



Establishing causation: a critical aspect of medical negligence claims

To proceed with a [**claim for personal injury arising out of medical treatment**](#), the patient needs to establish:

- There has been medical negligence, that is a breach of the duty of care owed by a health practitioner or a hospital to the patient;
- The patient has suffered damage as a result of the negligent treatment.

The issue of the injury loss and damage that is related to the breach of the duty of care is often the bigger challenge in establishing a medical negligence claim.

Establishing a breach in the duty of care requires expert evidence from a health practitioner who practices in the same field as the doctor and/or hospital who provided the medical care that supports a breach in the applicable standard of care as at the time the medical treatment was provided. A breach of the applicable standard requires a finding that the doctor and/or hospital failed to exercise competent professional practice at the time the treatment was provided.

Even if a breach of the duty of care is established there is no entitlement to compensation unless the injured person can establish that the injury loss and damage has resulted from the breach in the duty of care. Proving this aspect of the claim is called “establishing causation”.

If the injury loss and damage would have occurred in any event, regardless of the breach of the duty of care then no compensation can be claimed. It is necessary for the patient to show that it is more likely than not that the injury loss and damage would not have occurred but for the breach of the duty of care.

Depending on the nature of the injury loss and damage it is often necessary to obtain the opinion of an expert in a different field of medicine to that of the doctor who provided the opinion on the breach of the duty. For example a patient may undergo an orthopaedic procedure such as a hip or knee replacement that results in a vascular complication. To establish a breach of the duty an opinion will need to be sought from an expert orthopaedic surgeon. However, to establish causation an expert opinion will be required from a vascular surgeon on the relationship of the vascular complications to the alleged breach of the duty of care and whether such complications could have been avoided but for the breach in the duty of care.

A good example of where causation is a critical issue is in cases of delayed diagnosis such as delayed diagnosis of cancer, delayed diagnosis of a fracture or a delayed diagnosis of a complication that has arisen during a procedure in circumstances where the complication was not the result of negligence. The delayed diagnosis can in some cases be obvious and relatively simple to establish but this of itself will not be sufficient to establish a claim in medical negligence unless the patient can also establish that their outcome from the medical condition, injury or medical procedure would have been more favourable had the delay not occurred.

In many medical negligence cases, establishing causation is a greater challenge than establishing a breach of the duty of care. This is primarily due to the fact that the cause of the injury loss and damage suffered as a result of a particular medical condition can be uncertain and unpredictable.

Establishing causation is vital in any potential medical negligence claim. It is important to have experienced professional legal assistance if you wish to pursue a claim for compensation as a result of medical negligence.

How can Andersons help?

Todays writer, partner at Andersons Solicitors Suzanne Pinyon is highly experienced in medical negligence claims. Visit [Suzanne's profile](#) for more information or email enquiry@andersons.com.au or call 8238 6666.

Andersons offers a free 30 minute first appointment on personal injury claims. During this appointment, your lawyer will be able to tell you your likelihood of a successful claim and expected fees, allowing you to make a decision whether you proceed with the claim prior to committing or paying any fees.