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Accidents | Medical Malpractice

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THE REAL TRUTH ABOUT MEDICAL MALPRACTICE CASES IN NEW YORK AND WHY MOST PLAINTIFFS' NEVER RECOVER A PENNY!

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WHAT IS MEDICAL MALPRACTICE ?

Medical Malpractice is the professional negligence of a physician or hospital which causes injury or death to a patient . Medical negligence is often referred to as departures from accepted medical care in the medical community. In order to prove a medical malpractice action the plaintiff or their legal representative i.e. Administrator or Administratrix of the Estate (if the victim died from malpractice), must prove that the defendant doctors' or hospital departed from accepted standards of medical practice in failing to either perform a careful exam or failing to diagnose or treat a medical condition causing harm to the patient.

Standard of Proof

In New York the plaintiff's proof must be accompanied by medical expert testimony of a physician who must state their medical opinions with a reasonable degree of medical certainty at trial that the defendant doctor or hospital departed from accepted standards of medical care.

Causation

The plaintiff must also prove that the departure(s) or medical negligence of the defendant physician from accepted medical care caused injury or death the patient. This is often times referred to as “causation” . Many times a defense attorney will argue that even if the jury believes that their client departed from accepted care, the departure did not cause any harm to the patient and thus no award of money should be made by the jury.

Burden of Proof

As in all civil negligence cases the plaintiff or party that brings the lawsuit has the burden of proof. That means that the plaintiff must prove their case by the fair preponderance of the evidence, that is that the evidence shows more likely than not that the plaintiff’s claims are true. In order to even file a medical malpractice lawsuit in New York the plaintiff’s attorney must file something called a “ certificate of merit”, which is a document that accompanies the verified complaint and states that the plaintiff’s attorney consulted a doctor who has reviewed the case and who states that it has merit.”

Expert Proof

One challenging problem with medical malpractice cases is that there is a battle of the medical experts at trial .The defendant’s attorneys often have greater access to qualified medical professionals who are willing to come into Court and testify at trial that the conduct of the defendant doctor or hospital was within the standard of care. It takes an experienced medical malpractice attorney who is willing to put in the hard work and cross examine the defense expert on both the medical aspects of the case and also on collateral matters such as the amount of time they testify for the defense and the amount of money they earn as an expert witness per year by testifying or reviewing cases solely for the defense.

The Real Truth and Common Defenses

In my experience and as reported in some statistics of cases brought in New York, the plaintiff wins at trial only about 1/3 or 33% percent of the time in medical malpractice lawsuits. Part of the problem plaintiffs’ have is that juries often are reluctant to find fault against a doctor by their very status as a doctor in trying to diagnose and cure a patient. A skilled defense attorney will often use the “judgment defense” in a medical malpractice case. Under New York law a doctor cannot be held liable for a mere error in judgement. An example of medical judgement may be delaying or ordering one medical test or medication over another if the doctor deems the test in their judgement in the best interests of the patient. Another example of the “judgment defense” may be a doctor waiting to perform a procedure if an alternative course of action can be taken, which in the doctor’s judgment which is in the best interests of the patient. If the

doctor being sued for malpractice acted as a reasonable doctor would in their position and used their medical judgment and did a careful exam, most times the jury will not find her or she negligent for any harm caused to the plaintiff/ patient.

FACTORS TO CONSIDER BEFORE BRINGING A MEDICAL MALPRACTICE ACTION

Based upon my experience for a plaintiff to be successful or have a fair chance to win a medical malpractice case depends on several factors including: 1) the skill and experience of the attorney; 2) the jury selection process in weeding out those potential jurors with bias against the plaintiffs and in favor of doctors or hospitals; 3) meticulous preparation on the relevant medicine; and 4) credible and knowledgeable experts at trial. Before bringing a medical malpractice case you have the right to know facts from fiction in medical malpractice litigation.

MEDICAL MALPRACTICE CASES - FACT VERSUS FICTION ?

FICTION

Most medical malpractice lawsuits are frivolous.

On average, 97 percent of medical negligence claims have merit. Researchers at the Harvard School of Public Health examined over 1,400 closed medical negligence claims and found that 97 percent were meritorious. Of those 1,400 claims, 80 percent involved death or serious injury. The study concluded that “portraits of a malpractice system that is stricken with frivolous litigation are overblown.”

FICTION

Most incidents of medical malpractice can't be prevented.

Nearly 98,000 people die each year as a result of entirely preventable medical errors. While some patients are injured or die in the course of care despite doctors utilizing best practices, most medical malpractice incidents are a direct result of preventable errors. The worst examples of easily preventable errors are wrong-site surgeries, which some studies claim occur at least 40 times each week in American hospitals. Despite the staggering amount of patients injured by wrong-site surgeries, only one-third result in a lawsuit.

FICTION

Juries are awarding outrageous verdicts for medical malpractice lawsuits.

No more than one-half of one percent of malpractice payments resulted in an award of \$1 million or more, and judge or jury awards account for only 5 percent of all medical malpractice dollars. In 2005, the average award for a significant permanent injury was \$215,000, while the average award for a major permanent injury was \$315,000. The median award for cases where the patient was rendered a quadriplegic, brain damaged, or in need of lifelong care was \$635,000, and the award average for a patient's death was only \$195,000. From 1991 to 2003, the average size of trial awards grew only 3.4 percent. A RAND

study looked at the growth in malpractice awards between 1960 and 1999 and found that real average awards have grown by less than real income. In the majority of medical malpractice cases brought the plaintiff does not recover any money !

FICTION

Medical malpractice lawsuits are driving up healthcare costs for all of us.

Medical negligence compensation accounts for only 0.3 percent of national healthcare costs. According to the National Association of Insurance Commissioners, the total amount spent defending medical malpractice claims and compensating victims is \$7.1 billion – just 0.3 percent of America’s \$2.2 trillion in healthcare spending. Meanwhile, the real driver of healthcare costs is preventable medical errors, which are responsible for an additional – and unnecessary – cost of \$29 billion annually.

HELPFUL TIPS

Before bringing a medical malpractice case consult with a trial attorney who has tried many medical malpractice cases and has a winning record. Although no attorney can guarantee success in any personal injury case, you have a greater chance of success of winning if the lawyer you hire has experience and a winning record. Ask the attorney to show you testimonials from former clients he or she represented in medical malpractice cases. Make sure the attorney is willing to fund the case to verdict. And most important gauge the sincerity and passion of the attorney to fight in Court and believe in your case.

At **LEMMO LAW**, Edward A. Lemmo Esq. has over 25 years of experience in handling personal injury and medical malpractice cases. I am familiar with many areas of medicine and have access to medical experts to review your potential medical malpractice case and records to determine if there is merit to proceed with a lawsuit. We believe that you have the right to have a knowledgeable malpractice attorney answer your questions before hiring an attorney for your potential lawsuit. Call us today and we will try to help. There is no obligation on your part. As an attorney we can’t guarantee a successful outcome as the facts of each case are different, but will do our best to give you a fighting chance and be upfront with you about a potential medical malpractice case.

Call for free consultation

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Disclaimer: Attorney Advertising. Past results do not guarantee a successful outcome. This article is not meant as a treatise on the law but is a general article to educate the consumer on personal injury and medical malpractice litigation. Always seek counsel to review your case and hire an expert to review any medical records before proceeding with any medical malpractice personal injury litigation.

GO WITH ED THE RIGHT ATTORNEY FOR YOU!

In 2013 Ed Lemmo expanded his business as trial counsel to (6) six law firms in NYC that want his services as a trial attorney for their client cases

Ed Lemmo had a 100% success rate in trials and settlements in 2013 which were over 1.6 million dollars

Ed's motto is "I will help you every step of the way so you can take care of your injuries"