



MYOMED PREP
NURSING + IMAGING EDUCATION

PROFESSIONAL PRACTICE STUDY GUIDE

Allied Health Professional's Guide to Legal Proceedings in Patient Care

Legal decorum for depositions, court appearances and lawsuits:
an organized study document and courtroom tool

NexGen · Nursing

RadMatrix · Imaging

Rescue · EMS

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Educational Notice

This guide is published by MyoMed Prep LLC for educational purposes only. It provides general information about legal proceedings involving healthcare providers and does not constitute legal advice. Laws, procedures, and rules vary by state and jurisdiction. If you are involved in or anticipate involvement in legal proceedings related to your patient care, consult a licensed attorney in your jurisdiction. Nothing in this guide creates an attorney-client relationship or substitutes for individualized legal counsel.

HOW TO USE THIS STUDY GUIDE

- The guide is organized into five Parts. Each Part opens with what it covers and closes with **Check your understanding** questions.
- Colored boxes flag what to **do**, what to **avoid**, and **courtroom decorum**. Key legal terms are in **bold** and defined in the Glossary (§18).
- The **Quick-Reference Cards** at the end collect the essentials for review before a deposition or court date.

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PART I

Understanding Legal Risk

Why clinicians end up in legal proceedings, the kinds of proceedings, and what a malpractice claim must prove.

1. Introduction

2. Why Allied Health Professionals Face Legal Proceedings

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1 Introduction

Allied health professionals, including nurses, radiology technologists, and emergency medical services providers, deliver hands-on patient care in some of the most critical moments of a patient's life. With that responsibility comes the possibility that your clinical decisions, actions, or documentation could one day be examined in a legal proceeding.

Being called into court, whether as a witness or a named party, is one of the most stressful experiences a healthcare provider can face. The unfamiliar setting, the adversarial process, and the stakes involved can feel overwhelming. But understanding how the legal system works, what to expect at each stage, and how to prepare yourself can make the difference between a difficult experience and a devastating one.

This guide walks you through the full arc of legal proceedings related to patient care: the types of cases that involve allied health professionals, how claims are built and defended, what happens during depositions and at trial, how to testify effectively, and how to protect yourself throughout your career. It is written for clinicians and students across all allied health disciplines, with specific considerations for nursing, radiology technology, and EMS.

Knowledge is your first line of defense. The more you understand about this process, the better equipped you will be to navigate it if the time comes.

2 Why Allied Health Professionals Face Legal Proceedings

Allied health professionals are on the front lines of patient care. You assess patients, administer medications, perform procedures, operate complex equipment, make time-sensitive clinical decisions, and communicate findings to physicians and other team members. Each of these activities carries inherent risk.

Legal proceedings arise when a patient or the patient's family believes that the care provided fell below the accepted standard and caused harm. It is important to understand that not every adverse outcome is malpractice, and not every error constitutes negligence. Medicine involves uncertainty, and

adverse outcomes can occur even when every provider acts appropriately. The legal question is not whether the outcome was bad, but whether the care that led to it met the standard expected of a reasonably prudent provider in your position.

Allied health professionals face legal proceedings for a range of reasons, including

- medication errors or adverse drug reactions
- failure to assess, monitor, or reassess a patient
- failure to communicate changes in patient condition to the physician or care team
- procedural errors or equipment-related injuries
- falls, burns, or other preventable injuries
- documentation deficiencies
- scope of practice violations
- failure to follow established protocols or physician orders.

In many cases, allied health professionals are not the primary target of a lawsuit but are included because they provided care to the patient during the relevant time period. In other cases, the allied health professional's actions or omissions are at the center of the claim. Either way, understanding the process is essential.

3 Types of Legal Proceedings

Not all legal proceedings are the same. Allied health professionals may encounter several different types of proceedings, each with its own rules, participants, and potential consequences.

3.1 Civil Malpractice Lawsuits

This is the most common type of legal proceeding involving healthcare providers. A civil malpractice lawsuit is filed by a patient (the plaintiff) against one or more providers (the defendants) in civil court. The plaintiff seeks monetary compensation (damages) for injuries allegedly caused by negligent care. Civil malpractice cases are decided by the **"preponderance of the evidence"** standard, meaning the plaintiff must show it is more likely than not that the provider's negligence caused harm. Most malpractice cases settle before trial, but those that do not are tried before a judge and jury.

3.2 Criminal Proceedings

Criminal charges against healthcare providers are rare and typically involve allegations of gross negligence, reckless conduct, impaired practice (working under the influence of drugs or alcohol), patient abuse, fraud, or intentional harm. Criminal cases carry a higher burden of proof (**beyond a reasonable doubt**) and can result in fines, probation, loss of licensure, or

imprisonment. If you are ever the subject of a criminal investigation related to your clinical practice, retain a criminal defense attorney immediately, separate from any attorney provided by your employer or insurer.

3.3 Licensing Board Actions

State licensing boards (such as boards of nursing, radiology technology boards, or EMS certification agencies) have the authority to investigate complaints against licensed providers and take disciplinary action. Complaints can come from patients, employers, coworkers, or the board itself. Disciplinary actions range from letters of reprimand to suspension or revocation of your license. Licensing board proceedings are administrative in nature and follow their own procedural rules, which differ from civil and criminal court. You have the right to legal representation in board proceedings, and it is strongly recommended.

3.4 Administrative and Employment Hearings

These proceedings arise from workplace disputes, such as termination, suspension, or disciplinary action by your employer. They may involve union grievance procedures, hospital peer review, or hearings before administrative bodies. While these proceedings are not malpractice cases, they can involve review of your clinical performance and may have implications for future employment and licensure.

3.5 Coroner's Inquests and Death Investigations

When a patient dies under circumstances that require investigation, a coroner or medical examiner may convene an inquest. Healthcare providers who cared for the patient may be called to testify about the care provided, the timeline of events, and the patient's condition. These proceedings are fact-finding in nature and do not assign civil or criminal liability, but testimony given at an inquest can be used in subsequent legal proceedings.

4 Understanding Medical Malpractice

Medical malpractice is the most common legal theory under which allied health professionals face claims. To succeed in a malpractice case, the plaintiff must prove all four of the following elements. If any one element is not established, the claim fails.

4.1 Duty

ELEMENT 1 OF 4

The plaintiff must show that the provider owed a duty of care to the patient. For allied health professionals, this duty is established by the provider-patient relationship. If you assessed, treated, monitored, or otherwise provided care to a patient, a duty of care existed. This element

is rarely disputed.

4.2 Breach

ELEMENT 2 OF 4

The plaintiff must show that the provider breached the applicable **standard of care**. This means the provider's actions (or failure to act) fell below what a reasonably prudent provider with similar training and experience would have done under similar circumstances. Breach is established through expert witness testimony, clinical guidelines, institutional policies, and other evidence of what the standard required. This is often the most contested element in malpractice cases.

4.3 Causation

ELEMENT 3 OF 4

The plaintiff must show that the provider's breach of the **standard of care** was the direct cause of the patient's injury. This has two components:

- cause in fact (also called **"but for"** causation), meaning the injury would not have occurred but for the provider's breach
- proximate cause, meaning the injury was a foreseeable result of the breach.

Causation is frequently the most difficult element for plaintiffs to prove, because many patients have pre-existing conditions, multiple providers, and complex medical histories that complicate the causal chain.

4.4 Damages

ELEMENT 4 OF 4

The plaintiff must show that they suffered actual, compensable harm as a result of the breach. Damages can include

- economic damages, such as medical bills, lost wages, and future care costs
- non-economic damages, such as pain and suffering, emotional distress, and loss of enjoyment of life
- in rare cases, punitive damages, which are awarded to punish particularly egregious conduct.

Some states impose caps on certain types of damages in malpractice cases.

4.5 Statutes of Limitations

Every state sets a deadline (called the **statute of limitations**) for filing a malpractice lawsuit. These deadlines vary significantly by state, generally ranging from one to six years from the date of the alleged negligent act or from the date the injury was discovered or should have been discovered (known as the **"discovery rule"**). Some states also impose a **statute of repose**, which sets an absolute outer deadline regardless of when the injury was discovered. If a lawsuit

is not filed within the applicable deadline, it is typically barred. Statutes of limitations are subject to exceptions, including tolling (pausing) for minors, incapacitated patients, and cases involving fraud or concealment.

CHECK YOUR UNDERSTANDING • PART I

Study aid. Cover the answers, then check yourself against the section noted.

1. In a malpractice case, what is the legal question: the outcome, or something else?

ANSWER The legal question is not whether the outcome was bad, but whether the care that led to it met the standard expected of a reasonably prudent provider in your position. *See §2*

2. What burden of proof applies in a civil malpractice case, and what applies in a criminal case?

ANSWER Civil: “preponderance of the evidence” (more likely than not). Criminal: beyond a reasonable doubt. *See §3.1, 3.2*

3. Name the four elements a plaintiff must prove. What happens if one is not established?

ANSWER Duty, breach, causation, and damages. If any one element is not established, the claim fails. *See §4*

4. Which element is often the most contested, and which is frequently the most difficult for plaintiffs to prove?

ANSWER Breach is often the most contested element; causation is frequently the most difficult for plaintiffs to prove. *See §4.2, 4.3*

5. What is the “discovery rule”?

ANSWER The filing deadline can run from the date the injury was discovered or should have been discovered, rather than from the date of the act. *See §4.5*

PART II

When a Case Begins

How you are drawn in, what to do first, and how a case moves from filing through discovery.

5. How You Become Involved

6. The Litigation Timeline

7. The Discovery Phase

5 How You Become Involved

Understanding how you may be drawn into legal proceedings helps you respond appropriately from the very first moment.

5.1 Being Named as a Defendant

If a patient files a malpractice lawsuit and you provided care during the relevant time period, you may be named as a defendant in the complaint. You will be formally notified through “**service of process**,” which means you will receive a copy of the complaint and a summons. Do not ignore these documents. Notify your employer, your professional liability insurance carrier, and (if applicable) your personal attorney immediately.

5.2 Receiving a Subpoena

A subpoena is a legal order requiring you to take a specific action. There are two main types:

- a **subpoena ad testificandum**, which requires you to appear and give testimony at a deposition or at trial
- a **subpoena duces tecum**, which requires you to produce documents or records. A subpoena is not optional.

Failure to comply can result in contempt of court, fines, or other sanctions. If you receive a subpoena, notify your employer and, if applicable, your attorney before responding.

5.3 Your Role: Defendant, Fact Witness, or Expert Witness

KNOW YOUR ROLE

Your role in a legal proceeding determines your rights, obligations, and preparation. As a defendant, you are a party to the case, and the claims are directed at your care; you will have legal representation and will be actively involved in the defense. As a fact witness, you are not a party to the case but are called to testify about what you personally observed, did, or documented during the patient’s care; you generally testify based on your firsthand knowledge

and your documentation. As an expert witness, you are retained by one side to offer professional opinions about whether the care provided met the **standard of care**; expert witnesses are typically experienced clinicians who are compensated for their time and opinion.

5.4 What to Do Immediately

ACTION CHECKLIST

When you first learn that you are involved in a legal proceeding, take the following steps:

- ☐ do not alter, amend, or destroy any records
- ☐ do not discuss the case with coworkers, friends, or on social media
- ☐ notify your employer's risk management department
- ☐ notify your professional liability insurance carrier
- ☐ consult with an attorney before making any statements
- ☐ while your memory is fresh, write down your own personal notes about the events in question and share those notes only with your attorney.

6 The Litigation Timeline

Malpractice litigation is a slow process. Understanding the general timeline helps you anticipate what comes next and reduces uncertainty.

6.1 Pre-Suit Phase

Before a lawsuit is filed, the plaintiff's attorney typically investigates the case by obtaining medical records, consulting with medical experts, and evaluating whether the four malpractice elements can be established. Some states require the plaintiff to provide a pre-suit notice or obtain an expert affidavit before filing. This phase can last months to years.

6.2 Filing and Service

The lawsuit begins when the plaintiff files a complaint with the court and serves it on the defendants. The complaint outlines the allegations, identifies the defendants, and states the damages sought.

6.3 Answer and Initial Pleadings

After being served, each defendant must file an answer within the time frame set by state procedural rules (typically 20 to 30 days, though extensions are common). The answer responds to each allegation in the complaint and may raise affirmative defenses.

6.4 Discovery

Discovery is the longest phase of litigation, often lasting one to two years or more. During discovery, both sides gather evidence through written questions, document requests, and depositions. Discovery is covered in detail in Section 7.

6.5 Mediation and Settlement Discussions

Many courts require the parties to attempt mediation before trial. Mediation is a structured negotiation facilitated by a neutral mediator. The majority of malpractice cases resolve through settlement before reaching trial. Settlement is a business decision, not an admission of fault.

6.6 Trial

If the case does not settle, it proceeds to trial. Malpractice trials typically last several days to several weeks, depending on the complexity of the case and the number of parties involved. Trial is covered in detail in Section 9.

6.7 Post-Trial

After the verdict, either side may file post-trial motions or an appeal. Appeals focus on legal errors made during the trial, not on re-evaluating the facts. The appellate process can add months or years to the timeline.

6.8 Overall Timeline

From the date of the incident to final resolution, malpractice cases commonly take two to five years, and some take longer. This extended timeline is one of the most challenging aspects of being involved in litigation.

7 The Discovery Phase

Discovery is the formal process through which both sides in a lawsuit gather information and evidence before trial. It is the most active phase of litigation for healthcare providers.

7.1 Interrogatories

Interrogatories are written questions sent by one party to another, answered in writing and under oath. If you are a defendant, you may be asked to provide detailed information about your education, training, licensure, employment history, the care you provided to the patient, and your

understanding of the applicable **standard of care**. Your attorney will help you prepare your responses.

7.2 Requests for Production of Documents

Either side may request documents from the other, including medical records, institutional policies and procedures, staffing records, training records, incident reports, and communications related to the patient's care. If you are a defendant, your attorney will manage this process.

7.3 Requests for Admission

These are written statements sent by one party to the other, asking the recipient to admit or deny specific facts. Admissions narrow the issues for trial by establishing facts that are not in dispute.

7.4 Depositions

A deposition is sworn, out-of-court testimony given in response to questions from attorneys. Depositions are the most significant discovery event for healthcare providers and are covered in detail in Section 8.

7.5 Independent Medical Examinations

In some cases, a party may request an independent medical examination of the plaintiff by a physician chosen by the defense. This examination provides an independent assessment of the plaintiff's injuries and their cause.

7.6 Your Obligations During Discovery

If you are a party to the case, you have a legal duty to cooperate with discovery requests, to respond truthfully and completely, and to preserve all relevant documents and records. Failure to comply with discovery obligations can result in sanctions, adverse inferences, or dismissal of your defenses.

CHECK YOUR UNDERSTANDING • PART II

Study aid. Cover the answers, then check yourself against the section noted.

1. What is the difference between a subpoena ad testificandum and a subpoena duces tecum?

ANSWER Ad testificandum requires you to appear and give testimony; duces tecum requires you to produce documents or records. *See §5.2*

2. What are the three roles you may hold in a proceeding?

ANSWER Defendant, fact witness, or expert witness. *See §5.3*

3. List the six things to do immediately when you learn you are involved.

ANSWER Do not alter records; do not discuss the case; notify risk management; notify your liability carrier; consult an attorney before any statement; write private notes for your attorney only. *See §5.4*

4. Is a settlement an admission of fault?

ANSWER No. Settlement is a business decision, not an admission of fault. *See §6.5*

5. How long do malpractice cases commonly take from incident to final resolution?

ANSWER Two to five years, and some take longer. *See §6.8*

PART III

Testimony and Courtroom Decorum

Depositions, the courtroom, and how to testify with credibility and composure.

8. Depositions: Preparation and What to Expect

9. Trial: The Courtroom Experience

10. Testifying Effectively

8 Depositions: Preparation and What to Expect

For most allied health professionals, the deposition is the most important and most stressful part of the legal process. Thorough preparation is essential.

8.1 What a Deposition Is

A deposition is sworn testimony given outside the courtroom, typically in a conference room at an attorney's office. You will be placed under oath by a court reporter, and attorneys for both sides will ask you questions. Your answers are recorded by the court reporter and may also be videotaped. Deposition testimony carries the same legal weight as testimony given in court. Anything you say can be used at trial.

8.2 Who Will Be Present

The room will typically include

- the attorney asking questions (usually the plaintiff's attorney if you are a defendant)
- your attorney
- a court reporter
- possibly a videographer
- possibly other attorneys representing other parties in the case.

The judge is not present. Objections may be stated on the record, but you will generally be instructed to answer the question unless your attorney specifically instructs you not to.

8.3 How to Prepare

PREPARATION CHECKLIST

Preparation is the single most important factor in a successful deposition. Before the deposition:

- ☐ meet with your attorney to review the case, the allegations, and the likely areas of questioning
- ☐ review the patient's medical record thoroughly, especially your own entries

- ☐ review any statements or reports you previously made about the incident
- ☐ review relevant institutional policies and procedures that were in effect at the time
- ☐ review your own credentials, training, and certifications
- ☐ get a full night of rest before the deposition.

8.4 Rules for Answering Questions

DEPOSITION DECORUM

The following principles will serve you well in any deposition.

- 1 Listen to the entire question before answering.** Do not anticipate where the question is going.
- 2 Answer only the question that was asked.** Do not volunteer additional information, explanations, or context unless your attorney advises you to do so.
- 3 If you do not understand a question, say so and ask for it to be rephrased.** Do not answer a question you do not fully understand.
- 4 If you do not know the answer, say "I don't know."** If you do not remember, say "I don't recall." These are perfectly acceptable answers, and they are far better than guessing.
- 5 Do not guess or speculate.** If you are asked a question that calls for speculation, say so.
- 6 Take your time.** There is no rush. Pause before answering to collect your thoughts and to give your attorney time to object if necessary.
- 7 Be truthful.** Inconsistencies between your deposition testimony and the medical record, your trial testimony, or other evidence can be devastating to your credibility.
- 8 Stay calm and professional.** The opposing attorney may try to frustrate, confuse, or provoke you. Do not take the bait. A composed, truthful witness is a credible witness.
- 9 Do not argue with the attorney.** If you disagree with a characterization or premise in a question, you may say so calmly, but do not engage in a debate.
- 10 Avoid absolute language.** Words like "always," "never," and "every time" can be used against you if a single exception exists.

8.5 Common Attorney Tactics

RECOGNIZE THE TACTIC

Opposing attorneys use a range of techniques during depositions, including

- asking broad, open-ended questions designed to get you talking and volunteering information
- using silence after your answer to encourage you to fill the gap with additional statements
- asking the same question in different ways to test for inconsistencies
- reading from medical textbooks or guidelines and asking if you agree with specific passages
- using hypothetical scenarios to get you to commit to positions that may be used against you later
- asking rapid-fire questions to prevent you from thinking carefully before answering.

Recognizing these tactics helps you maintain control of your testimony.

8.6 After the Deposition

After the deposition, you will typically have the opportunity to review the transcript and submit corrections (called an “**errata sheet**”). Review the transcript carefully. You may correct transcription errors, but substantive changes to your testimony will be noted and can be highlighted at trial. Discuss any concerns about the transcript with your attorney.

9 Trial: The Courtroom Experience

If the case does not settle, it will proceed to trial. While most malpractice cases settle before this stage, you should be prepared for the possibility.

9.1 The Courtroom and Its Participants

A typical courtroom includes

- the judge, who presides over the trial, rules on legal issues, and instructs the jury
- the jury, which decides the facts and renders a verdict (most malpractice cases are jury trials)
- the plaintiff and plaintiff’s counsel, seated at one table
- the defendant(s) and defense counsel, seated at another table
- the court reporter, who creates a verbatim record of the proceedings
- the bailiff, who maintains order
- witnesses, who are called to testify and typically wait outside the courtroom until called.

9.2 Jury Selection (Voir Dire)

Before the trial begins, a jury is selected through a process called **voir dire**. Attorneys for both sides question prospective jurors to identify potential biases. Each side can excuse a limited number of jurors. Your attorney may discuss jury selection strategy with you, particularly regarding how jurors with healthcare backgrounds might view the case.

9.3 The Structure of a Trial

A trial generally follows this sequence:

- opening statements by both sides
- the plaintiff's case (the plaintiff presents witnesses and evidence first)
- the defense's case (the defense presents its witnesses and evidence)
- rebuttal (the plaintiff may present additional evidence to counter the defense)
- closing arguments by both sides
- jury instructions (the judge instructs the jury on the applicable law)
- jury deliberation and verdict.

9.4 Your Presence at Trial

COURTROOM DECORUM

If you are a defendant, you will typically be present throughout the trial. Your demeanor, appearance, and behavior in the courtroom matter. Jurors observe defendants at all times, not only when they are on the witness stand. Dress professionally, remain composed, and avoid visible emotional reactions to testimony, even when you disagree with what is being said. Your attorney will advise you on courtroom conduct.

10 Testifying Effectively

Whether you testify at a deposition or at trial, the core principles of effective testimony are the same, with a few key differences for the courtroom setting.

10.1 General Principles

COURTROOM DECORUM

- Tell the truth. This is your most important obligation and your strongest protection.
- Be professional and composed at all times.
- Speak clearly and at a pace the jury and court reporter can follow.
- Avoid medical jargon, or explain technical terms in plain language when you use them; jurors are not clinicians.
- Answer the question directly, then stop.

10.2 Direct Examination

When your own attorney questions you, it is called **direct examination**. Your attorney will use open-ended questions to help you tell your side of the story. This is your opportunity to explain your clinical reasoning, the care you provided, and why your actions were appropriate. Prepare

with your attorney in advance so you know the topics that will be covered and the flow of questions.

10.3 Cross-Examination

UNDER CROSS-EXAMINATION

When the opposing attorney questions you, it is called cross-examination. **Cross-examination** is designed to challenge your testimony, highlight inconsistencies, and advance the opposing side's narrative. The opposing attorney will use leading questions (questions that suggest the answer) and will try to control the pace and direction of your testimony. During cross-examination:

- stay calm and do not become defensive
- listen carefully to each question
- answer honestly and concisely
- do not let the attorney put words in your mouth; if a question contains an inaccurate premise, say so
- do not argue or become combative
- remember that your attorney can redirect (ask follow-up questions) after **cross-examination** to clarify or correct any misleading impressions.

10.4 Addressing the Jury

COURTROOM DECORUM

In a trial (unlike a deposition), direct your answers to the jury when responding to questions. Make eye contact with jurors. They are the decision-makers, and your ability to communicate clearly and credibly to them is critical.

10.5 Appearance and Demeanor

COURTROOM DECORUM

Wear professional, conservative attire. Avoid distracting accessories or clothing. Maintain good posture, make appropriate eye contact, and keep your hands steady. Your body language communicates confidence and credibility. Avoid crossing your arms, fidgeting, or looking away when answering difficult questions.

CHECK YOUR UNDERSTANDING · PART III

Study aid. Cover the answers, then check yourself against the section noted.

1. Does deposition testimony carry less weight than testimony in court?

ANSWER No. It carries the same legal weight, and anything you say can be used at trial. *See §8.1*

2. What should you say if you do not know or do not remember an answer?

ANSWER "I don't know" or "I don't recall." These are far better than guessing. *See §8.4*

3. Why should you avoid words like “always” and “never”?

ANSWER They can be used against you if a single exception exists. *See §8.4*

4. Name three tactics opposing attorneys commonly use in depositions.

ANSWER Any three of: broad open-ended questions, silence after your answer, the same question asked different ways, reading from textbooks or guidelines, hypotheticals, and rapid-fire questions. *See §8.5*

5. At trial, to whom should you direct your answers?

ANSWER To the jury. Make eye contact with jurors; they are the decision-makers. *See §10.4*

6. What may you change on an errata sheet, and what is the risk of other changes?

ANSWER You may correct transcription errors; substantive changes will be noted and can be highlighted at trial. *See §8.6*

PART IV

Evidence and the Standard of Care

Why the medical record is your primary defense and how the standard of care is judged.

11. Medical Records as Evidence

12. Standard of Care

11 Medical Records as Evidence

The medical record is the single most important piece of evidence in any malpractice case. What you documented, and what you did not document, will be scrutinized in detail.

11.1 Why Documentation Matters

In the legal setting, the standard principle is: "If it wasn't documented, it wasn't done." While this is an oversimplification, it reflects the reality that attorneys, judges, and juries rely heavily on the medical record to reconstruct what happened. Months or years after the event, memories fade, but the record remains. Your documentation is your primary defense.

11.2 What Strengthens a Medical Record

STRENGTHENS YOUR RECORD

Strong clinical documentation includes

- ✓ timely entries made at or near the time of the event
- ✓ objective, factual descriptions of assessment findings, interventions, and patient responses
- ✓ documentation of communications with physicians and other team members, including the content of the communication, who was contacted, and the response received
- ✓ documentation of patient and family education, including what was taught and the patient's demonstrated understanding
- ✓ clear documentation of clinical reasoning, especially when deviating from a standard protocol
- ✓ accurate, legible documentation that is free from unexplained abbreviations or ambiguity.

11.3 What Weakens a Medical Record

WEAKENS YOUR RECORD

Documentation problems that create legal vulnerability include

- late entries that are not clearly identified as late entries
- altered, backdated, or falsified records (this is one of the most damaging things a provider can do; it can transform a defensible case into an indefensible one)

- gaps in documentation, particularly during critical periods
- vague or conclusory language such as “patient doing well” without supporting clinical data
- copy-and-paste errors in electronic health records that result in inaccurate or outdated information being carried forward
- documentation that contradicts other entries in the record or testimony from other providers.

11.4 Electronic Health Records and Audit Trails

Modern electronic health records (EHRs) contain metadata and audit trails that track every entry, edit, and access event. Attorneys routinely obtain audit trail data to determine when entries were made, when they were modified, and by whom. This means that any attempt to alter a record after the fact will almost certainly be discovered. The audit trail is often as important as the record itself.

11.5 Amending Records Properly

If you need to correct or add to a medical record after the fact, follow your institution’s policy for addenda and late entries. Clearly identify the entry as a late entry or addendum, note the date and time of the original event, date and time-stamp the addendum, and do not delete or overwrite the original entry. If litigation is pending or anticipated, discuss any amendments with your attorney before making them.

12 Standard of Care

The **standard of care** is the central legal concept in every malpractice case. Understanding what it means and how it is established will help you understand both the claims against you and your defense.

12.1 Definition

KEY CONCEPT

The **standard of care** is the level of care, skill, and treatment that a reasonably prudent healthcare provider with similar training and experience would provide under similar circumstances. It is not perfection. It is not the best possible care imaginable. It is the care that a competent provider in your position would be expected to deliver given the clinical situation.

12.2 How Standard of Care Is Established in Court

Because jurors are not healthcare professionals, the **standard of care** must be established through evidence presented at trial. Sources used to establish the standard include

- expert witness testimony (this is the primary method; both sides will present experts who testify about what the standard required)
- clinical practice guidelines published by professional organizations
- institutional policies and procedures in effect at the time of the incident
- peer-reviewed medical and nursing literature
- textbooks used in accredited educational programs
- manufacturer instructions for use for medical devices and equipment.

12.3 Standard of Care Is Not a Guarantee of Outcome

A provider who meets the **standard of care** may still have a patient with a poor outcome. The standard of care analysis focuses on the provider's actions and decisions, not on the result. Conversely, a provider who achieves a good outcome may still have breached the standard of care if the clinical process was deficient. The analysis is about what you did and why, not about what happened afterward.

12.4 Variation by Setting and Circumstance

The **standard of care** is context-dependent. Factors that may be considered include

- the clinical setting (emergency department, inpatient unit, outpatient clinic, prehospital environment)
- available resources and equipment
- staffing levels and acuity
- the provider's level of training and scope of practice
- the urgency of the clinical situation.

What is expected of a nurse in a fully equipped intensive care unit may differ from what is expected of an EMS provider in a roadside emergency.

12.5 Scope of Practice and Standard of Care

Your scope of practice, as defined by your state's licensing laws and regulations, sets the boundaries of what you are legally authorized to do. Practicing outside your scope is a separate concern from breaching the **standard of care**, though the two may overlap. If you performed an act outside your scope of practice and that act caused harm, you face both a malpractice claim and potential disciplinary action from your licensing board.

CHECK YOUR UNDERSTANDING · PART IV

Study aid. Cover the answers, then check yourself against the section noted.

1. Why is altering a record after the fact so damaging, and why is it almost always discovered?

ANSWER It can transform a defensible case into an indefensible one; EHR audit trails track every entry, edit, and access event. *See §11.3, 11.4*

2. How do you properly amend a record?

ANSWER Follow policy, label it a late entry or addendum, note the original event time, time-stamp the addendum, never delete or overwrite the original, and talk to your attorney first if litigation is pending. *See §11.5*

3. Is the standard of care “perfect” or the “best possible” care?

ANSWER No. It is the care a competent provider in your position would be expected to deliver given the clinical situation. *See §12.1*

4. What is the primary method of establishing the standard of care in court?

ANSWER Expert witness testimony. *See §12.2*

PART V

Protecting Yourself

Working with counsel, liability insurance, discipline-specific risks, and the habits that protect you.

13. Working with Legal Counsel

14. Professional Liability Insurance

15. Discipline-Specific Considerations

16. Protecting Yourself Going Forward

17. Common Mistakes to Avoid

13 Working with Legal Counsel

If you are involved in a malpractice case, you will work with an attorney. Understanding the attorney-client relationship and your role in the process will help you participate effectively in your own defense.

13.1 Your Employer's Attorney

If you are sued for care provided during the course of your employment, your employer will typically provide legal representation through the institution's insurance carrier. This attorney will represent the institution and, in most cases, you as well. However, it is important to understand that the employer's attorney's primary obligation is to the institution. If a conflict of interest arises between your interests and your employer's interests (for example, if the institution's defense involves attributing blame to you), you may need your own separate attorney.

13.2 Your Personal Attorney

If you carry individual professional liability insurance, your insurance carrier will provide you with your own attorney. Having your own attorney ensures that someone is focused solely on protecting your interests. Even if you are also represented by your employer's attorney, your personal attorney serves as an additional safeguard. If you do not carry individual insurance and believe a conflict exists with the employer's attorney, consult with a personal attorney at your own expense.

13.3 Attorney-Client Privilege

Communications between you and your attorney are protected by attorney-client privilege, which means they cannot be disclosed to the opposing side. To preserve this privilege:

- communicate about the case only with your attorney
- do not discuss case details with coworkers, friends, or family
- do not put case-related communications in emails or text messages to anyone other than your attorney
- do not discuss the case on social media.

13.4 Your Responsibilities as a Client

YOUR RESPONSIBILITIES

You will be most effective in your own defense if you

- ☐ are completely honest with your attorney, including about facts that are unfavorable
- ☐ provide all relevant documents, records, and information promptly
- ☐ attend all scheduled meetings, depositions, and court appearances
- ☐ follow your attorney's advice regarding communications and conduct
- ☐ ask questions when you do not understand something about the process or strategy.

13.5 What Not to Do When You Learn of a Claim

DO NOT

Certain actions can seriously damage your defense:

- do not alter, amend, or destroy any medical records or documents
- do not discuss the case with anyone other than your attorney
- do not contact the patient or the patient's family
- do not post about the case or the patient on social media
- do not give statements to anyone (including hospital administrators or risk management) without consulting your attorney first
- do not ignore the lawsuit, subpoena, or legal correspondence.

14 Professional Liability Insurance

Professional liability insurance (also called malpractice insurance) is an essential protection for every allied health professional, regardless of your employer's coverage.

14.1 Why Individual Coverage Matters

Most employers carry liability insurance that covers employees acting within the scope of their employment. However, employer coverage has important limitations:

- the employer's policy is designed to protect the institution first
- the employer's attorney may face a conflict of interest between you and the institution

- employer coverage may not extend to activities outside the workplace (volunteer work, Good Samaritan situations, or moonlighting)
- if you are terminated or leave the employer, the employer's coverage may not extend to claims filed after your departure for care provided during your employment.

Individual coverage ensures that you have your own attorney and your own policy limits.

14.2 Types of Policies

There are two main types of professional liability insurance policies.

1. **Occurrence policies cover any incident that occurs during the policy period, regardless of when the claim is filed.** If you had an occurrence policy in effect when the incident happened, you are covered even if the claim is filed years later, after the policy has lapsed.
2. **Claims-made policies cover claims that are filed during the policy period.** If you cancel a claims-made policy, you are not covered for claims filed after the cancellation date, even if the incident occurred while the policy was active. To maintain coverage after a claims-made policy ends, you can purchase "**tail coverage**" (also called an extended reporting period endorsement), which extends the period during which claims can be reported.

14.3 What Policies Typically Cover

Most professional liability policies cover

- legal defense costs, including attorney fees, expert witness fees, and court costs
- settlements and judgments up to the policy limits
- licensing board defense in some policies.

Review your policy carefully to understand your coverage limits, deductibles, and any exclusions.

14.4 Reporting Requirements

If you are involved in an incident that may result in a claim, notify your insurance carrier as soon as possible. Many policies require prompt reporting and may deny coverage for late-reported claims. Do not wait until a lawsuit is filed; report the incident when you become aware of it.

15 Discipline-Specific Considerations

While the legal process is the same across disciplines, certain clinical and legal issues arise more frequently in specific allied health fields.

15.1 Nursing

Nurses face malpractice claims most commonly in the following areas:

- failure to assess or reassess a patient and recognize changes in condition
- failure to notify the physician of changes in patient status (commonly referred to as the **"failure to rescue"** scenario)
- medication errors, including wrong dose, wrong route, wrong patient, or wrong medication
- patient falls and other preventable injuries
- documentation deficiencies
- delegation and supervision issues, such as delegating tasks to unlicensed personnel without adequate supervision or follow-up.

Nurses should be aware that their state's Nurse Practice Act defines their scope of practice and that practicing outside that scope creates additional legal exposure. Board of Nursing investigations can run parallel to malpractice claims and can result in license discipline independent of the civil case outcome.

15.2 Radiology Technology

Radiology technologists face unique legal considerations, including

- imaging protocol compliance, particularly when a protocol deviation results in a missed diagnosis or requires repeat imaging with additional radiation exposure
- radiation safety, including proper shielding, appropriate technique factors, and adherence to **ALARA** (As Low As Reasonably Achievable) principles
- patient positioning errors resulting in injury, particularly with immobile, pediatric, or uncooperative patients
- communication of critical or unexpected findings, especially in settings where the technologist is the first to identify an abnormality
- contrast media administration, including proper screening for contraindications, monitoring for adverse reactions, and documentation of informed consent
- equipment malfunction, including proper reporting and documentation when equipment fails or produces substandard images.

15.3 Emergency Medical Services

EMS providers operate in a unique legal environment that reflects the prehospital setting.

1. Prehospital **standard of care** accounts for the austere, uncontrolled environment in which EMS providers work. The standard applied to prehospital care differs from the standard in a hospital setting, reflecting differences in available resources, personnel, and conditions.

2. Good Samaritan laws in many states provide limited legal protection for individuals who provide emergency care in good faith. However, these protections vary significantly by state, may not apply when you are on duty, and do not cover gross negligence or willful misconduct.
3. Governmental or qualified immunity may apply to EMS providers employed by government agencies in some jurisdictions, providing additional protection from civil liability.
4. Protocol compliance is a central issue in EMS malpractice cases. Deviation from established protocols must be clinically justified and documented.
5. Medical direction, both online (real-time physician oversight) and offline (standing orders and protocols), defines the scope of EMS practice and is relevant to the **standard of care** analysis.
6. Refusal of care documentation is a high-risk area. Thorough documentation of a patient's refusal, including assessment findings, risks explained to the patient, the patient's capacity to make decisions, and a witnessed signature, is essential.
7. Transfer of care documentation, including accurate and complete verbal and written reports at the receiving facility, is important for continuity of care and for establishing the chain of clinical responsibility.

16 Protecting Yourself Going Forward

The best defense against a malpractice claim begins long before any legal action is filed. The habits you build throughout your career are your strongest protection.

16.1 Document as If Your Record Will Be Read in Court

Because it might be. Every entry should be timely, accurate, objective, and complete. Document your assessments, interventions, patient responses, communications with other providers, and clinical reasoning. If you deviate from a standard protocol, document the reason.

16.2 Know Your Scope of Practice

Understand the legal boundaries of your practice as defined by your state's licensing laws. Do not perform tasks or make decisions outside your scope, even under pressure. If you are asked to perform a task outside your scope, document your concern and notify your supervisor.

16.3 Follow Established Protocols and Policies

Institutional policies, clinical protocols, and standing orders exist for a reason. When you follow them, they support your defense. When you deviate from them, you must be prepared to explain why. If you believe a protocol is outdated, unsafe, or inappropriate for a specific patient,

communicate your concerns, document your reasoning, and follow the appropriate chain of command.

16.4 Communicate Clearly

Communication failures are a leading cause of preventable patient harm and a common basis for malpractice claims. Use structured communication tools (such as **SBAR**: Situation, Background, Assessment, Recommendation) when reporting changes in patient condition. Document what you communicated, to whom, and the response received.

16.5 Maintain Your Professional Competence

Stay current with continuing education, certifications, and evolving standards of care in your field. Your ongoing education demonstrates your commitment to competent practice and strengthens your credibility if your care is ever questioned.

16.6 Carry Individual Professional Liability Insurance

As discussed in Section 14, individual coverage provides essential protection that your employer's insurance may not fully deliver.

16.7 Report Incidents Through Proper Channels

If an adverse event, near miss, or potential safety concern occurs, report it through your institution's incident reporting system. Incident reports are generally protected from discovery in many jurisdictions (though protections vary by state), and they demonstrate that you took the situation seriously and acted responsibly.

17 Common Mistakes to Avoid

The following mistakes can transform a defensible case into a difficult one, or create legal problems where none previously existed.

The ten mistakes

AVOID

1. **Altering, backdating, or destroying medical records after an incident.** This is perhaps the most damaging thing a healthcare provider can do in the context of a legal claim. Modern EHR systems record every change, and altered records are almost always discovered. Record alteration can turn a defensible malpractice case into one involving fraud, and it will destroy your credibility with a judge and jury.

2. **Discussing the case with coworkers, friends, or family.** These conversations are not privileged and can be discovered by the opposing side. The only person you should discuss the case with in detail is your attorney.
3. **Posting about the case, the patient, or your frustrations on social media.** Social media posts are discoverable, and even vague references can be traced back to a specific patient and case.
4. **Failing to notify your insurance carrier promptly.** Delayed reporting can jeopardize your coverage when you need it most.
5. **Attempting to handle the matter without legal counsel.** Malpractice litigation is complex, and the opposing side will have experienced attorneys. You need your own.
6. **Volunteering information during depositions or testimony.** Answer only what is asked. The more you volunteer, the more material the opposing attorney has to work with.
7. **Guessing or speculating when you do not know the answer.** "I don't know" and "I don't recall" are honest, appropriate answers. A guess that turns out to be wrong undermines your credibility on everything else you have said.
8. **Becoming argumentative, defensive, or emotional on the witness stand.** Stay composed and professional, regardless of the provocation.
9. **Ignoring a subpoena or court order.** Non-compliance can result in contempt of court and additional legal consequences.
10. **Assuming your employer's attorney is focused exclusively on your interests.** The employer's attorney represents the employer. Your interests and the employer's interests may not always align.

CHECK YOUR UNDERSTANDING · PART V

Study aid. Cover the answers, then check yourself against the section noted.

1. To whom does your employer's attorney owe a primary obligation?

ANSWER The institution. If your interests conflict, you may need your own attorney. *See §13.1*

2. Explain occurrence versus claims-made coverage, and what tail coverage does.

ANSWER Occurrence covers incidents during the policy period whenever the claim is filed; claims-made covers claims filed during the policy period. Tail coverage extends the reporting period after a claims-made policy ends. *See §14.2*

3. When should you notify your insurance carrier?

ANSWER As soon as possible, when you become aware of the incident; do not wait for a lawsuit. *See §14.4*

4. What should a refusal-of-care record include in EMS?

ANSWER Assessment findings, risks explained, the patient's decision-making capacity, and a witnessed signature. *See §15.3*

5. What does SBAR stand for?

ANSWER Situation, Background, Assessment, Recommendation. *See §16.4*

A**Affidavit**

A written statement made under oath, used as evidence in legal proceedings.

Answer

The formal written response filed by a defendant in response to a complaint, addressing each allegation.

B**Burden of Proof**

The obligation to prove the facts necessary to win a case. In civil malpractice cases, the burden is on the plaintiff and is measured by "preponderance of the evidence" (more likely than not).

C**Cause of Action**

The legal basis for a lawsuit; the set of facts that gives a party the right to seek a legal remedy.

Comparative Negligence

A legal doctrine in which fault is divided among the parties based on their respective contributions to the injury. The plaintiff's recovery may be reduced by their percentage of fault.

Complaint

The initial document filed by the plaintiff that begins a lawsuit, setting forth the allegations and the relief sought.

Contributory Negligence

A legal doctrine (used in a minority of states, including Maryland and Virginia) in which a plaintiff who is even partially at fault for their own injury may be completely barred from recovering any damages.

Cross-Examination

Questioning of a witness by the opposing attorney, typically using leading questions to challenge the witness's testimony.

D**Damages**

The monetary compensation sought or awarded in a lawsuit. Categories include economic damages (medical bills, lost wages), non-economic damages (pain and suffering), and punitive damages (punishment for egregious conduct).

Defendant

The person or entity against whom a lawsuit is filed.

Deposition

Sworn, out-of-court testimony given in response to questions from attorneys, recorded by a court reporter.

Direct Examination

Questioning of a witness by the attorney who called that witness, typically using open-ended questions.

Discovery

The pre-trial phase in which both sides gather evidence through interrogatories, document requests, depositions, and other methods.

Duty of Care

The legal obligation to provide care to a patient, established by the provider- patient relationship.

E**Expert Witness**

A person with specialized knowledge, training, or experience who is qualified to offer professional opinions in court on matters beyond the understanding of a typical juror.

F**Fact Witness**

A person who testifies about what they personally observed or did, based on firsthand knowledge rather than expert opinion.

G

Good Samaritan Law

A state law that provides limited legal protection to individuals who voluntarily provide emergency care in good faith. Protections vary by state and may not cover paid, on-duty providers.

Gross Negligence

A severe degree of negligence that demonstrates a reckless or willful disregard for the safety of others. It represents a higher threshold than ordinary negligence.

I

Immunity

Legal protection from civil liability. Some government-employed EMS and healthcare providers may have qualified or sovereign immunity under certain conditions.

Informed Consent

The legal and ethical requirement that a patient be given adequate information about a proposed treatment, procedure, or test (including risks, benefits, and alternatives) and voluntarily agree before it is performed.

Interrogatories

Written questions sent by one party to another in a lawsuit, to be answered in writing and under oath.

J

Judgment

The final decision of a court resolving a case.

L

Liability

Legal responsibility for one's actions or omissions. A finding of liability means the court has determined that the defendant is legally responsible for the plaintiff's damages.

Litigation

The process of taking legal action; the conduct of a lawsuit from filing through resolution.

M

Malpractice

Professional negligence; the failure of a healthcare provider to meet the applicable standard of care, resulting in injury to the patient.

Mediation

A voluntary or court-ordered process in which a neutral third party (the mediator) helps the parties negotiate a resolution. The mediator does not make a binding decision.

N

Negligence

The failure to exercise the care that a reasonably prudent person would exercise under similar circumstances.

O

Occurrence Policy

A type of professional liability insurance that covers incidents occurring during the policy period, regardless of when the claim is filed.

C

Claims-Made Policy

A type of professional liability insurance that covers claims filed during the policy period, regardless of when the incident occurred. Requires tail coverage for protection after the policy ends.

P

Plaintiff

The person or entity who files a lawsuit.

Preponderance of the Evidence

The standard of proof in civil cases, requiring that something is more likely true than not (sometimes described as greater than 50% likelihood).

Proximate Cause

The legal concept that a defendant's breach of duty must be a foreseeable and direct cause of the plaintiff's injury.

R

Respondeat Superior

A legal doctrine (meaning “let the master answer”) that holds an employer liable for the negligent acts of its employees committed within the scope of employment.

S

Settlement

An agreement between the parties to resolve a lawsuit without a trial, typically involving the payment of money by the defendant or insurer to the plaintiff.

Standard of Care

The level of care, skill, and treatment that a reasonably prudent healthcare provider with similar training and experience would provide under similar circumstances.

Statute of Limitations

The legally prescribed time period within which a lawsuit must be filed. The period varies by state and by the type of claim.

Subpoena

A legal order requiring a person to appear for testimony or to produce documents.

Subpoena Duces Tecum

A subpoena specifically requiring the production of documents, records, or other tangible items.

Summary Judgment

A court ruling made before trial that resolves the case (or specific issues) when there is no genuine dispute about the material facts and one party is entitled to judgment as a matter of law.

T

Tail Coverage

An endorsement to a claims-made insurance policy that extends the reporting period for claims after the policy has ended. Also called an extended reporting period endorsement.

Tort

A civil wrong (other than a breach of contract) that causes harm and for which the law provides a remedy. Malpractice is a type of tort.

V

Verdict

The decision of a jury (or judge in a bench trial) on the issues of fact submitted to them.

Voir Dire

The process by which prospective jurors are questioned and selected before a trial begins.



Quick-Reference Cards

Study aid. Each card repeats wording from the section noted so you can review the essentials at a glance or print a single page before a deposition or court date.

If you are named, served, or subpoenaed

§ 5.4

- ☐ do not alter, amend, or destroy any records
- ☐ do not discuss the case with coworkers, friends, or on social media
- ☐ notify your employer's risk management department
- ☐ notify your professional liability insurance carrier
- ☐ consult with an attorney before making any statements
- ☐ while your memory is fresh, write down your own personal notes about the events in question and share those notes only with your attorney.

Deposition and testimony rules

§ 8.4

- ☐ Listen to the entire question before answering.
- ☐ Answer only the question that was asked.
- ☐ If you do not understand a question, say so and ask for it to be rephrased.
- ☐ If you do not know the answer, say "I don't know." If you do not remember, say "I don't recall." These are perfectly acceptable answers, and they are far better than guessing.
- ☐ Do not guess or speculate.
- ☐ Take your time.
- ☐ Be truthful.
- ☐ Stay calm and professional.
- ☐ Do not argue with the attorney.
- ☐ Avoid absolute language.

Courtroom appearance and demeanor

§ 9.4, 10.4, 10.5

- ☐ Jurors observe defendants at all times, not only when they are on the witness stand.
- ☐ Dress professionally, remain composed, and avoid visible emotional reactions to testimony, even when you disagree with what is being said.
- ☐ In a trial (unlike a deposition), direct your answers to the jury when responding to questions.
- ☐ Make eye contact with jurors.
- ☐ Wear professional, conservative attire.

Documentation that defends you

§ 11.2

- ☐ timely entries made at or near the time of the event
- ☐ objective, factual descriptions of assessment findings, interventions, and patient responses
- ☐ documentation of communications with physicians and other team members, including the content of the communication, who was contacted, and the response received
- ☐ documentation of patient and family education, including what was taught and the patient's demonstrated understanding

- ☐ Avoid distracting accessories or clothing.
- ☐ Maintain good posture, make appropriate eye contact, and keep your hands steady.
- ☐ Your body language communicates confidence and credibility.
- ☐ Avoid crossing your arms, fidgeting, or looking away when answering difficult questions.

- ☐ clear documentation of clinical reasoning, especially when deviating from a standard protocol
- ☐ accurate, legible documentation that is free from unexplained abbreviations or ambiguity.

When you learn of a claim: do not

§ 13.5

- ☐ do not alter, amend, or destroy any medical records or documents
- ☐ do not discuss the case with anyone other than your attorney
- ☐ do not contact the patient or the patient's family
- ☐ do not post about the case or the patient on social media
- ☐ do not give statements to anyone (including hospital administrators or risk management) without consulting your attorney first
- ☐ do not ignore the lawsuit, subpoena, or legal correspondence.

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