

# **LEGAL ASPECTS OF INFECTION PREVENTION**

Statewide Program of Infection Control and Epidemiology

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# **CRIMINAL PROCEEDING**

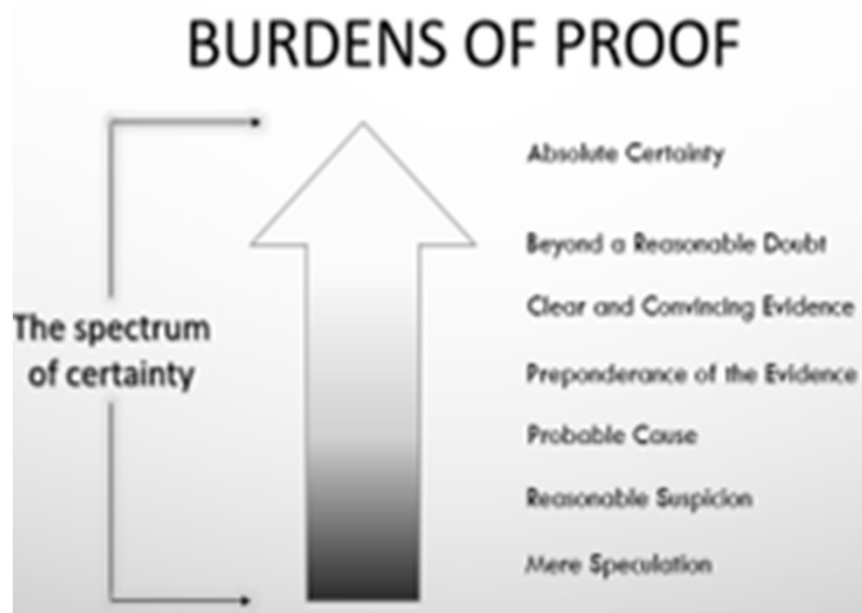
## **TWO ADVERSARIAL PARTIES:**

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.

## CRIMINAL PROCEEDING STANDARD OF PROOF:

The defendant must be found guilty “beyond a reasonable doubt.”



# CIVIL PROCEEDING

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



# 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  
22 CVS 123

JOHN DOE,

Plaintiff,

v.

LONG TERM CARE FACILITY,

Defendant.

### COMPLAINT

NOW COMES Plaintiff John Doe, complaining 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 hereto, 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 42D of the Rules for the Licensing of Adult Care Homes and the rules promulgated under 10A NCAC Subchapter 13F.
6. At all times relevant hereto, 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.

# **CIVIL PROCEEDING**

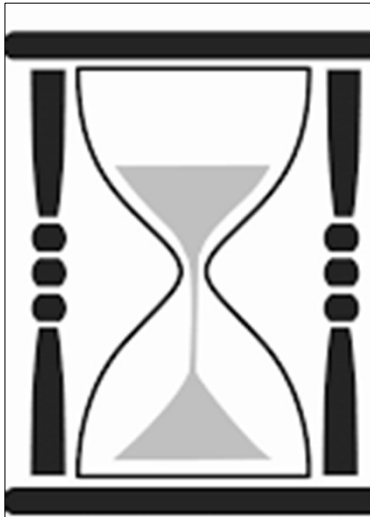
## **STANDARD OF PROOF:**

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



# 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.

# 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



# 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.

## 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.

## 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.

## APPLICATION OF STATUTES OF LIMITATION

- Patient “X” had abdominal surgery on *1-1-2015*.
- On *1-1-2019*, 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.

*What if the second surgery occurred today?*

# Statutes of Limitation

<b><i>Claims:</i></b>	<b>NC</b>	<b>SC</b>	<b>TN</b>	<b>VA</b>	<b>OH</b>
<b>Personal Injury</b>	3 yrs	3 yrs	1 yr	2 yrs	2 yrs
<b>Wrongful Death</b>	2 yrs	3 yrs	1 yr	2 yrs	2 yrs
<b>Medical Malpractice</b>	3 yrs	3yrs	1 yr	2 yrs	6 yrs

## Overview of the Litigation Process

- Plaintiff files a Complaint.
- Defendant files an Answer.
- The parties engage in “discovery.”
  - Written requests for information (Interrogatories, Requests for Production of Documents, Admissions, etc.)
  - Depositions (sworn testimony)
- Hearings
- Court-ordered mediation
- Trial



# MEDICAL MALPRACTICE

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

## **“Alleged” Medical Malpractice**

Negligence is the predominate theory of liability.





# **WHAT IS NEGLIGENCE?**

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



## **HOW DOES THE PLAINTIFF PROVE NEGLIGENCE?**

# **4 ELEMENTS OF NEGLIGENCE**

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

# 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.

# 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**

## 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.

# WHAT ARE “STANDARDS OF PRACTICE”?

(Often referred to as  
“***standards of care***”)

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.





STEPPING  
INTO MY  
SHOES

# **FROM WHERE DO THESE “*STANDARDS OF PRACTICE*” ORIGINATE?**

## **Regulatory Agencies:**

JCAHO

OSHA

## **National Guidelings or Recommendations:**

CDC

## **Professional Associations:**

APIC, AORN

## **• Hospital Policies and Procedures**

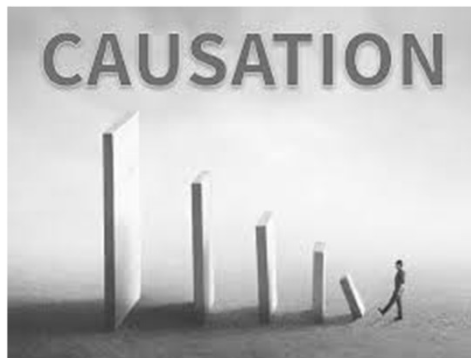
# **Facility Policies and Procedures are GUIDELINES!!**

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



# CAUSATION

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



A breach of the standard of care does not always cause an injury or damages.

# 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.



# 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”

# EXAMPLES OF INFECTION CONTROL LIABILITY – in the news

## Patients sue hospital system after thousands possibly exposed to HIV, hepatitis

An anesthesiologist allegedly failed to follow infection control protocols.

By **Mary Kekatos**  
July 30, 2024, 4:05 PM



A lawsuit is accusing an Oregon health care system of negligence after more than 2,000 patients were possibly exposed to HIV and hepatitis.

The plaintiffs -- known as E.P, K.R., C.R. and D.C. -- all of whom live in Clackamas County, Oregon, said they all received anesthesia for surgeries at various medical centers under Providence Health between March 2022 and February 2024, according to the complaint.

All the patients were later informed that the physician who administered anesthesia "failed to adhere to infection control procedures" and, as a result, all had potentially been exposed to hepatitis B, hepatitis C and HIV, the complaint says.

## **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.
- Failing to properly sterilize surgical instruments.
- Failing to timely diagnose an infection.



## **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.

## **EXAMPLES OF INFECTION CONTROL LIABILITY**

A lawsuit filed by the family of a premature baby who was treated at Children's Hospital of Philadelphia alleges she died after being one of 23 infants infected during a virus outbreak at the hospital's neonatal intensive care unit in 2016.

23 infants contracted adenovirus infections after eye exams at the unit. In a medical journal article published in June 2017, hospital staff attributed the outbreak to medical staff failing to wear gloves and clean equipment properly.

The infant tested positive for an adenovirus and went into respiratory distress, requiring a drainage tube to be placed in her chest on four separate occasions, the suit said. The suit went on to say that she developed a bacterial infection on top of the viral illness and died on Sept. 11, 2016.

## **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.

## 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.

## **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.

# EXAMPLES OF INFECTION CONTROL LIABILITY

## Administration of Medications

Patients of a hospital filed a class-action lawsuit after at least 450 of them were exposed to HIV and hepatitis due to bad practices in administering IV medications. The practice was limited to a group of endoscopy patients and covered a period of about two years.

The lawsuit alleged the impacted patients are were undergoing screening tests to check for Hepatitis B, Hepatitis C, and HIV, which could all cause lifelong impacts.

The complaint centered around the claim that the hospital and its employees were negligent in its policies and procedures when administering IV medications, which could now mean lifelong health issues for those affected.

# 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.

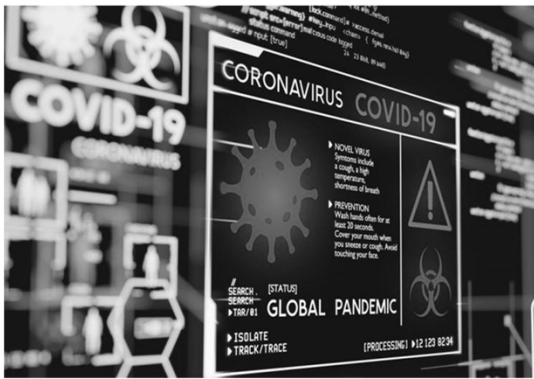
# EXAMPLES OF INFECTION CONTROL LIABILITY

## 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.



## OTHER POTENTIAL LIABILITY CLAIMS AGAINST HEALTH CARE PROVIDERS?



## Kansas officials say tuberculosis outbreak is largest on record in US history

Kansas is facing an unprecedented outbreak of tuberculosis, one that has been labeled the largest of its kind on record in the US.

According to the Kansas state department of health and environment, as of 24 January, there had been 67 active tuberculosis cases since 2024 and an additional 79 latent or non-active infections. The infections - all since 2024 - were reported in Wyandotte and Johnson counties, which are part of the greater Kansas City area.

Jill Bronaugh, the communications director for the Kansas department of health and environment, described the outbreak as the “largest documented [tuberculosis] outbreak in US history” since the federal Centers for Disease Control and Prevention (CDC) began monitoring and reporting cases of the illness in the 1950s.

## **COVID-19 Immunity - “Emergency or Disaster Treatment Protection Act”**

Provides immunity from civil liability for any harm or damages caused by acts or omissions in rendering health care services if those health care services:

- (1) occurred during the emergency declaration;
- (2) are in response to or as a result of the COVID-19 pandemic; and
- (3) are provided in good faith.

□ This protection expired on August 15, 2022.

## **COVID-19 Immunity & Takeaways from *Land v. Whitley***

1. Health care providers are unlikely to obtain a dismissal of the lawsuit before discovery takes place.
2. To establish immunity, health care providers must present evidence of how the COVID-19 pandemic impacted each allegation of negligence specifically. A causal link between the pandemic and the plaintiff's care is required.
3. Courts will interpret the statute as a "limited immunity".

## **OTHER POTENTIAL LIABILITY CLAIMS AGAINST HEALTH CARE PROVIDERS**

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

## **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 .

## Final Thoughts

