



What to know about medical misdiagnosis

If you've consulted with a health practitioner and believe the advice, diagnosis or treatment options they've provided are incorrect or they've been unable to diagnose a medical condition, then it's advisable that you seek a second opinion from an appropriately qualified health practitioner.

A misdiagnosis of a medical condition can result in no treatment being provided or incorrect treatment resulting in a delay in treatment or adverse injury loss and damage as a result of the incorrect treatment.

A failure to diagnose or a misdiagnosis of a medical condition does not necessarily amount to medical negligence. A breach in the duty of care owed by the doctor to the patient would need to be established.

When a health practitioner consults with a patient and is required to diagnose the cause of the patient's symptoms they are generally required to consider a number of potential causes as there may be a number of conditions that fit the symptoms. A variety of medications, pathology and

radiological tests may be required to obtain more information and make a diagnosis.

Whether a misdiagnosis or a failure to diagnose is compensable will depend on whether the doctor carried out the tests and investigations that a doctor exercising competent professional practice would have done. If not and you can establish that had those tests and investigations been carried out, an appropriate diagnosis would have been made and treatment provided then there may be a claim for medical negligence.

Can I claim compensation for medical misdiagnosis or failure to diagnose?

For a medical misdiagnosis or a failure to diagnose to be negligent and entitle you to compensation you need to establish a number of things.

Firstly, you need to establish that the health practitioner failed to meet the accepted standard of care (breach of the duty of care) to diagnose and treat you at the time of providing the treatment.

In other words, the health practitioner in all of the relevant circumstances should have made the diagnosis correctly and in a timely manner and failed to do so.

To establish the breach of the duty of care an expert opinion from an appropriately qualified health practitioner is required.

Secondly, the breach of the duty of care, namely the misdiagnosis or delay in making a diagnosis must have caused an injury to the patient, we call this establishing causation. Establishing causation in a misdiagnosis or failure to diagnose case can be difficult as the misdiagnosis or failure to diagnose may not have resulted in a materially different outcome for the patient.

Unfortunately if the outcome for the patient despite the misdiagnosis or failure to diagnosis in a timely manner is substantially the same as if the diagnosis had been correct or made in a timely manner, the claim is unlikely to result in any compensation. However, if the patient's condition is made significantly worse or the patient requires extensive treatment due to the misdiagnosis or delay in diagnosis then there may be a claim for compensation.

If the misdiagnosis or failure to diagnose in a timely manner results in psychological and/or physical harm that would not have occurred but for the misdiagnosis or delay then you may have a claim for medical negligence.

Medical negligence is complex and you should speak to an experienced medical negligence lawyer before making your own assessment on any potential claim. The sooner a claim is investigated the better.

For more information about [medical negligence](#) or to discuss your personal situation, please contact Partner Suzanne Pinyon on 8238 6666 or email enquiry@andersons.com.au