



# Adventist Bioethics CONSORTIUM

## Legal Issues and Clinical Ethics

4th Annual ADVENTIST BIOETHICS CONFERENCE  
MAY 6-7, 2019

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# Ethics

Of or relating to moral action, conduct, motive or character . . . . [C]onforming to professional standards of conduct.

Black's Law Dictionary, 16<sup>th</sup> Edition (citing *Kraushaar v. La Vin*, 181 Misc. 608, 42 N.Y.S.2d 857, 859 (1943))

# Ethics vs. Law

The relationship between ethics and law is complex. Ethical values and legal principles are usually closely related, but ethical responsibilities usually exceed legal duties. Conduct that is legally permissible may be ethically unacceptable. Conversely, the fact that a physician who has been charged with allegedly illegal conduct has been acquitted or exonerated in criminal or civil proceedings does not necessarily mean that the physician acted ethically.

In some cases, the law mandates conduct that is ethically unacceptable. When physicians believe a law violates ethical values or is unjust they should work to change in law. In exceptional circumstances of unjust laws, ethical responsibilities should supersede legal duties.

American Medical Association Code of Medical Ethics, Preamble, 2016

# Ethics vs. Law

- Mutually exclusive?
- What is legal?
- The Rule of “Ought”





# Torts

# The Law

Many areas of the law:

Criminal Law

*Torts*

Contracts

Real Property

Intellectual Property

Family Law

Constitutional Law

Labor/Employment Law

Estate Planning

Bankruptcy, etc.



# Torts

There are many torts,  
both intentional and  
unintentional:

Battery

Assault

Wrongful Imprisonment

False Arrest

Defamation

Products Liability

*Negligence*

Intentional Infliction of  
Emotional Distress, etc.



# Negligence

# Negligence

The tort of NEGLIGENCE has four elements:

- Duty
- Breach
- Causation
- Damages



# Medical Malpractice



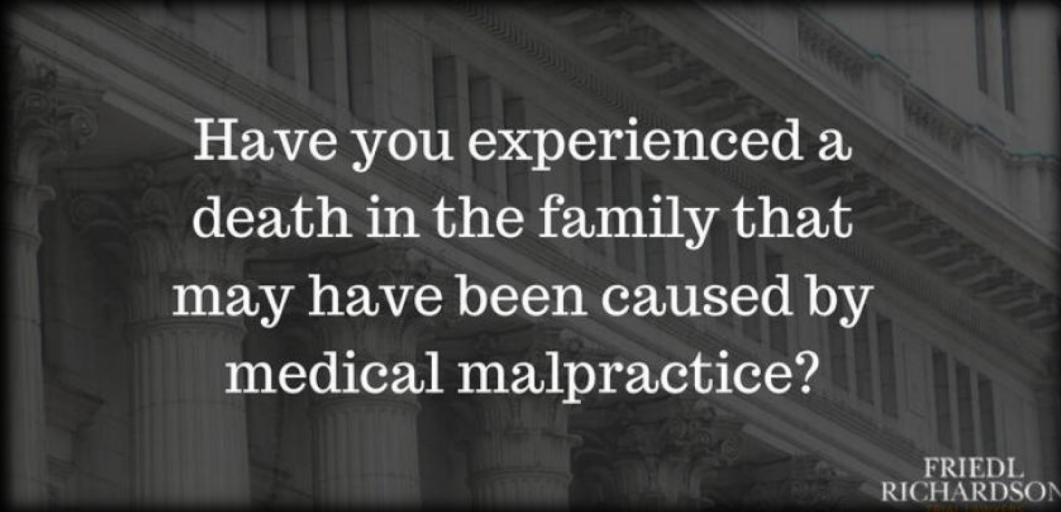
# Medical Malpractice

## Plaintiff

- Patient
- Patient's surviving heirs (wrongful death)

## Defendant

- Health care provider
- Physician
- Nurse
- Allied Health Professional
- Hospital
- Clinic



Have you experienced a death in the family that may have been caused by medical malpractice?

FRIEDL  
RICHARDSON

# Medical Malpractice



- Tort
- Negligence
- Medical Malpractice
- Medical malpractice is professional negligence by act or omission by a health care provider in which care provided deviates from accepted standards of practice in the medical community and causes injury or death to the patient. Standards and regulations for medical malpractice vary by country and jurisdiction within countries

Wikipedia ([http://en.wikipedia.org/wiki/Medical\\_malpractice](http://en.wikipedia.org/wiki/Medical_malpractice))

# Medical Malpractice

- Duty: A legal duty is established whenever a hospital or health care provider undertakes care or treatment of a patient
- Breach: A breach of duty here refers to a failure of the health care provider to meet a relevant standard of care for the time and place of the alleged injury
- Causation: The claimant must demonstrate that the failure to conform to the relevant standard of care was a proximate cause of the damages sustained
- Damages: Unless damages of some sort are sustained by the patient, there is no basis for a claim - regardless of whether or not the physician was negligent

Yale New Haven Medical Center: Issues in Risk Management. 1997.

[http://info.med.yale.edu/caim/risk/malpractice/malpractice\\_2.html](http://info.med.yale.edu/caim/risk/malpractice/malpractice_2.html).

# The Physician's Standard of Care

# Standard of Care



A physician is negligent if he fails to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful physicians would use in the same or similar circumstances. This level of skill, knowledge, and care is sometimes referred to as “the standard of care.”

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# Creation of the Standard of Care

- School
- Residency
- Fellowship
- Conferences
- Scholarly literature
- Professional society bulletins/standards
- Expert Testimony



# Meeting the Standard

- Juries
- Experts
- Documentation



## GOOD LUCK

When you go into court you are putting yourself in the hands of 12 people who weren't smart enough to get out of jury duty!

# Ethical Considerations

# Case Study:

## Sterilization of Minor Patient

15 year old female patient with profound intellectual disability. Patient's mother requests elective sterilization. Mother is concerned about future abuse and resultant unwanted pregnancy. What are the ethical implications? What are the legal implications?

# Case Study:

## Pregnant Minor

11 year old female patient is pregnant. Patient's mother's boyfriend is suspected to be the father. Law enforcement and child protective services instruct hospital personnel not to inform the patient's father of the pregnancy. Legally, may the patient's father be informed of the pregnancy? Ethically, should the patient's father be informed of the pregnancy?

# Case Study:

## Same-sex Couple

63 year old male is hospitalized and lacks capacity to make medical decisions. Same-sex (but unmarried) partner of 32 years is present and involved in care. Family has been estranged for 32 years, but is now present at the hospital. Family and partner disagree regarding medical decisions. Who is the legal decision-maker? Who is the appropriate decision-maker?



# Case Study:

## Comatose Minor

15 year old female patient is in a coma. Prognosis is uncertain. Patient's mother is involved in her care and making medical decisions for the patient. Laboratory testing reveals that the patient is pregnant. Can the medical team disclose the pregnancy to the patient's mother?