

LITIGATION SERVICES

About Medical Malpractice

In a medical malpractice lawsuit a person claims that a healthcare provider has caused injury by providing care below the required standard. Other issues such as defective medical devices may also arise.

While doctors are often defendants in malpractice lawsuits, suits may include pharmacists, dentists, hospitals, hospital staff, technicians and other alternative healthcare practitioners such as chiropractors. All healthcare providers have a legal duty to provide an appropriate standard of medical care to their patients.

The plaintiff must prove that the healthcare provider acted below the appropriate standard of care. The plaintiff must prove that the substandard care caused injury or death.

Examples of malpractice may include failing to diagnose a condition, failing to refer the patient to a specialist, providing wrong or incomplete treatment, failing to obtain the patient's proper consent for a procedure or failing to follow appropriate procedures during surgery. In the case of nurses, malpractice may include failing to notify a doctor about a patient's condition or failing to properly record the patient's condition.

A healthcare provider is not liable merely because they made an error. The plaintiff must prove that the healthcare provider did not meet the required standard of care. Virtually every malpractice case requires expert evidence from a person trained in the same field or specialty. These experts charge a fee for providing their opinion.

There may be situations where, though the healthcare provider made an error, the outcome would have been the same even if the mistake had not been made. For example, a doctor may fail to properly diagnosis a medical condition, but even if

the proper diagnosis had been made the injury would have occurred nonetheless. In such a circumstance, the healthcare provider will not be liable because no damage was caused.

The amount awarded may depend on the severity and duration of the injury, the impact of the injury on the plaintiff's lifestyle, whether the injury has affected the plaintiff's ability to earn a living and whether the plaintiff requires any special care, equipment or ongoing assistance.

Under the British Columbia Family Compensation Act, if malpractice has resulted in death, the children, spouse or parents of the deceased may bring a lawsuit against the person who caused the death. Compensation in such cases is limited to the economic loss suffered by the spouse, children or parents who were dependent on the deceased. The recoverable loss includes the loss of a portion of the deceased's income and/or the loss of household services previously performed by the deceased.

If a case appears to have merit and sufficient potential damages, a lawyer may be prepared to take the case on a contingency basis. Under such an arrangement, the legal fees paid to the lawyer are a percentage of the amount recovered.

Limitation periods in British Columbia define the time required to start a lawsuit. For an adult plaintiff, the time period for starting a medical malpractice lawsuit is usually two years from the date of injury. Under some circumstances the two year period may be extended. An infant who is injured will have a longer period of time to commence a legal action. Failing to file a lawsuit within the limitation period may result in the claim being dismissed. Thus, it is important that an action be commenced within two years of the injury

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