

5 Essential Steps in a Medical Negligence Claim

What is Medical Negligence?

Medical negligence occurs in South Australia when a doctor, hospital or other health care provider including allied health care and dentists breach their duty of care to a patient by failing to provide medical treatment, care and advice in accordance with due skill, care and attention and in accordance with competent professional practice as accepted in Australia at the time the medical treatment, care and advice was provided.

The negligent treatment, care or advice needs to result in injury, loss and damage known as causation. The extent of the injury, loss and damage will determine the worth of the claim.

Medical negligence can occur in:

- the provision of advice about medical treatment

- the provision of the medical treatment itself and
- in the post treatment care.

Medical negligence can include:

- the provision of incorrect treatment
- the prescription of incorrect medication
- the making of an incorrect diagnosis or
- a failure to diagnose, surgical error and delay in treatment.

Unfortunately, medical negligence does occur and can result in death or serious injury.

It is not the occurrence of a recognised risk of treatment that amounts to medical negligence but when a doctor, hospital or other health care provider is in breach of their duty to the patient in failing to do something or doing something a reasonable doctor in their shoes would not do.

How to make a Medical Negligence claim

If you or a loved one are impacted by medical negligence you deserve compensation for the injury, loss and damage resulting from the negligence.
Every case is different and needs to be investigated based on its own facts.

Medical negligence claims are complex and require careful preparation and the engagement of appropriate, qualified and experienced medical experts to provide opinion.

The following 5 steps are essential in a medical negligence claim

1. Seek legal advice early
Most legal practitioners or law firms acting in medical negligence claims will offer a first free interview and depending on the facts of the case, will usually offer a contingency arrangement whereby legal fees are payable only on the successful conclusion of the claim.

The first free interview will ensure that you make an informed choice about whether or not you wish to proceed with a claim and can assess the financial viability of proceeding with a claim.

Medical negligence claims are one of the most complex types of personal injury claims and require an experienced medical negligence lawyer who will offer advice and support during the lengthy and complex process.

There are time limits that can vary between jurisdictions. The relevant jurisdiction for a claim is where the negligent medical treatment took place. In South Australia there is a 3 year time limit from the date of the negligent act to issue a claim for compensation in court. However, there are a number of pre-action steps that are required to be taken by an applicant before issuing a claim in court.

Expert medical opinion supporting a claim in negligence is usually required before lodging a pre-action claim or submitting a claim in court. In limited circumstances an extension of time may be possible so it is advisable to obtain legal advice even if it is beyond the 3 year time limit.

2. Investigate the claim early
Early investigation of the claim will ensure the preservation of all relevant evidence including your evidence and memory of what occurred, documentary evidence and the evidence of any witnesses.

Early investigation will also ensure the ability to comply with notice periods and limitation dates and preserve your entitlements and minimise the risk of the loss of evidence due to the lapse of time.

A medical negligence lawyer will inform you about the rules and time limitations in filing a claim and will ensure that all necessary evidence required for a successful claim is obtained.

Early investigation of a claim will ensure expert evidence in support of a claim is obtained well before the need to lodge a claim with the court. It will also ensure compliance with the relevant court rules and potentially allow for settlement negotiations to take place before issuing proceedings in court.

3. Evidence is critical
All medical records including hospital records, specialist records, GP records and allied health records need to be obtained. This documentary evidence is the best evidence to prove the doctor/patient relationship. Evidence is required about what went wrong and why and the injury suffered.

It is imperative that all relevant paperwork is collected and engaging a lawyer early ensures all relevant documents will be obtained. This independent documentary evidence as well as the injured person's documented record of what occurred is necessary to obtain an independent expert medical opinion. It also allows the early identification of any gaps in evidence for consistency.

4. Consistency
The evidence of the injured person and the medical records need to be consistent and the earlier an injured person records what happened, the more likely it is to be accurate and consistent with the documentary evidence and the more likely it will remain consistent. It is the most powerful evidence if medical records back up what an injured person says occurred.

5. Record the impact of the medical negligence
Recording an early statement of the impact of the medical negligence on your life is imperative. Keeping a record or diary of all appointments, assistance required and out of pocket expenses is necessary. Engaging a lawyer early will ensure that regular statements and updates are recorded about the impact of the injury on your life including the impact on your ability to undertake activities of daily living such as domestic tasks and gardening, your ability to work and any loss of enjoyment of life and lifestyle changes.

People can adapt very quickly to change and it can often be difficult to remember as time goes by what your life was like before an injury. Regular recording of the impact on a person from the time of the injury through to the settlement of the claim is important.

It is also important to make sure that you advise other treating health care providers of your symptoms and let them document the effects of the injury on you. All of this information is required to prove your pain and suffering, financial loss and the physical and psychological impact of the medical negligence.

How Can Andersons Help?

Pursuing a medical negligence claim can be complicated and lengthy but necessary to hold the negligent medical provider to account and to receive the compensation you require to support and

maintain a quality of life post injury.

Having an experienced and trusted medical negligence lawyer along side you is essential to ensure your chances of success and compensation are optimised.

Andersons Solicitors have assisted many clients to obtain compensation for injuries sustained as a result of negligent medical treatment, and cases can and do succeed. To find out more or to discuss your personal circumstances with our Medical Negligence team, please contact us today or reach out to today's author Suzanne Pinyon.

Andersons offer a free 30 minute consultation to provide initial advice and to assess your options.

Find out more about **Medical Negligence Claims** here.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.