

## 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