

MEDICAL MALPRACTICE

GRAND ROUNDS SEPT 2025

SCOTT WHYNOT



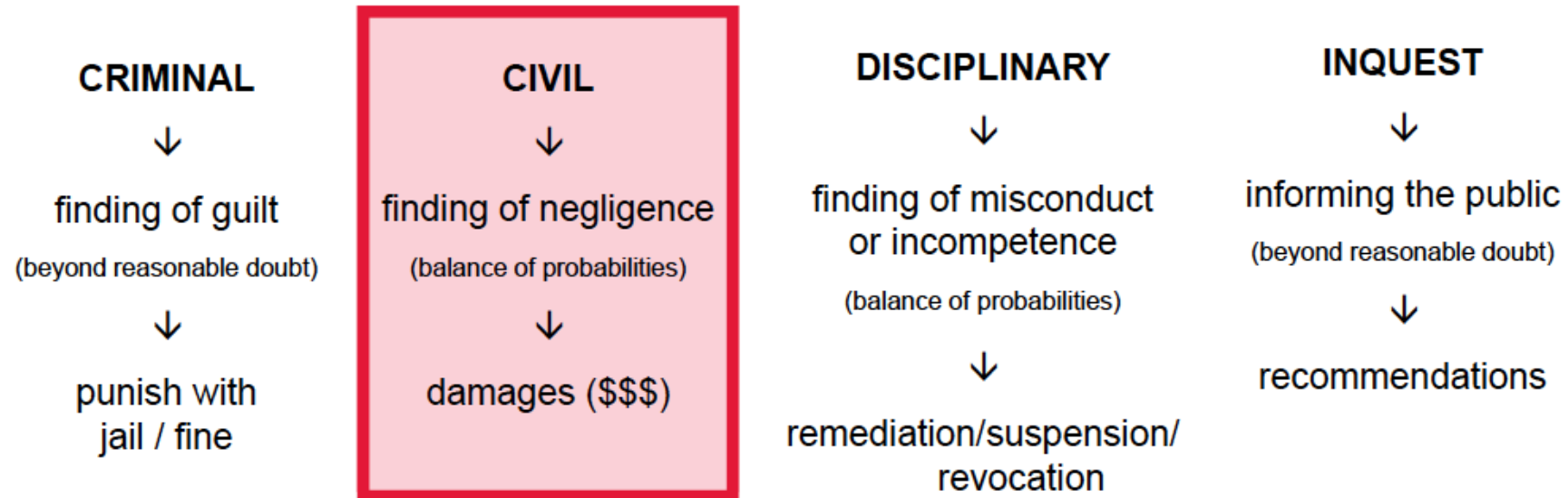
DISCLOSURE

- Nothing to disclose

LEARNING OBJECTIVES

- List the Elements of Negligence
- Describe Causation and Material Contribution to Risk
- Describe the Purpose of Damages in a Civil Suit

WHAT IS A LEGAL CLAIM



WHAT IS MEDICAL MALPRACTICE

- Malpractice – improper or unskillful conduct by a health care professional that results in injury to the patient
- Negligence is the most common type of medical malpractice claim

ELEMENTS OF NEGLIGENCE

- Health Care Professional (HCP) owed patient a duty of care
- HCP breached their duty to patient by failing to meet standard of care
- Actual harm or damage was suffered by the patient
- Proximate cause between HCP's breach and patient harm

EXAMPLES OF NEGLIGENCE

- Errors in triage
- Medication errors
- Birth trauma
- Delayed or wrong diagnosis
- Failure to escalate or refer

EXAMPLES OF NEGLIGENCE (FACILITY)

- Inappropriate staffing levels
- Inappropriate education and supervision of staff
- Failure to discipline or terminate unsafe or incompetent staff
- Negligent credentialing of physicians
- Inappropriate policies, procedures, precautions, equipment
- Error or delay in communicating test results

CYCLE OF A MALPRACTICE CLAIM



DISCOVERY

- Legal obligation to list all relevant documents
- Lawyers will advise on what documents to produce
- All individuals named can be examined (questioned by a lawyer)
- Allows suing party an opportunity to understand the care provided
- Allows defending party to better understand its exposure to risk

CONSULTING WITH EXPERTS

- Judge/jury not qualified to determine if a health care provider met the standard of care
- Court relies on independent experts to assess care, causation, and damages
- Experts typically retained by both parties

RESOLUTION

- 64% dismissed or discontinued/abandoned
- 31% settled
- 2.5% trial decision in favour of doctor
- <1% trial decision in favour of patient

ELEMENTS OF NEGLIGENCE



STANDARD OF CARE

- What did you do?
- What should you have done?

EXAMPLES

- Premature discharge
- Failure to provide adequate discharge instructions
- Misdiagnosis or failure to diagnose
- Surgical error
- Failure to provide proper and timely treatment

STANDARD OF CARE

- Expert witness
- Published standards and guidelines
- Research papers
- Healthcare organization policy

STANDARD OF CARE

- Reasonableness, not perfection
- Bad outcomes happen without negligence
- Judged in light of the knowledge that ought to have been reasonably possessed at the time of the alleged act of negligence
- Different opinions are acceptable

CAUSATION

- Plaintiff must establish that the defendant's conduct caused the plaintiff's injury
- Plaintiff bears burden of proof
- Primary test for causation is the 'but for' test
- Defendant's act must have been a necessary ingredient to bring about the injury

CAUSATION

- Even if factual causation is found, no negligence if the injury was not reasonably foreseeable to the defendant
- Material contribution to risk could apply where it is impossible to say which of two (or more) sources caused an injury

DAMAGES

- Breach of Standard of Care
- Causation
- Legal responsibility for loss

DAMAGES

- Restore the injured person and other affected parties to the same position they would have been in if the negligent act never happened
- Punitive damages sometimes awarded in malicious situations (aim is to punish the defendant, not compensate the plaintiff)

WHAT IS COMPENSABLE

- Pain and suffering (imposed cap of approx. \$450,000)
- Economic losses
- Future needs

DAMAGES

- Income loss
- Support and care costs
- Family members entitled to compensation (ex. children's loss of parent's income)
- OHIP and ODSP entitled to compensation

DAMAGES

Example – Brain injured adult

THE PATIENT	
General Damages	\$300,000
Past Income Loss	\$240,000
Future Income Loss (present value)	\$1,800,000
Care needs – cost of structure for lifetime	\$3,300,000
House modification	\$250,000
HIS SPOUSE (who is also his Guardian)	
Loss of care guidance and companionship	\$130,000
Past care costs provided	\$75,000
Guardianship and management fee over lifetime	\$900,000
OHIP and Disability insurer	
Subrogated claim for services provided	\$260,000
Subrogated claim for past disability payments	\$150,000
TOTAL	\$7,405,000
+ legal fees payable to plaintiff	
+ pre-judgment interest	

QUESTIONS?

