

## What is a Medical Malpractice Case?

A recent study by the Institute of Medicine found that medical mistakes probably cause thousands of deaths each year in the United States. Medical treatment that does not have a good result or that is not adequately explained may cause the patient and his or her family to consider making a claim for medical malpractice.

### Types of Malpractice

Medical mistakes may take the form of an incorrect or missed diagnosis, or a mistake in treatment. Diagnosis is the determination by medical personnel of what injury or illness to treat. Diagnosis may be incorrect because the examination of the patient is not thorough or proper, or because the right tests were not ordered, or because the doctor did not identify the condition that he or she should have identified considering the patient's symptoms and test results.

Mistakes in treatment include prescribing or dispensing the wrong treatment or wrong medication, not doing surgery or not using some other appropriate kind of treatment, or an insurance company or health facility refusing to provide needed treatment because of the cost.

### Bad Results may Not be Malpractice

Unsuccessful medical treatment is not necessarily grounds for a malpractice claim. In medicine, the outcome is sometimes disappointing even if everything is done correctly. A bad result is only grounds for a malpractice claim if there was *negligence* in the

treatment, and that negligence caused the results to be worse than they should have been. Negligence is conduct that falls below the standard of care. There is negligence if a medical professional does not use the level of knowledge or skill that is expected of a person in his or her specialty and area of practice, or does not do what a reasonable doctor would do in the circumstances.

### How to Prove a Case

Since malpractice is falling below the standard of care, or not doing what a reasonable professional would do, proving malpractice usually requires having a doctor or other medical professional testify as an *expert witness*. An expert witness can give an opinion that the medical treatment did not live up to the standard of care. The expert usually needs to be in the same specialty or field as the person whose treatment is claimed to be negligent. Finding a qualified expert is critical in most malpractice cases.

### Costs in Malpractice Cases

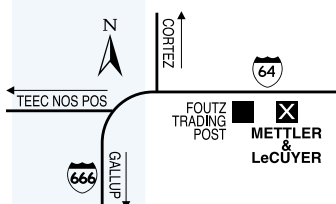
Because of the need to hire an expert, as well as other medical consultants in some cases, malpractice cases are expensive to bring to court. In addition, they usually involve doing research and taking depositions of opposing experts, in addition to the various treating medical providers and other witnesses. Medical malpractice cases often cost thousands of dollars to bring to trial. For that reason, it is not financially feasible to bring a medical malpractice case unless the amount that would be paid to the victim, if the case is won, would

be much more than the costs. Cases that involve a close call but no serious harm are not practical to bring. Likewise, cases where the medical person made a clear mistake, and where it would be easy to prove negligence, are not practical to bring if there was no serious or permanent harm from the mistake. For example, a nurse giving the wrong medicine to a patient in a hospital is a clear mistake, but if the medicine did not harm the patient, it would not be financially feasible to pursue a claim. However, in any case where there is serious harm, the medical treatment should be closely reviewed, to see whether it met the standard of care or whether there was negligence.

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