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Medical negligence claims – was it negligent treatment?

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If you've suffered an injury during or after medical treatment, you may want to consider your options to seek compensation. However, it's important to understand the difference between negligence and a mistake or an unexpected result. If you believe your injury is a result of negligence by a medical professional or institution, we can assist you in suing the professional(s) or institution(s). This is called a medical negligence claim. In this blog, we look at generally what can constitute a medical negligence claim and what does not.

The difference between negligent treatment by a medical professional, which led to injury or illness, and an unavoidable or unexpected result can be confusing, so you need to speak with one of our medical negligence lawyers to assist you.

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Determining negligence in medical negligence claims

Negligence occurs where a medical service provider has caused an unintended injury/adverse medical outcome to a patient while the patient was under their care (also known as medical malpractice). To make a successful medical negligence claim, you must prove the medical service provider breached their duty to exercise reasonable care, skill and judgment when providing medical care and that this caused your injury or illness.

Essentially, and without getting too technical about it, you must also be able to prove that the medical service provider's treatment did not meet with the relevant standards which are expected of Australian medical service providers (in the relevant medical discipline).

To prove medical negligence will require a report(s) from an appropriately qualified (and experienced) medical specialist or allied medical services professional (where appropriate).

Those reports will provide expert comment/opinion regarding the correct procedure(s), treatment, care, standards and safeguards which the medical service providers need to observe and follow and whether, in their opinion, the particular medical service provider in any particular instance, had met those applicable standards.

When is a medical mishap not negligent?

For a mishap to be considered negligent (in the eyes of the law and for the purposes of a medical negligence claim), it must be shown that the relevant standard of care provided fell below what is expected of that medical professional.

A medical mishap becomes a potential negligence claim when a medical professional does not exercise reasonable skill and care at the appropriate level of expertise expected of them, given their position.

It must also be shown that the negligence caused harm or injury, which is considered by the relevant branch of medicine/allied health to be something other than what might be reasonably expected to have occurred in light of the primary condition for which the patient was receiving treatment.

An example might be where a patient is admitted to hospital and receives care after having a stroke. Whilst receiving treatment for her stroke, she suffered a second stroke causing severe and permanent disability. The patient might well allege that her second stroke was caused by the treatment administered for her first stroke. However, a court might determine that the treatment administered to her after her first stroke was safe and appropriate treatment and did not play any material part in the second stroke.

In this case, where the court determined that the second stroke was due to an unfortunate but related (and foreseeable and unavoidable) complication of the original stroke symptoms progressing, the patient would not be entitled to any medical negligence damages.

The requirement for “informed consent” when undergoing medical treatment

Unexpected outcomes sometimes occur where a medical practitioner fails to warn a patient of:

- the risks of a medical procedure;
- any alternative treatments available;
- any possible side effects; and
- costs involved for specific medical treatment options.

If a medical or allied health practitioner fails to provide this information before the procedure, and complications occur resulting in permanent injury, they could be considered to have failed to obtain what's called "informed consent" prior to performing the medical procedure.

For example, a patient undergoes cataract surgery and loses their eyesight permanently as a result. Their doctor had failed to inform them that permanent vision loss is a risk factor for this type of surgery.

The patient may argue that had they been warned of this risk, they would not have proceeded with cataract surgery. The medical practitioner can still be liable for any injury regardless of whether there was any negligence in the performance of the actual procedure itself, as they failed to obtain "informed consent" from their patient.

Complicating factors which can arise with the concept of "informed consent" for medical procedures

There can be exceptions to the requirement of obtaining informed consent from a patient. For example, where the need to administer the relevant medical treatment arises in an emergency and the critical time frame involved does not allow the medical service provider the opportunity to explain the risks involved.

There are also situations where, although a patient has provided informed consent, their consent is not legally recognised. For example, consent was given by a patient who was not legally competent (if the patient was a 'child' or a person without legal capacity) at the time the consent was supposedly obtained from them.

Informed consent is a particularly complex area of medical negligence law, as it may be difficult to establish that a patient would not have undergone a medical procedure had they been aware of all the relevant risks involved.

We strongly recommend you speak with one of our lawyers who specialise in medical negligence claims to get the proper legal advice if you believe you were not provided the appropriate opportunity to consent to a medical or allied health procedure and have experienced an adverse medical outcome.

Get help from a medical negligence lawyer

Medical negligence claims can be one of the more complex types of compensation claims. But whilst they can be difficult, they are usually not impossible. If you or someone you know needs advice or assistance to consider their options to sue a medical service or allied health provider for negligence, then please get in touch.
