

# NURSING CARE MALPRACTICE

## (Part I)

We all make mistakes just because we are human beings. However, the question is: When does a nursing mistake become malpractice?

### What is malpractice?

Malpractice is simply a word for negligence regarding a professional. Negligence is a civil wrong. Negligence can occur with an *omission*—a failure to do something you were supposed to do, or a *commission*—doing something that should not have been done.

### What constitutes malpractice?

There are four elements of malpractice. Each element must be proven to have a case.

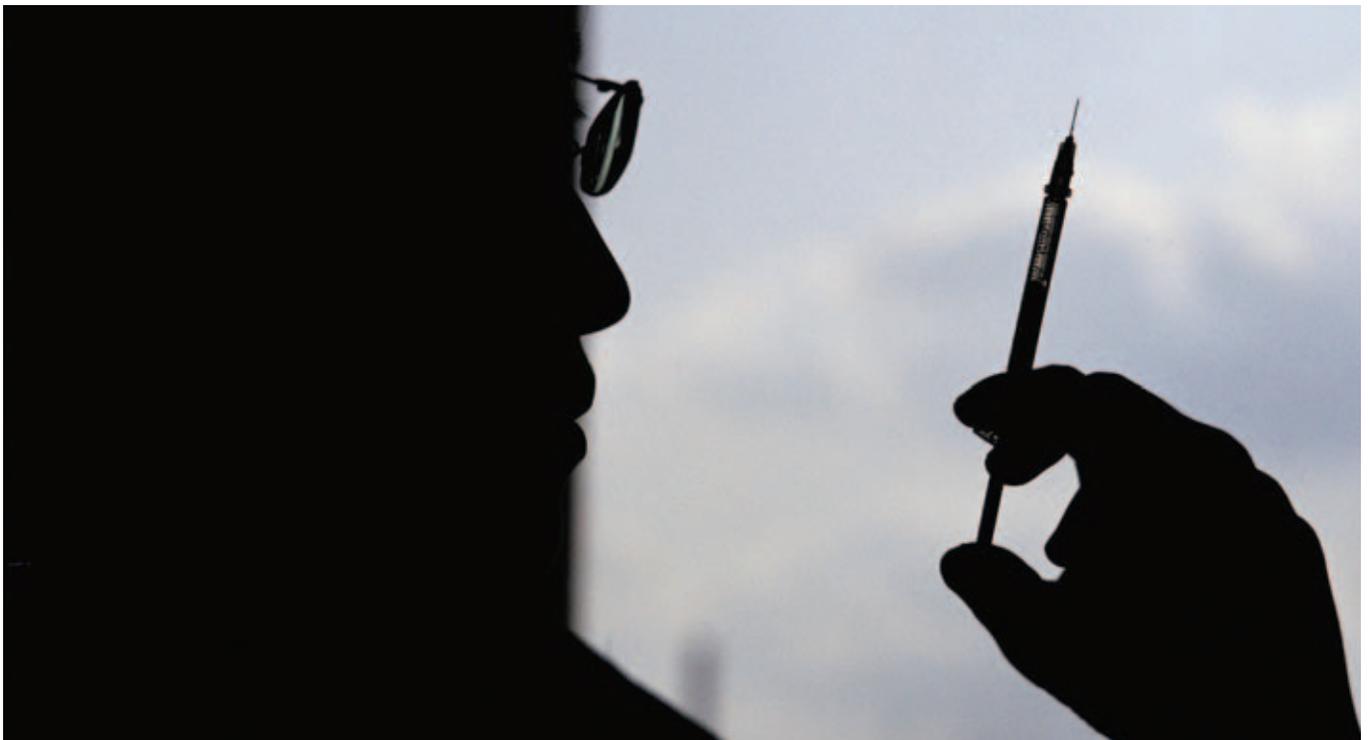
The first element is **duty**. Duty is the standard of care which is what those acting under same or similar circumstances would do.

The second element is **breach**. There must be a breach of that duty. You must do something or fail to have done something that others would have

done acting under same or similar circumstances.

The third element is **cause**. The breach of the duty must cause harm to occur.

As previously stated, negligence is a civil wrong. You have a duty to stop at the stop sign. If you run the stop sign, hit another car and cause harm to the people in the car, this fills all the requirements of negligence. However, if you run a stop sign, but do not hit anything, then you breached your duty, but did not



cause harm, and therefore, that is not considered negligence.

In the nursing context, nurses have a duty to administer the proper medication. If the nurse gives Ampicillin instead of the ordered medicine, Aminophylline, the nurse breached the duty. However, if the patient does not have a reaction to the Ampicillin, there is no harm and thus, it is not negligent. It is simply a medication error. However, if the patient does have a reaction, all of the elements of malpractice have been met and the nurse was therefore negligent.

### **What is The Indiana Medical Malpractice Act?**

In 1975, Otis Bowen was the governor of the State of Indiana, and he was also a physician. Many physicians were leaving the state because of rising medical malpractice premiums. Therefore, the trial lawyers, insurance companies, and physicians sat down to come up with a legislative scheme to keep doctors in this state.

*The Indiana Medical Malpractice Act* is one of the most comprehensive and toughest acts of tort reform in this country, and its constitutionality has been repeatedly upheld by the Indiana Supreme Court.

In our state, if a health care provider commits malpractice, the most a plaintiff can get for his injuries is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00). One can easily see if this is a brain damaged child who will spend the rest of his life in a nursing home, \$1,250,000.00 is not adequate to care for this child=s needs for the rest of his life.

The Act also provides that there shall be no personal liability on behalf of the physician or health care provider. Thus, if the jury awards Five Million Dollars (\$5,000,000.00), once the patient

receives the \$1,250,000.00, no additional money is available. Unlike in an automobile accident negligence case where a physician or health care provider runs a stop sign and hits a car and causes damage to the passengers, the damage in this case is unlimited for these

people=s injuries. If a jury awards Five Million Dollars (\$5,000,000.00), the injured person can garnish the physician= or health care provider=s wages, take his house or do whatever is necessary above and beyond the insurance limit to receive full compensation for his injuries.

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Another requirement of the *Indiana Medical Malpractice Act* is that all cases must proceed through a medical review panel before a case can be filed in court.

### What Is a Medical Review Panel?

A medical review panel is composed of three health care providers who are selected by a neutral process. The health care providers review written submissions and receive instructions regarding the law by a panel chairman who is an attorney. The panel members shall determine if:

- 1) The health care provider met the standard of care;
- 2) If the health care provider failed to meet the standard of care;
- 3) There is some material issue of fact not requiring expert opinion and;
- 4) If the health care provider failed to meet the standard of care, whether or not it caused damage.

As a licensed nurse in this state, you may be asked to serve on a panel. You are required to serve unless you can show good cause why you should not serve. It is an honor to be asked to serve on a medical review panel because you are the one who will determine the standard of care in that case.

Stay tuned for Part II where the questions of who is responsible if I make a mistake and should I carry my own insurance policy.

#### Reference

Indiana Code 34-18-1 et. Seq.

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