

# LEGAL ASPECTS FOR NURSING

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## Learning Objectives

- I. Legal Scope of Practice for Nurses
- II. The Basic Elements of Medical Malpractice Cases
- III. Types of Medical Malpractice Cases Against Nurses
  - I. Care Provided
  - II. Communication
  - III. Documentation

## Scope of Practice

- **Minnesota Nurse Practice Act:** Minn. Stat. §§ 148.171-148.285
  - Governs the licensure of nurses;
  - Provides definitions for what constitutes various types of nursing practice;
  - Establishes the grounds for disciplinary actions against nurse providers;

## Scope of Practice

- **Minnesota Nurse Practice Act:** Minn. Stat. § 148.171, subd. 15: The “practice of professional nursing” ...includes, but is not limited to:
  - providing a comprehensive assessment of the health status of a patient;
  - collaborating with the health care team to develop and coordinate an integrated plan of care;
  - implementing nursing care through the execution of independent nursing interventions;
  - implementing interventions that are delegated, ordered, or prescribed by a licensed health care provider;
  - providing safe and effective nursing care;
  - advocating for the best interests of individual patients

## Scope of Practice

- **Minnesota Medical Practice Act:** Minn. Stat. § 147.081, subd. 3 (3): Practice of Medicine includes:
  - Offering or undertaking to prevent or to diagnose, correct, or treat ... any disease, illness, pain, wound, fracture, infirmity, deformity or defect of any person;
  - Offering or undertaking to perform any surgical operation...

## Scope of Practice

- **Minnesota Nurse Practice Act:** Minn. Stat. § 148.261, subdivision 1:

“The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice advanced practice, professional, or practical nursing ... or to otherwise discipline a licensee or applicant...”

## Scope of Practice

- **Minnesota Nurse Practice Act:** Minn. Stat. § 148.262, subdivision 1:
  - Deny, revoke, or suspect a license,
  - Impose limitations on the nurse's practice ...including, but not limited to, limitation of scope of practice or the requirement of practice under supervision;
  - Impose conditions on the retention of the license including, but not limited to .... retraining or rehabilitation requirements...
  - Impose a civil penalty not exceeding \$10,000 for each separate violation
  - Order the nurse to provide unremunerated service;
  - Censure or reprimand the nurse; or
  - Any other action justified by the facts in the case.

## Scope of Practice

- **Minnesota Nurse Practice Act:** Minn. Stat. § 148.261, subdivision 1:
  - Conviction of a felony or gross misdemeanor reasonably related to the practice of nursing;
  - Failure or inability to performing nursing with reasonable skill and safety;
  - Engaging in unprofessional conduct by departing from Board rules or by failing to abide by minimal standards of acceptable and prevailing practice;
  - Engaging in unethical conduct, such as conduct likely to deceive, defraud or harm the public;
  - Improper management of records;
  - Inability to practice due to illness, use of alcohol or drugs, or as a result of a mental or physical condition

## Scope of Practice

- **Minnesota Nurse Practice Act:** Role in Medical Malpractice Cases? Not relevant because:
  - The Act lists types of care that nurses can provide under their licensure;
  - The Act does not address legal obligations or duties in the context of a medical malpractice lawsuit

## Basic Elements of a Medical Malpractice Case

In a medical malpractice case, the plaintiff must establish the following essential elements:

- The applicable standard of care;
- That the medical provider or nurse departed from the standard of care; and
- That the departure from the standard of care was the cause of the patient's injuries.

The Plaintiff “must introduce expert testimony” to establish these elements.

*Fabio v. Bellomo*, 504 N.W.2d 758, 762 (Minn. 1993).

## Basic Elements of a Medical Malpractice Case

### What is the Applicable Standard of Care?

“Reasonable care by a nurse is care that meets an accepted standard of care a nurse, who is in a similar practice in a similar community would use or follow under similar circumstances. A failure to provide care that meets an accepted standard of care under the circumstances would be negligence.”

- CIVJIG 80.31

## Basic Elements of a Medical Malpractice Case

### What is the Applicable Standard of Care?

- “A nurse is not negligent simply because his or her efforts are unsuccessful.”
- “The failure of a treatment is not negligence if the treatment was an accepted treatment, based on the information the nurse had or reasonably should have had when the choice was made.”
  - CIVJIG 80.31

## Basic Elements of a Medical Malpractice Case

### What is the Applicable Standard of Care?

- “A nurse must use reasonable care to get the information needed to exercise his or her professional judgment. An unsuccessful treatment chosen because a nurse did not use this reasonable care would be negligence.”
- “The fact that a nurse may have followed standing orders of the hospital or a doctor does not relieve the nurse of the duty to use reasonable care.”
- CIVJIG 80.31

## Basic Elements of a Medical Malpractice Case

### What is the Applicable Standard of Care?

- Minnesota law recognizes that it is the general duty of a nurse to follow the orders of a physician.
- “Certainly, if a physician or surgeon should order a nurse to stick fire to a patient, no nurse would be protected from liability for damages for undertaking to carry out the orders of the physician.” *Mesedahl v. St. Luke’s Hospital Ass’n of Duluth*, 194 Minn. 198, 205-06, 259 N.W. 819, 822 (Minn. 1935).

## Basic Elements of a Medical Malpractice Case

### **Was there a departure from the standard of care?**

Minnesota Statutes Section 145.682 requires the plaintiff in a medical malpractice action to provide affidavits of expert review to ensure that the action has merit and is not based on frivolous claims.

*Stroud v. Hennepin County Medical Center*, 556 N.W.2d 552, 555 (Minn. 1996).

## Basic Elements of a Medical Malpractice Case

### **Was there a departure from the standard of care?**

“...it is not enough simply to repeat the facts in the hospital or clinic record. The affidavit should set out how the expert will use those facts to arrive at opinions of malpractice and causation. To state, as was done in this case, that the expert will testify that the defendants ‘failed to properly evaluate and ‘failed to properly diagnose’ is not enough. These are empty conclusions which, unless shown how they follow from the facts, can mask a frivolous claim.”

*Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 92-93 (Minn. 1990).



## Basic Elements of a Medical Malpractice Case

### Was there a departure from the standard of care?

Reliance on hospital policies to establish medical negligence is not appropriate in a court of law because “it is not enough for a plaintiff simply to point to a healthcare provider’s policies and claim they were breached,” given the fact that “a plaintiff asserting medical negligence must establish a physician breached the standard of care in the relevant medical community – not just at her hospital.”

*Damgaard v. Avera Health*, 108 F.Supp.3d 689, 698 (D. Minn., June 3, 2015).

## Basic Elements of a Medical Malpractice Case

### Did the departure from the standard of care cause injury?

- “Coincidence is not causation.” *McDonough v. Allina Health System*, 685 N.W.2d 688, 696 (Minn. App. 2004).
- When expert opinions do “nothing more than show a mere possibility, suspicion, or conjecture that such a causal connection exists, without any foundation or the exclusion of other admittedly possible causes,” there can be “no finding of a causal connection.” *Bernloehr v. Central Livestock Order Buying Co.*, 296 Minn. 222, 224, 208 N.W.2d 753, 755 (1973).
- “Proof of causal connection must be something more than consistent with the plaintiff’s theory of how the claimed injury was caused.” *Walton v. Jones*, 286 N.W.2d 710, 715 (Minn. 1971).

## Types of Medical Malpractice Cases Against Nurses

### Care Provided to the Patient

- Failure to provide a prescribed medication;
- Failure to respond to a change in the patient's condition;
- Failure to implement indicated nursing interventions;

## Types of Medical Malpractice Cases Against Nurses

### Communication: “What we have here is failure to communicate.” Cool Hand Luke

- Failure to communicate to the physician  
vs.
- Failure to communicate in a particular way to the physician

## Types of Medical Malpractice Cases Against Nurses

**Communication:** Is a nurse obligated to insist that a doctor come to the hospital or change the plan of care? No...

“The imposition of such a duty would create chaos in a hospital. The nurses would be placed in an impossible position. If a nurse routinely insists on a physician's presence, the doctor would be apt to discount the nursing assessment on which they must rely. If a nurse fails to order a physician to be present (which is more likely the case), it makes the nurse strictly liable if the doctor is found liable for medical malpractice.”

*Mercil v. Mathers*, 1994 WL 1114, \*20 (Minn. Ct. App. Jan. 4, 1994) review granted in part, decision rev'd in part, 517 N.W.2d 328 (Minn. 1994).

## Types of Medical Malpractice Cases Against Nurses

**Communication:** Is a nurse obligated to insist that a doctor come to the hospital or change the plan of care? No...

- Courts have been unwilling to “impose a general duty on nurses to compel a physician to take additional treatment steps.” *Wall v. Fairview Hosp. & Healthcare Servs.*, 584 N.W.2d 395, 405 (Minn. 1998).
- Plaintiff's experts “misidentified the standard of care” for nurses when they asserted that “the nurses had an affirmative duty to take additional steps necessary to have neonatal support there for delivery.” *Huisman v. Chambers*, 2008 WL 5136271, \*4 (Minn. Ct. App. 2008)

## Types of Medical Malpractice Cases Against Nurses

**Documentation:** If you didn't document it, it didn't happen, right? Or did it? Things to consider:

- When you document:
  - Late chart notes
  - Additions or changes to notes
  - The audit trail
- How you document:
  - Specifics vs. generalities
  - The danger of copy and paste

## Types of Medical Malpractice Cases Against Nurses

**Documentation:** If you didn't document it, it didn't happen, right? Or did it?

- "Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice." Minn. R. Evid. 406.

## Types of Medical Malpractice Cases Against Nurses

**Documentation:** Did the failure to document cause injury?

“[M]ere negligence ‘in the air’ is not a tort and does not become actionable until the force of the wrongful conduct impinges on a person.” *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 437 (Minn. 1990) (quoting *Uppgren v. Executive Aviation Servs., Inc.*, 304 F. Supp. 165, 167 (D. Minn. 1969)).

## IN CLOSING...

“We bow to no one in our respect and esteem for the generally high quality of medical services available in this state and the pre-eminent standing of its medical profession in the nation.”

*Anderson v. Florence*, 288 Minn. 351, 362, 181 N.W.2d 873, 879–80 (1970)



**THANK YOU!**

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