

MALPRACTICE

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Primary Disciplinary Field(s): Legal Studies, Professional Ethics, Medicine, Psychology

1. Core Definition and Scope

Malpractice is formally defined as the professional misconduct or failure of a professional practitioner to meet the established standard of care in their specific field, resulting in measurable harm or injury to the client or patient. This concept is a specialized form of **negligence**, distinguished by the requirement that the defendant must hold a professional license or possess specialized expertise, and the alleged negligence must occur while they are acting within the scope of that professional role. It represents a significant breach of the fiduciary duty owed by the expert to the vulnerable party seeking their services.

Unlike simple negligence, which applies to everyday careless acts, malpractice necessitates a standard of care determined by the typical skill and competence demonstrated by reasonable practitioners in the same field and community. If a medical doctor, for example, fails to diagnose a readily identifiable condition that other doctors of similar training would have caught, that failure constitutes a breach of the professional standard, potentially leading to a malpractice claim. The standard is typically objective, measured against the peer group, rather than subjective or based on the individual professional's intent.

The scope of malpractice claims is broad, covering both errors of **omission**--failing to take a necessary action, such as neglecting to order appropriate diagnostic tests--and errors of **commission**--taking an inappropriate action, such as performing a surgery incorrectly or prescribing a dangerous drug combination. Crucially, as highlighted by examples in fields like psychology and medicine, malpractice also includes ethical violations, such as a professional making inappropriate sexual or emotional advances on a patient or client, thereby breaching fundamental professional boundaries and trust.

2. Elements of Negligence

To successfully prove a claim of malpractice in common law jurisdictions, the plaintiff must establish four distinct legal elements, demonstrating a direct causal link between the professional's actions and the resulting harm. The absence of even one element typically invalidates the claim, placing a significant burden of proof on the injured party seeking compensation.

The first element is **Duty**. This requires demonstrating that a professional relationship existed between the practitioner and the client, establishing a legally recognized obligation for the professional to adhere to a specific standard of care. This duty arises automatically when a practitioner agrees to treat, advise, or represent a client. Once duty is established, the second

element, **Breach**, must be proven. Breach occurs when the professional fails to exercise the level of care, skill, or diligence that a reasonably prudent and competent professional in the same field would have exercised under similar circumstances. Expert testimony is almost always required to define and prove the breach of this standard.

The third and often most complex element is **Causation**. The plaintiff must demonstrate two types of causation: factual (or "but-for") causation and proximate causation. Factual causation means that the injury would not have occurred "but for" the professional's negligent act or omission. Proximate causation limits liability to injuries that are a foreseeable result of the negligent act. If a doctor's misdiagnosis caused a delay in treatment, and that delay led directly to a worse medical outcome, causation is likely established. However, if an intervening, unrelated event caused the final injury, proximate causation may be difficult to prove.

Finally, the element of **Damages** must be present. The plaintiff must have suffered actual, measurable harm, loss, or injury as a direct result of the professional's breach. Damages can include physical injury, emotional distress, financial losses, or loss of legal rights. Without actual damages that can be compensated monetarily, even a clear breach of the standard of care does not constitute actionable malpractice.

3. Disciplinary Fields and Common Examples

While the principles of malpractice are uniform, their application varies significantly across professional disciplines, with each field exhibiting unique risks and regulatory standards. The highest volume of claims typically occurs in the healthcare sector, given the direct physical and psychological risks involved in medical treatment.

Medical Malpractice is perhaps the most recognized form, encompassing negligence committed by doctors, nurses, surgeons, and hospital staff. Common examples include surgical mistakes, such as operating on the wrong site or leaving instruments inside a patient; errors in administering anesthesia; failure to diagnose conditions like cancer or stroke in a timely manner; medication errors; or failure to obtain **informed consent** before a procedure. The source content provides a salient example of malpractice in healthcare: "Doctors and physicians who making inappropriate advances on patients," highlighting that intentional sexual or ethical misconduct constitutes a severe breach of professional duty, often resulting in both civil liability and criminal charges.

Legal Malpractice occurs when attorneys fail to perform their professional duties, leading to a detrimental outcome for the client. This includes failing to file crucial documents before a statute of limitations expires, providing erroneous legal advice, failing to investigate relevant facts, or engaging in serious conflicts of interest. Proving damages in legal malpractice often requires demonstrating that had the attorney acted competently, the client would have won the underlying case, a demanding standard known as the "case within a case."

Malpractice is also relevant in other high-stakes advisory professions. **Financial and Accounting Malpractice** can arise when auditors negligently misstate financial reports, causing investors significant financial losses. In mental health, **Therapist or Psychological Malpractice** frequently involves breaches of confidentiality, failure to prevent foreseeable harm (such as a patient threatening suicide), or violations of therapeutic boundaries, which can cause profound emotional damage to vulnerable clients.

4. Ethical and Professional Obligations

Malpractice is inextricably linked to the ethical frameworks governing professional bodies. Professional licenses are granted based on the promise that the practitioner will uphold standards that protect the public interest. A malpractice suit often represents the legal mechanism for addressing the failure to meet this ethical compact.

Central to professional practice is the concept of **fiduciary duty**, which dictates that the professional must act in the best interest of the client above all else. This duty requires absolute loyalty, confidentiality, and transparency. Breaches of this duty--especially in professions dealing with highly personal or sensitive information, such as law and therapy--are viewed with extreme legal and ethical gravity. For instance, any self-serving action that exploits the client's trust, such as financial manipulation or the sexual exploitation mentioned previously, automatically constitutes a profound ethical and professional violation, bypassing the need to prove mere carelessness.

Furthermore, professional bodies--such as state medical boards or bar associations--maintain strict **Codes of Conduct** that dictate expected behavior. While civil malpractice suits seek monetary compensation, professional disciplinary actions seek to protect the public by imposing sanctions like license suspension, mandatory retraining, or permanent revocation. Therefore, a finding of malpractice often triggers parallel regulatory investigations, subjecting the professional to both legal and administrative penalties.

5. Historical and Legislative Development

The roots of malpractice jurisprudence can be traced back to English common law regarding negligence and contract breaches in the early modern period. Originally, actions against professionals often fell under *assumpsit*, where the professional (e.g., a smith or surgeon) was held liable for failing to competently perform a promised service. As specialized professions grew and formalized in the 18th and 19th centuries, the concept evolved into the modern tort of negligence, focused specifically on the failure to use reasonable professional skill.

The 20th century saw a dramatic increase in malpractice litigation, particularly in the United States, fueled by medical advancements, increased patient expectations, and evolving standards of evidence. This rise led to the **Tort Reform Movement**, a legislative effort aimed at curtailing the

perceived crisis of excessive malpractice suits and high liability insurance premiums. This reform often involves imposing caps on non-economic damages (such as pain and suffering) that juries can award, or introducing mandatory mediation or arbitration processes before a case can proceed to a traditional trial.

A key historical development is the shift in defining the standard of care. Historically, professionals were judged by the standards of their local community--the "locality rule." Today, due to standardized national licensing, continuing education, and global access to medical knowledge, the standard of care has largely become national or even global, particularly in highly specialized fields. This evolution means that practitioners are held accountable to a higher, more uniform level of expected competence, regardless of their geographic location, making adherence to the established body of professional knowledge paramount.

6. Legal Consequences and Remedies

The legal consequences of a successful malpractice claim are substantial and typically involve both financial liabilities and professional repercussions. The primary remedy sought in a civil malpractice action is monetary compensation, designed to restore the injured party to the financial position they would have occupied had the negligence not occurred.

Damages awarded are categorized into two main types. **Economic damages** cover quantifiable, out-of-pocket expenses directly resulting from the malpractice, such as subsequent medical bills, rehabilitation costs, lost wages (both past and future), and loss of earning capacity. **Non-economic damages** are awarded for subjective, intangible harms, including pain and suffering, emotional anguish, loss of consortium, and loss of enjoyment of life. In cases of extremely reckless or willful misconduct, courts may also impose **punitive damages**, which are intended not to compensate the victim but to punish the professional and deter similar future behavior.

To mitigate the significant financial risk associated with these large damage awards, most licensed professionals are required to carry **Professional Liability Insurance** (often referred to as malpractice insurance). While this insurance covers the monetary judgment and associated legal defense costs, it does not shield the practitioner from disciplinary action taken by licensing boards. A finding of malpractice often leads to investigations that can result in public censure, probation, or the permanent loss of the professional license, effectively ending the individual's career in that field.

7. Debates and Preventive Measures

The domain of malpractice remains highly controversial, particularly in healthcare, fueling continuous policy debates regarding legal access and professional autonomy. One major point of contention is the practice of **defensive medicine**, where practitioners order marginally necessary

tests, consultations, or procedures primarily to create a robust documentation trail that shields them from potential lawsuits, rather than solely for clinical benefit. Critics argue this practice drives up healthcare costs unnecessarily, while proponents argue it is a rational response to the high cost and complexity of modern litigation.

Another significant debate centers on access to justice. Malpractice cases are notoriously expensive and time-consuming, requiring extensive use of expert witnesses. This economic barrier often means that only cases promising very large damage awards are pursued by contingency-fee lawyers, potentially leaving victims of less catastrophic, yet still harmful, negligence without legal recourse. Critics of the current system advocate for alternative dispute resolution mechanisms or specialized health courts to handle these complex claims more efficiently and affordably.

Preventive measures are continually evolving within professional fields to reduce the incidence of malpractice. These measures focus heavily on systemic improvements, including the adoption of rigorous safety checklists, enhanced communication protocols (especially during patient handoffs), continuous professional development, and robust peer review processes. Furthermore, clear, comprehensive, and timely documentation of all decisions and interactions is considered the best defense against malpractice claims, serving as critical evidence that the professional adhered to the accepted standard of care.

Further Reading

[Medical Malpractice \(Wikipedia\)](#)

[Legal Information Institute: Negligence \(Cornell Law School\)](#)

[American Bar Association: Model Rules of Professional Conduct](#)