

Are You a Victim of Medical Malpractice?

Do you suspect your doctor or surgeon has done something to you, or failed to do something for you, which is causing you physical pain or injury? Are you suffering because of a mistake made in your treatment, or during your surgery, which you feel should not have happened?

Medical malpractice lawsuits are complicated. They require numerous experts to weigh in on what was done to you, and what has happened to you as a result. There are standards that your doctor's treatment must be measured against, and you will need an experienced attorney to guide you through the lengthy process of litigation.

This guidebook will provide you with some issues to consider, and a general understanding of what to expect once you embark on the path of medical malpractice litigation. As you read through its contents, please contact us with any questions you may have.



Contact us today for a free consultation.

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What is Medical Malpractice?

It is a personal injury which occurs when a health care provider fails to provide reasonable care to a patient, resulting in injury to that patient. Medical malpractice is not limited to actions against doctors — any provider, such as a technician, podiatrist or nurse, can be sued for medical malpractice. The injury can occur because of a doctor's lack of knowledge, failure to perform necessary treatment, or failure to use enough care in treating the patient, for example, when a foreign object is left in a person during surgery, or in misdiagnosing or failing to diagnose a condition which then worsens, such as cancer.

Injured persons sue when they feel their treatment caused their injury because the treatment fell well below the standard of care for that treatment in the medical community. Those who do sue typically have "serious health consequences," and need money for the medical care, pain management and/or lost income caused by their injury. Some people sue for medical malpractice when they suspect an injury or condition, such as cerebral palsy, or Erb's palsy, occurred during a child's birth, for example, as a result of the delivering physician's improper technique or failure to address a situation, such as lack of oxygen to the fetus.

Regardless of the type of health care provider involved, the attorney must prove that the health care provider was negligent (acted below the applicable standard of care) and that the negligence caused the injury. Negligence by itself is not enough, and a bad medical outcome by itself is not enough. It must be proven that the negligent act caused the bad outcome.



When should I bring a lawsuit?

Medical malpractice actions must be brought within two-and-one-half years from the date of the act or failure to act which you feel was negligent. If the injury is that a foreign object, such as a surgical instrument, was left inside your body, you must file by one year from when the object was or should have been found, whichever occurs first. When an item "should have" been found is often debatable, so it is important to speak to an attorney as soon as you suspect something is wrong. If you do not file a lawsuit within the applicable timeframe, you lose the right to sue for your injuries. The rule is different for minors. Minors have until they are 21 to file a claim, so long as the act or omission occurred within ten years prior; otherwise, they must file when they are 18.

How does the case proceed?

After thoroughly interviewing the potential client regarding the condition and circumstances thought to comprise the malpractice, attorneys choosing to pursue a claim must have the client provide proper authorizations permitting the attorney to obtain all relevant medical records. The law now requires attorneys to have a physician, who is knowledgeable in the area of medicine in question, review the case and conclude that the claim has merit before a claim can be filed. In bringing a medical malpractice action, a plaintiff should be prepared to have their medical history examined closely by the medical providers' attorneys to rule out other explanations for the injury. Plaintiffs may also be asked to shoulder the expense of obtaining their relevant medical records for their attorney, but this varies by firm.

Many law firms handling medical malpractice lawsuits employ legal nurse consultants to review medical records for them. Attorneys must retain the services and assistance of a medical provider to participate as an expert witness, providing a report before trial, and willing to testify during trial, as to the level of care expected and how the treatment received fell short and caused the injury. These doctors' reviews of the claimant's medical records, written reports, and possible trial testimony can be expensive. Often, the law firm advances these costs.

How likely is an award?

Most cases settle, however, not until the sides are essentially ready for trial. This could be years after the lawsuit is brought. The parties will likely have exchanged extensive amounts of medical records and other information regarding the injury and its effect on the claimant, as well as information about the medical provider, the facility where the treatment was rendered or the procedure performed, including insurance information, policies and procedures. Depositions of the parties, as well as of any other relevant persons who may have knowledge of the circumstances alleged to have caused the injury, are likely to be done before a settlement is reached.

Attorney compensation

Attorneys pursuing medical malpractice cases do not charge their clients an hourly fee; instead, state law sets how much the attorney is to be paid out of the settlement proceeds or jury award, with the minimum fee being 30% if the settlement does not exceed \$250,000, with increased fees for higher recoveries.

In figuring out if you should sue, it would be wise to interview several medical malpractice attorneys to find one who has extensive experience — either against your medical provider, or concerning your type of injury, or at least in the court where you will likely sue. It is important to speak to an attorney as soon as you feel you may have a claim, in order to protect your rights and make the best case for you.

