

## Medical Malpractice

Medical malpractice is a medical mistake by a doctor, hospital, nurse, and other health care providers. Each is required under law to practice medicine consistent with accepted standards of care. Legally, medical malpractice is defined as a deviation from the standard of care. One of the challenges in this type of litigation is to determine which standard of care applies to your individual situation. Consulting with experts in the relevant field will help in determining if your case has merit.

These are common mistakes:

- wrong diagnosis
- failure to properly read an x-ray
- wrong dosage of medication
- failure to do a careful and thorough physical examination or take an accurate medical history
- mis-communication between hospital staff and physician
- mistakes made during surgery, labor and deliver, or any diagnostic intervention (for example, colonoscopy)

These specific areas of malpractice commonly seen in court cases:

- failure to diagnose breast cancer by not feeling a lump or in not properly reading a mammogram
- birth injuries including brain damage and Erbs Palsy (paralyzed arm) from a mis- handled pregnancy or labor or in not doing a CEsarian section when a normal delivery is obviously not going as expected
- surgical mistakes in any kind of surgery including punctures, lacerations, missing obvious disease, rushing the procedure, and sloppy incisions and suture closing
- failure to see a fracture on an x-ray
- failure to see lung cancer on an x-ray
- failure to adequately warn the patient of known side effects of treatment or medication, resulting in a delay in seeking treatment
- not recognizing appendicitis and letting the appendix to rupture with potentially other serious consequences

Although many cases fall into common patterns of malpractice, no two cases are identical. Every case is different in one way or another. Your attorney should be thoroughly familiar with the specific events unique to your medical treatment. Likewise, money recoveries, and even many highly advertised large verdicts, by other victims of malpractice are no guarantee your case will have a similar outcome.

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## Podiatric Malpractice

I have taken a special interest in podiatry and have handled hundreds of these cases. In addition to other activities in the podiatric community, I am a regular lecturer to the Podiatric Residents at the Mt. Sinai Medical Center's Podiatric Residency Program. I have had the privilege to be an operating room observer in most foot surgeries including bunions, hammertoes and heel spurs. Many lawyers who are not familiar with podiatry cases either consult with me on behalf of their client or ask me to handle the case as outside counsel.

Podiatric malpractice is a mistake by a podiatrist. In legal terms, it is a deviation from podiatric standards of care. Podiatric malpractice cases commonly involve disabling foot injuries in these areas:

- failed or ill-advised bunion corrective surgery (known as "hallux valgus" correction)
- botched heel spur surgery
- hammertoe surgery which results in twisted, distorted toes which lose their function or do not even touch the ground anymore
- diabetic ulcers which are not getting prompt podiatric treatment because the podiatrist is not aware of poor blood flow to the feet.
- unnecessary, multiple surgeries particularly with women between 25 and 65 years

The most serious and disabling podiatric errors are usually made in surgical cases. Even though much foot surgery is performed in the office, foot surgery is just like any other surgery:

- There are no short-cuts to be taken just because the surgery is performed in the podiatrist's office.
- Your podiatrist should take a thorough history, perform a careful examination, review x-rays and have a thoughtful surgical plan.
- You must be given a written consent form and you must be allowed to read it and understand it without being rushed, and not in the operating room, minutes away from the beginning of surgery.
- In addition to the written consent, your podiatrist should fully explain your condition, the proposed surgery, and its risks and alternatives including not having treatment or surgery and instead changing your shoes or getting inserts.
- You should not be rushed into surgery. You should be given sufficient time to consider your options and not be convinced to have the surgery the same day especially if the surgery is merely elective and not an emergency.
- The post operative course is important as with any surgery and you should be fully aware of what is involved and the degree of temporary disability you can expect.

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## Dental Malpractice

Dental malpractice cases can involve disabling injuries to the teeth and jaw and can also involve serious cosmetic issues.

Dentistry is generally divided into different specialties:

- general dentistry
- endodontics (root canal)
- prosthodontists (caps, bridges)
- periodontists (gum disease)
- orthodontics (braces)
- dental surgeons (extractions)

Many general dentists "do it all" and some do it all quite well. However, problems can occur when the dentist ventures into doing something without having quality experience or training. It is not uncommon for a general dentist to perform a root canal or build a bridge, then have the surgery fail with the patient seeking help from a specialist.

Once the specialist gets involved, the patient may learn that the work performed by the general dentist needs to be re-done. In many of these cases, the patient will usually suffer no harm other than inconvenience and additional dental visits. However, at times, as part of the additional dental work, the dental specialist has to do a significant amount of "new" work, sometimes with loss of teeth or bone. This may constitute permanent and serious damage the first dentist could be responsible for.

Nerve injuries are commonly seen in these case and can result from poorly performed root canal procedures or extractions of teeth.

The field of cosmetic surgery has gone through an enormous expansion and it is not uncommon to even see dentists advertise cosmetic transformations of your smile. For example, not every dentist who claims they can put veneers on your front teeth has the necessary experience and training. If performed improperly, the patient can lose not just the veneer but the affected teeth. Not only have the intended cosmetic results failed but the patient may be left with functional damage as well.

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## Chiropractic Malpractice

Chiropractic manipulation can be an effective means of treating various conditions relating to the spine, nerves and muscles of the body. However, there are several problem areas which find their way into the courts. As with any other medical provider, a chiropractor who does not practice consistent with accepted standards of chiropractic care and causes an injury, or worsening of your condition, could be liable in money damages for the damage caused. For example, a chiropractor should not cause one of your spinal discs to herniate or even bulge so that the disc is interfering with a nerve root giving you new pain. A more rare occurrence is that of a stroke. Several unacceptable maneuvers of the neck are known to make the patient have or be more susceptible to a stroke by cutting off the blood supply to the brain. Some patients have a medical history - which the chiropractor should be aware of - in which no manipulation of the neck should be done. However, a stroke will likely never happen with an experienced and well-trained chiropractor.

Unfortunately, it is difficult for the patient to know how well trained or experienced their chiropractor really is. Often a second opinion or consultation with another chiropractor will help you know if you are getting optimal chiropractic care. Many times an orthopedist should be consulted to check what the chiropractor is doing or the condition the chiropractor says you have. As with anything else, being a knowledgeable and questioning patient can help you avoid chiropractic problems.

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