



JACKSONVILLE MEDICAL MALPRACTICE GUIDE

*What To Do If You're Seriously Injured
By A Physician Or Hospital*

Edwards  Ragatz, P.A.

Personal Injury and Commercial Trials



When we have a medical issue, we go to the doctor usually without hesitation. Any treatment or procedure we need is given to us and we trust that it is going to help us, not harm us. Unfortunately, these things are not failproof. Medical professionals make mistakes and they can cost us our wellbeing. If you have been harmed

by a medical professional you may qualify for a medical malpractice case. Our Jacksonville medical malpractice lawyers are here to help make your case a success. We are experienced in these cases and we want you to feel confident that we will get you the best possible result.

TYPES OF MEDICAL MALPRACTICE CLAIM

Medical malpractice is when a medical professional acts in a negligent way that causes you harm or injury. There are many different kinds of medical malpractice claims, as the term is more of an umbrella which covers many different topics. Here are some examples of specific medical malpractice claims:

- » Injuries during labor and birth
- » Failing to or misdiagnosing cancer
- » Nursing home negligence
- » Dental malpractice
- » Surgical errors and/or mistakes
- » Not diagnosing a condition
- » Failing to treat a condition
- » Defective products
- » Pharmaceutical errors
- » Misinformation from a doctor

If you suspect that you have been harmed by a medical professional, you need to contact a dedicated and experienced medical malpractice attorney right

away. We will review your case and go over the details of the event in question to determine what your legal rights are.

FLORIDA STATUTES OF LIMITATION

The statute of limitations is the amount of time you are given to bring your case in civil court. Medical malpractice is a little different from the other personal injury cases in Florida. Usually you are given four years from the date of your accident to bring your case, but with medical malpractice you only have two years from the time you discover the malpractice or should have discovered it to bring your case. It is specifically like this because you may not realize you have been given the wrong pills or dosage from the pharmacist for some time. Or you may not discover that there was an instrument left in your body during surgery until you go back to the ER with symptoms. There are some scenarios in which you would know right away that you are a victim of medical malpractice. There have been instances where wrong limbs are amputated. Something as obvious as that would be discovered right away. As soon as you uncover the malpractice, you will have two years to bring your claim to civil court. Once you suspect you have a case, we urge you to contact us right away.

HOW MEDICAL MALPRACTICE COMPENSATION WORKS

Compensation in Florida is a little tricky for medical malpractice. The law states that there should be a limit to what you are allowed to get when you bring a claim against a medical professional. These limitations only apply to compensation for things that are non-economic damages which includes mental anguish, pain and suffering, stress, scarring and disfigurement, and loss of companionship. You will not see a cap for damages that are tactile and concrete such as your medical bills, lost wages, and treatments all past and future. There are more complicated aspects to these caps which your attorney can explain to you during your free consultation if they apply to your case.

FREQUENTLY ASKED MEDICAL MALPRACTICE QUESTIONS



How Do I Pick the Right Attorney?

If you've been injured due to medical malpractice, it's important that you get an experienced attorney to handle your case. If you're getting someone that doesn't know what they're doing in the medical malpractice field, it can literally be fatal to your case.

If you go on the internet, just about any law firm that does medical malpractice work is going to have information about their experience and their accomplishments. When you go on our website, you will find that we have some of the largest verdicts, not only in the state of Florida but in the nation. We had the largest medical malpractice verdict in the nation in 2012, which is one of the largest verdicts in the history of Florida. We got there through hard work and experience.

You'll also find that I began my career defending doctors, hospitals, nursing homes, and other healthcare providers, so when we handle medical malpractice cases, we can use that knowledge. I've actually had the privilege of sitting inside insurance carrier claims committee meetings and am able to identify what they deem important when deciding whether to resolve a case.

We work every case as if it's going to trial. If you don't do that, they're not going to treat you seriously and they're not going to pay your client the reasonable, full value of their case. Because of that, we're able to get many cases resolved short of trial..

There are a number of other things you can look to, including board certification. Lawyers will have to try a number of cases in their field to qualify. Judges

and opposing lawyers are interviewed. They must then pass a written test. There are also national recognitions, such as Best Lawyers in America. Our firm has a tier one rating in the field of medical malpractice, which means we're considered one of the top firms in the state.

We have lawyers at our firm who have been ranked by Best Lawyers in America as the top lawyer in the region multiple times in the last decade. Other recognitions you can look for include things like International Academy of Trial Lawyers, ABOTA, the American College of Trial Lawyers, and International Society of Barristers. There are only a handful of lawyers in each state that are picked for those organizations and it's based upon their accomplishments as trial lawyers, and it's based upon being deemed the cream of the crop.

What Mistakes Should I Try to Avoid?

One of the most important things that can be done if you suspect you have been a victim of medical negligence is to consult an attorney right away. You need to get expert legal advice early on because it is important to start analyzing if you have a claim.

Another mistake in medical malpractice cases is that people wait too long. There is a very short statute of limitations. The statute of limitations to file a medical malpractice claim in Florida is two years. In medical malpractice cases, clients have to do certain things before filing a lawsuit, and if those things aren't done before the two-year benchmark, then you may not be allowed to bring your lawsuit. Many reputable firms won't take a case if a certain period of time has passed, meaning once they're inside of a year or six months, they won't look at a case.

The other mistakes that can happen in a medical malpractice case is giving a statement to someone who you shouldn't be talking to in the first place. You have the right to talk to a risk manager or insurance adjuster, but they are trained to gather information that is going to help the hospital, doctor, or nurse that made the mistake, not to help you. You want to talk to a lawyer first and have them advise you before you give any sort of statement.

The additional thing you need to do is that you need to be diligent in following your doctor's or therapist's advice. You do not want to miss appointments. If

you don't follow their advice and your injury worsens, it will significantly weaken your claim.

What Benefits Can I Get?

One of the things that medical malpractice clients talk to me about is how to get benefits that are going to help them. These cases can take a long time to resolve. The things that we look to are, first and foremost, the health insurance benefits available to help provide coverage for our clients' medical problems. The law in Florida is that a health insurance carrier doesn't get to walk away because someone else injured you. They are required to pay your medical bills no matter who injured you. We will then have to deal with the health insurance carrier on what are called liens, in which they have a right to be reimbursed partially for those bills but are still required to them.

The other things we look for is if there's disability coverage. A lot of employers provide disability coverage, and if the injuries are bad enough to where someone can't work, then we try to get them covered.

If there's no health insurance and there's no disability coverage, then we have to look to other things. If there was an automobile accident that led to the person getting healthcare that then led to the malpractice issues in the case, there may be coverage through their car insurance. In Florida it's called personal injury protection (PIP) coverage, which may help provide coverage for some of the medical bills and also for lost wages for a period of time.

If there is truly no insurance available, then we look to governmental benefits. If you're totally disabled, then we can look to Medicare or Medicaid coverages if you're unable to support your family .

What Are Birth Injury Claims?

Birth injuries are some of the saddest, most catastrophic cases that we handle. From a human perspective, seeing a child that is injured at birth because of a medical mistake is one of the most difficult cases to work on, but also one of the most important.

One thing that needs to be known is that the injuries aren't fully determined right away. It takes experts, reviews of the records, and evaluations of your child

to truly know what their lifelong needs are going to be. There are complexities and difficulties in assessing what a baby's long-term problems are going to be, and that's part of our job when we take on a birthing injury case at Edwards & Ragatz.

What Are Brachial Plexus Injuries?

We've had multiple cases of brachial plexus injuries during birth. What's important to know is these cases are typically easy to avoid had the physician followed the standard of care. A brachial plexus injury occurs when a baby gets stuck, the physician doesn't apply the right techniques, pulls too hard, and ends up stretching or injuring the brachial plexus nerve, which comes from the spine down the arm, and gives a child a limp arm.

These are very significant, catastrophic injury cases. Tendon and nerve replacement surgeries may help to get more use out of the child's arms. These are very avoidable cases that can have long-term effects on the young baby as they develop into an adult.

What is a Breach of Duty?

We're often asked by our clients about breach of duty. Your physicians, in medical malpractice, have a duty to meet the applicable standard of care. What that means is that, a lot of times, clients come to us with nothing more than a hunch that their physicians didn't do things correctly. We gather all pertinent records and hire experts that are at the top of their field to help us determine what a physician should've done under similar circumstances. That's part of our job at Edwards & Ragatz.

What is Causation?

We're often asked by our medical malpractice clients about causation. Causation can get a little tricky, but simply put it is the deviation from the standard of care — what the physician did wrong — that caused your injuries.

At Edwards & Ragatz, we get highly-trained experts to talk about what the standard of care is, and secondly, that committing malpractice caused the injuries and the damages that we're seeking in your case.

How Much Do I Need to Pay for a Case?

Clients always want to know how much a medical malpractice case will cost them. These cases are extremely expensive to prosecute and because of that, clients are not able to afford to hire lawyers on an hourly basis. As a result, clients pay what is called a contingency fee, and that means our payment of any fee is contingent on us being successful for the client and making a recovery for them. A contingency fee means we're going to be paid a percentage of any recovery that is available to the client, either through a settlement or through a judgment that we collect for them.

In any medical malpractice case we handle, we typically present the client with a contingency fee contract. It is a graduated contract, meaning if we're able to resolve the case early, we charge the client less and the reason is because we spent less time and resources. Medical malpractice cases are one of the most expensive types of cases to prosecute in the state of Florida. They are highly complex and because of that, the resources put into it by the law firm are extraordinary. There's a lengthy and expensive pre-suit procedure we have to go through in prosecuting medical malpractice cases that most lawyers never deal with and never know how to deal with. It's important to hire an experienced attorney.

The contingency case model is designed to make the courthouse available to clients who can't afford to prosecute a case. We typically are going to spend anywhere from \$200,000 to \$300,000 in out-of-pocket costs in prosecuting a medical malpractice case that goes all the way through trial, so the contingency model means you're going to pay us a percentage of any recovery we make and we will be reimbursed for the costs we expend.

The way we graduate the fee is by charging a much lower percentage at the early part of the case. For example, if we're able to resolve a case before we hire the expert witnesses, then we charge a much lower percentage because we haven't spent as much time and money on the case. Once it goes into the pre-suit process, our fee goes up a few percentage points, and then once it goes into a full-blown litigation in court, it goes up an additional percentage. Our fees are in four different sets of percentages, depending on when in the life of the case the fee resolves.

How Much is My Case Worth?

Clients always want to know what the value of their medical malpractice case is at the very outset, and the reality is no responsible lawyer is going to give you the value of a case until they've had the opportunity and time to properly investigate all aspects. Properly working up a case means you have to look at liability, causation, and the damages, and we have to link all three together.

The medical malpractice cases are particularly difficult when it comes to liability. The comparison to an automobile accident case is this: in almost any automobile accident case, you're going to fill the jury box with people that know that someone's supposed to stop at a stop sign, or they're supposed to stop a red light, but you rarely ever get jurors in a medical malpractice case that know anything about what a doctor should or shouldn't do under any given circumstance.

We have to get what are called practice parameters and practice protocols. What we have to do is pin the doctor down and find methods to prove that they breached normalized standards that anyone should recognize in their field, and we want to find ways to prove those standards with written documents and other things that are going to help bolster our expert in the jury's eyes.

We then need to prove what's called causation and damages. In any medical malpractice case, we must prove that whatever damages we're seeking were actually caused by the malpractice that occurred. One example would be a misdiagnosis of cancer. There are two types of problems in a misdiagnosis of cancer. We have to prove liability, but we then also have to prove what was actually worsened as a result.

In many instances of medical malpractice, we need to put multiple experts together to figure out what damages we're going to be able to prove based on what the actual liability situation was. Once we've done those pieces, we're able to give you advice. It's our obligation to give you advice and to talk to you about what we think reasonable value ranges are, and there will be a point in every case where we sit down with you and have those discussions, but it's typically not at the very beginning.

Do I Need to Give a Recorded Statement?

We are regularly asked by our clients if they should talk to a risk manager, an insurance adjuster, or a defense lawyer to give a recorded statement. We recommend that they not do so until we've prepared them for an interview. The risk managers, insurance adjusters and defense lawyers are going to be friendly, they're going to act as if they're there to help you, but they frequently are not. They are there to try to protect the insurance carrier and to gather information that they can use against you, even though they're approaching you as if they are trying to protect you.

That doesn't mean there won't come a time where it's worth talking to them, but you should only do so after you've been properly trained and coached by your attorney in how to deal with questions that you're going to be presented with. You will always be told to tell the truth, but we want to ensure that you understand the way they're going to approach you and the way they're going to try to frame questions so that in telling the truth, you do so properly and with the right resources available to you so that you can't be led into mistakes.



How Long Do These Cases Take?

I am asked by medical malpractice clients how long their cases take to resolve. Medical malpractice cases are considered complex litigation and the average medical malpractice case takes about three to three-and-a-half years from the time it actually starts in a lawsuit in court.

The state legislature has passed numerous protections for doctors, hospitals and nursing homes, and other healthcare providers, that don't exist for anyone else in the law, and there are a long series of things that have to take place in malpractice cases that don't happen in most other cases. They also passed laws that mean unless you sue everybody that could be blamed in the case, the defense has advantages where they can put people on the verdict forms and reduce your verdict for people that may not be in court. That means that there are typically multiple parties in most medical malpractice cases. That makes cases go longer because you have multiple lawyers, and everything takes longer to schedule.

There's also something called a pre-suit procedure that happens in medical malpractice cases, and it is a lengthy procedure we have to go through before we're allowed to go to court. We have to give the other side actual expert opinions. In most cases, you don't have to present expert opinions until you're actually heading into trial, but in a medical malpractice case, we have to hire and get written expert opinions that we give to the other side before we're even allowed to start the case. We have 90 days of investigation before we can head into the lawsuit to even get to a trial.

Because we have these formalized steps that need to be taken, it is a lengthy, complex process. If you don't have people that know exactly what they're doing and how to respond to these formalized processes, you can lose your case. What I tell all of my medical malpractice clients is you have to come into it with the mindset that I'm going to live with this for a long time, I'm prepared to go to trial, and I'm going to hope that it gets resolved before that, but if it doesn't, then we're going to live through a lengthy tough process.

What Are the Medical Malpractice Statute of Limitations?

In medical malpractice cases, we're almost always asked what the time limits and requirements are. There is a two-year statute of limitation. It's a discovery standard that is two years from the date of when you knew or should have known that there was malpractice. At Edwards & Ragatz, we will guide you through the statute of limitations and make sure that your claims are timely presented.

There's also a four-year statute of repose from the date of incident. Within that four-year window, you have two years from the date you knew or should have known that there was malpractice. The applicable time limits can get a little complicated, but at Edwards & Ragatz we will help you navigate through the time requirements and make sure that we present your claim in a timely fashion.

What if There Were Medication Errors?

We had a case where a client called inquiring about a potential matter involving a medication error. In this case, it was done by his physician. There are two

sides of the same coin on medication errors — you can have pharmaceutical errors, and you can have a physician that writes a prescription that is maybe contraindicated with another drug, or the wrong dosage. That is a medical malpractice claim. In those claims, we get the physician's records. We get the chart. We get the labeling by the product to see what the correct dosage was. We see if there's any black box warning put out by the FDA that warns the physicians that the drug needs to be used in an intended and specific manner, and that's how we look at those types of medical malpractice cases involving physicians and medication errors.

What If I Did Not Follow Doctor's Orders?

We're often asked by our medical malpractice clients if they can do anything adversely to affect their case. For instance, one time a client asked if they can lose their right to pursue a medical malpractice case if they don't follow their physician's instructions. The reality is that not following your physician's instructions can negatively affect your case in a variety of ways. The defense attorney will argue that you're not being compliant. They will argue that you're not mitigating your damages and you're not taking responsibility to make the best recovery you can. We always instruct our clients to listen to their physicians carefully, to follow their advice, and to be completely transparent and candid with their physicians about what's going on with their body.

How Do I Prove Birth Injuries?

In our cases involving birth injuries we're asked, usually at our first meeting with our clients, how we prove the case. In medical malpractice cases, and particularly in birthing injury cases, you don't have the OBGYN, the neonatologist, or the pediatrician noting what they think was done wrong. We need to get experts in those fields to tell us what the standard of care was, to tell us what was done wrong, and how we're going to prove the case.

We forensically look at the records. We look at the medical bills. We look at phone logs. We look at the correspondence and communication between the specialties to forensically prove your case if it's not laid out in the records. There are sometimes deceitful entries, sometimes injuries change, and sometimes not only do they try to be obstructionists about it, they'll flatly be inaccurate

about what happened. We have a team of experts and doctors where we forensically look at your chart to be able to prove the case.

How Do I Prove Medical Negligence?

We're often asked in our medical malpractice cases by our clients how we're going to prove that the mistake or error was the cause of the problems, otherwise known as causation. A lot of times we will have very specific experts to speak only to causation. For instance, we had a case where there was sepsis of a little girl that was misdiagnosed at an emergency room. For liability, we had to get an emergency room physician to speak about what the doctor should have done, an emergency room nurse to speak about what the nurses should've done, and an infectious disease doctor to talk about how their mistakes caused the infection that she had and how that could have been prevented. In medical malpractice you have liability and causation. We at Edwards & Ragatz have the burden of proving both, and we do that through medical experts and in part through the medical chart.

What is Stevens–Johnson Syndrome?

We have multiple clients that have a very catastrophic condition called Stevens–Johnson Syndrome, and it is the name of a condition that can occur with medication errors when someone has the wrong type of medication or too much of a medication. It literally, in layman's terms, causes the skin to die and become necrotic. They are egregious cases. It starts as blistering or rashes, and it will literally turn into a burn that can consume the whole body. These patients are typically treated as burn patients, at burn units, and if they survive, they're left with horrific injuries, sometimes blindness, horrific scarring and horrific limitations as to how they can live their life.

CONTACT OUR FLORIDA MEDICAL MALPRACTICE ATTORNEY TODAY

If you have been a victim of medical malpractice, please do not hesitate to call our Florida medical malpractice attorneys today to set up a free case evaluation. We will guide you through this medical malpractice claim every step of

the way. These cases are complicated and you don't want just anyone to handle it. Our attorney is experienced and had handled these medical malpractice cases frequently and know how to use our expertise to get you the best possible result. We look forward to taking your call and showing you how you can turn this terrible situation around. Your case is a priority to us.

PREPARED BY EDWARDS & RAGATZ, P.A.

Tom Edwards and Eric Ragatz have worked together for more than 10 years, and between them, they bring decades of experience to every case. Tom is a Board Certified Civil Trial Lawyer, the highest specialty recognition given to lawyers handling injury and death cases and has the highest rating of AV by Martindale-Hubbell, a national attorney rating service. Eric has represented many injured clients in complex personal injury, medical malpractice, nursing home abuse and product liability cases, and has the highest rating of AV by Martindale-Hubbell.

This experience, and the personal devotion to clients and the relentless commitment to pursue justice, is why Edwards & Ragatz, P.A. is recognized for excellence in the Jacksonville area, and throughout the state. We are a dedicated team of various fields of expertise that serve clients with compassion and the utmost professionalism, making us one of the most trusted law firms in Jacksonville. From seasoned trial lawyers to paralegals and registered nurses, you can rely on the Edwards & Ragatz, P.A. team to deliver the comprehensive service and personal care your case deserves.

If you find yourself in an unfortunate situation and need medical malpractice lawyers or a personal injury attorney in Jacksonville, we will use our legal experience and vast resources to get fair compensation for your injuries. Together, we'll put the law on your side.

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