Physician Malpractice

What is Medical Malpractice?

As the name suggests, medical malpractice is an intentional deviation in behavior or attitude demonstrated by a health professional toward his or her patients to such an extent that it harms them. Malpractice can also be a direct consequence of negligence and is a punishable offense under the law.

Doctors can be sued in court for a number of reasons:

- Committing serious surgical errors
- Administering the wrong medications
- Showing negligence in diagnosing and treating patients

Malpractice can be broadly classified under three categories:

<table>
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<tr>
<th>Malpractice</th>
<th>Definition</th>
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<tr>
<td>Malfeasance</td>
<td>Performing an incorrect treatment (e.g., operating on the wrong patient).</td>
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<tr>
<td>Misfeasance</td>
<td>Performing a treatment incorrectly (e.g., accidentally severing a nerve and rendering the patient’s arm useless).</td>
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<tr>
<td>Nonfeasance</td>
<td>Deliberately delaying treatment or not performing it at all.</td>
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The Doctrine of *Respondeat Superior*

The physician or medical office is responsible for the malpractice of its staff, whether employed directly by them (doctrine of *respondeat superior*) or employed by a temporary agency (borrowed servant). *Respondeat superior* is a Latin term that means “let the master answer.” A medical office can be sued for the actions of any employee. Let’s consider an example to understand this point.

**Example**

Rachel recently completed a certification course on theater nursing and joined a hospital as a trainee scrub nurse. During a major lung operation, the surgeon instructed her to stitch the incision on the chest of the patient while he stepped out for a while. After the operation, the patient developed complications and succumbed to his wounds. A lawsuit was filed against the surgeon because he was responsible for delegating the task to Rachel despite knowing that she was not trained for the surgical procedure.

From this scenario, it is evident that under the doctrine of *respondeat superior*, physicians are liable for the actions of their healthcare employees.

**Notes**

Healthcare professionals, including nurses, medical attendants, and other clinical staff members, can also be included in malpractice lawsuits. Therefore, such people should always carry malpractice insurance policies. Generally, such policies can be obtained from local or state associations at low rates for clinical staff.

**Borrowed Servant**

*Borrowed servant* is a variant of the *respondeat superior* principle and is related to malpractice cases. The term *borrowed servant* is used for an employee who is involved in a malpractice incident. Such an employee is employed by a temporary agency and not by the physician (or the medical office) where the malpractice occurred.
Proving Medical Malpractice

Most medical malpractice lawsuits are settled when both parties involved agree on a financial reward to the injured patient. In other cases, lawsuits are dismissed because of a lack of evidence. There are rare instances when malpractice lawsuits make it to the courts. However, in order to prove malpractice, the patient's case must meet certain criteria. These are popularly known as the four Ds of negligence. Patients need to prove that the physician was negligent about his duties in the following areas:

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<tr>
<th>Duty</th>
<th>The physician was negligent in his or her duty toward the patient.</th>
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<td>Dereliction of duty</td>
<td>Physicians are required to adhere to the standard of care for a healthcare provider with the same training, in the same location, and in a similar situation. The physician failed to meet these standards.</td>
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<td>Direct cause</td>
<td>The physician’s actions or lack of actions increased the patient’s injuries.</td>
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<tr>
<td>Damages</td>
<td>The patient sustained damages through negligence on the part of the physician.</td>
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The damages specified are as follows:

- Physical or mental disability
- Loss of enjoyment of life activities
- Loss of financial earnings
- Medical expenses
- Pain and suffering
- Loss of relationships
Wrongful Death Statutes

In the event of the death of a patient (caused by the physician’s negligence), the patient’s family can file a wrongful death lawsuit. The amount of money claimed is based on the amount that the deceased patient could have earned throughout his life.

The payment may also be based on the tasks performed by the dead patient, such as childcare, cooking, and cleaning. Some states may allow surviving family members to file a case for pain and suffering, whereas some states put a cap on the claim amount in wrongful death cases.

Preventing Medical Malpractice Claims

Christine was admitted to a nursing clinic for preterm labor. After her operation, she developed complications and succumbed to her injuries. When Christine’s husband, Michael, threatened to sue the surgeon, the doctor calmly replied that it would not succeed because before the operation, he had obtained Michael’s signature on a no-objection agreement. It was duly signed by both the physician and Michael.

Physicians need to be careful to avoid malpractice lawsuits. They can prevent legal complications by:

- Explaining the risks involved in the medical procedure and obtaining the patient’s informed consent
- Having both parties (the physician and the patient) sign the informed consent form
- Documenting the informed consent
- Duly apologizing to the patient or family and acknowledging the error in the event of an unforeseen incident (death or injury to the patient).
## Defending Against Medical Malpractice

Medical records are the best form of defense against medical malpractice claims because they provide descriptions and details (including consent forms signed by the patient) of all care provided to a patient. Let’s take a look at the defensive measures used against medical malpractice.

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<th><strong>The Statute of Limitations</strong></th>
<th>This statute sets the time during which injured patients can file malpractice lawsuits. The timeframe of the statute begins on the date of injury. Discovery rules enable injured patients to file malpractice lawsuits from the time when the injury was first discovered or noticed.</th>
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<td><strong>Assumption of Risk</strong></td>
<td>Physicians can try to demonstrate that they made the patient aware of the risks involved in medical procedures. Such claims are based on the detailed consent form signed by the patient.</td>
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<td><strong>Contributory Negligence</strong></td>
<td>This is a malpractice defense in which the physician claims that the patient aggravated his or her own condition.</td>
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<tr>
<td><strong>Comparative Negligence</strong></td>
<td>This is a malpractice defense in which the physician claims that both the physician and patient are at fault in equal proportions.</td>
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<td><strong>Immunity From Negligence Suits</strong></td>
<td>The Federal Tort Claim Act of 1946 exempts U.S. government facilities such as veteran hospitals and military bases from malpractice lawsuits. However, the act provides immunity for ordinary negligence but not from intentional injury.</td>
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<td><strong>Res Judicata</strong></td>
<td><em>Res judicata</em> is a Latin phrase that means “the thing has been decided.” Once a patient loses a lawsuit against a physician, he or she is prohibited from bringing similar charges against the physician for the same injuries.</td>
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<tr>
<td><strong>Res Ipsa Loquitur</strong></td>
<td><em>Res ipsa loquitur</em> is a Latin phrase that means “the thing speaks for itself.” In these situations, the malpractice is quite evident, and the physician needs to demonstrate...</td>
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Fraud is a deliberate act to conceal facts with the intent of getting illegal or unfair benefit. Fraud, whether intended or unintended, is a criminal act. Some of the common frauds in the healthcare domain include:

- Billing for services that were not performed
- Charging for services other than those actually performed
- Physicians receiving payments for referring patients to other doctors
- Falsifying medical records intentionally
- Hiding errors in a medical record