

A Guide to Medical Malpractice Claims in New Jersey

Rosenblum Law

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About Rosenblum Law

Rosenblum Law is a law firm dedicated to serving medical malpractice clients throughout New York and New Jersey. With over 50 years of collective education and experience, our attorneys have the skills and knowledge necessary to make sure you get full and fair compensation for your injuries. Visit us online at www.rosenblumlaw.com.

Disclaimer

This publication is intended as a general education guide to medical malpractice claims in New Jersey. This publication does not constitute legal advice. Each case is unique and must be considered based on its own specific details. This publication is for informational purposes only and is based upon New Jersey law at the time it was published. Subsequent changes in the law may or may not affect your rights. For specific legal advice regarding your case, it is advisable to consult an experienced New Jersey medical malpractice lawyer who will be able to review your situation and the specific details of your case and provide custom-tailored legal advice.

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Chapter 1: Introduction

When we're sick or injured, we put a lot of trust in medical professionals to take care of us and help us get better. The last thing we expect is for them to somehow act in a way that makes our situation worse. But unfortunately, medical providers do sometimes act carelessly — and the results can be life-changing.

This guide will help you understand what medical malpractice is and how medical malpractice claims work. Medical malpractice cases are complex, and winning requires the right legal strategies, evidence, and experts.

If you think a medical professional has made a mistake that caused you harm, you should contact a medical malpractice attorney right away. There are special rules and strict deadlines that apply to medical malpractice lawsuits. An experienced attorney can help make sure you meet all requirements and build the strongest case possible so you can get the compensation you need to move forward with your life.

What is medical malpractice?

Medical malpractice is when a health care provider (such as a doctor, nurse, dentist, or hospital) fails to provide the proper standard of care and, as a result, causes injury to a patient. The proper “standard of care” refers to the generally accepted practices and procedures that a professional with similar training and experience would've used under the same circumstances.

Sometimes, medical malpractice is obvious (like operating on the wrong body part). But often, you won't know if medical malpractice has occurred without consulting an attorney. Your attorney will analyze all relevant medical records and other evidence to determine whether the facts support a claim. If the facts appear to support a case, your attorney will select an appropriate medical expert to review the case. The expert will confirm whether or not they believe you have a claim.

The opinion of an expert is important because in a lawsuit, expert testimony is generally required to establish:

- the standard of care,
- whether the defendant deviated from that standard, and
- whether that deviation caused your injury.

Keep in mind that a bad medical outcome doesn't necessarily mean anyone committed malpractice. A doctor can follow the appropriate standard of care and the outcome may not be what you or the doctor had hoped. That's why it's more important to look for unusual events around your treatment, such as poor management of your condition or evasive answers from the medical staff.

If you think you've been a victim of medical malpractice, you should document as much information as possible. That includes an account of events, medical records and test results, and the names of witnesses, doctors, nurses, and anyone else involved in your treatment.

There are [deadlines for filing a medical malpractice claim](#), so it's important to take that information to a lawyer as soon as possible.

Common forms of medical malpractice

In New Jersey, you can technically try to pursue a medical malpractice claim regardless of how serious your injury is. But preparing and litigating a medical malpractice case involves a lot of time, resources, and money. And medical malpractice lawyers usually work on a contingency basis. That means they won't get any fees or expense reimbursements unless they win money in the case. As a result, lawyers typically won't take on a case unless it involves serious injury or death.

Still, there are a wide range of medical errors that could be the basis of a successful medical malpractice claim. Below are some common examples of medical malpractice:

- Birth errors, including those resulting in cerebral palsy or Erb's palsy
- Obstetrical errors, including during prenatal or postpartum care, such as inadequate monitoring, failure to conduct proper tests, or medication errors
- Surgical errors and mistakes, including incompetence, poor pre-op or post-op procedures, substance abuse by medical staff, and anesthesia errors
- Delayed diagnosis, failure to diagnose, and misdiagnosis leading to harmful treatment
- Emergency room, clinic, or facility issues, such as inadequate staffing, poor training, safety or sanitation problems, outdated equipment, or faulty procedures
- Failure to treat, admit, or hold for observation
- Radiology and lab errors
- Medication errors, including those related to prescribing, administering, dosage, mislabeling, or allergy-related negligence
- Preventable amputations
- Brain injury due to oxygen deprivation
- Defective medical devices
- Administrative errors, including poor documentation, patient history omissions, and insufficient screening

Lack of informed consent may also be grounds for a malpractice suit. Informed consent is the process of a doctor getting permission from a patient to perform a medical procedure. Valid informed consent requires:

- **Disclosure.** This means the doctor must give you enough information about the procedure, including its purpose, chances of success, risks, alternatives, and costs. In other words, you must understand what the treatment involves, the potential results, and what could go wrong.
- **Capacity.** This means you must have the ability to understand and make decisions about your health. A patient may lack capacity if, for example, they have an intellectual disability or mental illness, they're suffering from extreme stress, or they're under the influence of drugs or alcohol.
- **Voluntariness.** This means that no one can coerce, manipulate, or pressure you into providing consent for a procedure. Your consent should be freely given, unless it's an emergency situation that requires immediate medical intervention (see below).

Doctors usually document informed consent by asking the patient to sign a form that outlines the treatment and its risks. But the doctor still must make sure that the patient is fully informed about the procedure before going ahead with the treatment.

In certain emergency situations, informed consent is not required. An example would be if you were brought to the hospital and your life was in danger. For children or incapacitated patients, another person may be appointed to provide informed consent on their behalf. But otherwise, if the doctor does not get informed consent, and you suffer harm as a result, you may have a medical malpractice claim.

Potential defendants in a medical malpractice case

When people think of medical malpractice, they typically think of a lawsuit against an individual doctor. But there are actually many different parties (individuals and entities) that may be responsible for medical malpractice. Examples include:

- Nurses
- Physician assistants
- Lab and x-ray technicians
- Anesthesiologists
- Pharmacists
- Dentists
- Chiropractors
- Midwives
- Psychiatrists and other mental health professionals
- Physical therapists
- Hospitals, clinics, and outpatient surgery centers
- HMOs
- Nursing homes
- Any person or organization that employs any of the above

Who will be legally responsible in a case depends on the type of malpractice, where the malpractice occurred, and who was involved. Sometimes, it's appropriate to only name the medical provider entity as a defendant. This would be the case if, for example, a systemic failure caused your injury, and not the negligence of any individual. Your attorney will be able to help you identify all responsible parties in your case.

What to do if you think you're a victim of malpractice

If you suspect medical malpractice, you should take the following steps as soon as possible:

- **Ask questions.** Questioning your health care provider can be intimidating for many people. But remember: you have the right to discuss your condition with your doctor. There's no need to be hostile or threaten to sue, but being direct can be useful. Ask about the results you got, and any plans for further treatment. It can help to have a family member or friend with you for support during these conversations.
- **Document everything.** Keeping detailed accounts can be critical in a medical malpractice case. So document as much as you can about the events around your treatment, all the parties involved, and any witnesses. This will help you remember things if you need to file a lawsuit. It will also help you explain your situation to a lawyer.
- **Request your medical records.** The sooner you get your records, the better. Unfortunately, records may be edited or altered if there's a bad result. Results or charts may be "misplaced," entries changed, or additions made. Your attorney will be able to identify any such changes if you get a copy of your records soon after the malpractice occurred.
- **Contact a lawyer.** It's usually difficult to determine on your own if you've been the victim of malpractice. And preparing and filing a medical malpractice case is extremely complex, with strict time limits. To make sure you don't lose out on compensation, you should contact an experienced attorney as soon as you suspect malpractice. See [*Chapter 2: Finding an Attorney for Your Case*](#).

Chapter 2: Finding an Attorney for Your Case

Medical malpractice lawsuits are complex and involve special issues and procedures. This is not a type of case that you should pursue without the help of an experienced lawyer. An attorney will be able to help you:

- assess the facts of your case and enlist experts to confirm you have a viable claim;
- gather critical evidence, including medical expert testimony, to support your case; and
- navigate complicated court procedures and legal requirements.

When consulting with a lawyer, you should bring your medical records with you, along with a list of doctors and health care providers that you've visited. You should also bring any other documentation related to the injury, such as photographs, correspondence, and medical bills. The more information you can provide, the better the attorney will be able to understand what happened.

When assessing your case, the attorney will take a detailed history of all the medical treatment you've received. This will help them make sure they obtain all the appropriate medical records. They'll then analyze your medical records and other available evidence. If it appears you may have a claim, they'll choose an appropriate medical expert and send your case to that expert for review.

If, in the medical expert's opinion, your medical provider failed to administer the proper standard of care, and you were harmed as a result, you may be able to proceed with a lawsuit. This initial investigation can take several months, so it's important to consult an attorney as soon as possible. Most medical malpractice attorneys will be happy to provide an initial consultation free of charge.

What to look for in an attorney

Choosing the right attorney can make a big difference in the outcome of your case. Here are a few things you should look for when hiring a medical malpractice lawyer:

- **Experience.** Your attorney should have a deep understanding of medical malpractice laws and how they apply to your situation. During your initial consultation, it's a good idea to ask about how long they've been practicing and how many cases they've handled.
- **Results.** There are many experienced personal injury lawyers out there, but some do better than others. Ask them for a short list of their biggest settlements and verdicts (a strong showing in the latter category will tell you they aren't shy of the courtroom).
- **Resources.** Preparing and litigating a medical malpractice case requires a lot of time and money. And there's no guarantee the case will settle. That means the attorney you choose should have the financial resources and enough support to take the case to trial. They should also be able to engage the right medical experts for your case. Ask them to quantify this in real terms. For example, you can ask how many experts they hire for the

average medical malpractice case, their average expenditures on a medical malpractice case, and the most money they've ever spent to bring a case to verdict.

- **Attentiveness.** An attorney who pays proper attention to your case is crucial. Otherwise, they may miss important details that could affect the outcome of your case. Ask during your initial consultation how you'll be able to communicate with them if needed, and how long they typically take to return your messages. It's best to get a feeling for how quickly they'll respond to you *before* you hire them.
- **Fees.** If you've been the victim of medical malpractice, hiring an attorney is almost always a worthwhile investment. But unexpected fees are never welcome. When choosing a lawyer, be sure to ask about their fee structures. Keep in mind that it's standard for medical malpractice attorneys to represent clients on a contingency fee basis. That means you won't pay any attorneys' fees up front. Instead, the attorney will only be paid if they get you compensation through a settlement or trial verdict.

One of the greatest concerns for victims of medical malpractice is how long the case will take before they see a monetary reward. This is understandable, especially if the injury impacts your ability to work. You may be worried that you won't be able to support yourself if the case takes a long period of time.

Unfortunately, this legitimate concern is not easily addressed. On average, medical malpractice cases take years to resolve. And a case taking several years does not mean that a lawyer is bad. To the contrary, the best way to ensure the largest monetary award is to prepare and negotiate a case as thoroughly as possible. There are many law firms that don't take this approach. Instead, they resolve cases as quickly as possible for smaller amounts. They make up for lower awards by handling a larger volume of cases. This only benefits them, but is a detriment to you, the client. When vetting a medical malpractice law firm, this is definitely a red flag to look out for.

Looking for help selecting the best medical malpractice lawyer in New Jersey?

At Rosenblum Law, we understand the devastating effects medical malpractice can have on your life. We'll thoroughly evaluate your situation and determine the best course of action for your particular circumstances. If we're able to take on your case, we'll guide you through the legal process and fight on your behalf for maximum compensation.

We also provide guidance for those looking for help selecting the best law firm for their case. We have a large network with dozens of law firms that we have pre-screened to ensure that you will get the best law firm *for your specific case*.

For a free consultation, call us today at 888-235-9021 or contact us through our website at www.rosenblumlaw.com/contact. We're passionate about helping all our clients get the compensation they're owed — and we won't take a fee unless we win a settlement or verdict for you.

Chapter 3: Common Concerns About Suing Your Doctor

Pursuing a medical malpractice case is a big decision. Even if you're struggling physically and financially, you may have other considerations on your mind. Below are a few common concerns patients have when deciding whether or not to sue their doctors.

If you're having any doubts about pursuing a medical malpractice claim, you should at least consult an experienced medical malpractice attorney. Many attorneys are happy to provide a free initial consultation, and they can help answer your questions and talk through any apprehensions you may have.

There are [strict deadlines](#) for filing a medical malpractice lawsuit, so it's important to talk to an attorney as soon as possible. If you deliberate too long, you may no longer be able to pursue your claim at all.

You aren't the "suing type"

Most people who sue for medical malpractice aren't the "suing type." In fact, it may be the only lawsuit they file in their entire lives. And there are many legal requirements for winning a lawsuit, which means that if you haven't experienced any real harm from a medical mistake, you won't be able to pursue a medical malpractice case in the first place. See [Chapter 4: Pursuing a Medical Malpractice Claim](#).

But if a medical provider's mistake did cause a serious injury, *you're* the one who ends up suffering, not just from the physical consequences — but also the financial burden. Medical bills can pile up quickly. And if you're unable to work, or limited in your ability to work, you can lose income well into the future. In these situations, you should not shoulder the burden alone. The person or entity responsible for your injuries should provide appropriate compensation.

Everyone makes mistakes

It's true that everyone makes mistakes. But that doesn't mean they shouldn't take responsibility for those mistakes, especially if they were avoidable. Pursuing a medical malpractice case is one way to hold your doctor accountable. While an apology is nice, it doesn't change the impact of your injury on your life. You still have to face the physical, emotional, and financial consequences.

It's also very possible that a doctor who didn't give you the appropriate standard of care also failed to give the appropriate care to other patients — and may continue doing so in the future. Legal action can help ensure that doctors realize the consequences of their errors and make necessary changes so it never happens again.

You don't think your injuries are that bad

If your injuries are minor, a medical malpractice lawsuit might not seem to make sense. But people often downplay the seriousness of their injuries because they don't want to be viewed as

a complainer. Moreover, some injuries don't exhibit symptoms until weeks, months, even years later.

A medical malpractice attorney can review your records and engage the right medical experts to evaluate your present situation and likely future issues. Even if you initially feel that your injuries aren't so bad, you could be entitled to compensation for medical expenses, lost wages, and perhaps pain and suffering. If you have an injury that has affected your life physically or financially (or that may affect you in the future), you should seek legal advice before deciding it "isn't that bad."

You like your doctor and don't want to harm them

Many people like their doctors — that's why they chose to work with them. But unfortunately, being a nice person doesn't mean that he or she didn't cause real harm to you. And even if your doctor generally provides good care, that also doesn't mean they didn't make a serious mistake in your particular instance.

If your doctor didn't provide you with the appropriate standard of care, you deserve to be compensated for any resulting harm. And again, by holding your doctor accountable, you may also help keep him or her from injuring other patients in the same way. A medical malpractice lawsuit does not mean the doctor will automatically lose his or her license or go out of business. While the doctor will have to participate in the legal process, he or she will still likely be able to see patients and work as usual. The state medical board may also investigate, and the doctor may face consequences such as censure or mandatory training, but license revocation is rare. It's usually reserved for only the most extreme cases. Your attorney can help you understand all the potential consequences of filing a claim.

Of course, deciding whether to sue your doctor is entirely up to you. If you want your doctor to continue treating you, then it's not a good idea to sue him or her. But you should keep in mind that if you don't pursue a medical malpractice claim before the legal deadlines, you will never be able to get compensation for your injuries. You'll have to live with the physical and financial effects of your injuries, and your doctor will never have to face the consequences of the error.

Another thing to remember is that sometimes medical injuries result from systemic errors, and not the mistakes of an individual doctor. In that case, you may not have to sue your doctor as an individual at all. Instead, you would sue the responsible entity, such as the hospital. See [Chapter 1: Introduction — Potential defendants in a medical malpractice case](#). However, it's difficult to uncover these kinds of "hidden" mistakes on your own. This is another reason to consult an experienced attorney as soon as possible.

You're worried about the time and money involved with a lawsuit

Medical malpractice lawsuits generally do take years to resolve. But if you've suffered a serious injury, it's worth the wait. You can help the process along by taking the steps outlined in [Chapter 1: Introduction — What to do if you think you're a victim of malpractice](#) as soon as possible. That includes seeking the advice of an attorney. While you will have to participate in the process, your attorney will do the heavy lifting for you and guide you every step of the way.

You also should not have to pay any costs up front. It's standard for medical malpractice lawyers to take cases on contingency. This means that they won't get any attorneys' fees unless they win a settlement or award for you. They'll also advance any expenses, such as fees for medical experts, obtaining records, and depositions, which will also be reimbursed from any amount they win for you. If a lawyer insists you pay fees up front, you should find a new lawyer immediately.

You're worried about what your friends and family will think of you

Fear of looking bad is completely normal. But you also have to keep in mind that the consequences of medical malpractice are deeply personal and affect you in ways that only you know. Your friends and family may be empathetic, but they can never truly understand how the pain and suffering, medical bills, and lost wages are truly affecting you. Friends and family who have your best interests in mind should understand how important compensation is for you to move on with your life.

Chapter 4: Pursuing a Medical Malpractice Lawsuit

While your attorney will guide you through the entire process, it's helpful to have at least a basic understanding of the legal process. Knowing what to expect can help you alleviate some stress, avoid mistakes that could hurt your case, and gather the right evidence. Below is a basic overview of how medical malpractice cases work.

Statute of limitations

One of the most important things to know about medical malpractice is that there's a strict legal deadline for filing a lawsuit. This is called the "statute of limitations." In New Jersey, the statute of limitations gives you only two years to file your lawsuit. For birth-related injuries, cases filed on behalf of a minor plaintiff generally must be started prior to the minor's 13th birthday. If you file after this deadline, the court will likely dismiss your case.

The two-year timeframe generally starts on the date the harm was inflicted — that is, on the date of the alleged medical error. Sometimes, however, the clock starts running on the date you discovered (or could've reasonably discovered) that you were harmed. For example, if you had surgery but didn't discover until three years later that the surgeon left a surgical instrument in your body, you might have two years from the date of that discovery. When you consult with an attorney, they'll confirm that the statute of limitations hasn't passed for your case.

Also keep in mind that state-owned medical facilities and state-employed health care providers are entitled to special notice of your intention to file a lawsuit. You must give this notice within 90 days of the malpractice. This is another reason to consult an attorney right away. If you fail to give proper notice, your claim may be barred.

Elements of medical malpractice claim

While it's always unfortunate when a doctor makes a mistake, a medical error alone is not enough to win a medical malpractice case. Proving a medical malpractice claim actually requires showing four things (called "elements"):

- **The defendant had a duty to you.** Medical providers have the duty to treat their patients with the same skill and care ordinarily used by a reasonably well-qualified professional in the same or similar circumstances. This duty arises as soon as there's a provider-patient relationship. But what qualifies as the appropriate standard of care is often hotly contested. Attorneys on both sides will enlist the help of medical experts to try to establish the standard of care.
- **The defendant breached their duty.** Whether there was a deviation from the standard of care will also be established through the evidence, including medical records and expert testimony. The question is whether a reasonable person (or entity) in the medical provider's same circumstances would have acted the same way. Did they do something they shouldn't have? Or did they fail to do something they should have? If the medical provider behaved unreasonably (or "negligently"), they are legally liable for any injury or harm that resulted.

- **The breach of duty caused injury to you.** You must also prove that the negligent care was a cause of your injury. In other words, you have to show evidence that if it weren't for the provider's negligence, you wouldn't have been injured in the same way. Proving this can get complicated, and this is a common point of defense. For example, a doctor may argue that even if he or she did commit an error, the injury was caused by something else and would've occurred even if the doctor hadn't committed the error.
- **You suffered damages as a result of the breach.** Lastly, you also have to establish the extent of the damage caused by the defendant's errors. Your losses may be economic, such as medical bills and lost wages. They can also be non-economic, such as diminished quality of life due to pain and suffering, or disability.

If your case goes to trial, a judge or jury will decide whether or not malpractice occurred and the amount of damages if it did occur. If, during the process, certain legal requirements aren't met, the judge may dismiss the case.

Note that in general, only the injured patient can sue for medical malpractice. The exception is if the patient can't advocate for themselves due to age or incapacity. In that case, a family member might sue on their behalf. If a patient dies, certain family members may also be able to start a wrongful death lawsuit.

Building a medical malpractice case

Building a strong medical malpractice case requires gathering evidence of the medical error. Your attorney will thoroughly investigate your case and help gather evidence, but as soon as you suspect malpractice, you should start collecting as much information as you can. Below is an overview of the types of evidence that you'll need in your medical malpractice case.

Medical records

Your medical records will be one of the most important pieces of evidence in your case. These records may include, among other documents:

- Evaluations
- Physicians' notes
- Test results
- Radiology images
- Prescriptions
- Treatment plans

You have the right to obtain copies of your medical records. It's best to get these records as soon as you suspect malpractice. If you were cared for by multiple medical providers, you may have to make separate requests to each provider. Note that the provider may not charge you a "search" fee or deny your request because you have unpaid bills. They may only charge a reasonable fee for copying and mailing the records.

Other evidence

In addition to your medical records, you should document as much information about your treatment as you can. That includes names of medical professionals you interacted with, such as doctors, nurses, technicians, and administrators. It's also important to write down what you can remember about your interactions. Your attorney may interview some of these individuals later on as part of building your case.

It's also helpful to try to create a timeline. Your timeline should include any relevant events, such as dates of appointments, any hospital stays, and treatments. This information will help your attorney make sure you have all the right evidence for your case.

The role of experts

Engaging the right medical experts is a critical part of a medical malpractice case. Any expert engaged in your case must be a licensed physician in the same field as the defendant and be able to administer the same care that's the subject of the case. Your attorney will have to enlist the help of such experts to review your case, provide an "Affidavit of Merit," and provide testimony at trial. See [The litigation process](#) below.

Without expert testimony, you generally won't be able to establish the appropriate standard of care, whether the defendant deviated from that standard, and whether that deviation caused your injury. Sometimes, the error may be so obvious that an expert isn't needed to testify as to what the standard of care should be. But this is rare. An example would be if a doctor operated on the wrong leg. But even in this case, you'll need medical experts to establish your damages.

Given the importance of experts to your case, you should choose an attorney with access to qualified experts. Having highly qualified experts on your side can have a big impact on your ability to win a case. The better the expert, the more believable the expert will be during trial.

Evidence that can't be used

Sometimes, the defense will have documentation of their error that you will not be able to use in your case. In 2004, the New Jersey Patient Safety Act (the "PSA") was passed. Under the PSA, health care facilities must report serious medical errors to the Department of Health. The purpose of the PSA is to encourage healthcare facilities to internally review serious medical errors so that they can prevent similar errors in the future.

Any documents created by healthcare facilities solely to comply with the PSA are confidential. This means in a medical malpractice case, you won't be able to get these materials and use them as evidence against the medical provider.

Valuing a medical malpractice case

Valuing a medical malpractice case is not an exact science. It will largely depend on the type of malpractice and your resulting injuries. Generally, however, the compensation (or “damages”) you can receive in a medical malpractice case falls into three categories:

- **Economic damages.** Economic damages are compensation for all your monetary losses related to your claim. There’s no limit to the amount of economic damages you can win in New Jersey — you can claim all out-of-pocket expenses related to your injury, as long as you have evidence of them. This may include compensation for past and future medical bills and expenses, lost wages due to time away from work or inability to work, and any other expenses arising out of your injuries.
- **Non-economic damages.** Non-economic damages include compensation for things like pain and suffering, loss of enjoyment of life, emotional distress, disfigurement, disability, and impairment. In a wrongful death case, damages could also include loss of consortium and loss of emotional support. Like economic damages, non-economic damages are unlimited in New Jersey. A jury can award any amount for these losses based on the evidence.
- **Punitive damages.** Punitive damages are sometimes imposed where the defendant acted intentionally or with extraordinary recklessness, malice, or fraud. Such damages are reserved for cases that involve extreme malpractice. New Jersey doesn’t impose an overall cap on the amount of damages a plaintiff can receive in a medical malpractice lawsuit, but under New Jersey Statute 2A:15-5.14, it does limit punitive damages. This limit is \$350,000 or five times the amount of compensatory damages (economic and non-economic damages), whichever is greater.

The litigation process

Once you’ve consulted with an attorney and a medical expert has reviewed your case, your attorney will determine whether it makes sense to move forward with a lawsuit. If they decide to take on your case, here’s what the legal process will look like:

- **Filing and serving a Complaint.** The Complaint is a document that states the alleged malpractice, your injuries, and the compensation that you’re seeking. Your attorney will prepare this document for you and file it with the court, which officially begins your lawsuit. A copy of the Complaint must also be delivered (or “served”) to the defendant, along with an official notice of the lawsuit called a “Summons.”
- **Defendant’s Answer.** Once the defendant receives the Complaint, they’ll have to file an official response called an “Answer.” In their Answer, they’ll admit or deny the allegations in the Complaint. The Answer will also include any defenses and counterclaims.
- **Affidavit of Merit.** Within 60 days of the defendant’s Answer, under New Jersey law, your attorney must file an “Affidavit of Merit.” In this affidavit, an “appropriate licensed person” (usually a doctor in the same field as a defendant) declares under oath that

there's a reasonable probability that the care, skill, or knowledge exercised by the defendant fell outside acceptable professional standards or treatment practices. In other words, the affidavit states that the medical expert believes there's a valid basis for the lawsuit. If you don't serve a proper Affidavit of Merit, your lawsuit may be dismissed.

- **Discovery.** After the Complaint and Answer are both filed, the discovery phase begins. Discovery is the formal process of exchanging information, documents, and other evidence so the attorneys can prepare their cases. During this time, various parties will also have to give "depositions." Depositions are sworn, out-of-court testimonies in the form of question-and-answer sessions with the attorneys. As the plaintiff, if requested by the defendant, you may have to undergo an Independent Medical Examination ("IME") as well. The IME is conducted by a doctor chosen and paid for by the defendant. The purpose is not to provide treatment or care, but to gather information about your injuries and condition that can be used in the lawsuit.
- **Motions.** Throughout the process, attorneys may make various requests to the court called "motions." Examples include motions to dismiss (throw out the case because of a legal deficiency), compel discovery (order the other side to respond to a discovery request), or change venue (move the case to a court in another location).
- **Trial.** If the parties don't reach a settlement agreement, after discovery the case will proceed to trial. However, a settlement can still be reached any time before the judge or jury makes a decision. During the trial, both attorneys will give opening statements, present all evidence, call witnesses (including medical experts), and conclude their cases with closing arguments. The judge or jury will then decide who wins the case and the amount of damages, if any (called the "verdict").
- **Appeal.** Once the trial is over, the losing side may decide to "appeal" to a higher court. An appeal is basically asking the higher court to review the actions of the trial court and make sure the law was properly applied. If you win an appeal, it's possible to reverse the decision of the trial court.

While there's no set time frame for resolving a medical malpractice claim, preparing a case and going through the trial process can take years. How long your case will take depends on how busy the court is, the complexity of your case, and how willing all parties are to cooperate and negotiate.

The modified comparative fault rule

When pursuing a medical malpractice case, you'll have to keep in mind that New Jersey follows a modified comparative fault rule. This means that if you are partially responsible for your injuries, any damages will be reduced in proportion to your percentage of fault. If your percentage of fault is greater than all of the defendants' fault combined, then recovery will be barred completely. The judge or jury in your case will be responsible for assigning fault.

An example of this rule would be if a doctor was negligent in setting a broken bone, but you also engaged in heavy lifting against the doctor's orders. A jury could find that both the doctor's

negligence *and* your actions contributed to the bone not healing properly. If the jury finds that you were 10% at fault, the doctor was 90% at fault, and the damages are \$100,000, then you would recover only \$90,000. If the jury found you 51% at fault for the injury, you wouldn't recover anything.

Settlements and mediation

Throughout the legal process, the attorneys may try to resolve the case out of court through negotiations. Resolving a case out of court is called a "settlement." While some cases will settle, it's not guaranteed. Medical malpractice claims typically settle less often than other types of cases. This is because the defendant-physician usually must agree and consent to any settlement — even if their insurance company wants to settle. And many doctors prefer to aggressively defend the cases, since if they win, the malpractice won't go on their record.

Settlement may be reached through direct negotiations. Or sometimes, when both parties to a lawsuit want to resolve the claim out of court, they may also agree to mediation. Mediation is a proceeding where a neutral third-party, called the mediator, helps the plaintiff and defendant reach a settlement. Mediators are often retired judges, attorneys, or other court personnel.

There are no set rules for a mediation. Instead, it's usually guided by the mediator's own style and method. The mediator will listen to both sides and make sure everyone gets a chance to tell their story and ask questions. The idea is that this process will help both sides come to an understanding and fair compromise. Of course, sometimes that isn't possible. If you can't reach a compromise through mediation, you can still proceed with your case in court.

It's important not to take any settlement offer without consulting an attorney first. Your attorney will be able to review your case and engage the right medical experts to confirm the value of your case. Settlement offers — especially early in the process — are typically much less than the amount your case is truly worth. It takes a skilled negotiator with medical malpractice experience to reach a settlement that's fair. Sometimes, it may not be possible to reach a settlement that properly compensates you for your injuries. In that case, it may be best to go to trial. Whenever you're presented with a settlement offer, your attorney will be able to advise you on the best path forward.

Chapter 5: Frequently Asked Questions

If you suspect you or a loved one has been the victim of medical malpractice, you likely have a lot of questions about your case. Below are answers to some common questions we receive about medical malpractice in New Jersey. But keep in mind that every case is different. If you'd like to discuss the specifics of your case, you should contact a New Jersey medical malpractice attorney.

1. How do I know if I have a medical malpractice case?

It's difficult to know if you have a medical malpractice case without the help of an experienced medical malpractice attorney. When you consult with an attorney, they'll review your case to make sure the [statute of limitations](#) hasn't lapsed. They'll then analyze all relevant medical records and evidence to determine whether the facts support a claim.

If the facts appear to support a case, they'll select appropriate medical experts who are willing to review the case. You'll only have a viable claim if the medical expert agrees that there's support for a case, and the expert is willing to give an opinion on the health care provider's conduct. See [Chapter 4: Pursuing a Medical Malpractice Lawsuit](#) for more information about building a medical malpractice case.

2. How much is my medical malpractice case worth?

The value of your case depends on the facts, including the type of malpractice and the harm you experienced. But valuing a case isn't an exact science — there's no formula that will be able to tell you how much you may recover.

Compensation typically includes:

- economic damages, such as medical expenses, lost wages, and other out-of-pocket expenses; and
- non-economic damages, such as compensation for pain and suffering, loss of enjoyment of life, or disability.

In extreme cases, you may also be able to recover punitive damages. To better understand how much your claim is worth, you should consult with an attorney. See [Chapter 4: Pursuing a Medical Malpractice Lawsuit — Valuing a medical malpractice case](#).

3. How much will it cost me to bring a medical malpractice lawsuit?

It's standard for medical malpractice attorneys to provide initial consultations free of charge. So if you suspect medical malpractice, you should contact an attorney right away. If an attorney believes you have a viable claim, they'll usually take the case on a contingency basis. This means you won't have to pay any attorneys' fees upfront. Instead, the fees will come out of any money they win for you.

In New Jersey, court rules limit the amount a lawyer can charge you in a contingent fee arrangement. Generally, the fee can be no more than:

- 33⅓% of the first \$750,000;
- 30% of the next \$750,000;
- 25% of the next \$750,000;
- 20% of next \$750,000; and
- on all amounts in excess of the above, a reasonable fee determined by application to the court.

Your attorney will also likely advance all out-of-pocket expenses for litigation costs (filing fees, deposition fees, copying charges, etc) and expert fees. These expenses will be reimbursed from your settlement or trial award. Medical malpractice cases tend to be aggressively defended, so these expenses can add up to substantial amounts. Because medical malpractice attorneys typically work on contingency and advance expenses, they'll usually only pursue cases if there's the possibility of a significant financial payout.

4. How much time do I have to file a medical malpractice lawsuit?

New Jersey's statute of limitations generally only gives you two years to file your lawsuit. This usually starts on the date the harm was inflicted — that is, the date of the alleged medical error. Sometimes, however, the clock starts running on the date you discovered (or could've reasonably discovered) that you were harmed. If you try to file a lawsuit beyond the deadline, the court will dismiss your case.

Also keep in mind that state-owned medical facilities and state-employed health care providers are entitled to special notice of your intention to file a lawsuit within 90 days of the malpractice. This is another reason to consult an attorney right away. If you fail to give proper notice of your claim, your lawsuit may be barred.

See [*Chapter 4: Pursuing a Medical Malpractice Lawsuit — Statute of limitations.*](#)

5. Can I still have a claim if I signed a consent form?

Yes. Even if you sign a consent form, the doctor still has a duty to provide medical care in accordance with accepted medical standards. If they fail to do so, you could still have a claim.

The doctor also must ensure that you're actually fully informed about the procedure and understand the risks before proceeding with the treatment. Signing a form alone may not be enough. Lack of informed consent may be grounds for a malpractice suit. See [*Chapter 1: Introduction — Common forms of medical malpractice.*](#)

6. Will I have to go to court?

Medical malpractice cases are hard fought. They're often extensively litigated before the parties reach a settlement — if a settlement is reached at all. Medical malpractice claims typically settle

less often than other types of cases because the defendant-physician must usually agree and consent to any settlement — even if their insurance company wants to settle. Many doctors prefer to aggressively defend cases, because if they win, the malpractice won't go on their records.

If your case doesn't settle before trial, you'll have to appear in court. You may also have to attend other proceedings, such as negotiations, medical examinations, and depositions. Your attorney will guide you through the entire process.

7. How long will a medical malpractice case take?

There's no set frame for resolving a medical malpractice case. The length of a medical malpractice case varies, but in general it can take years. The more complex your case is, the more time it will take.

First, you'll need to consult with an attorney. If your attorney thinks you may have a claim, they'll investigate further and engage a medical expert to review your case. If they still believe you have a viable claim, they'll then proceed with filing the case. A period of negotiations, discovery, and motions will follow. And if the parties don't reach a settlement, the case will go to trial. This process takes a lot of time. The cooperation of the defendants and their insurer to reach a settlement will also affect the timeline.

8. Should I take a settlement offer?

It's important not to take a settlement offer without consulting an attorney. Your attorney will be able to review your case and engage the right medical experts to confirm the value of your case.

Settlement offers — especially early in the process — are typically much less than your case is truly worth. It takes a skilled negotiator with medical malpractice experience to reach a fair settlement. And sometimes, it may not be possible to reach a fair settlement at all. In that case, it may be best to go to trial. Whenever you're presented with a settlement offer, your attorney will be able to advise you on the best path forward.

9. How does medical malpractice settlement mediation work?

When both parties to a lawsuit want to resolve the claim out of court, they may agree to mediation. Mediation is a proceeding where a neutral third-party, called the mediator, helps the plaintiff and defendant reach a settlement. Mediators are often retired judges, attorneys, or other court personnel.

There are no set rules for a mediation. Instead, it's usually guided by the mediator's own style and method. The mediator will listen to both sides and make sure everyone gets a chance to tell their story and ask questions. The idea is that this will help both sides come to an understanding and fair compromise. Of course, sometimes that isn't possible. If you can't reach a compromise through mediation, you can still proceed with your case in court.

10. Will my case or settlement become publicized in the media?

If you file a lawsuit, it will generally become part of the public record. The rulings in a case will also be public. That means it's possible for it to be picked up by the media. If you settle out of court, however, you can keep many sensitive details and the settlement amount out of public records. Your settlement agreement may also be drafted in a way that obligates all parties to keep the details confidential.

11. What should I do if a loved one died as a result of medical malpractice?

If you believe your loved one died as a result of medical malpractice, you should contact an experienced medical malpractice attorney right away to evaluate your case. You may be able to bring a wrongful death action. Keep in mind that preparing a wrongful death lawsuit requires a great deal of investigation, and there are deadlines for filing your action. This means you should take action as soon as possible.

12. What if I have other questions about medical malpractice?

If you have other questions about a potential medical malpractice case, you should contact a lawyer right away. As noted above, there's a [time limit for filing a claim](#). If you wait too long, it may be too late to file a lawsuit.

At Rosenblum Law, we understand the devastating effects medical malpractice can have on your life. We'll thoroughly evaluate your situation and determine the best course of action for your particular circumstances. If we're able to take on your case, we'll guide you through the legal process and fight on your behalf for maximum compensation.

For a free consultation, call us today at 888-235-9021 or contact us through our website at www.rosenblumlaw.com/contact. We're passionate about helping all our clients get the compensation they're owed — and we won't take a fee unless we win a settlement or verdict for you.