

Medical Errors

Third Leading Cause of US deaths

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When faced with an unexpected outcome from a medical diagnosis, or a medical treatment or procedure, patients and their families want to know if anything may have been done wrong, especially when left with a clear or potential life-altering injury. As a result of such injuries, which include medical bills, loss of income, and the need for home care, Individuals and families often face a tremendous financial burden.

If medical negligence, which is also known as medical malpractice, was involved, a patient needs to prove two things: that there was substandard care, and that the care caused a serious, otherwise avoidable injury. If there is a basis to support a claim of medical negligence, a patient has a right to seek compensation for the wrongdoing.

The time limits for filing a law suit, known as the statutes of limitations, are laws which dictate the time in which a lawsuit must be commenced. In New York, the type of health problem, the entity that caused the avoidable medical error, and whether the patient is alive or has died, all play a key role. Once the statute of limitations has expired a law suit cannot be brought; thus if medical negligence is suspected, action must be taken quickly.

In order to determine if something serious happened during medical treatment which should not have occurred, had the medical treatment been up to the prevailing standards of care, it is necessary to gather all of the pertinent medical records and information. The process can be quite onerous. Once the records are gathered, not only do they need to be reviewed and scrutinized by legal professionals well versed in medical negligence cases, but most importantly, the records must be reviewed by qualified doctors and often other medical professionals, who are experts in their fields, to determine if the care was proper, appropriate and up to the standards of medical care for the particular condition and treatment.

If the experts determine that avoidable mistakes were made, correlating to the injuries or poor health suffered, only then can a lawsuit be brought. The actual litigation process can often be lengthy. The attorneys for



the patient need to identify the actual health care providers who made the avoidable medical mistakes, in order to file the lawsuit naming the proper parties involved. Then, the “discovery” process begins. That process includes obtaining evidence documents such as medical records, X-rays, radiological studies, and the taking of oral and written testimonies from all the parties involved. The discovery process usually takes a number of months and includes the patient and/or minor’s parents being interviewed, and each medical care provider being questioned. Once the discovery process is completed, the Court is notified that the patient’s attorneys are ready for trial.

Often the Court schedules discussions, known as conferences, to see if the parties can resolve the matter by way of settlement, rather than having a court trial. If the defendant’s legal advisors feel confident that the plaintiff’s attorneys have proven that there was indeed, substandard care and that it caused a serious injury, it is common for the medical malpractice case to resolve before a trial in court becomes necessary.

If a trial does become necessary, the patient’s trial attorney will spend considerable time preparing. Depending on the complexity of the case, a trial itself can take a couple of weeks to months.

Cases can be settled during the trial process as well, but if not, then a jury will hear the case in court, and come to a verdict, based upon the evidence presented, either for the patient or the defense. For a jury to determine in favor of the plaintiff, they must decide that there were deviations or departures from the standard of care that caused an otherwise avoidable injury to the patient. The jury assigns a monetary value to the injury suffered. The jury also determines the value of other losses which can include pain and suffering, loss of enjoyment of life, lost wages, medical costs, and in case of a death, certain losses to spouse and children.

In the end, while the process involved to be successful in a medical malpractice can be arduous, most patients and their families often gain a sense of peace in knowing they have helped healthcare be safer for others.