



NACCHO is a living embodiment of the aspirations of Aboriginal communities and their struggle for self-determination



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Duty of Care



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Defining Duty of Care

- Is different from “the duty to provide care” and “the duty to give care”..
- It is a legally imposed obligation or duty (as described in common law) on ***all people to “take care”***.
- ***It is about ensuring our actions or omissions do not harm someone else.***





Defining Duty of Care

It involves two people: the person who **owes** a duty and the person it is **owed** to.

An example: I want to light a fire on my land to burn rubbish. I set the fire close to the fence where my neighbor has a hay shed. I owe a “duty of care” to my neighbor to take care the fire doesn’t spread to his shed.





The neighbour principle


Who, in law, is my neighbour? The answer seems to be – persons who are so **closely** and **directly affected** by my act that they should be taken into consideration



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Situations in which a duty of care applies

- Road users – to other road users
 - School authorities – to students
 - Occupier of premises – to persons entering the premises
 - Health professionals – to students
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Situations in which a duty of care applies

- Staff Safety on site/ outreach visits
- Phone
- Transport - Clients and children, babies
- Home visits
- Vehicles
- Check lists





Health Care Professional Perspective

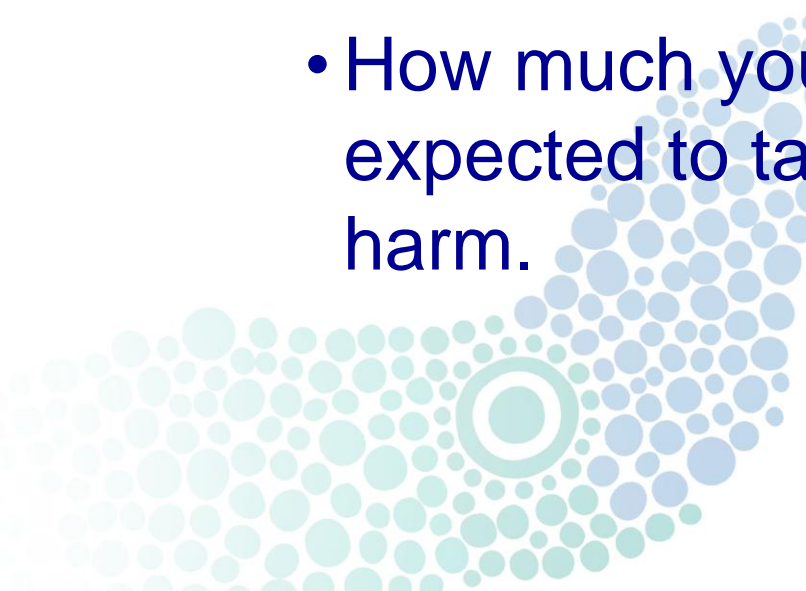
- A health professional has a duty of care to prevent harm to a patient s/he is caring for.
- The ***amount*** of care the health professional is required to take to ensure no harm to the patient by his/ her actions or omissions depends on a number of **factors**.





Factors

These factors include:

- The magnitude of the potential harm
 - The extent to which it was foreseeable
 - How much you could objectively be expected to take care to prevent the harm.
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The modern act of negligence

A duty is imposed on a person by law to act with care towards others. If this duty exists and there is a failure to act carefully and another suffers loss, then the act of negligence is committed.



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Negligence

Four elements constitute an action of negligence in law.

Person (A) in order to prove negligence on the part of another (B), must show that :

1. B owed a duty of care to A
2. B has breached that duty of care, through some activity or lack of it.
3. A has suffered some physical or financial harm
4. B's breach of duty caused the harm.





Negligence and harm

- Careless acts do not always amount to negligence
 - In negligence, a person is only liable for harm that is the foreseeable consequence of their actions, that is, failure to exercise reasonable care and skill
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