

# Health Law: Quality & Liability

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Medical Malpractice -  
But For Causation

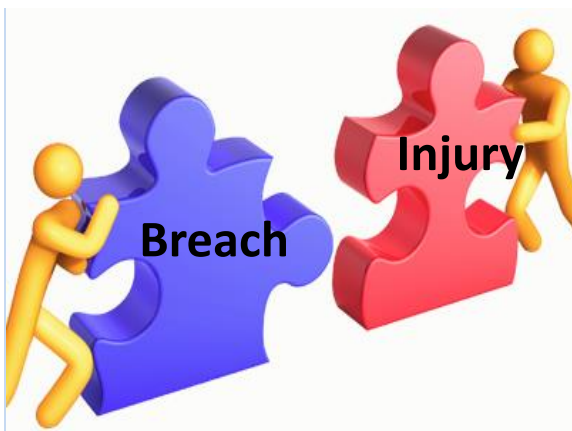
# Causation

PTF is suing because  
she is injured

PTF **already** established  
that DEF breached the  
applicable SOC

# BUT

Is the injury the  
result of the  
malpractice



# 2 types

“But for”

Lost chance

**But for  
causation  
Definition**

Main type of  
causation in  
the law

Rest. 3d 26

Conduct is a factual  
cause of harm when the  
harm would probably  
not have occurred  
absent the conduct.

**But for** (without)  
DEF's negligence

PTF would not be  
injured

Sine qua  
non

Not enough that  
DEF negligence  
**increased** the  
risk of harm

DEF negligence  
must be **most**  
**likely** cause

**Probability is sufficient**

**Never sufficient**

Speculative

Merely possible

**But for**  
**causation**  
**Consequences**

> 50% chance that  
injury came from  
DEF negligence

→ 100% damages

50% or < 50% chance  
injury from DEF  
negligence

→ 0% damages



# But for causation

Math problems

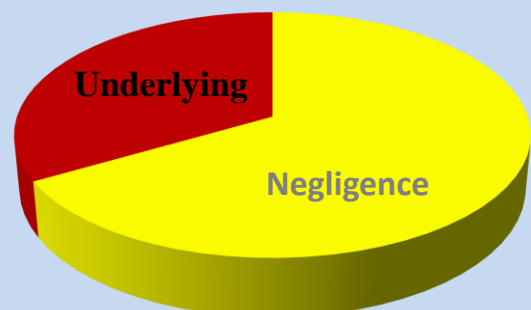
Negligence **increases** risk of adverse outcome

Adverse outcome obtains

Was injury **probably** the result of DEF negligence (as opposed to alternative cause, e.g. underlying illness)

Baseline risk death **10%**

After DEF negligence risk of death **30%**



Dies. Why? 30% chance death most of that from negligence

1% → 3%

Risk from  
negligence >  
other risk

30% → 70%

Risk from  
negligence >  
other risk

40% → 70%

Risk from  
negligence <  
other risk → no  
but for causation

Often no  
statistics, just  
expert opinion  
on probability

**But for  
causation  
Cases**



ADAM.

But even if  
experimental  
treatment works,  
denial did not  
“cause” injury

Assume no breach  
and were enrolled  
in trial

Then what?

**w/o** negl.

\_\_\_ % in  
prenatal  
surgery  
group

**with** negl.

\_\_\_ % in  
prenatal  
surgery  
group

“But for”  
causation is  
**always**  
sufficient

Let’s move from  
“but for” to  
“lost chance”  
causation