MEDICAL NEGLIGENCE AND MALPRACTICE – HOW CAN YOU PROTECT YOURSELF?

Each year, countless medical procedures are performed in the United States. Many of these are necessary and improve or save patients' lives. A portion of medical treatments are performed that may not be necessary, or complications arise from them. If you are a victim of a treatment that led to short or long-term effects on your health, you may be able to receive compensation for hospital bills, loss of income, or pain and suffering caused by the procedure. It is important to know where the blame lies in these cases so that you can protect yourself in the future.

NEGLIGENCE VS. MALPRACTICE – WHAT'S THE DIFFERENCE?

While "negligence" and "malpractice" are often used interchangeably, there are some important differences between the two. Negligence is defined broadly as conduct that fails to meet the standard of care for a patient, whereas malpractice is considered improper, illegal, or negligent professional activity or treatment. It is possible for medical negligence to fall under the category of malpractice.

Treatments that are classified as negligence rather than malpractice usually involve a lack of action on the part of the physician. For example, if a patient entering the hospital is wearing a medical alert bracelet which the staff fails to notice, and that person receives improper treatment as a result of this, the hospital can be sued for negligence. In comparison, a doctor who misdiagnoses a condition and then performs surgery might be accused of malpractice if, based on the evidence, other competent doctors would not have made the same mistake.

DUTY OF CARE

If you're suing someone for negligence, one of the first elements to establish is their duty of care. You must show that the defendant didn't follow the duty of care required by the law. It is defined as the legal obligation to act in a standard or reasonable way.

The duty of care is difficult to assess in emergency situations. In the emergency room, doctors face this dilemma daily. The fear of missing something and then being sued often leads to extra tests and scans for many non-threatening ailments. These scans are not only expensive, placing strains on insurance claims, but often subject the patient to high levels of radiation. However, in the small chance there is a life-threatening condition, these tests are necessary.

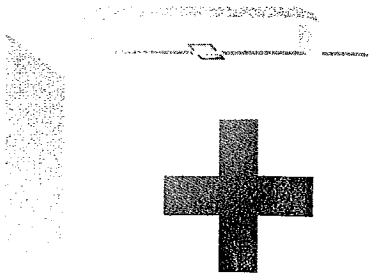
Duty of care can be a flexible concept. In order to have a successful claim, it is important to prove that a duty existed in the first place. While it can be an easy concept to prove for some typical claims, it can also be muddled and confusing. The duty often will depend on the specifics of each case and having a good lawyer.

LACK OF INFORMED CONSENT

One kind of medical malpractice is based on a doctor's failure to adequately inform you about a proposed medical procedure or treatment. You have the right as a patient to determine what you want done to your body. Without the right information, you can't make a good, educated decision about whether to go ahead with the plan. If you're not given the right information and you're injured during the treatment, you may have a medical malpractice case.

"Consent" merely means your doctor gives you information about a medical treatment and you agree to it. You may consent verbally or by an act showing consent - like nodding your head. However most states require written consent; it is not enough for you to merely sign your name or say "Yes." You must give informed consent - need to be told about and understand many things before treatment begins, including:

- The name of the doctor performing the procedure and their qualifications.
- Your medical condition.
- The purpose of the proposed procedure.
- The risks involved.
- Any alternative treatments or procedures and the risks involved.
- The chances of the procedure's success.
- The expected recovery time.
- The approximate cost of the procedure and whether it is likely to be covered by your health insurance.



Signing an informed consent form doesn't mean your doctor or the hospital can't be liable for malpractice. It is not like saying: "I'll take the procedure as is." If the doctor exceeds the consent you gave, it may be malpractice. Proving your doctor didn't get your informed consent is not always enough to win a medical malpractice lawsuit. There must be a connection between the lack of informed consent and your injury. You must prove that, with the right information you would not have consented to the medical treatment and the medical outcome would have been different.

UNNECESSARY SURGICAL PROCEDURES

All surgeries come with the risk of complications such as hemorrhage, damage to organs, infection and anesthesia errors. When the surgery was not necessary in the first place, these costs hit especially hard. Many analysts feel that the increasing number of unnecessary surgeries is linked to the increasing number of doctor-owned outpatient surgery centers. If you feel you have been unnecessarily subjected to surgery, you could be entitled to compensation for expenses related to the surgery, plus lost income as well as pain and suffering.

A doctor who turns to surgery right away instead of suggesting non-surgical options to the patient might be considered negligent. Before undergoing surgery, a patient should always get a second or third opinion.

If a lawsuit is filed, the patient's medical records will most likely be turned over to a third-party expert who will determine if

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the doctor's decision to recommend surgery complied with standard practice. The issues surrounding filing a medical malpractice lawsuit for unnecessary surgery is extremely complicated. Plus, the facts of each case are unique. This article provides a brief, general introduction to the topic. For more detailed, specific information, please contact a medical malpractice lawyer.

WRONG-SITE SURGERY

Despite procedures to prevent it, wrong-site surgery is on the rise. The Joint Commission estimates wrong-site surgery happens 40 times a week on average. The number of cases reported to the Joint Commission nearly doubled in 2010 as compared to 2004.

Wrong-site surgery comes in a couple of varieties. A surgeon might operate on your left knee instead of your right. A surgeon might perform the right procedure on the wrong patient. A surgeon might do a hip replacement where a knee replacement was intended. Health care providers should have procedures in place to eliminate the risk of wrong-site surgery. Hospitals, administrators, nurses and surgeons must follow guidelines set out by the Joint Commission. The Joint Commission gives accreditation - a seal of approval - to hospitals in the United States.

According to the Joint Commission's policies, hospitals are supposed to follow a triple-check system before conducting any surgery. Before even entering the operating room, the hospital is supposed to check:

- If they are treating the right patient.
- The right part of the body.
- The right procedure has been recommended.

In the operating room, the protocol requires a time-out and final verification of what's to be done before beginning surgery. During this check, all of the professionals involved must agree unanimously on the proceedings. To prevent wrong-site surgery, become educated about your procedure, and ask for a second opinion before it is done. Be patient with the nurses and other surgical staff as they ask you questions about your procedure – it is better to take the time to go over it now than suffer long-term consequences.

PATIENT ABANDONMENT

Imagine you're on the operating table, prepped for surgery and sedated. You wake up, thinking you're ready to go on with your recovery. You're shocked to find out that your doctor never showed up to perform the surgery, and you're going to have to go through the process all over again. This is an extreme example of patient abandonment, when a doctor fails to provide necessary medical care to a current patient without cause.

Once a doctor-patient relationship is created, the doctor is obligated to treat the patient until the relationship ends. The doctor's duty to treat a patient includes coverage for the patient when the doctor is away or otherwise unable to attend to the patient. Abandoning a patient in need of attention without making reasonable plans for care isn't only unprofessional, but it is considered medical malpractice.

Examples of abandonment include:

- Failing to transfer a patient to an appropriate level of care.
- Failing to respond to calls from a hospital regarding a patient.
- Refusing to care for a patient after arranging the patient's admission.
- Failing to treat a patient until new coverage is arranged.

If you believe your doctor abandoned you during treatment, you must show that:

- Your doctor had a duty to treat you - a duty was created when the physician-patient relationship was established.
- You had a reasonable expectation that your doctor would treat you.
- Your doctor failed to treat you although he or she was obligated to do so.
- You suffered injury as a result.

CONFLICTS OF INTEREST

A conflict of interest occurs when someone's involvement in more than one activity or project may lead them to make decisions that favors one while hurting the other. A good example is a lawyer who represents both spouses in a divorce. Can they really look out for both sides' best interests? Usually not, and that's why most states have ethical rules barring attorneys from doing it. The same rules apply to medical practitioners – doctors are meant to perform on behalf of their patient. Unfortunately, recent trends dictate that this is not always the case.

According to a 2010 professional report, a large percentage of doctors across the country have some sort of a relationship with outside companies, specifically pharmaceutical manufacturers. Some doctors are being paid millions of dollars by big drug companies to promote their products. While in some circumstances this might be to the benefit of the patient, there are many cases where newer medications have been prescribed with a lack of sound research regarding their side effects.

It is recently become common for doctors' offices to buy their own equipment for tests like MRIs and CT Scans. Sometimes doctors even open their own outside testing facility, run the tests themselves, and collect the fees. This is a practice called self-referrals. Doctors who run their own site are required to inform patients of this, as well as provide a list of other sites in the area where they can receive the same treatment.

It is up to you to guard yourself. Whether or not you have a reason to think your doctor is acting in his own best interests instead of yours, when a medication is prescribed or a test is ordered:

- Ask for an explanation of why the drug or test is needed. Ask how often the doctor prescribes or orders it, too. Answers like, "It is just routine," or "All the time," may be an indication that a second opinion is needed.
- When it comes to drugs, ask if the doctor is paid in any way by the drug's maker.
- If an MRI, CT Scan, or another imaging test is ordered, ask if the doctor has an ownership interest in the testing site.
- If you suspect a doctor is acting improperly, contact your state's medical board and file a complaint. You may also consider filing a Medicaid/Medicare fraud complaint with the federal government and your attorney general's office.

ASK THE RIGHT QUESTIONS

Protect yourself against malpractice and negligence- do not be afraid to ask your doctor questions or to walk away if something doesn't feel right.

QUESTIONS FOR YOUR ATTORNEY

- How is the hospital responsible for a surgeon if they are negligent during an operation?

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