

# Risk Management Mentor Program

# Program Disclaimer

## ▶ Modules

1. Risk Management Fundamentals
2. Enterprise Risk Management
3. Applications
4. Healthcare Providers
5. Clinical and Patient Safety
6. Legal and Regulatory
7. Claims and Litigation
8. Risk Financing

## ▶ Topics

- ▶ Web links
  - ▶ Primary sources
  - ▶ Templates
  - ▶ Questions
  - ▶ Responses



# Module 7

## Claims and Litigation

## ► Objectives

---

Examine the types of patient events

---

Recognize the elements of a medical malpractice claim

---

Describe the litigation process

---

Explore pertinent aspects of claims reserving

---

Discuss types of damages in medical malpractice

---

Review the process for claims reporting to MedPro Group

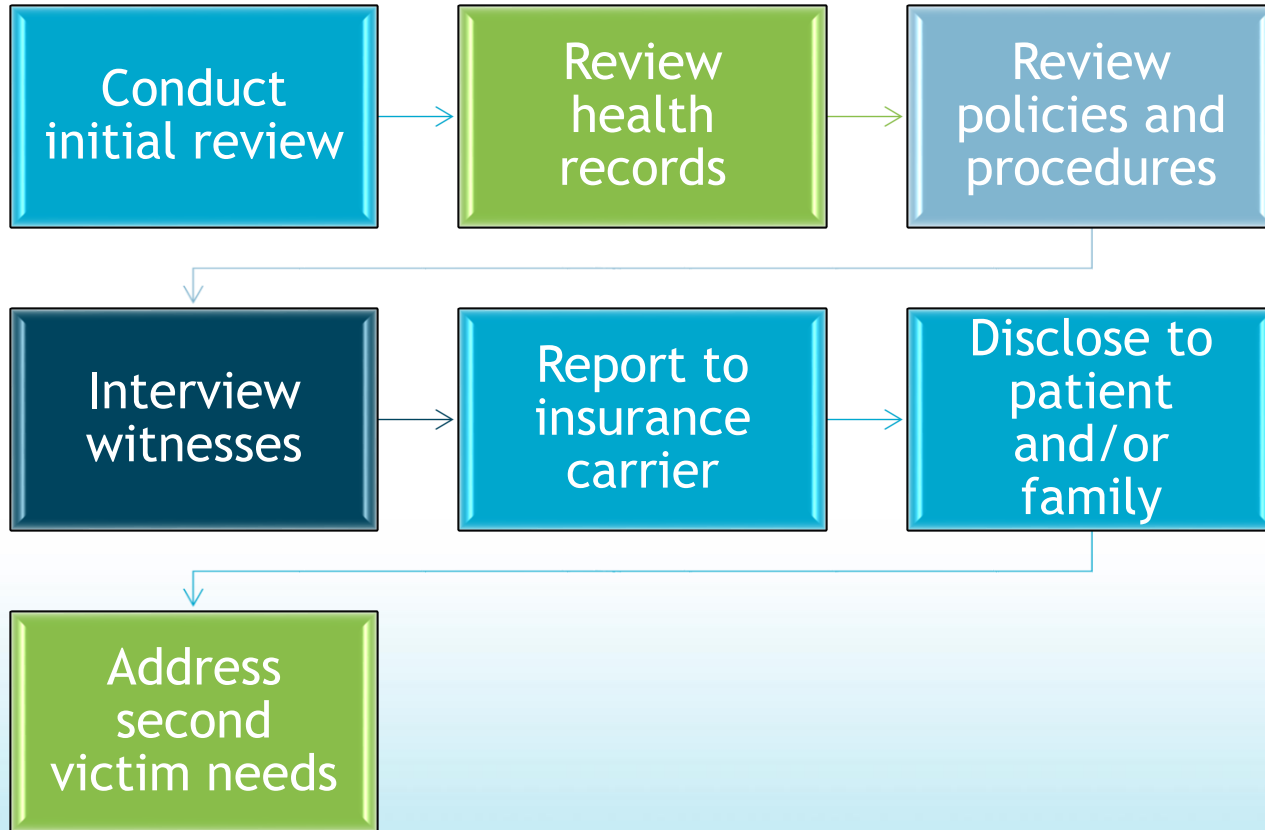
## ▶ Patient incidents and adverse events

Prevention

Identification

Reporting

## ▶ Potentially compensable event (PCE) process





## ► Definitions

---

Claim - written demand

---

Lawsuit - legal proceeding

---

Medical malpractice - failure to perform an owed duty

---

Negligence - failure to provide care

---

Negligence per se - violation of a law

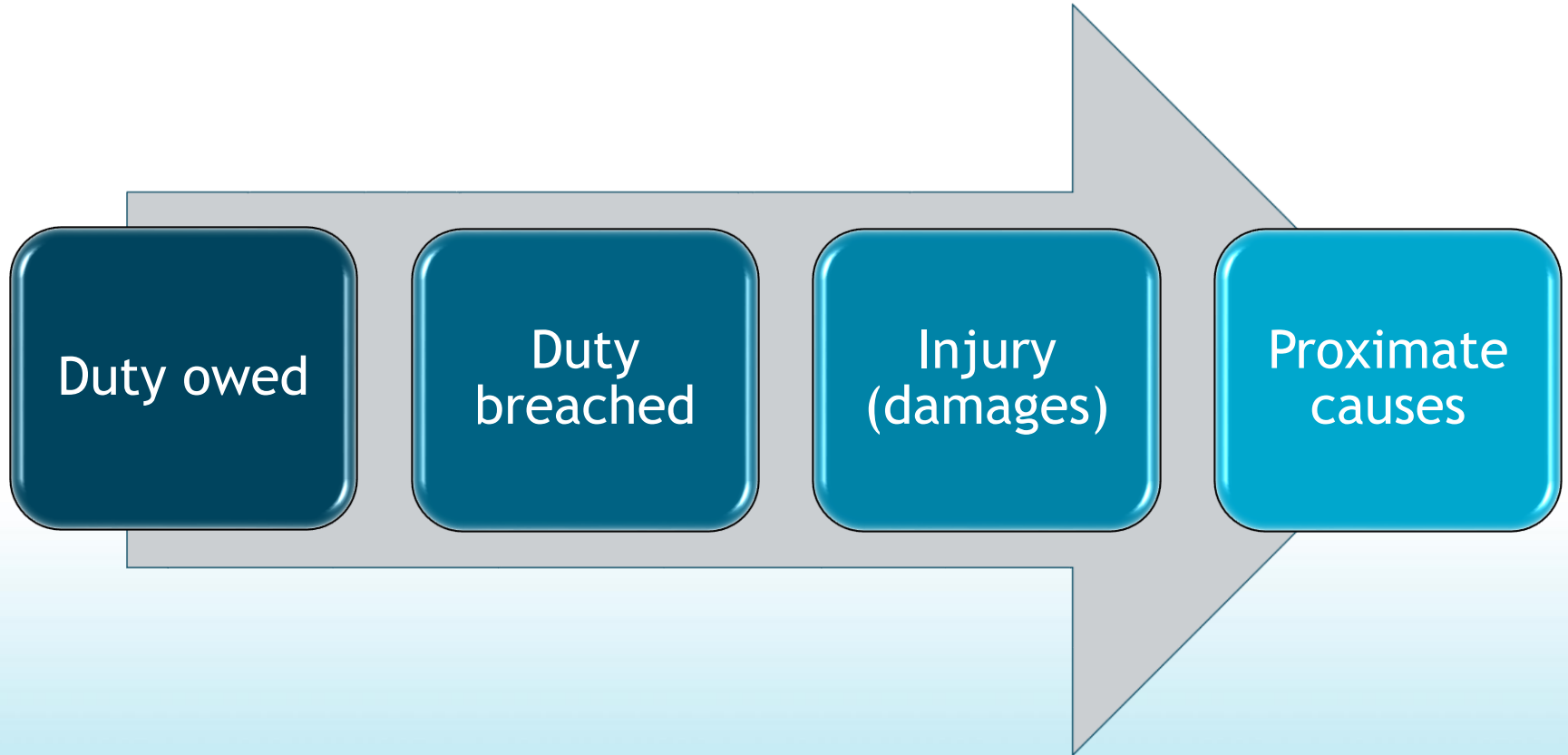
---

Ostensible agency - patient sought care at institution, not physician

---

Respondeat superior liability - vicarious liability

## ▶ Legal elements of malpractice



## ▶ General steps of litigation



## ▶ Claims reserves

Jurisdiction

Plaintiff

Presiding judge

Attorney reputation

Defendant characteristics and reputation

Type of claim

## ▶ Three categories of damages

### Economic damages

- Lost wages
- Medical or dental bills
- Funeral expenses

### Noneconomic damages

- Pain and suffering
- Loss of consortium

### Punitive damages

- Evidence tampering

## ▶ Risk management role

- Assist defense counsel and insurance representative
- Be available to your staff
- Attend depositions and legal proceedings
- Provide updates to administration
- Determine whether the hospital should consent to settle
- Assist in evaluating hospital's position and liability

## ▶ Claims correspondence folder

Correspondence concerning investigation of the event



Health records



Legal papers



Expert reviews



Insurance coverage information



## ▶ MedPro Group process for claims reporting

Reporting  
requirements per  
policy

- What and when
  - Potential compensable event
  - Subpoena
  - Claims (plaintiff attorney letter)
  - Legal proceedings



## ▶ Case study: Claims management

- ▶ During the labor and delivery of a baby, a woman suffered a postpartum hemorrhage. As a result, she received several units of packed red blood cells, fresh frozen plasma, and platelets. She was admitted to the intensive care unit for a few days, and she was eventually discharged with a healthy baby boy. While the patient was still in the hospital, her husband had expressed his concern to the doctor and nursing staff as to how and why his wife had developed postpartum hemorrhage since he was never aware that this could happen.
- ▶ This event happened on January 3 of the current year.

## ▶ Case study: Claims management

- ▶ Note: In reviewing the case, you note that no labor and delivery informed consent by the physician was performed nor any documentation of informed consent was contained in the patient's health record, indicating the potential risk of postpartum hemorrhage during labor and delivery.
- ▶ Your hospital has a claims-made policy that requires reporting of all medical malpractice claims and potentially compensable events (PCEs).
- ▶ Should this be reported to the insurance carrier? Why or why not?

## ▶ Case study: Claims management

- ▶ Report the claim as a potentially compensable event (PCE) or incident.
- ▶ Rationale: Although postpartum hemorrhage is a known common complication of labor and delivery, the fact that no informed consent was documented in the patient's health record makes this case vulnerable should a future claim or suit be pursued. In addition, although mother and baby may not be suffering any known afflictions at this time, the potential for an adverse event to occur still exists whether from an anatomical defect or missed diagnosis of an active physiological problem, or a complication of multiple blood transfusion products. Filing an incident report or reporting a PCE to the medical malpractice insurance carrier will trigger coverage for a claims-made policy in the event a claim is made at a later date.

## ▶ Quiz question

When reserving for a claim, what are some factors to consider?

- A. Defendant behavior and demeanor
- B. Jurisdiction socioeconomic setting
- C. Legal counsel experience
- D. Plaintiff characteristics
- E. Venue or political climate
- F. All of the above
- G. Only A and B



## ▶ Response

### F. All of the above

Rationale: Many factors influence the chance for a defense verdict in a legal case. Proper preparation of defendants for deposition and trial can influence the jury and provoke the plaintiff's attorney into shifting his or her strategy. The jurisdiction is critical especially from the socioeconomic and political aspects. Venues in which the majority of the population are lower to middle income may result in a plaintiff verdict. The opposite may be true for an affluent or a rural area resulting in a defense verdict. The experience and expertise of legal counsel are important in understanding how to apply legal strategy along with familiarity with the presiding judge and the values of the local community. The plaintiff as a witness can be compelling depending on the case. This is why reserving of claims cases is both an art and a science.

## ▶ Resource

- ▶ Carroll, R. (2011). *Risk Management Handbook for Healthcare Organizations, Volume 1: The Essentials, 6<sup>th</sup> edition*. Chicago, IL: American Society of Healthcare Risk Management.

## ▶ Disclaimer

The information contained herein and presented by the speaker is based on sources believed to be accurate at the time they were referenced. The speaker has made a reasonable effort to ensure the accuracy of the information presented; however, no warranty or representation is made as to such accuracy. The speaker is not engaged in rendering legal or other professional services. If legal advice or other expert legal assistance is required, the services of an attorney or other competent legal professional should be sought.