

# A MEDICAL MALPRACTICE VICTIM'S GUIDE TO COMPENSATION IN NEW YORK

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**Medical malpractice** can cause significant and permanent injuries. Our society recognizes the right to obtain compensation if we are harmed by someone else, whether through an accident or by medical negligence. Negligence is typically defined as someone who is careless. In a medical malpractice case, negligence is defined as being a departure from good and accepted medical care. In an accident case, negligence is really someone's carelessness that caused harm.

**Compensation** is defined as the right to be paid for something that is owed. It's not a handout. It's not a give-away. It's not a winning lottery ticket, or a slot-machine jackpot. Accountability is the obligation to account for one's actions. Most people will agree that each person should be held accountable for their actions. In our society of justice, if a wrongdoer is not held accountable for their actions, there is a good chance that person will do that wrongdoing again and again. If we are a society of people who require that individuals take responsibility for their actions, then a wrongdoer is responsible not just for the happening of an accident, but also the injuries that arise from that accident. That's what compensation is about.

How does an injured medical malpractice victim get compensated for their injuries?

1. The injured victim and their family needs to meet with an experienced medical malpractice lawyer- someone who has handled cases like yours. The attorney will obtain your medical records from the doctors and hospitals who treated you.

Once all records are obtained, your lawyer will send your records out to a medical expert, usually someone who has the same specialty as the doctor who you believe caused you harm.

Only after confirming that there were (1) Departures from good medical care, and (2) That those departures were substantial causes of your injuries, and (3) That your injuries are significant or permanent, can a lawsuit be started on your behalf.

2. Compensation comes in one of two forms:

(1) A settlement, or

(2) A verdict

**A settlement** is a guaranteed amount that a doctor, hospital or their insurance company has agreed to pay to resolve your case. In order to make your settlement valid, there are specific ways in the State of New York to do this. The most important one is to have the settlement done in 'open Court', and place the settlement details 'on the record' with a court reporter. If the settlement agreement is not done in Court, and is done by letter

between the attorneys, there must be specific details about the agreement in order to make it binding.

There was a recent case in New York where a lawsuit was brought by a malpractice victim and both sides eventually agreed to settle the case. The terms of the agreement were made and confirmed by letter to the defense attorney. Before the settlement could be processed by the insurance company, the victim died, and the insurance company tried to get out of the deal by claiming that there was no binding agreement to begin with. Unfortunately for the victims' family, a New York appeals Court agreed with the insurance company and held that since there was no valid binding settlement agreement while the victim was alive, there was no binding settlement once he died.

Needless to say, I'm sure the victim's family brought a legal malpractice lawsuit against their attorney.

**A verdict** allows a victim to 'enter judgment' against the doctor or hospital for the amount that has been awarded. In addition to the award, interest will be added to the award for past pain and suffering from the time of the malpractice until the date of the verdict.

Once a judgment is entered, the attorney can make every effort to collect against the doctor, hospital or its' insurance company.

### **Elements of compensation:**

1. Pain & suffering

2. Economic loss

(a) Medical & hospital bills

(b) Lost wages

(c) Lost future income

(d) Lost benefits

(e) Lost future benefits

(f) Future medical expenses, including doctors, hospitals, surgery, rehabilitation, medical insurance premiums, nursing, medications & medical equipment

### **Pain & Suffering**

A settlement for pain and suffering is based on what other similar cases have settled for. Many times your lawyer can determine what 5 days of suffering is worth in the County in which you have your case. They can try and find similar cases and injuries to what you experienced to get a sense of the value of your particular case.

Having said that, it's important to note that every case is different, and every person who suffers an injury handles it differently. That's why there's such great fluctuation between similar cases, especially in different parts of the State. A jury in upstate Albany County may view a fractured arm as having a lower value than a jury in Manhattan or the Bronx.

Importantly, pain and suffering awards are tax-free in New York.

### **Economic Loss**

This is an element of 'damages' that is easily calculated. If the victim was working, we can piece together what they were earning at the time of the malpractice, and then project forward what they likely would have earned in the future had they not suffered such horrible injuries.

In order to help a jury understand the value of money, medical malpractice lawyers will often hire economists, experts at evaluating and discussing the value of money. We all know that the value of a dollar 20 years ago was much different than it is today. That's known as inflation. An expert economist is brought in to explain to a jury that a dollar today will not buy the same things 10, 15, 20 and even 30 years from today. That is why when we ask a jury to make an award today, they must recognize that this award will be used to help pay for medical expenses for the rest of that victims' life. If an award is made to pay for something that costs \$100 dollars today, in 15 years that same \$100 will not be able to buy the medical device that he used to buy it 15 years earlier. It would not be fair to the victim or his family to dig into their own pockets to pay for those expenses, especially when they did nothing to contribute to the victim's injuries. It should be the total responsibility of the person who caused the harm.

To determine what medical expenses are likely to be incurred in the future, medical specialists are brought in to discuss the victim's injuries and what they can expect to happen in the future. We often include rehabilitation experts, and vocational experts to explain what type of employment this handicapped individual might be capable of doing in the future, and what kind of income they could ever be expected to earn.

### **Conclusion**

These are the basics to understanding how a medical malpractice victim obtains full and fair compensation in the State of New York.