

## Professional Liability

January 3, 2018

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## Objectives

- Understand the basic elements of a professional liability claim
- Understand the standards to which you will be held as a resident physician
- Identify methods to reduce potential liability
- Know what you should do if you are named in a professional liability claim



## Professional Liability

## Elements of a Professional Liability/Negligence Claim

- **Duty of care;**
- Breach of that duty;
- Injury (damages); and
- Proximate cause.

Plaintiff's burden to prove each



## Duty of Care

- Duty: An obligation imposed by law on one person to act for the benefit of another person due to the relationship between them.
- In medicine, duty is established by the patient-physician relationship.



## Elements of a Professional Liability/Negligence Claim

- Duty of care;
- **Breach of that duty;**
- Injury (damages); and
- Proximate cause.

Plaintiff's burden to prove each



## Breach of Duty (Violation of Standard of Care)

The standard of care is the treatment and care that a physician or surgeon of ordinary skill, care and diligence would have done under like or similar conditions or circumstances.

A violation of the standard of care is the failure or omission to do some particular thing(s) that a similar physician or surgeon would have done under like or similar conditions or circumstances.



## Minimize Claims By:

Knowing the standards of care are in your specialty and practice according to those standards

- Keep current with your specialty via continuing education and via the available medical literature
- Seek consultations when unsure, especially when outside of your daily practice

Side Note: Research shows that maintaining an excellent relationship with your patient will help avoid communication problems and issues that later may result in lawsuits



## Evidence of the Standard of Care

- During trial, whether a physician or surgeon treated a patient within the requisite standard of care must ordinarily be determined from the testimony of medical experts
- Standard of care considered will be those in place at the time of alleged injury



## Elements of a Professional Liability/Negligence Claim

- Duty of care;
- Breach of that duty;
- **Injury (damages);** and
- Proximate cause.

Plaintiff's burden to prove each



## Damages

- Economic
  - Medical expenses;
  - Lost wages/lost earning capacity
- Non-economic;
  - Pain & suffering;
  - Emotional distress;
  - Loss of consortium
- Punitive



## Elements of a Professional Liability/Negligence Claim


- Duty of care;
- Breach of that duty;
- Injury (damages); and
- **Proximate cause.**

Plaintiff's burden to prove each




## Proximate Cause

- The injury was, more likely than not, caused by the defendant's negligence
  
- Presented via expert testimony - stated in terms of "probability."



## If you are named as a Defendant or receive legal correspondence


- Call Risk Management/Legal Affairs
  
- You will be assigned legal counsel
  
- Follow all advice of counsel, be cooperative
  
- Do not call patient or speak with their attorney



## Documentation and Communication

## Documentation

- Good documentation can prevent a lawsuit or minimize its impact
  - Plaintiffs' attorneys will review the record as part of their decision on filing a case
  
- "If it is not documented, you didn't do it" - at least harder to prove and defend



## REALITY CHECK

The standard of care that you are expected to deliver increases as your skill and knowledge increase. This will continue to rise as your progress through residency.

The risk for professional liability associated with not meeting this standard of care is now a true reality.



## DUTY OF STATE OF OHIO (UNIVERSITY) EMPLOYEES

Work within the scope of your job or official responsibilities

Do not act with a malicious purpose, in bad faith or in a wanton and reckless manner



## LIABILITY PROTECTIONS AFFORDED UNIVERSITY EMPLOYEES

Qualified, limited immunity – if you work in the scope of employment & not malicious, wanton, etc.

Indemnification - \$1 million per occurrence/\$3 million aggregate thru UT Professional Liability Insurance Program

Legal representation – Lawsuit defense provided by Ohio AG Office



## LIABILITY PROTECTION ISSUES

Moonlighting – is outside the scope of your residency employment and is not covered


Rotations need to be academically approved  
– free lance experience is not covered



**OHIO**  
2014 Closed Claims  
ALAE and Indemnity Payments by Physician Specialty


Appendix C, Exhibit B

PHYSICIAN SPECIALTY	TOTAL CLAIMS	CLAIMS WITH ALAE	TOTAL ALAE	AVERAGE ALAE	CLAIMS WITH INDEMNITY	TOTAL INDEMNITY	AVERAGE INDEMNITY
Surgery - Orthopedic	362	128	\$1,241,000	\$9,731	0	\$2,496,340	\$277,571
Internal Medicine	128	105	\$1,047,110	\$20,624	13	\$4,387,300	\$279,147
Emergency Medicine	108	108	\$1,844,720	\$14,304	0	\$4,248,810	\$229,895
Surgery - General	100	89	\$2,801,110	\$11,152	0	\$4,220,880	\$433,590
Gynecology/Obstetrics	64	46	\$4,771,260	\$102,853	23	\$13,421,960	\$492,617
Radiology	84	71	\$2,894,987	\$27,387	12	\$1,993,840	\$299,610
Family Physicians-General	42	39	\$4,096,760	\$47,766	23	\$7,649,170	\$277,699
Podiatry	41	39	\$2,487,880	\$11,273	0	\$2,210,880	\$108,276
Cardiovascular Disease	40	33	\$602,880	\$18,269	0	\$1,879,830	\$449,880
Anesthesiology	40	33	\$602,880	\$18,269	0	\$1,879,830	\$449,880
Other	400	229	\$9,820,620	\$24,847	40	\$11,748,200	\$279,120
<b>TOTALS and AVERAGES:</b>	<b>1225</b>	<b>1074</b>	<b>\$26,420,880</b>	<b>\$13,614</b>	<b>106</b>	<b>\$29,552,230</b>	<b>\$249,766</b>



## 3 Keystones for Risk Control

- Establish an excellent rapport with your patients with open communication
  
- Keep current in your field and conduct your practice within the applicable standards of care and manage your patients accordingly
  
- Do thorough documentation



# Questions

