

Medical Negligence
can have devastating
outcomes. You need
an expert lawyer
on your side.

**Turner
Freeman**
LAWYERS

**It is difficult
to put into words
what a remarkably
extraordinary person
our lawyer has been.
They have always
been there for me
through what has
been a terrifying
and distressing time.**

Karilyn

What is medical negligence?

A medical negligence case is a claim for compensation arising out of injuries suffered in the provision of medical services by a medical practitioner, allied health professional or a hospital. Medical negligence law is both a complex and sophisticated area. Establishing negligence requires a certain degree of knowledge and expertise. Therefore, every case must be managed with certain skill.

A person must suffer an injury caused by the negligence. The law is clear that a doctor treating a patient owes a duty of care arising out of that fact alone. The duty in general is to “exercise reasonable professional skill and judgment”. In other words, a health care provider is expected to provide treatment and advice that is competent and professional. If that treatment provider fails to act in accordance with the proper standard of care and if someone has suffered an injury directly as a result of that failure, then a person is entitled to claim compensation for their injuries.

The law is also clear that health providers owe a duty to inform patients of material risks and benefits of treatment. Obtaining a signed consent form, for example, does not of itself prove that the patient provided “fully informed” consent. The risks which are “material” and important will depend on the circumstances of each patient’s case.

In cases where death is caused by medical negligence, dependants of the deceased such as children or spouses can bring a Compensation to Relatives Act claim for the loss of financial and non-financial benefits which the deceased would have continued providing had they lived. A defined group of close relatives may also bring what is commonly referred to as a “nervous shock claim” if they have sustained a psychiatric injury as a result of the negligence.

What types of settings give rise to medical negligence?

Medical negligence can occur in a wide variety of settings. Examples include: birth trauma giving rise to a brain injury, obstetrics, gynaecology, general surgery, emergency medicine, general practice, cardiology, cancer treatment, psychiatric care and cosmetic care.

When can an action in medical negligence arise?

Examples of the situations which give rise to medical negligence include:

- Incompetent medical treatment, including during surgery.
- Incompetent post operative care after surgery.
- Failure to provide appropriate referral and treatment for a condition.
- Delay in the diagnosis of a condition.
- Failure to report correctly on test results.
- Failure to warn and advise on risks associated with treatment.
- Incompetent prescription and monitoring of medication.
- Lack of informed consent to medical treatment.

Defences in medical negligence

In order to succeed in a medical negligence case, injured persons must also consider and overcome defences available to health practitioners being sued. For example, if the injury was a recognised complication of surgery which could not have been avoided with the exercise of due care and skill, medical negligence may not be established.

What do you have to prove in a medical negligence case?

Establishing that a professional has breached their duty of care is the most crucial component of a medical negligence claim. Evidence is required that the health professional has acted in a manner that was unreasonable by reference to what an ordinary skilled professional in that field or in that speciality would have done. This is where expert opinion becomes crucial. Courts usually weigh up the evidence on both sides. This can often be a difficult balancing act and for this reason, the expert evidence obtained must be comprehensive and convincing.

In medical negligence, a person must also prove that the treaters' breach of duty of care caused or materially contributed to the injury or death. It is insufficient to prove that the negligent treatment possibly or may have caused the injury or death. In cases involving a delay in diagnosis, medical experts on both sides often disagree about whether earlier treatment would have made a difference to the patient's outcome.

Evidence in medical negligence cases

Unlike a typical personal injury matter, responsibility for the injury or death is rarely admitted. To prove, for example, that a cardiologist was negligent, expert evidence from another cardiologist is required. Many health practitioners are however reluctant to give evidence against their peers.

Health practitioners also rarely document all events or errors in their clinical records. Additionally, factual disputes as to what did or did not occur must be carefully managed. Records and instructions from the patient must be carefully scrutinised by lawyers and not simply left to medical experts in the hope that they will identify the relevant legal and factual issues.

The expert evidence required in medical negligence cases can often be costly. The questions posed to medical experts and the information and assumptions provided to them require legal skill and experience in order to save time and significant costs and to reduce the risk of losing the case.

Allegations of medical negligence often involve complex questions which can become obscure and therefore necessitate expert analysis. Established rapport with credible experts and the skill of lawyers well-versed in medical law is vital to avoid pursuing claims with little merit.

Turner Freeman acts on a "no win, no fee" basis in relation to our professional fees as we are confident in the commitment and expertise of our medical negligence lawyers.

At Turner Freeman, we assist our clients to understand and navigate complex legal and medical issues with compassion and humanity.

What is a person entitled to claim by way of compensation?

In general, if successful, a person is entitled to claim compensation for different types of "damages" such as:

- Pain and suffering.
- Past and future medical and other expenses.
- Past and future loss of income.
- Care and domestic assistance, provided on a voluntary and paid basis.
- Loss of capacity to provide domestic services to a dependant.

Sometimes, injured people pursuing medical negligence claims have pre-existing injuries. The damage caused by medical negligence, pre-existing conditions and unrelated factors must also be carefully distinguished.

**Turner Freeman
has been so supportive
to me and my husband,
they've been thorough
and compassionate.
They were there
for me through what
was a terrifying and
distressing time.**

Mart & Paul

13 43 63

TurnerFreeman.com.au