

MEDICAL MALPRACTICE INSTRUCTOR'S GUIDE

BACKGROUND:

Medical malpractice and basic tort law is important in medicine. For example, in Emergency Medicine, it is estimated that one suit is filed for every 20,000 visits to an Emergency Department. However, depending upon area this number is highly variable (about one in every 5000 visits in some areas but one in every 50,000 visits in others). Documentation (or the lack thereof) is also critically important, as proper documentation in the chart – the medical record – may determine if the necessary elements for the successful filing of a suit are present. Furthermore, basic legal definitions are provided for learners in order for them to become more familiar with the diverse terminology present [1].

This module was designed to fulfill several purposes. The first is to teach the learner the various vulnerabilities physicians face in everyday practice. The second is to discuss the criteria that are required for a potential suit to move forward. Lastly, the learner is given some general rules of thumb to follow that may potentially lessen their future risk. Facts about malpractice insurance are also provided.

This type of module falls into the category of self-contained tools for education that have been purported to allow for greater autonomy and control by the learner, thus allowing a foundation of knowledge to be developed on which more detailed information can be integrated [2]. We believe that after finishing the module, the learner will have a greater understanding of medical malpractice and be able to incorporate some of the ideas within their own practice.

PURPOSE & GOALS:

To provide an overview of the history of malpractice, the US legal system and how malpractice fits in, the definition and components of malpractice and methods for reduction of risk during clinical practice.

EDUCATIONAL OBJECTIVES:

After completion of the module, the learner will be able to:

- Identify and define several areas of vulnerability for physicians, including:
 - The role of communication and potential litigation
 - The role of the medical record and litigation
 - The role of laboratory testing and malpractice
 - The role of nursing and ancillary staff and malpractice
- Distinguish between criminal and civil law
 - Identify differences in punishment between the two
- Identify the necessary elements for a successful suit
- Define statute of limitations
- Describe and identify documentation pearls

- Demonstrate knowledge concerning malpractice insurance including:
 - Coverage limits
 - Damages

RESOURCE FILES:

1. Definition of Malpractice module (filename: malpractice.cts.pptx)

- This powerpoint presentation is meant to be independently reviewed as an asynchronous module which reviews basic facts about malpractice and tort law, general rules of thumb for documentation and facts about malpractice insurance. The module includes both a pre and post-test to help the learner determine their baseline knowledge and retention of the information contained within the module.
- Estimated time: 60 minutes

2. Summary Handout (filename: malpractice.summary.handout.pdf)

- This document provides a summary of the teaching points for the module

TOTAL MODULE DURATION: 60 minutes

REQUIRED RESOURCES:

- Computer with capability of running PowerPoint

DESCRIPTION OF MODULE:

Intended Audience

- This module was developed for both medical students and 1st year residents prior to beginning a rotation in an emergency department. This allows for early exposure to this concept and is an important component to consider for their future practice.

Pre-reading

- Zane RD. The legal process. Emerg Med Clin N Am. 2009;27:583-592.
- Studdert DM, Mello MM, Brennan TA. Medical malpractice. N Engl J Med. 2004;350(3).
- Kuhn W. Malpractice and emergency medicine. Emergency Medicine Reports. 1990;11(2).
- Carlon JN, Foster KM, Pines JM et al. Provider and practice factors associated with emergency physicians' being named in a malpractice claim. Ann Emerg Med. 2018;71:157-164.

Recommended Implementation/timeline

- Pre-module
 - Prior to taking the module, the pre-reading should be made available to the learners to provide foundational knowledge as to the basics of malpractice and tort law, as well as the landscape of malpractice within emergency medicine.
- During the module

- **Medical Malpractice** Module is sent to the learner for independent study/completion. (60 minutes)

CONCLUSIONS:

Medical malpractice is a subject not often taught in medical school and is one subject in which all medical students and resident physicians should be familiar. This module was developed to train medical students (in their clinical rotations) and 1st year residents in the basic intricacies concerning medical malpractice. In perusing the module, advanced learners (residents) will have the opportunity to discover where their own current practice is lacking and potentially incorporate some of the information into their future documentation and practice. Beginning learners (e.g. medical students) will have the opportunity to learn where common pitfalls and medico-legal traps lie, and thus incorporate some of these ideas during their clinical rotations.

REFERENCES:

1. Henry G, "Risk Management Monthly December 2011". *Risk Management Monthly*. The Center for Medical Education: December 2011. Web. Accessed February 15, 2012.
2. Candy PC, Brookfield SD. *Self-direction for lifelong learning: A comprehensive guide to theory and practice*. 1st Ed. San Francisco, CA: Jossey-Bass (Wiley Publishers), 1991.