

Minimizing The Risk Of Malpractice Lawsuits From Providing Patient Care
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DISCLAIMER

Every attempt has been made to ensure that the content of this presentation is accurate and relevant. However, it is possible that the circumstances of your situation may require a different approach or more tailored advice. Please consult with your institution's risk management department and seek the assistance of an attorney to evaluate your specific circumstance.

In Illinois, you may reach out to the Illinois State Bar Association's Illinois Lawyer Finder at (800) 922-8757.

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OVERVIEW

- Risks of Medical Care
- Overview of Medical Malpractice
- Continued Education and Training
- Documentation
- Communication

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Risks of Medical Care	<p>Risks</p> <ul style="list-style-type: none">• Medical care carries risks of poor outcome• No guarantee medical care will fix/cure ailment• Medical errors due to actions or inactions by healthcare professionals, systematic failures, or a combination of factors• Medical errors third leading cause of death in the United States with about 250,000 deaths each year <p>Goal-No preventable harm to patients</p>
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Overview Of Medical Malpractice	<p>Who can sue?</p> <ul style="list-style-type: none">• Anyone with the required filing fee or a fee waiver <p>Why do patients sue?</p> <ul style="list-style-type: none">• Negative Outcome, Negative Experience, Poor Communication, \$\$\$\$\$\$ <p>Allegations vs. Liability</p> <ul style="list-style-type: none">• Complaint is just a statement of what the patient claims are• A judgment should be a decision on the merits
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Overview Of Medical Malpractice	<p>Insurance</p> <ul style="list-style-type: none">• Do you have any?• Does your employer have insurance that covers you?• Does it matter?• YESSSS!!
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**OVERVIEW OF MEDICAL MALPRACTICE
COURT PAPERS ARE HERE**

What happens if you receive court papers related to a lawsuit?

- Contact Risk Management
- Contact your insurance carrier
 - You might be entitled to representation at no cost
- Contact your lawyer immediately

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**OVERVIEW OF MEDICAL MALPRACTICE
COURT PAPERS ARE HERE**

What you should not do

- Ignore court papers
- Contact the patient
- Contact the patient's attorney
- Access the patient's chart

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**OVERVIEW OF MEDICAL MALPRACTICE
PROFESSIONAL NEGLIGENCE**

Healthcare malpractice is a form of professional negligence, which consists of four elements:

1. duty
2. breach of duty
3. causation **and**
4. damages

The patient has the obligation/burden to prove her case, each and every element

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**OVERVIEW OF MEDICAL MALPRACTICE
DUTY, BREACH, CAUSATION AND DAMAGES**

1 – Duty
 •Is there a professional relationship between the healthcare provider and the patient?
 •Telehealth
 •Curb side consults
 •Family/Friends
 •Careful with what you do and say!

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**OVERVIEW OF MEDICAL MALPRACTICE
DUTY, BREACH, CAUSATION AND DAMAGES**

2 – Breach
 •Did the healthcare provider violate the standard of care?
 •Standard of care
 •Not perfection
 •Not what a majority of nurses would do
 •Clinical judgment
 •Need expert testimony
 •Negative outcome does not necessarily mean a violation of standard of care-No Monday morning quarterbacking

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**OVERVIEW OF MEDICAL MALPRACTICE
DUTY, BREACH, CAUSATION AND DAMAGES CONT.**

3 – Causation
 •Did the healthcare provider's actions or failure to act cause an injury?
 •Need expert testimony

4 – Damages
 •Was the patient harmed?
 •Most healthcare providers are not at risk of losing personal assets, but it can happen.

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WHAT CAN YOU DO TO MINIMIZE YOUR RISK OF BEING INVOLVED IN A MALPRACTICE LAWSUIT?

CDC

1. **C**ontinuing Education
2. **D**ocument
3. **C**ommunicate

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CONTINUED EDUCATION

You need CE for RN re-licensure so go to something you will use! *(like this presentation)*

*Implicit bias, diagnosis, treatment and care of Alzheimer's disease, along with other dementia types CE requirements begins in 2024.

If you don't know, ask

Share your experiences

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DOCUMENTATION

Education vs. Practice vs. Litigation

- Do you know the difference?

Electronic Medical Records

- Got Data?
- Audit Trail

Is there a policy?

- What is it?
- Has it been updated?

Changing records

- Who would do that?

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DOCUMENTATION

Education vs. Practice vs. Litigation

- If it wasn't documented, it wasn't done. Really?
- Practical realities of patient care
 - Time and resources
- Most healthcare practitioners don't document for litigation
 - I never thought a lawsuit was coming from the patient's care

Reasons you document

- Prevent medication errors
- Communicate with other healthcare providers
- A reference point of a patient's condition at a specific point in time

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DOCUMENTATION

Electronic Medical Records

- Data, Data, and Metadata

Audit Trail

- Who accessed the patient's chart? When? What did they do?
- Access the patient's records only when you need to provide patient care.

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DOCUMENTATION

Records Policies

- Review them, update them, know them
- Cloning
- Default entries

Changing the records

- Don't, under any circumstances, alter, correct, delete, or make additional or explanatory comments in the patient's health record or in any other document or file without discussing the matter with risk management, especially after an adverse event.
- Addendums or late entries might be okay depending on the circumstance.
- Get it right the first time, if you can

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DOCUMENTATION

Dictation

- Review and edit.

Dos

- Use proper notations to prevent misunderstandings about the patient's care
- Use appropriate terminology and medical abbreviations to help prevent confusion and errors
- Timely complete entries in the patient's chart (same day preferred)
- Document patient non-compliance AND actions taken to address non-compliance

Don'ts

- Write negative, judgmental, or subjective comments about patients and their families

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COMMUNICATION

Can we just talk?
Should we?
To whom?
What should I say?

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COMMUNICATION

*Communication is key to provision of health care services

- Tell the physician and tell him/her often
- Change in condition/What can you do about it?
- Tell the patient
- About what you are doing and why you are doing it?
- Follow up on test results

***How you communicate matters**

- Text messages on your personal devices about patients (Oh No!!)
- HIPAA compliance? Discovery? Electronic communications?

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COMMUNICATION CONTINUED

Better safe than sorry-Send the patient to the ER

- Phone triage, tele-health or even if you are stopped on your way to the store
- If ever in doubt send the patient out (to ER)
- Minor delays can have disastrous consequences

Be careful what you say

- If a patient asks a question that is better for the physician let the physician handle it
- What you know vs. what you think?
 - Speculation

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COMMUNICATION

Be careful who you talk to

"You have the right to remain silent. Anything you say can and will be used against you in a court of law..."

- Consult Risk Management
- Seek legal help
- Don't go it alone

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TAKE-A-WAYS

CDC

1. **C**ontinuing Education
2. **D**ocument
3. **C**ommunicate

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QUESTIONS

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