

Medical Malpractice

If you are reading this, you are probably interested in finding out information about medical malpractice cases. This document is designed to give you a very basic discussion of how a medical malpractice case progresses from the initial filing of a complaint through the trial of the case. This is merely an overview and is not intended to serve as legal advice for your particular case or factual circumstances, but it may answer many of your questions and give you an understanding of a very confusing process.

The Act

The rules concerning the handling of a medical malpractice case are contained in the Louisiana Medical Malpractice Act (which we will refer to as “The Act.”) The rules are very technical, and the provisions frequently change.

In general, the act defines medical malpractice as any negligent act or omission causing injury or damage to another as a result of services rendered, or which should have been rendered, by a health care provider. Malpractice is often referred to as a “breach of the standard of care.”

The Standard of Care

Every health care provider must give each patient treatment that meets the appropriate standard of care. The standard of care required of every health care provider is to exercise that degree of skill ordinarily employed, under similar circumstances, by the members of that profession, and to use reasonable care and diligence, along with their best judgment.

If the patient feels that he was not given the appropriate standard of care, he must then prove that the health care provider either lacked this degree of knowledge or skill or failed to use reasonable care and diligence, along with their best judgment in the application of that skill, and that as a result the patient suffered injuries that would not otherwise have been incurred.

If a patient has a bad result, or an unexpected result, this does not mean there was malpractice - there must be a breach of the standard of care.

How and where do I file?

In most medical malpractice cases, a person is not allowed to file a civil suit in state court right away, as in most other types of personal injury cases. The person must first bring the case before a

“medical review panel” comprised of three doctors or health care professionals who are supposed to review the case to determine whether there has been a breach of the standard of care.

When must I file?

Your complaint must be filed within one year of the date of the occurrence or within one year of the date you found out that you were a victim of malpractice, but in no event in excess of three years from the date of the act of malpractice.

This is a three year preemptive period. If you file beyond three years, your complaint will be dismissed. It does not matter if the patient was unaware of the doctor’s malpractice for in excess of three years and recently found out. After three years it is too late to file. After three years from the act of malpractice, the case is no longer valid.

What happens after the complaint is filed?

After the complaint is filed, a “medical review panel” is selected. First an “attorney chairman” is selected to organize the panel of doctors or health care providers, explain their duties and conduct the meeting of the panel members. The plaintiff then selects a member to serve on the panel. The defendant selects a member. These two members select the third member. The “attorney chairman” is not allowed to vote.

The panel opinion

According to the act, the panel shall, within one hundred eighty days after the selection of the last panel member, render one or more of the following expert opinions:

- (1) The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as charged in the complaint.
- (2) The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as charged in the complaint.
- (3) That there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court.
- (4) Where the panel finds that the conduct complained of was a factor, whether the plaintiff suffered (a) any disability and the extent and duration of the disability, and (b) any permanent impairment and the percentage of the impairment.

Once the panel renders its opinion, the attorney chairman sends the opinion and written reasons to the parties by certified mail.

What happens after the panel renders its decision?

After the panel has reviewed the case and rendered a decision, then the patient may file a civil suit. Even if the panel finds no malpractice, the patient may bring the case to court. You must file your petition in district court within 90 days of notification by the attorney chairman, by certified letter, of the panel's opinion.

The "Cap"

The amount of recovery in a medical malpractice case is "capped" or limited by law to \$500,000.00 plus future medical expenses. Not all medical malpractice cases have a value as high as \$500,000.00, but, by law, no award, for anything other than future medical expenses, can exceed that amount.

It is important to note that "future medical expenses" includes all medical expenses from the time of the malpractice - not just from the date of the trial. The future medical expenses component can be extremely large.

The Patient's Compensation Fund

In most cases, the physician or hospital are only liable for the first \$100,000.00 of any recovery. The remaining \$400,000.00, should the value of the case be that high, is collected from the Patient's Compensation Fund or "PCF." The PCF is not a fund of money set up by the State of Louisiana. It is a fund set aside by the insurance companies of doctors and hospitals to pay claims between \$100,000.00 and \$500,000.00.

Settlement

The doctor or hospital may settle with the plaintiff at any time. They can settle for any amount, but if they settle for the full extent of its liability, or \$100,000.00, then there is an admission that the doctor or hospital is at fault. The plaintiff is no longer required to prove that the doctor or hospital did something wrong.

The plaintiff may then attempt to settle his case with the PCF or take the matter to trial.

Conclusion

As stated earlier, this is a very brief overview of how these cases work. If you have any other questions, please do not hesitate to give us a call.