

Medical Malpractice

What is professional negligence?

“Professional negligence” means the failure of a provider of health care, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.

Why is professional negligence not called medical or dental malpractice?

In 2015, the Nevada Legislature repealed, revised and renamed several statutes to consolidate the various related medical negligence causes of action under one term — professional negligence.

What is a professional negligence claim?

A professional negligence claim is a lawsuit filed by a patient or their heir(s) against a provider of health care. The lawsuit seeks to recover money damages from the provider as compensation for an alleged injury and/or death related to the medical care at issue. Due to the specialized nature of professional negligence actions, as well as the time and monetary costs needed to pursue such a lawsuit, most lawyers will only accept those cases with strong evidence of a serious injury.

What is NOT a professional negligence claim?

Not every bad or unexpected outcome results in a viable professional negligence claim. Patients often present to health care providers with serious or even fatal medical problems that are untreatable, or otherwise have a low probability of success. To constitute a viable professional negligence claim, there must be expert medical testimony that a specific negligent act or inaction of the provider was the direct cause of the bad outcome. Further, even if the provider made a serious error, the claim is not viable if the error did not result in an injury to the patient.

Who is the provider of health care?

A provider of health care can be any of the following: a physician, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered

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physical therapist, podiatric physician, licensed psychologist, chiropractor physician, doctor of Oriental medicine, limited license holder for radiologic imaging, medical laboratory director or technician, licensed dietitian or a licensed hospital, clinic, surgery center, physicians' professional corporation or group practice that employs any such person and its employees.

Who is NOT the provider of health care?

Anyone not listed by statute as a provider of health care cannot be sued for professional negligence. Specifically, the following practice areas are considered wellness services: anthroposophy, aromatherapy, traditional cultural healing practices, detoxification practices and therapies, energetic healing, folk practices, Gerson therapy and colostrum therapy, healing practices using food, dietary supplements, nutrients and the physical forces of heat, cold, water and light, herbology and herbalism, reiki, mind-body healing practices, nondiagnostic iridology, noninvasive instrumentalities and holistic kinesiology.

What are some common professional negligence claims?

In a dental setting, patients often complain of nerve pain or damage caused by ineffective or delayed treatment. The fact that another dental provider remedied the problem is insufficient to constitute a viable professional negligence claim. Remember that an expert affidavit is required to demonstrate that the first provider's care and treatment was below the standard for the profession.

In a medical context, there have been many cases alleging failure to timely consult with appropriate specialists, untimely activation of Systemic Inflammatory Response Syndrome (SIRS) protocols and administration of contra-indicated medications to dementia patients.

How can I start my professional negligence lawsuit?

A lawsuit must be filed in the form of a complaint. The complaint must include an affidavit from a medical expert who practices in the same or a substantially similar field as the provider of health care being sued. The affidavit must explain why the bad result was caused by the act or inaction of the provider, and was not a natural and unavoidable result of the patient's age or illness.

An affidavit is not required in a few narrowly defined cases, and the provider is presumed to have caused the bad result; although the provider may dispute the presumption. Those cases are where:

- A foreign substance other than medication or a prosthetic device was unintentionally left within the body of a patient following surgery;
- An explosion or fire originating in a substance used in treatment occurred in the course of treatment;
- An unintended burn caused by heat, radiation or chemicals was suffered in the course of medical care;
- 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
- A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of a patient's body.

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What is the Statute of Limitations for filing a professional negligence claim?

A claim based on professional negligence generally must be filed within “3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first.” If the provider conceals “any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care,” the statute of limitations is tolled. In other words, the time period of the concealment does not count towards the time you have to file your lawsuit.

As these timeframes are relatively short, a person wishing to pursue a professional negligence claim should consult with an attorney immediately upon discovery of an injury and suspected negligence. The attorney will need time to gather facts, review medical records, and decide whether or not to take the case so as not to deprive the client of the ability to seek a second opinion if necessary.

How much money am I entitled to if I win?

- It depends on many factors. For starters, Nevada law defines damages (the amount of money to be paid) as either economic or non-economic. Economic damages are those that can be approximated as flowing from the injury, such as the cost of treatment, loss of earnings, and a loss of earning capacity. There is no cap on economic damages. Non-economic damages in Nevada are capped at \$350,000 and include such things as pain and suffering.
- Pragmatically, most successful medical malpractice claims are covered by insurance policies. Like other types of insurance, there are policy limits addressing the maximum amount a company will pay for a successful claim. Minimum coverage on these policies tends to be \$1 million per claim and up to \$3 million for all claims during the policy term.

Can I complain to anyone other than the courts?

A licensed medical professional is subject to the disciplinary authority of the regulatory agency that issued the provider’s license. For example, if a Medical Doctor (M.D.) violates the Nevada Medical Practice Act, a patient may complain to the Nevada State Board of Medical Examiners. Following an investigation, the board may file disciplinary charges against the doctor, which could result in probation from practice or other sanctions. Filing a complaint with the board is not the same as starting a lawsuit in court. Even if your charges are substantiated at a board hearing, the board cannot award any money damages to you for alleged injuries caused by the doctor.

How do I find an attorney with experience in professional negligence matters?

As a cautionary note, you should seek an attorney with specific experience in these types of cases. While there are many similarities between professional negligence and personal injury cases, the differences could result in your damages being reduced or your case being dismissed altogether.

The State Bar of Nevada’s Lawyer Referral Service (LRS) is a free resource that connects callers with attorneys who accept cases in the requested area of law. For more information, contact LRS at (702) 382-0504, or toll-free in Nevada at 1 (800) 789-5747.