



# 5 Things You Didn't Know About Medical Malpractice

A guide to help you after an injury due to a doctor's negligence



Silberstein, Awad & Miklos, P.C.  
Medical Malpractice Attorneys

**You didn't deserve what happened to you.  
But we can help.**

If you're one of the thousands of people harmed by a doctor, nurse or other healthcare provider's negligence or inability, you're not alone.

Medical malpractice is serious – and if you've been a victim of it, you don't have to suffer alone.

We can help you through this difficult time so you're free to focus on what's most important: your recovery.

You can count on us.

The attorneys of Silberstein, Awad & Miklos, P.C.

**877-Ask-4-Sam**

Our team includes an attorney-nurse, an attorney-pharmacist, and several experienced trial attorneys, which means we can understand what you're going through and we'll do everything in our power to get you the compensation you deserve.



# What is Medical Malpractice?

Medical malpractice is professional negligence by a healthcare professional that leads to harm, injury or death, and thousands of people each year are victims. It occurs when a healthcare provider doesn't follow the recognized "standard of care" for a patient. According to the Journal of the American Medical Association, or JAMA, says that medical negligence is the third leading cause of death in the U.S., right behind cancer and heart disease.

### What is the Standard of Care?

*Standard of care: What a reasonably prudent medical provider would or wouldn't do in the same or similar circumstances.*

In plain English, that means if a sensible, knowledgeable and decent healthcare provider would or wouldn't do something, your healthcare provider should behave the same way.

### What Most People Don't Know About Medical Malpractice

Medical malpractice can be complicated, and it's the last thing you want to think about when you've been misdiagnosed or injured – or when a loved one has died. However, having all the facts in your corner can make a huge difference when you've been the victim of malpractice.



Here are five things most people don't know about medical malpractice:

1. How common medical malpractice really is
2. How to determine whether you're a victim of negligence or malpractice
3. What you're supposed to do if you suspect you were a victim of malpractice
4. Why many people who deserve to file claims don't do it
5. What it takes to win a medical malpractice case

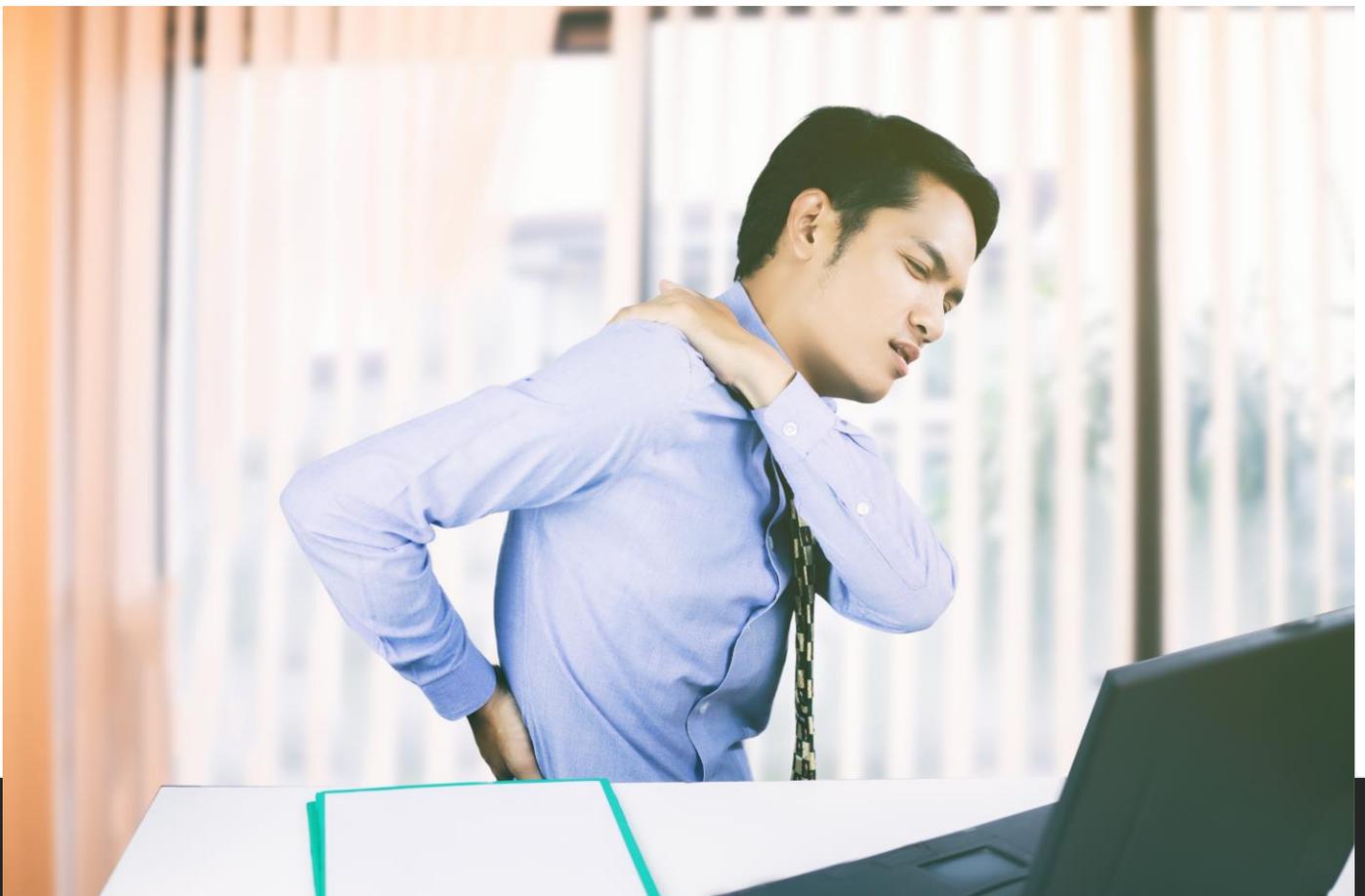
# Medical Malpractice Statistics

When it comes to the number of medical malpractice cases, New York is fairly average. There are about 19 cases of medical malpractice out of every 100,000 medical treatments each year – and that’s a pretty high number.

## The 5 Most Common Medical Malpractice Claims

Medical malpractice takes place across all disciplines, from pediatrics to geriatrics, but most medical malpractice cases that settle or go to court involve:

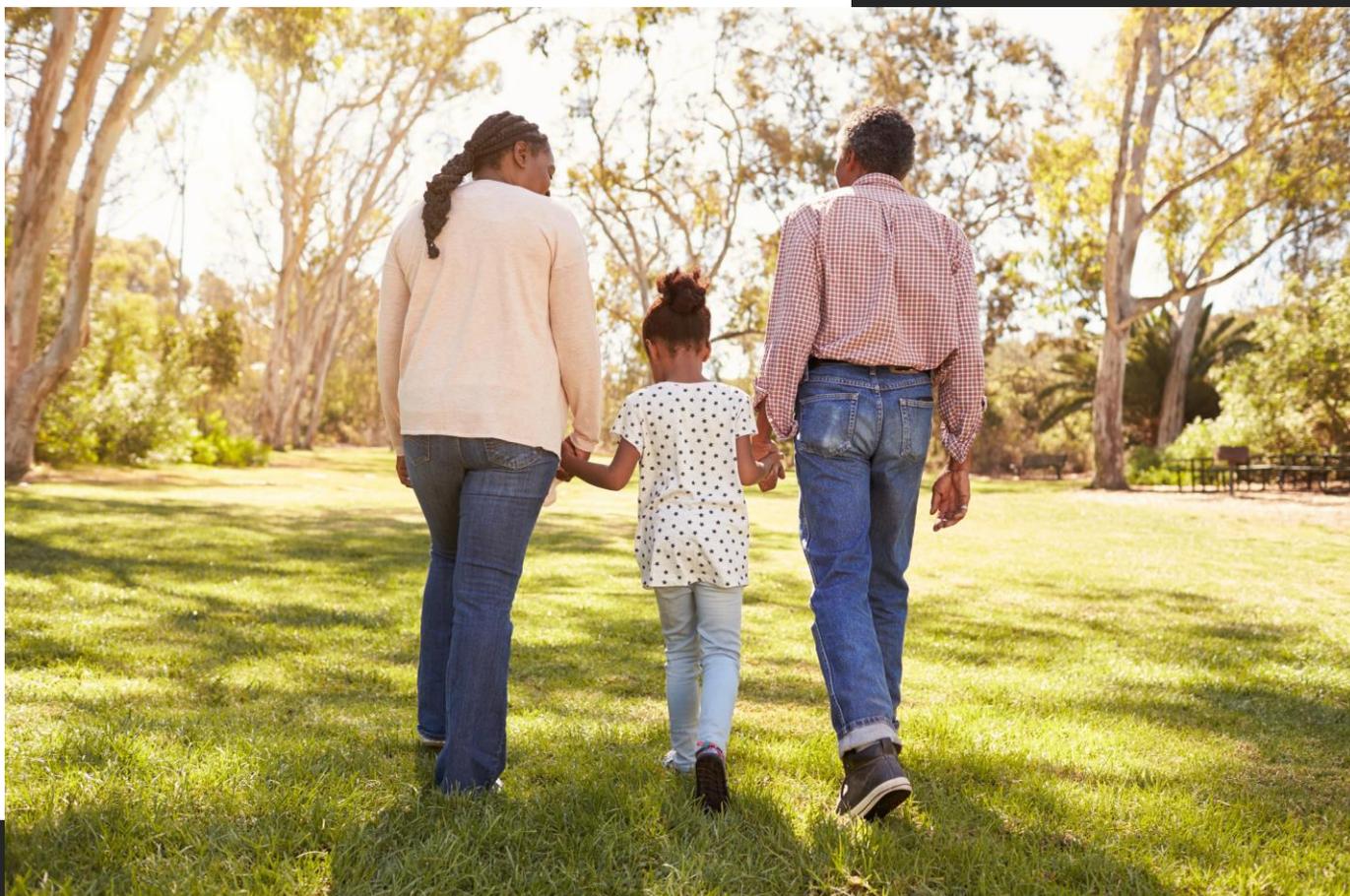
- Misdiagnosis or delayed diagnosis
- Childbirth injuries
- Medication errors
- Surgery errors
- Anesthesia errors



## #1: Misdiagnosis or Delayed Diagnosis

Some diseases and illnesses are difficult to identify, and some of them hide behind symptoms of other sicknesses – but the most prevalent misdiagnoses and delayed diagnoses among adults have to do with cancer; among children, the most common is meningitis.

Another common form of misdiagnosis involves heart attacks and strokes. Sometimes people go to the emergency room for treatment of chest pains, numbness or other serious symptoms and the physician on duty releases them without properly evaluating or diagnosing their condition, which leads to serious, permanent or irreparable home once they're out of the hospital.



## #2: Childbirth Injuries

Childbirth injuries, both to mothers and their babies, are also very common. Medical malpractice and negligence during childbirth can lead to permanent nerve damage, brain injuries, broken bones and even death.

There are two categories of malpractice involving expectant mothers and their children: those that occur during prenatal care and those that occur during delivery.

### Negligence or Malpractice During Prenatal Care

Things that go wrong while the mother is pregnant, before her child is born, falls into this category. Usually, these types of cases involve the physician or other healthcare provider failing to diagnose or recognize conditions that involve:

- Ectopic pregnancies
- Birth defects
- Diseases that can be contagious to the child
- Medical conditions the mother has that could affect her pregnancy or delivery

### Negligence or Malpractice During Delivery

Delivering a child can be hectic, but that doesn't excuse a healthcare provider from his or her duty to both patients – the mother and her child. The most common types of negligence and malpractice that occur during delivery involve the healthcare provider's failure to anticipate, identify or respond to:

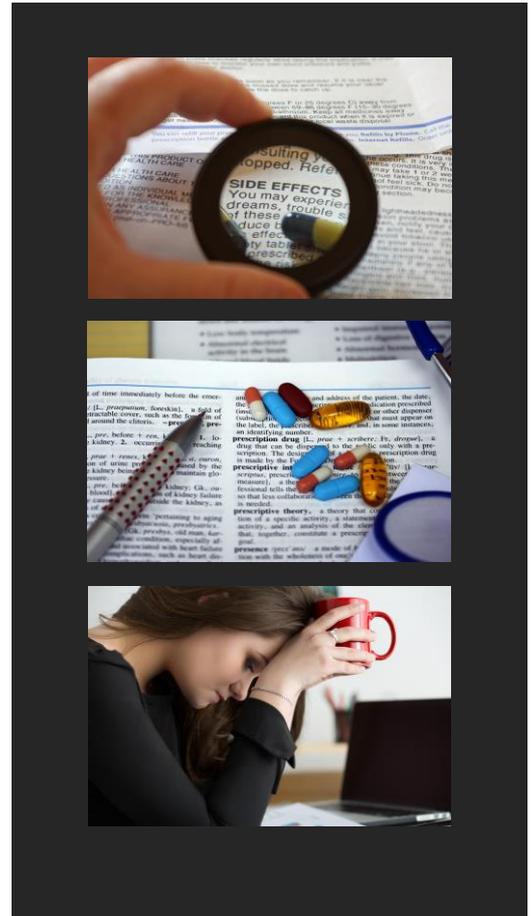
- A tangled or problematic umbilical cord
- Complications due to the baby's size
- Signs that indicate the baby is in distress
- The necessity of a Caesarian section, or C-section
- The use of forceps or a vacuum extractor



### #3: Medication Errors

Mistakes that doctors and other healthcare professionals make while prescribing or administering drugs can be very serious. Most errors occur in patients over the age of 60, which increases the likelihood of serious adverse reactions and death.

These types of mistakes are usually the result of the healthcare provider's failure to evaluate a patient's medical history or notice which drugs the patient is already taking. Sometimes doctors prescribe the wrong drug or the wrong dosage, too.



#### #4: Surgery Errors

Statistically, most surgery errors aren't life-threatening – but they can include nerve damage, leaving a foreign object inside someone's body, or even operating on the wrong body part (or the wrong patient). Errors like these can cause permanent problems, though, and negligence or malpractice during surgery can be completely life-changing.

#### #5: Anesthesia Errors

Anesthesia errors can be fatal. Generally, they're the result of an anesthesiologist failing to properly evaluate a patient, prescribing the wrong (or too much) anesthesia, or failing to properly monitor a patient's vital signs.



## Chapter 3

# How to Tell if You're a Victim of Medical Malpractice

You have legal grounds to sue if a healthcare provider's negligence causes injury or damage to you or a loved one.

It's just that proving it can be tough – and that's what you have to do to win your case.

### What to Ask Yourself

If you believe your doctor or other healthcare provider was negligent, ask yourself:

- 1. Was there a delay in my diagnosis?** Untreated illnesses get worse over time, but if your healthcare provider didn't diagnose you in a timely manner, you could be paying the price now.
- 2. Did my doctor misdiagnose my condition?** It's your doctor's job to find out what's wrong with you and, if possible, fix it. A diagnostic error involves your doctor telling you there's nothing wrong or saying you have an illness or disease that you don't when you really do have a medical condition. Misdiagnoses can lead to improper treatment, delayed treatment, or no treatment at all – and that can cause your original condition to worsen.
- 3. Did my doctor tell me about known medical risks?** Your doctor is responsible for telling you about the benefits, risks and alternatives to treatments so you can make the most informed decision possible. If your doctor doesn't do that, he or she may be guilty of negligence (and medical malpractice).
- 4. Was my treatment right for me?** Your healthcare provider is supposed to stay up-to-date in his or her knowledge of procedures to treat illnesses, injuries and disease. In fact, it's a legal requirement for most healthcare professionals, as is treating patients carefully – but sometimes physicians and other health workers use old, outdated and even harmful treatments because they don't know about better alternatives.
- 5. Did my doctor make a mistake during my procedure?** Everyone makes mistakes, but when a healthcare provider's mistakes cause you harm or make your illness get worse, you could have a medical malpractice case. Medical errors kill about 200,000 patients in the U.S. each year.



## Chapter 4

# What to Do if You Suspect Medical Malpractice

If you think you've been the victim of medical malpractice, there are a few things that you must do – primarily to take care of yourself, but also to preserve your case.

### Get Medical Care Immediately

When you know you have a medical condition, even if your doctor doesn't agree, get a second opinion. It's essential that you get a proper diagnosis as soon as possible, or your condition could become a lot worse.

### Gather Information

Write down everything you know so you don't lose track of what happened. Gather all your medical documents, including discharge papers and prescription information, and see if you can get your medical chart from the facility that treated you.

### Talk to an Attorney

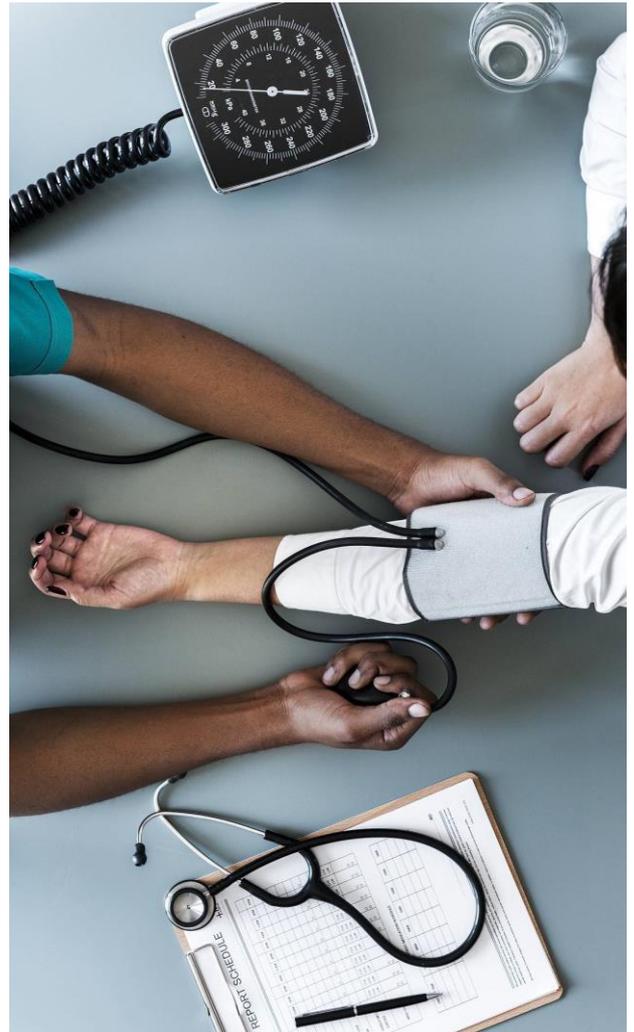
Contact an experienced medical malpractice lawyer as soon as possible. You can even do this while you're on your way to get the medical care you need, or while you're still in the hospital receiving treatment. A good attorney will come visit you in the hospital or in your home to help you with your case.

### What is a Statute of Limitations?

A statute of limitations is the period of time you have to file a claim.

In New York, you only have 2 years and 6 months to file a medical malpractice claim after the negligent action occurs. In some cases, the statute of limitations is longer, such as when you didn't discover the negligent action immediately. If malpractice caused the patient's death, then the statute of limitations to sue is 2 years from the date of death, and a separate statute of limitations of 2 years, 6 months for pain and suffering. (Both apply in death cases.)

Because this can become extremely complicated, it's essential that you talk to an attorney immediately.



## Chapter 5

# Why Some People Won't File Medical Malpractice Claims

Some people are worried that other doctors will learn that they sued and refuse to treat them, but that's simply not true.

Others don't want to be part of the "system" or be thought of as the kind of person who sues when something doesn't go their way. The truth is that a personal injury won't take your case if your doctor wasn't negligent – so-called "frivolous lawsuits" don't happen nearly as often as people seem to think they do.

Still others fear that the costs of their medical care will go up – but that's not true, either.

Finally, some people think that it costs money to sue a doctor or healthcare provider for medical malpractice. What they don't know is that it doesn't cost anything to sue for malpractice; your lawyer won't even take a dime until you win financial compensation in your case.

Many people don't want to file medical malpractice claims – even if they have a very strong case. While only you can decide whether to pursue a claim, know that damages awarded in a medical malpractice lawsuit often cover:

- The cost of subsequent medical care. That means the medical care you need as a result of one doctor's negligence is usually covered.
- Loss of services for the spouse.
- Missed wages from the days, weeks, months or years of work you had to miss as a result of your healthcare provider's negligence.
- Past, current and future pain and suffering.



# What it Takes to Win a Medical Malpractice Case

Your lawyer will do all the “heavy lifting” in your medical malpractice case. You won’t have to face your doctor, deal with insurance companies or dig up data on current medical treatments – your attorney can handle all of that for you.



## Requirements for a Medical Malpractice Claim

In order to file a medical malpractice claim, your lawyer has to show:

- A doctor-patient relationship existed between you and your healthcare provider. This involves proving that you hired the doctor and the doctor agreed to be hired.
- The doctor was negligent. Being unhappy with your treatment or the outcome doesn’t entitle you to file a medical malpractice claim – only the doctor being negligent in connection with your diagnosis or treatment qualifies you to file.
- You were injured or harmed in some way. Your lawyer must show that you were injured or harmed by the doctor’s negligence or carelessness. Doctors are required to be “reasonably skillful and careful” when they’re treating patients, so if your doctor wasn’t in your case, he or she may be considered negligent and guilty of malpractice.
- Your doctor’s negligence is the reason you were injured or harmed. Your attorney has to prove that it’s more likely than not that your healthcare provider’s negligence was the cause of your illness, injury or disease, or the cause of your loved one’s death.
- Your injury led to specific damages. The doctor’s negligence and your resulting injury must have led to specific damages, including physical pain, mental anguish, additional medical bills or lost work and lost earning capacity.

Winning a medical malpractice case usually happens in one of two ways: The doctor's insurance company settles with the victim without going to court or a court awards the victim damages by ordering the doctor's insurance company to pay.



### Settling a Medical Malpractice Case

When your case settles, it means that you, your attorney and the doctor's insurance company have reached an agreement on how you'll be compensated. Sometimes these cases involve a lot of negotiation, which your attorney will handle for you.

For example, the insurance company might say, "We'll give you \$250,000 to cover your medical bills and lost wages." Your attorney knows that you're entitled to more money and that the amount they're offering won't cover your bills or wages, so he or she comes back with a much larger figure. You can continue this back-and-forth process until you've reached a settlement you're happy with. If the insurance company won't agree, your attorney may suggest that you take the case before a judge.

### Going to Court in a Medical Malpractice Case

Some medical malpractice cases end up in front of a judge and jury, who will decide how much compensation is fair for your injuries and the amount of pain and suffering you've been through.

If this happens, your lawyer will prepare for a court appearance by consulting with medical professionals who understand what happened to you, talking to witnesses, and gathering documentation that proves your doctor or healthcare provider was negligent in your case. Your attorney will also speak to the judge on your behalf, explaining your situation – including what happened and what you've suffered as a result. Your lawyer will show the court proof of everything he or she says to make sure your case is as strong as possible.

## Recovering From Medical Malpractice

You don't have to go through the pain and suffering associated with medical malpractice alone. You deserve the appropriate medical care and to have people willing to fight for what's right in your corner. You also deserve compensation when you've suffered because of a doctor or other healthcare provider's careless negligence.

We can help you throughout your recovery process and help lift the burden of worrying about your future.

Call us today at **877-Ask-4-Sam** for a completely free consultation. You'll talk to an experienced medical malpractice attorney who understands what you're going through and who has the resources to get you the compensation you deserve. We'll answer all your questions and give you the peace of mind you need to focus on what's most important – your recovery.

*Call 877-Ask4SAM to get the help you need now.*