed by experts, attorneys, etc.). Additionally, the law requires disclosure of privileged medical information where there is a substantial risk to an individual or the public, e.g., certain contagious diseases. In this case, alcohol abuse in a school-bus driver can reasonably be said to constitute a serious risk of harm to children, so disclosure may be preferable to confidentiality. The physician should first inform the patient that unless he abstains from further drinking and enters a rehabilitation program, he will have no choice but to report to the employer in the name of public safety. Although you have breached patient confidentiality by reporting to the employer, no legal liability will result from your action. Choice A is therefore incorrect.

If the patient works as an office clerk, then the doctor no longer has as strong a reason to report to the employer and he will likely lose the lawsuit if he were to breach confidentiality. The doctor should, however, emphasize to his patient the dangers of driving while intoxicated, and may consider reporting to the department of motor vehicles if the patient remains recalcitrant, especially if there is a past history of drunk driving.

For the usual sick-leave note, the doctor may simply state that the patient is to be excused from work 'for medical reasons' for a time period, without specifying the diagnosis. That's the usual case, but the facts here warrant a fuller disclosure of the medical conditions.

ANSWERS TO QUESTION 28: C, D, E

There are many legal risks in using the Internet in clinical medicine. Depending on the facts, a court may find that a doctor-patient relationship has been formed. Factors may include knowledge of names of subscribers, frequency of interactions, specificity of queries, and so on. In particular, a subscription fee is likely to be construed as evidence of soliciting and accepting a more committed interaction, so it places the operator of the website at greater legal risk. A specific disclaimer is a standard precaution but may not be enough to protect against a lawsuit.

Other than negligence, a viewer may also claim breach of confidentiality or privacy. E-mail not uncommonly ends up in the wrong mailboxes, and risks exposing sensitive medical information to strangers. Encryption of all identifiable electronic correspondence is therefore a good idea. Because e-mail preserves a record of what was asked, said, or recommended, they constitute powerful evidence supporting — or damning — the doctor.

ANSWER TO QUESTION 29: C, D

Retinal detachment is an ophthalmologic emergency and Dr. Moon should have promptly referred the patient to a specialist. His failure to arrange for a stat consult constitutes a breach of the standard of due care. As a GP, Dr. Moon may not have been expected to confirm or treat the condition but he has a duty to recognize the diagnosis and to make an immediate referral.

However, the patient must still show that were it not for the delay, she would have retained her vision. That is, she must show that the GP's

negligence was a proximate cause of her blindness. She will need to produce expert testimony that the 36-hour delay adversely affected the outcome. The facts in this hypothetical question were taken from an actual malpractice case where the lower court found the GP to be negligent but the appellate court overturned the decision because causation was not proved.

ANSWER TO QUESTION 30: D

Consent is unnecessary in an emergency only if it cannot be readily obtained. This is not the case here, as the parents are available and are, in fact, refusing to give consent. The boy is too young to give consent, or even assent, i.e., to agree, to the procedure. Giving in to the parents would mean harm to the child who is too young and legally incompetent to protect himself. Answer D is therefore best under the circumstances, notwithstanding the risk that the parents might file a suit against the surgeon. If there is time, one would petition for a court hearing, which will most likely rule in favor of surgery. However, the medical facts suggest that immediate surgery is critical and a delay will place the child in peril of loss of the testicle. Unless an immediate court hearing can be arranged, option E is not a good choice.

ANSWER TO QUESTION 31: C

It is better to have a trusted friend who has a good attitude towards covering for your patients than a skilled but overworked colleague who considers it another burden to shoulder. Lawsuits begin with poor service, frustration, and anger, even before any substandard care is provided. The covering colleague can easily put the original doctor at risk. Good communication skills and proper attitudes are every bit as important as clinical knowledge.

It is generally insufficient to simply refer all calls to the emergency department. Doctors generally have a duty to secure coverage for their patients even when they are unavailable or not 'on call.' Of course patients should always be reminded that if they have a serious symptom or are unable to contact the doctor on call, they should go to the nearest emergency department for professional help.

ANSWER TO QUESTION 32: ALL CORRECT

Wishing to sue may begin even before any actual mal-occurrence has taken place. During the course of a medical encounter, especially in a hospital

setting, there are numerous opportunities for the patient and family to feel uncared for, frustrated, and angry. These include medical bills, long waiting time, rudeness, inefficiency, confusion and so on. Then an unexpected adverse medical event occurs. How well do we respond? The doctor with poor bedside manners and who is arrogant and rushed is at increased risk for a lawsuit. Patients and families rarely sue a doctor they like, even though the outcome is bad.

Poor record-keeping makes malpractice defense that much harder. Remember the adage: 'Good records, good defense.'

ANSWERS TO QUESTION 33: IT ALL DEPENDS ON YOUR POLICY

All professional liability policies should cover negligence on the part of the doctor and employees, and peer review risks, although the hospital typically provides this latter coverage as well. However, do not take this for granted and be clear of the scope and exclusions of your policy. Most malpractice insurance policies do not cover premise liability (for accidents that occur on the premises that have nothing to do with medical care, e.g., tripping on the carpet or falling off a chair in the waiting-room). You, therefore, will need a separate premise insurance policy.

Malpractice insurance policies nowadays are usually claims-made policies. That is, when you retire and are no longer in practice, you will have to buy 'tail-coverage' to protect you from a malpractice lawsuit from a past event. Claims-made policies expire once you are no longer insured with the company.

Take a few minutes to understand the limitations of your professional liability policy. Make sure it's current and meets all of your needs. And never go bare. As retirement approaches, purchase tail coverage for the protection you deserve — just in case.

ANSWERS TO QUESTION 34: B, C

The Good Samaritan Law immunizes aid-givers for negligent acts, but there may be no immunity when such activities occur in a hospital setting. That is, doctors treating a stranger on hospital grounds may still be held to the same standard of care expected of a healthcare provider with a legal

duty to treat (the usual provider-patient relationship). Nurse Nightingale and Dr. Goodnight may therefore be liable if their actions were shown to be negligent (not clear from the facts), and which resulted in harm (also not clear from the facts). The nurse working in a hospital setting obviously needs an update in CPR skills. Mr. Passerby, being a lay person will be held to a lower standard than the healthcare providers, and therefore will likely escape liability. Besides, breaking of ribs is not an uncommon result of vigorous chest compression.

Whether six minutes is too long a wait will be determined at trial by expert testimony. It appears to be a delayed response, but there may be extenuating circumstances, e.g., when was the Code-500 called, and was there another Code-500 in the hospital at the time?

ANSWERS TO QUESTION 35: ALL CORRECT

Choice A is correct as the law of malpractice will find the defendant liable only if injuries resulted from the negligent act.

Your office assistant should preferably be trained to recognize abnormal test results. At the minimum, there should be a system for the physician to see all reports before they are filed away, and then only after you have initialed the reports to indicate you have seen them. The assistant's liability will be imputed to you, the employer, under *respondeat superior*.

The lab owes an independent duty to inform the physician when there is a critically high or low value, and will be named as a co-defendant.

Overlooked reports account for many instances of patient harm, and these errors are preventable.