

When failure to provide medical treatment with due care in pregnancy and birth can lead to a medical negligence claim.

A **medical negligence birth injury claim** can arise from medical treatment during pregnancy, labour and birth when there is a failure by the doctors, nurses and/or a hospital to provide medical treatment and advice in a timely manner and /or with due care.

This article examines the duty of care owed and when a breach of the duty of care may arise during pregnancy, labour and birth, and whether the medical complications were avoidable.

What is a doctor’s duty of care?

When a doctor undertakes to treat a patient, a doctor patient relationship is established either explicitly where the patient engages a doctor to provide specific medical advice and treatment, or implicitly where a doctor undertakes to treat a patient, for example in an emergency setting.

Once this relationship has been established there arises a duty of care owed by the doctor to the patient. This duty is to provide medical treatment and care in a skilful, prompt, adequate and proper manner and in accordance with competent professional practice accepted in Australia at the time the treatment is provided. This same duty applies to all medical professionals including nurses, allied health professionals and hospitals.

Whilst breaches in the duty of care are rare, sadly it does happen and, in those cases, a patient may be entitled to compensation for any losses that result from the breach of the duty of care.

A doctor’s duty to advise of risks

Complications can arise with any medical procedure or treatment and part of a doctor’s duty is to explain the risks and benefits of a procedure or treatment to a patient so that the patient can make an informed decision about whether to undergo the procedure or treatment.

As with anything in life, there are risks associated with medical procedures which can and do occur even when due care has been taken by the doctor. However, in some circumstances medical complications can arise where the complication could have been avoided if due care had been taken by the doctor.

During pregnancy, some examples of when a breach of duty of care can arise include;

- Failing to carry out appropriate examinations or organise appropriate tests.
- Failing to consider or properly consider and advise the patient of test results.
- Failing to diagnose a high-risk pregnancy and/or manage the pregnancy appropriately.
- Failing to diagnose, appropriately monitor and/or treat a medical condition arising during pregnancy.
- Failing to consider or properly consider and advise the patient regarding the alternative options for labour and birth.

During labour, some examples of when a breach of duty of care can arise include;

- Failing to adequately monitor the baby’s heart rate.
- Failing to monitor the progression of the labour and take appropriate and necessary action when required.

- Failing to consider or properly consider the health and wellbeing of the mother and baby during the progression of labour.
- Failing to advise the mother of alternative methods of progressing the labour and birth when appropriate to do so.
- Failing to recognise foetal distress (often evidenced by irregularities with the baby's heart beat).
- Failing to expedite the delivery when the health and wellbeing of the mother or baby are compromised.
- Failing to recognise an emergency and take appropriate action.
- Failing to carry out a procedure during labour with due skill, care and attention.

During birth, some examples of when a breach of duty of care can arise include;

- Trauma to the mother from the mode of delivery, for example vaginal delivery using forceps.
- Trauma to the baby due to instrumental delivery or the use of excessive force during delivery.
- Delay in progressing the birth in circumstances where the health and wellbeing of the mother and/or baby are compromised.
- Failing to carry out a procedure during delivery with due skill, care and attention.

How Can Andersons Help?

A **medical negligence birth claim** can arise from medical treatment during pregnancy, labour and birth when there is a failure by the doctors, nurses and/or a hospital to provide medical treatment and advice in a timely manner and /or with due care.

Each case is very dependent on the specific facts of the case and the breach is assessed at the date the treatment was provided. Expert medical evidence is required in all cases to comment on the applicable standard of care, and whether that standard of care has been breached in the circumstances of the case.

Birth claims are complex but if properly investigated by a legal practitioner experienced in medical negligence claims, in addition to expert medical support obtained to support a breach of the duty of care owed, then compensation can be obtained for the damage suffered as a result of the breach.

Suzanne Pinyon is a leading Medical Negligence lawyer in Adelaide, highly experienced in cases of pregnancy, labour and birth medical malpractice. If you have any questions about medical negligence or need to speak to a lawyer, please reach out to Suzanne or other members of the Andersons medical negligence team.

and birth when there is a failure by doctors to provide treatment and advice in a timely manner and /or with due care.