

Kilian's Medical MCQ Repository.

LCR4802 - May/June 2012

Question 1	
a) A medical practitioner may accept commission from a pharmacist in connection with a prescription given by the medical practitioner.	X
b) An agent of a manufacturer of medicine may supply a medical practitioner with free medicine samples for the treatment of his/her patients.	X
c) A patient who refuses to accept recommended treatment is under a statutory duty to sign a certificate of release of liability.	Y

Question 2	
a) By accepting someone as a patient, a doctor by implication guarantees that the patient will be cured of his/her disease.	X
b) A doctor who has rendered a service to a member of a medical scheme, must provide the member with an account setting out the details of the service rendered.	Y
c) Doctors who practice in partnership agree to share profit only and not losses as well.	X

Question 3	
a) Medical treatment without the informed consent of the patient <i>prima facie</i> constitutes an assault and will be wrongful unless justified by some other ground of justification such as <i>negotiorum gestio</i> or statutory authority.	Y
b) The National Health Act 61 of 2003 does not authorise the provision of a health service to a seriously ill person who refuses treatment, even if any delay in the provision of the treatment to the patient might result in his or her death.	Y
c) The Mental Health Care Act 17 of 2002 provided that, under certain circumstances and subject to certain conditions, an interventions may be provided to a mental health care user without his/her consent and against his/her will.	Y

Question 4	
a) A doctor who is an employee of a public hospital may not refuse to attend to a particular type of patient, such as a patient with AIDS.	Y
b) In <i>Christian Lawyers Association of South Africa v Minister of Health</i> the court rules that the Choice of Pregnancy Act 92 of 1996 was no in conflict with the constitutional right of life.	Y
c) The right to emergency medical treatment as contained in section 27 of the Constitution implies ( <i>inter alia</i> ) that nobody who suffers a sudden catastrophe which calls for immediate medical attention should be turned away from a hospital which is able to provide the necessary treatment.	Y

Question 5	
a) A doctor who, for the purpose of artificial insemination, negligently uses semen from a man who suffers from a venereal disease, as a consequence of which a defective child is born, faces liability on the basis of wrongful birth.	Y
b) Reproductive cloning of human beings will be prohibited by section 57 of the National Health Act 61 of 2003 when that section comes into operation.	X
c) The Human Tissue Act 65 of 1986 places a total ban on the removal of any tissue from the body of a minor for medical and dental purposes such as transplantation.	Y

Question 6	
a) In <i>Peace v Fine</i> the court found that, even if there had been negligence, the plaintiff had to establish, on a balance of probability, that the patient's life would have been saved had he been kept under constant observation and had resuscitation commenced as soon as he displayed symptoms of distress.	Y

b) For purposes of the criminal liability of a medical practitioner for the death of a newly-born child, the baby will be deemed to have been born alive if it had breathed.	Y
c) In <i>Mkwetshana</i> 1965 it was held that the appellant-doctor was negligent in administering 20cc of the drug paraldehyde, a deadly overdose, where he had insufficient knowledge and experience of the drug.	Y

Question 7	
a) A hospital can incur vicarious liability if an independently practicing doctor who hires an operating theatre in the hospital, negligently performs an operation.	X
b) In its guidelines on ethics for medical research published in 2002, the Medical Research Council recommended that ‘the use of human nuclear transfer cloning to create a new life’ should be prohibited.	Y
c) It was held in <i>Hartl v Pretoria Hospital Committee</i> 1915 that a doctor who at the request of a hospital authority renders gratuitous service to the hospital is a servant thereof.	X

Question 8	
a) In effect, a professional board is the sole repository of power to decide what is ethical and what is unethical in medical practice.	Y
b) A medical practitioner who has been suspended from practicing may become liable to be prosecuted under the criminal provisions applying to unregistered persons if he/she practices during the period of his/her suspension.	Y
c) A medical practitioner who wishes to appeal against the findings of a disciplinary committee can only appeal to the High Court.	X

Question 9	
a) In principle, a clause in a contract which restricts a party’s freedom to trade is invalid and unenforceable.	X
b) A doctor who acts contrary to the tacit agreement between himself/herself and the patient, commits a breach of contract and may be denied the right to claim remuneration for his/her service.	Y
c) If a person dies under the influence of a general anaesthetic, the medical practitioner may not issue a death certificate before an inquest has taken place.	Y

Question 10	
a) The State’s obligation to provide free health service to children below the age of six years only extends to the provision of primary health care service.	Y
b) The Schedule to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 lists the refusal to provide reasonable health services to the elderly as an unfair practice in the health care sector.	Y
c) Section 20 (Section 10) of the National Health Act 61 of 2002 requires a health care provider to provide the patient with a discharge report when the patient is discharged from the health establishment.	X

LCR4802 - October/November 2011

Question 1	
a) A health care practitioner may refuse to treat a patient who is verbally abusive.	Y
b) In <i>Christian Lawyers Association of South Africa v Minister of Health</i> the Court ruled that the Choice of Termination of Pregnancy Act was no in conflict with the constitutional right of life.	Y
c) When dispensing, a pharmacist must substitute an interchangeable multi-source medicine for the medicine prescribed by the doctor even if the patient expressly forbids the pharmacist to do so.	X

Question 2	
a) If a person dies under the influence of a general anaesthetic, the medical practitioner may not issue a death certificate before an inquest has been taken place.	Y
b) The Choice on Termination of Pregnancy Act provides that a person may be sterilised if he or she is capable of consenting and is 18 years of age or older.	Y
c) A doctor can be convicted of culpable homicide only if it can be proved that he/she was guilty of gross negligence since ordinary negligence does not constitute a sufficient form of culpability.	X

Question 3	
a) In <i>Afrox Health Bpk v Strydom</i> the Supreme Court of Appeal held that the indemnity clause was not legally enforceable in the particular circumstances.	X
b) In <i>Friedman v Glicksman</i> the Court held that it would be contrary to public policy to allow a claim based on wrongful birth.	X
c) In <i>Van Wyk v Lewis</i> the Court applied the <i>res ipsa loquitur</i> doctrine to prove negligence on the part of the medical practitioner.	X

Question 4	
a) The State's obligation to provide free health services to children below the age of six years only extends to the provision of primary health care.	Y
b) The Schedule to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 lists the refusal to provide reasonable health services to the elderly as an unfair practice in health care sector.	Y
c) Section 10 of the National Health Act 61 requires a health care provider to provide the patient with a discharge report when the patient is discharged from the health establishment.	Y

Question 5	
a) A medical intervention may sometimes be performed on a patient against his/her will in order to protect the public interest.	Y
b) The Mental Health Care Act 17 of 2002 does not afford recognition to therapeutic privilege.	X
c) It was held in <i>rose v Sinclair</i> 2004 that it is acceptable for a doctor to rely on nursing staff to hand out medication to patients.	Y

Question 6	
a) Should a doctor, whilst treating a patient, guarantee that the patient will be cured, the patient might be able to claim damages for breach of contract in the event of the doctor failing to fulfil his undertaking.	Y
b) A patient's claim against a doctor for negligent treatment does not necessarily depend on proof of the existence of a contract between doctor and patient.	
c) Where a penalty clause is included in a contract, the innocent party may not claim damages in lieu of the penalty sum from the party who is in breach of contract, unless the particular contract expressly so provides.	Y

Question 7	
a) There is no duty (there is a duty) on a court of law to bring to the attention of the professional board concerned, <i>prima facie</i> proof of unprofessional conduct on the part of a practitioner which was disclosed in the course of a court trial.	X
b) Section 27(3) of the Constitution provides that no one shall be refused medical treatment.	X
c) In <i>S v Berman</i> a medical practitioner was found guilty of murder for administering a blood transfusion to the wrong patient.	X

Question 8	
a) In <i>S v R and Others</i> the Court recognised the important role DNA testing has to play in	Y

liberating men from unfounded charges of rape and women from humiliating questions with regard to allegations of rape.	
b) <i>Negotium gestio</i> is the ground of justification which is best suited to a situation where the medical treatment is necessary to prevent a life-threatening disease from which the patient is suffering from spreading to others.	Y
c) A procedure can never be lawful where it is undertaken upon the person of a healthy individual with a view to ultimately bring about the restoration of the health of another person who is ailing.	X

Question 9	
a) A hospital can incur vicarious liability if an independently practising doctor who hires an operating theatre in the hospital, negligently performs an operation.	X
b) In its guidelines on ethics for medical research published in 2002, the Medical Research Council recommended that 'the use of human nuclear transfer cloning to create a new life' should not be prohibited. (should be prohibited)	X
c) It was held in <i>Hartl v Pretoria Hospital Committee</i> 1915 that a doctor who at the request of a hospital authority renders gratuitous service to the hospital, is not a servant thereof.	Y

Question 10	
a) The principle that the High Court is the upper guardian of all minors, was confirmed in <i>Hay v B and Others</i> .	Y
b) A gamete obtained from a minor may not be used for purposes of artificial insemination.	Y
c) A patient who refuses to accept recommended treatment, must sign a certificate of release of liability as prescribed by the National Health Act 61 of 2003.	Y

LCR4802 – May/June 2011

Question 1	
a) The action for 'wrongful pregnancy' or 'wrongful conception' can be described as an action for damages by the parents of a healthy child, following negligent contraceptive advice given by a medical practitioner or a negligent sterilisation or abortion performed by a medical practitioner.	Y
b) The doctor's common-law duty to respect the confidentiality of his patient is an absolute duty and the doctor will not be justified in disclosing confidential information about a patient such as the patient's HIV status, even if such disclosure is in the public interest.	X
c) The standard of care required of a medical practitioner who undertakes the treatment of a patient is the highest possible degree of professional skill.	X

Question 2	
a) A woman is married in community of property may not undergo a sterilisation purely for convenience and in the absence of a medical indication without her husband's consent.	X
b) In <i>S v Bezuidenhout</i> a radiologist was convicted of culpable homicide after the death of a baby to whom he administered an excessive amount of contrast medium.	Y
c) In <i>Van Wyk v Lewis</i> the Court refused to find that the doctor was negligent on the basis of <i>res ipsa loquitur</i> .	Y

Question 3	
a) A health care provider may refuse to treat a patient who is verbally abusive towards him/her.	Y
b) If <i>prima facie</i> proof of unprofessional conduct is submitted to a professional board, it is within the professional board's absolute discretion to institute an inquiry.	Y
c) By accepting someone as a patient a doctor by implication guarantees that the patient will be cured of his disease.	X

Question 4	
a) There has not as of yet been a reported case in South Africa dealing with the scenario where a doctor attempted to protect himself against the liability for negligence by requesting the patient to sign a disclaimer, or a consent form containing a waiver clause.	Y
b) Consent to suffer a minor injury or a temporary, slight impairment of health in order to put to the test sound scientific or psychological hypotheses that may be of value to science, is viewed as <i>contra bonis mores</i> .	X
c) There is nothing in the Choice of Termination of Pregnancy Act to suggest that the refusal to perform a termination of pregnancy procedure constitutes criminal conduct.	Y

Question 5	
a) The death of a patient whilst undergoing a therapeutic procedure under the influence of a general or a local anaesthetic, will be deemed to be a death from unnatural causes and an inquest will have to be performed before a death certificate can be issued by a medical practitioner.	Y
b) The National Health Act 61 of 2003 contains a provision that places an obligation on the doctor to inform the patient of his/her right to refuse health services and to explain the implications, risks and obligations of such refusal	Y
c) According to Section 14 of the National Health Act information concerning a user's health status may be disclosed if the patient gives oral consent to such disclosure.	X

Question 6	
a) In <i>Clark v Hurst</i> the Court was not prepared to grant absolute recognition to an advance directive (such as a living will).	Y
b) A covenant in restraint of trade is either enforceable in its entirety or unenforceable in its entirety and a court is not entitled to decide that only a part of such clause is enforceable.	X
c) It was held in <i>Friedman v Glicksman</i> that the action for wrongful birth is not recognized in our law as it is deemed to be contrary to public policy.	X

Question 7	
a) Once it comes into force, section 57 of the National Health Act will allow reproductive cloning of human beings.	X
b) Once section 57 of the National Health Act takes effect, therapeutic cloning as well as stem cell research may become conditional lawful.	X
c) Where a general practitioner fails to call in a specialist as a result of which a patient dies, the general practitioner may be found guilty of culpable homicide.	Y

Question 8	
a) In <i>Van Biljon v Minister of Correctional Services</i> the Court ruled that the state owes a higher duty of care to HIV positive prisoners than to citizens in general.	Y
b) At criminal proceedings where an accused is charged with the killing of a newly born child, such child shall be deemed to have born alive if it is proved that the child had as independent circulation, and was at the time of its death entirely separated from the body of its mother.	X
c) A doctor who makes harmful medicine available to a suicidal patient without foreseeing that the patient might commit suicide, will be convicted of murder if the patient indeed commits suicide, provided that a reasonable person in his position would have foreseen the possibility of suicide and would have taken steps to guard against such an occurrence.	Y

Question 9	
a) In <i>Van Wyk v Lewis</i> the judges had opposing views as to question whether the locality rule applies in South Africa.	Y
b) In <i>Collins v Administrator Cape</i> it was held that where it concerns a claim against a hospital for harm suffered by a patient in consequences of negligence of its staff the financial resource of the hospital is irrelevant when determining the standard of care that may be	X

expected. (can not be expected)	
c) A patient need not be paying patient in order to have a right of recovery against a state hospital for negligence.	Y

Question 10	
a) In <i>Christian Lawyers Association v National Minister of Health</i> the Court held that the definition of 'woman' in the Choice on Termination of Pregnancy which implies that a female under the age of 18 years is entitled to consent to a termination of a pregnancy without her parents' consent, is constitutional.	Y
b) A medical practitioner who wishes to appeal against a finding by a disciplinary committee can only appeal to the High Court.	X
c) A completely pointless operation undertaken in the knowledge that it is unnecessary is unlawful, whether the operation is performed for profit or for any other reason, no matter how skilfully it might have been performed, and regardless of whether the patient consents or not.	Y

LCR4802 – October/November 2010 – Paper not available in English.

Vraag 1	
a) Artikel 9 van die Grondwet verbied uitdruklik onbillike diskriminasie op grond van gestremdheid.	Y
b) Artikel 27 van die Grondwet waarborg iedereen die reg van toegang tot, onder meer, reprodktiewe gesondheidsorg.	Y
c) Dit is geoorloof vir n geneesheer om kommissie van 'n apteker te ontvang in verband met 'n voorskrif wat die geneesheer verskaf het.	X

Vraag 2	
a) Die Wet op die Bevordering van Toegang tot Inligting 2 van 2000 maak dit vir pasiënte makliker om toegang te verkry tot inligting vervat in sy/haar mediese rekords.	Y
b) Die National Health Act 61 van 2003 beklee in artikel 4(1) die Minister van Gesondheid met die bevoegdheid om voor te skryf dat sekere kategorië persone vir gratis gesondheidsdienste by openbare gesondeheidsinstellings kwalifiseer op die voorwaardes deur hom voorgeskryf.	Y
c) Die Wet op Gesondheidsberoep 56 van 1974 vereis van praktisyns wat 'n betaling van 'n pasiënt vorder, om binne redelike tyd aan die pasiënt 'n gekwalifiseerder rekening te versterk.	Y

Vraag 3	
a) n Apteker moet kragtens wetgewing alle pasiënte wat met voorskrifte aanmeld, inlig aangaande die voordele van 'n vervanging van 'n handelsmerkmedisyne (etiese medisyne) deur 'n vervangbare multibronmedisyne.	Y
b) Daar bestaan geen wetterereglike bepaling wat 'n pasiënt wat weier om aanbevole behandeling te ondergaan, verplig om 'n sertifikaat van vrywaring teen aanspreeklikheid te onderteken nie.	Y
c) 'n Geneesheer wat voornemens is om hoer gelde vri bepaalde dienste van 'n pasiënt te vorder as wat normaalweg daarvoor gevorder word, is wetlik verplig om voordat hy/sy die dienste lewer, die pasiënt of ander person verantwoordelik vir die pasiënt se onderhoud te verwittig van die gelde wat hy/sy voornemens is om te vorder.	Y

Vraag 4	
a) Wanneer 'n hof moet bepaal of 'n beperkingsbeding teen die openbare belang en gevolglik onafdwingbaar is, let die hof onder meer op die beskikbaarheid van alternatiewe, soortgelyke dienste.	Y
b) <i>S v Kramer 1987</i> is 'n voorbeeld van 'n geval waar 'n narkotiseur strafregtelike aanspreeklikheid opgedoen het op grond van sy versuim om behoorlike beheer uit te oefen oor 'n gevaarlike voorwerp nadat hy beheer daarvoor aanvaar het.	Y

c) In beginsel is 'n geneesheer geregtig om 'n pasiënt teen sy/haar wil te behandel slegs as dit gaan om die beskerming van 'n oorheersende maatskaplike belang.	
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Vraag 5	
a) In <i>Louwrens v Oldwage</i> het die Hoogste Hof van Appel onomwonde bevestig dat die wesenlikheidsmaatstaaf soos in <i>Castell v De Greed</i> neergelê, korrek is.	X
b) Daar word uitdruklik, maar gekwalifiseerde erkenning aan terapeutiese privilegie verleen in artikel 13(3) van die Mental Health Care Act 17 van 2002.	Y
c) 'n Mediese proefneming uitgevoer op 'n pasiënt wat op geen ander bekende wyse van 'n gewisse dood gered kan word nie, sal geoorloof wees selfs al is dit gevaarlik en hou dit 'n geringe moontlikheid van sukses in.	Y

Vraag 6	
a) Organe verkry van geestesongesteldes mag gebruik word vir oorplantingsdoeleindes.	X
b) Sperm verkry van 'n gewoontemisdadiger mag gebruik word vir kunsmatige bevrugting.	X
c) Die oorplanting van 'n gonade verwyder uit 'n lyk, wat voortplanting tot gevolg kan hê, is absoluut verbode ingevolge wetgewing.	Y

Vraag 7	
a) In <i>Administrator of Natal v Edouard</i> 1990 het die Appelfhof bevestig dat algemen skadevergoeding nie toegestaan sal word in 'n aksie weens ongeoorloofde swangerskap wat op kontrakbreuk gebaseer is nie.	Y
b) In <i>Raath and Another v Mukheiber</i> 1999 het 'n eis weens ongeoorloofde swangerskap geslaag op die grondslag dat die geneesheer 'n wanvoorstelling aangaande sterilisasie van die vrou gemaak het.	Y
c) By 'n deliktuele eis weens ongeoorloofde swangerskap is die aanspraak op skadevergoeding beperk slegs tot gevalle waar die versoek tot sterliksasie om sosio-ekonomiese redes gerig is.	X

Vraag 8	
a) 'n Aborsie mag in dien eerste 12 weke van swangerskap uitgevoer word op 'n elfjarige swanger meisie op haar versoek, en haar ouers/voog se toestemming word nie veries nie.	Y
b) Die is 'n misdryf as iemand wat nie 'n geneesheer is nie, 'n swangerskap na die 12de week van draagtyd beëindig.	Y
c) Indien 'n geneesheer 'n fetus op 'n nalatige wyse voor geboorte beseer, maar die kind later gebore sou word en sterf as gevolg van die voorgeboortlike besering, kan die geneesheer moontlik aan strafbare manslag skuldig bevind word.	Y

Vraag 9	
a) Ingevolge die beginsles neergelê in <i>Grotjohn</i> 1970 kan 'n geneesheer wat 'n potensiële dodelike middle aan 'n ernstig depressiewe pasiënt verskaf, welwetende dat die pasiënt beoog om selfmoord te pleeg deur 'n oordosis van die middle te neem, moontlik aan moord skuldig bevind word.	Y
b) 'n Geneesheer kan aan strafbare manslag skuldig bevind word slegs indien daar bewys word da thy/sy grof nalatig was, aangesien gewone nalatigheid nie 'n voldoende skuldvorm daarstel nie.	X
c) Mediese behandeling sonder die ingeligte toestemming van die pasiënt stel <i>prima facie</i> 'n aanranding daar en sal onregmatig wees tensy 'n regverdigingsgrond aanwesig was, soos statute bevoegdheid of <i>negotiorum gestio</i> .	Y

Vraag 10	
a) In <i>Pearce v Fine</i> 1987 het die hof bevind dat die eiseres op 'n oorwig van waarsynlikhede bewys dat die pasiënt se lewe gered sou gewees het indien hy deurlopend onder waarneming was en indien bybrengingsmaatreëls 'n aanvang sou geneem het sodra die eerste tekens van 'n ernstige wending in sy toestand waargeneem kon word.	X

b) Vir doeleindes van 'n geneesheer se strafregtelike aanspreeklikheid vir die dood van 'n pasgebore baba, sal die baba beskou word lewendig gebore te gewees het indien die baba asemgehaal het.	Y
c) In <i>Mkwetshana</i> 1965 is beslis dat die appellant-dokter nalatig was deur 20cc van die middle paraldehyd, 'n dodelike oordosis, toe te dien waar hy ontoereikende kennis en ervaring van die middle gehad het.	Y

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Vraag 1	
a) Artikel 9 van die Grondwet verbied uitdruklik onbillike diskriminasie op grond van gestremdheid.	Y
b) Artikel 27 van die Grondwet waarborg iedereen die reg van toegang tot, onder meer, reprodktiewe gesondheidsorg.	Y
c) Dit is geoorloof vir n geneesheer om kommissie van 'n apteker te ontvang in verband met 'n voorskrif wat die geneesheer verskaf het.	X

Vraag 2	
a) Ingevolge artikel 16 van die National Health Act 61 van 2003 word 'n pasiënt se magtiging benodig indien 'n geneesheer die pasiënt se gesondheidsrekords vir doeleindes van die behandeling van die pasiënt wil nagaan.	Y
b) In die reël neem die kontrak aangaan tussen geneesheer en pasiënt die vorm van 'n stilswyende ooreenkoms waardeur die geneesheer onderneem om die pasiënt se kwaal te diagnoseer en hom of haar op die gewone wyse te behandel.	Y
c) 'n Beperkingsbeding is of in die geheel afdwingbaar, of in die geheel onafdwingbaar, en 'n hof is nie by magte om te beslis dat net 'n gedeelte van 'n beperkingsbeding afdwingbaar is nie.	X

Vraag 3	
a) Artikel 9 van die Grondwet verbied uitdruklik onbillike diskriminasie op grond van gestremdheid.	Y
b) Artikel 27 van die Grondwet waarborg iedereen die reg van toegang tot, onder meer, reprodktiewe gesondheidsorg.	X
c) Dit is geoorloof vir n geneesheer om kommissie van 'n apteker te ontvang in verband met 'n voorskrif wat die geneesheer verskaf het.	Y

Vraag 4	
a) In <i>S v Bellocq</i> 1975 is die beskuldigde skuldig bevind aan moord nadat sy haar kind, wat aan toksoplasmose gely het, in 'n wasbak verdrink het.	Y
b) Genadedood op versoek van die lydende is wederegtelik.	Y
c) 'n <i>Clarke v Hurst</i> 1992 is beslis dat die beëindiging van mediese behandelik in die omstandighede van die saak nie wederegtelik sou wees nie, omdat dr. Clark reeds breindood was.	X

Vraag 5	
a) Die Wet op Menslike Weefsel 65 van 1983 skryf voor dat vir doeleindes van weefselverwydering, die dood van die betrokke person vasgestel moet word deur minstens twee geneeshere, waarvan een vir minstens vyf jaar as geneesheer gepraktiseer het.	Y
b) Daar is geen bepaling in die Wet op Menslike Weefsel 65 van 1983 wat genetiese manipulering van gamete of sigote buite die menslike liggaam verbied nie.	X
c) Die Wet op Sterlisasie 44 van 1998 bepaal dat 'n getroude person wat verlang om gesteriliseer te word, gesteiliseer mag word mits hy of sy in staat is om toe te stem tot 'n sterilisasie, 18 jaar of ouer is, en die ander eggenoot se skriftelike toestemming het.	X

In *Edouard v Administrator of Natal* 1990 het die Appellhof



Vraag 6	
a) beslis dat die vader se eis vir die onderhoudskoste van die kind, totdat sy die leeftyd van 18 jaar bereik, tereg deur die hof <i>a quo</i> toegestaan is.	Y
b) die verhoorhof se beslissing dat algemene skadevergoeding vir die ongerief, pyn en lyding en verlies van lewensgenot gelyk deur die eiser se vrou nie weens kontrakbreuk verhaal kan word nie, bevestig.	Y
c) daarop gewys dat die saak uniek is in die opsig dat dit gegrond is op die algehele versuim om die ooreengekome sterilisasie uit te voer.	Y

Vraag 7	
a) 'n Geregistreerde vroedvrou kan 'n swangerskap in die elfde week daarvan regmatigelik beëindig, suiwer op versoek van die swanger vrou.	Y
b) 'n Swanger elfjarige het haar ouer se toestemming nodig om 'n vrugafdrwyng te ondergaan.	X
c) 'n Geregistreerde vroedvrou pleeg 'n misdryf indien sy 'n swangerskap wat voorgevloei het uit verkragting in die dertiende week daarvan beëindig.	Y

Vraag 8	
a) Kunsmatige bevrugting mag regtens slegs op 'n getroude vrou uitgevoer word.	X
b) Die aanwending van rekombinante (DNS-herverbindings-) tegnologie om die geslag van die vrug te kies, word tans as oneties beskou.	X
c) 'n Geneesheer kan nie aan strafbare manslag skuldig becing word weens die veroorsaking van 'n pasiënt se dood nie, tensy hy of sy grof nalatig was.	

Vraag 9	
a) Indien 'n geneesheer die moontlikheid voorsien het dat 'n pasiënt 'n middle, wat hy of sy aan die pasiënt verskaf het, moontlik kan gebruik om selfmoord te pleeg, en hom of haar met sodanige moontlikheid versoen het, kan die geneesheer skuldig bevind word aan moord.	Y
b) Mediese behandeling sonder die ingeligte toestemming van die pasiënt stel <i>prima facie</i> 'n aanranding daar en is onregmatig tensy 'n regverdigingsgrond soos <i>negotiorum gestio</i> of statutêre bevoegdheid aanwesig was.	Y
c) In <i>Buls and Another v Tsatsarolakis</i> 1976 het die hof die beginsel bekragtig dat slegs redelike vaardigheid en voorsorg, en nie die hoogste mate van beroepsvaardigheid nie, die mate van voorsorg is wat van 'n geneesheer vereis word.	Y

Vraag 10	
a) In <i>Pringle v Administrator Transvaal</i> het die hof op grond van die toepassing van die stelreël <i>res ipsa loquitur</i> bevind dat die verweerder nalatig was deur die pasiënt se <i>vena cava superior</i> te skeur.	X
b) Daar word algemeen aanvaar dat een vennoot middellik aanspreeklik is vir die wederregtelike handeling van 'n ander vennoot indien die betrokke daad binne die bestek van die vennootskapsbesigheid val.	Y
c) In <i>Afrox Healthcare Bpk v Strydom</i> 2002 het die Hoogste Hof van Appel te kenne gegee dat 'n vrywaringsbeding moontlik nie as verweer teen groewe nalatigheid gehandhaaf sal word nie, hoewel daar in hierdie saak geen bewering van sodanige grad van nalatigheid was nie.	Y

LCR4802 – October/November 2009

Question 1	
a) A doctor who is an employee of a public hospital may not refuse to attend to a particular type of patient, such as a patient with AIDS.	Y
b) In <i>Christian Lawyers Association of SA and Others v Minister of Health and Others</i> 1998 (4) SA 1113 (T), the court ruled that the Choice of Termination of Pregnancy Act 92 of 1996	Y

was not in conflict with the constitutional right to life.	
c) The right to emergency medical treatment as contained in section 27 of the Constitution implies (inter alia) that nobody who suffers a sudden catastrophe which calls for immediate medical attention should be turned away from a hospital which is able to provide the necessary treatment	Y

Question 2	
a) A person who is not registered as a medical practitioner or intern in terms of the Health Professions Act 56 of 1974 commits a crime if he/she advises any person on such a person's physical state for gain	Y
b) A medical practitioner who wishes to appeal against a finding by a disciplinary committee can only appeal to the High Court.	X
c) When dispensing, a pharmacist must substitute an interchangeable multi-source medicine for the medicine prescribed by the doctor, even if the patient expressly forbids the pharmacist to do so.	X

Question 3	
a) If a person dies under the influence of a general anaesthetic, the medical practitioner may not issue a death certificate before an inquest has taken place.	Y
b) In Van & Lion and Others v Minister of Correctional Services 1997 (2) SACR 50 (C) the court ruled that the state does not owe a higher duty of care to HIV-positive prisoners than to citizens in general	X
c) A doctor who acts contrary to the tacit agreement between himself/herself and the patient, commits a breach of contract and may be denied the right to claim remuneration for his/her services.	Y

Question 4	
a) Sperm obtained from a seventeen-year old may be used for artificial insemination.	X
b) A medical intervention against the patient's will can only be justified if it was necessary in order to protect an overriding interest of the state or society, and not merely on account of its being in the best interest of the patient.	X
c) The National Health Act 61 of 2003, section 7, makes provision for the treatment of a patient without his/her consent where failure to treat the patient might result in a serious risk to public health.	Y

Question 5	
a) In Reath and Another v Mukheiber (1997, unreported) the court awarded damages for the pure economic loss suffered by the plaintiff as a result of a gynaecologist's misrepresentation of the woman having been sterilised.	Y
b) In Friedman v Glicksman 1996 (1) SA 1134 (A) the court held that it would be contrary to public policy to allow a claim based on wrongful birth.	X
c) In the case of wrongful life a claim is brought by or on behalf of an abnormal or disabled child himself/herself.	Y

Question 6	
a) The Human Tissue Act 65 of 1983 places a total ban on the removal of any tissue from the body of a minor for medical and dental purposes such as transplantation.	X
b) The Human Tissue Act 65 of 1983 prohibits the use of a gamete obtained from a habitual criminal for artificial insemination.	Y
c) A person of 18 years or above, who is capable of consenting, may have a sterilisation procedure performed on him/her.	Y

Question 7	
a) A person who is mentally disabled to such an extent that he or she is incapable of fulfilling the parental responsibility associated with giving birth, may be sterilised without his or her	Y

consent.	
b) A doctor who, for the purposes of artificial insemination, negligently uses semen from a man who suffers from a venereal disease, as a consequence of which a defective child is born, faces liability on the basis of wrongful birth.	Y
c) Reproductive cloning of human beings will be prohibited by section 57 of the National Health Act 61 of 2003 when that section comes into operation	Y

Question 8	
a) If a doctor should negligently injure a foetus before birth, and the child is later born but dies as a result of the pre-natal injury, the doctor may possibly be convicted of culpable homicide.	Y
b) In terms of the judgment in Grotjohn 1970 (2) SA 355 (A), a doctor who provides a potentially deadly medicine to a severely depressed patient, knowing that the patient intends to commit suicide by taking an overdose of the medicine, may nevertheless never be convicted of murder.	X
c) A doctor can be convicted of culpable homicide only if it can be proven that he/she was guilty of gross negligence, since ordinary negligence does not constitute a sufficient form of culpability.	Y

Question 9	
a) In Mkwetshana 1965 (2) SA 493 (N) it was held that the appellant-doctor was negligent in administering 20cc of the drug paraldehyde, a deadly overdose, where he had insufficient knowledge and experience of the drug.	Y
b) Medical treatment without the informed consent of the patient <i>prima facie</i> constitutes an assault and will be wrongful unless justified by some other ground of justification, such as <i>negotiorum gestio</i> or statutory authority.	Y
c) In Jansen van Vuuren and Another NNO v Kruger 1993 (4) SA 842 (A) the Appellate Division held that, in the particular circumstances, the doctor was entitled to disclose his patient's HIV positive status to the patient's dentist in order to prevent possible HIV infection of the dentist.	X

Question 10	
a) The standard of care required of a medical practitioner, is the highest possible degree of professional skill, which means that a medical practitioner is negligent if he/she does not act with the highest possible degree of professional skill.	X
b) In Pearce v Fine and Others 1987 (3) SA Practice Management 14 (D), the court found that, even if there had been negligence, the plaintiff had failed to establish, on a balance of probability, that the patient's life would have been saved had he been kept under constant observation and had resuscitation commenced as soon as he displayed symptoms of distress.	Y
c) For purposes of the criminal liability of a medical practitioner for the death of a newborn child, the baby will be deemed to have been born alive if it had breathed.	Y

LCR4802 – May/June 2009

Question 1	
a) Disability is one of the grounds on which discrimination is prohibited in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.	Y
b) The Constitution expressly recognises every person's right to make decisions concerning reproduction.	Y
c) Although the Constitution provides that everyone has the right to have access to health-care services, it is not clear whether this includes reproductive health care.	X

Question 2	
a) The Health Professions Act 56 of 1974 makes provision for disciplinary control by the	Y

Health Professions Council of South Africa to ensure that doctors' fees are reasonable.	
b) The South African Medical and Dental Council (the predecessor of the Health Professions Council of South Africa) made a rule whereby registered specialists may not perform acts which do not belong to their speciality.	Y
c) There is a rule of professional ethics whereby it is improper conduct for a doctor or dentist to perform professional acts for which he or she is inadequately trained and/or insufficiently experienced. (except in an emergency)	Y

Question 3	
a) Any person registering for the first time for a profession listed in the statutory regulations, will be required to perform remunerated medical community service for a period of two years before being entitled to practise the profession in question.	X
b) It is an offence for a person who is not registered as a medical practitioner to advise anyone on his or her physical state for gain.	Y
c) It is an offence for a person who is not registered as a medical practitioner to treat anyone for cancer, even where it is not for gain.	Y

Question 4	
a) In effect, a professional board is the sole repository of the power to decide what is ethical and what is unethical in medical practice.	Y
b) A medical practitioner who has been suspended from practising, may incur criminal liability if he or she practises during the period of his or her suspension.	Y
c) A pharmacist must dispense an ethical medicine (branded medicine) unless the patient has expressly requested a generic substitute.	X

Question 5	
a) A medical practitioner may accept commission from a pharmacist in connection with a prescription given by the medical practitioner.	X
b) An agent of a manufacturer of medicine may supply a medical practitioner with free medicine samples for the treatment of his/her patients.	X
c) A patient who refuses to accept recommended treatment is under a statutory duty to sign a certificate of release of liability.	Y

Question 6	
a) By accepting someone as a patient, a doctor by implication guarantees that the patient will be cured of his disease.	X
b) A doctor who has rendered a service to a member of a medical scheme, must provide the member with an account setting out the details of the service rendered	Y
c) Doctors who practise in "association" conclude an agreement in term of which they share both profits and losses.	X

Question 7	
a) Managed health-care organisations must be formally accredited by the Council for Medical Schemes.	Y
b) The person who alleges that he is not bound by a restraint clause bears the onus of providing that enforcement thereof would be against the public interest.	Y
c) Where a penalty clause is attached to a covenant in restraint of trade, the creditor may not claim damages from the party acting in contravention of the covenant in lieu of the penalty sum, unless the particular expressly so provides.	Y

Question 8	
a) A successful operation performed without the patient's consent, can be considered to conform to the definition of conduct constituting the crime of assault.	Y
b) The National Health Act 61 of 2003 does not authorise the provision of a health service to	Y

a seriously ill person who refuses treatment, even if any delay in the provision of the treatment to the patient might result in his or her death.	
c) The Mental Health Care Act 17 of 2002 provides that, under certain circumstances and subject to certain conditions, an intervention may be provided to a mental health care user without his/her consent and against his/her will	Y

Question 9	
a) The Human Tissue Act 65 of 1983 prohibits a minor from donating blood for purposes of a blood transfusion or the production of a blood product.	X
b) The Human Tissue Act 65 of 1983 does not prohibit the transplanting of a gonad removed from a dead body.	X
c) Genetic manipulation of gametes or zygotes outside the human body is absolutely prohibited by the human Tissue Act 65 of 1983.	Y

Question 10	
a) In <i>S v Nel 1988</i> the Court found that the accused, a general practitioner, has been negligent in various respects, <i>inter alia</i> in failing to call in a specialist obstetrician.	Y
b) Medical practitioners are required to act with the highest possible degree of professional skill.	X
c) <i>Afrox Healthcare v Strydom 2002</i> is authority for the statement that there is no legal duty on a hospital reception clerk to point out to a patient that the admission forms contains an indemnity clause.	Y