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In a medical malpractice case, the injured patient, otherwise referred to as the plaintiff, must first establish that a healthcare provider owed a legal duty to the patient. All healthcare providers, whether they are physicians, nurses, therapists, etc., owe a duty of care to the patient.

The plaintiff must also establish what the appropriate level of care was under the circumstances. Failure to meet this appropriate level of care is ultimately what leads to the healthcare provider’s alleged medical negligence.

The first step in proving that a healthcare provider owed a legal duty of care to a patient is to demonstrate that there was a relationship between the healthcare provider and the patient at the time the alleged malpractice occurred. The relationship is one that is voluntary and entered into by mutual agreement. Typically, the way to support the finding that the healthcare provider-patient relationship existed at the time of the malpractice is with evidence from the patient’s medical records.

Additionally, testimony can be used to prove this relationship, by showing that the patient chose to be treated by the particular healthcare provider; that the patient submitted to examinations for the purpose of treatment of a certain health problem or condition; and that the treatment by the healthcare provider was ongoing.

A healthcare provider must prove that they used the degree of care and skill of the average healthcare provider with a similar specialty practice, taking into account the medical knowledge that is available to the provider at the time the alleged malpractice took place. For example, for a physician, the standard of care is based on what the average physician, who practices in that area of medicine (orthopedics, gynecology, etc), would customarily or typically do in similar circumstances. The standard of care is the first element of a medical malpractice claim.

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