THIS EXAMINATION CONSISTS OF 7 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 434

Medical Negligence Law

Section 1

Raab, McGivern, L

**TOTAL MARKS:** 100

**TIME ALLOWED:** 3 HOURS

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**NOTE:** 1. This is an open book examination, meaning you can refer to class notes, cases, PowerPoint slides and other class readings. Students are permitted to bring the optional text, *Legal Liabilities of Doctors and Hospitals in Canada, Robertson & Picard (5th ed 2017).* No other texts or library books are permitted.

2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 6 QUESTIONS

LAW 434, Section 1

Page **2** of **7**

On February 13, 2022, Janet Jones attended the emergency room at Lions Gate Hospital in the early evening. She was seen by the triage nurse who recorded that Janet complained of feeling very unwell, with a terrible headache and dizziness since she woke up that morning. The triage nurse also noted “pt known drug user. See past visits to emergency seeking drugs”.

It was a very busy day in the emergency department and Janet had been waiting over one hour when she saw her family doctor, Dr. Street, walk through the emergency department heading for the exit. Janet stopped her and asked her if she wouldn’t mind just giving her some pain meds while she waited because she was in so much pain. Dr. Street recognised Janet as a patient whom she had been seeing in her clinic since she was a baby; however, her shift at the hospital had already ended over an hour ago and she was heading home for dinner. She told Janet that she could not give her any pain medication without assessing her first, and that she was heading home and that Janet would have to wait for the emergency doctor on shift to see her.

Janet waited for another hour before she was seen by Dr. Adams. Dr. Adams reviewed the vital signs taken by the nurse which were all normal. Janet told him she felt really terrible, that she had the worst headache of her life, felt dizzy whenever she stood up and was now shivering. Dr. Adams ordered blood work and told her that she probably had the flu and that she should go home and sleep it off. Janet requested some pain medication and Dr. Adams told her she did not need pain medication for the flu adding that “pain medication is not the answer for all of life’s problems”. A blood sample was taken from Janet and Dr. Adams told her she could go home now. When she asked about the results of her blood work, he told her they would call her if there was anything abnormal.

LAW 434, Section 1

Page **3** of **7**

Janet went home and went straight to bed. Around dinner time the following day Janet’s friend came over to check on her. Janet told her that earlier in the day she started vomiting and her

vision had become very blurry. She did not, however, want to return to the hospital because she was in a great deal of pain and did not think she could tolerate sitting in a chair in the emergency department for hours waiting to be seen. She also grumbled that there was no point anyway since all she wanted was pain relief and the doctor already told her he would not give her any and she just needed to sleep it off. Her friend was quite concerned about her and called 911. Janet reluctantly agreed to be taken back to Lions Gate Hospital by ambulance.

When Janet returned to the Hospital the emergency room doctor on shift, Dr. Noble, noted Janet now had a significantly elevated temperature with blurred vision. He told Janet that she should have come back to the emergency room immediately when she started vomiting and her vision became blurry. He also noticed that the results of her blood work had come back the day prior and showed significantly elevated white blood cell and protein levels - which was a sign of bacterial meningitis (bacterial infection in the brain). Dr. Noble was very concerned that Janet’s illness was due to bacterial meningitis and proceeded to do a lumbar puncture, which is a procedure in which the physician inserts a needle into the space between the lumbar bones in the patient’s back in order to obtain a sample of cerebrospinal fluid (the fluid that surrounds one’s brain and spinal cord). This is the definitive test for bacterial meningitis. The results of the lumbar puncture indicated that Janet had bacterial meningitis. Dr. Noble admitted Janet to the intensive care unit and immediately started the appropriate 28-day course of antibiotic therapy for bacterial meningitis. Janet’s condition improved and her bacterial meningitis resolved. However, Janet had sustained brain injury due to meningitis, with vision and cognitive deficits. Janet also suffered from pain in her back, at the location of the lumbar puncture, which took about three months to resolve.

LAW 434, Section 1

Page **4** of **7**

Janet decided to retain a lawyer to pursue a medical malpractice case to seek compensation for her permanent brain injury and back pain (although the back pain had resolved).

In the course of pursing this action, her lawyer discovered that Janet’s abnormal blood results had not been reported to Dr. Adams the evening prior in accordance with the hospital policy. The hospital had a policy that abnormal results must be reported immediately by phone to the ordering physician. Normal results were to be placed in the general inbox for review by the emergency physician at the beginning of the morning shift. The laboratory technician, James Lone, admitted that he sent the lab test to the general inbox and that he was not aware of the hospital policy regarding abnormal results. He was new at Lions Gate Hospital and no one had brought this policy to his attention, nor was it included in the policy manual he had received during his training. Upon reviewing the laboratory report, there was a notation that was automatically generated on the report that the white blood cell and protein levels were at “CRITICAL LEVELS” and with an asterisks that indicated “report to ordering physician immediately”. Mr. Lone admitted during his examination for discovery that he should have read the report more carefully before sending it to the general inbox and that had he done so, he would have known that he needed to contact the emergency physician immediately with the results rather than simply sending the results to general inbox.

Janet’s lawyer started a lawsuit against Vancouver Coastal Health Authority (which operates Lions Gate Hospital), Dr. Street, Dr. Adams, Dr. Noble and James Lone (lab tech).

The matter proceeded to trial. In addition to the above, the following evidence was led and submissions made:

LAW 434, Section 1

Page **5** of **7**

The Plaintiff’s evidence and submissions:

* The Plaintiff did not introduce any expert evidence on standard of care at trial. The Plaintiff’s lawyer submitted that is plain and obvious that the defendant, Dr. Adams should have performed a lumbar puncture to rule out this serious possible illness, and no expert evidence on this point is required – it is a simple matter of patient safety. Dr. Adams stated during his Examination for Discovery that bacterial meningitis can cause brain injury and even death if not promptly diagnosed and treated. For this reason, it is common sense that a lumbar puncture should have been performed by Dr. Adams to rule out this potentially life threatening condition. The Plaintiff’s lawyer sought to exclude the opinion of the Defendant’s infectious disease expert on the basis that she is overqualified and out of touch with the reality of patient care in a small community hospital in Canada. The Plaintiff led evidence from an infectious diseases expert who worked in a similar community hospital in British Columbia who opined that it is well understood in medicine that the sooner antibiotics are given the better, and that if Janet had been given antibiotics during her first visit it is possible that she would have had a better outcome. That is the reason why giving antibiotics as soon as possible is the standard of care. Janet testified that she was not told of any risks of the lumbar puncture. In addition to back pain, other risks of the procedure include headache (a 25% risk) and bleeding around the location of the needle insertion.

LAW 434, Section 1

Page **6** of **7**

The Defendants’ evidence and submissions:

* The Defendants retained an expert who was the head of the infectious disease department Harvard Medical School. She opined that it was reasonable for Dr. Adams to discharge Janet without doing a lumbar puncture as headaches are a very common complaint in the emergency room and emergency room physicians must exercise their clinical judgment when deciding which patients need a lumbar puncture. She stated that she still works a few shifts a month at the Massachusetts General Hospital and in her experience when consulting with emergency room physicians, patients do not typically receive a lumbar puncture for headache alone. She also reviewed various studies on the timing of antibiotics administration in patients with bacterial meningitis and opined that even if Janet’s bacterial meningitis had been diagnosed on her first visit and antibiotics started immediately, there was only about a 40% likelihood that the treatment would have prevented her brain injury. This is because the elevated white blood cell and protein levels in Janet’s lab test from the blood work taken during the first visit were already so high, that it would have caused brain injury before the treatment could have resolved the proliferation of bacteria. She said Janet’s back pain was not related to her meningitis; rather, it was caused by the lumbar puncture. She explained that there is a 25% chance that the patient will suffer from some degree of back pain following this procedure which usually resolves after a few weeks. While Janet’s back pain lasted somewhat longer than usual, this was likely due to her being bedridden during her antibiotic treatment. Dr. Noble gave evidence that while he does not have any memory of treating Janet, he felt confident that he would have discussed the risks of lumbar puncture with her. He says it is part of his standard practice to discuss the risks of headache and back pain with his patients and he then documents “risks discussed” in the patient chart. This notation is found in Janet’s patient chart.

LAW 434, Section 1

Page **7** of **7**

**Questions**

1. Did Dr. Street and the laboratory technician, James Lone owe a duty of care to Janet? Please set out the relevant law, your analysis and conclusion. **(8 marks)**
2. One of the allegations brought against Dr. Adams is that he breached the standard of care by failing to perform a lumbar puncture during Janet’s initial visit in order to determine if Janet had bacterial meningitis. Is this allegation likely to succeed at trial? Please set out the relevant law, your analysis and conclusion. **(30 marks)**
3. Assuming there was a breach of the standard of care by failing to perform a lumbar puncture, did this breach cause Janet’s brain injury? Please set out the relevant law, your analysis and conclusion. **(20 marks)**
4. Does Janet have a claim against Dr. Noble for failing to inform her of the risk of back pain before doing the lumbar puncture? Should this claim be pled as a battery or lack of informed consent? Please set out the relevant law, your analysis and conclusion.
5. **marks)**
6. Was Janet contributorily negligent in causing her brain injury? Please set out the relevant law, your analysis and conclusion. **(10 marks)**
7. Is the Vancouver Coastal Health Authority/Lions Gate Hospital exposed to any liability? Please set out the relevant law, your analysis and conclusion. **(12 marks)**

**END OF EXAMINATION**