

# NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
ATTORNEYS AT LAW

## Failure to Diagnose Medical Malpractice Claims: Not as Easy as One Might Think

By Collins & Collins

September 15, 2011

If a doctor did not diagnose your medical condition and you suffered harm because of the lack of a diagnosis, you may have a claim against the doctor for [medical malpractice](#). If you think you have a claim against a doctor for medical malpractice, contact a medical malpractice lawyer as soon as possible.

A medical malpractice claim may arise against a doctor if the doctor acted outside of the ordinary standard of care. In other words, if the doctor did not act in the same way that another doctor would act in the same situation, the doctor may have violated the duty of care.

A medical malpractice claim for a doctor's failure to diagnose a medical illness or condition may be successful if the doctor failed to order tests that are routine for a patient displaying your symptoms. In addition, if the doctor had the results from a multitude of tests that indicated your condition, but the doctor was unable to make the proper diagnosis, you may have a successful case against the doctor for medical malpractice. A misdiagnosis of a condition may also qualify as medical malpractice.

All this seems pretty simple. Now for the bad news. To be successful in a medical malpractice claim for a doctor's failure to diagnosis a medical condition, the plaintiff must hire a medical professional to testify against the negligent doctor . The expert witness must have the same expertise as the defendant, and should be able to explain what an average doctor would have done in the same situation. For example, if the defendant is a neurologist, the plaintiff's expert witness should also be a neurologist to establish what the standard level of care is for a neurologist.

There a two major and related hurdles to this threshold requirement. First, few New Mexico doctors are willing to testify against their local colleagues. As such, it is typically necessary to hire an out of state expert. This leads to the second problem. Out of state medical experts are extremely expensive.

### DISCLAIMER

Main Office:  
500 4<sup>th</sup> St. NW, Suite 405  
Albuquerque, NM 87102  
Phone: (505) 242-5958/Fax: (505) 242-5968

<http://www.newmexicoinjuryattorneyblog.com/>

Even armed with a costly expert, proving that a doctor's actions fell below the standard of care is not always as easy as a patient or his family may expect. In fact, it is quite difficult. In New Mexico, most medical malpractice claims must go before the [Medical Review Panel](#) prior to filing suit. The Panel often finds at this early stage that there was no negligence. This result is often the outcome even when the patient or his attorneys have expended great costs on a medical expert to prove the doctor fell below the standard of care. Though a bad outcome at the Medical Review Panel does not prevent a patient from filing suit, it will definitely cause some concern for the attorney who is looking at countless hours and very costly litigation ahead.

Even if the plaintiff establishes that the defendant breached the standard level of care owed to a patient to diagnose a medical condition, the plaintiff must still show that the failure to diagnose caused the plaintiff harm. If the plaintiff became severely ill, suffered permanent damage or died because of the doctor's failure to diagnose the medical condition, the resulting harm caused by the doctor will be easier to prove. However, even in these seemingly straightforward cases, the injured patient may have suffered a host of preexisting medical conditions that contributed to the damages. The doctor and/or his insurance company may argue that these override the medical negligence and should preclude or greatly reduce recovery.

In short, these cases are very difficult and expensive to pursue. The frivolous medical malpractice lawsuit is largely a myth created by proponents (i.e. insurance companies and corporate interests) of tort reform. Doctors, hospitals and most importantly their insurance carriers fight these cases very hard. They fight the clearly baseless cases. And generally they fight the meritorious cases just as hard. A brief review of the news illustrates this reality when medical malpractice has reached record highs while medical malpractice lawsuits continue to plummet.

Sadly, though medical malpractice is quite pervasive, very few injured patients will be compensated for their injuries. This applies equally to what most would regard as a simple matter of showing that the doctor failed to diagnose a serious and obvious medical condition. Until patients/voters recognize the cynical myths created by the Tort Reform movement, medical malpractice will continue to rise, insurance companies will continue to profit on the backs of both doctors and patients, and innocent patients will continue to be harmed in mass. Unfortunately, few voters recognize this until they become an injured patient.

#### DISCLAIMER

Main Office:  
500 4<sup>th</sup> St. NW, Suite 405  
Albuquerque, NM 87102  
Phone: (505) 242-5958/Fax: (505) 242-5968

<http://www.newmexicoinjuryattorneyblog.com/>