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(2) the person's act or failure to act could be foreseen by a reasonable person to produce a harm of the same general nature.

There may be more than one cause of the same harm.

MUJI 1st Instruction 6.34; 6.35

Committee Notes

This instruction tracks the MUJI 2nd instruction on causation.

Expert testimony is usually necessary to establish causation in a medical malpractice claim. *Butterfield v. Okubo*, 831 P.2d 97, 102 (Utah 1992). There are exceptions when the causal link is readily apparent using only "common knowledge." *Bowman v. Kalm*, 2008 UT 9, 179 P.3d 754.

The committee considered a "loss of chance" instruction, but decided that Utah law is unclear on whether such instructions are appropriate. Counsel should review Restatement (Second) of Torts § 323(a) (1965); *Medved v. Glenn*, 2005 UT 77; 125 P.3d 913 (increased risk of harm is a cognizable injury where a related injury is also present) ; *Anderson v. BYU*, 879 F.Supp 1124 (D. Utah 1995); *Seale v. Gowans*, 923 P.2d 1361 (Utah 1996); *George v. LDS Hospital*, 797 P.2d 1117 (Utah App. 1990); *Anderson v. Nixon*, 139 P.2d 216 (Utah 1943); R.A. Eades, *Jury Instructions on Medical Issues*, Instructions 10-10 to 10-12 (LexisNexis, 6th ed. 2007).