


LEGAL UPDATE:

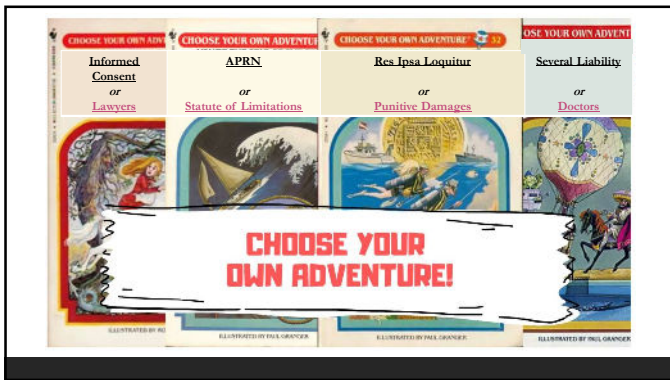
Choose your own Adventure

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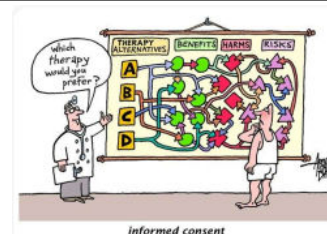


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INFORMED CONSENT



informed consent

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LEGAL DEFINITIONS

For a patient's consent to be effective, whether express or implied, the physician must have informed the patient as to the **nature of the ailment**, the **nature of the [operation/treatment]** and the **material risks**, if any, involved in undergoing the [operation/treatment]. OUJI 14.10

- WHAT IS WRONG WITH YOU
- HOW ARE WE GOING TO FIX IT
- AND WHAT COULD GO BAD?

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It is the **duty of the physician** to disclose to [his/her] [patient] all relevant information to enable that [patient] to make an informed decision on whether to consent to or reject the physician's proposed treatment or surgery.

This duty of disclosure includes advising a [patient], when a proposed treatment or surgery involves a **known risk of death or serious bodily harm**, of the **possibility of such outcome and explaining in understandable terms the complications that might occur**. The disclosure shall include any **alternatives** to the proposed treatment or surgery and the risks of each, including the risk in **foregoing all treatment** or surgery. OUJI 14.11

- Physician's Duty
- Known risks
- Alternatives, including no treatment/surgery

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EXCEPTIONS

1. A physician has no duty to disclose risks that are already known to the patient, or which are commonly understood by the average person to be involved in the proposed treatment or operation.
2. A physician has no duty of disclosure when [he/she] relies upon facts which would demonstrate that full disclosure would be detrimental to a patient's total care and best interest, or where such disclosure would alarm an emotionally upset or apprehensive patient so that the patient would not be able to weigh rationally the risks of refusing to undergo the recommended treatment or operation.
3. A physician has no duty to inform a patient of the risks of a medical procedure when an emergency exists and the patient is unconscious or otherwise incapable of determining for [himself/herself] whether treatment should be administered. OUII 14.12

Everyone knows the risk

Too much information can be bad

Emergencies

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Before a physician may be held liable for a breach of [his/her] duty to disclose, the patient must establish that [he/she] would have chosen no treatment or surgery or a different course of treatment of surgery had the alternatives and material risks of each been made known to [him/her]. In addition, the patient must have been injured by the undisclosed risk as a result of submitting to the treatment or surgery. OUII 14.13

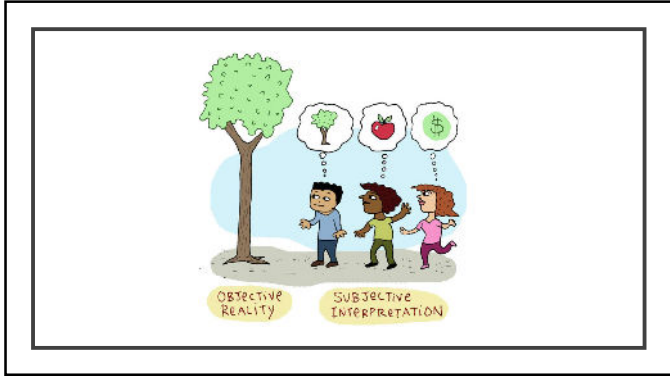
If a plaintiff testifies he would have continued with the proposed treatment had he been adequately informed, the trial is over under either the subjective or objective approach. If he testifies he would not, then the causation problem must be resolved by examining the credibility of plaintiff's testimony. The jury must be instructed that it must find plaintiff would have refused the treatment if he is to prevail.

Although it might be said this approach places a physician at the mercy of a patient's hindsight, a careful practitioner can always protect himself by insuring that he has adequately informed each patient he treats. If he does not breach this duty, a causation problem will not arise. *Scott v. Bradford*, 1979 OK 165, ¶¶22-23

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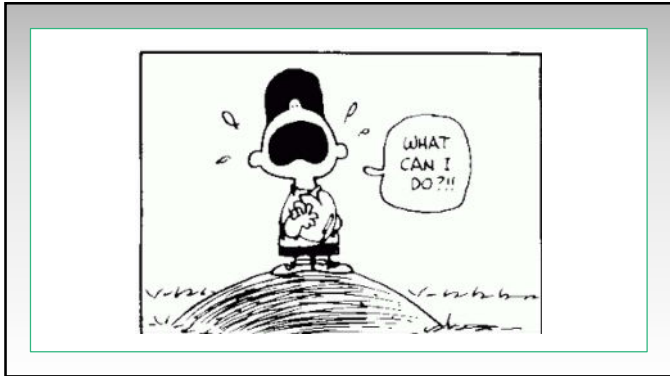
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Today, this Court reemphasizes that the scope of a physician's communications must be measured by his/her patient's need to know enough information to enable the patient to make an informed and intelligent choice. In other words, **full disclosure of all material risks incident to treatment must be made.** As such, no physician has carte blanche to **delegate any or all tasks to a non-doctor.** To hold otherwise, would obliterate a patient's freedom of choice and reinstate the paternalistic approach to medicine this Court rejected in *Scott v. Bradford* over thirty-eight years ago. **1979 OK 185, 606 P.2d 554. The scope of the duty to inform is broad enough to include a physician's duty to inform the patient "who" will be performing significant portions of the procedure or surgical tasks.** *Hurley v. Kirk*, 2017 OK 55, ¶15.

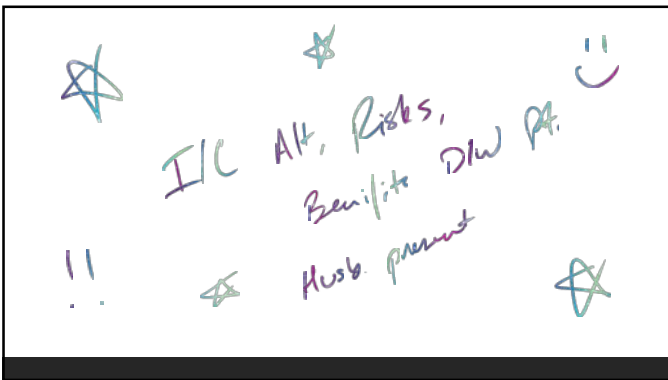
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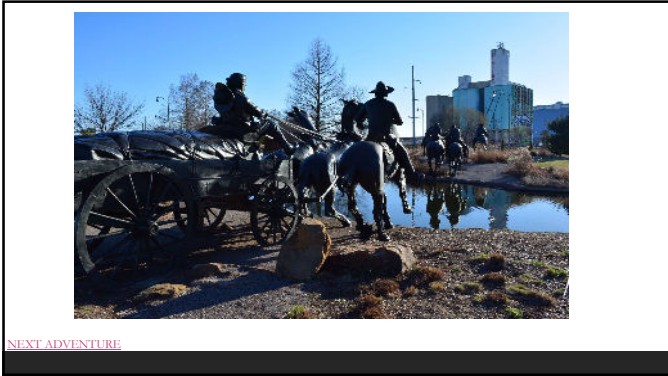
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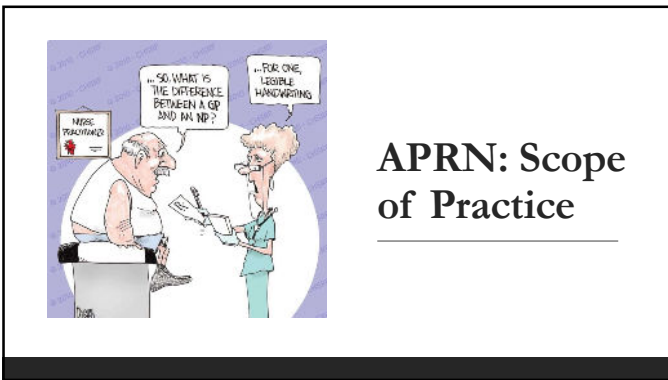
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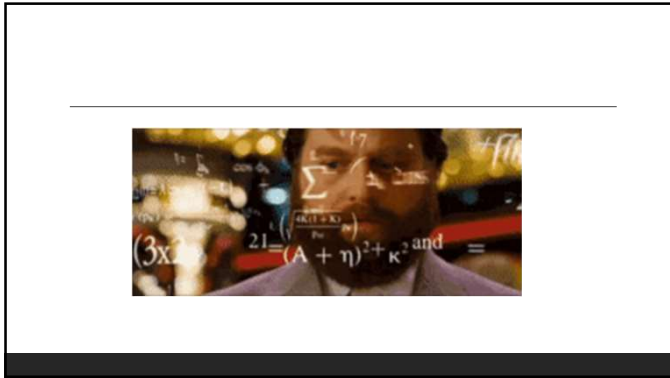
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APRN – SCOPE OF PRACTICE

*Decision-Making Model for Scope of Nursing Practice Decisions:
Determining Advanced Practice Registered Nurse, Registered Nurse and
Licensed Practical Nurse Scope of Practice Guidelines*

<https://nursing.ok.gov/prac-decmak.pdf>

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2.1 If you are an Advanced Practice Registered Nurse (APRN), is the activity for advanced practice nurses within the recognized scope and standards of your certifying body and **consistent with advanced educational preparation as an APRN in an area of specialty?**

a. If you answer **NO** to this question, the activity is **NOT** within your scope of practice.

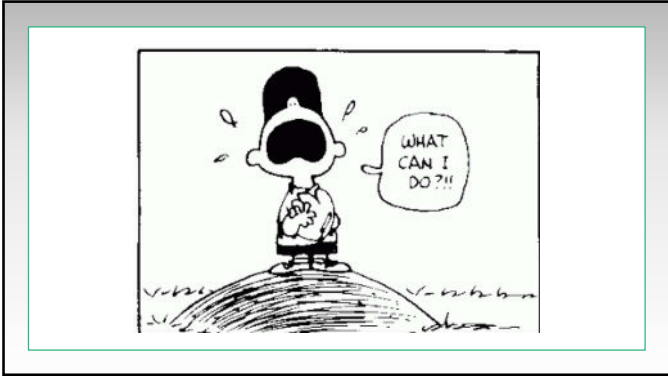
b. If you answer **YES**, proceed to #3.

<https://nursing.ok.gov/prac-decmak.pdf>

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APRN	APRN	Advanced Educational Preparation	Advanced Certifying Body	APRN	APRN
2	CRN	CRN	CRN	CRN	CRN
3	CRP	CRP	CRP	CRP	CRP
4	CRN	CRN	CRN	CRN	CRN
5	CRN	CRN	CRN	CRN	CRN
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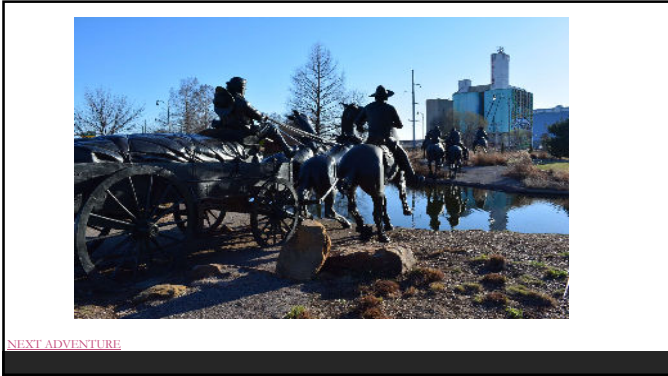
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Res Ipsa
Loquitur.

(Loquit-or?)

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The Thing Speaks for Itself

The only way this could have happened is if someone was negligent. Because it wouldn't happen otherwise. You doctors were in charge, so it must be your fault, because it has to be someone's fault and I sued you.

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Under "Common Law" (Judge-made Law): The jury may *infer* the negligence of the defendant. That ***inference*** may be rebutted and refuted by the defendant to disprove it.
Little v. Arbuickel Mem'l Hosp. Bd. of Control, 1983 OK CIV APP 28, ¶ 4

Under Oklahoma Statute (Congress-made Law): The jury may ***presume*** the negligence of the defendant ***physician***. That ***presumption*** may be rebutted and refuted by the defendant to disprove it.
 76 O.S. §21

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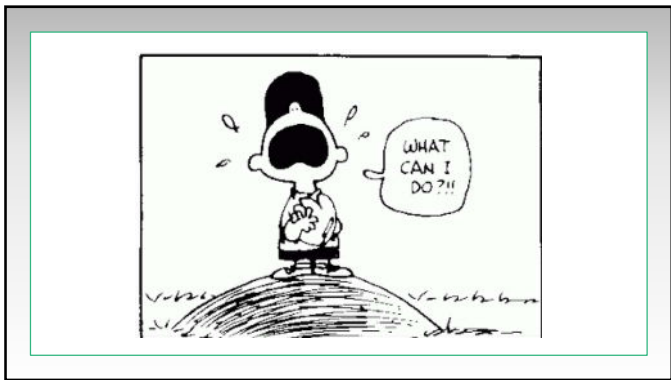
Common Law = Common Knowledge/No Experts

Statutory Law = Expert Testimony (usually), because it only applies to "medical care" cases.

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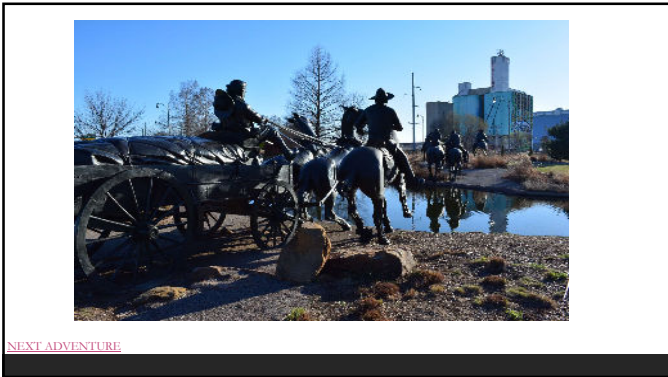
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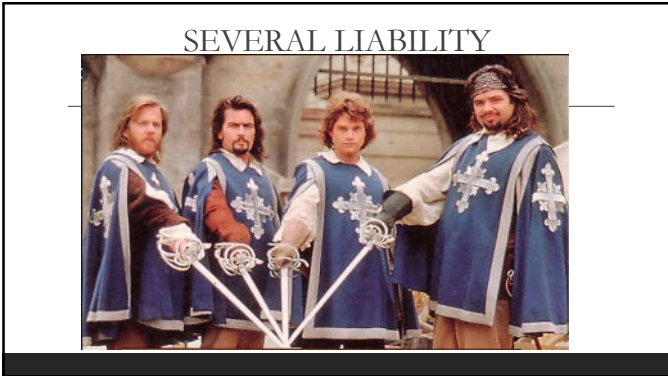
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B. A defendant shall be jointly and severally liable for the damages recoverable by the plaintiff if the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than fifty percent (50%). If at the time the incident which gave rise to the cause of action occurred, a joint tortfeasor acted with willful and wanton conduct or with reckless disregard of the consequences of the conduct and such conduct proximately caused the damages legally recoverable by the plaintiff, the liability for damages shall be joint and several as to any such tortfeasor.

23 O.S.2009 § 15

A. In any civil action based on fault and not arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor.

23 O.S.2011 § 15

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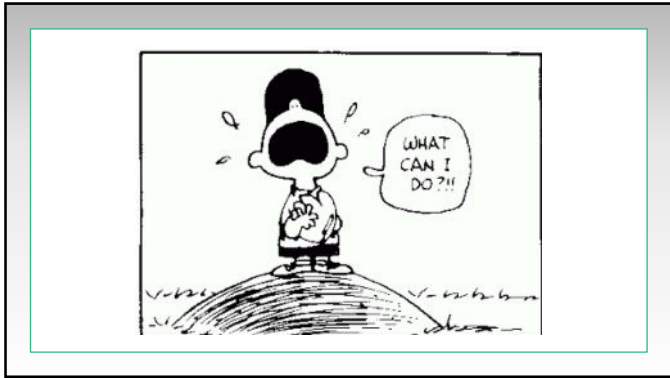


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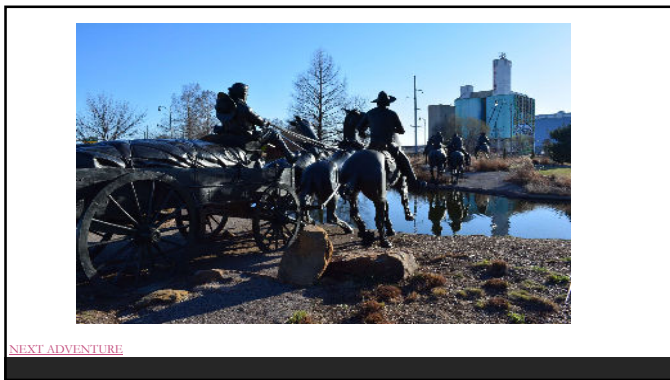
Doctor 1:	_____%
Doctor 2:	_____%
Doctor 2, PC:	_____%
Hospital A:	_____%
TOTAL:	100%

Plaintiff in the amount of \$XXX,XXX

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NEXT ADVENTURE

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Punitive Damages

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A. In an action for the breach of an obligation not arising from contract, the jury, in addition to actual damages, may, subject to the provisions and limitations in subsections B, C, and D of this section, award punitive damages for the sake of example and by way of punishing the defendant based upon the following factors:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;
2. The profitability of the misconduct to the defendant;
3. The duration of the misconduct and any concealment of it;
4. The degree of the defendant's awareness of the hazard and of its excessiveness;
5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard;
6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and
7. The financial condition of the defendant.

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B. Category I. Where the jury finds by clear and convincing evidence that:

1. The defendant has been guilty of reckless disregard for the rights of others; or
2. An insurer has recklessly disregarded its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in an amount not to exceed the greater of:
 - a. One Hundred Thousand Dollars (\$100,000.00), or
 - b. the amount of the actual damages awarded.

Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

C. Category II. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or
2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in an amount not to exceed the greatest of:
 - a. Five Hundred Thousand Dollars (\$500,000.00),
 - b. twice the amount of actual damages awarded, or
 - c. the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or entities.

The trial court shall reduce any award for punitive damages awarded pursuant to the provisions of subparagraph c of this paragraph by the amount it finds the defendant or insurer has previously paid as a result of all punitive damage verdicts entered in any court of this state for the same conduct by the defendant or insurer. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

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D. Category III. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or
2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; and the court finds, on the record and out of the presence of the jury, that there is evidence beyond a reasonable doubt that the defendant or insurer acted intentionally and with malice and engaged in conduct life-threatening to humans; the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in any amount the jury deems appropriate, without regard to the limitations set forth in subsections B and C of this section. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

E. In determining the amount, if any, of punitive damages to be awarded under either subsection B, C or D of this section, the jury shall make the award based upon the factors set forth in subsection A of this section.

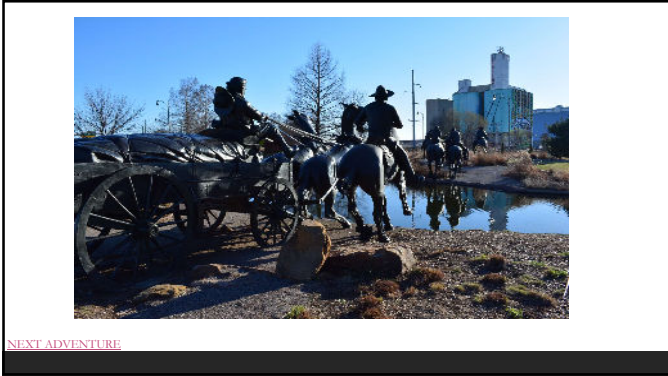
F. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

G. This section shall apply to all civil actions filed after the effective date of this act.

Historical Data

Laws 1995, SB 263, c. 287, § 2; Amended by Laws 2002, SB 1571, c. 462, § 1, emerg. eff. July 1, 2002 ([superseded document available](#)).

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Statute of Limitations

STATUTE OF LIMITATIONS
Oklahoma Statutes Criminalized
Title 76, Tort
Section 11 - Limitation of Action
Cite as O.S. §.---

An action for damages for injury or death against any physician, health care provider or hospital licensed under the laws of this state, whether based in tort, breach of contract or otherwise, arising out of patient care, shall be brought within two (2) years of the date the plaintiff knew or should have known, through the exercise of reasonable diligence, of the existence of the death, injury or condition complained of; provided, however, the minority or incompetency when the cause of action arises will extend said period of limitation.

Historical Data

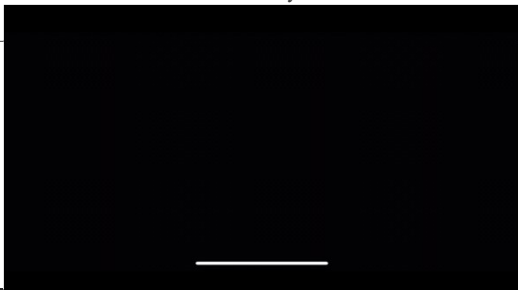
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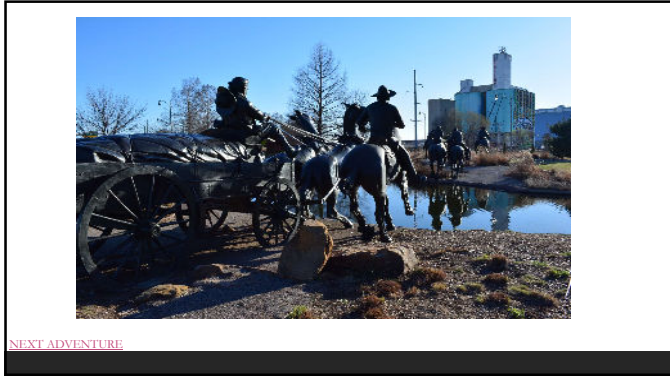
NEXT ADVENTURE

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The Lawyers



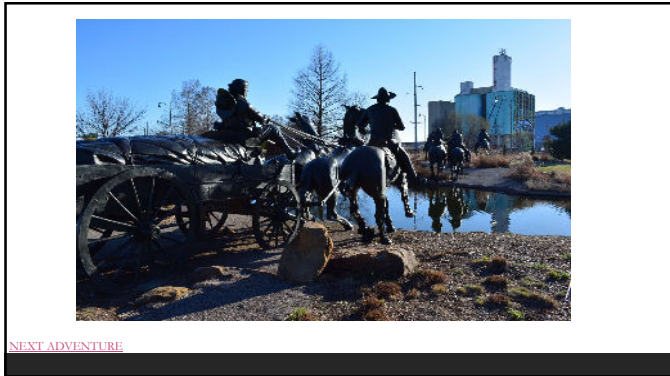
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Questions, Comments, Concerns?



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