

Medical Malpractice

Article

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Overview

According to Wikipedia, medical malpractice is, “professional negligence by act or omission by a health care provider in which care provided deviates from accepted standards of practice in the medical community and causes injury or death to the patient.”

A medical malpractice lawsuit can be filed by the injured patient against any licensed health care provider. Examples of medical malpractice include:

- failure to provide proper treatment for a specific medical condition
- failure to diagnose or misdiagnose a condition or disease
- not treating a condition in a timely manner

Comparative Negligence

California follows a comparative negligence rule: “A claimant’s negligence reduces his recovery, but will never bar recovery - *Li v. Yellow Cab Company*, 13 Cal. 3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975).”

Statute of Limitations

A medical malpractice action must begin within three years of the injury date or one year from the date the patient discovers the injury – whichever occurs first. This applies to anyone six years or older. See California Civil Proc. Code § 340.5 (West 1992).

California Rules

California medical malpractice laws are to protect individuals from the negligence of a healthcare provider to cause harm or injury. California has a \$250,000 limit on non-economic damages that can be awarded.

California requires that a physician be given 90 days’ notice of the intention of filing a malpractice lawsuit. The state allows and enforces contracts for arbitration on such claims. In addition, the state imposes a scale for attorney fees, which are not to exceed 40% of the first \$50,000 recovered, 33-1/3% of the next \$50,000, 25% of the next \$50,000 and 15% of damages over \$600,000.

If the patient (plaintiff) dies before payment is completed, the judgment may be modified by the court. However, payment continues to whoever the plaintiff owed a duty of support.

Conclusion

It is a necessity to hire an attorney who is experienced and knowledgeable in California Medical Malpractice cases. This type of lawsuit can be extremely expensive to pursue; you need an attorney who is conversant with medical issues.