

Health Law: Quality & Liability

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Medical Malpractice –
Other Defenses



Affirmative Defenses



DEF can avoid
liability **even if**
PTF establishes
prime facie case



Good Samaritan
Statutes of Limitation
Statutes of Repose
Assumption of Risk
Comparative Negligence



Good Samaritan



Provide **immunity**
from civil damages
for personal injuries
that result from
ordinary negligence.



4 requirements

Outside a medical setting (e.g. accident scene, choking in restaurant, natural disaster)

No pre-existing duty to provide care

No expectation of payment

Recipient does not object

Limit: no protection from liability for “gross” negligence - willful, wanton, even malicious

Assumption of Risk

Complete defense

100% bar to damages

Not about PTF **fault**

About PTF **consent**

PTF understood and voluntarily agreed to confront risks (subjective standard)

BELLEVUE CHALLENGE COURSE
AT EASTGATE PARK



ASSUMPTION OF RISK/ WAIVER OF LIABILITY

*** You (and, your parent or guardian, if you are under age 18), must complete all parts and sign this Assumption of Risk/ Waiver of Liability, including a Photo Release before participating in any Bellevue Challenge Course activities. ***

Participant Name: _____ Date of Birth: _____
 Home Address: _____ Hm Tel: _____
 City, State Zip: _____ Wk Tel: _____

ASSUMPTION OF RISK
PLEASE READ CAREFULLY

Complementary therapies

- Naturopathic medicine
- Nutritional therapy
- Physical rehabilitation
- Mind-body medicine
- Spiritual support

Conventional therapies

- Surgery
- Chemotherapy
- Immunotherapy
- Radiation
- Stem cell transplant

Partial waivers

Physicians **cannot**
make patients
waive their right
to sue

But **partial**
waivers
allowed

Discharge AMA

UW Medicine
HARBORVIEW MEDICAL CENTER - UW MEDICAL CENTER
UNIVERSITY OF WASHINGTON PHYSICIANS
SEATTLE, WASHINGTON

DISCHARGE - AGAINST MEDICAL ADVICE

I, _____, am voluntarily leaving and signing out
(Name of patient)
(OR)
I, _____, am voluntarily taking _____
(Name of person signing) (Name of patient)

from the Medical Center, contrary to the advice of the medical staff in attendance. This is to certify that I, in so doing, assume full responsibility for any and all risks of this action, and hereby agree to hold the Medical Center and its' staff free from any liability of any consequences that may result directly or indirectly by reason of such removal.

(Signature of patient or person assuming responsibility) (Relationship of person assuming responsibility)

Other partial
waivers
allowed

Deviation from
standard of care for
religious reasons



Patient
participates in
experiment

A research study for Irritable Bowel Syndrome (IBS).

Frustrated by your IBS and endless bathroom stops?

A local research study seeks people with Irritable Bowel Syndrome.

- ✓ No-cost investigational medication
- ✓ No-cost study-related care

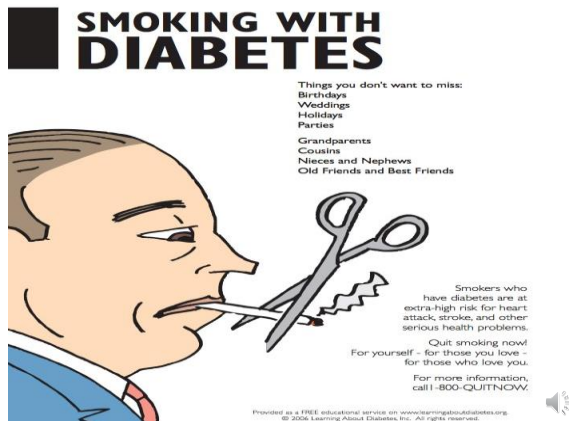
SEE IF YOU QUALIFY. CLICK HERE.
www.StudyIBS.com

**Comparative
Negligence**

Not about PTF
consent (like AR)

About PTF **fault**

PTF not do what
reasonable person
would do (objective
standard)



No provide contact
information (to get
rest result)

No follow-up on test

No provide
information (allergy)

Fail follow advice

Contrast SOR,
SOL, AR
(100% bar)

Usually partial (not complete) defense

Only **reduces** damages



(1) Was DEF negligent?

Answer "yes" or "no." _____

If your answer to Question No. 1 was "no", do not answer any further questions on this **form**.



(2) Was the negligence of DEF a legal cause of injury to PTF?

Answer "yes" or "no." _____

If your answer to Question No. 2 was "no," do not answer any further questions on this **form**.



(3) Was PTF negligent?

Answer "yes" or "no." _____

If your answer to Question No. 3 was "no," you must now complete Question 7.



(4) Was negligence of PTF a legal cause of injury to him/her?

Answer "yes" or "no." _____

If your answer to Question No. 4 was "no," you must now complete Question 7.



(5) What . . . damages . . . caused . .

(6) Determine percentage of fault for PTF and DEF for damages identified

Defendant	____%
Plaintiff	____%
TOTAL	<u>100%</u>



Arbitration

Only changes **where** the conflict is resolved

Arbitration changes the tribunal from a government court to **private dispute resolution**

Patient must **understand** she is giving up her right to sue (in court)

“NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS CONTRACT.”