

# HSCC 330

## Legal and Legislative Aspects of Health Care

---

### Tort Law: Part 1

# Objectives

---

- Upon completion of this section, the student should be able to:
- Define negligence and its facets
- Differentiate between negligence and liability
- Define foreseeability, standard of care, reasonableness, ultra vires, and other legal terms
- Recognize a prima facie case
- Recognize common causes of liability
- Recognize the most frequent types of malpractice claims

# Intentional Torts v. Torts of Negligence

---

- Criminal
- Criminal Intent
- Public (state)
- Imprisonment/Fines
- Conscious & Deliberate
- Statutes
- Civil
- Negligence (carelessness)
- Individual
- Redress (Damages)
- Unreasonable
- Standard of Care

# 3 Categories of Tort Law

---

- Negligence
- Intent
- Strict Liability

# Negligence

---

- Failure to act
- Omission or commission of an act that a reasonably prudent (professional) person would or would not do under given circumstances

# Negligence

---

- It is a form of heedlessness or carelessness that constitutes a departure from the standard of care (standard of conduct) generally imposed on members of society

# Degrees of Negligence

---

## ■ Ordinary Negligence

- failure to act or do what a reasonably prudent person would do or the doing of that which a reasonably prudent person would not do under the circumstances of the act or omission in question

# Degrees of Negligence

---

## ■ Gross Negligence

- intentional or wanton omission of care that would be proper to provide or the doing of that which would be improper to do

# Forms of Negligence

---

- Malfeasance
- Misfeasance
- Nonfeasance
- Malpractice
- Criminal Negligence

# Most Frequent Types of Malpractice Claims

---

- Failure to observe patient/notice S&S
- Failure to take appropriate action
- Failure to communicate
- Slips and Falls
- Failure to take adequate history
- Wrong meds, dosages, concentrations
- Negligently following orders
- Burns
- Patient mix-ups
- Use of defective equipment

# Duty v. Due Care

---

- Duty

- the legal obligation to perform

- Due Care

- reasonable care under the circumstances

# Standard of Care

---

- Description of the conduct that is expected of an individual in a given situation
- It is a measure against which a defendant's conduct is compared

# Cause of Action or Prima Facie Case

---

- Duty Owed (due care)
- Duty Breached (by being negligent)
  - Malfeasance
  - Nonfeasance
- Damages (injury)
- Direct Cause or Proximate Cause (by defendant's negligence)

# Cause of Action or Prima Facie Case

---

- ALL 4 elements must be in effect before you can recover damages!

# Ultra Vires

---

- Acting outside scope of practice

# Reasonableness

---

- That degree of skill and knowledge customarily used by a competent health care practitioner of similar education and experience in treating and caring for the sick and injured in the community in which the individual is practicing or learning his profession.

# Reasonableness

---

- Yardstick for standard of care
- The degree to which you adhere to the standard of care

# Arbitrary & Capricious

---

## ■ Arbitrary

- acting without reason
- a unilateral decision

## ■ Capricious

- acting on impulse,
- whim, willful, deliberate
- at one's pleasure

# Forseeability

---

- The reasonable anticipation that harm or injury is likely to result from an act or omission to act

# Liability

---

- A determination at the conclusion of a legal process that:
  - a person has been negligent
  - negligence caused injury to another person
  - the negligent person must compensate the injured person for his injury or loss

# Common Causes of Liability

---

- Failure to assist patient
- Failure to assess patient
- Failure to maintain confidentiality
- Failure to perform procedures according to accepted standard of care
- Failure to monitor or refer patient

# Joint & Several Liability

---

- Suit against ALL persons who share responsibility for injury

# Types of Damages (Punitive Part of a Civil Suit)

---

- Nominal
- Compensatory
- Punitive

# In conclusion . . .

---