Graduate Certificate in Clinical Negligence Law

# Causation in Clinical Negligence

Causation in Clinical Negligence:

Causation is a fundamental concept in clinical negligence law that forms the basis for establishing liability. It refers to the link between the healthcare professional's breach of duty and the harm suffered by the patient. In order to succeed in a clinical negligence claim, the claimant must demonstrate both breach of duty and causation. This explanation will delve into the key terms and vocabulary related to causation in clinical negligence to provide a comprehensive understanding of this complex area of law.

1. Causation:

Causation in clinical negligence refers to the causal relationship between the healthcare professional's breach of duty and the harm suffered by the patient. It is essential to establish that the breach of duty directly caused or contributed to the patient's injury or loss. Causation can be established through factual causation and legal causation.

2. Factual Causation:

Factual causation, also known as "but for" causation, requires proving that the harm would not have occurred "but for" the healthcare professional's breach of duty. In other words, the patient must demonstrate that the harm was a direct result of the healthcare professional's actions or omissions. This can be challenging to establish in complex medical cases where multiple factors may have contributed to the harm.

For example, if a surgeon leaves a surgical instrument inside a patient during a procedure, and the patient suffers an infection as a result, the patient must prove that the infection would not have occurred "but for" the surgeon's negligence in leaving the instrument inside the patient.

3. Legal Causation:

Legal causation, also known as "remoteness of damage," focuses on whether the harm suffered by the patient was a reasonably foreseeable consequence of the healthcare professional's breach of duty. The court will assess whether the harm was within the scope of the defendant's duty of care and whether it was a direct consequence of their actions.

For example, if a patient suffers a severe allergic reaction to medication prescribed by a doctor, the court will consider whether the doctor could have reasonably foreseen the risk of an allergic reaction and whether this harm falls within the scope of the doctor's duty of care.

4. Novus Actus Interveniens:

Novus actus interveniens refers to a new intervening act that breaks the chain of causation between the healthcare professional's breach of duty and the patient's harm. If a new act or event occurs that is independent of the defendant's actions and contributes to the patient's harm, the defendant may not be held liable for the full extent of the harm.

For example, if a patient fails to follow post-operative care instructions provided by a surgeon and develops an infection, the patient's failure to adhere to the instructions may be considered a novus actus interveniens that breaks the causal link between the surgeon's breach of duty and the infection.

5. Material Contribution to Harm:

In cases where it is difficult to establish factual causation using the "but for" test, the courts may apply the material contribution to harm test. This test allows for a finding of causation if the defendant's breach of duty materially contributed to the patient's harm, even if it cannot be proven that the harm would not have occurred "but for" the breach.

For example, if a patient undergoes surgery with a slight risk of complications, and the surgeon's negligence increases that risk, the courts may find that the surgeon's breach materially contributed to any harm suffered by the patient.

6. Loss of Chance:

Loss of chance is a concept that applies in cases where the patient has lost the opportunity for a better outcome due to the healthcare professional's breach of duty. In these cases, the court will assess the extent to which the patient's chances of a better outcome were reduced by the defendant's actions and award damages accordingly.

For example, if a doctor fails to diagnose a patient's cancer in its early stages, leading to a reduced chance of successful treatment, the patient may be entitled to compensation for the loss of chance of a better prognosis.

7. Multiple Concurrent Causes:

In some cases, the patient's harm may be caused by multiple concurrent factors, including the healthcare professional's breach of duty. The courts will consider the contribution of each factor to the harm suffered by the patient and apportion liability accordingly.

For example, if a patient develops an infection following surgery due to a combination of the surgeon's negligence and the patient's pre-existing health condition, the courts may apportion liability based on the contribution of each factor to the harm suffered by the patient.

8. Burden of Proof:

In clinical negligence cases, the burden of proof rests with the claimant to establish causation on the balance of probabilities. The claimant must provide sufficient evidence to demonstrate that the healthcare professional's breach of duty caused or contributed to the harm suffered by the patient.

The claimant must show that it is more likely than not that the harm would not have occurred but for the defendant's breach of duty. This requires presenting expert medical evidence and other relevant information to support the claimant's case.

9. Expert Evidence:

Expert medical evidence plays a crucial role in establishing causation in clinical negligence cases. Medical experts with relevant expertise in the field of medicine involved in the case provide opinions on the causal link between the healthcare professional's breach of duty and the harm suffered by the patient.

These experts assess the standard of care provided by the healthcare professional, the nature and extent of the patient's injuries, and the causal relationship between the breach of duty and the harm. Their evidence is essential in helping the court understand complex medical issues and reach a decision on causation.

10. Proximate Cause:

Proximate cause refers to the legal principle that limits liability to harm that is reasonably foreseeable as a direct consequence of the defendant's actions. The court will consider whether the harm suffered by the patient was a proximate result of the healthcare professional's breach of duty or whether it was too remote to hold the defendant liable.

Proximate cause is determined based on the foreseeability of the harm, the proximity between the breach of duty and the harm, and the absence of any intervening acts that break the chain of causation. It helps establish a clear link between the defendant's actions and the patient's injuries.

11. Thin Skull Rule:

The thin skull rule is a legal doctrine that states that a defendant must take the claimant as they find them, even if the claimant has a pre-existing condition that makes them more susceptible to harm. In clinical negligence cases, this rule means that the healthcare professional is liable for the full extent of the harm suffered by the patient, regardless of any pre-existing vulnerabilities.

For example, if a patient has a pre-existing heart condition that is aggravated by a healthcare professional's negligence, the healthcare professional may be held liable for the exacerbation of the condition, even if a person without the pre-existing condition would not have suffered the same harm.

12. Loss of Chance vs. Causation:

Loss of chance and causation are two distinct legal concepts in clinical negligence law. While causation focuses on establishing the direct causal link between the healthcare professional's breach of duty and the harm suffered by the patient, loss of chance deals with situations where the patient has lost the opportunity for a better outcome due to the breach of duty.

Loss of chance allows for compensation where the patient's chances of a better outcome were reduced by the defendant's actions, even if it cannot be proven that the harm would not have occurred "but for" the breach. It provides a basis for awarding damages in cases where the patient's prospects of recovery were diminished by the defendant's negligence.

13. Eggshell Plaintiff Rule:

The eggshell plaintiff rule is a legal doctrine that holds a defendant liable for all harm suffered by a claimant, even if the harm is more severe than expected due to the claimant's pre-existing vulnerabilities. In clinical negligence cases, this rule means that the healthcare professional is responsible for the full extent of the harm suffered by the patient, regardless of the patient's fragility or susceptibility to injury.

For example, if a patient with a pre-existing bone condition suffers a fracture due to a healthcare professional's negligence, the healthcare professional may be held liable for the fracture, even if it is more severe than expected due to the patient's condition.

14. Res Ipsa Loquitur:

Res ipsa loquitur, Latin for "the thing speaks for itself," is a legal doctrine that allows the court to infer negligence on the part of the defendant based on the circumstances of the case. In clinical negligence cases, res ipsa loquitur may apply when the harm suffered by the patient is so obviously the result of negligence that no further evidence is required to establish liability.

For example, if a surgical instrument is left inside a patient following a procedure, res ipsa loquitur may apply as this type of negligence is so egregious that it speaks for itself in terms of establishing liability.

15. Loss of Opportunity:

Loss of opportunity is a legal concept that applies in clinical negligence cases where the patient has lost the opportunity for a better outcome due to the healthcare professional's breach of duty. It recognizes that the patient's prospects of recovery were diminished by the defendant's actions and allows for compensation based on the lost chance of a better outcome.

Loss of opportunity focuses on the value of the chance lost by the patient rather than the certainty of the harm suffered. It provides a basis for awarding damages where the patient's chances of a better outcome were reduced by the defendant's negligence.

16. Cumulative Causation:

Cumulative causation refers to situations where multiple factors contribute to the harm suffered by the patient, including the healthcare professional's breach of duty. In these cases, the courts will consider the combined effect of all factors on the patient's injuries and apportion liability based on the contribution of each factor.

For example, if a patient develops an infection following surgery due to a combination of the surgeon's negligence and a hospital-acquired infection, the courts may apportion liability between the two causes based on their respective contributions to the harm suffered by the patient.

17. Intervening Acts:

Intervening acts are events or actions that occur after the healthcare professional's breach of duty and contribute to the harm suffered by the patient. These acts may break the chain of causation between the breach of duty and the harm, limiting the defendant's liability for the patient's injuries.

Intervening acts can include the patient's own actions, third-party negligence, or unforeseeable events that play a role in causing or exacerbating the harm. The courts will assess the impact of intervening acts on the causal link between the breach of duty and the harm suffered by the patient.

18. Substantial Factor Test:

The substantial factor test is a legal principle used to determine causation in cases where multiple factors contribute to the harm suffered by the patient. Under this test, the defendant's breach of duty is considered a substantial factor in causing the harm if it materially contributes to the patient's injuries, even if it is not the sole cause.

The substantial factor test allows for a finding of causation where the defendant's actions played a significant role in the patient's harm, even if other factors also contributed to the injury. It provides a flexible approach to establishing causation in complex cases with multiple concurrent causes.

19. Loss of Chance Doctrine:

The loss of chance doctrine is a legal principle that allows for compensation when the patient has lost the opportunity for a better outcome due to the healthcare professional's breach of duty. This doctrine recognizes that the patient's chances of a better outcome were diminished by the defendant's actions and provides a basis for awarding damages based on the lost chance of a better result.

The loss of chance doctrine focuses on the value of the opportunity lost by the patient rather than the certainty of the harm suffered. It allows for compensation where the patient's prospects of recovery were reduced by the defendant's negligence, even if it cannot be proven that the harm would not have occurred "but for" the breach.

20. Foreseeability:

Foreseeability is a key factor in determining legal causation in clinical negligence cases. It refers to whether the harm suffered by the patient was a reasonably foreseeable consequence of the healthcare professional's breach of duty. The court will consider whether the harm was within the scope of the defendant's duty of care and whether it could have been anticipated based on the circumstances of the case.

Foreseeability helps establish the proximity between the breach of duty and the harm, as well as the extent to which the defendant could have predicted the consequences of their actions. It plays a crucial role in determining liability for the harm suffered by the patient.

21. Loss of Opportunity vs. Loss of Chance:

Loss of opportunity and loss of chance are two related but distinct legal concepts in clinical negligence law. While both address situations where the patient has lost the opportunity for a better outcome due to the healthcare professional's breach of duty, loss of opportunity focuses on the value of the opportunity lost, while loss of chance deals with the diminished prospects of recovery.

Loss of opportunity recognizes that the patient's chances of a better outcome were reduced by the defendant's actions and provides a basis for awarding damages based on the lost opportunity. Loss of chance, on the other hand, allows for compensation where the patient's prospects of recovery were diminished by the defendant's negligence, even if it cannot be proven that the harm would not have occurred "but for" the breach.

22. Reasonable Care and Skill:

Reasonable care and skill are the standards of care expected of healthcare professionals in providing treatment to patients. Healthcare professionals are required to exercise the degree of care and skill that would be expected of a reasonably competent practitioner in the same field under similar circumstances.

The standard of care is assessed based on the knowledge, training, and experience of the healthcare professional, as well as any guidelines or protocols relevant to the specific treatment provided. Breach of the standard of care can lead to liability for clinical negligence if it results in harm to the patient.

23. Recklessness vs. Negligence:

Recklessness and negligence are two different legal concepts that relate to the conduct of healthcare professionals in providing treatment to patients. Negligence refers to a failure to exercise reasonable care and skill in the treatment of a patient, resulting in harm or injury. It is based on the standard of care expected of a reasonably competent practitioner in the same field.

Recklessness, on the other hand, involves a conscious disregard for the risks of harm to the patient, demonstrating a higher degree of culpability than mere negligence. Reckless conduct by a healthcare professional can lead to liability for clinical negligence if it causes harm to the patient.

24. Contributory Negligence:

Contributory negligence is a legal defense that allows the defendant to argue that the patient's own actions or omissions contributed to the harm suffered, reducing the defendant's liability for the injuries. If the court finds that the patient's negligence played a role in causing the harm, it may apportion liability between the parties based on their respective contributions.

For example, if a patient fails to follow post-operative care instructions provided by a surgeon and develops an infection, the court may consider the patient's contributory negligence in assessing the extent of the surgeon's liability for the infection.

25. Standard of Care:

The standard of care is the level of care and skill expected of healthcare professionals in providing treatment to patients. It is based on the knowledge, training, and experience of a reasonably competent practitioner in the same field under similar circumstances. Healthcare professionals are required to adhere to the standard of care to avoid liability for clinical negligence.

The standard of care is assessed based on the specific circumstances of the case, including the nature of the treatment provided, the patient's condition, and any relevant guidelines or protocols. Breach of the standard of care can lead to liability if it results in harm to the patient.

26. Damages:

Damages are the compensation awarded to the claimant in a clinical negligence case to compensate for the harm suffered as a result of the healthcare professional's breach of duty. Damages may include compensation for pain and suffering, loss of earnings, medical expenses, and other financial losses incurred as a direct result of the negligence.

The court will assess the extent of the harm suffered by the patient and award damages accordingly to provide fair compensation for the injuries sustained. Damages aim to restore the claimant to the position they would have been in had the negligence not occurred.

27. Burden of Proof in Causation:

The burden of proof in causation rests with the claimant in a clinical negligence case to establish that the healthcare professional's breach of duty directly caused or contributed to the harm suffered by the patient. The claimant must prove causation on the balance of probabilities, showing that it is more likely than not that the harm would not have occurred but for the breach.

To meet the burden of proof, the claimant must present expert medical evidence, witness testimony, and other relevant information to support their case. Causation is a key element in proving liability for clinical negligence, and the claimant must demonstrate a clear link between the breach of duty and the harm

suffered.

28. Standard of Proof:

The standard of proof in clinical negligence cases is the balance of probabilities, also known as the civil standard of proof. This standard requires the claimant to prove their case on the basis that it is more likely than not that the defendant's breach of duty caused or contributed to the harm suffered by the patient.

The balance of probabilities is a lower standard of proof than the criminal standard of proof, which requires proof beyond a reasonable doubt. In civil cases, including clinical negligence claims, the claimant must establish liability on the balance of probabilities to succeed in their claim for damages.

29. Negligence vs. Causation:

Negligence and causation are two distinct legal concepts in clinical negligence law. Negligence refers to a healthcare professional's failure to exercise reasonable care and skill in providing treatment to a patient, resulting in harm or injury. Causation, on the other hand, focuses on establishing the link between the breach of duty and the harm suffered by the patient.

Negligence involves assessing the standard of care expected of a reasonably competent practitioner in the same field under similar circumstances. Causation requires demonstrating that the breach of duty directly caused or contributed to the harm suffered by the patient. Both negligence and causation are essential elements in proving liability for clinical negligence.

30. Duty of Care:

Duty of care is the legal obligation of healthcare professionals to exercise reasonable care and skill in providing treatment to patients. Healthcare professionals owe a duty of care to their patients to ensure their safety and well-being during treatment. Breach of the duty of care can lead to liability for clinical negligence if it results in harm to the patient.

The duty of care is assessed based on the specific circumstances of the case, including the nature of the treatment provided, the patient's condition, and any relevant guidelines or protocols. Healthcare professionals must adhere to the duty of care to avoid breaching their obligations and facing potential liability for negligence.

This comprehensive explanation of