Table of Contents

CHAPTER 1. STANDARD OF CARE

0 1 1	T 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
§ 1:1	Introduction
2 1.1	iii oa actioii

- § 1:2 General elements of negligence
- § 1:3 The standard of care
- § 1:4 National versus local standard of care
- § 1:5 Presumption of due care
- § 1:6 Effect of presumptions
- § 1:7 Burden of proof
- § 1:8 Expert testimony required
- § 1:9 Doctor is not an insurer or guarantor
- § 1:10 Unfavorable results
- § 1:11 Improper diagnosis and mistakes of judgment
- § 1:12 Hindsight
- § 1:13 Res ipsa loquitur

CHAPTER 2. CAUSES OF ACTION

- § 2:1 Introduction
- § 2:2 Essential elements of a medical malpractice claim
- § 2:3 Misdiagnosis and mistreatment
- § 2:4 Simple negligence
- § 2:5 Negligence per se
- § 2:6 Breach of contract
- § 2:7 Abandonment
- § 2:8 Battery
- § 2:9 Emotional distress
- § 2:10 Wrongful death
- § 2:11 Wrongful death of a fetus
- § 2:12 Wrongful pregnancy and negligent sterilization
- § 2:13 Wrongful birth and wrongful life
- § 2:14 Bradley Center claims
- § 2:15 Fraud and breach of fiduciary duty; breach of private duty
- § 2:16 Failure to report child abuse
- § 2:17 Claims against joint tortfeasors
- § 2:18 Negligent granting of staff privileges and negligent retention
- § 2:19 Loss of consortium
- § 2:20 Dram Shop Act claims
- § 2:21 Strict liability
- § 2:22 Punitive damages

- § 2:23 Fair Business Practices Act
- § 2:24 Res ipsa loquitur

CHAPTER 3. PATIENT-PHYSICIAN RELATIONSHIP

- § 3:1 Introduction
- § 3:2 Consensual transaction
- § 3:3 A limited patient-physician contact
- § 3:4 Termination of consent by patient
- § 3:5 Termination of consent by physician

CHAPTER 4. DEFENSES

- § 4:1 Introduction
- § 4:2 Avoidance of consequences, contributory negligence, and comparative negligence
- § 4:3 Allocation of fault among joint tortfeasors
- § 4:4 Assumption of risk
- § 4:5 Foreseeability and intervening cause
- § 4:6 Proximate cause
- § 4:7 Release and satisfaction
- § 4:8 Exculpatory clauses
- § 4:9 Good Samaritan defense
- § 4:10 Immunity for voluntary provision of healthcare services and charitable immunity
- § 4:11 Workers' compensation exclusive remedy
- § 4:12 Res judicata
- § 4:13 Ostensible or apparent agency defense
- § 4:14 Emergency medical care
- § 4:15 Sovereign immunity and official immunity
- § 4:16 Attorney misconduct
- § 4:17 Res judicata
- § 4:18 Arbitration clauses

CHAPTER 5. CONSENT TO TREATMENT

- § 5:1 Introduction
- § 5:2 History of informed consent in Georgia
- § 5:3 Scope of procedures covered under O.C.G.A. § 31–9–6.1
- § 5:4 Scope of doctor's duty to inform under O.C.G.A. § 31–9–6.1
- § 5:5 Presumption of written consent under O.C.G.A. § 31–9–6.1
- § 5:6 Means of informing the patient under O.C.G.A. § 31–9–6.1
- § 5:7 Cause of action under O.C.G.A. § 31–9–6.1

Table of Contents

- § 5:8 Exceptions to disclosure and prior consent under O.C.G.A. § 31–9–6.1
- § 5:9 Scope of protection of valid consent under O.C.G.A. § 31–9–6.1
- § 5:10 Right to refuse consent to treatment
- § 5:11 Advance directives for health care

CHAPTER 6. STATUTES OF LIMITATION AND REPOSE

- § 6:1 Introduction
- § 6:2 Actions covered by the statute of limitations for medical malpractice claims
- § 6:3 The general two-year limitation for medical malpractice claims
- § 6:4 The five-year statute of repose
- § 6:5 Foreign object limitation
- § 6:6 What is a foreign object?
- § 6:7 Failure to inform of foreign object only tolls the statute
- § 6:8 Breach of warranty and the statute of limitations
- § 6:9 Exceptions and disabilities
- § 6:10 Steps necessary to toll the statute of limitations
- § 6:11 Consortium claims
- § 6:12 COVID-19 pandemic judicial emergency implications

CHAPTER 7. FRAUD, MISREPRESENTATION, AND THE STATUTE OF LIMITATIONS

- § 7:1 Introduction
- § 7:2 Tolling the statute of limitations by fraud
- § 7:3 Proof of actual fraud is not required
- § 7:4 Knowledge of the misrepresentation
- § 7:5 The deterrence requirement
- § 7:6 Plaintiff's burden of proof
- § 7:7 Fraud and the statute of repose

CHAPTER 8. COMPLAINTS, AFFIDAVITS, AND INITIAL CONSIDERATIONS

- § 8:1 Introduction
- § 8:2 The medical negligence complaint and answer
- § 8:3 Introduction to the medical negligence affidavit
- § 8:4 Necessary affidavit elements
- § 8:5 Affidavit expert competence pleading requirements
- § 8:6 Challenges to defective affidavits

- § 8:7 Lack of an affidavit filed with the complaint
- § 8:8 Required medical authorizations
- § 8:9 Venue considerations
- § 8:10 Non-economic damage caps

CHAPTER 9. DISCOVERY

- § 9:1 Introduction
- § 9:2 Practical discovery issues after HIPAA
- § 9:3 Other records
- § 9:4 Physical and mental examinations
- § 9:5 Patient-physician privilege
- § 9:6 Patient-psychiatrist privilege
- § 9:7 Defendant's financial condition
- § 9:8 General discovery objections
- § 9:9 Peer review privilege
- § 9:10 Peer review defined
- § 9:11 Confidentiality of peer review proceedings

CHAPTER 10. THE *DAUBERT* STANDARDS AND EXPERT WITNESSES

- § 10:1 Introduction
- § 10:2 Fed. R. Evid. 702; O.C.G.A. § 24-7-702(b)
- § 10:3 The trial court's gatekeeping role
- § 10:4 The Supreme Court's analysis in *Daubert*
- § 10:5 Other factors for consideration of reliability
- § 10:6 Focus: the expert's methodology, not his conclusions
- § 10:7 The "fit" element
- § 10:8 The "helpfulness" element
- § 10:9 The "prejudice or confusion" element
- § 10:10 Daubert covers all expert testimony
- § 10:11 Not all expert opinions about science require *Daubert* analysis
- § 10:12 Opinions based on inadmissible hearsay; O.C.G.A. § 24-7-703
- § 10:13 The burden of proof
- § 10:14 The *Daubert* hearing
- § 10:15 Abuse of discretion standard on appellate review
- § 10:16 Daubert analysis in medical malpractice cases
- § 10:17 Qualifications of experts; O.C.G.A. § 24-7-702(c)
- § 10:18 Hearing on the expert's qualifications
- § 10:19 The affidavit requirement and O.C.G.A. § 24-7-702(e)
- § 10:20 Appellate court analysis of expert witness requirements
- § 10:21 Daubert discovery requirements

CHAPTER 11. SUMMARY JUDGMENT AND TRIAL ISSUES

§ 11:1 Introduction

A. GENERAL REQUIREMENTS FOR SUMMARY JUDGMENT IN MEDICAL CASES

- § 11:2 Statutory requirements of O.C.G.A. § 9–11–56
- § 11:3 Uniform Superior Court Rules
- § 11:4 Principles for granting summary judgment
- § 11:5 Circumstantial versus direct evidence
- § 11:6 Expert testimony required
- § 11:7 Summary judgment for defendant
- § 11:8 Inadmissible opinions and conclusions

B. REQUIREMENTS FOR AFFIDAVITS FOR SUMMARY JUDGMENT

- § 11:9 Mere difference of treatment is insufficient
- § 11:10 Sufficiency of opinion of plaintiff's expert
- § 11:11 Magic words not required
- § 11:12 Is it a material question of fact?
- § 11:13 Proof on causation required
- § 11:14 Credibility and fact issues
- § 11:15 Technical requirements for an expert's affidavit
- § 11:16 Applying the proper standard
- § 11:17 Qualification of experts
- § 11:18 Time for filing plaintiff's expert affidavit

C. EXCEPTIONS TO THE REQUIREMENT FOR EXPERT TESTIMONY

- § 11:19 Ordinary negligence cases
- § 11:20 Pronounced results cases
- § 11:21 Simple negligence and professional liability combined

CHAPTER 12. DIRECTED VERDICT

- § 12:1 Introduction
- § 12:2 Application of statutory provisions under Georgia Civil Practice Act
- § 12:3 Motion for directed verdict after previous denial of summary judgment
- § 12:4 Reopening the evidence to avoid directed verdict

CHAPTER 13. HOSPITAL SETTING LIABILITY

§ 13:1	Introduction
§ 13:2	Locality rule applicable in direct hospital liability
	allegations
§ 13:3	Statutory independent contractor defense
§ 13:4	Joint venture
§ 13:5	Negligent credentialing
§ 13:6	Negligent staffing
§ 13:7	Negligent hiring or retention
§ 13:8	Liability for hospital personnel
§ 13:9	Duty to protect
§ 13:10	Medical judgment versus simple negligence
§ 13:11	Charitable immunity
§ 13:12	Negligence per se: Certified registered nurse
	anesthetists and physician's assistants
§ 13:13	Immunity issues related to hospital authorities
§ 13:14	Psychotherapeutic medical record privilege

CHAPTER 14. TRIAL PRACTICE

- § 14:1 Introduction
 § 14:2 Jury selection
 § 14:3 Qualifying experts
 § 14:4 Direct examination of experts
 § 14:5 Cross-examination of medical experts
 § 14:6 Miscellaneous evidentiary considerations
 § 14:7 Opening and closing statements in medical malpractice cases
- § 14:8 COVID-19 considerations

CHAPTER 15. EIGHTH AND FOURTEENTH AMENDMENT MEDICAL CLAIMS

§ 15:1	Introduction
§ 15:2	Procedures for bringing the claim: 42 U.S.C.A. § 1983 and <i>Bivens</i>
§ 15:3	The government's duty to provide medical care for prisoners
§ 15:4	Serious medical needs
§ 15:5	Deliberate indifference defined and applied
§ 15:6	Supervisory liability
§ 15:7	Custom and policy liability
§ 15:8	Qualified immunity defense for individual defendants
§ 15:9	Punitive damages in § 1983 cases

§ 15:10 Prison Litigation Reform Act

CHAPTER 16. EMTALA CLAIMS

- § 16:1 Introduction
- § 16:2 Appropriate medical screening
- § 16:3 Emergency medical condition
- § 16:4 Stabilizing treatment
- § 16:5 Transfer of an unstable patient
- § 16:6 Procedure for appropriate transfer
- § 16:7 Remedies

CHAPTER 17. FEDERAL TORT CLAIMS ACT

- § 17:1 Introduction
- § 17:2 General principles of the Federal Tort Claims Act
- § 17:3 Administrative requirements
- § 17:4 Accrual of claim/statute of limitations
- § 17:5 Feres defense

CHAPTER 18. FORMS

- § 18:1 Introduction
- § 18:2 Form complaint for damages
- § 18:3 Plaintiff counsel's response letter to HIPAA notice letter sent by defense counsel
- § 18:4 Plaintiff's interrogatories to defendant
- § 18:5 Plaintiff's first request for production of documents
- § 18:6 Defendant's interrogatories to plaintiff
- § 18:7 —Alternate form
- § 18:8 —Death case
- § 18:9 Defendant's request for production to plaintiff
- § 18:10 —Alternate form
- § 18:11 ——Federal court
- § 18:12 HIPAA release form
- § 18:13 Federal Tort Claims Act administrative claim form

APPENDIX

Appendix A. Georgia Tort Reform Bill

Table of Laws and Rules

Table of Cases

Index