

# What is Precedent?

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In the legal world, the term precedent is an extremely important one. Defined as “a decided case that furnishes a basis for determining later cases involving similar facts or issues”<sup>1</sup>, it aids your lawyer to analyze the legal principle or principles upon which the case was decided and compare it/them to your case and predict what decision should occur in your particular lawsuit.

Precedent has also been called “binding precedent”. Because all subsequent decisions must follow the initial decision, all higher courts in the same jurisdiction (e.g., state appellate courts) are bound by the lower court holding (e.g., trial court). In addition, if a federal trial court renders a decision that becomes binding, all higher federal courts in that jurisdiction must follow the holding as well.

If you or the other party is unhappy with a decision based on prior precedent, the party can appeal to the higher court for a review of the decision. The appeal allows your attorney to challenge the fact that your case is not the same or similar as those cases decided earlier. The higher court may uphold the decision of the trial court or may overturn the decision. If the court overturns the decision, “new law” is made.

Sometimes lawyers use what is called “persuasive precedent”. Persuasive precedent is a case decision that is not “binding” but one that should be given consideration, thoughtful analysis and application to the case before the court<sup>2</sup>. As an example, if a matter before a court in one state has not yet ruled on a legal principle, but another or several other state courts have done so, a lawyer might argue those decisions should apply in the instant case in an attempt to have the court his or her case make the same determination.

Precedential decisions are important for you as a nursing professional. As an example, if you are named in a lawsuit that alleges you were professionally negligent, and the plaintiff’s (patient’s) attorney alleges your conduct and it is contrary to precedential decisions in your state concerning what is considered professional negligence of a nurse, your attorney can argue, among other points, that there are no binding precedential decisions in the state and therefore the case against you should not apply to you. Conversely, if there were binding precedential decisions that mirror your conduct that resulted in a verdict against other nurse defendants, the court will most probably allow the case to proceed and a decision against you would be quite possible.

When a case is filed against you alleging professional negligence, one of the first things your attorney will do is to review professional negligence case decisions in your state that are similar to yours in order to determine if there is binding precedent. Likewise, your attorney will also look to some other states to determine if the issue before the court in your case has been decided in other states, and although non-binding holdings, might be used to argue that the case should be

dismissed.

## **FOOTNOTES**

1. Bryan A. Garner, Editor (1999).Black's Law Dictionary. 8<sup>th</sup> Edition. St. Paul, MN: West, 1214-1215.
2. Id.

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