

A Guide to Medical Malpractice:
A Medico-Legal Team is Central to Your Case
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A patient goes to the doctor or hospital, trusting the ability of the healthcare professional in curing any ailment. Complete trust is placed upon the doctor's skills and knowledge, his specialty, and the various professional degrees suffixed to the doctor's name. Most of the time, a patient goes to a specific hospital or doctor based on their reputation. The number of healed patients, the number of successful surgeries all play a big role, the bigger the name, the higher the expectations by the patient and family members. But what if the doctor or the hospital fails to carry out the expected duties in saving a life or properly treating an ailment?

Everybody has read the horrific tabloid stories about surgeons removing the wrong organ or, perhaps just as horrific, patients not being anesthetized properly and feeling every ounce of pain during an operation but unable to alert anyone.

According to WHO, **medical negligence** causes nearly 2.6 million deaths a year (**WHO news release on 13 September 2019**).

This number is scary high when compared to deaths related to **seasonal flu** (6,50,000) (**WHO news release on 13 December 2017**) and **road accidents** (1.35 million) (**WHO news release on 7 February 2020**). **Medical Malpractice** is a dainty issue most of us would rather never think about.

It is indeed a perplexing issue as medicine is far from a perfect science. In most cases, the professional will have to take a trial and error approach, eradicating one possible diagnosis at a time. The trying of alternatives until the goal is attained, be it diagnosis or treatment, is very different from improper or negligent care, despite the fine line between the two. Therefore, the official charged with investigating Medical Malpractice has to be extremely skilled.

“Medical negligence is when a healthcare professional causes a harm to a patient due to ignorance or a harm occurs unknowingly or not taking a diligent action that could have reduced the discomfort or life threatening complication.”

“Medical malpractice occurs when the healthcare professional is aware of the complications or potential consequences and still proceed.”



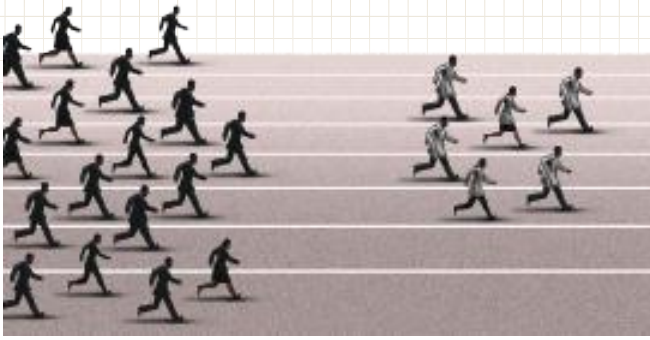
The most common examples of Medical Malpractice or Negligence

I. Surgical Error

When the doctor tells the patient that they need to undergo a surgery, it brings a slight fear or discomfort for the patient. There is a common misconception that nothing can go wrong if it is a minor surgery. The truth is that regardless of the type of surgery, whether minor or major, a surgical error can occur. **"Surgical Error"** is an avoidable mistake during any surgery. There are different reasons why a surgical error can occur:

- i.* Incompetency of the surgeon;
- ii.* Not following the surgical protocol;
- iii.* Too many cases to handle at one time which may drain out the surgeon;
- iv.* Overconfidence due to experience;
- v.* Insufficient planning;
- vi.* Missing the patient's medical history or comorbidities (other diseases the patient has) that may cause a complication during the surgery.

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*"All medicine is made to make you better.
If it did the opposite, it would be malpractice."*

– Chael Sonnen

Every patient is different. No matter how many years of experience a surgeon has and how many successful surgeries they have seen, it is always a trial and error approach for each patient. In any case, if negligence should take place, this can lead to physiological and psychological trauma for the patient. Every year we hear stories on how a small mistake by the surgeon costs loss of a body part or someone's life.

II. Misdiagnosis and Delayed Diagnosis

A misdiagnosis by a doctor always leads to a delayed diagnosis. Not all delayed diagnosis is considered medical negligence. The reason is, a lot of diseases may show the same signs and symptoms (characteristics), and it may take some time for the doctor to narrow down and find the real cause of a patient's condition. So, what is the thin line that would help someone to determine if, in fact, negligence has happened? The answer is simple, could it have been diagnosed faster if the doctor had done the right tests and noticed the more dominant symptoms, or was it easy for another doctor to find the right diagnosis much faster?

The reasons for a Delayed Diagnosis:

- i.* Failure to order the right tests (labs, x rays, scans etc.);
- ii.* Failure to obtain an opinion from a specialist;
- iii.* Disregarding the evident symptom that might have helped in the timely diagnosis.

III. Hospital-acquired Infections

Hospitals are supposed to be a place where people go for treatment and get cured of any condition or infection they have. Patients expect hospitals to be a germ-free environment, but that is not true in some cases. "Hospital-acquired infections" may occur during hospital admission or even after the discharge.

Hospital-acquired infections are caused due to various reasons like:

- i.* **Improper sterilization;**
- ii.* **Contaminated instruments;**
- iii.* **Lack of proper hygiene of the hospital staff;**
- iv.* **Congested hospital rooms.**

IV. Anesthesia errors

The common understanding of anesthesia is that it provides relief from pain to the patient. However, the effect of anesthesia on a patient is more than just reducing the pain. Anesthesia medicine has more power over other functionalities of the patient's life, like breathing, body temperature, blood pressure, heart rate. A lot of careful planning is required to decide the type of medicine and the dosage.

The cause of negligence may be as follows:

- i.* Wrong calculation of medication;
- ii.* Not monitoring the patient during and after the surgery;
- iii.* Being negligent of other conditions that the patient has which may cause a complication;
- iv.* Failure in explaining to the patient about the do's and don'ts;
- v.* Failure in identifying the complications and treating in a timely manner.

V. Medication Dosage Error

Most of the medicines carry some side effects or risks. So how to differentiate if the complication or condition of the patient is due to a medication dosage error or medical negligence.

Some of the common negligence related to medication dosage is:

- i.* Failure in administering an age-appropriate dosage;

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"If people understood that doctors weren't divine, perhaps the odor of malpractice might diminish."

– Richard Selzer



- ii. Administering a medicine that the patient is already allergic to;
- iii. Prescribing a wrong medicine;
- iv. Prescribing a wrong cocktail of medicine (combinations of medicine) that may interact with each other.

Whether it is a wrong diagnosis, incorrect dosages, or surgical error, there's no doubt these errors, injuries or even deaths are preventable.

What happens when we hear some news on lives lost or body part lost because of a small mistake? Was it avoidable? Could there have been a better approach? Was it the patient? What if the patient chose to go to another doctor? So many questions are often followed after any such horrific incident.

"What should you do if you or your loved one has been a victim of medical malpractice or suspect medical negligence?"

Consult a Medico-Legal Team

It is your legal right to seek adequate compensation for your losses or pursue any other form of justice permitted by the law.

When a Medical Malpractice case is filed, the judge completely relies on the medical shreds of evidence from medical experts. As much as a lawyer is required to file a case and fight on patient's behalf, it is so much important that your lawyer has all the valid science-based points to prove any negligence or Malpractice in the court. Most of the time, the Medical Malpractice cases are lost when the plaintiff's lawyer is not able to submit documents or prove the violation of medical protocol.

This is where a Medico-Legal team is important.

"A Medico-Legal team comprises of a group of people who are highly skilled lawyers and medical professionals."

The Medico-Legal team will use their extensive knowledge in medicine and law to assess a case to find out if the patient was a victim of Medical Malpractice.

How does a Medico-Legal team work?

I. Case Assessment

Most Medical Malpractice cases will begin with suspicion. Maybe your condition got worse after treatment, or the outcomes were not as expected. You will then seek a second or third opinion from other practitioners, whose findings might strongly point towards an instance of Medical Malpractice.

Case assessment is an indispensable step in a Medical Malpractice case. You do not want to end up suing the doctor or healthcare facility, only for the defendant to prove with ease that they have no case to answer. That would be tantamount to wasting your time and money. A medical team specialized in evaluating Malpractice will review your medical record chronology to point out a specific error or a pattern of mistakes that ultimately led to your situation. This case assessment will help you to know whether you have a solid case before you can take the next step.

II. Evidence collection

Once it is sure that there, in fact, was Malpractice, a Medical Malpractice attorney takes up your case, and the next step is to obtain substantial evidence to prove that your doctor acted negligently. The medical experts will guide throughout this process and identify the required information.

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"Malpractice tort reform can be something as commonsensical as the establishment of medical courts - similar to bankruptcy or admiralty courts - with special judges to make determinations in cases brought by parties claiming injury."

- Bill Bradley

Medical Malpractice cases are stubbornly difficult to prove as they mostly boil down to having a doctor scientifically prove that it was the other doctor who failed to do their job correctly. This isn't very effective in a lot of cases. This is why a vital part of a Medical Malpractice case is to gather strong evidence. This includes medical records and, in some cases, expert witnesses.

III. Proving the Medical Malpractice Case

With the evidence ready, the lawyer will file a lawsuit as per the malpractice laws.

The burden of proof shall lie on the patient. However, it shall be the lawyer's job to prove the case on the patient's behalf. The lawyer will prove the following:

- i. Duty of care
- ii. Breach of duty
- iii. Causation
- iv. Damages

With the assistance of the medical experts, the lawyer will prove in the court how the doctor or healthcare facility, in the process of handling the patient, breached their duty of care which directly led to the patient's injuries or wrongful death.

The lawyer will also prove the economic and non-economic costs suffered by the patient due to the incident and hence persuade the court accordingly to award a certain amount of money in a settlement.

"Do not be afraid of questioning your hospital/ doctor or asking for a second opinion and never hesitate in contacting a medico-legal team if you feel a foul play or medical negligence in your or your loved one's treatment. We are here to help".

"For the first time in the UAE, STA Law Firm and Acorn Research have teamed to provide you with a specialized Medico-Legal team across the GCC".

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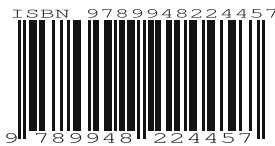
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