

# Family Medicine Lawsuits

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# Medical Malpractice

- Improper, unskilled, or negligent treatment of a patient by a physician, dentist, nurse, pharmacist, or other health care professional.
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# Elements of a Case

- Duty
- Breach of duty
  - Reasonable and prudent physician standard
- Cause in fact
- Proximate cause
- Damages
  - physical pain, additional medical bills, mental anguish, lost work or lost earning capacity

# Why Family Physicians Get Sued

- Failure to diagnose or a delay in diagnosis
  - Negligent maternity care practice
  - Negligent fracture or trauma care
  - Failure to consult in a timely manner
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# Why Family Physicians Get Sued

- Negligent drug treatment
  - Negligent procedures
  - Failure to obtain informed consent
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# Types of Cases



# Negligent Prescription of Medications or Medical Devices

- Physicians may be held liable if they ignored the manufacturer's instructions regarding a medical device, or prescribed an incorrect medication.
  - The prescribing physician is considered a "learned intermediary." Thus, the physician has to advise the patient of the risks and side effects.
  - A pharmaceutical manufacturer may be liable if a drug caused a patient injuries, and the manufacturer failed to warn of side effects.
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# Informed Consent

- Physicians must tell a patient the potential benefits, risks, and alternatives involved in any surgical procedure, medical procedure, or other course of treatment, and must obtain the patient's written consent to proceed.
  - Failure to obtain a patient's informed consent relative to a procedure/treatment is a form of medical negligence, and may even give rise to a cause of action for battery.
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# Breach of Contract or Warranty

- Failure to produce the promised results may give rise to an action for breach of contract or breach of warranty.
  - For example, if a patient is not satisfied with the outcome of a procedure, and the physician had guaranteed a certain result, the patient may attempt to recover under a theory of breach of warranty.
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# Problems of Proof: "Res Ipsa" Doctrine

- If a patient injured as the result of a medical procedure does not know exactly what caused the injury, but it is the type of injury that would not have occurred without negligence on the part of the health care providers, the person may invoke "res ipsa loquitur" or "the thing speaks for itself," and implies that the plaintiff need only show that a particular result occurred and would not have occurred but for someone's negligence.
  - Once this doctrine is invoked, the burden is on the defendant to show that he or she was not negligent.
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# Problems of Proof: "Res Ipsa" Doctrine

- To invoke this doctrine, a plaintiff has to show that:
    - Evidence of the cause of the injury is not obtainable;
    - The injury is not the kind that ordinarily occurs in the absence of negligence by someone;
    - The plaintiff was not responsible for the injury;
    - The defendant had exclusive control of the instrumentality that caused the injury; and
    - The injury could not have been caused by any instrumentality other than what the defendant had control over.
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# Florida Overturns Medical Malpractice Caps

- On March 13, 2014, Florida's Supreme Court ruled 5-to-2 in favor of invalidating medical malpractice caps on non-economic damages.
  - The Supreme Court concluded that the cap on wrongful death non-economic damages violates the state Constitution's equal protection clause.
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# Protect Yourself

- Documentation
  - Follow-up
  - Procedures
  - Patient relations
  - Don't let your guard down
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# Case Summaries



# Family Physician's Case

- A carpenter fell off a stepladder onto the floor, injuring his back. He had an evaluation in the ED with a full spine X-ray series that a board-certified radiologist read as normal. He was then discharged from the ED with a diagnosis of cervical/thoracic strain. His pain persisted through three sequential visits. An additional MRI and a neurosurgical consultation ordered ultimately documented a cervical disk herniation with radiculopathy and a T3 compression fracture. The carpenter sued the ED physician, the radiologist, the hospital and his family physician for the development of chronic pain, as a result of the alleged delay in diagnosis. The complaint incorporated a request for punitive damages because the family physician's PA had seen the patient.

# Family Physician's Case Outcome

- After a 10-day trial the jury found all the defendants not guilty.

# Screwdriver

- Arturo Iturralde sued Dr. Robert Ricketson and Hilo Medical Center claiming the doctor acted below the standard of care when he implanted a screwdriver shaft into his spine after the two titanium rods that he had intended to use were missing. The stainless steel screwdriver shafts snapped shortly after being placed in plaintiff's back, and he had to undergo additional surgeries. Dr. Ricketson denied that the care that he provided was below the standard of care.
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# Screwdriver Outcome

- Plaintiff's verdict for \$5.6 million including \$3.4 million in punitive damages.
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# Wrongful Death Lawsuit

- Mr. Nicastro died as a result of a coronary thrombosis due to occlusive coronary atherosclerosis. Mr. Nicastro had previously been hospitalized twice due to chest pains indicative of a coronary problem. On both occasions Dr. Fred Park, his family physician, was his attending doctor. During the first hospitalization, Dr. Richard Mermelstein was called in for consultation due to Dr. Park's limited privileges which required him to obtain consultation for treatment of cardiac failure. Although the evidence at trial indicated Mr. Nicastro was suffering from a developing myocardial infarction, Dr. Mermelstein misdiagnosed the problem as a virally induced pleurodynia on the basis of test results.

# Wrongful Death Lawsuit Cont.

- After making the diagnosis Dr. Mermelstein withdrew from the case and did not follow up on the test results which were inconsistent with his diagnosis. Medical records indicate no attempt by Dr. Park to follow up with the tests. There is no evidence that either doctor gave Mr. Nicastro treatment or advised him to change his lifestyle as a smoker and coffee drinker, or reduce his physical labor to avoid coronary risk factors.
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# Wrongful Death Lawsuit Cont.

- Similarly, during the second hospitalization of Mr. Nicastro, Dr. Park failed to order appropriate tests and appears to have discharged Mr. Nicastro without adequate treatment. After Mr. Nicastro's death, his wife filed a medical malpractice action claiming that the death of Mr. Nicastro was brought about by the negligence of Drs. Park and Mermelstein.
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# Wrongful Death Lawsuit Outcome

- Initially a jury rendered a verdict that the two doctors were not negligent.
  - Plaintiff in the case appealed the decision.
  - A judge and appellate court ordered a new trial.
  - After 10 years of litigation, the parties to this wrongful death action reached a structured settlement of \$600,000.
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# Ultrasound – Wrongful Birth

- Ana Mejia and Rodolfo Santana sued Dr. Marie Morel an OB/GYN Specialists of the Palm Beaches on medical negligence and respondeat superior theories claiming that Dr. Morel failed to inform them that their son was developing in Ana's womb without any legs and with only one arm. They claimed that they would have aborted the pregnancy if they had been properly informed of the results of multiple ultra sound tests performed during the pregnancy. They sought compensation for the cost of caring of their son, who is now 3-years-old.

# Ultrasound – Wrongful Birth Outcome

- Plaintiff's verdict for \$4.5 million.

# Going Too Far?

- After suffering an on-the-job head injury, Brian Persaud, a 38-year-old construction worker, was rushed to a nearby hospital in New York City. Mr. Persaud contested that, after receiving stitches to his head, doctors forced a rectal exam upon him even though he furiously resisted. The emotionally injured Persaud then sued.
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# Going Too Far? Outcome

- Mr. Persaud lost his case when a jury found that the hospital did nothing wrong. The rectal exam was meant to check for damage to Mr. Persaud's spinal cord and was never completed.
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# Failure to Inform of Risk

- Dr. Thomas, a family physician, was contacted by Mrs. Truman in connection with her pregnancy. He continued to act as the primary physician for Mrs. Truman for six years. During this time, Mrs. Truman sought Dr. Thomas' medical advice and often discussed personal matters. Mrs. Truman consulted with Dr. Casey, a urologist, about a UTI which had previously been treated by Dr. Thomas. Dr. Casey discovered irregularities during the exam and sent Mrs. Truman to a gynecologist, who discovered Mrs. Truman's cervix had been largely replaced by a cancerous tumor. Mrs. Truman died from the cancer. Her children brought a wrongful death action against Dr. Thomas for failure to perform a pap smear test and not specifically informing Mrs. Truman of the risk involved.

# Failure to Inform of Risk Outcome

- A jury rendered a special verdict, finding Dr. Thomas free of any negligence that caused Mrs. Truman's death. That verdict was appealed. An appeals judge affirmed the judgment.
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# Fellows Clinic Sued

- A 26-year-old woman showed up to the Chicago College of Osteopathic Medicine Fellows Clinic with complaints of mild shoulder and neck pain from studying. An unsupervised medical student manipulated her neck, injuring her long thoracic nerve. The plaintiff argued the University failed to have procedures requiring direct supervision of medical students by a licensed doctor.
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# Fellows Clinic Sued Outcome

- A Chicago jury returned a \$9.8 million verdict against the Chicago College of Osteopathic Medicine and the doctor running the Fellows Clinic of the college.
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# Failure to Diagnose

- Dr. J was a second-year internal medicine resident doing an ER rotation. She saw a middle-aged man who was ill and had abdominal pain. Over the course of a few hours, she wrote the initial H&P, ordered some tests and recorded the initial results. Another resident and attending then took over. After improving the man was sent home, but returned the next day with a rare complication and ended up having a bowel resection and sepsis. The man's diagnosis was rare, involving a congenital defect. The man sued the residents, including Dr. J, and the hospital, alleging they should have made the diagnosis.

# Failure to Diagnose Outcome

- The jury was somewhat divided, but decided in favor of the doctors. The court ruled that there was no negligence.
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# Reasonable Care

- Jacqueline Granicz had a history of depression and was taking Prozac when she began seeing Dr. Chirillo in 2005. Dr. Chirillo switched her to the antidepressant, Effexor. In 2008, Jacqueline called Dr. Chirillo's office and spoke to a medical assistant. Jacqueline told the assistant she had not "felt right and reported that she was under mental strain, crying easily, not sleeping well, taking more sleeping pills, and was having gastrointestinal problems. Jacqueline attributed these maladies to the Effexor, and she told the assistant she had stopped taking it. The assistant wrote this information in a note for Dr. Chirillo.
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# Reasonable Care Cont.

- Dr. Chirillo read the assistant's note and decided to change Jacqueline's antidepressant to Lexapro and refer her to a gastroenterologist. Dr. Chirillo's office called Jacqueline and told her to pick up samples of Lexapro and a prescription for the drug. But Dr. Chirillo's office did not request that Jacqueline schedule an appointment with the doctor. Jacqueline picked up the samples and prescription that day. The next day, Jacqueline committed suicide. Jacqueline's husband alleged Dr. Chirillo breached his duty to exercise reasonable care in his treatment of Jacqueline.
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# Reasonable Care Outcome

- The trial court ultimately granted a final summary judgment against Jacqueline's husband based on its finding that Dr. Chirillo did not have a legal duty to prevent Jacqueline's suicide.
  - The Second District reversed, finding because plaintiff's experts had testified that Dr. Chirillo had breached the applicable standard of care by failing to recognize the seriousness of the plaintiff's symptoms, by failing to speak to the patient & insist that she come in for an evaluation, by failing to refer her to an expert in depression & by failing to conduct an evaluation of the antidepressant which was known to cause suicidal ideations.
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# **Good Samaritan Act**



# Good Samaritan Laws

- “Good Samaritan Laws” were enacted to protect persons who voluntarily assist others in emergency situations from liability for their actions.
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# The Florida Good Samaritan Act

- The "Good Samaritan Act" was enacted to protect persons who voluntarily assist others in emergency situations from liability for their actions.
  - This law can provide a good defense to physicians in different circumstances. Although there is no general affirmative duty to assist victims of accidents in the United States, the Good Samaritan laws have been enacted to protect those who may take an affirmative act to assist an accident victim.
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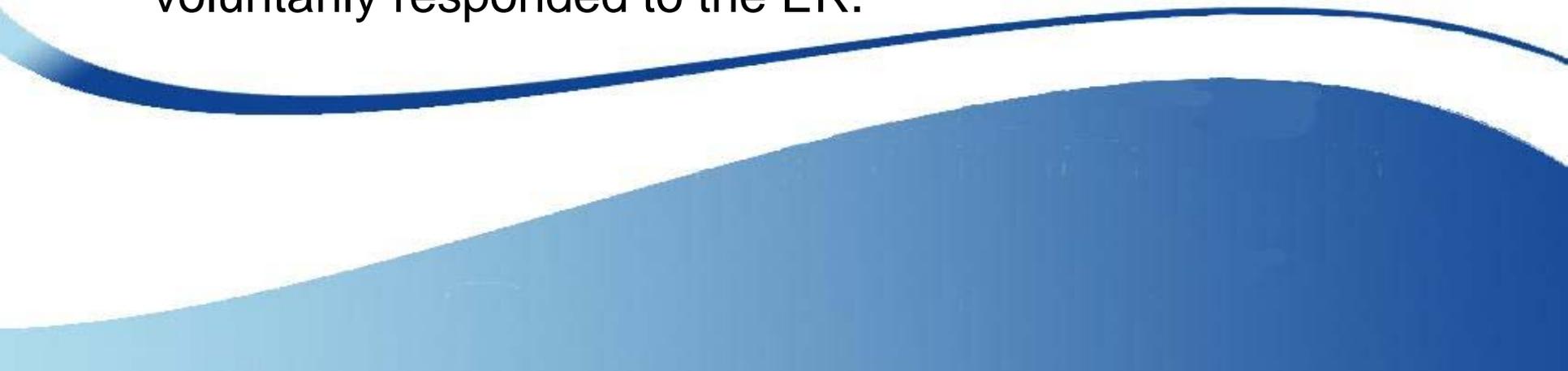
# The Florida Good Samaritan Act

- If a person acts reasonably in assisting an accident victim in a declared emergency situation, or in an emergency that occurs outside a facility with proper medical equipment, and the victim does not refuse treatment, the rescuer cannot be held liable for his or her actions.
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# Good Samaritan in Florida

- Mr. Harris was taken to the ER suffering from a swollen throat and tongue. The attending ER physician requested assistance. An anesthesiologist, Dr. Soha, who did not provide on-call services to the ER, was available in the hospital and responded to the ER physician's request. Dr. Soha assisted the emergency room physician in providing emergency care to a hospital patient, however Mr. Harris subsequently died after suffering complications from a reaction to medication.
  - Despite this aid, Mrs. Harris filed suit against Dr. Soha, alleging he failed to take actions which may have prevented Mr. Harris' death. Mrs. Harris argued that the Good Samaritan Act was inapplicable because Dr. Soha was at the hospital attending to a patient from "his practice" and his response to the ER was not voluntary.
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# Good Samaritan in Florida Outcome

- In 2009, a Florida appeals court held that an anesthesiologist was immune from liability under the state's Good Samaritan Act after assisting an ER physician in providing emergency care to a hospital patient. The court stated that not granting immunity to the anesthesiologist would contravene the legislature's intent. The court granted immunity, holding that the anesthesiologist had been attending to a patient of his practice and that he had voluntarily responded to the ER.
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# Responding to an Emergency

- Bruce Adams, D.D.S., put Orlando Reynoso under anesthesia to perform oral surgery. The dentist administered anesthesia because Mr. Reynoso was mentally retarded and couldn't sit through a procedure. After Mr. Reynoso went to the recovery room, Dr. Adams noticed that Mr. Reynoso's oxygen saturation levels were low. They fluctuated between the mid-80s and 90s. Dr. Adams had anesthesiologist Dr. Lo, monitor Mr. Reynoso. The patient spit up blood, and his SATs fluctuated irregularly. Dr. Lo recommended that Mr. Reynoso be sent to the hospital. Dr. Adams called family physician Dr. Newman, for a second opinion. Dr. Newman agreed that Mr. Reynoso should go to the hospital. The office tried to arrange a nonemergency ambulance transfer, but when none was available they called 911. Mr. Reynoso was taken to the hospital.

# Responding to an Emergency Cont.

- Mr. Reynoso sued Dr. Newman and the others, claiming the doctors were negligent for not recognizing an emergency and getting him to the hospital sooner. Mr. Reynoso claimed that the delay deprived him of oxygen, exacerbating his existing mental retardation. Dr. Newman asked the court to throw out the lawsuit against him, arguing he should be shielded from the suit because he responded as a Good Samaritan.
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# Responding to an Emergency Outcome

- The appellate court sided with the physician. It ruled that, based on the premise of the medical malpractice claims, it's clear that an emergency existed. The court further said that it didn't matter whether Dr. Newman believed he was on his way to an emergency.
- "Because there is no dispute that Dr. Newman was a volunteer who rendered Mr. Reynoso emergency care, his subjective belief as to the existence of a medical emergency when Dr. Adams contacted him and while he was on the way to the surgery center is irrelevant.



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