

Establishing Negligence Claim

To establish a **negligence claim in medical malpractice**, the plaintiff must prove **four essential elements**:

I. Elements of Negligence in Medical Malpractice

1. Duty of Care

The healthcare provider owed a duty to the patient.

- This exists when there is a **provider–patient relationship**.

2. Breach of Duty

The provider failed to meet the **accepted standard of medical care**.

- Determined by what a reasonably competent provider would have done under similar circumstances.

3. Causation

The breach caused the patient's injury.

- Two types:
 - **Actual Cause** ("but for" the breach)
 - **Proximate Cause** (foreseeable result of breach)

4. Damages

The patient suffered physical, emotional, or financial harm.

Case Study Scenario: Delayed Cancer Diagnosis

Facts

Mary, a 42-year-old woman, saw Dr. Smith, her primary care physician, after discovering a lump in her breast. Dr. Smith dismissed it as a cyst without ordering imaging or referring her to a specialist. Six months later, Mary returned, and a mammogram confirmed she had stage III breast cancer. A medical expert testified that early intervention would likely have identified the cancer at stage I, significantly improving her prognosis.

Plaintiff's Arguments

1. Duty

Dr. Smith had a physician–patient relationship and thus owed a duty to provide competent care.

2. Breach

- Dr. Smith **deviated from the standard of care** by failing to order imaging or refer to a specialist.
- A reasonably prudent doctor would have acted immediately upon complaint of a breast lump in a woman over 40.

3. Causation

- Delay allowed the cancer to progress from stage I to stage III.
- Earlier diagnosis would have offered a **90%+ survival rate**; current prognosis is less favorable.

4. Damages

- Medical expenses increased.
 - Emotional distress from worsened condition.
 - Shortened life expectancy and pain/suffering.
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Defendant's Arguments

1. No Breach of Duty

- The lump was soft, mobile, and small—indicators consistent with a benign cyst.
- Dr. Smith followed standard conservative management.

2. Causation Not Proven

- Cancer may have already been advanced when initially presented.
- Plaintiff cannot prove that earlier action would have changed the outcome.

3. Comparative Negligence

- Mary delayed returning for follow-up despite advice to monitor the lump.

- Patient noncompliance contributed to harm.
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Plaintiff's Counterarguments

- **Standard of care requires imaging regardless of physical feel**, especially given age and risk.
 - Plaintiff returned multiple times but was dismissed.
 - The expert medical witness establishes **causal link** between delayed diagnosis and worsened condition.
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Relief Sought

1. **Compensatory Damages**
 - Medical expenses (past and future)
 - Lost wages/loss of earning capacity
 - Pain and suffering
 - Emotional distress
 2. **Punitive Damages** (*only if conduct was reckless or grossly negligent*)
 3. **Injunctive Relief** (*rare in malpractice, but can include mandating procedural changes*)
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Related Real-Life Cases

- **Herskovits v. Group Health Cooperative** (Washington, 1983)
 - Loss of a 14% chance of survival was deemed enough to support causation.
 - **Hall v. Hilbun** (Mississippi, 1985)
 - Established that a general practitioner has the duty to refer or consult when out of expertise.
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A bar exam-style essay question, followed by a model answer, and then a sample civil complaint based on the delayed cancer diagnosis scenario we discussed. This will help reinforce your understanding of negligence in medical malpractice.

Bar Exam-Style Essay Question: Medical Malpractice (Negligence)

Question:

Mary, a 42-year-old woman, visited her primary care physician, Dr. Smith, after finding a lump in her breast. Dr. Smith performed a physical exam, concluded the lump was a benign cyst, and told Mary to monitor it. He did not order a mammogram or refer her to a specialist. Six months later, Mary returned, reporting the lump had grown. A mammogram revealed stage III breast cancer. Mary filed a medical malpractice lawsuit, alleging negligence.

Discuss the elements Mary must prove in a medical malpractice claim against Dr. Smith and any potential defenses Dr. Smith might raise.

Model Answer

1. Duty of Care

Mary must show that Dr. Smith owed her a duty of care. A physician–patient relationship was clearly established when Dr. Smith examined Mary. Thus, duty is met.

2. Breach of Duty

Mary must show that Dr. Smith breached the **standard of care**. The standard is what a reasonably competent doctor would have done under similar circumstances. Given Mary’s age and complaint of a breast lump, the standard likely required further diagnostic imaging or referral. Failure to do so could be seen as a deviation from accepted medical practice.

3. Causation

Mary must establish **actual** and **proximate cause**.

- **Actual cause:** But for Dr. Smith’s failure to act, Mary’s cancer would have been diagnosed at an earlier stage.
- **Proximate cause:** The harm—progression to stage III—was a foreseeable consequence of delayed diagnosis.

4. Damages

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Mary has shown significant damages: a worsened medical prognosis, increased medical costs, pain and suffering, and emotional distress.

Possible Defenses

- **No breach:** Dr. Smith may argue the lump appeared benign and conservative treatment was reasonable.
- **No causation:** Cancer may have already advanced, and earlier detection may not have changed outcome.
- **Comparative negligence:** Mary may have delayed follow-up. If so, damages could be reduced proportionally.

Conclusion

Mary is likely to succeed if she proves a breach of the standard of care caused a worsened condition. Dr. Smith's success depends on undermining breach or causation, or establishing comparative fault.

Sample Civil Complaint: Negligence – Medical Malpractice

IN THE SUPERIOR COURT OF [State/Country]

COUNTY OF [County]

Mary Doe, Plaintiff

v.

Dr. John Smith, M.D., Defendant

Case No. [To be assigned]

COMPLAINT FOR MEDICAL NEGLIGENCE

Plaintiff Mary Doe alleges as follows:

1. Parties and Jurisdiction

- Plaintiff Mary Doe is an adult resident of [City, State].

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- Defendant Dr. John Smith is a licensed physician practicing in [County, State].
- Jurisdiction and venue are proper under [relevant state statute].

2. Facts

- On or about [Date], Plaintiff presented to Defendant complaining of a lump in her breast.
- Defendant conducted a physical exam but failed to order any diagnostic imaging or refer her to a specialist.
- Plaintiff returned approximately six months later with a larger mass; she was then diagnosed with stage III breast cancer.
- Expert review has concluded that the standard of care required immediate imaging at the initial visit.

3. Cause of Action: Medical Negligence

- Defendant owed Plaintiff a duty of care as her treating physician.
- Defendant breached this duty by failing to diagnose or timely refer for testing.
- As a direct and proximate result of this breach, Plaintiff suffered worsened health, emotional distress, and financial losses.

4. Damages

- Plaintiff seeks compensation for:
 - a. Past and future medical expenses
 - b. Pain and suffering
 - c. Emotional distress
 - d. Loss of life expectancy
 - e. Any other relief the court deems just

WHEREFORE, Plaintiff respectfully requests judgment against Defendant for compensatory damages in an amount to be proven at trial, costs of suit, and such other relief as the Court deems proper.

Respectfully submitted,

[Plaintiff's Attorney Name]

[Address]

[Bar No.]

[Date]

I. Sample Jury Instruction: Medical Negligence

This jury instruction is modeled on standard civil jury instructions used in many states for medical malpractice claims.

Model Jury Instruction: Negligence of a Healthcare Provider

Instruction No. [X] – Negligence – Medical Malpractice

In order to find that the defendant, Dr. Smith, was negligent, you must find that:

1. A **physician–patient relationship** existed between the plaintiff and the defendant;
2. The defendant **owed the plaintiff a duty** to provide medical care that met the standard of care applicable to similarly trained physicians under the same or similar circumstances;
3. The defendant **breached that duty** by failing to meet the standard of care;
4. The breach of duty was a **proximate cause** of injury or harm to the plaintiff; and
5. The plaintiff suffered **damages** as a result.

The "standard of care" means the type and level of care that a reasonably prudent healthcare provider in the same field would use in similar circumstances.

You may consider the testimony of expert witnesses in determining what the standard of care is and whether it was met or breached in this case.

II. Motion to Compel Expert Disclosure (Sample)

This motion would be used by the plaintiff if the defendant doctor fails to disclose their retained expert witness by deadline.

Sample Motion: Motion to Compel Expert Witness Disclosure

**IN THE SUPERIOR COURT OF [State/Country]
COUNTY OF [County]**

Mary Doe, Plaintiff

v.

Dr. John Smith, M.D., Defendant

Case No. [XXXX]

PLAINTIFF’S MOTION TO COMPEL EXPERT WITNESS DISCLOSURE

Plaintiff, by and through undersigned counsel, respectfully moves this Court pursuant to [state civil rule, e.g., Rule 26(b)(4) or Rule 37] to compel Defendant to disclose the identity and opinions of any expert witness Defendant intends to call at trial.

MEMORANDUM IN SUPPORT

1. On [Date], the Court issued a scheduling order requiring all parties to disclose expert witnesses by [Deadline Date].
2. Plaintiff timely disclosed Dr. Jane Roe, an oncologist, with a full expert report.
3. As of [Date], Defendant has failed to disclose any experts or responsive information.
4. Expert testimony is central to medical malpractice claims under the applicable standard of care.
5. Plaintiff is prejudiced by the lack of reciprocal disclosure.

WHEREFORE, Plaintiff respectfully requests that the Court compel Defendant to disclose expert witnesses within [X] days or preclude Defendant from offering expert testimony at trial.

Respectfully submitted,

[Attorney Name]

[Address / Bar No.]

[Date]

III. Cross-Examination Outline: Defendant Physician (Dr. Smith)

This outline focuses on exposing deviations from the standard of care and causation.

Cross-Examination of Defendant (Dr. Smith)

Topic	Purpose	Sample Question(s)
Initial Visit	Establish lack of action	“You didn’t order a mammogram on the first visit, correct?”
Standard of Care	Show deviation	“Would you agree that a breast lump in a woman over 40 typically warrants imaging?”
Referral	Highlight inaction	“You didn’t refer Mary to a breast specialist?”
Knowledge	Emphasize foreseeability	“You were aware that early detection improves survival rates for breast cancer, weren’t you?”
Impact of Delay	Link to damages	“Would you agree that a delay in treatment can allow cancer to metastasize?”

A **Deposition Outline for Plaintiff’s Medical Expert** (e.g., an oncologist or diagnostic radiologist) in a **medical malpractice** case like *Mary Doe v. Dr. Smith*.

Deposition Outline – Plaintiff's Medical Expert

Case: *Mary Doe v. Dr. John Smith, M.D.*

Witness: *Dr. Jane Roe, M.D.* (Plaintiff’s expert oncologist)

I. Background and Qualifications

Goal: Establish the expert’s credentials and credibility.

- Please state your full name and current professional title.
- Can you describe your educational background?

- Are you board-certified in your specialty?
 - How long have you been practicing in your field?
 - What is your area of subspecialty, if any?
 - Have you published any peer-reviewed articles or textbooks on oncology/diagnostics?
 - Have you previously testified as an expert in court? How many times for plaintiff vs. defense?
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II. Retention and Compensation

Goal: Disclose any bias or financial interest.

- When were you first contacted about this case?
 - Who retained you?
 - What materials were you asked to review?
 - What is your hourly rate for review and testimony?
 - How much have you been paid to date?
-

III. Materials Reviewed

Goal: Clarify the factual basis for the opinion.

- Can you list all records and documents you reviewed?
 - Did you rely on any medical literature or guidelines in forming your opinion?
 - Did you conduct any independent research?
-

IV. Standard of Care Opinion

Goal: Identify the applicable standard of care and show deviation.

- What is the accepted standard of care for a physician presented with a breast lump in a 42-year-old woman?
- Based on the records, did Dr. Smith meet or deviate from that standard?

- What specific acts or omissions breached the standard of care?

Follow-up Questions:

- Should a mammogram or ultrasound have been ordered during the initial visit?
 - Should a referral to a specialist have been made?
 - Would the standard of care require follow-up testing within a certain time frame?
-

V. Causation Opinion

Goal: Link the delay to worsened condition and prognosis.

- Based on your review, what was the stage of cancer at the time of eventual diagnosis?
 - Had a mammogram been conducted earlier, would the cancer have been detected at an earlier stage?
 - How does delay in diagnosis affect prognosis in breast cancer cases?
 - Is it your opinion that the delay in diagnosis contributed to the cancer progressing to stage III?
 - Would earlier detection have likely led to better treatment options and outcomes?
-

VI. Damages and Prognosis

Goal: Emphasize harm suffered due to the delay.

- In your opinion, how has the delay impacted Mary Doe's chances of survival?
 - What additional treatments (e.g., chemotherapy, surgery) did she undergo that may not have been necessary with early diagnosis?
 - Has the delay likely reduced her life expectancy?
 - What are the psychological impacts of such a progression in diagnosis?
-

VII. Anticipated Defense Arguments

Goal: Rebut expected defense claims.

- If the defense argues that the cancer would have progressed anyway, how do you respond?
 - Do you believe that earlier detection would have made a difference in this case?
 - Have you reviewed studies or literature that support your conclusions?
-

VIII. Summary of Opinions

- Can you summarize your key opinions in this case?
 - Do you hold these opinions to a reasonable degree of medical certainty?
-

Preparation Tip

Be prepared to defend the **objective basis** for your conclusions. Keep all literature, diagnostic guidelines (e.g., NCCN, ACR), and any clinical studies cited in your report available during the deposition.

A **Cross-Examination Outline for the Defendant's Medical Expert** in a medical malpractice case. The goal of cross-examination is to challenge the credibility, qualifications, and conclusions of the defense expert while reinforcing the strength of the plaintiff's case.

Cross-Examination Outline – Defendant's Medical Expert

Case: *Mary Doe v. Dr. John Smith, M.D.*

Witness: *Dr. Robert Black, M.D.* (Defendant's expert)

I. Background and Qualifications

Goal: Establish possible bias or lack of relevant expertise.

- Dr. Black, you are being compensated for your time in this case, correct?
- How much are you being paid for your expert opinion in this case?
- Is this the first time you've testified for a defendant in a medical malpractice case?

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- Have you previously worked as an expert for plaintiffs in malpractice cases?
 - How many times have you testified as an expert witness in the past year?
 - Can you describe your practice? Is it focused primarily on research, teaching, or clinical care?
 - How often do you treat patients who present with breast cancer or breast lumps?
-

II. Review of Records and Materials

Goal: Highlight potential gaps or weaknesses in the expert's review of the case.

- Dr. Black, you've reviewed the records in this case, correct?
 - Did you review the full set of medical records, including the initial consultation with Dr. Smith?
 - Did you also review Mary Doe's follow-up records after her eventual diagnosis?
 - Did you review any literature or clinical guidelines related to the standard of care in this case?
 - Did you consult with any other specialists or experts while forming your opinions?
-

III. Standard of Care and Defendant's Actions

Goal: Challenge the defense expert's view on the standard of care and whether Dr. Smith met it.

- Dr. Black, you disagree with Plaintiff's expert that a mammogram should have been ordered on the first visit, correct?
- Why do you believe it was appropriate for Dr. Smith not to order a mammogram despite Mary Doe's age and the presence of a breast lump?
- Are you aware that several medical guidelines (such as those from the National Comprehensive Cancer Network or American Cancer Society) recommend imaging for women with a palpable lump over the age of 40?
- Is it your position that Dr. Smith adhered to the same standard of care that a reasonable and prudent physician would have used in similar circumstances?

- Would you agree that the failure to order diagnostic testing could be considered a deviation from the standard of care in some circumstances?
-

IV. Causation: Impact of Delay in Diagnosis

Goal: Dispute the defense expert's opinion on causation, emphasizing the role of the delay in diagnosis.

- Dr. Black, you do not believe that the delay in diagnosis caused Mary Doe's cancer to progress to stage III, correct?
 - You are aware that research shows that early-stage breast cancer has a better prognosis, correct?
 - Are you familiar with studies indicating that early detection of breast cancer can increase the chances of survival by over 90%?
 - Based on your opinion, would you agree that diagnosing the cancer earlier may have prevented the need for chemotherapy or extensive surgery?
 - You do not believe that the delay in treatment made a significant difference in Mary Doe's prognosis, is that right?
 - Are you aware that the delay in diagnosis allowed the cancer to spread and affected her ability to undergo less invasive treatments?
 - Isn't it true that earlier intervention could have reduced the risk of metastasis or the need for aggressive treatments?
-

V. Damages: Effect on Plaintiff's Life

Goal: Emphasize the consequences of the delay and the damage to the plaintiff's health.

- Dr. Black, do you agree that the longer breast cancer is untreated, the worse the outcome for the patient?
- Are you aware that Mary Doe's cancer spread to the lymph nodes and liver due to the delay in diagnosis?
- You're aware that, had her cancer been detected earlier, she may have had a better chance of survival with less aggressive treatments, right?

- How would you respond to the opinion that the delay in diagnosis reduced her chances of survival by a significant percentage?
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VI. Limitations and Bias

Goal: Expose any limitations in the expert's methodology and potential bias towards the defense.

- Dr. Black, are you familiar with the latest studies in breast cancer detection and treatment?
 - Have you kept up with new medical literature in the field of oncology over the past five years?
 - How many malpractice cases have you been involved in as a testifying expert?
 - Is it fair to say that your expert testimony has primarily been for the defense?
 - Do you routinely testify in defense of doctors in malpractice cases?
 - Is it true that your primary practice is focused on defending physicians in medical malpractice cases, rather than providing care to patients?
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VII. Summary of Opinions and Conclusion

Goal: Summarize the cross-examination to leave the jury with doubt about the defense expert's conclusions.

- So, Dr. Black, to summarize: You believe that Dr. Smith acted within the standard of care despite not ordering imaging for a 42-year-old woman with a palpable breast lump, correct?
 - You do not believe that the delay in diagnosis made a significant impact on Mary Doe's cancer progression, correct?
 - And you do not believe that earlier detection would have altered the outcome of this case, is that right?
 - Based on all of these points, would you agree that your opinion is not based on the most up-to-date practices or guidelines in oncology?
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Cross-Examination Strategy Tips:

- **Control the expert’s testimony** by guiding them through yes/no questions, limiting their ability to explain or deviate.
 - **Use medical literature and guidelines** to challenge the expert’s opinions and reinforce the standard of care.
 - **Undermine the credibility** of the expert by questioning their experience, bias, or failure to keep current on recent developments in the field.
 - **Focus on causation** and the defendant’s failure to act reasonably, demonstrating how the delay caused harm.
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A **Rebuttal Outline (Redirect Examination)** that can be used for redirecting your **medical expert** after the defense expert’s cross-examination in a medical malpractice case like *Mary Doe v. Dr. John Smith, M.D.* The goal is to clarify or emphasize any points that were challenged or misrepresented during cross-examination, reinforcing the credibility of your expert and their conclusions.

Rebuttal (Redirect Examination) Outline for Plaintiff's Medical Expert

Case: *Mary Doe v. Dr. John Smith, M.D.*

Witness: *Dr. Jane Roe, M.D.* (Plaintiff’s expert oncologist)

I. Clarifying Qualifications and Expertise

Goal: Reinforce the expert’s qualifications and credibility.

- Dr. Roe, during the cross-examination, it was suggested that you have a limited role in patient care in your practice. Can you clarify how often you treat patients with breast cancer and perform diagnostic procedures?
- Could you please explain how your experience in treating breast cancer patients, including diagnosing and managing early-stage cancer, supports your opinion in this case?

- Did you testify earlier that your practice regularly involves reviewing cases like the one at hand? How do you stay current in your field, and how does that influence your opinion?
-

II. Responding to Misunderstandings in Cross-Examination

Goal: Correct any inaccuracies or misunderstandings created during cross-examination.

- During cross-examination, it was suggested that you did not believe early detection of breast cancer would have made a difference in this case. Could you clarify your opinion?
 - You were asked whether earlier diagnosis could have prevented the cancer from progressing—what was the basis of your opinion that earlier detection would have resulted in a better prognosis for Mary Doe?
 - Can you elaborate on how a delay in diagnosing breast cancer to stage III would impact the treatment options and patient survival, based on your experience and medical guidelines?
-

III. Reaffirming Causation: The Link Between Delay and Harm

Goal: Strengthen the argument that the delay in diagnosis worsened the patient's condition.

- It was implied that the progression of cancer was inevitable, regardless of the delay in diagnosis. How do you respond to that?
 - Is it your professional opinion that earlier diagnosis and treatment would have led to a better outcome for Mary Doe? Why or why not?
 - Can you describe the typical prognosis for a patient diagnosed with breast cancer at stage III versus a patient diagnosed at an earlier stage?
 - In your opinion, would earlier detection have likely avoided some of the more aggressive treatments Mary Doe underwent? Can you explain how those treatments might have been reduced?
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IV. Defending the Standard of Care and the Defendant's Actions

Goal: Reinforce that Dr. Smith's actions deviated from the standard of care.

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- During cross, you were asked whether Dr. Smith’s failure to order a mammogram was consistent with the standard of care. Could you explain why, in your opinion, ordering a mammogram would have been required in this case?
 - The defense expert seemed to imply that there was no necessity for imaging given the patient’s age and symptoms. Can you explain what the accepted medical guidelines say about ordering diagnostic imaging in this case?
 - You testified earlier that a reasonable physician would have followed up with additional imaging—can you explain how the delay in doing so directly impacted Mary Doe’s chances of survival?
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V. Highlighting the Defendant’s Potential Bias and Lack of Relevant Expertise

Goal: Undermine the defense expert’s objectivity or qualifications.

- During cross, Dr. Black was asked about his involvement in many defense cases. Can you explain how your role as an expert for the plaintiff differs from someone who frequently testifies for the defense?
 - You were asked whether Dr. Black was familiar with recent literature in the field—what recent studies or guidelines do you rely on in forming your opinion?
 - Would you say that Dr. Black’s opinions are consistent with the most current standards of care, or do they reflect outdated practices?
-

VI. Reaffirming the Plaintiff’s Damages and Loss

Goal: Strengthen the argument that the delay caused significant harm to the plaintiff.

- In response to defense counsel’s questions about the impact of the delay, can you summarize the psychological and physical toll that a delayed cancer diagnosis has on patients?
 - Can you explain why, in your professional opinion, the delay in diagnosis has a long-term impact on Mary Doe’s quality of life?
 - Could you clarify how the delay not only affected the physical outcome of the disease but also Mary Doe’s emotional and psychological well-being?
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VII. Final Opinion on the Case

Goal: Reaffirm your expert’s strong and well-supported opinion.

- Dr. Roe, based on your expertise, the medical records, and the treatment guidelines, do you stand by your opinion that the delay in diagnosing Mary Doe’s cancer led to a worse outcome for her?
 - Can you again summarize, based on medical literature and your clinical experience, why earlier detection and treatment would have changed the outcome of this case?
 - Is it your opinion that Dr. Smith’s actions in this case fell below the accepted standard of care for treating a patient with a breast lump, given the patient’s age and presentation?
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VIII. Preparing the Jury: Key Takeaways

Goal: Ensure that the jury understands the critical points of the expert’s testimony.

- To conclude, can you briefly summarize why it is important for physicians to follow the standard of care when diagnosing breast cancer?
 - Can you explain the significance of early detection and how it impacts both treatment and long-term survival rates in breast cancer cases?
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Redirect Strategy Tips:

- **Clarify misunderstandings** from the cross-examination, particularly on causation, the standard of care, and the implications of the delay.
 - **Emphasize the medical guidelines** that support your expert’s opinions on early diagnosis and the appropriate standard of care.
 - **Reinforce the expert’s credibility** by highlighting their qualifications, experience, and reliance on current medical standards.
 - **Avoid being confrontational** while redirecting. Instead, focus on re-establishing the factual foundation of your expert’s opinions.
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Outline of jury instructions related to damages in a medical malpractice case, which can be adapted based on the specifics of Mary Doe v. Dr. John Smith, M.D.:

JURY INSTRUCTIONS: DAMAGES IN A MEDICAL MALPRACTICE CASE

1. General Overview of Damages

- **Instruction:** “If you find that the Defendant, Dr. John Smith, M.D., was negligent, you must then determine the damages to which Plaintiff, Mary Doe, is entitled. In this case, damages are intended to compensate the Plaintiff for the harm suffered due to the Defendant’s negligence. The law recognizes two broad categories of damages: economic and non-economic damages.”
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2. Economic Damages

- **Instruction:** “Economic damages are those that can be measured in monetary terms. These include, but are not limited to, the following:
 1. **Medical Expenses:** All reasonable and necessary medical expenses incurred by Mary Doe as a result of the delay in diagnosis and the resulting treatment of her cancer. This includes the costs of hospitalization, surgery, physician’s fees, medical tests, prescriptions, and other healthcare costs.
 2. **Lost Wages:** Any wages, salary, or other compensation that Mary Doe has lost as a result of her illness and the medical treatments she has required. This also includes future lost earnings that are the direct result of her condition and treatment.
 3. **Cost of Future Care:** Any additional medical care or treatments that Mary Doe will require in the future as a result of the delay in diagnosis and the progression of her cancer.”
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3. Non-Economic Damages

- **Instruction:** “Non-economic damages are those that do not have a specific, measurable monetary value but are intended to compensate the Plaintiff for the intangible harms she has suffered. These include, but are not limited to:

1. **Pain and Suffering:** The physical pain, discomfort, and emotional distress that Mary Doe has experienced as a result of the delay in diagnosis, the progression of her cancer, and the treatments she has undergone.
2. **Loss of Enjoyment of Life:** The loss of the ability to engage in normal activities, hobbies, and life experiences due to the pain, suffering, and restrictions caused by the delayed diagnosis and the progression of her cancer.
3. **Emotional Distress:** The mental anguish, anxiety, and emotional trauma caused by the delay in diagnosis and the fear of death or serious illness resulting from the cancer.”

4. Punitive Damages (If Applicable)

- **Instruction:** “Punitive damages may be awarded in cases where the Defendant’s conduct was particularly egregious, reckless, or intentionally harmful. Punitive damages are not intended to compensate the Plaintiff but are instead meant to punish the Defendant and deter similar conduct in the future. You may only award punitive damages if you find that Dr. Smith’s actions were grossly negligent or demonstrated a disregard for the health and safety of Mary Doe.”

5. Calculation of Damages

- **Instruction:** “You are not required to reduce damages to a precise amount. If you find in favor of the Plaintiff and determine that damages are appropriate, you may use your judgment to arrive at an award that fairly compensates her for the harms she has suffered. It is not necessary for Plaintiff to provide an exact dollar amount, but the evidence should guide you in determining what is just and fair.”

6. Mitigation of Damages

- **Instruction:** “The Plaintiff has a duty to mitigate, or reduce, the damages she has suffered. If you find that Mary Doe could have taken reasonable steps to reduce her damages, such as seeking treatment from another healthcare provider or following prescribed medical instructions, then you should reduce the damages to account for that failure to mitigate. However, the Defendant has the burden of proving that the Plaintiff failed to mitigate her damages.”

7. Causation of Damages

- **Instruction:** “In order to recover damages, the Plaintiff must prove by a preponderance of the evidence that the Defendant’s negligence was a direct cause of the harm that she has suffered. In other words, Plaintiff must prove that, but for the Defendant’s delay in diagnosis, the harm and damages would not have occurred, or would have been significantly lessened.”
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8. Pre-Existing Conditions

- **Instruction:** “If you find that Mary Doe had a pre-existing condition, you may still award damages if the Defendant’s negligence aggravated or worsened that condition. In this case, if the Defendant’s failure to diagnose the cancer earlier caused additional harm or suffering beyond what the Plaintiff would have experienced had the condition been properly diagnosed, you may consider those additional harms in your award.”
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9. No Speculative Damages

- **Instruction:** “In awarding damages, you must not speculate about what might have happened. Your decision must be based on the evidence presented during the trial, and you are not permitted to award damages for harms or losses that are purely speculative or uncertain.”
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Closing Instruction on Damages

- **Instruction:** “If you find that the Defendant is liable, you must award damages that will fairly compensate the Plaintiff for the harm she has suffered. The damages should reflect the nature and extent of the harm, taking into consideration all of the evidence you have heard regarding the Plaintiff’s pain, suffering, medical expenses, and lost wages. Your award should be based on what is reasonable and just.”
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Final Instruction on Amount of Damages

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- **Instruction:** “Finally, remember that the damages you award are meant to compensate the Plaintiff for the actual harm she has suffered, and not to punish the Defendant, unless you find that punitive damages are warranted based on the evidence you have heard. You should not base your award on sympathy or prejudice, but rather on the facts and the law.”
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These **jury instructions** will guide the jury on how to assess damages in a medical malpractice case, covering both compensatory and punitive damages, while also providing clarity on the relevant factors like causation and mitigation. Let me know if you need any adjustments or further information on how to handle damages in a particular context.