

Chapter 1 : What is psychiatric malpractice? - National Empowerment Center

And like any other doctor or health care provider, a psychiatrist may be liable for medical malpractice in the event that a mistake harms a patient. This article will first describe some types of medical malpractice cases that might emerge from the psychiatrist-patient relationship.

Contact Us When Psychiatric Care Crosses the Line into Medical Malpractice Most people associate medical malpractice with errors made by medical physicians in the care of their patients. However, just like medical doctors, psychiatrists have a duty to perform their professional duties with a reasonable standard of care. The personal nature of psychiatric treatment creates an extremely delicate relationship that can easily become inappropriate if the psychiatrist fails to consistently act in a proper manner. While not all psychiatric patient injuries result from malpractice, there are particular situations in which the actions of a psychiatrist can cross the thin line into medical negligence. Here are some examples of how psychiatric care can cross the line into medical malpractice: Psychiatrists often deal with patients who are prone to suicidal tendencies; so mental health care routinely includes suicide assessments. When psychiatrists fail to adequately perform these screenings, and a patient subsequently attempts suicide, the doctor may be held liable. Malpractice may also arise if the psychiatrist fails to provide a suicidal patient with adequate treatment. Just like medical care, psychiatrists make diagnoses regarding mental health conditions. When psychiatrists make incorrect diagnoses, the patient may not get necessary treatment and their condition could significantly worsen. When psychiatrists prescribe medication, they must ensure that their prescriptions are accurate. Not only must they prescribe the correct medication, but they must also make certain that the dosage is accurate and appropriate for the patient. Warning a third party of threats. Though doctor-patient confidentiality applies to the psychiatric relationship, the law requires psychiatrists to report certain dangers, including circumstances where a patient has made a credible threat to the health and safety of a third party. For example, a psychiatric patient reveals a plot to murder a neighbor. The psychiatrist does not report the threat to law enforcement and the patient attempts to carry out his plan, resulting in serious injury to the neighbor. The psychiatrist may be liable for medical malpractice under this scenario. Engaging in an inappropriate relationship with a client. Psychiatrists must maintain strictly professional relationships with their patients. When they fail to establish boundaries and cross the line of appropriateness, vulnerable patients can be mentally and physically injured. An article in Psychology Today expressly lists sexual relationships between psychiatrists and patients as grounds for a malpractice claim. As with all medical malpractice claims, psychiatric patients must prove each aspect of medical negligence in order to successfully seek compensation. A doctor-patient relationship existed. The psychiatrist acted in a negligent manner by breaching the duty of reasonable care. The patient endured a physical or mental injury.

Chapter 2 : An Introduction to Psychiatric Malpractice Lawsuits and Their Causes | Brain Blogger

Answer: Nobody enters into medical practice planning to be the subject of a malpractice lawsuit or a board complaint. Most psychiatrists are simply trying their best to provide quality patient care, improve revenue streams, and reduce paperwork under difficult, even hostile, circumstances.

What is psychiatric malpractice? He failed to notice that Mary was developing tardive dyskinesia until the condition became very disfiguring and permanent. Laurie has been seeing various psychiatrists over the past 24 years in both inpatient and outpatient settings and has never been asked to sign a medication consent form. Ted fully understands the risks associated with using neuroleptic medications and told his psychiatrist that he had come to the decision not to take them. However, not all of these examples would meet the criteria for a psychiatric malpractice lawsuit. As consumers of mental health services it is very important for us to be informed about what malpractice is. What does it look like? How do we know if it is happening to us? Attorney Fleischner helped me to understand that, from a legal standpoint, there is a difference between feeling wronged and unjustly treated, and psychiatric malpractice. Under the law, malpractice has a very specific definition. Malpractice means the failure to exercise a degree of skill that would be reasonably expected of a doctor in similar circumstances. In order for there to be a case for malpractice, four elements must be present: There must be a doctor-patient relationship. The psychiatrist has to breach the duty of reasonable care. For instance, in cases involving suicide it can be difficult to prove proximate cause. In fact, Attorney Fleischner cited only one example of a practice that would uniformly be considered malpractice. That is universally condemned and in virtually every context it would be malpractice. He said that such lawsuits can be quite expensive and that they can take many years to conclude. Fleischner said that compared to medical malpractice cases, the amount of money that the court awards in psychiatric malpractice cases is usually much less: But there are some settlements in psychiatric malpractice cases in the hundreds of thousands of dollars. It may be that people are willing to settle earlier before going to trial. It may be that there is a fear that juries will not be as sympathetic to people with mental illness as they are to someone who loses their leg. He cited the following cases: If you are interested in reading about more of these, we suggest checking out a book called *Medical Malpractice: Psychiatric Care* by Joseph T. It is an expensive book but can be found in most law libraries where you can read it for free. I asked Attorney Fleischner what we can do to protect ourselves against unlawful and unethical psychiatric practices. He suggested the following: The most important thing to do is talk with the psychiatrist and ask questions about why she or he is proposing a particular treatment. If you are uncertain, ask again. Seek a second opinion if you feel that would help. It is very important to keep notes, to keep your own records, or to keep your own independent diary of what happens at each visit with your psychiatrist. If you are on an inpatient unit, write letters to friends or relatives that you trust and tell them about the things that are going on from day to day. Periodically review your clinic record and to ask that the record be corrected if there are mistakes in it or to seek to add your own statement to the record if something is inaccurate. Of course the laws regarding access to psychiatric records varies from state to state so you will have to know what the state law allows. It makes a lot of sense to keep records of what medications you have been taking, the dosages, when your medications were changed, and keep your receipts from the pharmacy. There are even some attorneys who specialize in cases of sexual exploitation. You might also try contacting the Protection and Advocacy Program in your state. They should be able to give you a referral. Bringing a malpractice lawsuit is not our only option if we feel we have been treated unjustly or unethically by a psychiatrist. Our other options include these: All licensed psychiatrists work under a code of ethics and can have their license to practice taken away if they are found by a review board of their peers to have acted unethically. For more detailed information on the principles of medical ethics as well as guidelines for filing complaints look for the booklet *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* We found it at a medical school bookstore for 3 dollars. In summary, it is important for us to learn our rights and to insist on being treated respectfully and with dignity. We do not have to sit back and assume there is nothing we can do about the injustices we may have suffered at the hands of

professionals who seem so much more powerful that we may feel. Not all psychiatrists are bad and many of us can recall professionals that have been very helpful to us. But for those of us who have been injured physically or emotionally by a psychiatrist, there is action we can take. If you have successfully taken action against a psychiatrist or other mental health professional who has hurt you or treated you unjustly, we would love to hear from you. Please write out your story and send it to us at the address listed below.

Chapter 3 : Medical malpractice: What does it involve?

Most people associate medical malpractice with errors made by medical physicians in the care of their patients. However, just like medical doctors, psychiatrists have a duty to perform their professional duties with a reasonable standard of care.

An Introduction to Mental Health Malpractice We are witnessing a surge in the number of malpractice suits filed against mental health professionals. Although a study found that psychiatrists were seventeen times less likely to be sued than other physicians, this number still represents an increase in the number of such lawsuits, an increase which began in the s and continues to grow ever more rapidly. This surge in the number of lawsuits against mental health professionals is largely the product of three separate, but powerful changes in the mental health care delivery system. First, the development of relatively safe and powerful medications for the treatment of some of the most debilitating illnesses schizophrenia, depression, and bipolar disorder among them - helped to solidify what had beforehand been a very mushy standard of care. With power comes responsibility. Second, historically patients have found it difficult to sue their mental health provider. After all, this is the very person with whom, in times past, the patient spent hours of each week, sharing their deepest thoughts. With the growth of managed care, a single, monthly fifteen-minute appointment with a psychiatrist has become the norm. The average length of hospital stays has tumbled. Although many patients concurrently receive psychotherapy from a nonmedical provider an arrangement known as "split treatment" , few patients now develop any close relationship with their psychiatrists. As a result, patients are more willing to sue when treatment goes wrong. By Skip Simpson and Jerry Meek Finally, since there has been a dramatic decline in the number of patients receiving mental health treatment in public facilities. The enactment of Medicaid and Medicare, combined with an ideological shift towards the "least restrictive alternative," encouraged States to close State psychiatric hospitals and look to private, outpatient providers for treatment. Since government providers generally enjoy limited immunity from lawsuits, this shift towards private mental health care created new opportunities for plaintiffs to be properly compensated for injuries and deaths caused by the mental health professionals. Common Forms of Mental Health Negligence Mental health professionals are increasingly being held accountable for their negligence. Here are some of the most common forms of negligence: The standard of care requires the clinician to conduct a proper suicide risk assessment of each potentially suicidal patient. What are some of the factors which must be considered? Is there a family history of suicide? Has the patient made prior suicide attempts? Has he recently been discharged from a psychiatric hospital? Major depressive disorder, bipolar disorder, and schizophrenia have the highest suicide completion rates. Does the patient have a co-morbid anxiety disorder or a substance dependency or abuse disorder? Both of which would markedly increase the risk for suicide. Does the patient suffer from a chronic physical illness? Most importantly, the clinician has a duty to specifically ask the patient whether he has been having suicidal thoughts, whether he has formulated a plan to commit suicide, and whether he intends to commit suicide. The standard of care requires that all suicide risk assessments be documented in the record. Where the patient is at high risk for suicide, the clinician must hospitalize the patient, involuntarily when necessary. Sixty percent of suicides occur with firearms. When the patient is in an inpatient setting, the nursing staff has a duty to monitor the patient with sufficient regularity and to remove from the patient articles such as shoelaces, shirts, and other clothing which could be used to commit suicide. There is a myth that psychiatric diagnoses are ill defined - that mental health professionals, after properly assessing a patient, are likely to reach different diagnoses of the same patient. The truth is that psychiatric diagnoses are very well defined. Clear criteria define each diagnosis. Unfortunately, these psychiatric diagnoses have two fundamental flaws. First, unlike other areas of medicine, disorders are classified according to their symptom clusters, not according to their etiology. This means that two patients with the same symptoms will be diagnosed with the same disorder, even if there are different causes of the disorder. Second, usually a diagnosis is made based upon the presence or absence of certain symptoms, not upon their intensity. Nevertheless, diagnosis is very important in psychiatry because these diagnostic classifications guide all of the research and treatment protocols. For example, the failure to

inquire about prior manic episodes in a severely depressed patient may cause the clinician to mistakenly diagnose a patient with major depressive disorder, rather than bipolar disorder. The latter requires treatment with a mood stabilizer, such as Lithium, Depakote, or Tegretol. There is a right way and a wrong way to perform diagnostic assessments. If an assessment is incomplete, treatment errors are likely to result. Most effective treatments have side effects. In the s and s, the lobotomy officially known as the "prefrontal leucotomy" became a popular treatment for psychotic agitation. What is now forgotten is that the lobotomy was generally a very effective treatment. Unfortunately, the procedure reduced the patient to a hollow shell, devoid of any personality or awareness of the world around him. With the invention of antipsychotic medications sometimes known as neuroleptics, psychiatry found a way to eliminate psychotic hallucinations and delusions with far fewer side effects. Unfortunately, one very serious side effect of antipsychotics especially of the older, conventional antipsychotics, like Haldol, Thorazine, and Mellaril remains: Patients with TD suffer through involuntary movements of the head, neck, trunk, and extremities. Often, they will make wormlike movements with their tongue, smack their lips, chew, and grimace, as their arms or legs make writhing, uncontrollable motions. If caught early, the disorder can often be extinguished by discontinuing the antipsychotic and prescribing counteracting medications such as reserpine. TD cases usually involve one or more of three areas of negligence. First, if the patient was placed on an antipsychotic for any reason other than the treatment of psychosis that is, of hallucinations or delusions, the provider was likely negligent. Unfortunately, some psychiatrists still prescribe antipsychotics for anxiety. This is clearly inappropriate. Second, if a psychiatrist places the patient on an antipsychotic for a period of time longer than clinically necessary, this is negligent. For example, a bipolar patient is sometimes appropriately placed on an antipsychotic during the manic phase of the illness, but then the antipsychotic is never discontinued after the manic phase ends. Finally, if the clinician unreasonably fails to detect the onset of TD, or fails to take steps to reverse it, he or she will be negligent. Usually this duty can be discharged by simply warning the intended victim. First, the patient must have made an actual threat. It is apparently not sufficient, for example, that the patient suffers from paranoid delusions that a specific person is trying to kill him, nor that the patient is experiencing command hallucinations ordering him to harm a specific person. The duty apparently does not arise if the patient threatens a class of persons for example, her coworkers or if the clinician, through his training or experience, could have reasonably determined the likely target. Although the clinician can effectively monitor, supervise, and control a patient in the inpatient setting, most cases of harm to third parties occur in the outpatient setting and it is not clear that a duty would arise where the patient is merely an outpatient. It is established that there should be, indeed must be, a treatment boundary separating the mental health professional and his or her patient. The term "boundary violation" refers to any violation of this treatment boundary. Most commonly, the boundary violation involves sexual contact between a mental health professional and his or her patient. All such contact is negligent, despite attempts by some experts to justify or excuse such conduct. Plaintiffs routinely win boundary violation lawsuits when brought. When filing these lawsuits, it is important for the trial lawyer to broadly plead, alleging merely that the professional has negligently violated the proper treatment boundary, without specifically alleging sexual misconduct. Such broad pleading may help to protect the availability of coverage. Sometimes a mental health professional improperly establishes a close friendship with his or her patient, by, for example, going to dinner frequently, traveling out of town, or interacting socially in other ways. Such non-professional conduct may become a negligent boundary violation if it interferes with the treatment relationship. Some mental health professionals believe that serious mental disorders are the result of very bizarre forms of early childhood trauma. Employing hypnosis or guided imagery, they lead their patients to believe that they were the victims of graphic sexual abuse, that family members were leaders of satanic cults who forced them to engage in horrendous acts of violence, or that they were abducted by aliens yes, of the extraterrestrial type. Unfortunately, many patients come to fully believe that these are accurate memories from their childhood, without having received warnings that delayed memories are unreliable and uncertain. Shortly after the confrontation with her parents, the patient committed suicide. Fortunately, largely as a result of litigation, this form of quackery is a dying breed. Yet, amazingly, other thoroughly controversial therapies persist. Recently, in Colorado, a ten year-old girl was

smothered to death after her therapist wrapped her up in a blanket intended to represent the womb and asked her to wiggle out of the blanket in a symbolic rebirth. Representing Mental Health Patients and Their Families

Several months ago, a woman in her early 30s entered our office, seeking our representation of her in a potential psychiatric malpractice suit. She explained, in the most intricate of detail, how half a dozen psychiatrists, treating her over the span of a decade, had conspired among themselves to keep her drugged and dependent. Suspicious, we asked her what their diagnosis for her was. Either she had a great case, or she truly was delusional. Although unusual, the story does serve to highlight the fact that there are unique challenges in store for the attorney who handles mental health malpractice cases. Our clients are our inspiration. But when a client suffers from a mental disorder, the disorder typically has a dramatic impact upon the attorney-client relationship. It is estimated that two to three percent of the population suffer from Borderline Personality Disorder, a disorder which is also frequently co-morbid with the disorders afflicting many mental health malpractice clients. Patients with Borderline Personality Disorder frequently exhibit very unstable interpersonal relationships, loss of impulse control, and very intense, inappropriate emotional responses. As clients, these patients may love their attorney in the morning and threaten to fire them in the afternoon. They overreact when faced with a perceived rejection - a phone call not timely returned or a candid and critical assessment of the case by their attorney, among them. Representing a borderline client requires both patience and understanding. They are quick to conclude that their attorney has been uncaring; that their attorney has withheld information from them; or that their attorney has abandoned them. Attorneys need to be extrasensitive of the need to respond quickly to their concerns and of the need to provide the borderline client with full and prompt information on the course of the litigation. Attorneys need to avoid responding angrily when the borderline client expresses their own outrage at an imaginary insult by the attorney. Delusions are a form of psychosis, readily treated and eliminated with modern antipsychotic medications. They are also often symptomatic of schizophrenia. When clients fail to respond to - or become noncompliant with - the medication, their delusions often rapidly return. Most relevant to the attorney-client relationship, these delusions may be grandiose or persecutory in nature. The grandiosely delusional client believes that he or she has some great talent or insight, has a prominence unsupported by reality, or has some special relationship with a powerful or important person including a deity.

Chapter 4 : NJ Medical Mistakes Lawyers | Psychiatric Medical Malpractice

Medical malpractice in the psychiatric fields is as common as other medical fields and often involves more than just the traditional doctor or patient. Common forms of psychiatric negligence Failure to conduct a proper suicide risk assessment.

Although more complicated than the injuries associated with medical malpractice , mental health malpractice is a quickly growing field of malpractice law. Mental health practice generally occurs when a mental health practitioner disregards or breaches the proper standard of care that they are supposed to render for their clients. This can take many forms and involve many different types of conduct. The majority of mental malpractice cases do not stem from unforeseeable problems, but rather from situations that could have been avoided if only they were recognized and treated properly by a mental health provider. The following are the most commonly associated claims in successful mental health malpractice cases: Keep in mind that these claims are often applied to different types of mental health professionals. For example, a therapist with a PhD is not able to prescribe medication, instead a patient must go to a psychiatrist who is an MD. If the claim is against a physician, then it is likely that the actions of the psychiatrist will be heavily scrutinized as medical professionals are held to a higher standard of care than a non-medical professional. How is Mental Health Malpractice Proven? Like other forms of malpractice, mental health malpractice is usually classified as a type of negligence. In order to prove mental health malpractice using negligence principles, certain elements must be proven in court to hold the practitioner liable. Duty to the Plaintiff: The court must prove that the mental health professional owed a duty of care to the injured party. The court must then prove that the professional breached this duty of care to the client. It must be shown that the breach resulted in measurable injury or damages, such as a physical injury or mental complications If the court is able to prove these elements, the professional will likely be found liable for mental health malpractice. Failure to prove any of the elements will mean that the professional is not liable for malpractice. The same defenses for a medical malpractice case often work for mental health malpractice as well. The most common defenses are: Statute of limitations still apply in mental health cases. The time limit to file a malpractice case is typically years, but they differ between states. There is some discussion about raising the statute of limitations in cases involving children, but nothing concrete has come from it. Although the doctor typically does not have duty to people who are not patients, the exception is if the patient is dangerous to a specific person or persons. In order for a plaintiff to sue in court, the plaintiff must have suffered a wrong at the hands of the defendant. The doctor cannot be liable because it was the patient who caused his or her own injuries. However, most states place a duty to warn victims on mental health providers. If a patient harms or kills a victim, the provider may sometimes be liable. The doctor-patient privilege would not be a defense if the mental health provider had a duty to warn or protect the victim. Most states have a duty to warn. However, the following states do NOT place a duty to warn on mental health providers:

Chapter 5 : Psychiatric Malpractice Lawyers at Morgan & Morgan

Fleischner said that compared to medical malpractice cases, the amount of money that the court awards in psychiatric malpractice cases is usually much less: "Settlements in psychiatric malpractice cases may not be as high as they are in some medical malpractice cases.

Medical Malpractice When you obtain the services of a psychiatrist, it is probably because you are seeking to improve your mental or emotional health. Some psychiatric patients are recovering from a specific traumatic event. In some circumstances, psychiatric patients have ended up as the victims of neglect or abuse. In the greater Chicago area, if you believe that you or someone you love may be the victim of psychiatric malpractice, you should discuss your case and concerns with an experienced Chicago medical malpractice attorney. Psychiatric malpractice is considered medical malpractice and is handled by the law in precisely the same way. The relationship between a psychiatrist and a patient is deeply personal and intimate. No psychiatrist ever has the right to disrespect any patient or to treat any patient carelessly. Every professional in the field of medicine has a responsibility " and in fact takes an oath " to bring no mental, physical, or emotional harm to a patient. Every phase of psychiatric treatment should be aimed at helping patients to improve their mental and emotional conditions. Unfortunately, some instances of psychiatric malpractice may never be reported because the victims may be uncertain about what constitutes malpractice. Psychiatric patients may sometimes find that their complaints are dismissed as exaggerations, paranoia, or an unwillingness to cooperate with psychiatric treatment. In some cases, even family members may dismiss the concerns. Where can a victim of psychiatric malpractice turn? An experienced Chicago medical malpractice attorney will not dismiss your concerns. Examples of psychiatric malpractice include but are not necessarily limited to: The right medical malpractice attorney will work tenaciously to ensure that a victimized psychiatric patient is justly and properly compensated for the harm that he or she has endured. Of course, no one anticipates becoming a victim of psychiatric malpractice, but anyone who is undergoing psychiatric treatment should take these steps to protect yourself: Keep a journal and write a detailed summary of each visit with the psychiatrist. Also use the journal to record your prescribed medications, dosages, and any changes to those prescriptions and dosage amounts. Ask your psychiatrist exactly why a medicine is being prescribed and precisely what its intended effect is supposed to be. If you are at an inpatient facility, routinely write detailed letters describing your treatment and experiences to friends and family members you trust. Patients have a right to professional care when they seek treatment for their physical and mental health. Psychiatrists and all other doctors take an oath to uphold professional codes of ethics and to treat patients on the basis of those ethics. The medical profession maintains a high standard, and when the care provided by a healthcare professional falls below that standard, it may constitute as medical malpractice. If a psychiatrist or another medical professional, or a psychiatric hospital or clinic, causes a patient to be injured or harmed by failing to provide the acceptable standard of care, that patient has the right to file a medical malpractice lawsuit. Proving that a psychiatrist was abusive or negligent may require the testimony of a psychiatric authority who will testify " as an expert witness " that you would not have been harmed if you had been cared for by a typical, competent psychiatrist in similar circumstances. For a medical malpractice claim against a psychiatrist to succeed, a medical malpractice attorney must be able to prove that these charges are true: The plaintiff that is, the patient making the claim had a doctor-patient relationship with the psychiatrist. The psychiatrist was negligent in providing treatment and care to the plaintiff. That negligence was a direct cause of harm to the plaintiff. When someone files a medical malpractice lawsuit in Illinois, he or she may obtain several types of awards if the lawsuit prevails. Punitive damages are rarely awarded in Illinois medical malpractice cases. Professional psychiatrists have a legal and ethical obligation to meet their responsibilities to patients seeking psychiatric treatment. Negligence and malpractice are unacceptable, but an experienced Chicago medical malpractice attorney can usually help a victim of psychiatric malpractice win both compensation and justice. If you have endured abuse, negligence, or mistreatment by a psychiatrist or by the staff at a psychiatric facility, you should contact an experienced medical malpractice lawyer to discuss your legal rights and options.

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Chapter 6 : Mental Health Malpractice Lawyers | LegalMatch Law Library

If you or a loved one has suffered due to psychiatric malpractice, call our Chicago medical malpractice attorneys at () Types of Psychiatric Malpractice Patients have a right to competent, professional care when they seek treatment for their mental health issues.

There are a large variety of medical malpractice cases, based on the degree of negligence or recklessness, that a patient can claim in a lawsuit. Examples of Medical Malpractice Misdiagnosis - A doctor in a hospital fails to recognize cardiac tamponade in a year-old man and the lack of diagnosis or treatment leads to his death. Childbirth Injuries - An obstetrician fails to perform a C-section in a timely manner, resulting in serious injuries to the baby. Medication Errors - Negligence by a physician or nurse causes a fatal overdose of Vitamin K. Anesthesia Errors - An anesthesiologist gives the wrong amount of anesthesia to a patient, resulting in brain damage. Surgery Errors - A surgeon injures a year-old with a bone saw, causing permanent scarring and neuropathy. One of the most common recurring themes in all of these forms of medical malpractice is negligence. Negligence comes in many forms and in many different types of severity, and that level of severity will determine how much you can possibly win in compensation. Negligence is defined as the failure to act with the same amount of care that a reasonable medical professional would have acted within the same situation. This has to be the direct reason for your injury for it to be a medical malpractice case. The doctor calls him into the examination room, but is distracted and rushed from having so many patients that day. Unfazed by the depth of the wound, he says it needs just a few stitches. In doing this, he instinctively takes tools near him from a table - but unbeknownst to him, these tools had just been used to treat an infection. In addition, this decision goes against the policy to only use tools that were sterilized and in drawers. A few days after this doctor visit, your son feels pain, gets sicker, and has a clear discoloration around the cut. His laceration is now infected, requiring hospitalization and extensive treatment. The doctor denies any and all responsibility for this infection. This is a clear case of negligence from the description, but it also relates to the four elements of negligence. These are duty, breach, injury, and damages. If reasonable care and standard medical guidelines are not followed, then the duty has been breached by the doctor. The injury must cause the victim to have suffered damages, whether they are economic or non-economic. Your son required hospitalization, and the subsequent medical bills were substantial. You may have also had to miss time at work to tend to your son. Gross Negligence In addition to simple negligence, there is also gross negligence. Gross negligence takes the idea of negligence a step further - the breach of duty was much worse in these cases, where the failure to provide reasonable care goes beyond medical standards and would have been obvious to anyone. An example of this would be to imagine that you are someone who needs immediate surgery after a car accident causes severe trauma to your left arm. The surgeon, however, in his carelessness, checked your chart believing you were a different patient, one who needed their right arm amputated. The right arm gets amputated instead of the left arm receiving treatment. These examples are admittedly very clear cut. There is a lot to consider in a medical malpractice case - just because an injury occurred while under the care of a medical professional does not mean an individual has a guaranteed medical malpractice lawsuit on their hands. There are ways in which many people think they have a medical malpractice suit, but it turns out to not be the case; it is important to understand your situation. Do You Have a Case? Just because a patient suffers an injury while under the care and attention of a doctor, it does not automatically mean the individual has a medical malpractice suit against the healthcare professional. Before surgery, patients are given warnings of the risks involved in a procedure. The patient must understand the risks and authorize the surgery, meaning that those risk factors would not be grounds for a medical malpractice case. If a patient receives instructions after their surgery about what to do for follow-up care, they must follow it. If they fail to follow these instructions, and an injury occurs as a result, they will likely not have a medical malpractice suit. A week-old premature newborn endured a medication overdose in a hospital in Fort Myers, Florida. This resulted in permanent colostomy and removing part of her liver.

Chapter 7 : Medical Malpractice Archives | Bill of Health

PSYCHIATRIC MALPRACTICE, STANDARDS OF CARE These evaluations can be requested by the defense or the plaintiff. The reports reflect local jurisdictional standards.

The injured patient must show that the physician acted negligently in rendering care, and that such negligence resulted in injury. To do so, four legal elements must be proven: This includes doing nothing when they should have done something. This may be considered an act of omission or a negligence. Dissatisfaction with the outcome of treatment does not imply malpractice. It is only malpractice when there is negligence and injury and negligence causes the harm or injury. Types of error and malpractice Examples of cases where an error or negligence could lead to a lawsuit include: A team from the University of Illinois reported in *Annals of Pharmacotherapy* that blood thinners make up about 7 percent of all medication errors in hospitalized patients. Blood thinners can lower the risk of stroke and heart attack by preventing clots from developing in the veins and arteries, but at higher doses, they can also increase the risk of bleeding. In , the *BMJ* published findings indicating that the main cause of malpractice was misdiagnosis or delayed diagnosis. In , Johns Hopkins scientists suggested that medical errors should rank as the third leading cause of death in the U. However, it is unclear exactly how many deaths result from malpractice. Measures that have reduced the incidence of infringements by hospitals include the establishment of guidelines for best practice, and sustained implementation of hand hygiene rules. Informed consent If the patient does not give informed consent to a medical procedure, the doctor or health care provider may be liable if the procedure results in harm or injury, even if it was carried out perfectly. If a surgeon does not inform the patient that a procedure involves a percent risk of losing a limb, and the patient loses a limb, the doctor will be liable, even if the operation was done perfectly. This is because the patient may have opted not to go ahead if they had been informed of the risks. What does a malpractice case involve? A malpractice case can be stressful for all parties. The plaintiff is the person who complains. In legal terms, the plaintiff is the person who brings a case against another in a court of law, the person who initiates the suit, the one who is suing. The defendant is the party who is being sued. In a medical malpractice suit it is the health care provider. This could be a doctor, a nurse, a therapist, or any medical provider. Even those who were "following orders" may be liable for negligent acts. The prevailing party is the party who wins the case, whether the plaintiff or the defendant. If the defendant wins the case, the plaintiff has lost and will receive no compensation. The losing party is the party who loses the case. The fact-finder is the judge or the jury. Essential elements for a case The plaintiff has to prove that four elements existed in order to succeed in a medical malpractice claim: A duty was owed by the health care provider or hospital A duty was breached, because the health care provider or hospital did not conform to the expected standard of care The breach resulted in an injury, and it was closely linked to the injury Considerable damage resulted for the patient, whether physical, emotional, or financial The process Medical malpractice suits are common in the U. First, the plaintiff or their legal representative must file a lawsuit in a court of law. Before the trial begins, the plaintiff and the defendant have to share information through discovery. This may include requests for documents, depositions, and interrogatories. The parties can settle out of court, if they come to an agreement. In this case, the case will not go to trial. If they do not agree, the case will proceed to trial. The plaintiff has to prove compellingly that the defendant was negligent. In most trials, both the defendant and plaintiff will present experts to explain what standard of care was required. The fact-finder must then consider all the evidence and decide which party is the most credible. A verdict will be given by the fact-finder for the prevailing party. In other words, the judge will decide who wins. If it is the plaintiff, the judge will then decide on damages. The losing party may ask for a new trial. In some courts, if the plaintiff wants a larger settlement, they may move for additur, which means asking for an assessment of the damages and awarding a larger amount. If the defendant is dissatisfied with a large judgment, they may move for remittitur, which means they ask the court to reduce the amount of damages. Either party may take an appeal from the judgment. What kind of damages can the plaintiff get? The plaintiff may be awarded compensatory and punitive damages. Compensatory damages may include economic damages, including lost earning capacity, life care expenses,

and medical expenses. Usually, past and future losses are assessed. Punitive damages are only awarded if the defendant is found guilty of malicious or willful misconduct. Punitive damages is a form of punishment. It is compensation in addition to actual damages. Lawsuits tend to be costly, time consuming, and stressful. Anyone who is considering starting a lawsuit should weigh up the possible pros and cons before taking action. If the injury is minor, the patient may spend more on the lawsuit than the eventual money they will recover.

Chapter 8 : Psychiatric Malpractice Lawyer | The Cochran Firm

Psychiatric Malpractice Case Analysis: Striving For Objectivity James Knoll, MD, and Joan Gerbasi, JD, MD Forensic psychiatrists, acting as expert witnesses, must be able to perform objective analyses of psychiatric.

Share on Facebook The psychiatrist-patient relationship is one of the most intensely personal in the field of professional health care. And like any other doctor or health care provider, a psychiatrist may be liable for medical malpractice in the event that a mistake harms a patient. This article will first describe some types of medical malpractice cases that might emerge from the psychiatrist-patient relationship. It will then discuss what a patient must prove in court in order to win a psychiatric malpractice lawsuit. When Could a Psychiatrist Be Sued? There are three types of malpractice cases that are especially relevant to the psychiatrist-patient relationship. They include exploitation of the trust relationship and improper prescriptions, and third party liability. **Exploitation of the Trust Relationship.** What happens when a psychiatrist takes advantage of his or her position of trust or power, and begins crossing boundaries by sleeping with a patient, for example? But can the patient sue the psychiatrist for medical malpractice? In many cases, the answer is yes. A patient has a right to expect competent and professional conduct from a psychiatrist. This can be true even if the patient consented to a sexual relationship. The harm in this situation can come in many forms. The most common form is emotional harm resulting from a breach of trust. Obviously, prescribing the wrong medication or the wrong dosage of the right medication can have dire consequences. For that reason, all doctors including psychiatrists are required to exercise care when prescribing drugs. As a result, a psychiatrist will be liable for any harm resulting from an improper prescription, assuming other reasonably competent doctors would not have made the same mistake under similar circumstances. Imagine that a patient informs a psychiatrist that the patient intends to kill someone. The psychiatrist attempts to persuade the patient to reconsider, but believes that the patient will commit the act anyway. The psychiatrist has a problem. It might seem obvious that the psychiatrist should report the conversation to the police in order to prevent the murder. But strict rules of confidentiality apply to the psychiatrist-patient relationship. Assume the psychiatrist decides to honor the confidentiality and does not call the police. The patient commits the murder. Can the family of the victim sue the psychiatrist for failing to report the conversation to the police? Although it is a close call, and the answer can vary by state, the answer is probably yes. The family of the victim can probably sue the psychiatrist if the patient clearly informed the psychiatrist of an intent to kill, and the psychiatrist believed that the threat was legitimate, but failed to act. **What The Patient Must Prove** In order to prevail in a psychiatric malpractice case, a patient must prove three basic elements: **Doctor-Patient Relationship** When a doctor examines a patient or provides treatment, a doctor-patient relationship is generally established. In any situation in which a psychiatrist holds him or herself out as a mental health professional and provides treatment to a patient, a doctor-patient relationship is typically created. Of course, this element can be firmly established through documentation treatment records, bills, etc. **Negligence** A psychiatrist can be considered negligent for, in administering health care services, failing to act as other reasonably competent psychiatrists would have acted under similar circumstances. In medical malpractice lawsuits, patients must prove two things to demonstrate negligence: In legalese, " standard of care " refers to the level of competence that most psychiatrists would have conducted themselves with, under the circumstances which gave rise to the alleged malpractice. In the vast majority of cases, expert testimony is required in order to establish the appropriate standard of care -- meaning the patient usually through an attorney consults a specialist usually another psychiatrist who offers an opinion as to what the proper course of conduct would have been under the circumstances. **Breach of the Standard of Care.** The next step is to prove that the defendant psychiatrist breached the standard of care in treating the patient, by failing to follow the proper course of conduct. For example, if the standard of care required the psychiatrist to assess a fairly common psychiatric disorder and prescribe the correct medication to treat it, failure to take those steps might constitute a breach of the standard of care. This harm can take many forms, including: This causal link can be difficult to prove, and this is another element that can best be established through the professional opinion of a trained expert. For example,

assume that a depressive patient is prescribed medication that carries suicidal ideation as a known side effect, and the patient commits suicide a few weeks after starting the prescription.

Chapter 9 : When Psychiatric Care Crosses the Line into Medical Malpractice

The attorneys at Morgan & Morgan are familiar with the devastating effects psychiatric malpractice or negligence can have on a patient and/or their family. A psychiatrist, as a medical professional, owes patients and their families, a certain duty of care.

February 9, Psychiatric treatment is often a difficult process for both doctor and patient. Because of this, strict guidelines have been set out to help doctors make the right diagnoses and prescribe the proper treatments, while providing the best standard of care for patients, and protecting the patient and other individuals from harm. However, this does not always occur and patients are continually at risk because of errors made by health care professionals. Medical malpractice in the psychiatric fields is as common as other medical fields and often involves more than just the traditional doctor or patient. Common forms of psychiatric negligence Failure to conduct a proper suicide risk assessment. The standard of care requires physicians to conduct a proper risk of suicide assessment on every potentially suicidal patient. If a doctors fails to properly assess the patient considering all the relevant factors such as patient history, age, gender, sexual orientation, employment and living standards, then he is at risk for potential litigation. If a proper suicide risk assessment has been performed and it has been determined there is a legitimate risk of suicide, a doctor must take steps to prevent that suicide from occurring. If he fails in this task, he could be judged guilty of malpractice. Improper diagnosis or treatment. While some people believe that many psychiatric diagnoses are ill-defined, this is simply not the case. Any mental health professional should be able to come to a definitive diagnosis assuming the proper patient assessment has occurred. However, if an improper diagnosis is made or if a doctor prescribes the incorrect treatment, a patient or their family have a strong case for malpractice against the doctor or mental health professional. Extending further from the traditional doctor and patient relationship, courts have ruled that if a patient makes threats during sessions against another person, the clinician has a duty to warn this person of the potential threat if they believe it is credible. It has been established there must exist a boundary between the healthcare professional and their patients. One of the most common treatments patients undergo is the process of revealing past memories that have been repressed. Many psychiatric health care professionals believe these memories to be the source of the mental health problems for many patients. If false memories are revealed and it causes irreparable harm to the patient or other individuals, the mental health care professional can be held liable for creating these false memories. Malpractice case studies Prosenjit Poddar, a student from Bengal, India, was rebuffed by Tatiana Tarasoff who wanted to see other men. Poddar withdrew and became increasingly antisocial. Tarasoff left for South America and Poddar began to improve even seeing a psychologist. During his sessions, he confided in his psychologist revealing a plan to murder Tarasoff. When she returned, he stopped seeing his psychologist and carried out the plan he had told him about. Neither Tarasoff or her family received any warnings about the threat. The court found that that a mental health professional has a duty to not just the patient, but also any individuals that have been threatened by the patient. In Syracuse, New York, Joe Mazella, a well respected and popular high school coach, committed suicide after spending three years in the care of physicians and being prescribed antidepressants. After his death, his widow filed a lawsuit against the doctors treating him. Attorneys for the widow argued that Mazella would not have wanted to end his own life and the combination of negligence and low quality of care by the doctors along with three years on antidepressants that are known to cause suicide led to the beloved coach taking his own life. Conclusion Courts are increasingly recognizing the standard of care required for mental health care professionals and, in some areas, their responsibilities can extend far beyond just their patients. These cases represent just a small part of the malpractice cases facing mental healthcare professionals. It is important for every mental health care professional to provide the highest standard of care possible at all times and to maintain the safety of not only their patients but any individuals that have been threatened by the patient. Failure to provide this type of care is grounds for malpractice and mental health care professionals should and are often held liable for these mistakes.