

## How to Get Answers to Questions When Unexpected Medical Outcomes Occur.

I think that most doctors would be surprised to know that when people contact me about a potential medical malpractice case, they are not primarily concerned with being financially compensated for the consequences of a medical mistake. Rather, more often than not, what motivates a patient or a family member to call my office is the fact that they are not getting answers to questions they have from their health care providers.

The overwhelming majority of medical malpractice telephone calls I receive are from family members of patients who are still under active care seeking answers to questions that are not being provided by doctors. An unexpected outcome occurs and no explanation for this is provided. Family members become concerned that they do not have real understanding of their loved one's current medical condition. The lack of information causes them to worry that there might be additional risks they are not aware of. Inevitably, I tell people in these circumstances that it is too early to consider the issue of whether they have a viable medical malpractice claim and I encourage them to contact the hospital's patient advocate to help them get answers to their questions medical questions. I also provide them with the information below, to educate them about their legal rights.

Under the American Medical Association Code of Ethics, physicians have an ethical obligation to advise a patient when they commit consequential acts of medical malpractice when "a patient suffers significant medical complications that may have resulted from the physician's mistake or judgment." Am. Med. Assn. Code of Medical Ethics A-02 Edition, E-8.12 Patient Information, 77. Similarly, the American College of Physicians Ethics Manual mandates disclosure of errors if disclosure of this information is "material to the patient's well-being." Lois Snyder & Cathy Leffler, Ethics Manual, Fifth Edition, 142 Annals Internal Medicine 560, 563. Finally, the Joint Commissions on Accreditation of Health Care Organizations requires that patients be informed of unanticipated results that differ from the expected outcome in a significant way when a medical error occurs at a hospital. Joint Comm'n on Accreditation of Health Care Orgs., Revisions to Joint Commission Standards in Support of Patient Safety and Medical/Health Care Error Reduction 12 (2001).

In New Jersey, the Patient Safety Act, N.J.S.A. 26:2H-12.23 (PSA) imposes a legal duty to immediately disclose medical errors to patients who are harmed by them. N.J.S.A. 26:2H-12.25. Under the PSA, a patient must be informed no later than the end of the episode of care, or, if discovery occurs after the end of the episode of care, in a timely fashion, when the patient is a victim of "a serious preventable adverse event." N.J.S.A. 26:2H-12.25(d). A "serious preventable adverse event" is any adverse event that is preventable and results in death, loss of body part, or disability or loss of bodily function either lasting more than seven days, or that is still present at the time of discharge. N.J.S.A. 26:2H-12.25(a). In addition to requiring adverse events to be reported to the victims of medical malpractice, the Patient Safety Act also requires health care providers to report medical errors to the Department of Health and Human Services (the "Department"). N.J.S.A. 26:2H-12.25(c).

As of (a) March 3, 2008, for hospitals, (b) August 30, 2008, for ambulatory care facilities, home health care agencies and hospice providers, and (c) starting March 3, 2009, for nursing homes and assisted living facilities, health care providers have 24 hours after the discovery of a serious preventable adverse

event to notify a patient that it has occurred. N.J.A.C. 8:43E-10.7(b). Patients are to be notified in person if they are still at the facility or by telephone or by certified mail if they are not. N.J.A.C. 8:43E-10.7(c). Disclosure to a patient must be accompanied by documentation in the patient's medical chart which indicates: (a) that the disclosure was made, (b) the time, date and individuals present when the disclosure was made and (c) the name of the person to whom the disclosure was made. N.J.A.C. 8:43E-10.7(f). Medical providers failing to disclose a serious preventable adverse event to a patient are subject to a fine of \$1,000 if the event was also not disclosed to the Department of Health and Senior Services, but \$5,000 if they reported the event to department, N.J.A.C. 8:43E-3.4(15).

If a patient suffers a significant permanent injury as a result of a preventable medical mistake, then after the health care event is over, consultation with a medical malpractice attorney should be considered. If questions about an unexpected outcome are going unanswered in the midst of a medical crisis, however, a patient should contact the hospital's patient advocate and insist on a full explanation of the care provided and description of their current medical condition. Doctors have an ethical obligation to provide this information.