

Pennsylvania Medical Malpractice eBook

*What You Need to Know to
Protect Yourself and Your Rights*

Brendan B. Lupetin, Esquire

[Meyers Evans Lupetin & Unatin, LLC](#)

www.meyersmedmal.com

(412) JUSTICE



INTRODUCTION

We hope this free eBook will serve as a resource for anyone interested in learning about the basics of Pennsylvania Medical Malpractice Lawsuits. When a terrible outcome happens from medical care a common source of anxiety comes from wondering whether it should have been prevented and, if so, what rights and options the injured person or family has. We hope this eBook will answer some of those questions.

DISCLAIMER

This, “Pennsylvania Medical Malpractice eBook What You Need to Know to Protect Yourself and Your Rights,” is authored by Brendan B. Lupetin, an attorney and partner with the law firm of [Meyers Evans Lupetin & Unatin, LLC](#), whose principal office is located in Pittsburgh, Pennsylvania.

The information provided is for general informational purposes only and is not a substitute for professional legal advice based on your individual circumstances and the particular laws of your jurisdiction. Laws change frequently and may have changed since this book was authored, therefore Brendan Lupetin and Meyers Evans Lupetin & Unatin, LLC, cannot warrant that all representations are correct.

You should always consult with an attorney directly before making legal decisions concerning your own unique legal issues. The offer of the information in this eBook does not create an attorney client relationship. An attorney/client relationship with attorney Lupetin or this law firm can only be formed by executing a written contract with Brendan Lupetin or Meyers Evans Lupetin & Unatin, LLC, that is signed by the client and a representative of the firm.

TABLE OF CONTENTS

What <i>is</i> Medical Malpractice in Pennsylvania?	1
What is NOT Medical Malpractice?	2
The Eight Most Common Types of Medical Malpractice	3
Medical Malpractice Statistics	4
Proving Medical Malpractice	6
What Damages are Available for Medical Malpractice?.....	9
Statute of Limitations and Repose	12
How Do You Know if YOU Have a Valid Medical Malpractice Claim?	14
How to Prevent Medical Malpractice and Protect Your Rights	15
The 3 Keys to Picking the Best Medical Malpractice Lawyer	18
for YOUR Case	

What is Medical Malpractice in Pennsylvania?



Medical malpractice is when a hospital, doctor, nurse or other healthcare organization or provider provides substandard medical care that causes injury or death to a patient. In short, it is when a doctor, nurse or hospital doesn't do their job and, as a result, someone gets hurt or dies.

Healthcare Provider Malpractice

The law in Pennsylvania requires healthcare providers like doctors and nurses to have the same knowledge and skill and use the same care when treating a patient. This is called the standard of care.

This is the standard that medical professionals in Pennsylvania must meet in order to provide safe care to patients. When a doctor or nurse's knowledge, skill or care of a patient falls below the required patient care standard and as a result the patient is harmed – that is medical malpractice.



Hospital Malpractice

Healthcare institutions like hospitals can be held liable for medical malpractice. A healthcare institution is directly liable to the patient if it violates one of the duties it owes to the patient to ensure the patient's safety. The law in Pennsylvania requires hospitals and other medical institutions to uphold 4 patient safety duties.

Duty #1 - Maintain safe and adequate facilities and equipment.

Duty #2 – Hire and staff only competent healthcare personnel.

Duty #3 – Oversee all healthcare personnel within its walls for patient safety.

Duty #4 – Have in place and enforce rules and policies that ensure quality care for patients.

If a hospital violates any of these rules and, as a result, a patient is harmed or dies, then the hospital is directly liable to the patient for medical malpractice.

What is NOT Medical Malpractice?

As important as it is to know what medical malpractice is, it is also important to know what medical malpractice is not. The fact is, that most healthcare, even a poor outcome, is NOT medical malpractice. Also, in our experience, *most* doctors and nurses have the best intentions for their patients. But because the stakes are so high in medicine, it is common for patients or their families to wonder if a poor outcome was preventable. The following is a list of common occurrences that people think might be medical malpractice but is not.

1. A bad or unusual outcome of medical care or a surgery.
2. A healthcare provider says they are sorry for the outcome.
3. A healthcare provider treats a patient with disrespect or with a lack of bedside manner.
4. The patient is unhappy with the results or outcome.
5. When a healthcare provider is unable to cure or fix the patient.
6. A subsequent treating doctor or nurse voices dissatisfaction with the prior medical provider.
7. Medical care was recommended or provided which the patient or patient's family, in hindsight, disagreed with.
8. A legitimate mistake was made but it did not actually cause any harm.
9. There are errors in or information is missing from the medical records.

Additionally, because of how difficult medical malpractice claims are to win for the patient combined with how expensive they are, many claims that technically could be considered medical malpractice cannot be handled because the care at issue is defensible and/or the injuries are not significant enough to warrant the risk and costs.

The Eight Most Common Types of Medical Malpractice

In our experience, there are the Eight Most Common Types of Medical Malpractice:

1. **Misdiagnosis** – When the healthcare provider fails to diagnose the correct illness or condition.
2. **Delayed Diagnosis** – When the correct diagnosis should have been made earlier and the delay caused harm to the patient.
3. **Failure or Improper Treatment** – When the healthcare provider makes the right diagnosis but fails to treat the condition or recommends the wrong treatment.



4. **Surgical Errors** – When a surgeon causes the patient harm during surgery due to negligence. There are many common surgical errors. They include unintentionally cutting a nerve or blood vessel during surgery, anesthesia errors, operating on the wrong body part, or leaving a sponge or instrument inside the body.
5. **Medication & Prescription Mistakes** – When a doctor or nurse or pharmacist causes the patient to be given the wrong medication, the wrong dose of medication or no medication when they need it and, as a result, the patient suffers injury.
6. **Instruments Left in Patients** – It is often malpractice when a medical instrument like a sponge is inadvertently left in the patient following a surgery.
7. **Birth Injury** - Birth injury malpractice may occur in many forms. The obstetrician’s prenatal care may have been inadequate, even though the mother sought treatment to ensure her own health and her unborn baby’s health. Negligence can also occur during childbirth, or in the period immediately following delivery, resulting in injuries to mom or baby. If those injuries were preventable, medical malpractice likely took place.
8. **No Consent & Lack of Informed Consent** – Doctors are required to inform the patient of all the risks associated with a given procedure or medical treatment before gaining the patient’s consent for the medical care. This is called informed consent. A physician who proceeds with a procedure or treatment without the patient’s informed consent is liable for all injuries caused by that procedure or treatment, regardless of whether the procedure is performed or the treatment is administered with the proper skill and care.

Medical Malpractice Statistics

We place our trust in our doctors, nurses and hospitals to help not hurt us and our loved ones. For the most part, this trust is warranted and important for ensuring we get the care and treatment we need. But it is also important to be aware that the medical industry is far from perfect so that we advocate to get the best care possible. These sobering statistics provide a view of the darker side of medicine in the United States:

Medical negligence is the third leading cause of death in the United States.

A report published in [*The British Medical Journal*](#) conducted by doctors from Johns Hopkins found that medical negligence is the third leading cause of death in the U.S. behind only heart disease and cancer. Patient safety experts have calculated that more than 250,000 deaths per year are due to medical error in the U.S. The experts who conducted the study noted, that “diagnostic errors, medical mistakes and the absence of safety nets”

Despite the danger – Medical Malpractice Claims are Dropping

[Data obtained from the National Practitioner Data Bank](#) reveals that the number of medical malpractice lawsuits are decreasing. Since 2001 there has been an unquestionable drop in the total number of paid medical malpractice claims against health care professionals including physicians in the U.S. The amount spent on these claims has dropped significantly as well.

For example, there were just over 16,000 paid medical malpractice claims against doctors in 2001. By 2016 that number had dropped to below 8500 which is nearly a 50% drop in 16 years. The amount paid on these claims dropped by about 23% during that time.

Medical Malpractice Claims are Dropping in Pennsylvania Too

According to the [Pennsylvania Judicial System](#), Medical malpractice claims have declined considerably in Pennsylvania since 2001. In 2000 – 2002 there were, on average, 2,733 medical malpractice filings in Pennsylvania. The number of medical malpractice filings in Pennsylvania has dropped every year since to an all-time low in 2017 of 1,449. This trend is due in large part to so called “Tort Reform” laws that were enacted in Pennsylvania in the early 2000s.



Injured Patients and the Families of Deceased Patients Face an Up-Hill Battle in Court

Statistics published by the [Pennsylvania Judicial System](#) show that in 2017, nearly 80% of medical malpractice lawsuits jury trials resulted in a verdict for the doctor or hospital. Only 13% of verdicts for the patient were more than \$500,000. To be fair, these statistics do not account for the majority of medical malpractice lawsuits that were settled before going to trial.

Many Doctors Have Little Expectation of Ever Being Sued

According to a [2017 Medscape Malpractice Report](#), While most physicians will at some point be named in a lawsuit, few anticipate legal action — even if they’ve appeared in court in the past. In the aforementioned Medscape report, 29 percent of respondents claimed to be surprised by said lawsuits, while 58 percent referred to themselves as very surprised.

Most physicians who have been sued have been sued more than once.

Also reported in the [Medscape report](#), among doctors sued for malpractice, the majority have faced legal action on at least two occasions. Primary care physicians and surgeons are the most likely to be named in multiple lawsuits.

Most physicians think medical malpractice cases are unwarranted.

Don’t expect to go up against a medical professional who empathizes with your case or is willing to admit to making a mistake. In Medscape’s 2017 survey, a whopping 89 percent of physicians claimed that the lawsuits in which they’d been targeted were unwarranted.

Most doctors beat around the bush or fail to apologize for medical errors.

The journal [BMJ Quality and Safety](#) reveals that over 70 percent of physicians would offer limited apologies (or none at all) in the wake of medical errors. Furthermore, many would be reluctant to disclose errors in the first place. In the Medscape study cited earlier, most respondents claimed that apologies would make little difference in lawsuit outcomes.

Burnout plays a huge role in medical errors.

A recent [Stanford](#) study links physician burnout to errors in the medical industry, with 55 percent of respondents admitting to suffering symptoms of burnout. Those dealing with burnout are far more likely to experience self-reported errors, even after adjusting for specialty and hours worked.

Americans trust medicine more than most institutions.

Trust in institutions has been falling for years, but most people still trust doctors more than they trust the media or politicians. In fact, [34 percent of Americans](#) admit to holding great trust in medical leaders. Still, this remains alarming in light of past studies, which indicate that over three-quarters of Americans once trusted their doctors.

Proving Medical Malpractice

The bare minimum required to prove a medical malpractice claim requires a patient to establish: 1. The healthcare provider undertook and had a duty to care for the patient; 2. The healthcare provider violated that duty i.e. deviated from the standard of care and was negligence; 3. The healthcare provider's negligence was an actual cause of harm to the patient; and 4. Harm in the form of injury or death.

1. Was there a Duty of Care?

To make out a viable medical malpractice claim the patient must prove that a doctor-patient relationship existed at the time of the events in question. Generally, any time a doctor or nurse or in the course of their business treats or provides medical care or advice to a patient the duty to provide reasonable care exists. In most instances, the patient's medical records prove which healthcare providers rendered care and in turn owed a duty of reasonable care to the patient.



A patient will not be able to establish a claim of medical malpractice if the doctor or nurse can show that the doctor-patient relationship had terminated before the events in question or never existed in the first place.

2. Was it Medical Negligence?



Once you have proven duty of care, the next step is to determine whether there was a breach of the standard of care i.e. whether the healthcare provider not as careful or skillful as they should have been under the circumstances. In Pennsylvania, A doctor must have the same knowledge and skill and use the same care normally used in the medical profession. A doctor whose care falls below this standard of care is negligent.

Additionally, Pennsylvania requires doctors to use current skills and knowledge in their care of patients. In other words, a doctor must have up-to-date medical skills and knowledge, and if he or she fails to keep current or fails to use current knowledge in the medical treatment of the patient, the physician is negligent. An example would be the development of a new surgical technique which provides greater safety and better outcomes for patients. If a doctor performed a surgery on a patient using an out-of-date technique and not the current, best technique and injured that patient, the doctor would be negligent.

3. Did the Negligence Cause Harm?

In order to succeed in a medical malpractice claim, the patient must prove that the negligence caused actual harm to the patient. If there was negligence but it had nothing to do with the patient's injury, then the claim fails.

In Pennsylvania, there are two ways in which causation can be established: 1. Factual Causation; and 2. Increased Risk of Harm.

Factual Causation

Negligence is a factual cause of the patient's harm when the harm would not have occurred "but for" the conduct. To be a factual cause, the conduct must have been an actual, real factor in causing the harm, even if the result is unusual or unexpected.



One interesting point is that to be a factual cause, the defendant's actions do *not* have to be the *only* factual cause. The fact that some other causes combine with the negligence of the defendant in producing an injury does not relieve the defendant from liability as long as his or her own negligence is a factual cause of the injury. An example would be where a patient slipped and broke their leg and developed a dangerous condition called compartment syndrome (when pressure within the muscles builds to dangerous levels). If left untreated this condition will lead to the death of the patient's muscle and nerves and potentially require amputation. If a doctor cares for this patient but fails to recognize in time that compartment syndrome is present and the patient suffers injury from the delay as a result, the doctor can be said to have been a cause of the harm but not the only cause of the harm. Although the original injury and the compartment syndrome combined to cause the injury, the doctor's negligence is a legal cause and damages may be awarded.

Increased Risk of Harm

When a healthcare provider acts negligently but it is impossible to state with 100% certainty what injury was caused thereby, the increased risk of harm standard may apply for Pennsylvania medical malpractice claims. One of the great Court holdings on this point states, "When a defendant's negligent action or inaction has effectively terminated a person's chance of survival, it does not lie in the defendant's mouth to raise conjectures as to the measure of the chances that he has put beyond the possibility of realization. If there was any substantial possibility of survival and the defendant has destroyed it, he is answerable. It is rarely possible to demonstrate to an absolute certainty what would have happened in circumstances that the wrongdoer did not allow to come to pass." In short, Pennsylvania recognizes that it is often

impossible to demonstrate to an absolute certainty what would have happened under circumstances that the doctor did not allow to happen due to their negligence.

Pennsylvania law holds that when a healthcare provider negligently fails to act or negligently delays necessary care, and his or her negligence is a factual cause of injuries to the plaintiff, that negligent defendant physician is responsible for the injuries caused.

In order to establish this type of causation, the patient must present expert testimony that the failure to act or delay on the part of the doctor increased the risk to the patient of the harm the patient experienced. This type of testimony provides a sufficient basis to find that negligence was a factual cause of the injuries sustained.

4. Was there Harm?

Finally, the healthcare provider's failure to meet the standard of care must have caused actual harm. Practically speaking because of how expensive and difficult medical malpractice lawsuits are to undertake, the harm needs to be substantial. A discussion of the types of damages applicable and recoverable from medical malpractice actions is discussed in more detail in the following chapter.

What Damages are Available for Medical Malpractice?

There are various types of medical malpractice cases ranging from surgery on the wrong body part, to misdiagnosis of a disease. If a case of medical malpractice is proven to have caused harm to the patient, the patient is entitled to be compensated the amount of money damages that fairly and adequately compensates the them for all the physical injuries and financial damages he or she has sustained. The possible damages recoverable in a medical malpractice claim are:

1. Past Medical Expenses

An injured patient is entitled to be compensated in the amount of all past medical expenses reasonably incurred for the diagnosis, treatment, and cure of his or her injuries from the date of the mistake to the present.

2. Future Medical Expenses

An injured patient is also entitled to be compensated for all medical and other related expenses including expenses for the purchase and replacement of medically necessary equipment she will reasonably incur in the future for the treatment and care of her continuing injuries. Future medical expenses are typically determined through a combination of the patient's treating doctors and a life care planner. A life care planner is a doctor or nurse who identifies what medical care or accommodations the patient will need in the future and then projects out the total cost for that care for the patient's life expectancy.

3. Past Lost Earnings

Oftentimes, the injured patient's ability to work and earn money will be affected by their injury. In such a situation, the law permits the patient to be compensated for the amount of all earnings that he or she has lost from the time of the medical mistake up to the present as a result of his or her injuries. If the patient has been able to continue to work but at a lesser level than before the malpractice injury, the patient may recover the difference between what he or she could have earned but for the harm, minus any sum he or she actually earned from any employment. Because these figures are, generally speaking, straightforward, they can often be established by the injured person's testimony and wage records. Typically, an expert is not needed to calculate the amount of past economic damages.

4. Future Loss of Earnings and Lost Earning Capacity

Similarly, the patient is also entitled to receive a sum of money that fairly and adequately compensates the plaintiff for all *future* loss of earnings and earning capacity. To establish a claim for this type of damages, the patient must prove through testimony, earnings records, and, often times expert analysis, the total amount of money they would have earned for the remainder of

their work life or period into the future they are deemed disabled but for the medical mistake that caused harm.

When evaluating a patient's future lost earnings due to medical malpractice, there are a number of additional factors which must be considered, including, the patient's age, education, and work experience; the patient's physical condition before and after the injury; the work that the patient has done in the past or was capable of doing; the work that the patient would have been doing in the future had the injury not occurred; the extent and duration of the patient's injury; the work the patient will probably be able to do in the future with the injury; the effect increases in productivity have on the amount of the patient's loss (for example when the patient's condition is expected to improve such that they will perform more work in the future); the effect inflation will have on the amount of the loss;

Because of the complexity in evaluating a person's future economic losses, expert testimony is almost always required to weigh in on the total future loss with reduction to present value based upon a reasonably secure fixed income investment factored in.

5. Past and Future Noneconomic Damages – The Human Losses

Past and future medical costs and earnings losses get the patient out of the "debt" their medical malpractice injury has caused them. To be made whole (or as close as financial compensation can) the patient is entitled to recover money for their noneconomic or "human losses" suffered from the malpractice.

There are four items that make up a damage award for noneconomic loss, both past and future: (1) pain and suffering, (2) embarrassment and humiliation, (3) loss of ability to enjoy the pleasures of life, and (4) disfigurement.

While expert testimony from a doctor or healthcare provider can be used to support a claim for noneconomic damages, it is important to note that a patient's own testimony as to pain and suffering alone can support a jury award. In fact, medical experts are prohibited from testifying that the patient at issue definitively suffered pain. A medical expert can only testify to the nature and type of injury the patient suffered and whether it is reasonable that such an injury would cause pain or suffering.

Pain and Suffering

The first item to be considered in the patient's claims for damage awards for past noneconomic loss and for future noneconomic loss is pain and suffering. The law in Pennsylvania states that patients who have been harmed by medical malpractice are entitled to be fairly and adequately compensated for all physical pain, mental anguish, discomfort, inconvenience, and distress that they have endured from the time of the injury until the present and that they will endure for the rest of their life as a result of the injuries.

It is important to note that this category of harm relates not just to physical pain (e.g. an injured spinal nerve causing excruciating pain in the patient's leg) but also to mental pain (e.g. the anxiety, stress and depression associated with coming to grips with a permanent injury).

Embarrassment and Humiliation

The second item that goes to make up noneconomic loss is embarrassment and humiliation. Victims of medical malpractice are entitled to be fairly and adequately compensated the embarrassment and humiliation they have endured and will continue to endure for the rest of their life as a result of the injuries.

This category can be one of the most significant harms suffered by a patient. For example, patients left with paraplegia often have to depend on other people to help them bathe and go to the bathroom. How do you put a price on this loss of dignity and the personal degradation associated with it?

Loss of Enjoyment of Life's Pleasures

The third item of noneconomic damages a patient may claim is loss of enjoyment of life. The patient is also entitled to be fairly and adequately compensated for the loss of his ability to enjoy any of the pleasures of life as a result of the injuries from the time of the injuries until today, and for the remainder of his life.

As was stated in our nation's declaration of independence, there are three key "inalienable rights" we as American's hold in the highest regard – life, liberty and the pursuit of happiness. It is that last category, "the pursuit of happiness" that relates to a patient's right to seek financial compensation for the loss of the ability to enjoy the things in life that make them happy. For example, do we not all cherish a good night's sleep? If an injury, caused by medical malpractice, prevents a patient from ever sleeping they way they used to then they are entitled to be compensated for the loss of their ability to enjoy this pleasure that most of us take for granted. For example, many of us take for granted our ability to walk without a limp and without pain. If a patient's ability to walk has been compromised due to malpractice, the law says they can claim financial compensation for that loss.

Disfigurement

The fourth and final item is disfigurement. In addition to any damages claimed for pain and suffering, embarrassment and humiliation, and for loss of enjoyment of life, the patient is entitled to be fairly and adequately compensated for any disfigurement she has suffered from the time of the injury to the present and that she will continue to suffer during the future duration of her life.

An important point here is that disfigurement is not limited to just visible scars but also to any limbs, speech defects or hearing deficiencies, the patient has suffered from medical practice.

You Cannot Ask a Jury for a Specific Amount of Noneconomic Damages

In Pennsylvania, lawyers fighting for patients in court are forbidden from asking the jury to award a specific amount of money for the patient's noneconomic damages. They can ask for the specific amount of medical bills and lost earnings but lawyers cannot state a number to the jury for what is fair compensation for the patient's human losses. This makes the job of the jury in appraising this loss much more difficult because they are not given any guidelines.

Statute of Limitations and Repose

Two (2) Year Statute of Limitations for Pennsylvania Medical Malpractice

In Pennsylvania, patients have a limited time within which to bring their medical malpractice claims. If a patient fails to file a lawsuit in time then they will lose their legal rights to recover financial damages for medical malpractice. This [“Two year limitation” law](#) in Pennsylvania is called the statute of limitations. See 42 Pa.C.S. § 5524(2). Pennsylvania's statute of limitation states that actions to recover damages for personal injury including medical malpractice, wrongful death, and several other less common kinds of claims must be commenced within two years of the negligent act that caused harm.

Exceptions to the Two (2) Year Statute of Limitations

There are three (3) primary exceptions to the statute of limitations in Pennsylvania: 1. Late discovery of the negligence; 2. Fraudulent Concealment by the Defendants; and 3. The victim is a minor.

Late Discovery Exception

Pennsylvania law recognizes the “discovery rule”, which pauses the running of the statute of limitations period until the time the patient knows (or should know) that they were injured by medical malpractice.

For example, imagine you have a persistent cough. On January 15, 2014, your PCP sends you for a CT study which reveals a *treatable* tumor in your lung but your doctor misreads the study as unremarkable. Three years later in 2017, you see a different doctor who diagnoses you with end-stage metastatic lung cancer. The second doctor shows you for the first time the CT study from 2014.

If the two-year statute of limitation law for medical malpractice was applied, you would be time barred from filing a claim. With the discovery rule, however, because you did not know about the negligence and need for treatment back in 2014, your statute of limitations would not begin to run until 2017 when you “discovered” what happened. Even though more than two years passed, the discovery rule would allow you to still bring your claim.

Fraudulent Concealment

The second exception to the statute of limitations is fraudulent concealment. This exception stops the statute of limitations clock in the event the doctor intentionally hid the negligence from the patient. For example, if your surgeon knew he cut something he shouldn't have but did not tell you in hopes you would never discover what occurred, your statute of limitations would not begin to run until the surgeon's negligence was revealed.

Victim is a Minor

The statute of limitations also does not begin to run for minors who have been injured by malpractice until they turn 18 years old. Minors have until two years *after* their 18th birthday to file a claim. For example, if a pediatrician fails to diagnose and treat a condition that injures a 5-year-old child, the child until her 20th birthday to file a claim.

Seven (7) Year Statute of Repose for Pennsylvania Medical Malpractice

In almost all cases, the statute of repose is the absolute deadline for a medical malpractice case. This means that, regardless of whether the statute tolls, a victim cannot file a claim past the expiration of the statute of repose. This mostly relates to situations which involve either the late discovery or fraudulent concealment exceptions to the statute of limitations.

Pursuant to Pennsylvania statute 40 Pa.C.S. § 1303.513, most medical malpractice claims against medical professionals are barred after seven years from the date of the malpractice.

Though seven years is the general rule, exceptions still exist for injuries caused by foreign objects and injuries suffered by minors.

The statute of repose does not apply at all to injuries caused by foreign objects left unintentionally in a patient's body. The victim could discover the foreign object fifteen years after the surgery and still be able to file the claim.

WARNING! While the statutes of limitations and repose appear relatively straightforward, the actual application is often quite complex and depends on the specific facts of each case. Anyone considering making a claim for personal injuries caused by medical malpractice should immediately consult with a knowledgeable attorney. In most instances, an attorney will explain your specific statute of limitations for free.

How Do You Know if YOU Have a Valid Medical Malpractice Claim?

The simple truth is that the only way to know if what happened to you or a loved one was the result of medical malpractice is to seek out the opinion of a seasoned medical malpractice lawyer. Only an experienced Pennsylvania medical malpractice lawyer will be able to determine if your claim meets all the legal requirements of a medical malpractice claim including what the standard of care was and whether it was violated.

Additionally, it is common for patients to believe that unrelated medical conditions that developed after the medical care in question were the result of a medical mistake. Lawyers who have handled many medical malpractice cases from start to settlement or jury verdict are able to help the patient understand which injuries were caused by malpractice and which were not. A well-qualified medical malpractice lawyer also knows how to find the best medical experts who can further determine if what happened was the result of medical malpractice.

Notwithstanding the important role a medical malpractice lawyer plays in helping patients understand what happened and why – there are certain situations that more often than not result in viable medical malpractice claims, including:

- A doctor performs surgery in the wrong place
- A doctor performs the wrong surgery
- A medical instrument or sponge is left inside the patient
- A doctor, nurse or hospital risk manager admits that a mistake was made
- The wrong medication is administered
- A patient on a cardiac monitor suffers an unwitnessed arrest

Of course, even when a patient is fairly certain that true medical malpractice occurred, the wisest next step is to **contact an experienced Pennsylvania medical malpractice lawyer**. This is because the patient will need a legal advocate to help them navigate the settlement and/or litigation process. Going it alone can cost the patient their legal rights and significant amounts of money they may be legally entitled to.

How to Prevent Medical Malpractice and Protect your Rights

After the thousands of potential medical malpractice claims we have reviewed and the many hundreds of claims we have successfully handled, we believe there are certain steps patients and their families can take to reduce the chance that medical malpractice will occur.

Be Your Own Patient Advocate or Get a Patient Advocate

Being proactive about medical care is undoubtedly the best step. Do your research! While medical providers can find a well-researched patient annoying, patients should absolutely do research to understand their health condition, what the standard treatments consist of, and document their symptoms. Patients should prepare a written list of questions that they feel are important, and demand full and complete answers from their health-care provider.

The medical system and medicine in general can be intimidating. By educating yourself you empower yourself and are more likely to speak up when something doesn't seem right. We encourage patients to speak up and advocate for your own well-being. If you sense that something is wrong, you should do something about it. Be the squeaky wheel. Tell the doctor or nurse what your concern is. If you do not get the response you need, find someone else. While it is very important to trust your doctor or nurse, it's also important to listen to your gut and use common sense.

And if you feel you cannot properly advocate for yourself, find a family member or friend to be your advocate.

Get a Second or Third Opinion

Also, you should never be afraid to get a second or third opinion. If you do not feel comfortable with the treatment a doctor is recommending, find another doctor and see what they say. If three different doctors all tell you the same thing you will have more peace of mind that it is the right decision. We see instances where a patient has been treating with the same doctor for a long time and even though they suspect that the treatment they are getting is substandard they stick with the doctor out of loyalty, convenience or because they don't want to hurt the doctor's feelings. But your health is too important and you owe it to yourself or your loved one to make sure the best medical care is obtained.

Keep your PCP and Family in the Loop

It is a great idea to update your primary care doctor about what is happening you're your medical care outside their office. While your PCP should receive updates from your other medical providers, this information does not always get to them in a timely fashion or get their attention. If you have any concerns about what other medical providers are doing, run it by your PCP and make sure they are aware of and OK with what is happening.

Similarly, it is always a good idea to keep your friends and family in the loop, especially those with medical backgrounds – nurses, physician assistants, doctors. It is not uncommon that you may think nothing of a medical development that raises red flags for someone else.

Request Medical Records

It is also a good idea to obtain copies of your medical records any time you are worried about the care you are getting or how a doctor is documenting your condition and care. Doctors and hospitals are required to provide your medical records to you. In most cases patients can obtain all of their medical records for a small cost. In addition to allowing you a “look behind the curtain”, these records will play an important role in the event you have a medical malpractice case. The medical record is the bedrock on which all medical malpractice claims are based. While the patient’s recollection of what happened is often very important, pretty much all medical malpractice cases are founded on the facts within the records. For example, imagine your elderly family member is hospitalized for pneumonia and has to be placed on a ventilator. You stay with the patient as much as you can but have to go home from time to time. One day when you return to the hospital a doctor explains that your loved one has suddenly become unresponsive and appears to have lost brain function. Your loved one later dies and you are given no explanation for what happened. But when a medical malpractice lawyer gets the medical records you learn that the breathing tube was misplaced by a physician’s assistant and despite alarms sounding no one responded when your loved one’s oxygen levels fell to dangerous levels. Without the records you have no clue; but with the records you know your loved one’s death was preventable and the result of medical negligence.

It’s best to request these records prior to filing a medical malpractice claim so your healthcare provider does not attempt to change your information. Although it is illegal to falsify medical records and, due to the advent of electronic medical records, it is much harder nowadays to get away with, we still, from time to time, see healthcare providers attempt to modify the records in order to escape liability.

Keep A Journal

In general, it is a great idea to keep a journal or log of events that occurs during medical treatment. It is easy to forget what a doctor or nurse may have said or what and when certain events happened. It can be comforting and empowering to have a document from which to explain to other medical providers what has happened.

Journals can also be very helpful in supporting medical malpractice claims. This is because documentary evidence is usually seen as more credible by defense lawyers and juries when compared to a witness’s memory. A journal entry is believed to be more accurate because it was created at or about the time of the events in question whereas memories are subject to hindsight bias and distortion.

When keeping a medical journal (and you can do this on your cell phone note function, email or in written form) describe the signs and symptoms as they occur and as they are reported. Write down which medical providers did what and said what and when everything happened. Write as much and as often as you can. Again, in our experience, the more detail that is contained in the journal the more trustworthy it is found to be. In the event of medical malpractice that causes a serious injury or death, you should write down in detail the impact of the medical error.

Speak with an Experienced Medical Malpractice Lawyer

When it comes to protecting your legal rights in a medical malpractice claim, the most important step you can take is to immediately speak with an experienced Pennsylvania medical malpractice lawyer. While no one wants to consult with an attorney, the stakes are simply too high for patients who have been seriously injured from medical care.

We have, regrettably, had to turn away many patients who had been seriously injured from medical malpractice because they waited too long and the statute of limitations had expired. It is not unusual for a medical malpractice claims to result in settlements or jury verdicts for hundreds of thousands, even millions of dollars. Resultantly, the decision to pursue and investigate a potential medical malpractice claim could be one of the biggest and most important decisions a patient ever makes in their life. Doesn't it make sense then to seek the help of a lawyer who is an expert in handling such matter?

There are two other significant reasons patients should consult with a medical malpractice lawyer: 1. The lawyer's investigation is free; and 2. A good lawyer will give the patient answers, regardless of whether there is an actionable claim for medical malpractice.

First, any quality medical malpractice lawyer will conduct a claim investigation for free. This means that the attorney will listen and document the facts of the claim as the patient knows them and then, if the lawyer believes there may be a case, the lawyer on his or her own dime will obtain the relevant medical records, review them, study the relevant medical literature and, in some cases, secure the opinion of an expert. If there is no case, there is not charge. If there is a case, the lawyer will only be reimbursed if money is later recovered. Thus, for the patient, there is no risk in asking a lawyer to investigate.

Second, a good medical malpractice lawyer, will explain to the patient what happened and why, regardless of whether it is a case. The truth is that we have to decline more than 90% of the medical malpractice claims we investigate. Thus, more often than not, we explain to a patient or patient's family that the care they question was appropriate. But we pride ourselves on providing patients with an explanation for why it is not a case, including why the medical care was appropriate or why the outcome was not the result of medical malpractice. We know that patients struggle wondering why? It is important to us to answer that question.

The 3 Keys to Picking the Best Medical Malpractice Lawyer for YOUR Case

No one wants to be in the position where they have to find a medical malpractice lawyer. As we have seen, however, medical malpractice does not discriminate and when it happens, selecting the right lawyer for the case is a critical decision. In our experience there are three key factors patients or their families should consider to select the best medical malpractice lawyer for their unique case:

1. Make Sure the Firm or Lawyer Focuses on Medical Malpractice Law

First, make sure to research medical malpractice lawyers and law firms online. Read the reviews about them on their website as well as search engines like Google. Ask friends and family if they know anyone who was satisfied with the medical malpractice lawyer they know. Ask friends in the medical field who they know to be the most formidable medical malpractice lawyers. Ask lawyer friends to provide you a list of competent medical malpractice lawyers.

Once you have identified several candidate medical malpractice law firms and lawyers, make sure they focus a significant portion of their practice on medical malpractice lawsuits specifically. There are many lawyers and law firms who list “medical malpractice” on their website but who do not actually specialize in this type of law. Instead, they are looking to sign cases up and refer them or settle them quickly and cheaply.

2. Make Sure the Firm or Lawyer Has Tried Malpractice Jury Trials

Second, we find that most of our clients would prefer to avoid a jury trial if at all possible. Because of that, we work our absolute hardest to make sure our client’s cases are proven so clearly that a settlement is obtained.

It is critically important, however, that the law firm who represents you has a track record and reputation for trying medical malpractice lawsuits to jury verdict. This is because sophisticated insurance companies are largely making the decision whether to settle your case and for how much. If the insurance company knows you are represented by a lawyer or law firm ready, willing and able to take your case to a jury trial then they are more likely to settle the case and settle for money in order to avoid the risk of sustaining a large, public jury verdict. On the other hand, if a medical malpractice insurance company sees that your lawyer never tries cases and always looks to take any settlement no matter how paltry then the insurance company is sure to either refuse to settle or offer unfair money. The reputation of your medical malpractice lawyer can result in hundreds of thousands, even millions of dollars of difference in the outcome of your case.

3. Make Sure You Like and Connect with the Lawyer and Firm

Third, after you have confirmed that the lawyer or law firm focuses on medical malpractice law and has a track record of trying cases to a jury when circumstances require, the third and final key step is to meet with the lawyer and make sure you like and connect with them.

The truth is there are several terrific and well-qualified medical malpractice law firms in Pennsylvania but not all of them are right for your case. It is important you like and trust the lawyer that will represent you and fight for you. Medical malpractice lawsuits are, generally, long and stressful. Because malpractice case can take years to resolve with numerous difficult moments and decisions throughout, it is critical you believe in what your lawyer is recommending. If you do not like your lawyer or worse, do not trust your lawyer, then a medical malpractice lawsuit can turn into a nightmare.

Thank you!

Thank you for reading our Pennsylvania Medical Malpractice eBook! We commend you for taking the time to learn more about Pennsylvania medical malpractice law in order to protect your legal rights. Your interest in this book means a lot to us.

If you have any questions about any of the topics discussed in this book or have questions about your own potential Pennsylvania medical malpractice lawsuit, we encourage you to contact us. We love hearing from our readers and helping people get answers to their questions.

Visit us on the web: www.meyersmedmal.com

Or

Call us: (412) JUSTICE

Disclaimer

The following eBook is authored by Brendan B. Lupetin, an attorney and partner with the law firm of Meyers Evans Lupetin & Unatin, LLC, whose principal office is located in Pittsburgh, Pennsylvania.

The information provided is for general informational purposes only and is not a substitute for professional legal advice based on your individual circumstances and the particular laws of your jurisdiction. Laws change frequently and may have changed since this book was authored, therefore Brendan Lupetin and Meyers Evans Lupetin & Unatin, LLC, cannot warrant that all representations are correct.

You should always consult with an attorney directly before making legal decisions concerning your own unique legal issues. The offer of the information in this eBook does not create an attorney / client relationship. An attorney/client relationship with attorney Lupetin or this law firm can only be formed by executing a written contract with Brendan Lupetin or his law firm that is signed by the client and a representative of the firm.