



Legal Aspects of Infection Prevention in Long Term Care

Statewide Program of
Infection Control and Epidemiology

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Our legal system of American jurisprudence is adopted from the English common law system.

Generally, there are two major types of legal proceedings:

CRIMINAL

CIVIL

CRIMINAL PROCEEDING

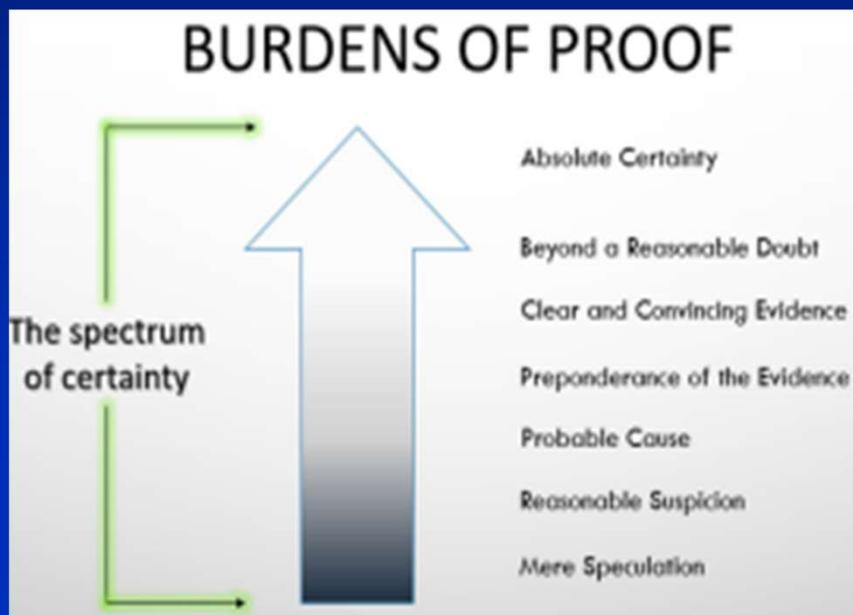
TWO ADVERSARIAL PARTIES:

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 proceedings are initiated by the filing of a Complaint in civil court and serving the defendant with the Complaint and Summons.

STATE OF NORTH CAROLINA

File No. _____

_____ County

In The General Court Of Justice
 District Superior Court Division

Name Of Plaintiff

Address

City, State, Zip

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS

Name Of Defendant(s)

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

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

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.

CIVIL PROCEEDING

STANDARD OF PROOF:

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



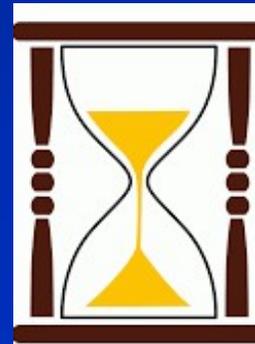
CIVIL PROCEEDING

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** from the date of death.
- Action involving insane/incompetent person – **3 years** after disability is removed (or guardian appointed)
- Most other actions—**3 years**



APPLICATION OF STATUTES OF LIMITATION

- Resident “X” gets a medication overdose while in the nursing facility and *dies*.
- The heirs of Resident “X” have 2 years within which they may file a “wrongful death” claim in Superior Court.

APPLICATION OF STATUTES OF LIMITATION

- Resident “X” is an adult and *develops a pressure ulcer that becomes infected but does not die.*
- Resident “X” has 3 years to make a claim for damages.

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 (standards of practice)
- Breach of duty
- Causation
- Damage

DUTY

The defendant has a duty to conform to specific *standards of practice* or conduct for the protection of the plaintiff against an unreasonable risk of injury.

DUTY

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

WHAT ARE “STANDARDS OF PRACTICE”



Often referred to as “*standards of care*”

THESE STANDARDS ARE OUTLINED IN N.C. GEN. STATS. 90-21.11 & 90-21.12 DEFINITIONS & STANDARD OF HEALTH CARE:

The defendant health care provider **shall not** be liable for the payment of damages unless the jury 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?

National Guidelines or Recommendations:

CDC

Professional Associations:

APIC, AORN

Facility Policies and Procedures

North Carolina Administrative Code

Federal Regulations

Facility Policies and Procedures are GUIDELINES!!

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



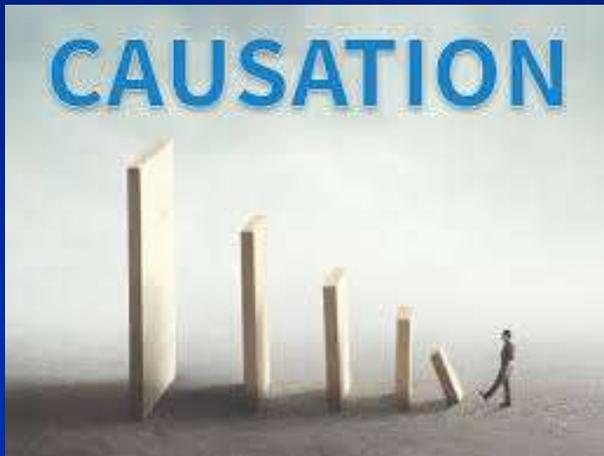
4 ELEMENTS OF NEGLIGENCE

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- Damage

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.

CAUSATION



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

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.**



INFECTION CONTROL LIABILITY



HOW CAN THE ICP BREACH STANDARDS OF PRACTICE?

- Inadequate disinfection or sterilization process for equipment in the facility
- Failing to have a policy for IV tubing change
 - Scientific literature indicates tubing should be changed every 48 to 72 hours

HOW CAN THE ICP BREACH STANDARDS OF PRACTICE?

- Failing to isolate residents properly
- Failing to follow the proper protocol when entering/exiting isolation areas
- Failure to recognize pattern of problems in a facility experiencing an outbreak
 - Can delay isolation / treatment

INFECTION CONTROL LIABILITY

Duty to Inform of Nosocomial Infection

- Facilities must inform residents who develop a nosocomial infection
- Courts increasingly finding duty to disclose all pertinent facts re: a patient's condition
- Duty to disclose even if infection caused by negligence of outside provider
- Failing to inform residents may result in liability for negligence, fraud, or conspiracy
 - *Jury could award compensatory and punitive damages*

INFECTION CONTROL LIABILITY

Duties to Non-Residents

- Duty of **ordinary care** to all employees, volunteers, and visitors
 - What a reasonable person would do in same/similar circumstances to protect self & others from injury
- Applies to individuals present during visiting hours in the parts of the facility that are open to visitors

INFECTION CONTROL LIABILITY

Duties to Non-Residents

- If a third-party contracts an infection due to facility's negligence, that person may have a claim against the facility
- Warn visitors of residents on isolation of risk of contracting the disease
 - *DOCUMENT THE WARNING!*

INFECTION CONTROL LIABILITY CLAIMS



CLAIM #1

INFECTION CONTROL LIABILITY

- Resident developed several wounds on his right leg – one became infected
- Right leg worsened, leading to an amputation
- Lawsuit alleged facility's failure to implement proper wound care measures & timely send the resident to an outside provider led to the infection & amputation

CLAIM #2

INFECTION CONTROL LIABILITY

- Nurse discovered open wound with purulent drainage and odor in resident's abdominal fold
- Three days later, resident unresponsive
- Hospital diagnosed resident with MRSA; died one week later due to sepsis
- Lawsuit alleged facility should have recognized signs and symptoms of infection earlier

CLAIM #3

INFECTION CONTROL LIABILITY

- Resident developed a UTI that went undiagnosed
- Then developed pneumonia, leading to sepsis & death
- Lawsuit alleged:
 - UTI due to improper hygiene, bathing, & incontinent care
 - Facility failed to timely recognize & assess signs/symptoms of UTI

INFECTION CONTROL LIABILITY



RSV, INFLUENZA, & COVID CLAIMS

- Hand hygiene
- Isolation procedures
- Mask requirements
- Surveillance – identify trends, outbreaks
- Immunization policies & records of immunization status
- Sick leave policies

CLAIM #4

INFECTION CONTROL LIABILITY

- Facility failed to screen residents for COVID & failed to place symptomatic residents in isolation
- Facility had a screening process:
 - Form to complete
 - Anyone with fever/symptoms should've been denied entry
- Breaches in SOP
 - Staff & visitors were not regularly screened
 - Facility allowed individuals in with incomplete screening forms

CLAIM #5

INFECTION CONTROL LIABILITY

- Facility used iPads for admission process
- Staff used the same iPads for residents in the COVID unit & on regular halls
 - Did not clean them or use appropriate PPE
- Lawsuit alleged this led to the spread of COVID throughout the facility

DHSR SURVEYS

INFECTION CONTROL DEFICIENCIES

SURVEY SAYS...

Infection Control was the
THIRD MOST-CITED
deficiency of 2025!

SURVEY SAYS...

- Lack of handwashing – *most common citation*
- Not disinfecting glucometers properly
 - i.e., disinfect between residents
- Not knowing correct type of wipes to use to disinfect glucometers

DHSR SURVEYS STAFF INTERVIEW TOPICS

- Signs/symptoms of infection exhibited by resident?
- Transmission-based precautions
 - i.e., contact, droplet, airborne
 - What are they?
 - What's required for each type?
 - How/where is notice displayed?
- Protocol for washing hands vs. using alcohol-based products
- When to use gloves; when to remove/change

DHSR DEFICIENCIES INFECTION CONTROL

- Failed to prevent an infection control system failure when employees entered the facility by using three separate entrances without COVID screening stations
 - **IMMEDIATE JEOPARDY!!!**
- Failed to test all residents for TB before admission
- Failed to wear PPE according to facility policy when entering isolation rooms
- Failed to wash hands between two rooms where residents were under enhanced droplet precautions

Thank You
**HEALTHCARE
HEROES**

FINAL
THOUGHTS

