

**LCR404U**

( 468828) October/November 2010

**MEDICAL LAW**

Duration 2 Hours

100 Marks

**EXAMINERS**

FIRST

ADV LC COETZEE

SECOND

PROF C VAN DER BIJL

This examination question paper consists of 7 pages plus instructions for the completion of a mark reading sheet

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THE QUESTIONS IN THIS PAPER COUNT A HUNDRED (100) MARKS THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B YOU MUST ANSWER BOTH PARTS A AND B PART A CONSISTS OF TEN (10) MULTIPLE CHOICE QUESTIONS EACH QUESTION COUNTS THREE (3) MARKS, WHICH MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF THIRTY (30) MARKS IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION SCRIPT ITSELF THE QUESTIONS IN PART B COUNT SEVENTY (70) MARKS

**PART A (MULTIPLE CHOICE QUESTIONS)**

IMPORTANT NOTICE THE QUESTIONS IN THIS PART HAVE TO BE ANSWERED ON THE MARK READING SHEET WHICH WILL BE ISSUED WITH YOUR EXAMINATION ANSWER BOOK. YOU HAVE TO READ THE INSTRUCTIONS IN CONNECTION WITH THE USE OF THE MARK READING SHEET CAREFULLY. FAILURE TO DO SO MAY MEAN THAT YOUR ANSWERS CANNOT BE MARKED-BY THE COMPUTER

Ten questions (marked 1-10) follow Each question contains three statements (marked (a)-(c)) Some of the statements are correct and some are incorrect You must decide which of these statements is/are correct. The three statements are followed by five allegations (marked (1)-(5)) Each of them alleges that a certain statement or combination of statements is correct You must decide which allegation accurately reflects the conclusions to which you have come

Also bear in mind that if a composite statement is partly correct and partly incorrect, then the statement as a whole, is incorrect.

**[TURN OVER]**

**Question 1**

- (a) Section 9 of the Constitution expressly prohibits discrimination on the ground of disability
  - (b) Section 27 of the Constitution guarantees everyone the right to have access to, *inter alia*, reproductive health care
  - (c) It is lawful for a medical practitioner to obtain commission from a pharmacist in connection with a prescription given by the medical practitioner
- (1) All the statements above are correct
  - (2) Only statements (a) and (b) are correct
  - (3) Only statements (a) and (c) are correct
  - (4) Only statements (b) and (c) are correct
  - (5) Only statement (a) is correct

**Question 2**

- (a) The Promotion of Access to Information Act 2 of 2000 makes it easier for patients to gain access to *information* contained in his/her medical records
  - (b) The National Health Act 61 of 2003 in section 4(1) empowers the Minister of Health to prescribe conditions subject to which certain categories of persons are eligible for free health services at public health establishments
  - (c) The Health Professions Act 56 of 1974 requires practitioners who claim payment from a patient to furnish the patient with a detailed account within a reasonable period
- (1) All of these statements are correct
  - (2) Only statements (a) and (c) are correct
  - (3) Only statement (c) is correct
  - (4) Only statements (a) and (b) are correct
  - (5) Only statements (b) and (c) are correct

**Question 3**

- (a) A pharmacist is statutorily obliged to inform all patients who visit a pharmacy with a prescription for dispensing, of the benefits of the substitution for a branded (ethical) medicine by an interchangeable multi-source medicine
  - (b) There is no statutory provision compelling a person who refuses to accept recommended treatment to sign a certificate of release of liability
  - (c) A medical practitioner who intends to charge a fee that exceeds that usually charged for certain services, is legally obliged to inform the patient or any person responsible for the latter's maintenance of the fee he intends to charge before rendering those services
- (1) All of these statements are correct
  - (2) Only statements (a) and (b) are correct
  - (3) Only statements (a) and (c) are correct
  - (4) Only statements (b) and (c) are correct
  - (5) Only statement (a) is correct

**Question 4**

- (a) In considering whether a covenant in restraint of trade is against the public interest and therefore unenforceable, the court will have regard to, *inter alia*, the availability of similar, alternative services
  - (b) *S v Kramer* 1987 (1) SA 887 (W) is an example of a case where an anaesthesiologist incurred criminal liability for failing to exercise proper control over a dangerous object after accepting control of it
  - (c) In principle a medical practitioner is legally entitled to treat a patient against his/her will only where it is necessary to protect an overriding social interest
- (1) All the above statements are correct
  - (2) Only statements (a) and (b) are correct
  - (3) Only statements (a) and (c) are correct
  - (4) Only statements (b) and (c) are correct
  - (5) Only statement (b) is correct

**Question 5**

- (a) In *Louwrens v Oldwage* [2006] 1 All SA 197 (SCA) the Supreme Court of Appeal unequivocally confirmed the correctness of the materiality test as laid down in *Castell v De Greef* 1994 (4) SA 408 (C)
  - (b) Therapeutic privilege is accorded express but limited recognition by section 13(3) of the Mental Health Care Act 17 of 2002
  - (c) Where a patient cannot be saved from certain death by any other known means, even a dangerous experiment with little chance of success will be fully justified
- (1) Only statements (a) and (b) are correct
  - (2) Only statements (a) and (c) are correct
  - (3) Only statements (b) and (c) are correct
  - (4) Only statement (b) is correct
  - (5) All of these statements are correct

**Question 6**

- (a) Organs obtained from mentally ill persons may be used for purposes of transplantation
  - (b) Sperm obtained from a habitual criminal may be used for artificial insemination
  - (c) The transplanting of a gonad removed from a dead body which may result in procreation is statutorily prohibited in absolute terms
- (1) None of these statements is correct
  - (2) Only statement (a) is correct
  - (3) Only statements (a) and (c) are correct
  - (4) Only statement (b) is correct
  - (5) Only statement (c) is correct

**Question 7**

- (a) In *Administrator of Natal v Edouard* 1990 (3) SA 581 (A) the Appellate Division confirmed that general damages will not be awarded in an action for wrongful pregnancy based on breach of contract
- (b) In *Raath and Another v Mukheiber* 1999 (3) SA 1065 (SCA) a wrongful pregnancy claim succeeded on the basis that the doctor had made a misrepresentation relating to the sterilisation of the woman
- (c) In a **delictual** action for wrongful pregnancy, the claim for damages is limited only to the situation where the request for sterilisation was made for socio-economic reasons
- (1) All the above statements are correct  
(2) Only statements (a) and (b) are correct  
(3) Only statements (a) and (c) are correct  
(4) Only statements (b) and (c) are correct  
(5) Only statement (a) is correct

**Question 8**

- (a) An abortion may be performed on an eleven-year-old girl during the first 12 weeks of gestation on her request, and the consent of her parents/guardian is not required
- (b) It is an offence for someone who is not a medical practitioner to terminate a pregnancy after the 12<sup>th</sup> week of gestation
- (c) 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
- (1) Only statement (c) is correct  
(2) All of these statements are correct  
(3) Only statements (a) and (c) are correct  
(4) Only statements (a) and (b) are correct  
(5) Only statements (b) and (c) are correct

**Question 9**

- (a) 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 possibly be convicted of murder
- (b) 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
- (c) Medical treatment without the informed consent of the patient *prima facie* constitutes an assault and will be wrongful unless justified by some other ground of justification, such as *negotiorum gestio* or statutory authority
- (1) All the above statements are correct  
(2) Only statements (a) and (b) are correct  
(3) Only statements (a) and (c) are correct  
(4) Only statements (b) and (c) are correct  
(5) Only statement (c) is correct

**Question 10**

- (a) In *Pearce v Fine and Others* 1987 (3) SA Practice Management 14 (D), the court found that the plaintiff had established, 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
- (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
- (c) 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
- (1) All the above statements are correct  
(2) Only statement (b) is correct  
(3) Only statements (a) and (c) are correct  
(4) Only statements (a) and (b) are correct  
(5) Only statements (b) and (c) are correct

**[30]**

## SECTION B

THIS PART CONSISTS OF THREE (3) QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUBQUESTIONS. YOU MUST ANSWER ALL THREE (3) QUESTIONS. SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE APPLICABLE. IN DECIDING UPON THE LENGTH OF YOUR ANSWERS YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION.

## Question 1

- (a) Discuss the disciplinary powers of professional boards (Include in your discussion the penalties that a professional board may impose upon finding a practitioner guilty of unprofessional conduct ) (10)
- (b) A number of young general practitioners would like to practice jointly They are not sure whether they should practice in partnership or in association Advise them (5)
- (c) The National Health Act 61 of 2003 provides in section 7 for the treatment of a patient without consent Set out the contents of the provisions of this section (Please note that a discussion of substituted consent is not required ) (5)
- [20]**

## Question 2

- (a) Define the concept of a "material risk" for purposes of the doctrine of informed consent as laid down in *Castell v De Greef* 1994 (4) SA 408 (C) (4)
- (b) Who may, in terms of section 26 of the Mental Health Care Act 17 of 2002, apply in writing to the head of a health establishment for the provision of an intervention to a mental health care user without her (the mental health care user's) consent? (5)
- (c) (i) Define passive euthanasia (1)  
(ii) Discuss *Clarke v Hurst NO and Others* 1992 (4) SA 630 (D) (8)
- (d) Name three possible applications of human cloning, and state what the National Health Act 61 of 2003 provides regarding human cloning (4)
- (e) Briefly set out the facts in *Van Wyk v Lewis* 1924 AD 438 and then answer (i) and (ii) below Discuss the importance of *Van Wyk v Lewis* regarding the question whether
- (i) *res ipsa loquitur* finds application in the South African medical law  
(ii) the so-called locality rule finds application in the South African medical law (8)
- [30]**

## Question 3

- (a) What is the role of the Constitution, the National Health Act 61 of 2003, and the common law in enforcing the medical practitioner's duty to keep information regarding patients confidential? (In regard to the common law, you need only mention the name of the relevant action. No discussion of case law is required.) (6)
- (b) (i) Upon admission to a hospital, a patient signs a clause indemnifying the **hospital** from liability for any damage incurred in the hospital, whether as a result of the negligence of the hospital or its staff or not. Is it a condition for the enforceability of the clause that the admission clerk should have pointed it out to the patient in advance? (3)
- (ii) Is a clause indemnifying a **hospital** from liability for **gross** negligence enforceable? (2)
- (iii) Has any case as yet served before our courts in which the court had to decide on the enforceability of a clause indemnifying a **medical practitioner** against liability for damages that a patient incurs as a result of the negligence of the medical practitioner? (1)
- (c) Distinguish between wrongful birth and wrongful life, and discuss with reference to case law the question whether any/both of these two causes of action enjoy(s) recognition in South African law (8)
- [20]

TOTAL: [100]

**PART 1 (GENERAL/ALGEMEEN) DEEL 1**

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For use by examination invigilator  
 Vir gebruik deur eksamenopsiener

**IMPORTANT**

**BELANGRIK**

- USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- MARK LIKE THIS
- CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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**PART 2 (ANSWERS/ANTWOORDE) DEEL 2**

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*Specimen only*



## MARK READING SHEET INSTRUCTIONS

Your mark reading sheet is marked by computer and should therefore be filled in thoroughly and correctly

**USE ONLY AN HB PENCIL TO COMPLETE YOUR MARK READING SHEET**

*PLEASE DO NOT FOLD OR DAMAGE YOUR MARK READING SHEET*

Consult the illustration of a mark reading sheet on the reverse of this page and follow the instructions step by step when working on your sheet

Instruction numbers ❶ to ❿ refer to spaces on your mark reading sheet which you should fill in as follows

- ❶ Write your paper code in these eight squares for instance

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- ❷ The paper number pertains only to first-level courses consisting of two papers

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- ❸ Fill in your initials and surname
- ❹ Fill in the date of the examination
- ❺ Fill in the name of the examination centre
- ❻ WRITE the digits of your student number HORIZONTALLY (from left to right). Begin by filling in the first digit of your student number in the first square on the left, then fill in the other digits, each one in a separate square
- ❼ In each vertical column mark the digit that corresponds to the digit in your student number as follows [-]
- ❽ WRITE your unique paper number HORIZONTALLY  
NB Your unique paper number appears at the top of your examination paper and consists only of digits (e.g. 403326)
- ❾ In each vertical column mark the digit that corresponds to the digit number in your unique paper number as follows [-]
- ❿ Question numbers 1 to 140 indicate corresponding question numbers in your examination paper. The five spaces with digits 1 to 5 next to each question number indicate an alternative answer to each question. The spaces of which the number correspond to the answer you have chosen for each question and should be marked as follows [-]
- ◆ For official use by the invigilator. Do not fill in any information here