Medical & Hospital Negligence

What is medical malpractice?

Medical malpractice occurs when a health care provider (or a hospital) fails to render care that is in keeping with accepted medical techniques and principles. In other words, they fall below the reasonable standard of care for a given situation. Generally, this occurs when a doctor, nurse, or technician does something that is not in keeping with good practice, or fails to do something necessary for the patient's care.

Who can sue for medical malpractice?

Medical malpractice cases can be brought by a patient who suffered harm due to negligence. But in some circumstances, they can be brought by others, as well. For example, if the injuries are severe, permanent, and disabling, members of the patient's family – spouse, children, or parents – may have a claim. Keep in mind, however, that the laws governing this legal area vary from state to state. In Florida, for example, parents can sue for malpractice only if their children are 25 or under.
When a patient dies as a result of medical negligence, wrongful death laws – such as the Florida Wrongful Death Statute (F.S. 786, 17-21) – may enable family members to sue. The permitted plaintiffs under the Florida law include the estate of the deceased person, and the surviving spouse, children, and parents.

Who can be sued for medical malpractice?

In a medical malpractice case, anyone whose professional negligence has caused injury to a patient can be named as a defendant. In Florida, claims against private individuals and medical institutions are governed under Statutes 766-768, which often go through revision. A check of the most recent statute book can provide an up-to-date picture of the legal landscape.
Governmental entities -- and the health care professionals employed by them -- may stand in a different posture in the eyes of the law. For example, in Florida, a suit against a hospital owned by the state, city, county, or county tax assessing district must be brought under the Florida Tort Claims Act. In these cases, a patient's claim is much more restricted, both in terms of what must be proved to establish legal responsibility, and the amount of damages that may be recovered. When a patient is injured in a hospital owned by the federal government, such as a Veterans Administration facility, their lawsuit must be brought under the Federal Tort Claims Act.

How long do I have to bring suit?

This, too, can vary from state to state. Florida, for instance, has a two-year statute of limitations in medical negligence cases. This means, generally, that the lawsuit must be filed within two years from the time the plaintiff – whether it be the patient or a family member or guardian – knew, or should have known with reasonable diligence, that the injury occurred and there was a reasonable possibility that medical malpractice caused it.
Florida also has a "statute of repose," another harsh provision in its civil laws. This means that unless there is fraud, misrepresentation, or concealment, one can never sue a health care provider more than four years after the actual malpractice incident. So even if the plaintiff does not know, or can't be expected to know, that an injury occurred, it cannot bring a claim, in most circumstances, once four years have passed since the incident.
Florida does have one significant exception to this rule called "Tony's Law," which was enacted in 1996. This statute specifies that if a malpractice incident occurred after July 1, 1996, the four-year statute of repose cannot cut off a child's malpractice claim before that child's eighth birthday. However, the two-year statute of limitations still applies – and can cut off the claim if the child's parents or guardians knew, or should have known, of the injury and the reasonable possibility that medical malpractice caused it.
Since the rules on limitations are often changed by the legislature – and often modified by the appellate courts – it's important to consult with an attorney immediately if you think your potential case could have a timing problem.

How common are malpractice cases?

Here's another fact that may come as a surprise: Very few patients who are injured by physician negligence actually sue. Indeed, according to research published the New England Journal of Medicine, only about 2 percent of patients harmed by physician mistakes ever seek compensation through a lawsuit. Meanwhile, medical errors are anything but infrequent events, with studies by Harvard researchers estimating negligence-caused deaths at up to 98,000 each year – more than twice the number of people who die in automobile accidents.

Can I expect the same result in my case as in similar cases you list?

All medical malpractice cases – no matter how similar they may appear – are different, with their own unique circumstances. The defendants, juries, and judges will vary, as well. As such, each case must be evaluated on its own merits. It also means that if Babbitt, Johnson, Osborne & Le Clainche – or any other law firm – obtained a certain result in a case that seems similar to yours, that shouldn't imply that you can expect the same result. We analyze each case individually, and many factors go into that evaluation. These include:

• How clear is the defendant's negligence? (Will it be viewed as an egregious error or as a reasonable medical complication?)

• How hard is it to prove the defendant's negligence? (How many medical experts will be required? How many medical specialties are involved?)

• What are the damages – and how hard will they be to prove? (Can the plaintiff show "hard damages" or is the harm intangible?)

• What sort of witnesses will the plaintiff and health care providers make? (Juries tend to help people they like.)

• What is the caliber of the attorneys representing the parties? (The best lawyers tend to get the best results for their clients. This applies to both sides.)

• Where is the venue? (The county in which the case must be filed and tried is a huge consideration. Many smaller communities in Central and North Florida, for example, have never seen a substantial verdict returned in a malpractice case. Others, meanwhile, have had very large verdicts.)

• Who is the judge?

• What are the legal issues presented?

What must I prove in my case?

In any medical malpractice case, a plaintiff must introduce evidence that establishes three key elements:

• Negligence

• Proximate (immediate) cause

• Damages

Failure to prove any one of these essentials means that the plaintiff has not made their case. And there are no exceptions to that rule. Therefore, it's important to understand how courtS, and juries, define these elements.
Negligence is defined as the failure to use ordinary care. In a medical malpractice case, this means that the health care provider – or hospital – failed to do something that was in keeping with accepted medical or nursing practice. In other words, they failed to take the reasonable steps that another professional in their shoes would have.
Proximate cause is a legal concept that essentially means the defendant's action – or inaction – caused the result at issue. In all cases, it is essential to prove that the health care provider's negligence did in fact cause the plaintiff's injuries – and that this injury (or one similar to it) would have been reasonably foreseeable as a result of the defendant's failure to render appropriate care. In short: The injury wasn't a one-in-a-million occurrence, but something likely to happen given the provider's negligence.
Damage is the harm to the patient that directly results from the health care provider's negligence. It isn't just the physical harm, either, but the emotional and financial suffering the plaintiff has experienced as a result of the incident.

How do I go about proving my case?

The way cases are tried can also vary from state to state. Florida, in nearly every instance, requires the use of expert testimony to prove medical negligence. The expert – a physician who is licensed and practicing at the time of trial or when the injury occurred – will establish the standards of good and accepted practice for the care in question, and how the defendant, by his or her actions, violated them.
It's important to note that a bad medical outcome does not automatically mean there was negligence – and juries are not permitted to infer negligence from bad results. Therefore, if the plaintiff cannot, or does not, introduce the required testimony from a qualified expert, they will fail to make their case. If that happens, the judge may withdraw the case from the jury and direct a verdict against the plaintiff.
In most cases, expert testimony is also required to prove proximate cause. A qualified physician must testify that the plaintiff's injuries probably would not have occurred if proper medical practices had been followed – and that the defendant's health care provider should have reasonably foreseen this or some similar result. Once again, if there is not adequate expert testimony for this essential element of the suit, the plaintiff fails to make their case, and the defense may move for a directed verdict. There are limited instances where juries may, in fact, infer causation – but those cases are

relatively rare.
Damages in a medical malpractice case can take many forms, and each may need to be proven in a different way. Some damage elements – such as the presence of physical pain or mental anguish – can be proved by the testimony of the plaintiff, family, and friends. To prove lost wages, a plaintiff can introduce tax or wage records. Bills – as well as the testimony of an expert – are often used to establish medical expenses. By using an expert, a plaintiff can also show that the charges were reasonable and necessary to treat the condition. There are other elements of damage – such as future disability and medical expense – that may require the testimony of an expert witness.
Keep in mind, too, that even if a jury returns a verdict and an award for the plaintiff, that isn't always the end of the story. Defendants will sometimes appeal a ruling that they have been negligent. When they do, an appellate court will review the trial record to determine if the plaintiff's evidence of negligence was legally adequate.

How long will my case take?

Normally, a medical malpractice case takes one to three years to bring to conclusion. The time varies because of a number of factors that aren't always the same – or equally complex – from case to case. These can include: the number of parties involved; the number of depositions and depth of investigation needed; the schedules and other commitments of the expert witnesses, judge, and other key participants. Most of the cases we accept – some 80 percent – eventually settle, which helps our clients avoid long delays in obtaining redress. But if the case is tried and we obtain a favorable verdict, the defendant has an absolute right to appeal, which can prolong the case another 2 to 4 years. Increasingly, we're finding that more defendants – perhaps emboldened by "tort reform" – are willing to take cases all the way to trial. That makes it even more important to make sure you work with an experienced, aggressive trial lawyer.

Will I have to attend court hearings?

Not always. As your case is developed and prosecuted, there will be various court hearings on legal matters. Often these hearings will involve discovery issues; for example, when one side objects to turning over certain documents and the court has to rule on whether those objections are justified. These types of hearings do not typically require your attendance or participation. But if any session does require you to attend, you will be notified promptly.

How will I go about paying for your time and expenses?

Most medical malpractice cases – like other types of personal injury lawsuits – are handled on a contingent fee agreement. This means that we receive a percentage of any recovery you obtain as a result of the case, whether it be a verdict we win or a settlement we negotiate. It also means that if no recovery is achieved, you pay us nothing. Our expenses work the same way. Should you recover an award or settlement, our costs in developing the case are deducted from that. If you don't recover, you don't repay us. The risk is ours. We take it because of our belief in our abilities – and your case.

What kind of expenses are involved?

The prosecution of a malpractice case is expensive. Medical records must be obtained, depositions must be taken, experts must be paid for their time. There are costs involved, too, in the courtroom exhibits and technology used to fully demonstrate the devastating injuries that our clients have suffered. Expenses can vary – and vary greatly – from case to case, but typically, our cost in developing a medical malpractice case will run between $50,000 and $200,000. Of course, in more complex cases, the cost may be substantially higher. Not surprisingly, we're very careful about the cases we take on. When we handle a case, it's because we have every expectation of winning it. We need to feel confident about each case – just as you need to feel confident about us.