Schraf

HEALTH LAW

Final Examination, Spring, 1990

For all questions, read the question carefully and respond with an artfully written answer. Do not assume that quantity is a substitute for quality. Write on one side of the blue book only, and be sure that your handwriting is easily legible. To the extent that you use any source (including the textbook materials), identify that in your answer. "Blue book" format will not be required, but your citations should be readily traceable. Point value of questions are marked by each question - they are <u>not</u> evenly weighted. Good luck, and thanks for putting up with the tortured schedule this year.

1. (15 points) In Nutown, Pennsylvania there are two hospitals, Misery and Hopeless. There are 75 physicians in Nutown, 50 of whom belong to the Goldfarb practice group. Goldfarb's doctors have long been loyal to Misery, and they have a nice medical office building next door to Misery. The new administrator at Hopeless has decided to try to recruit the Goldfarb group away from Misery. He comes to you with this deal:

    Hopeless will purchase the existing medical office building owned by the Goldfarb group, and in the purchase agreement Hopeless will agree that they will not rent the building to any other physicians. Hopeless will then construct a new medical office building on the campus of Hopeless for the Goldfarb group and will lease it to Goldfarb for exactly the proportionate costs to Hopeless of financing the portion of the new building leased by Goldfarb. Hopeless will also agree that it will not lease space in the new building to any physician not approved in advance by the Goldfarb group. Hopeless will also guarantee Goldfarb that Hopeless will pay Goldfarb any difference between Goldfarb's average monthly income for the prior year and their monthly income for the first year in the building if less. Finally, Hopeless will construct two additional office/clinic buildings for lease at fair market rates to the Goldfarb group at locations in the community not currently served by either Goldfarb or Hopeless.

    A member of the board of trustees of Hopeless has asked you to advise the board about this transaction. Do so.

2. (10 points)

    a. You are in house counsel to a large metropolitan hospital that has just been sued. The board of trustees has asked you to advise them with respect to their own and the hospital's liability. They are particularly interested in the possibilities of a motion for summary judgment.

Read the complaint and write a letter of advice to the board:

IN THE COURT OF COMMON PLEAS
OF NIRVANA

Ginny Forester,
Plaintiff

vs.

Guilty Hospital,

-and-

John Doe, Mary Smith,
Tom Hanks, Bob Gleason,
and Fred Jenks, as Trustees,

-and-

Ronald Smerlas, M.D.,
Defendants.

COMPLAINT

1. Plaintiff is a fifty-five year old woman.

2. Guilty Hospital ("Hospital") is 500 bed, acute care hospital.

3. Defendants Doe, Smith, Hanks, Gleason and Jenks are the trustees of the Hospital.

4. Defendant Smerlas is a physician on the medical staff of the Hospital.

5. On May 4, 1989 Plaintiff called the physician referral service of Hospital and was referred to Dr. Smerlas for treatment of an inflammation of her right leg.

6. Hospital referred Plaintiff to Dr. Smerlas, and Plaintiff was treated in Dr. Smerlas's offices on May 6, 1989.

7. After a series of complications, Plaintiff was admitted to Our Lady of Innocence Hospital on May 10, 1989 and had her leg amputated.

8. Although Plaintiff was never admitted to Guilty Hospital, she selected Dr. Smerlas only because of the referral to him by Hospital's referral service.

9. Dr. Smerlas has been found negligent in three other lawsuits involving similar incidents.

10. Dr. Smerlas's application for admission to the medical staff of Hospital did not reflect those prior incidents, but no letters of inquiry regarding Dr. Smerlas's credentials were ever sent to the three other hospitals listed on his application in the states of Moe, Larry and Curly.

9. Physicians on the medical staff of Hospital are admitted to the medical staff by action of the Hospital's board of trustees.

WHEREFORE, Plaintiff demands judgment against Defendants in the amount of three million dollars.

b. Would your answer be different if these events happened in 1991?

3. a. (10 points) Yellowstone Hospital is large, private nonprofit hospital. It receives Hill-Burton funds, Medicare reimbursement, Medicaid reimbursement, and various state grants allowing it explore new, innovative medical techniques. It has obtained valid certificates of need that were required before conducting each of its new programs. It has three urologists on its medical staff, one of whom is on the board of trustees of the hospital, all of whom practice together under the name Urologists of Yellowstone, Inc. Each of the urologist's practices are "full" (they are currently accepting no new patients). A new urologist has recently moved into the Yellowstone area and has not joined the Yellowstone practice group. However, she has applied for privileges at the Hospital. The Hospital's urologists have recommended against admitting the new urologist to the medical staff, claiming that there is already a strain on the Hospital's ability to handle urologic procedures. Advise the Hospital's President.

b. (5 points) Assume the same facts as above, except that Yellowstone Hospital is now a county-owned facility.

4. (15 points) You have been asked to represent a group of local philanthropic physicians who want to build a new hospital in Columbus. Advise them on the key issues you think they should consider, including, but not limited to, your thoughts on structuring the new entity so that it will best be able to achieve and protect a status as exempt from the payment of federal income taxes.

5. (10 points) A friend and client of yours has approached you for legal advice regarding a new idea he has. He wants to set up a new physical/occupational therapy center that will be state-of-the-art. He doesn't have the money to build it himself, but he thinks he can persuade a number of local physicians to put up a significant amount of the required capital. His idea is that he will form a limited partnership, sell limited partnership interests to the physicians, and have the limited partnership borrow the necessary funds for construction and to begin operation. Each limited partnership interest will cost $10,000, but each physician will invest only about $500 in cash and pay the remainder of his/her investment through deductions against what would otherwise be paid to him/her from limited partnership profits. After the full $10,000 is paid, of course, the physicians will receive cash distributions. The amount of payment to each physician will be determined by the number of limited partnership interests owned, not by the number of referrals made. Interests will only be sold to physicians who live within 50 miles of the facility, and any physician who leaves that area must resell his/her interest for what would then be fair market value. Advise your friend.

6. (20 points) Define each of the following terms in a short paragraph (be certain to explain their relevance to the materials covered in this course in your definition):

a. prospective payment system
b. rule of reason
c. moral hazard
d. board certified
e. health maintenance organization
f. gatekeeper
g. average length of stay
h. footnote 17
i. corporate negligence
j. essential facilities doctrine
k. fee-splitting
l. corporate practice of medicine
m. balance billing
n. allowable costs
o. cross-subsidization
p. capitation
q. community rating
r. relative value scales
s. cost-shifting
t. unrelated business income tax

7\. (15 points) The following findings of fact were made by the federal district court. Write the rest of the opinion.

> An HMO was formed as a joint venture among (a) the dominant local health insurer who insured about 50% of the local area's population, (b) three of the four local area hospitals, and (c) each hospital's own independent practice association (IPA) of physicians. Each of those seven entities was represented on the board of directors of the HMO, and each contributed capital to the formation of the HMO. The insurer also contracted with the HMO to perform administrative functions, including utilization review. The HMO entered into contracts with the three hospitals to provide hospital services and with the three IPA's to provide physician services to the HMO's enrollees. Under the contracts with the IPA's, the physicians agree to accept discounted fees for their services, to participate in utilization and quality review processes, and to refer HMO patients only to other contracting parties. The HMO has captured about 10% of the area's population who have health coverage of one sort or another, including traditional indemnity insurance and HMO or PPO coverage.
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> Plaintiffs are a radiology group at the area's fourth hospital, who is not a contracting provider to the HMO. They have brought suit against the HMO, the three hospitals and the three IPA's alleging certain antitrust violations.