







The High Price of Malpractice Claims

- Verdict or settlement
- Trial and discovery costs
 - Money
 - Time
- Significant personal and emotional impact on care providers involved in lawsuit

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Malpractice = Medical Negligence

Plaintiff must establish four elements of cause of action

- Duty
- Breach
- Causation
- Harm

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Duty

Care provider must possess/exercise degree of learning and skill ordinarily possessed and exercised by care providers in good standing acting in similar circumstances.

In other words, care provider must practice within "standard of care."

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Standards in Phlebotomy

- Patient identification
- Sample identification
- Technique
- Universal precautions

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Causation

- Definition:
 - More probable than not that injury resulted from deviation from the standard of care
- No liability without proof of causation

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Failure to License Not Cause

- Fahr v. Catholic Healthcare (2002)
 - Medial nerve injury
 - Sample from antecubital, not wrist
 - Phlebotomist not licensed
 - Can't sue for negligence per se
 - Failed to show cause between lack of license and injury

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Causation Not Established

- Mengelson v. Ingalls Health Ventures (2001)
 - Patient requested draw in right arm
 - 3 attempts to draw from left arm
 - Patient had pain and left work early next day
 - 4 weeks of burning pain
 - 3 months later in car accident – neck damage
 - Reflex sympathetic dystrophy

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Injury

- If there is no injury, there is no basis for a lawsuit
- Injury usually must be physical
- Normally no recovery for purely emotional injury

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Fear

- Lopresti v City of Malden (2001)
 - Bank and hospital sponsored cholesterol screening
 - Phlebotomist drew blood with previously used needle
 - Negative test results to monitor for infection
 - Non injury – no damages

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Distress

- In re Needle Cases (2003):
 - Phlebotomist routinely reused needles
 - 3600 patients notified
 - Patient did not have blood drawn, only tested from another facility
 - No claim for emotional distress or battery

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Compensable Harm

- Nerve damage
- Vessel damage
- Subcutaneous hemorrhage
- Dizziness
- Death

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Types of Damages

- Actual expenses
 - Medical
 - Wages
 - Special accommodations
- Pain and suffering
- Punitive damages
 - Reckless / wanton behavior

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Wanton Disregard

- Walker v. Humana Medical Corp (1982):
 - Blood drawn on hospital patient without checking identification
 - Wrong blood transfusion
 - Court found "took blood without making any effort to determine [the correct patient]"

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Personal Liability of Employees

- Employees can be named in a lawsuit
 - Fairly easy to initiate lawsuit
- Homeowners insurance normally contain exclusion for acts occurring in employment

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Metropolitan Property v. Fitchburg Mutual (2003)

- Phlebotomist poked Lab Assistant to get her attention
- Lab Assistant fell off her chair, causing severe back injury
- Assistant claimed the act of poking her was not acting in furtherance of her employment
- Court found injury occurred in workplace and was not covered

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Metropolitan Property v. Fitchburg Mutual (2003)

- Injury itself most likely covered by workers compensation insurance of employer
- Limits on types of damages under workers compensation
- Lab Assistant probably seeking more “pain and suffering” types of damages from phlebotomist

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Personal Liability of Employees

- Many states have laws requiring employer indemnify employee provided:
 - Employee acting in the scope of employment
 - Was not acting with intentional misconduct, willful neglect of duties, or bad faith
 - Minn.Stat. 181.970

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Source of Errors

- Procedural
- Decisional
- Administrative

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Procedural Errors

- Venipuncture
 - Site preparation
 - Insertion of needle
- Repositioning
- Use of tourniquet

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Decisional Errors

- Site selection
- Vein selection
- Patient identification
- Sample identification
- Policy compliance
- Inattention / distraction

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Administrative Errors

- Hiring practices
- Training
 - Initial
 - Continuing
- Ongoing competency assessment

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Wilkerson v. Laboratory Corp. of America (2005)

- Plaintiff sued for nerve damage caused by LabCorp's phlebotomist.
- Phlebotomist inserted the needle for blood draw and repeatedly repositioned the needle in an attempt to locate a vein.
- Plaintiff developed reflex sympathetic dystrophy.

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Wilkerson v. LabCorp, cont'd

- Claims against LabCorp:
 - Negligent hiring and retention
 - Negligent supervision
 - Vicarious liability
 - Improper positioning of needle
 - Continuing to probe for vein knowing it could cause injury
 - Failure to remove needle after complaints of pain
 - Continuing to draw blood knowing it could cause injury
 - Causing excessive bleeding and hematoma

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Baptist Healthcare Systems, Inc. v. Golda Miller, et al (2005)

- Phlebotomist left tourniquet on 80 year-old patient's arm for about 10 minutes to answer a phone call.
- Patient's arm was swollen and had turned colors.
- Patient developed nerve problems.

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Baptist Healthcare Systems, Inc. v. Golda Miller, et al

- Jury awarded \$154,000 in injuries
- Also found Plaintiff partially negligent
 - Reduced damages to \$100,100

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Fairshter v. American National Red Cross (2004)

- Blood donor sued Red Cross alleging she developed complex regional pain syndrome as a result of negligent phlebotomist

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Fairshter v. American National Red Cross (2004)

- Plaintiff alleged phlebotomist:
 - Improperly inserted the needle
 - Wiggled the needle
 - Stuck her more than once
 - Left her unattended during the draw, even after her arm turned blue

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Fairshter v. American National Red Cross (2004)

• Evidence:

- Red Cross knew phlebotomist lied on her application
- Red Cross ignored staff complaints about phlebotomist's technique
- Phlebotomist on probation at time of draw
- Multiple donors had complained
- Red Cross did not make any effort to retrain

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Pietrunti v. Island Diagnostic Laboratories (1998)

• Patient's mother sued for injuries

- Told phlebotomist she became ill at the sight of blood
- After draw, phlebotomist left the room
- Mother calmed child and placed band-aid on finger
- Collapsed while walking toward waiting room and broke her leg

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No Negligence

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Pietrunti v. Island Diagnostic Laboratories (1998)

- Court found no negligence
 - Unreasonable to expect the phlebotomist to protect her from falling and breaking leg
 - No evidence that phlebotomist required mother to stay in the room
 - No evidence plaintiff was on verge of fainting

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Mislabeled

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Mislabeled

- Darrie Eason was told she had an aggressive form of breast cancer
- Underwent double mastectomy
- Four months later, was told the lab had mixed up two specimens
- Other patient wasn't given news of aggressive breast cancer

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You Be The Judge

- Hospital hires recent graduate
- Policy requires 40 hours of supervised training
- Phlebotomist assigned to duties with less than 5 hours training
- Several months later patient alleges nerve damage occurred during blood draw

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You Be the Judge

- Patient seizes following surgery and dies
- Death determined to be from hyponatremia
- Physician accuses phlebotomist of drawing sample from above IV site

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You Be the Judge

- Patient testifies phlebotomist inserted needle "almost straight up"
- Phlebotomist testifies "used a 45 degree angle"
- Sources (text books, lab policy) suggest 15-30 degree insertion angle
- Nerve damage results

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You Be the Judge

- Work station not properly set up
- Following uneventful blood draw phlebotomist stretches to reach gauze
- Needle pushed deeper into patient
- Nerve damage can't be corrected by surgery

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You Be the Judge

- Phlebotomist assesses patient
- Attempts draw from radial artery but unsuccessful
- Draws from brachial artery
- Nerve damage occurs

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Needlestick Injuries

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Needlestick Injuries

- Between 13 and 62% of all accidents reported at hospitals are associated with needlestick injuries occurring during the process of blood collection.
- 51 cases of human immunodeficiency virus (HIV) infections transmitted from patients to health-care workers, 20 have been associated with phlebotomy.

• RON B. SCHIFMAN, M.D., Phlebotomists at Risk, MAYO CLIN PROC. 1998;73:703-704

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Minimizing Risks

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Minimizing Risks

- Hiring
 - Employment Checks
 - Background Checks

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Training

- Proper patient identification
 - Confirming identity with patient
 - Using barcodes on inpatients
- Proper labeling
 - Compare tubes to labels
 - Print labels at bedside
 - Label tubes in presence of patient
 - Procedure for correcting discrepancies before specimen is drawn

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Training

- Collection Practices
 - Phlebotomists should understand what to do in the following events:
 - Difficult draw
 - Patient becomes ill
 - Hematoma
 - Excessive pain
 - Ensure no allergies to supplies to be used

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Training

- Collect appropriate sample and amount
- Verify patient met collection criteria
 - Fasting
 - Time considerations
- Appropriate site
- Appropriate equipment
- Proper prioritization, e.g. STAT
- Proper handling of specimen

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Proper Supervision

- Fully investigate complaints
 - Techniques criticized by colleagues
 - Patient complaints
 - Provide retraining when necessary
- Review mislabels to determine if employees are skipping steps or not following policies

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Proper Supervision

- Annual Competency Assessment
- Review
 - Policies standard operating procedures
 - Procedures to ensure correct labeling
 - Proper use of personal protective equipment
 - Proper use of equipment
- Hands on training

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Proper Supervision

- Certification through outside agency
 - National Credentialing Agency (NCA)
 - American Society of Clinical Pathologists (ASCP)

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Documentation

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Why is documentation so important?

- Personal testimony is subject to doubt
- Your documentation is a reflection of your practice
- You (and your lawyers) need information to defend your care
 - Medical record
 - Administrative documentation

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“In addition to all the other evidence in the case, the significance of the revised hospital record should not be overlooked...An allowable inference from the bungled attempt to cover up the staff inadequacies on the morning of January 24, was that the revision indicated a consciousness of negligence. The court so charged and the jury could so find.”

Pisel v. Stamford Hospital
180 Conn. 314; 430 A.2d 1 S.Ct. Connat (1980)

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Proper Documentation

- Follow documentation guidelines
- Complete (no blanks or gaps)
- Avoid excessive detail
- Stay neutral and objective -- whether note pertains to patient, another care provider or an incident/error
- Correct spelling/grammar
 - Abdominal “mussels”

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On the second day, the knee was better, and on the third day it had completely disappeared.

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Remember:
All Information Is Discoverable (with only a few exceptions)

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Summary

- Know the patient
- Know your level of skill
- Apply policies / practices consistently
- Pay attention to detail
- Take your time
