Medical Jurisprudence

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Medical Jurisprudence

- Definition: The branch of the law that deals with the application of law to medicine.
Lecture Objectives

Identify and discuss high-yield topics.
Essentials of Medical Ethics

• Autonomy: patients have the right to make their own informed decisions even if contrary to medical advice.

• Beneficence: care be provided with the intent of doing good for the patient.

• Non-maleficence: provide care under the assumption you are not doing harm or minimizing harm to the patient.

• Justice: distribution of your care and resources equitably.
HIPPA
Definition of HIPPA

• Privacy rule requires health care providers to obtain patient authorization to use or disclose individually identifiable health information with certain broad exceptions.
An eight year old child is brought to your office for a school entry examination. During the exam you notice multiple bruises on the child’s back and legs in various stages of healing. You suspect child abuse. Which of the following options is the most appropriate action for you to take?

1. Confront the child’s patient and threaten them with physical violence if it happens again.

2. Call the child’s neighbor to have them monitor the situation for you.

3. Promptly notify the proper authorities about your suspicions.

4. Take the child into your custody.
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HIPPA Exceptions

- Notification of patient death to authorities
- Court order
- Serious contagious disease (CDC reporting)
- Child abuse (must report) or suspicion of child abuse
- Serious and immediate threat of harm to identifiable person(s).
EMTALA

Emergency Medical Treatment & Labor Act

Significance: any patient presenting to the ED is to be treated and stabilized regardless of medical insurance.
Advanced Care Directive
An eighty year old man is brought to the ED by ambulance with his wife after a sustaining injuries in a motor vehicle accident. The man is alert and oriented but has suffered serious, potential life threatening, lower extremity injuries. His wife informs you his advanced directives on file state that he does not wish to have his life prolonged in the event of serious medical disease/injury. What should you do next?

1. Make the patient comfortable with proper pain management and contact hospice.

2. After explaining to the patient the extent of his injuries, suggested treatment and potential outcomes, ask the patient for his decision.

3. Move on to your next patient in need of medical attention.

4. Medical care should be directed by his wife.
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Definition

A legal document in which a person specifies what actions should be taken for their health if they are no longer able to make decisions for themselves because of illness or incapacity.

Does not come into effect until the patient is incapable of making their own decisions.
Types

Living Will: list of items the patient wants or doesn’t want.

Durable Power of Attorney: patient appoints someone to make decisions for them.
1. The PSDA requires all health care agencies to recognize the living will and durable power of attorney for health care.

2. The Act applies to hospitals, long-term care facilities, and home health agencies that get Medicare and Medicaid reimbursement.

3. Under the PSDA, health care agencies must ask you whether you have an advance directive.

4. They also must give you information about your rights under state law.
Witnesses

1. Two (2) witnesses required.

2. Must be at least 18 yo.

3. Cannot be the healthcare provider, work for the healthcare provider, work at the place you live.

4. Must know the patient.

5. One (1) of the two witnesses cannot be related or benefit financially after the patient’s death.

6. Must see the patient sign the form.
Informed Consent

Patient Autonomy
A 15 year old girl is brought to the ED by fire rescue. She is unconscious. CT scan confirms intracranial injuries requiring emergency surgery. Her parents are not available to provide consent. What is the best available option?

1. Perform the life saving surgery since consent is implied in this situation.

2. Do your best to stabilize the patient without performing surgery.

3. Obtain a court order to perform the life saving surgery.

4. There is nothing you can do without parental consent.
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1. **Perform the life saving surgery since consent is implied in this situation.**

2. Do your best to stabilize the patient without performing surgery.

3. **Obtain a court order to perform the life saving surgery.**

4. **There is nothing you can do without parental consent.**
Five Components of Informed Consent

1. Nature of procedure
2. Risk of procedure
3. Alternatives to procedure
4. Expected benefits of procedure
5. Potential consequences of not doing anything
Application of Consent

• Applies to adults with capacity to make decisions
• Consent is implied in cases of emergency

Classic board question

Beneficence
Consent of Minors

- Minors (under age 18) presumed to be incompetent to make their own decisions.
- Only parents or legal guardians can give legal consent

Don’t get tricked up by other family members
Exceptions to Parental Consent

- Emergency Situations: minor’s life is at risk or at risk of serious harm.
- Emancipated minor: married, divorced, independent & self supporting.
- Specific Health Care Situations: STD tx, contraception, prenatal care, substance abuse
Parens patriae

- Grants power to the state to protect persons who are legally unable to act on their own behalf.

- Parents don’t have the right to deny life saving care to minors due to religious exemption.

Good question material
Informed Refusal

- Patient must be fully informed of the effects and potential outcomes of refusing therapy including potential harm.
Malpractice
Definition of Malpractice

• Malpractice is a preventable error in patient care that deviates from the standard of care in a local community resulting in harm to the patient.

• A law suit needs to be filed within the statute of limitations.
Common Allegations

- Failure to diagnose
- Delay in diagnosis
- Failure to follow up
Malpractice Claim Criteria

- Duty Owed
- Duty Breached
- Causation
- Damages

Physician only needs to prove one does not exist.
Duty Owed

Has a doctor-patient relationship been established?

A doctor-patient relationship is formed if a partial history is taken and medical advice has been provided.
Duty Breached

Has the physician failed to fulfill his/her duties to the patient?

Did your actions fail to comply with the standard of care in the local community?
Causation

Can the actions of the physician be attributed to the patient’s complaint?

Are your actions responsible for the patient’s complaint?
Did the actions of the physician result in harm?

Maybe, maybe not.
What to Do?

Do what a reasonable, cautious, prudent physician would do.

Follow the guidelines when practicing. Refer to Evidenced Based Medicine when possible.

Guidelines and Evidenced Based Medicine are unbiased, current, comprehensive, recognizable and created by experts in the field.
Poor medical record documentation is the leading reason of medically defensible malpractice cases resulting in settlement or lost at trial.

If you didn’t document it, you didn’t do it!
Non Compliance

Ultimately the more learned partner - the physician - should take the lead in giving patients information and urging them to comply with recommendations.

Then document.

Document why the established goal is not being achieved and that the patient has been informed of the risks of continued noncompliance.
Copying & Pasting

The copying and pasting of one provider’s note into another provider’s is:

- Extremely common
- Fraudulent
- Indefensible
- Can produce inaccurate information

Recent development so expect a question
Patient Termination
You can terminate or fire a patient from your practice for all of the following reasons except:

1. Failing to pay their bills for your service.

2. Not adhering to prescribed therapy.

3. Being abusive to office staff.

4. Incompatible personality.

5. None, all of the above are acceptable reasons for patient termination.
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Reasons for Patient Termination

- Non Compliant Patient
- Patient abusive to staff
- Patient fails to pay bills
- Incompatibility of personality
- Disagreement with recommended therapy
- Continual cancellation of appointments
- Dishonesty
- Initiation of legal proceedings against the physician
How to Document a Patient Firing

Medical record should contain:

- Objective documentation of rational reason
- Use a professional tone
- Include a referral resource for patient to find a new physician
- Provide adequate notice. Typically 30 days notice.
- Absolutely no limiting of care during the notice period.
- Maintain a copy of the letter of termination in the patient record.
- Provide a copy of medical records upon receipt of proper authorization.
Res Ipsa Loquitur

The Thing Speaks for Itself

Meaning: no single person can be identified for an obvious negligent act so all involved are held liable.

Example: patient goes to the OR for elective cholecystectomy, suffers a fractured arm while under anesthesia that is noticed post-op.
Respondent Superior

Meaning: in many situations, the employer (physician) is responsible for the actions of their employees.
Example: patient calls office to speak to physician for medical advice. Instead, inappropriate medical advice is provided by the physician’s medical assistant resulting in harm.
The End