

# FLORIDA MEDICAL MALPRACTICE GUIDE

*What To Do If You're  
Injured By A Healthcare Professional  
Or Hospital*



If you have been a victim of medical malpractice, we just want to say how very sorry we are that you have to deal with the pain, the financial burden, and the loss of your normal daily life due to this tragic accident. You deserve to be compensated in full by the negligent medical care professional who perhaps ruined your body, your men-

tal health, and maybe even your life. Our Tampa Bay medical malpractice attorney is here to guide you through this particularly difficult time. Here is what you need to know about medical malpractice before you call us to set up a free case evaluation.

## TYPES OF MEDICAL MALPRACTICE INJURIES

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All forms of medical malpractice can be truly devastating and cause you some serious trauma. To be sure about whether or not you have a medical malpractice claim, you first have to figure out what exactly happened to you and what category your accident/incident falls under. There are several categories of medical malpractice that include:

- » Delayed diagnosis or misdiagnosis – You may have a claim if your doctor either did not assess you properly to get your condition treated or they diagnosed you with the wrong condition, causing you harm with unneeded treatment (as well as a lack of treatment for what was really ailing you).
- » Failure to treat – This sounds like an act malicious intent, but sometimes your doctor just does not tell you about a treatment that you should have been getting which leads to a worsened condition, not necessarily to hurt you but because they either did not know or they forgot.
- » Surgical errors – These injuries can be severe and life-changing. You might have gotten the wrong procedure done, had damage to your body during surgery, gotten the wrong dose of anesthesia, etc.

- » Medical product liability – This mostly pertains to the equipment used on you during a medical procedure that caused you injury, and this negligent party is not necessarily your doctor, but maybe is the company that owns the product.
- » Birth injury – These tragic incidents happen when prenatal care was not up to par for the mother or the baby either before, during, or after birth.

All of these injuries are totally preventable and can cause a lot of grief for you and your family. When you meet with an attorney, you should explain every detail about your case so that you and your attorney can talk about how to proceed.

## FLORIDA TIME LIMITATIONS

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The rules for medical malpractice make it tougher for you to bring a suit. The statute of limitations for any other injury-causing accident (such as a car accident) is four years. For medical malpractice in Florida, you only have two years to bring your claim. It becomes even trickier for you because there are steps you need to take for medical malpractice claims before you can officially file. You have 90 days from the date of your injury to put the health care provider on notice. That requires especially fast action. You also need to have an affidavit from another medical professional confirming that you indeed have a good claim before you can bring one against your medical provider. The sooner you talk to an attorney, the quicker you can accomplish all of these steps and ensure you are protecting your right to sue.



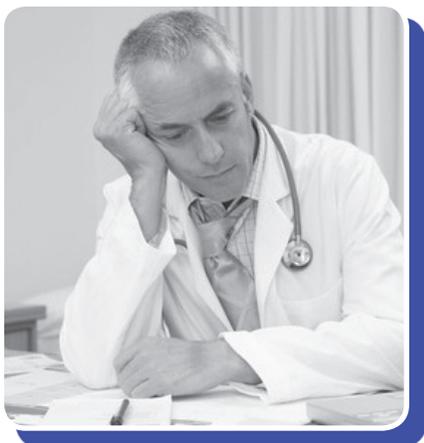
## WAYS TO GET COMPENSATION

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The best way to make sure that you are going to get the best compensation available to you is to hire an experienced and dedicated Tampa Bay medical malpractice attorney. You will be pursuing compensation for your lost wages,

medical bills for treatment and care, future lost earnings, pain and suffering, mental anguish, loss of companionship, anxiety and depression, and disfigurement. All of these injuries are considered, for the most part, to be severe.

Thankfully, only a few years ago, the cap for compensation was deemed to be unconstitutional because it was holding back compensation for people who, in dire instances, deserved more than what the caps would have provided for them. Prior to the ruling in 2017, it used to be that you couldn't collect more than \$500,000 for non-economic damages, which includes pain and suffering as well as loss of normal life. You also would be capped at \$1,000,000 if the medical malpractice resulted in death or if a loved one was left in a vegetative state. The ruling to make this cap unconstitutional is huge for those who are truly deserving of more compensation. As mentioned, these cases are brutally tragic and can result in such carnage, it's as if someone's worst nightmare is being played out.



## FREQUENTLY ASKED MEDICAL MALPRACTICE QUESTIONS

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### *What is Arbitration?*

You may be wondering, "How does arbitration work with respect to medical malpractice claims?" More often than not, arbitration is required in medical malpractice case. When a doctor renders service, they require the patient to sign a form consenting to arbitration. The courts prefer that cases go to arbitration because it lessens the docket load, and judges have fewer cases to decide. The arbitration itself works a little bit like a trial, but there are three arbitrators who look at the evidence and who can converse to come up with an award for the injured claimant. Once that award is determined, then it's the circuit court that actually enforces that award.

## *What Can We Do for a Birth Injury?*

You may need to know if there can be a claim for a child's injury that occurs during delivery or birth that can be actionable as medical malpractice. It can be, and we've successfully prosecuted those claims a number of times. We hire experts to examine whether or not there was a failure of care, either in preparation for or during delivery where the doctor could have avoided it had they done what was proper.

Some deliveries are going to be complicated and they're going to have certain expected complications, but in no way does that absolve any medical care provider of negligence. If a medical care provider, including the physician who delivers the child, has failed to do what is required by the standard of care, then we do have a claim for medical malpractice.

## *How Do We Prove a Breach of Duty?*

Under the law, there has to be a duty of care that's owed by a doctor. In order to prove a claim for medical malpractice, there has to be a breach of that duty of care, meaning a deviation by the medical provider below the professional prevailing standard of care. That is what a breach of that duty is. The other elements to proving malpractice are causation and proof of damages.

## *What is Causation?*

There is a standard that we have to follow to prove damages. The plaintiff who's bringing a medical malpractice claim has to prove that there was a breach of the prevailing standard of care by the medical doctor or the hospital that caused that person's loss or damages. We have to prove that to a reasonable degree of medical certainty, and that's what the causation element requires under Florida law.

## *What is Contributory Negligence?*

In Florida, we have something called comparative negligence. Comparative negligence says that a person or an entity that's being sued is saying that they may be responsible for this, but the person who's bringing the claim is also responsible. If a jury finds that that person contributed to their own losses or

damages by failing to heed the advice of a doctor or doing things that were contrary to medical indication and recommendations, they indeed can be held comparatively negligent.

In Florida, comparative negligence means that a jury will be apportioning fault between the medical provider and the person who's bringing the claim. When we bring these claims, it's not only important that we prove that there was a breach of the prevailing standard of care and that that doctor or hospital was negligent, but we also establish that our client was not comparatively at fault.

## *How Do We Determine Damages in a Medical Malpractice Case?*

The value of a medical malpractice case is going to range due to all kinds of variables. Florida law does say that, to the extent that anyone has suffered a loss due to another's negligence, they are entitled to be compensated for that loss. Our firm makes it our fundamental purpose to ensure that we have complete and total compensation for any loss that we can prove in court. That means that we want to have an understanding about how an injury in a medical malpractice setting has affected somebody's income and ability to earn money in the future, provide for their family, or pay for any future medical bills that may be necessitated because of an injury.



What makes us uniquely human is how we live our life and where we find our joy, and an injury can often result in pain and limitations that can take that away. Those are what we call non-economic damages, and while they can't be easily quantified, it doesn't mean that they're not valuable or that they don't mean something to the person who has lost them. In our civil justice system, any loss that results in taking away that ability to live your life fully, without pain, is compensable, and it's our job to prove to a jury that there is value in it.

## *Do I Have a Medical Malpractice Case?*

The most important thing that a person can do if he or she wants to know if they have a good medical malpractice case is to talk to an attorney with experience

early on. The worst thing a client can do is to wait or to put it off. First of all, there's a statute of limitations. The practice of law is more an art than a science, so there's no way to absolutely know what the value of the case is in the early stages of the case. As the plaintiff, we have to prove the damages. It's ultimately determined, most often by a jury.

## *Do Most Medical Malpractice Cases Go to Trial?*

Not every indication of a bad medical outcome indicates bad medicine, so there's a tremendous amount of investigation that we take on as a law firm to determine whether or not your doctor even breached the standard of care. Once there is a viable medical malpractice case, frequently the other side takes the case all the way to trial. These cases are very complex and doctors typically resist any sort of settlement because they don't want it to impact their record.

## *What if There Was a Failure to Diagnose?*

Florida has a law, called the Good Samaritan Law that would require a heightened standard of care or proof to establish any claim for compensation that occurs in an emergency room setting if it is being administered because of an urgent situation.

All of these claims are dependent on the details of the facts. Our job is to understand the medicine and have a full investigation of all of the facts that have led to the injury, because you can suffer injury in an emergency room that is not covered by the Good Samaritan Law if it is not in response to an urgent situation. Regardless as to whether or not an injury is suffered in an emergency room, we will prosecute it to the full extent of the law.

## *Can You File a Malpractice Suit Against Someone Who Isn't a Doctor?*

In Florida, the medical malpractice statute applies to doctors, hospitals, nurses, chiropractors, as well as a whole host of individuals who people may not consider specifically to be a doctor. It's a very broad statute, and the key point about that statute is, if your case involves a physician or a hospital or a nurse that failed to use reasonable care under the circumstances, it's very important

to contact an attorney right away because there is a limited amount of time to pursue that claim.

## *What is Informed Consent?*

Florida has a unique statute that applies to informed consent. When we file medical malpractice cases, especially cases that involve surgery or procedures that require consent for that treatment, it's very important to establish that, if there has not been fully informed consent by the patient in deciding to undergo that procedure, that is a separate claim of medical malpractice, and we file it as a separate claim within the same lawsuit.

What happens with this under Florida law is that the physician who is proposing that a patient undergo a procedure has to fully explain the material risks that could happen in that procedure and not just tell the patient what those potential risks are, but also tell them about what other alternatives that patient has other than the procedure that's being proposed. The patient has a right to know what their options are. They have the right to make a knowing and voluntary decision about what medical treatment they choose to undergo, and if that informed consent is not properly provided to the patient, it's another way that we can prove a medical malpractice claim.

## *How Much Are Legal Fees?*

Sometimes I'm asked, "How much does a lawyer cost in the context of a medical malpractice case?" Our firm works on a contingency fee basis. What that means is that if we don't make a recovery for you, we don't get paid. Along the way, by the way, we're paying money to prosecute the case; we're hiring witnesses, we're taking depositions, we're paying filing fees, and none of that is chargeable to the client if we don't make a recovery.

## *Who is Liable for My Injuries?*

Sometimes a client will ask whether or not a doctor is automatically responsible if an operation or a procedure doesn't go well. On the one hand, a bad medical

outcome doesn't automatically indicate bad medicine. On the other hand, we really need to look at the procedures that were involved in the case and make sure that the hospital or those that were attending the procedure were doing what they should have done.

Oftentimes, doctors are required to adhere to checklists, and so we want to not only make sure that the hospital had all the right checklists in place and all the right procedures, but that those were actually followed. That's what's important, and it's critically important that the client consult with the attorney who has experience, who has handled these types of cases, and who can navigate the medical intricacies involved in these things to determine whether there is medical malpractice.

## *What is Mediation?*

Mediation is the opportunity for each side to go to the table, in a confidential setting, and discuss the merits of their case. One thing that I tell all of my clients in preparing for mediation is that we want to go to the table in good faith, but not expect a settlement. Mediation used to be a very opportune moment to explore and accomplish settlement. Now, it seems that the insurance companies who are involved in setting up the defense are less inclined to mediate the case. They prefer the case proceed to trial, and it's often not until the week before the trial that they even take a fair look at the case.

## *Are There Caps for Rewards?*

People often ask me if there is a cap on medical malpractice damages. There are caps that are actually being litigated in our court system, even though they were passed merely a decade ago or longer. The reality is that those caps are only for the non-economic damages. Rather than talking about what those are and how they might affect the claim, we try to pursue every course of recovery to actually get total compensation for each client. There would not be caps, for example, that would affect a patient's lost earning ability or a patient's future medical expenses, or any other damages that would be part of the claim. There may be caps for non-economic damages, which we commonly refer to as pain and suffering, but that is still being litigated, and we expect to prosecute those whether they're limited or not.

## *How Long Will This Case Take?*

When I'm asked the question, "How long will it take to resolve a medical malpractice case in Florida?" what I tell my clients is that every case is different and it takes a long time, especially with a medical malpractice case because typically they are vigorously defended by the other side. What's really important is we don't want to shortchange a client's case by trying to settle it too quickly. A lawyer has the responsibility of getting together all of the evidence and ultimately proving the case, so it's very important that we take our time and we do it the correct way, and we equip ourselves to present the case thoroughly at trial.

It can be frustrating for a client if a case takes too long, but on the other hand, it's a once in a lifetime opportunity to prosecute a case. Once a case is settled or determined at a jury verdict, we can't go back years later and say things are worse than we even thought, so now we want more compensation. It's just not possible. The most important thing is that you hire an established, experienced trial attorney who can help you navigate the difficulties and the intricacies of your medical malpractice case.

## *How Long Do I Have to File a Claim?*

When I meet with clients that are entertaining whether they want to pursue a claim for medical malpractice, the question that frequently comes up is, "What is the statute of limitations to bring a claim for medical malpractice?" In Florida, we generally have a two-year statute of limitations, which says that a person has to properly file their claim within two years from the date that they knew or reasonably should have known that there was an act of medical malpractice, but no further out than four years.

If an act of medical malpractice occurs on January 1 of the year, two years after that, if the person knew about that on the date that it occurred, that's when the statute of limitations would run out. If they didn't know about it for say another two years after that, then they would have an additional two years because that's the four-year statute of repose. In general, Florida medical malpractice law states the claim has to be brought within two years from the date that the patient knew or reasonably should have known about the act of medical malpractice, but no longer than four years from the date that the malpractice

actually occurred. There's a different statute of limitations that applies in instances when the patient has been defrauded or the doctor has not advised the patient about certain things that have occurred to the patient, and there's another special statute of limitations that applies to minors as well. We can go over your case and give you a clear answer.

## *What Are Medication Errors?*

When you're dealing with an injury because of medication errors, you need to understand the science behind what medications can do to a patient. Every medication, while it may be designed to be ingested by a person, can have adverse effects if the dosage is wrong or if it's not the right medication. If someone is dealing with a problem and seeks help from their physician, and they get a prescription, they could be further harmed if the dosage isn't right or it's not the right type of medication and it can have all types of horrible consequences for a patient. We've had some tragic cases where medications were administered improperly and the consequences have been devastating for our clients. We will hold accountable anybody who has a duty under the law to make sure that medications are properly administered, that it is the right dosage, and it is the right prescription.



## *Do I Have a Claim for Misdiagnose?*

You may be wondering whether you have a claim for medical malpractice if the doctor misdiagnosed your condition. In truth, it can be the basis for a claim. The ultimate issue is, of course, whether or not that misdiagnosis has resulted in added harm. I had a case like this where a woman who was not diagnosed in time with breast cancer had advanced degeneration

of her condition because of the failure to timely diagnose her condition.

In addition to the fact that you are going to have to deal with the disease that you currently have, the doctor's failure can add to that and make it worse if not treated timely or treating another wrong condition has somehow added harm to the patient. It can be actionable, and we investigate those cases thoroughly. We

have experts who we rely on to help us in prosecuting these claims for medical malpractice.

## *Do I Still Have a Claim if I Wasn't Following Doctors Orders?*

I've had clients ask, "Is it possible that I could lose my right to pursue a medical malpractice claim if I'm not compliant with what the doctor is asking me to do, or if I fail to follow the instructions that I'm given?" That is different than the doctors' duty to use reasonable care and abide by their standard of care. However, in the defense of a medical malpractice case, many times, the defense will bring up that issue, which is that the claimant or the person who's bringing the case did not mitigate their damages, did not mitigate or reduce their losses because they failed to follow the specific instructions of a physician. If you believe that you have been the victim of a medical malpractice, and you're concerned that the instructions that are given to you by a doctor will cause you more harm, it's important for you to seek legal advice immediately.

## *Do I Have a Claim for a Pharmacy Error?*

The pharmacist has a responsibility to properly fill your prescription. Nobody ends up in a pharmacy unless they're dealing with a problem to begin with and getting an improper medication usually means that they're original problem doesn't get better and having a mis-filled prescription can actually create new problems. If you have worsening of an original injury or sickness, or you're now suffering a new injury, the pharmacist can be responsible if they have not properly filled out that prescription. That is actually a claim that we've successfully prosecuted here in our firm, and it's critical that we have that opportunity to hold pharmacists accountable too. The pharmacy negligence case or the mis-filled prescription case is a viable cause of action in Florida, and we vigorously prosecute those claims.

## *How Do You Prevent Negligence?*

Our firm is focused on safety. The work that we do here, where we hold negligent actors accountable, is fundamentally for the purpose of all of us living in a safer society. Along with that goal of a safe society, we routinely counsel our

clients about how to make sure that they can avoid injury in medical settings. If it's in a hospital setting or anything else, what I tell my clients is be your own advocate, and do not ever take your hands off the steering wheel. You have to be the person, or sometimes if it's on behalf of a loved one, making sure that there is appropriate care being administered for the situation.

A lot of us really find ourselves feeling kind of like it's not our place to speak out in medical settings, but doctors and all medical care professionals really owe it to each patient to be able to communicate what the situation is and also to advise every patient about the potential risks. Only if there's full communication and there's diligence on the part of a patient can there be efforts undertaken to avoid injury that could occur in a medical setting.

## *How Do You Prove Fault in Medical Malpractice?*

Sometimes I'm asked, "What do I do if I think my doctor may have caused further injury to me?" It's critically important, number one, to get proper medicine. If you're injured by your doctor, go see another doctor to find out what can be done to make your situation better. The next important thing is that you go see an attorney who has experience with these types of cases. Oftentimes, there are volumes of medical records that we need to pour through to navigate the intricacies of the medicine to see whether or not a doctor or the hospital made some mistakes that resulted in your injury, so it's important that you do that.

## *Can a Case Get Turned Down?*

In Florida, we have a medical malpractice statute that requires the person bring the claim of medical malpractice to have verified medical opinions from qualified doctors. That is an expensive process. When we look at cases involving medical malpractice, we know it's going to be expert-driven, and we utilize some of the best experts in the United States from highly educated institutions and very reputable institutions. Many of them teach at medical schools and so forth.

One of the key issues that we look at in medical malpractice cases is if there was a breach of the prevailing standard of care and if there was harm done to that patient because of that medical malpractice. Causation is extremely

important in proving those damages. Our firm incurs the costs as the case is being pursued, and we know that it has to be something that is economically reasonable, not just for the law firm, but for the patient and the patient's family to pursue to be able to establish that claim. Florida has a very special statute that requires experts to execute affidavits to establish medical malpractice and testify at trial.

## *How Do You Use Experts in a Medical Malpractice Claim?*

You may be wondering, "How will I know if we have a viable or provable medical malpractice claim?" We're not going to know that until we obtain all the medical records. What happens is we get all those records, we review them, and then we will have them reviewed by experts. We have a number of experts that we use right here in the Tampa Bay community, and all across the United States that we rely on to help us review the case. We have to establish, by the greater weight of the evidence, that there was a breach of professional standard of care that, more likely than not, caused injuries and damages due to that medical malpractice.

We're going to be focused on those medical records, and we're going to be looking at those records extremely carefully along with our experts to determine if there was indeed a breach of that prevailing standard of care. The records are extremely important in determining if indeed there is a sustainable, provable, and winnable medical malpractice case.

## *Will My Medical Malpractice Case Settle or Go to Trial?*

I've been asked in my practice whether or not a medical malpractice case is more likely to go to a jury trial or if it will settle in advance of a trial. It's important that when we take on a case, we expect it to go to a trial, because if we expect it to go to a trial, then we're going to do everything that we need to do in the event that it does go to a trial. Whether it ultimately goes to a trial or not, we don't know until we're actually there.

## CONTACT OUR TAMPA BAY ATTORNEY TODAY

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If you were the victim of medical malpractice, you have every right to compensation in the fullest possible amount. Please do not hesitate to contact our Tampa Bay medical malpractice attorney today to set up your free, confidential case evaluation. Let us help you to pursue this case successfully and allow us to protect your rights.



## CREATED BY PERENICH THE LAW FIRM

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Brothers and founding partners of PERENICH The Law Firm, Greg, Tim, and Terence maintain their mission to continue the legacy their father, Guy Perenich, began decades before. Together, the

brothers reaffirm their connection to the community they've always called home, through the vocation of legal advocacy, in service to righting the wrongs of injustice.

PERENICH The Law Firm was built upon a foundation of values and principles Guy Perenich taught his sons. Today Greg, Tim and Terence carry on their father's legacy to bring justice to all members of our Tampa Bay community.

We are a family of trial lawyers at PERENICH The Law Firm with deep ties to Clearwater and communities throughout Tampa Bay. For decades, we have built strong bonds and formed lasting relationships with our clients, continuing a multi-generational commitment to helping those seeking recovery and justice.

Our family is dedicated to protecting your family, just as we would our own. Whether an experienced personal injury attorney is needed to enforce your

rights after an auto accident, or you need expert legal representation to protect your home in foreclosure or bankruptcy, the attorneys of PERENICH The Law Firm are committed, experienced, effective, reliable Tampa Bay area bankruptcy and accident injury lawyers.

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