

# Informational Brochure



# MEDICAL MALPRACTICE CLAIMS

## *What is Medical Malpractice?*

“Medical malpractice” means the failure of a physician, hospital or employee of a hospital, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.

## *What is a Medical Malpractice Claim?*

A medical malpractice claim is a claim for money damages in which a patient (or if the patient has died, the patient’s heirs) sues because there was medical malpractice which caused very serious harm. Because of the laws set forth in NRS Chapter 41A which specify how a medical malpractice claim must be pursued, most lawyers are not willing to pursue a medical malpractice claim unless the patient was very seriously harmed.

## *What is not a Medical Malpractice Claim?*

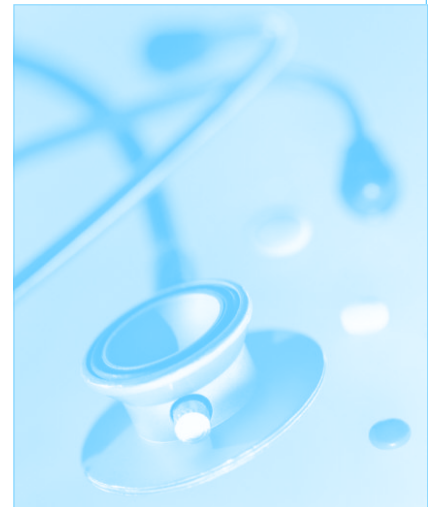
Doctors and hospitals routinely treat people with serious, even fatal medical problems. Even in the best hospitals there are small risks of death and other bad outcomes for any surgery, including minor surgery. The simple fact of a bad or unexpected outcome does not make a malpractice claim. A viable malpractice claim requires expert medical testimony that a specific negligent act of the doctor or hospital was the direct cause of the bad outcome and that the bad outcome would not have happened if the doctor or hospital had given the proper care. If a doctor or hospital makes a very serious error but the patient is not seriously hurt, there is not a viable malpractice claim. If the doctor or hospital makes a very serious error but the patient would have died (or suffered great damage) even with proper care, there is not a viable malpractice claim.

## *How does Nevada law require a Medical Malpractice Claim to be made?*

A lawsuit for medical malpractice must be filed. To protect health care providers against being sued only because of a bad result (injury or death), the lawsuit must include an affidavit from a medical expert explaining why the bad result was caused by a serious mistake or omission by the health care provider and not as a natural and unavoidable result of the person's age or illness. The medical expert providing the affidavit must be in the same or substantially similar field as the health care provider being sued.

However, in certain cases an affidavit is not required and there is a presumption – which the health care provider can dispute – that the bad result was caused by the fault of the health care provider. The special cases are these:

- (a) A foreign substance other than medication or a prosthetic device was unintentionally left within the body of a patient following surgery;
- (b) An explosion or fire originating in a substance used in treatment occurred in the course of treatment;
- (c) An unintended burn caused by heat, radiation or chemicals was suffered in the course of medical care;
- (d) An injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto; or
- (e) A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of a patient’s body.



*Over for more* →

# MEDICAL MALPRACTICE CLAIMS – *(continued from other side)*

## *What is the time limit for filing a Medical Malpractice Claim?*

A lawsuit for medical malpractice must be filed “within one year of when the plaintiff discovers or through the use of reasonable diligence should have discovered the malpractice,” or within three years of the date of injury, whichever is earlier. There are only a few exceptions.

## *What is the effect of these time limits?*

These time limits make it less attractive for attorneys to take medical malpractice cases. Usually, the patient or the patient’s heirs know the bad outcome right away, which means that suit arguably must be filed within one year of the date of the injury. It takes time and money to gather the medical records and have them reviewed by a medical expert. A good attorney wants some time to review medical records before deciding whether to take a case, or wants to be able to decline the case while still allowing the client to have enough time to consult with another attorney. As a practical matter, a decision whether or not to seek to pursue a medical malpractice claim should be made immediately upon discovery of an injury and suspicion of medical malpractice.

## *What are some common Medical Malpractice Claims?*

The failure to timely diagnose cancer is a common claim. If the cancer, such as pancreatic cancer, has very poor long-term survival rates regardless of when diagnosed, it is hard to make a claim for delay in diagnosis. Most successful delayed cancer diagnoses cases involve cancers such as melanomas or colon or breast cancers, which have very good survival rates if diagnosed early and very poor survival rates if diagnosed in later stages. The failure to diagnose fetal distress and order a C-section with resulting brain damage has been a frequently litigated area.

## *What other areas of health care are covered by Nevada’s Medical Malpractice law?*

Claims against dentists are covered by substantially the same law as claims against doctors and hospitals and their employees.

## *What areas of health care are not covered by Nevada’s Medical Malpractice law?*

In simple language, physicians have an M.D. (medical doctor) or D.O. (doctor of osteopathy) degree. Professionals commonly called “doctor” who are not covered by the medical malpractice law include optometrists, chiropractors, podiatrists, etc. Nursing homes are not hospitals and are not covered.

## *How do I find an attorney with experience in Medical Malpractice matters?*

You can contact the State Bar of Nevada’s [Lawyer Referral & Information Service](#) at **702-382-0504** (toll-free in Nevada at **1-800-789-5747**) or look in the yellow pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The state bar’s main office (see numbers listed below) can tell you whether or not an attorney is licensed in Nevada and in good standing.

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