

Medical Negligence Claim



We place a lot of trust in our doctors and expect to be looked after properly. If your doctor or allied health care professional, hospital or other facility breaches their duty of care, then you may be able to make a claim for compensation.

A person must suffer injury as caused by that negligence in order to bring a medical negligence claim for compensation. The law provides that a doctor treating a patient owes a duty of care arising out of that factor alone. The duty is to 'exercise reasonable professional skill and judgement'.

A health care provider must provide treatment and advice that is competent. If that treatment provider fails to act in accordance with a reasonable standard of care and as long as someone has suffered an injury directly as a result of that failure, then that person may be entitled to claim what is referred to as 'damages' for their injuries.

Medical negligence can occur in settings such as:

- Obstetrics
- Gynaecology
- Paediatrics
- Emergency medicine

- Surgery
- Orthopaedics
- Misdiagnosis of medical conditions
- Delayed diagnosis of medical conditions
- Cosmetic surgery
- Incompetent medical treatment
- Incompetent post-operative care
- Failure to provide appropriate referral
- Failure to report completely on test results
- Failure to warn and advise of risks associated with treatment
- Lack of informed consent to medical treatment

Elements Required to Bring a Successful Medical Negligence Claim

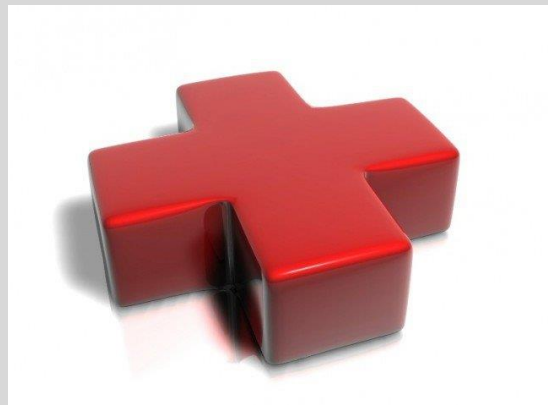
To bring a successful medical negligence claim a patient has to establish the following elements:

1. Does the professional owe a duty of care to a class of persons of which the patient is a member?
2. Has the professional breached this duty of care?

3. Did the breach of duty of care cause or materially contribute to the patient's injury?
4. Has the patient suffered an injury?

Establishing that the professional has breached their duty of care requires evidence that the health professional has acted in a manner that was unreasonable by reference to what an ordinary skilled professional in that field or of that speciality would have done.

Expert report/opinion is required to assess whether the particular treatment was incompetent or unreasonable. Courts then weigh up the evidence on both sides which can often be a difficult balancing act. Expert reports must be comprehensive and convincing.



Upon negligence being proven, you may be entitled to claim damages for:

- Pain and suffering;
- Past and future medical or other expenses;
- Past and future loss of income
- Care and domestic assistance, whether provided voluntarily or on a paid basis
- Loss of your capacity to provide domestic services to a dependant

Deciding Whether to Take Action

Doctors and other health care providers rarely ever admit fault. That is why specialised knowledge and experience are necessary to properly investigate, prepare and prosecute a medical negligence claim. The medical profession is a small close knit community and often it is not easy to obtain the expert report. We have a wide range of contacts and regularly obtain expert reports from interstate and also overseas specialists. As we prepare our cases thoroughly before commencing proceedings, we are able to settle cases early thereby saving clients the expensive cost of litigation.

This article is meant for general information only and should not be relied upon as legal advice.

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