

# Medical made up by the legal system



**ASSIGN  
BUSTER**

Medical Malpractice: Is Your Care Below Standard? Imagine yourself lying on an operating table, motionless, quiet. Above, you notice people standing over you.

You try to speak but the words just cannot come out. Your arms feel as if they are plastered to the table. You begin to stand up but feel as if weights are strapped to your back and you are bound to the table. Suddenly you feel a sharp pain in your midsection.

In and out, you see a surgeon slicing your body open with a scalpel. Every motion the masked person makes is as if you are being torn apart from the inside out. One would hope this would simply be a nightmare and they will wake up and everything will be fine. In this instance, this person will come to and realize that they had just gotten the surgery that they needed, while they were still conscious. This is not a horror story meant to scare anyone, this has actually happened on a number of occasions. People have actually woken up during their own surgery to all of the pain and the agony that would be expected of such a procedure. The only problem with that situation is, they cannot do anything about it because they are in a temporary paralysis. This is the sort of thing that can go wrong, among many other things, during a routine medical procedure.

Not all cases are nearly as extreme as the one described, while others can be much more. Malpractice can be a difficult subject to understand. The word malpractice is used in many ways to describe different circumstances. The actual term negligence refers to the carelessness of a professional or an associate (Cazalas 17).

Although each situation is looked upon by a case-by-case basis, there is a system in which carelessness is determined. Under the eyes of the law, there is a scale which measures whether or not a situation is considered to be carelessness or not. This scale is called the standard of care. The standard of care describes what a prudent person, who acts under circumstances that are similar to the ones in question, would do. This prudent person is nobody specific; it is just a fictional person made up by the legal system who is completely average in every way. This person is an average person who is equipped with the average skills and knowledge that pertains to this field of work, and also contains an average amount of judgment and common sense (Cazalas 19-23). The actions of what this average professional would do in this situation are used as a sort of measuring device to determine whether the actions taken by the professional in question were appropriate. If what the person in question did met the requirements of what the standard of care calls for, then there has been no account of negligence.

There are four main points that actually make up negligence. There must first be a situation in which the standard of care must be given under the given circumstances. Failing to follow the standard of care begins the case of negligence. After not satisfactorily completing the standard, there is an apparent setup for harm to the patient resulting from this failure to meet the requirements of care. When an injury is inflicted on the patient, that relates to the standard of care being violated, and that seals the case. Those are the four ingredients needed to complete a case of negligence (Cazalas 18).

There are two specific cases that show how the standard of care is used in the determination of cases in certain situations. They both take place in

Canada, and they both pertain to nurses that had left their posts to go on their coffee breaks.

One of these cases was proved to be negligent, while the other was proven not to be a case of negligence. These are both taken from the publication *Nursing and the Law: In Child v. Vancouver General Hospital* 71 W. W. R. 656(1969), the nurse left for a coffee break after the physician in charge had seen the patient who, as the physician later testified, appeared much improved. In deciding that the nurse was not negligent to leave such a patient unattended, the court emphasized that the question of liability should be determined in the light of the circumstances, as they existed at the time.

When the nurse left the patient, it was not foreseeable that an increased risk to the patient would be created. (Cazalas 23) One can see that in this case the court ruled in favor of the nurse based on the fact that the situation was unforeseen. None of the people working in that facility could have been able to tell if something of great sincerity could happen while a patient is in improving health. Although it would have been ideal for someone to be there to see over the patient, nobody can be everywhere at once. In this next case it is not so simple. In *Laidlaw v. Lions Gate Hospital*, 70 W. W.

R. 727 (1969), the court held that the nurse who left on a coffee break and the supervisor who allowed the nurse to leave might reasonably have anticipated needs for nursing care that could not be met during the nurses absence. When the nurse left, there were two patients in the recovery room

with only one nurse to attend to them. Within a very brief time three other patients arrived, including the plaintiff, Mrs.

Laidlaw. This meant there were now five patients and only one nurse in the recovery room. Because the one nurse did not have sufficient time to minister properly to her, Mrs.

Laidlaw suffered extensive, permanent brain damage as the result of insufficient oxygen while still under the anesthetic after surgery.(Cazalas 23)For this case a nurse had testified, stating that the nurses were to take their breaks before patients arrived. They were also informed of the schedule and should have been prepared to administer aid to those patients that were coming in. The court that tried this case charged the nurse and the supervisor who allowed the break to be taken with negligence. The standard of care shows how two very similar cases can be judged simply by using common sense. These cases I believe are very representative of how the standard of care is used in the court system. Malpractice is not specifically restricted to surgeries and hospitals.

All fields of medicine can commit acts of negligence. Although not as commonly known, there are cases of malpractice in the field of dentistry. There are many things that a dentist can do that would be considered negligent, but there are only a few that happen often enough to be touched on specifically.

One instance has to do with a professional's error in judgment while making a decision. An error made is not always counted as negligent. There are two things to consider while judging a case based on an error in judgment. One is <https://assignbuster.com/medical-made-up-by-the-legal-system/>

when the dentist should understand the correct procedure, but does so in a sloppy or non-sufficient manner. This is definitely a case of negligence. The second is when a dentist must make a decision that has the potential to be risky. If something goes wrong, the patient is injured, and there were safer alternatives to the procedure; negligence is appropriately applied. While the dentist may not have been intentionally inflicting harm on the patient, there may have been a better alternative to the option that they may have chose.

(Howard and Parks 138-143)Anesthetics are another of the most common problems faced by dentists. The ability to administer the proper dosage, and the correct type of anesthetic is a very difficult task. The professional must take many things into consideration while using anesthetics, including the patients health history. Many dentists fear administering anesthetics to patients with weak hearts or problems with their respiratory system.

(Howard and Parks 138-143)Using x-rays is also a major problem faced by professionals in the dental field. X-rays, due to there somewhat damaging effects, should only be used whenever necessary.

The dentists judgment is questioned once again. Overuse of the x-ray may cause adverse effects in the patient, while under-using the x-ray may cause more damage that can go unnoticed. If the dentist cannot operate the machine well, or cannot get a clear shot, then it can also be counted as negligence. In most cases an x-ray taken at the wrong angle can cause more problems than not taking one at all. (Howard and Parks 138-143)Prescribing the wrong type of drug for the situation doesnt happen all that often, but it is a concern.

A larger problem is the patients reaction to the drug that they are being prescribed. The dentist must make a short history check for the patient in question or they could both be in for some big problems. As drugs become increasingly different over time, so do peoples reactions to them. It is advised that the dentist do a check on every patient that they must administer drugs to.

(Howard and Parks 138-143)A problem that seems almost a little too outlandish to even be considered under the main cases of malpractice encountered during dental procedures, is removing one or more of the incorrect teeth. On many occasions a dentist has removed the wrong tooth, or to many teeth. Under the laws governing dental procedures, the patient must provide informed consent. This also refers to the patient being in the correct state of mind and not under any sort of sedation. Whether or not the doctor is removing the teeth out of ignorance or discovers new problems, they must consult the patient before performing any sort of modification.

(Howard and Parks 138-143)The subject of medical malpractice and remaining within the guidelines of the standard of care is fairly complex. As long as the professional in question remains within the standard of care they should be free from any questioning. There are some things that the professionals can do to prevent situations from getting out of hand.

Maintaining a healthy caring relationship with the patient they are to be caring for will help out greatly. If the patient feels they can trust their doctors or dentists judgment, then it may be easier to deal with any problems that may arise. A stronger relationship with ones patient may also help the doctor make better judgment calls. They may not be so risky with a situation.

<https://assignbuster.com/medical-made-up-by-the-legal-system/>

Obtaining informed consent from the patient, and written documentation also helps in certain situations. If proper paperwork is filled out then the medical professional can save oneself from being accused of any malpractice. The medical staff the professional chooses should be well aware of what they are doing, and trained specifically for the job they are to be performing. The professionals themselves should also maintain their education by continuing to study new information, so as to keep themselves in check.

Medical malpractice is a very serious issue. Although not always life threatening, situations involving wrongdoing in the medical field can be physically as well as emotionally distressful. Maintaining an above average standard of care can help keep medical professionals out of trouble. Making sure communication is kept between oneself and ones health care provider will help make a more secure environment while undergoing any sort of medical procedure.

Medicine should not be feared, being more informed of the facts will help deal with any problems that one may have. The standard of care must be maintained, and as long as it is everyone will be better off.