

LEGAL ASPECTS OF INFECTION PREVENTION

Statewide Program for 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

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CRIMINAL PROCEEDING

TWO ADVERSARIAL PARTIES:

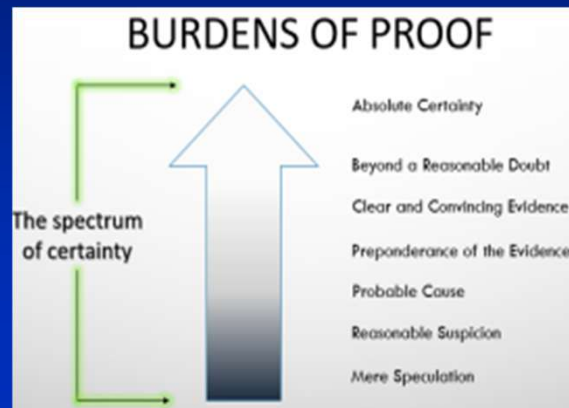
Criminal Defendant: The defendant commits the crime.

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.



Civil proceedings are initiated by the filing of a complaint in civil court and serving the defendant with the summons and complaint.

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STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
Name Of Plaintiff	CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4	
Address		
City, State, Zip		
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	
<p>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!</p> <p>¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!</p> <p>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!</p> <p>A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 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. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>		

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STATE OF NORTH CAROLINA WAKE COUNTY JOHN DOE, Plaintiff, v. LONG TERM CARE FACILITY, Defendant.	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 123 COMPLAINT
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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.

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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**.

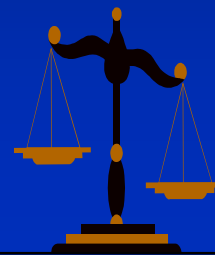
Defendant: The defendant is the party “allegedly” responsible for causing the plaintiff’s injury or damage.

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CIVIL PROCEEDING

STANDARD OF PROOF:

The defendant must be found guilty by the greater weight of the evidence or by a 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** from the date of death
- Action involving a 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 **2 years** within which they may file a “wrongful death” suit in Superior Court

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APPLICATION OF STATUTES OF LIMITATION

- Patient “X” is a five-year-old minor child and *does not die* from the medication overdose but loses all her hair as a result.
 - Patient “X” has until age 10 years to file suit.

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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 file suit.

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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 a blue surgical towel from the prior surgery.
- Patient “X” has **1 year after the date of discovery** of the foreign object to file suit.

What if the second surgery occurred today?

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Statutes of Limitation

CLAIMS	NC	SC	TN	VA	OH
Personal Injury	3 years	3 years	1 year	2 years	2 years
Wrongful Death	2 years	3 years	1 year	2 years	2 years
Medical Malpractice	3 years	3 years	1 year	2 years	1 year

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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

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

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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.

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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 of 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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WHAT ARE STANDARDS OF PRACTICE?



Often referred to as “standards of care”

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THESE STANDARDS ARE OUTLINED IN N.C.G.S. § 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.

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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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Policies and Procedures are GUIDELINES!!!

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



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4 ELEMENTS OF NEGLIGENCE

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

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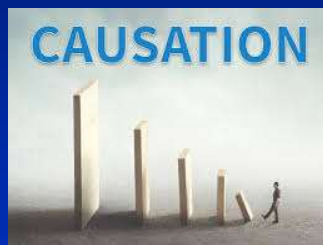
BREACH OF DUTY

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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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.

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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's no negligence.**

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Contributory Negligence Prevents Recovery by the Plaintiff



- NC is a contributory negligence jurisdiction.
- Our Supreme Court held that "a patient has an active responsibility for his own care and well-being."
- Failure to keep appointments and to report symptoms constitutes sufficient evidence of contributory negligence

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INFECTION CONTROL LIABILITY



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HOW CAN THE IP BREACH STANDARDS OF PRACTICE?

- Inadequate disinfection or sterilization process for medical devices or surgical instruments
- Unsterile surgical procedures
 - i.e., contaminated equipment or ignoring infection-control protocols
- Improper hand hygiene
 - Failing to wash hands between patients
 - Washing hands vs. using alcohol-based products

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HOW CAN THE IP BREACH STANDARDS OF PRACTICE?

- Failure to isolate patients with communicable disease properly
- Failure to guard against cross-infection
- Failure to recognize pattern of problems in a hospital experiencing an outbreak
 - Can delay isolation / treatment
- Failure to wear appropriate PPE

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CLAIM #1 INFECTION CONTROL LIABILITY

- Premature infant contracted adenovirus during eye exam in neonatal ICU
- Infant went into respiratory distress, requiring a drainage tube in chest four separate times
- Lawsuit alleged the infant developed a bacterial infection on top of the viral illness and died
- Hospital attributed outbreak to staff failing to wear gloves and clean equipment properly
- 23 infants were infected

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CLAIM #2 INFECTION CONTROL LIABILITY

- Minor child hospitalized with roommate diagnosed with shigellosis
- Sign above roommate's bed read "Enteric Conditions and/or Precautions"
- Lawsuit alleged no one advised minor's parents that the roommate had a contagious infection
- Interaction between minor patients encouraged; meals served at same table

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CLAIM #2 INFECTION CONTROL LIABILITY

- Minor's pregnant mother contracted shigellosis
- Underwent therapeutic abortion
- Case settled

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INFECTION CONTROL LIABILITY

Duty to Inform of Nosocomial Infection

- Providers must inform patients 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*

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INFECTION CONTROL LIABILITY

Duties to Non-Patients

- 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 hospital that are open to visitors

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INFECTION CONTROL LIABILITY Duties to Non-Patients

- If a third-party contracts an infection due to hospital staff's negligence, that person may have a claim against the hospital
- Warn visitors of patients on isolation of risk of contracting the disease

DOCUMENT THE WARNING!

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OTHER POTENTIAL LIABILITY CLAIMS AGAINST HEALTH CARE PROVIDERS?



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Utah measles outbreak grows to 486 cases as U.S. total approaches 1,600

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A measles outbreak in Utah is now at 486 cases, with 107 reported in the last three weeks, according to [data](#) from the state's Department of Health and Human Services. The outbreak began in June 2025. Nationally, 1,575 measles cases have been reported so far this year to the [Centers for Disease Control and Prevention](#). A South Carolina measles outbreak, which began in October 2025, remains at 997 cases, the state's Department of Public Health [reported](#) today. No new cases have been reported by the state since March 17.

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RSV, INFLUENZA, & COVID CLAIMS

- Hand hygiene
- Isolation procedures
- PPE requirements
- Surveillance: identify trends & outbreaks
- Immunization policies & records of immunization status
- Sick leave policies

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INFECTION PREVENTIONIST AS A DEFENDANT

Probability: The chance that an IP will be sued individually is low, compared to clinicians with routine, hands-on patient care, *but not zero*

What should you do if you are served?

- Contact hospital's administrator and attorney immediately.
- Deliver summons and complaint to attorney for hospital or administrator immediately.
- Your attorney must file an answer on your behalf within 30 days of receipt of the complaint.
- Don't talk to *anyone* about the incident in question outside the presence of hospital attorney.

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Final Thoughts



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