

Frequently Asked Questions

Q: What is "medical malpractice"?

Medical malpractice is the term used to describe any substandard treatment or lack of treatment, on the part of a health care provider that causes harm to a patient. When a health care provider acts negligently, that is known as a departure from the standard of care. That means that they failed to do what any reasonably competent health care providers would do in a similar situation. Examples of medical malpractice are too numerous to list, but it can include such things as misdiagnosis, improper treatment, failure to treat, delay in treatment, failure to perform appropriate follow-up, prescription errors, etc. In many instances, medical malpractice is not obvious to a lay-person and requires the review and analysis by medical experts.

Q: Does someone who is not satisfied with the results of his or her surgery have a malpractice case?

In general, there are no guarantees of medical results, and unexpected or unsuccessful results do not necessarily mean negligence occurred. To succeed in a medical malpractice case, a plaintiff has to show an injury or damages that resulted from the doctor's deviation from the standard of care applicable to the procedure.

Q: What should I do if I think I have a medical malpractice claim?

You should talk to a lawyer who specializes in such cases as soon as possible. Tell the attorney exactly what happened, from your first visit to the doctor or other health care provider, through your last contact with him or her. If possible, obtain your medical records and bring them to your first meeting with the attorney. There are time limits governing how long someone may bring a medical malpractice claim, so time is of the essence.

Q: What is the first step in pursuing a medical malpractice claim?

The first step is the suspicion that you may have been the victim of medical malpractice. Certainly not every bad result is due to medical malpractice. Still you may have a strong reason to believe that something was done wrong. You may have been advised by another health care provider that you should seek an attorney to look into a situation. Either way, you should consult a qualified attorney to review the matter. The attorney will often consult with medical experts. This process often involves the

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obtaining and review of medical records.

Q: Will the case have to be tried before a jury?

While some cases do actually go through a full trial, many cases are settled before the Court date.

Q: How does the firm charge for the legal work it does?

In a medical negligence case, you will pay nothing for legal fees unless and until we recover money for you. Our fee is a percentage of that recovery. This is known as a contingency fee.

Q: How much money I should ask for or expect? What expenses are included in a settlement?

Typically a medical malpractice claim will include compensation for pain and suffering, payment of medical expenses for treating the injury caused by the malpractice and reimbursement for any past, present or future financial losses that you have incurred as a result of the malpractice. This varies by jurisdiction. In Maryland there are caps imposed by the General Assembly on how much a jury can award for non-economic loss. That is why we work hard to develop all details which will enable us to present all possible economic losses that you may be entitled to claim such as future health care costs and future loss of income.

Q: How long do I have to file a claim?

That depends on where the case arises and is brought.

In the District of Columbia, the case must be brought within 3 years from the date the injury was caused by a health care provider. If the patient could not reasonably discover the injury until later on, generally they are permitted 3 years from when they did discover the injury to file the claim. If the patient was a minor child when injured, extra time is allowed and generally the time does not begin to run until the child reaches the age of majority. If the patient is mentally incompetent, extra time is also allowed.

If the claim is brought in Maryland, generally speaking the law requires that the claim be filed within the earlier of 5 years from the date of the medical injury or three years from the date when the injury is discovered. If the patient was a minor child when injured, extra time is allowed, and generally the time does not begin to run until the child reaches the age of majority. If the patient is mentally incompetent, extra time is also allowed.

Q: If I signed a consent form can I still proceed with a case?

A consent form is not the same as permission slip for the doctor to commit malpractice. Typically the form is just an indication that

you are aware of certain risks and complications associated with a particular treatment or procedure. Nevertheless, signing such a form does not allow a doctor or nurse to be careless in how they treat you.

Q: What is "informed consent?"

Although the specific definition of informed consent may vary from state to state, it means essentially that a physician (or other medical provider) must tell a patient all of the potential benefits, risks and alternatives involved in any surgical procedure, medical procedure or other course of treatment, and must obtain the patient's written consent to proceed.

Q: Do I have a case against a doctor who prescribed me a drug for treatment, but failed to tell me it was part of an experimental program?

Your physician had a duty to tell you that the drug was part of an experimental program, and you had the right to refuse to participate in it. You may have grounds for an action against your doctor based on his or her failure to obtain your "informed consent" relative to this treatment.

Q: What is a "Certificate of Merit?"

One obstacle plaintiffs in many states may have to overcome before they can even file a malpractice action against a health care professional is the requirement that they file what is commonly known as a "certificate of merit." In order to file a certificate of merit, a plaintiff will first have to have an expert, usually another physician, review the relevant medical records and certify that the plaintiff's health care provider deviated from accepted medical practices, which resulted in injury to the plaintiff. The plaintiff's attorney then files the certificate of merit, which confirms that the attorney has consulted with a medical expert and that the plaintiff's action has merit.

Q: How will the jury decide if my doctor was negligent?

The jury will consider the testimony of experts witnesses who are qualified to express opinions about what happened, why it happened and whether the actions of your health care providers met with accepted standards of care. Expert witnesses will also have to testify to what injuries were caused by the health care providers and what problems were caused by the underlying illness of medical problem that brought you to the doctor in the first place. The jury will have to weigh the evidence from both sides and decide if the plaintiff has proved the case by a preponderance of the evidence.

Q: What is Contributory Negligence - how does it affect my case?

Maryland and D.C. are two of the very few remaining jurisdictions that recognize the traditional common law doctrine of contributory negligence. Thus, a jury is told by the judge that if they find that the patient was in any way careless and that the carelessness contributed to the injuries claimed they will be completely barred from winning any award from the health care provider.