Multiple Choice Questions
Answer Key

1. A
2. D
3. C
4. E
5. C
6. B
7. C
8. D
9. D
10. E

Essay Question

As we discussed, there is no set template or sole right answer to this question. Your answer instead should seek to cogently identify the key issues needed to provide the analysis requested by the exam. A brilliantly deep, but narrow, response that misses most of the issues will fare worse than a broader answer that touches on most of the issues with less depth.

With that in mind, here are the key issues that we discussed in our review session:

I. Threshold: Ability to Bring Lawsuit
   a. Does the Controlled Substances Review Act have a judicial review provision? If not, will Administrative Procedure Act apply?
   b. What’s the final agency action here? If interpretive rule, do any Administrative Procedure Act exemptions apply?

II. State Farm procedural issues
   a. Lays out the baseline requirements for any agency action
   b. Presumption of reviewability; hard look doctrine; contemporaneous record, rational relationship between record, analysis and conclusions reached.

III. For binding statutory interpretive effect, must weigh Mead factors (power allocated by Congress for agency to speak with legally binding effect on ambiguous aspects of statute, and did agency effectively use that procedure here)
IV. If agency had power to issue such binding interpretations under *Mead* and actually used it, then *Chevron* framework applies.

a. Step One – did Congress speak clearly to the specific issue at hand? Possible statutory interpretive tools for Controlled Substances Act language at issue here ("legitimate medical practice") could include plain language, dictionary definitions of terms, *noscitur* (interpret "medical" with "usual course of professional practice"), *Bob Jones* argument that Congress meant to use open-ended terms that would reflect evolution in norms, rule of lenity, constitutional avoidance canon, and federalism clear statement principle.

b. Step Two – if not, did agency reach a reasonable interpretation?

V. Even if agency does not get *Chevron* deference, must still review its interpretation to see if it gets *Skidmore* weight.

a. Thoroughness, consistency, validity – "the power to persuade"

b. Court may take note of agency's interpretation, but the court makes the ultimate decision on how to interpret the statute.

c. Issues under *Skidmore*: DOJ had issued inconsistent interpretations; the interpretive ruling lacked any thoroughness or supporting analysis; Congress split the authority to issue binding interpretations between DOJ and Health & Human Services, and DOJ has to defer to HHS interpretations on matters of medical and scientific matters.

VI. *Auer* issue here? No.

Please note that this list includes the major issues; you may have spotted additional facts and issues worth mentioning as well. Also, this answer is not a template for all statutory interpretive questions – make sure that this approach fits the facts and agency procedure laid out in the final exam.