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Medical Negligence

If you've suffered an injury or illness or you are a dependent of someone who has died as a result of an injury or illness caused by the negligence of a medical practitioner, hospital or another health services provider, you may be able to claim compensation.

What is medical negligence?

Medical negligence, also referred to as medical malpractice, is a phrase used to describe circumstances where the duty of care owed to a patient by a doctor, hospital or allied health professional is breached and as a result of the breach, the patient suffers injury, loss and damage.

Medical negligence generally falls into one of following four categories:

1. Whether the treatment undertaken was indicated;
2. In the provision of advice with respect to the medical treatment and any risks associated with the treatment;
3. The provision of the medical treatment; and
4. The post treatment care provided.

The types of medical providers you can claim against include general practitioners, surgeons, specialist doctors, public and private hospitals, dentists and allied health professionals such as physiotherapists and chiropractors.

Given the complexity of medical treatment, sometimes treatment does not go as expected and this does not necessarily mean there was negligence involved.

Evidence needs to be obtained to establish that the treatment was not provided with due skill, care and attention and in accordance with competent professional practice at the time the treatment was provided.

How long do I have to make a claim?

Generally, you have 3 years in which to lodge a claim for injury, loss and damage arising from negligent medical treatment. In limited circumstances, an application for an extension of time may be possible.

It is essential that you get legal advice about a potential claim from a lawyer experienced in medical negligence claims early. Make sure it is well before the 3 year time limit in order to avoid a claim becoming statute barred, to ensure all of the necessary investigations can be carried out and to ensure you're complying with all court rules that may apply.

If the claim involves a child who was under the age of 18 at the time of the negligent act, the 3 year time limit begins once the child turns 18 and they have until they are 21 to lodge the claim. However, even in such circumstances, it is necessary for the claim to be investigated as early as possible to preserve evidence and to notify the negligent party of the claim within 6 years of the date the claim arose.

The limitation date is further extended for people suffering from a mental incapacity.

What might I be entitled to?

The majority of claims settle out of court and well before a trial.

Andersons have assisted many clients to obtain compensation for injuries sustained as a result of negligent medical treatment, and cases can and do succeed.

Medical evidence from appropriate specialists can be obtained when the facts in a case support the position that a doctor and/or hospital has breached the duty of care owed to a patient and damage has resulted from that breach.

The types of compensation that you may be entitled to include:

- Lump sum payments for pain and suffering if the injury is significant;
- Loss of wages;
- Medical expenses;
- Domestic and other care services.

At Andersons, we can provide initial advice on your particular circumstances free of charge and assist you with the claims process should we consider an investigation into the circumstances is warranted and you wish to pursue a claim.

For more information on medical negligence and all things related to personal injury claims, please visit our website: andersons.com.au/services/medical-negligence-claims/