

QUESTION 1 (15% of the exam total) – limit 300 words

From our class discussions of medical malpractice, please explain how medical malpractice tort reform may or may not significantly impact the cost of health care generally, and why this is the case.

QUESTION 2 (5% of the exam total) – limit 150 words

Briefly explain what the “law and economics” theory underlying tort liability stands for, and how it is different from corrective justice.

QUESTION 4 (80% of the exam total) – limit 2500 words

Please read the attached news stories carefully. Anna Crandall (Brian Crandall’s wife) has set up a short meeting with you, Karra Porter, to discuss the various tort claims she could bring based on the events described in the news articles below. First, please list the universe of tort claims that could be brought by Anna (a bullet point list is fine). Then, time permitting, you should advise Anna of the relative strengths and weaknesses of each claim, and inform her of whether she is likely to prevail on each. Organize your answer by tort claim. Keep in mind that this news story does not cover every fact that you would like to know in advising Ms. Crandall. When necessary, please make it clear which questions you would need to ask Anna before fully evaluating each tort claim. Please do not discuss any tort that we did not discuss in class. With limited time, you should not do any online research to learn more about this particular case. You could go far beyond this word limit, but your client does not have all day; therefore, you should use your judgment and prioritize your time on the tort claims under which you think Anna is most likely to recover.

Best of luck, and I hope you have a terrific winter break.

The Salt Lake Tribune

<http://www.sltrib.com>

Cop who deployed Taser on Brian Cardall: He came at me, 'so I [stunned] him'

Statement » County attorney said the officer was justified in using force.

By Melinda Rogers
The Salt Lake Tribune

Salt Lake Tribune

Updated:11/19/2009 07:20:29 PM MST

The Salt Lake Tribune

<http://www.sltrib.com>

Brian Cardall had already been shocked once with a Taser.

Sitting naked on the side of a southern Utah highway, he apparently wasn't registering a string of commands thrown at him by Hurricane police Officer Ken Thompson.

Thompson wanted Cardall to "stay down on the ground." But the 32-year-old man, who was experiencing a bipolar episode, started to get up.

So Thompson did what he thought was right. "I pulled the trigger again," Thompson said in a transcript of his interview with investigators following Cardall's June 9 death.

Washington County Attorney Brock Belnap included the interview transcript with a statement Thursday in which he announced Thompson was justified in using force on Cardall.

The man was running and agitated on State Road 59 near Hurricane when he ignored officers' commands to stop.

Belnap's statement said Thompson's decision to twice deploy a Taser on Cardall was legal under Utah law and the Hurricane Police Department's use of force policy.

He "responded to a tense, uncertain and rapidly unfolding situation in a manner consistent with his training," Belnap said. "He did not intend, believe or foresee [anything that] would seriously injure or cause the death of Brian Cardall."

Belnap reviewed findings by the Washington County Critical Incident Task Force formed to independently collect evidence in the case. He also sought advice from the Utah Attorney General's Office before deciding whether to prosecute Thompson.

He called Cardall's death a tragic event that prompted people to "question what happened and search for alternatives that could have avoided the tragedy."

Thompson's description of the tragedy that unfolded began when he and Hurricane Police Chief Lynn Excell told a naked Cardall to get to the ground and "tried to get him to comply so we could take him into custody and figure out what was going on and he just wouldn't comply," according to the interview transcript.

"He'd kind of take a couple of steps toward the chief, take a couple of steps back off the road towards the car and his wife and then a couple of steps toward me," Thompson said.

"He told me at one point, 'This is a hostage situation -- don't shoot him.' And he was looking at the chief like I was going to shoot the chief."

Thompson told investigators Cardall wouldn't comply with his commands and that Cardall, who was unarmed, came at him.

"So I [stunned] him," Thompson said. "And he went down kind of went off to my left away from the road. And then he tried to get back up and so I [stunned] him again."

Thompson said Anna Cardall was telling her husband to "get down on the ground" and "do what they say."

He described the scene with Cardall moving back and forth between his wife, the chief and himself as "chaos." Thompson said he chose to deploy the Taser on Cardall when the man came at him in what he perceived was a more direct manner. "He was coming right at me ... right before I [stunned] him he went from you know -- 10,15 or 20 feet to 5 feet just like that."

Thompson said he understood a Taser to be a "less than lethal" weapon that could "help bring an uncontrollable person under control, without, you know, without killing them."

The transcript also includes an interview with Excell, who verified Thompson's depiction of events.

Excell and attorney Peter Stirba, who represents Hurricane police, on Thursday called the investigation into Thompson's actions "thorough." They are pleased Thompson was vindicated, as they believed he would be based on the evidence.

They called Cardall's death a "tragedy" and expressed their condolences.

"I want everybody to know that I was there. I know what happened at that scene. The evidence in this case clearly shows that the officers were justified and that their actions were reasonable under that circumstance," Excell said.

"This is a tragedy ... this affected a lot of people, not only the Cardall family, but also the officers involved and their families as well."

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The Salt Lake Tribune

<http://www.sltrib.com>

Autopsy links Taser to Cardall's death

Coroner cites being stunned near the heart as a key factor.

By Melinda Rogers
The Salt Lake Tribune

Salt Lake Tribune

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The Salt Lake Tribune

<http://www.sltrib.com>

A Taser that twice shocked Brian Cardall contributed to or caused heart irregularities in the 32-year-old man that led to his death on the side of a southern Utah highway in June, the Utah Medical Examiner's Office has ruled.

Deputy Chief Medical Examiner Erik Christensen cited "ventricular fibrillation following conducted energy weapon deployment during a manic episode with psychotic features" as Cardall's cause of death.

The Salt Lake Tribune obtained a copy of the autopsy report Thursday from the Cardalls' attorney. The family chose to release it after Washington County Attorney Brock Belnap said he will not prosecute the officer who deployed a Taser on Cardall.

Belnap said Hurricane police Officer Ken Thompson legally used a Taser on Cardall as the man suffered a bipolar manic episode June 9.

The Cardall family disagrees with Belnap's decision, said Karra Porter, who is advising the Cardalls on their legal options.

Christensen's report states that prongs from a Taser a Hurricane police officer deployed struck Cardall over his heart. While Christensen acknowledged other factors could have contributed to Cardall's death, he pointed out factors that indicate a Taser electrocuted a naked, unarmed Cardall.

"While it is generally acknowledged that [Taser] use is safe and represents an extremely low risk due to the electrical activity of the weapon, the circumstances in this case represent a combination of the factors that are believed to increase the risk of a potential electrical death," Christensen's report reads.

"These include the placement of the barbs over the cardiac axis, the penetration of the barbs deeply into a thin chest wall directly over the heart, absence of intervening clothing and more than one cycle of electrical stimulation.

"Additionally, the initial cardiac rhythm of ventricular fibrillation is consistent with findings seen in cases of electrocution."

Christensen's conclusion that the X-26 Taser, made by Scottsdale, Ariz.-based Taser International, played a significant role in Cardall's death is bold.

While Taser International has claimed its products are not risk free, it has publicly stated its products do not cause cardiac arrest. It has filed numerous lawsuits against medical examiners who have cited Tasers as a cause of death.

Christensen noted that because Cardall, a graduate student at Northern Arizona University, was in a manic state, he was at risk for a heart attack before the Taser struck him.

Christensen said Cardall did not die from excited delirium, a syndrome often cited as a cause of death when someone is agitated or delirious and then dies after forcefully being taken into custody.

Thompson twice deployed a Taser on Cardall on the side of State Road 59 near Hurricane after Anna Cardall called 911 to report her husband was behaving erratically.

Thompson, one of multiple officers on the scene, waited 42 seconds after arriving before he deployed a Taser on a manic and confused Cardall, according to 911 recordings.

The 156-pound Cardall is heard screaming for about five seconds after Thompson first deploys a Taser on him. After a two-second pause, Thompson deploys the Taser on Cardall again. He says in the recordings Cardall had tried to get up.

Mental health history

Christensen's report details Cardall's struggle with bipolar disorder, which surfaced with depression in high school. Doctors diagnosed him as bipolar in 2005 after a manic episode that required brief hospitalization.

Cardall suffered manic episodes in 2006 and 2007, which he believed was due to a lack of sleep and stress, the report states. Cardall had been on and off medication for his disorder; he had scaled back medication in January.

Christensen wrote that Seroquel, the medication Cardall took for bipolar disorder, likely didn't contribute to his reaction after being shocked. He detected trace amounts of marijuana in Cardall's system, but Cardall tested negative for other illicit drugs.

Cardall's family told Christensen that Cardall occasionally used marijuana, according to the report.

Taser International had not yet seen Christensen's report, company spokesman Steve Tuttle said.

"We have not been provided a copy of the autopsy for our medical advisory board to review the details of this tragic incident. Our hearts continue to go out to the Cardall family during this difficult time," Tuttle told *The Tribune*.

Peter Stirba, a Salt Lake City attorney representing the Hurricane Police Department, said only that Belnap's decision vindicates Thompson and was correct based on evidence.

Possible lawsuit?

The Cardall family is disappointed Belnap didn't hand off the case to another county, said Porter, of Salt Lake City-based law firm Christensen and Jensen.

"It would be awkward for a county attorney in a relatively rural area to prosecute people he works with every day," she said.

Utah law, however, says county attorneys handle use of force investigations.

Any lawsuit filed by the Cardall family will face fierce contention from Taser International, which has only lost one case in the 97 lawsuits filed against the company since its inception in 1993, Tuttle said.

But the tide is beginning to turn, said California attorney Peter Williamson, who, along with co-counsel John Burton, recently won the first suit against Taser International.

A federal judge in the U.S. District Court for Northern California ordered Taser to pay \$1.4 million in attorney fees to Williamson and Burton, who represented the family of Robert Heston, who was killed in 2005 after he was shocked multiple times while high on methamphetamine.

The 40-year-old man's father had called police for help to restrain his combative son. Five officers shocked Heston 25 times.

Judge James Ware ordered the company to pay attorney fees following a decision by a jury to award Heston's family \$153,000 in damages. The jury found that Taser International didn't properly educate the police who stunned Heston about cardiac risks associated with the weapon.

In an explanation of why he awarded attorneys fees in the case, Ware wrote: "The notoriety of ... the first-of-its-kind verdict, in some circumstances, has prompted a number of Taser customers and prospective customers to

consider the risk of repeated and prolonged Taser electric charges on individuals in an excited or delirious state."

Williamson said the company considers the verdict in the Heston case "a fluke."

"The only way we can get Taser to change its warnings and training is to sue them enough times that they finally capitulate," said Williamson, who believes the Cardalls have a strong case against Taser.

Changing targets

In an Oct. 12 bulletin, Taser told police not to aim a Taser at a suspect's chest. Shooting the device lower will incapacitate a suspect more effectively, it said. The bulletin notes police still can shoot at a chest lacking a better option.

Taser critics say the bulletin is the company's first admission that the weapons pose a cardiac risk - an allegation the company denies. The company based its decision on best practices research and will help police avoid lawsuits from those who claim the devices cause injuries and other health problems, Taser's Rick Guilbault said in the bulletin.

Taser's bulletin states the risk of cardiac arrest when a Taser is deployed on a suspect is low, but notes reactions can't be predicted, particularly when other underlying medical conditions or drugs are added to the equation.

"We have not stated that Taser causes [cardiac] events in this bulletin, only that the refined target zones avoid any potential controversy on this topic," Tuttle said.

He added changes "specifically had nothing to do with the Cardall incident."

But Williamson is skeptical.

"It's interesting to note within the last 30 days, Taser has issued its [new training bulletin]," Williamson said, adding that in addition to the Cardall case, Taser is dealing with another pending California trial where a man died after being shocked in 2004.

Taser as a cause of death

Medical examiners nationwide have been sued for citing Tasers as a cause of death.

Last year, an Ohio judge ordered a medical examiner to remove Taser's name from three autopsies. The Summit County Medical Examiner's Office "offered no medical, scientific or electrical evidence to justify finding the stun gun was a factor in the deaths of two men in 2005 and another in 2006," *The Arizona Republic* reported in May 2008. Taser and the City of Akron had sued the medical examiner, claiming the examiners didn't have the proper education to decide whether Tasers contributed to the death.

The county's chief medical examiner contested the ruling, according to *The Arizona Republic*.

Taser also sued Indiana coroner Roland Kohr, who found the weapon contributed to a man's death in 2004.

Taser International dismisses what it calls misconceptions that the company targets medical examiners who make unflattering reports.

"This is simply not true," Tuttle said. "In the two instances that Taser has brought legal action regarding medical examiners, the lawsuits were to correct scientifically baseless opinions that resulted in very negative consequences to numerous entities and people."

Williamson disagrees. He said Taser intimidates medical examiners who find the stun guns lead to death.

"Very few medical examiners will stick their necks out on the line," he said.

Excited delirium theory nixed

Christensen's finding that Cardall did not die of excited delirium in Cardall is noteworthy.

Speculation that the controversial syndrome killed Cardall has been widespread among law enforcement since he died.

In a letter to the editor *The Tribune* published in June, University of Minnesota biomedical engineering professor Mark Kroll suggested excited delirium killed Cardall.

Kroll, a member of Taser's scientific and medical advisory board, wrote that: "Excited delirium is a widely accepted entity in forensic pathology and is cited by medical examiners to explain the sudden in-custody deaths of individuals who are combative and in a highly agitated state."

"The fundamentals of an excited delirium death are not that difficult to understand," Kroll wrote. "Our bodies have limits to exertion... If these limits are sufficiently exceeded, we will die."

Christensen's report states that Cardall displayed some symptoms of excited delirium, but he did not show signs of hyperthermia, a condition where the body produces more heat than it can expend. He wasn't involved in a physical struggle and didn't show "feats of superhuman strength," which is common in excited delirium cases.

"His initial cardiac rhythm is also different from the usual rhythm in cases of [excited delirium]," the report states.

Porter said Christensen's findings support the Cardall family's efforts to expose Brian Cardall's mistreatment. The family may file a lawsuit so that "the full truth emerges regarding Brian's death."

"They also want to feel reassured that steps are being taken to prevent other senseless deaths in the future," she said.

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Brian Cardall Web site

Learn more about Brian Cardall's life at www.briancardall.com

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