

Medical Battery

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Torts

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Three ways to sue health care providers

- Medical battery
- Professional negligence
- Informed consent

Medical battery

- An intentional tort
- The elements of battery:
 - Act
 - Intent
 - Causation (actual and proximate)
 - Touching
 - Harmful or offensive

Medical Battery - Example: Ear Surgery

Patient gives permission to surgeon to operate on left ear. While patient is under anesthetic, surgeon decides to operate on right ear. Right ear is made better.

Result? Battery

Why? Cutting on someone's ear without permission is battery, even if it helps them. Lack of damages does not invalidate an intentional tort action.

Medical Battery - Example: Emergency Heart Surgery

Unconscious patient arrives in emergency room needing open-heart surgery to survive. Physicians operate. The surgery is performed incompetently, causing permanent impairment.

Result? No battery

Why? The hospital and physicians can prove an affirmative defense of consent. For a patient incapable of giving or withholding consent, consent is implied by law.

Medical Battery - Key Points

- Damages are not necessary to make out a case for battery. *Thus, the patient who is not injured, and is in fact better off because of the touching, still has a case.*
 - Note: A “harmful” touching for purposes of battery is not necessarily one that causes harm.
- Consent for emergency treatment is implied by law for public policy reasons.