

Health Law: Quality & Liability

Prof. Thaddeus Pope

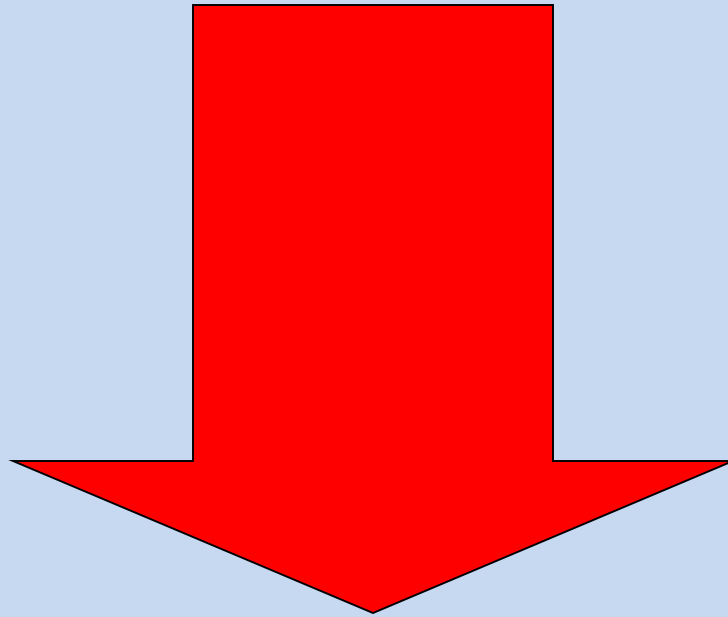
Treatment Relationship:
Formation



When is a Relationship Formed



No treatment relationship



No physician duties



**Treatment
relationship**

**Standard
of care**

Confidentiality

**Informed
consent**

**Non-
abandonment**



Other duties (e.g. EMTALA) do not depend on a treatment relationship. But that is not our focus.



Formation

Examples



Not concerned
with the **merits**
of these cases



Our focus is on
the **existence**
of a treatment
relationship



Key
question



Did the
physician
consent
to treat



Bilateral contract



“Will you
treat me?”

“Yes, I will”



Sometimes

Clear & Easy



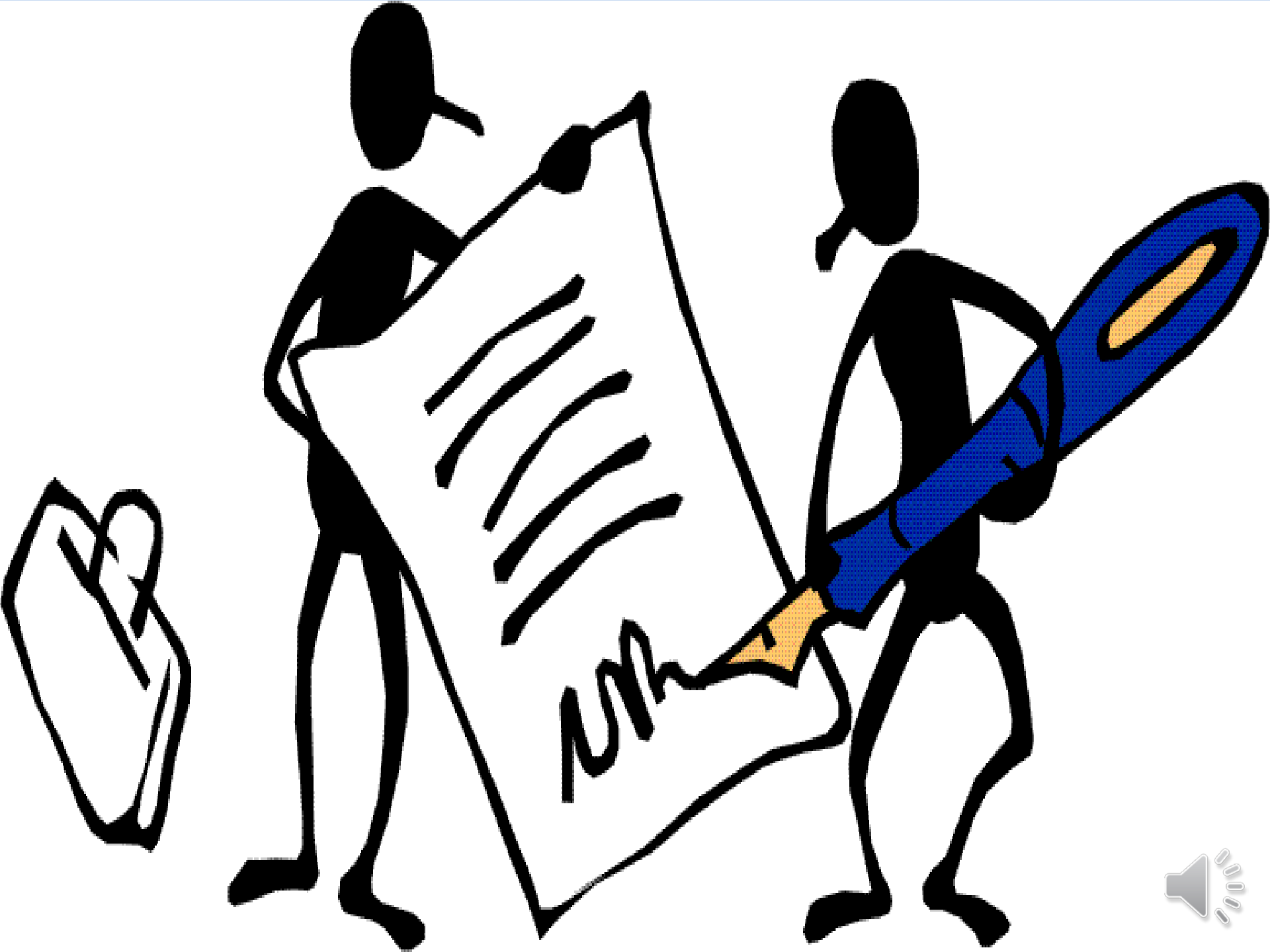
Patient seeks care

Physician provides it

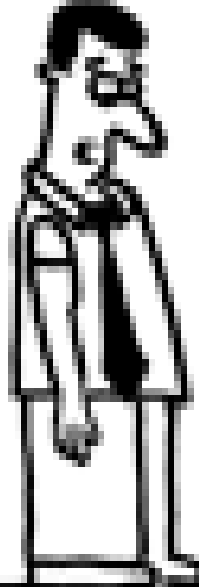


Actual examination or treatment manifests consent

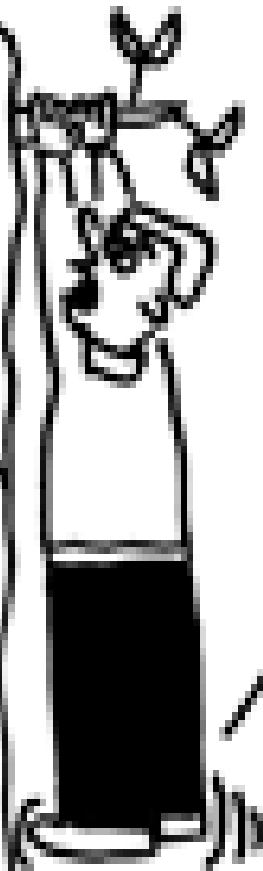




We don't
have a
written
contract.



But you
orally promised
to rescue me!



But sometimes
consent is
less clear



Some physician –
patient interaction

But is it **enough**?



What **type**

What **amount**

is sufficient



Look for
detrimental
reliance





If you call it,
others back off





If you have lifeguards,
people swim more



DON'T WAIT

The *New* ER at

St. Mary's Hospital

is Ready For *You.*



Injured will come



Adams

v.

**Via Christi Reg.
Med.**



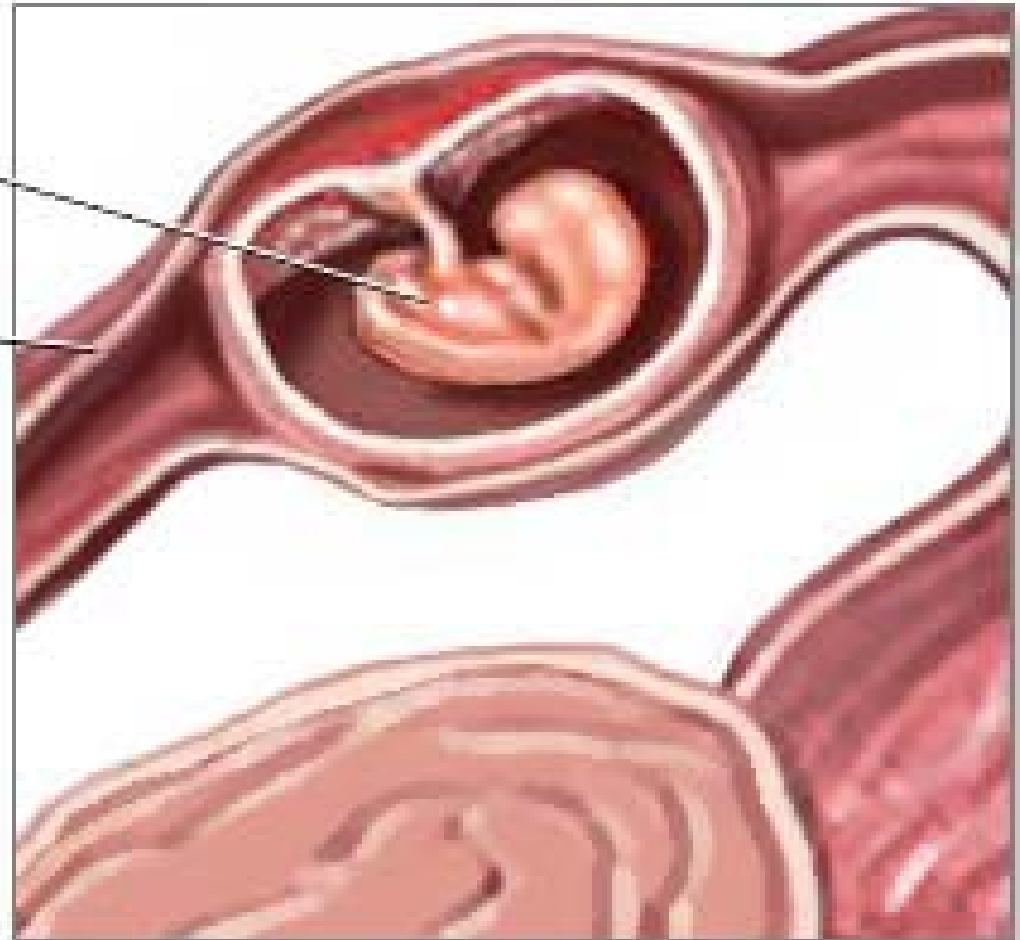
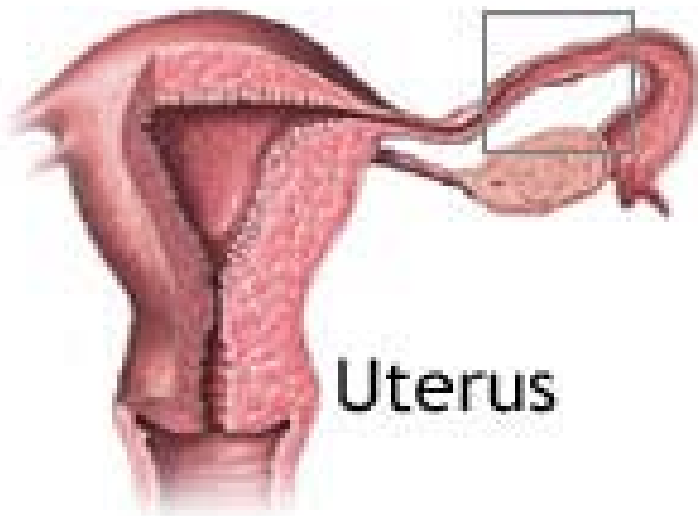
19yo Nichelle died

Ectopic pregnancy

Fetus

Fallopian tube

Uterus



48 hours earlier

Abdominal pain



Called Dr. O

“Go to ED, if it gets worse”



So, they **delayed**
going to the ED



Theory of professional negligence (medical malpractice)



Dr. O should have suspected
ectopic pregnancy

Dr. O should have advised of
danger

9:30pm ER visit would have
saved her



Breach

fail diagnose

Damages

death

Causation

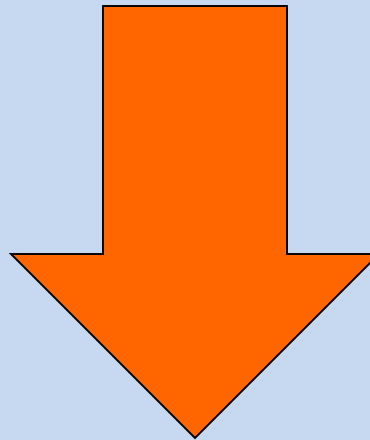
diagnosis

would prevent



Dr. O argues:

No duty



Merits of malpractice
action irrelevant



Doctor O argument

(no duty because no
treatment relationship)



Not seen, talked, treated Nichelle
for 4 years

Not speak Nichelle on July 22

No longer even provided
obstetrical care AT ALL

Took no action



Only discussed Nichelle's
condition in general terms with
mother

Not consider Nichelle his patient

Nichelle not consider him her
doctor



Mrs. Adams argument 1



“family physician for
Mr. and Mrs. Adams
and their three
children for several
years”



Not enough

See Hurley



Relationship
defined by each
“episode of
illness”



Mrs. Adams argument 2



Doctor O called
“right back”



Still not
enough



This is “affirmative action.” But not itself sufficient.

He could have said “I cannot help you”



Mrs. Adams argument 3



Doc listened and gave medical
opinion (3 separate pieces)

Abdominal pain not abnormal

Take ER if got worse

See doc next day



This conduct
creates a
treatment
relationship



“reassure”

“dissuade”



Objective test

Look to **external** acts,
not subjective intent



Dr. O did not **want** to treat

But he used his judgment to
offer a recommendation

It **looks** like he is treating



Lyons

v.

Grether





Physician
refused to see
patient with
service dog



Complaint is
abandonment
(wrongful termination).

Not “bad” treatment but
“no” treatment



Only a duty to
treat if **already**
in a treatment
relationship



Physician argument



Not **yet** seen (or
examined)

Did not even speak to
patient (or patient's
agent)



Patient

argument



Patient did “entrust
her treatment to the
physician”

The physician did
accept the case



Appointment

Specific time

Specific place

Specific purpose

All 3 cumulatively sufficient



Formation

because

detrimental

reliance



Let's now turn
to a separate
question



Move now
from forming
to **ending**

