



MEDICAL MALPRACTICE 101

Medical errors and medical malpractice expose patients to, and not limited to: physical harm, illness, expenses, pain and suffering, emotional harm, lost work time, disfigurement and death.

Defining Medical Errors

In preventing injuries that may be a result of medical malpractice, one needs to understand how malpractice occurs, through medical errors.

When most people seek out a medical assessment and/or treatment, they usually already have an injury and/or illness. Should a patient become worse or negatively transform, it is often difficult to diagnose whether the situation is due to a pre-existing condition or a medical mistake or error involving treatment or lack thereof.

These situations are further complicated by the common fact that just because a patient has had a negative outcome doesn't necessarily mean the negative outcome fits the definition of "malpractice". The term "standard of care" is the basis of objectively determining whether such bad outcomes fall into the definition of "malpractice". "Standard of care" is essentially the level of care in which a patient should expect from a health care professional in a similar situation. There are circumstances however, where certain health care providers hold themselves up as experts within a sector resulting in being held to a higher standard than the average health care provider.

These bad outcomes can also be complicated by influences outside the health care provider's control. Incorrect information provided by a patient, insufficient history, misleading symptoms are all examples of situations which may lead to misdiagnosis and bad outcomes of which had little to do with the health care provider's performance.

Medical malpractice is defined as when a health care provider deviates from the accepted standard of care for the medical community in a specific situation. Medical malpractice is medical negligence. A health care provider was responsible (or had a legal duty) to care for a patient, the health care provider failed to live up to that responsibility (or breached that duty), and that failure (breach) was the cause of damage or injury to the patient. Each state and territory has developed specific medical malpractice law to resolve such cases.

The Most Common Medical Errors

Misdiagnosis – Misdiagnosis is defined as when a health care provider incorrectly diagnosis the cause of a patient's injury or illness. Misdiagnosis can lead to incorrectly prescribing medications, pain and suffering, emotional trauma, exacerbation of the condition, further injury and death.

Inappropriate Medication – If a patient receives the wrong medicine, an unintended outcome can occur during several different steps of the treatment process. For example, a pharmacist may give a patient the incorrect medication, or a doctor's handwriting on the prescription could be illegible. Another scenario occurs when incorrectly prescribed medicine interacts with other medications the patient takes and creates negative side effects. Allergic reactions cause some medications to be lethal to certain patients.

Statistical Categories of Medical Malpractice Occurrences

An Institute of Medical report 1 has compiled a detailed study quantifying the types of medical errors that occur in healthcare settings. One cited study lists causes of error as follows:

- > technical errors (44%),
- > misdiagnosis (17%),
- > failure to prevent injury (12%),
- > medication errors (10%).

About 70% of all errors were believed to be preventable. The remainder were presumably non-preventable errors such as a patient reacting to a drug who had no previous history of an allergy to the drug.

National Patient Safety Foundation Survey: The National Patient Safety Foundation (NPSF) commissioned a phone survey in 1997 to review patient opinions about medical mistakes. The findings showed that 42% of people believed they had personally experienced a medical mistake. In these cases, the error affected them personally (33%), a relative (48%), or a friend (19%). Of these people, the type of mistake they had experienced was:

- > misdiagnosis (40%),
- > medication error (28%),
- > medical procedure error (22%),
- > administrative error (4%),
- > communication error (2%),
- > incorrect laboratory results (2%),
- > equipment malfunction (1%), and
- > other error (7%).

Unfortunately, the wording in the study for misdiagnosis was “misdiagnosis or wrong treatment”, so it is unclear exactly how many were true misdiagnoses or wrong condition treated versus the wrong treatment for the correctly diagnosed condition. In other questions, people reported that they believed their doctor failed to make an adequate diagnosis in 9% of cases, and in another question 8% cited misdiagnosis as a causal factor in the medical mistake.

The location where the medical error was experienced was:

- > hospital (48%),
- > doctor’s office (22%),
- > operating room (7%),
- > clinic (5%),
- > emergency room (5%),
- > pharmacy (4%),
- > home (3%),
- > medical laboratory (1%),
- > nursing home (1%), and
- > other (5%).

When asked to cite what they believed primarily caused the error, NPSF survey respondents mentioned:

- > carelessness/negligence (29%),
- > untrained staff/incompetence (14%),
- > communication (12%),
- > misdiagnosis (8%),
- > overworked staff (8%),
- > misread prescription or pharmacy error (6%), and
- > other (14%).

Another interesting statistic is that Medico-legal action across multiple countries is more common against male than female doctors (odds ratio of 2.45).

