

Legal Lens: Navigating Eye Care Without Lawsuits

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Course Description: This course aims to educate participants on the common areas of optometric practice that often result in lawsuits, as well as how to prevent and avoid such legal action.

Course Objectives:

- Educate participants about medical malpractice and strategies to avoid related lawsuits.
- Educate participants about the potential liability associated with employees and methods to mitigate this risk.
- Educate participants about premise liability and ways to prevent premise liability claims.

Course Outline:

- I. Medical Malpractice
 - a. Medical Malpractice Definition: “failure to provide the degree of care another clinician in the same position with the same credentials would have performed that resulted in injury to the patient.”
 - b. Statistics
 - i. General medical malpractice stats
 - ii. Ophthalmology malpractice stats
 - iii. Optometry malpractice stats
 - c. Standard of Care
 - i. Standard of care definition: the level of care, skill, and treatment that is accepted and practiced by a reasonable

and prudent healthcare provider under similar circumstances.

- ii. How does the standard of care change?
-published guidelines from reputable organizations like AAO, AOA etc.
- iii. How new technologies and treatments change the standard of care.

d. Elements of Medical Malpractice (Negligence)

- i. Duty: duty is established when a doctor-patient relationship is formed
- ii. Breach: duty is breached by failing to provide treatment in accordance with the accepted medical standards and can be an act or omission
- iii. Causation: breach of duty directly caused harm or injury to the patient
- iv. Damages: patient suffered actual harm or damages as a result of the breach of duty
-damages can include physical injury, emotional distress, additional medical expenses, loss of income, or other losses

e. Common Reasons of Malpractice Claims

- i. Misdiagnosis: Failing to correctly diagnose a medical condition or delaying the diagnosis that results in harm to the patient
- ii. Documentation: Inaccurate or incomplete medical records that leads to misdiagnosis, inappropriate treatment, or medication errors
- iii. Miscommunication: Miscommunication between providers, between providers and patients, or in medical records that leads to mistakes in diagnosis, treatment, or medication administration
- iv. Failure to Follow-Up: Failing to provide appropriate follow-up care after a procedure or treatment that results in complications or worsened conditions for the patient
- v. Patient Abandonment

- vi. Failure to Educate
- vii. Failure to obtain Consent: failure to inform patients of the risks, benefits, and alternatives to a proposed treatment or procedure.
- f. Medical Malpractice Examples
 - i. Glaucoma
 - ii. Failure to follow-up
 - iii. Misdiagnosis
 - iv. Other examples of medical malpractice
- g. Procedures and Processes to reduce and avoid liability
 - i. Quality Assurance Programs: monitor and improve the quality of care provided through auditing of billing/coding procedures and exam/follow-up procedures
 - ii. Informed Consent Examples: dilation, punctal plugs, foreign body removal and others
 - iii. Informed Refusal Examples: when a patient refuses a test or treatment
 - iv. Referral procedures
 - v. Patient Education
- h. Professional Liability Insurance
- II. Employee Liability: legal responsibility that employers have towards their employees in terms of providing a safe working environment, fair treatment, and complying with employment laws and regulations
 - a. Title VII of the Civil Rights Act: prohibits employers from discriminating against employees or job applicants on the basis of race, color, religion, sex, or national origin
 - b. Pregnancy Discrimination Act: prohibits employers from discriminating against employees on the basis of pregnancy, childbirth, or related medical conditions and includes all aspects of employment, such as hiring, firing, promotions, and benefits
 - c. Equal Pay Act: prohibits employers from paying employees of one gender less than employees of another gender for equal work in the same establishment

- d. Age Discrimination in Employment Act: federal law in the United States that prohibits employment discrimination against individuals who are 40 years of age or older
 - e. Title I of Americans With Disabilities Act: prohibits discrimination on the basis of disability in employment
 - f. The Family and Medical Leave Act (FMLA): requires covered employers to provide eligible employees with unpaid, job-protected leave for specified family and medical reasons
 - g. Privacy and Data Protection: laws and regulations regarding the collection, use, and protection of employee personal data
- III. Premise Liability: legal concept that holds property owners and occupants responsible for accidents and injuries that occur on their property
- a. Landowners Duty: duty to maintain their property in a safe condition for visitors
 - b. State differences: Premises liability laws can vary from state to state
 - c. Insurance considerations: coverage limits, exclusions, and the process for filing a claim
 - d. Lease considerations: allocation of responsibility for maintenance and repair of the property and liability for injuries, indemnification, insurance requirements