

EXAM NUMBER _____

THIS EXAMINATION CONSISTS OF **FOUR (4)** PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

LAW 382.001
Health Law

EXAMINATION – FALL 2021
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Overview of Examination Instructions

This examination has two parts (I, and II).

- Part I (30 marks) is mandatory.
- Part II (60 marks) choose only four (4) questions (15 marks each) to answer.

TOTAL MARKS: 90

TIME ALLOWED: 3 HOURS

(AND 10 MINUTES READING TIME)

NOTES:

1. This is an open book examination, Students are permitted to annotate the examination paper but may not begin answering the exam questions during the 10 minutes reading time.

PART I – Mandatory Memo

MARKS

- 30 The fundamental importance of standardized, interoperable, securely protected health data has been known for decades. There have been repeated efforts to achieve a modern effective health-data system in Canada and each one has failed. The COVID 19 pandemic has made this deficiency ever more apparent, with some commentators suggesting that the deficiencies in health data management has led to increased deaths, illness as well as negative economic consequences.

You are asked to analyse the situation from the following perspectives and offer policy options to address this issue. Please answer from all three perspectives:

1. You are a lawyer for the Federal Government and have been asked to provide policy advice to the CEO of the Public Health Agency of Canada;
2. You are a lawyer with the Provincial Government of British Columbia and have been asked to assist your government respond to greater Federal Government interest in regulating this area;
3. You are a member of the Privacy Subsection of the Canadian Bar Association and have been charged with the responsibility of drafting a submission to both the Federal and Provincial Governments on behalf of the Privacy Subsection.

PART II – Choose only four (4) of the following questions to answer:

MARKS

- 15 **Question 1:** You are a lawyer in a health authority. The Vice President of Medical Affairs has brought the following issue to you attention and seeks your advice.

About a year ago, an individual was hired as a locum radiologist at a small rural hospital. Although there were some complaints from patients that the individual was abrupt and brusque, there were no major concerns about performance. However, last week, during a routine verification of credentials, the Medical Affairs department has discovered that this individual was no longer licensed to practice with the College of Physicians and Surgeons.

- 15 **Question 2:** There is a very solid and active research program and many clinical trials undertaken at the various hospitals in your health authority. The research and clinical leader of radiology program has brought the following issue to your attention and seeks your advice. A 35 year old woman suffering from breast cancer was enrolled in a clinical trial using a new radiation therapy regime. Unfortunately for this woman, she suffered from a very rare side effect which continues to cause her in chronic pain. Although the woman is grateful that her breast cancer is in remission, she is very upset with the side effects she continues to suffer from and is threatening to sue. Please provide a memo the Research Director with your analysis.

- 15 **Question 3:** Your firm provides advice in the area of Privacy and IT security. Your client, a health authority, is seeking your advice on the following issue. About a year ago, the hospital was a subject of a ransomware attack. Fortunately, at that time, the hospital's IT department acted swiftly. There was a small payment made to the "threat actor" who provided the encryption key following this payment allowing the IT system to be re-secured. No further action was taken at the time. Yesterday, the hospital's privacy officer was informed by a media source that patient data

allegedly taken a year ago was being offered for sale on the “dark web”. Please prepare a memo outlining the issues this situation raises and your preliminary advice to the client.

- 15 **Question 4:** You are a lawyer supporting the Chief Medical Health Officer (CMHO) in your region. In view of the raging COVID19 pandemic, the CMHO is considering the imposition of a requirement for all health care providers to be fully vaccinated in order to continue working in health care. The CMHO’s office has been deluged with comments from the following constituencies:
- (a) people who are supportive and irritated that the CMHO is taking inordinately long to impose this requirement as the pandemic rages on making the health care system precarious;
 - (b) unvaccinated health care workers who object to the requirement to be vaccinated.
 - (c) people who are concerned that eliminating unvaccinated workers from providing vital services in health care will lead to cancellation of services.

Each of these constituencies has threatened legal action. Please prepare a memo for the CMHO to assess the risks.

- 15 **Question 5:** Matthew is a 45 year old Indigenous man who has battled alcohol addiction since a very young age. He has cirrhosis of the liver and needs liver transplant. He has had all the preliminary medical tests and has been approved to be on a wait list for a transplant as soon as a suitable organ is available. The outstanding requirement is for Matthew to abstain from alcohol for 6 months. The clinical rationale for this is to ensure that the transplant recipient is in the best possible physical condition to benefit from this very scarce resource. Advocates within the Indigenous community consider this requirement discriminatory and have asked you, as a lawyer who represents many Indigenous causes, to provide an opinion.

- 15 **Question 6:** The patient is a 13 year old individual who appears to be thoughtful and mature. Throughout life, this patient has felt that the male sex and gender assigned does not fit and has made concerted efforts to be accepted as a female. This person is one of the youngest individuals to seek gender reassignment services at the clinic in your health authority. The parents are separated. One parent is supportive but very ambivalent about authorizing such life changing procedures at such a young age. The other parent is adamantly opposed. The program directors have asked for your opinion on how to proceed forward.

- 15 **Question 7:** Your client is a private company that recently bought the rights to a new technology that would make it possible for a person to end their life. This device called a “Sarco machine” looks like a sleeping pod which when activated, floods the pod with nitrogen before slowly reducing oxygen levels to close to 1% causing death. Your client would like to start selling this product in Canada. Please draft a memo to your client outlining the legal issues with selling this product in Canada.

- 15 **Question 8:** Your client has a very rare form of brain cancer for which there is no treatment in Canada. However, Johns Hopkins University Hospital in the United States has recently received approval for a clinical trial for use of a highly personalized drug which has shown promise. Your

client is considered a suitable candidate to try this drug, but the cost of enrolling in this clinical trial is just over \$1 million. The Provincial Health Services Plan has refused to cover this cost. He has come to you to explore his legal options to challenge this decision. Please provide your opinion.

END OF EXAMINATION