

## Medical Malpractice

[Medical malpractice](#) is a major subset of [personal injury law](#) which specifically deals with the [negligence](#) of doctors and medical professionals in the scope of their professional duty.

Because of their years of study, training, and experience, doctors, while performing their professional duties, are held to a much higher standard than members of the general public. Like an ordinary claim for negligence, a claim of medical malpractice has 4 basic elements:

1. **Duty:** everyone, all the time, has a legal duty to exercise reasonable care to avoid causing harm to others. Doctors have a similar duty when they are practicing medicine. A slight twist is put on the standard of care for doctors, which results in the standard being much higher: when practicing medicine, a doctor is expected to behave as a reasonable person *with the same level of education, training, experience, and skill*.
2. **Breach:** it must be shown that the doctor's behavior actually fell below this standard of care.
3. **Causation:** the doctor's breach of his or her duty of care must have actually caused the harm that the patient alleges.
4. **Harm:** The patient must have suffered some actual harm.

The major point of contention that comes up in medical malpractice cases is usually whether or not a doctor actually breached his or her [duty of care](#). Because modern medicine is so complex, it's usually impossible for a jury of laypersons to determine if a doctor actually acted reasonably in a particular situation. For this reason, it's almost impossible for a jury of laypersons to make an informed decision without an expert witness (usually another doctor who practices the same field of medicine as the defendant) to inform them on the relevant professional standards. Typically, the plaintiff and defendant will each hire expert witnesses to present the facts in a light most favorable to their side.

Typically, a court will instruct the jury to apply one of two possible tests when determining if a doctor's conduct has fallen below the standard of care. These tests are:

- **The national standard:** a doctor's conduct will be compared against the degree of skill and knowledge held by the average doctor in the same field, across the entire country. This is typically applied to doctors who practice in large cities, or in fairly common specialties.
- **The local standard:** The physician will be held to the standard of the average physician in the local area in which they practice. The "local area" might include a city, county, or state.

It's important to remember that, just because the doctor did something that not every doctor would have done, they have not automatically liable for malpractice. When a

medical problem comes up, there are usually at least a few plausible solutions. Typically, there will be some doctors who prefer solution #1, while other doctors might favor solution #2. Let's say that they both have a very similar (and very good) success rate, but a majority of doctors prefer solution #1, for whatever reason.

Suppose a doctor uses solution #2, and something beyond anybody's control goes wrong, causing harm to the patient which would not have happened had the doctor used solution #1. This doctor *would not* be liable for medical malpractice.

Just because the doctor used a method that's preferred by a minority of similarly-competent doctors (we're excluding total quacks, and assuming that both solutions have a sound medical basis), that doesn't mean the doctor behaved unreasonably.

To succeed in a medical malpractice claim, you have to show that the doctor did something that no competent doctor would have done.

### **Statute of Limitations**

All personal injury claims are subject to [statutes of limitations](#). Medical malpractice is no exception. In most personal injury cases, the statute of limitations begins to run (the clock starts ticking) the moment the injury occurs. However, in some medical malpractice cases, the harm caused by the medical malpractice is not discovered for weeks, months, or possibly years after the malpractice occurs. For this reason, many states have slightly modified the statute of limitations for medical malpractice cases. Some have simply made it longer than it is for other personal injury cases.

Others, however, have adopted a more reasonable rule: the same statute of limitations applies to all personal injury cases, but the clock doesn't start ticking until the injury is discovered, or reasonably should have been discovered.

This makes it far less likely that a valid medical malpractice claim will be barred by a statute of limitations.

### **Conclusion**

As you can see, there are a lot of things to consider when deciding to file a medical malpractice lawsuit. You should consult with an experienced [medical malpractice attorney](#) who can advise you on your chances of success, and how to proceed.