



LEGAL ISSUES AND RISK MANAGEMENT

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Demystifying the 4 Elements of Negligence

Dating back to ancient Roman law, people who enter into a profession accept that a reasonable degree of care and skill is undertaken when providing patient care.¹ During this time frame, malpractice was a recognized wrong. Consequently, malpractice and disciplinary actions against healthcare clinicians have escalated in all clinical areas of expertise. As a profession, nursing has developed into a progressively advanced, specialized, and independent profession assuming more responsibilities and tasks in response to today's healthcare climate. Perinatal and neonatal nursing is especially vulnerable as there is a high expectation for clinicians to intervene quickly and appropriately when a woman or a neonate is at risk for an adverse outcome. Subsequently, nurses are exposed to increased liability in malpractice actions.

In today's healthcare climate, nurses are required to stay abreast of key aspects of healthcare including clinical reasoning and information to determine a diagnosis, updated terminology, and evidence-based interventions and processes in order to uphold patient safety's basic tenets. Clinicians are also encouraged to have a basic understanding of a medical malpractice claim, which has predictable steps and elements that must be proven. Because many nurses lack a legal background, being familiar with terms that are the basis of a malpractice case is vital. This begins with defining tort and familiarization with legal vocabulary related to 4 elements of negligence that are required for a claim to move forward.

A tort is a form of civil law addressing an act or omission that causes injury or harm to an individual.^{1,2} This results in civil wrongdoing in which a court can impose liability that provides solutions for civil wrong and may

eventually lead to financial compensation.² In contrast, criminal law enforces public justice and punishes individuals who are found guilty.^{1,3} Tort is divided into 3 broad categories to include intentional, strict, and negligence. An intentional tort is a result of a deliberate act or omission against an individual, such as striking a woman in active labor. Strict tort involves creating and marketing a defective product leading to injury. One example may be car seat design defect resulting in injury. Finally, a tort of negligence is defined as not meeting a standard, resulting in a failure to practice as an ordinary prudent or reasonable person would do under similar circumstances. In other words, negligence is a wrongful or unreasonably unsafe act committed by someone leading to injury of another individual. Specific torts include but are not limited to assault, battery, intentional emotional distress, and negligence.¹ In determining what is considered reasonable, a test for negligence may be considered.³ Factors to consider include a nurse's knowledge of an individual's condition and seriousness of a situation, level of professional competence, a nurse's physical condition, availability of other healthcare professionals, and an ethical component.

To establish negligence in a medical malpractice claim, 4 fundamental criteria must be satisfied. These legal elements include a professional duty owed to a patient, breach of duty, proximate cause or causal connection elicited by a breach of duty, and resulting injuries or damages suffered.¹ These 4 elements apply to all cases of negligence regardless of specialty or clinician level. A plaintiff's attorney will need to establish that a nurse's negligence more than likely caused an injury based on a preponderance of evidence gathered by a legal team. For example, an attorney and hired experts must determine a nurse's inability to correctly interpret a fetal heart rate tracing with tachycardia, absent variability, and recurrent late decelerations; a lack of initiating corrective measures and prompt physician notification for fetal heart rate resulted in an adverse outcome.

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Duty is the first element and is simplest to establish. Duty of care refers to a professional relationship that is established between a patient and a clinician or a nurse's legal obligation to an individual who may be affected by specific actions.^{1,3} Perinatal and neonatal nurses are obligated under legal statutes and nursing organizations to possess a reasonable degree of knowledge or skill ordinarily possessed by other specialty nurses under similar circumstances. When a patient receives care in an outpatient or inpatient setting, a duty of care relationship through a nurse-patient association is established. For example, a relationship is established when a neonatal nurse practitioner initiates resuscitation and administers lifesaving medications after an operative vaginal birth for recurrent fetal heart rate decelerations.

Breach of duty is the second element. This is established when a clinician's practice has neglected to meet an appropriate standard of care in which a reasonably prudent person of similar experience and training would do under similar circumstances. To identify whether a duty has been breached, a standard of care must be identified. These general guidelines provide a foundation for nursing actions and set minimum criteria for clinical proficiency and competence. Nursing standards are identical regardless of geographical location or level of care that is provided. Once professional practice standards have been identified, an expert will articulate how a particular requirement is applied in a malpractice action. A plaintiff's attorney must then prove that a healthcare provider's actions fell below an applicable standard of care. For instance, a standard of care for intrapartum nurses is to provide frequent ongoing labor assessments of a high-risk woman in active second-stage pushing to include fetal heart rate and uterine activity data. A breach of duty may be established if an attorney can establish that a nurse spent a majority of time in a different location.

A breach in duty is irrelevant unless a patient is injured.¹ As a consequence of a breach in duty, causation needs to be proven. Therefore, this third element requires an attorney to ascertain a causal connection between an injury and a failure to meet a standard of care. In other words, a claimant's harm is caused by a nurse's actions or lack of action is a consequence of a breach in duty. Establishing causation can be more difficult. For instance, several preexisting comorbidities may be present that result in similar outcomes. Or,

multiple clinicians from various specialties may be involved with an aspect of medical care that has been associated with an injury.

Various forms of harm can arise during care of a woman or a newborn that could be claimed in a negligence case or be dismissed. For example, a nurse administers an incorrect dose of antibiotics to a newborn with sepsis but no harm occurred. This action alone is a violation of a nursing standard of care but because there were no adverse effects, a plaintiff attorney does not have a cause of action. Comparatively, 6 pop offs during a vacuum birth result in a subgaleal hemorrhage and subsequent neonatal death. A direct relationship between inappropriate use of a device and this outcome establishes causation.

Once a negligent act and causation elements are proven, a plaintiff's legal counsel can move forward to recovering compensation in a malpractice claim. Damages are intended to reimburse a plaintiff for harm that has occurred. This can include but is not limited to medical and hospital expenses, future healthcare, mental anguish, and physical and emotional disabilities. A jury may also impose additional damages as punishment if there is evidence of reckless or malicious behavior.

While nursing has evolved into an integral part of a healthcare delivery system in which there is more autonomy, increased responsibilities have brought forth more claims of negligence. Thus, nurses are obligated to be mindful about legal vulnerabilities. This starts with nurses becoming familiar with the foundations of malpractice in a perinatal or neonatal setting. More knowledge encourages increased accountability, which can lead clinicians to be better prepared for any legal challenges that may be encountered when providing patient care.

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