

## INTRODUCTION

Every healthcare professional owes a duty of care to their patients. This not only applies to surgeons, doctors, nurses and midwives but also extends to other medical professionals such as dentists, opticians, audiologists and psychiatrists.

If you, or a family member, have suffered injury while receiving medical care you may be entitled to take a claim for compensation for medical negligence.

## WHAT IS MEDICAL NEGLIGENCE?

Medical negligence is a rapidly expanding area of litigation in Ireland.

Medical Negligence is essentially an act or omission by a health care professional which is below the accepted standard of care and which results in injury or death to a patient.

There are four main steps in proving medical negligence:

1. **Duty of Care** – a legal duty is owed whenever a health care provider or hospital undertakes to treat a patient;
2. **Breach Duty of Care** – it must be shown that the health care provider in question failed to follow the relevant standard of care;
3. **Injury** – the breach of duty must have caused injury and;
4. **Damage** – Regardless of whether or not the health care provider was negligent, there is no basis for a claim in negligence without damage, be it monetary, physical or emotional.

Medical negligence can happen because of:

- **Diagnosis** – i.e. misdiagnosis or delayed diagnosis;
- **Treatment** – i.e. errors in the medical treatment such as incorrect medication, surgical errors, exposure to infection (MRSA etc) or;

- **Disclosure** – i.e. failure to inform the patient of the risks of the treatment or procedure.

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## BLAME GAME

Medical negligence cases are very complex because the cause of the harm suffered can be difficult to pinpoint.

In a lot of cases, the person is sick before they ever get to hospital, or they are suffering from a serious underlying condition, such as cancer.

One of the tasks which the solicitor faces is to identify what the outcome would have been if it was not for the negligence of the healthcare professional.

The other side will almost always argue that either the harm caused was a result of the illness the patient had before they ever attended. They often argue that in the case of a mistake in surgery, that the mistake was within the realm of acceptable error.

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## DAVID AND GOLIATH

Another difficulty is that medical negligence cases are still David and Goliath type challenges.

They involve you (an individual) taking on the State which has deeper pockets and no empathy with the impact the event has on the individual concerned. They have no emotional stake in the outcome.

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## OUTSIDE VIEWPOINT

The medical profession in Ireland is a small community. It is often difficult to find suitable experts based in Ireland who will be willing to provide a report which might be used to support a claim in medical negligence.

For this reason, it is usually necessary to retain medical experts based in the UK, and sometimes further afield.

It is regrettable that a patient who suspects that they may have been the victims of medical negligence are put to the additional inconvenience and expense of having to retain a foreign expert.

However, we make this step easier by using one of the experts from our panel with whom we are used to working with.

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## DO I HAVE A CLAIM IN MEDICAL NEGLIGENCE?

If you, or a family member, have suffered injury due to the actions or inactions of a medical professional you may be entitled to compensation. You will be able to discuss the facts of your situation, in detail, with a member of our medical negligence team.

As experts in the area of medical negligence litigation, we will assess your complaint and assist you in reaching a decision on whether to make the claim or at the very least investigating it further.

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## WHAT STEPS MUST BE TAKEN TO ESTABLISH A POSSIBLE CASE OR "CAUSE OF ACTION"?

Medical negligence claims, in a similar way to personal injury claims, are made up of a series of hurdles. If you do not clear the first hurdle you cannot move on to the next.

To establish a case in medical negligence we need to take these steps:

- Take up copies of all medical records and check them. In some cases we may even send them to a medical records expert for analysis;
- Write to the doctor, health care professional or institution we believe is responsible for the injuries caused;
- Medical experts specialising in the particular area of medicine involved will then be asked to consider whether or not the treatment received was negligent or sub-standard and if so the extent of the damage it caused.

- If we consider that we have enough evidence to prove a case of medical negligence, then we advise starting court proceedings immediately.
- Clinical negligence cases can be settled by negotiation without the need to proceed to a full trial but they are rarely resolved without starting court action.

The Medical Negligence Team at Lynch Solicitors is headed by John M. Lynch, Principal. We have extensive experience in dealing with medical negligence cases, and in representing victims of medical malpractice in the High Court, at public inquiries and compensation tribunals.

We have acted and advised clients in various types of medical negligence cases such as:

- Birth related injuries, such as cerebral palsy;
- Misdiagnosis, such as cancer misdiagnosis;
- Eye injuries as a result of substandard treatment;
- Disabilities caused to limbs as a result of substandard surgical procedures or failure or delay diagnosis of injury;
- Injuries caused as a result of substandard care in provision of prescription medicines;
- Brain injuries as a result of substandard surgical procedure and treatment of care post surgery;
- Injuries caused as a result of contracting infections as a result of clinical negligence, such as MRSA;
- Medical negligence cases for the use of inappropriate surgical techniques and/or faulty or inappropriate surgical equipment or implants, such as the DePuy Hip Implant.

## FOR MORE INFORMATION

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