

LEGAL ASPECTS OF INFECTION PREVENTION

Statewide Program of Infection Control and Epidemiology

April 24, 2024

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CRIMINAL PROCEEDING

TWO ADVERSARIAL PARTIES:

Criminal Defendant: The defendant commits the crime.

The State of North Carolina/Prosecutor: The prosecutor represents the state and seeks to prove that the defendant committed the crime.

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CRIMINAL PROCEEDING STANDARD OF PROOF:



The defendant must be found guilty **"beyond a reasonable doubt."**

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CIVIL PROCEEDING

An action brought to enforce, redress or protect private rights.

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CIVIL PROCEEDING

Two Adversarial Parties:

□ **Plaintiff**: The plaintiff is the injured or damaged party. The plaintiff initiates the lawsuit by filing a **complaint** setting out allegations and a claim for damages within an appropriate **statute of limitations period**.

□ **Defendant**: The defendant is the party "allegedly" responsible for causing the plaintiff's injury or damage.

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 21 CVS 123
JOHN DOE, Plaintiff,	COMPLAINT
vs. LONG TERM CARE FACILITY, Defendant.	
NOW COMES Plaintiff John Doe, complainant of Defendant Long Term Care Facility, alleges and says as follows:	
1. Plaintiff John Doe is a citizen and resident of Wake County, North Carolina.	
2. Defendant Long Term Care Facility is a limited liability company duly organized and existing under the laws of the State of North Carolina.	
3. This Court has jurisdiction over this cause of action and personal jurisdiction over Defendant.	
4. Venue for this case is proper.	
5. At all times relevant herein, Defendant Long Term Care Facility was an Adult Care Home licensed and regulated by the State of North Carolina pursuant to North Carolina General Statutes 131D, as well as Subchapter 12D of the Rules for the Licensing of Adult Care Homes and the rules promulgated under HANAC Subchapter 11F.	
6. At all times relevant herein, Defendant Long Term Care Facility owed a duty to Plaintiff John Doe to use reasonable care for his safety while he resided at the facility.	

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CIVIL PROCEEDING

STANDARD OF PROOF:

The defendant must be found guilty by the greater weight of the evidence or by the preponderance of the evidence.



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CIVIL PROCEEDING

Statutes of Limitations:

The statutory time period within which a lawsuit must be filed or within which certain rights must be enforced or the claim will be barred.

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COMMON STATUTORY PERIODS OF LIMITATION- NC

- Wrongful death action—**2 years**
- Action involving minor— “before the minor attains the **full age of 10 years.**”
- Action involving retained foreign body—**1 year** after discovery, but not more than **10 years** from the last act of the defendant
- Most other actions—**3 years**

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APPLICATION OF STATUTES OF LIMITATION

- Patient “X” gets a medication overdose while in the hospital and **dies**.
- The heirs of Patient “X” have **two years** within which they may file a “wrongful death” claim in Superior Court.

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APPLICATION OF STATUTES OF LIMITATION

- Patient “X” is a minor child and **does not die** from the medication overdose, but lost all of her hair as a result.
- Patient “X” has until **age 10 years** to make a claim.

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APPLICATION OF STATUTES OF LIMITATION

- Patient “X” is an adult and **does not die** from the overdose.
- Patient “X” had an extended hospital stay due to the overdose. Patient “X” has **3 years** to make a claim for damages.

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APPLICATION OF STATUTES OF LIMITATION

- Patient “X” had abdominal surgery on **1-1-95**.
- On **1-1-99**, Patient “X” has a second surgery to remove an abdominal mass. The mass was found to be a blue surgical towel from a prior surgery.
- Patient “X” has **1 year after the date of discovery** of the foreign object to make a claim.

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Statutes of Limitation

Claims:	NC	SC	TN	VA	OH
Personal Injury	3 yrs	3 yrs	1 yr	2 yrs	2 yrs
Wrongful Death	2 yrs	3 yrs	1 yr	2 yrs	2 yrs
Medical Malpractice	3 yrs	3yrs	1 yr	2 yrs	6 yrs

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Overview of the Litigation Process

- Plaintiff files a Complaint.
- Defendant files an Answer.
- The parties engage in written and oral “discovery”.
 - Interrogatories, Requests for Production of Documents, Admissions etc.
 - Depositions
- Court-ordered mediation
- Trial

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MEDICAL MALPRACTICE

“Alleged” medical malpractice or medical negligence is the area of civil litigation most likely to affect health care personnel.

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“Alleged” Medical Malpractice

Negligence is the predominate theory of liability.



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WHAT IS NEGLIGENCE?

The failure to use such care as a reasonably prudent and careful person would use under the same or similar circumstances.

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HOW DOES THE PLAINTIFF PROVE NEGLIGENCE?

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4 ELEMENTS OF NEGLIGENCE

- Duty
- Breach of duty
- Causation (proximate cause)
- Damage

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DUTY

There exists a duty on the part of the defendant to conform to specific **standards of practice** or conduct for the protection of the plaintiff against an unreasonable risk of injury.

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DUTY

NC Pattern Jury Instructions:

Every health care provider must use **best judgment** in patient care and treatment use **reasonable care and diligence** and provide health care in accordance with the **standards practice among members of the same health care profession with similar training and experience situated in the same or similar communities**

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BREACH OF DUTY

1. The failure to conform to specific **standards of practice.**
2. The failure to use your **best judgment** in care and treatment of the patient.
3. The failure to provide care in a **reasonable and diligent** manner.

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WHAT ARE "STANDARDS OF PRACTICE"?

(Often referred to as "**standards of care**")

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In any medical malpractice action as defined in G.S. 90-21.11(2)(a), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the **standards of practice** among members of the

1. **same health care profession with similar training and experience**
2. **situated in the same or similar communities**
3. **under the same or similar circumstances**

at the time at the time of the alleged act and giving rise to the cause of action.

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FROM WHERE DO THESE "STANDARDS OF PRACTICE" ORIGINATE?

Regulatory Agencies:

JCAHO
OSHA

National Guidelines or Recommendations:

CDC

Professional Associations:

APIC, AORN

• Hospital Policies and Procedures

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Facility Policies and Procedures are GUIDELINES!!

(If policies are not followed, then facility staff must document why policies are not followed.)



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CAUSATION

The breach of the duty by the defendant must **proximately cause** the plaintiff's injury.



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DAMAGE

There must be **damage** to the plaintiff's **person or property** to recover for the defendant's negligence.



There can be a breach of duty by the defendant, **but if there's no damage, then there is no negligence.**

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Contributory Negligence Prevents Recovery by the Plaintiff



- NC is a contributory negligence jurisdiction

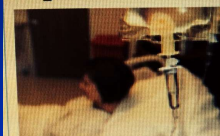
Our Supreme Court states, "a patient has an active responsibility for his own care and well-being"

- "failure to keep appointments and to report symptoms constitutes sufficient evidence"

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EXAMPLES OF INFECTION CONTROL LIABILITY

Nine Dead from Infected IV Feeding Bags



Birmingham, AL: Investigators working with the Centers for Disease Control and Prevention (CDC) in Atlanta are working to determine what might have been the source of an **infection** passed along to 19 patients fed intravenously in six Alabama hospitals [READ MORE]

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EXAMPLES OF HOW THE ICP COULD BREACH THE ACCEPTED STANDARDS OF PRACTICE

- By recommending that the hospital use an outdated or inappropriate disinfection or sterilization process for disinfecting and sterilizing various hospital equipment.
- By failing to have a policy for IV tubing changes when there is documented scientific literature to demonstrate that tubing should be changed every 48 to 72 hours.

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EXAMPLES OF HOW THE ICP COULD BREACH THE ACCEPTED STANDARDS OF PRACTICE

- By failing to correctly isolate patients.
- Confidentiality issues, HIPAA.
- Outbreak investigation and proper precautions and isolation, e.g. failure to recognize pattern of problems in a hospital unit thus delaying appropriate precautions and isolation.

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EXAMPLES OF INFECTION CONTROL LIABILITY

Exposure to Contagious Patients

- Hospital licensure regulations in most states require isolation facilities for patients with communicable disease.
- Liability may be imposed for failure to isolate patients with communicable diseases or for failure to guard against cross-infection. Courts have held that defendants are liable when a patient contracts an infection after being negligently exposed to a contagious patient.

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EXAMPLES OF INFECTION CONTROL LIABILITY

Exposure to Contagious Patients – (Continued)

- In *Ryan v. Frankford Hosp.*, the minor plaintiff, Sean Ryan, was hospitalized and placed in a room with another minor. A sign above the bed read "**Enteric Conditions and/or Precautions.**"
- In their complaint, the plaintiffs alleged that at no time throughout Ryan's hospitalization at the defendant hospital were they advised that their child's roommate had a contagious infection, **shigellosis**. Interaction between the minor patients was encouraged, and meals were served to them at the same table.

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EXAMPLES OF INFECTION CONTROL LIABILITY

Exposure to Contagious Patients – (Continued)

- Sean's pregnant mother, presumably as a result of her contact with contagious patient or her son, was admitted to another hospital with the diagnosis of shigellosis. Shortly thereafter, she underwent a therapeutic abortion. Court documents show that the case was settled.

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EXAMPLES OF INFECTION CONTROL LIABILITY

Obligation to Inform Patients of Nosocomial Infection

Providers should inform patients when a nosocomial infection has occurred. Courts have become increasingly insistent that physicians have a duty to disclose fully all pertinent facts concerning their patient's condition, even if the physician is convinced that he or she is acting in the patient's best interest by remaining silent.

This obligation exists regardless of whether the condition is the result of negligence of the physician, a colleague, or the hospital. Failure to inform patients in such situations **may result in liability for fraud, negligence, or conspiracy**. Punitive as well as compensatory damages may be awarded in such situations.

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EXAMPLES OF INFECTION CONTROL LIABILITY

Duties to Non-Patients

Providers' obligations extend to persons other than their patients. A duty of **reasonable care** extends to all employees, volunteers, and visitors on the premises. An individual who visits during regular visiting hours and remains in those parts of the premises open to visitors is an invitee to whom the hospital owes the **duty of exercising ordinary care**. If a third party develops an infection from a patient because of the provider's negligence, case law has established that damages may be awarded to the third party. **Visitors of isolation patients, for example, should be warned of the risk of contracting the disease, and documentation should be made indicating the visitor was so advised.**

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OTHER POTENTIAL LIABILITY CLAIMS AGAINST HEALTH CARE PROVIDERS?



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CARES Act: "Coronavirus Aid, Relief and Economic Security Act"

PREP Act: "Public Readiness and Emergency Preparedness Act"

On January 30, 2023, the Biden administration announced the end of the national emergency and public health emergency declarations as of May 11, 2023, related to the COVID-19 pandemic. The declarations have been in place since early 2020 and provided liability immunity to health care providers who administered services.

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"Emergency or Disaster Treatment Protection Act"
N.C. Gen. Stat. 90-21.130 to 90-21.134

Bad news: This protection expired on **August 15, 2022.**

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Plaintiffs' attorneys are finding ways to keep lawsuit alive through the discovery period.

- Artful pleading, including specific allegations of:
 - Bad faith;
 - Gross negligence and willful and wanton conduct; and
 - Not indirectly related to the COVID-19 pandemic.
- Constitutional challenges

Similarly, defense attorneys are using the immunity statute as a bar for claims against health care providers during the pandemic.

Stay tuned....

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OTHER POTENTIAL LIABILITY CLAIMS AGAINST HEALTH CARE PROVIDERS

- Breach of contract
- Fraud
- Libel/Slander
- Product liability
- Premises liability

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INFECTION PREVENTION PROFESSIONAL AS A DEFENDANT

Probability: The chance that an ICP will be sued is low compared to clinicians with "hands-on" patient care.

What should you do if you are served with a civil summons and Complaint stating that you have been sued?

- Contact the hospital attorney or your administrator immediately.
- Deliver summons and complaint to attorney for hospital or its insurance carrier immediately.
- An answer must be filed on your behalf by you and your attorney within 30 days of receipt of the Complaint.
- Do not talk to anyone about the incident in question outside the presence of hospital attorney or administrator .