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HOW TO DECIDE WHETHER OR NOT TO SUE FOR MEDICAL MALPRACTICE

STANDARD OF CARE:

The standard of care in a medical malpractice claim is much different than the standard or duty owed by ordinary citizens to each other.

A medical provider is held to the standard of care of the average medical provider within his/her practice or specialty. In other words, if a medical provider fails to exercise that degree of care and skill of the average qualified practitioner in that field of practice or specialty, then there is negligence or fault. Medical providers include doctors, nurses, hospitals, dentists, chiropractors, nursing homes, and others.

Certain areas such as emergency services, other than in the ordinary course of one's practice, and public health immunization programs are ordinarily exempt from liability for one's negligent acts or omissions.

Medical negligence is the deviation from the acceptable standard of care.

PROOF REQUIRED:

The burden of proof is on the plaintiff, the person alleging negligence. Proof that the applicable standard of skill fell below the acceptable standards for that practice or specialty in question is a legal requirement.

Unlike an ordinary claim of negligence, where a jury can use their own ordinary knowledge and common sense to determine whether the standard of care has been breached, in a malpractice case that failure or breach must be proved through expert medical testimony.

The courts have determined that a plaintiff ordinarily cannot prevail as a matter of law without proof by a medical expert in the same or similar specialty that there was a deviation from the acceptable standard of care.

CAUSAL CONNECTION:

The plaintiff must prove that the substandard care of the medical provider caused the injuries for which he or she seeks damages.

If the medical provider is negligent, but the negligence did not result in any injury, the claim must fail. This is the case many times when a person has more than one complication which cannot be directly attributable to the medical provider's negligence but was the normal progression of a pre-existing injury, condition, or disease.

DAMAGES:

The plaintiff must have damages which are directly related or caused by the negligence of the medical provider. In about 80% of cases, although it is relatively clear that the medical provider did not live up to the standard he or she should have, the estimated damages do not economically justify a claim or lawsuit. The costs may exceed the damages one might reasonably expect to recover.

This that due to the fact that the cost of a medical expert (or sometimes several medical experts) to review records, make a finding of negligence in a written report, testify in a deposition (sworn testimony before a court reporter), and testify at trial are significant.

Secondly, due to the inherent prejudice by juries in general to those who sue medical providers, the best chances of recovery under the best situations are about 60 to 70%. Statistically, the medical providers win about 90% of their cases.

Most people focus on the negligence of the medical provider rather than the resulting damages. If a case does not have significant value, it would be cost prohibitive to pursue. It's better to understand the costs and the tremendous effort of all involved before a decision can be made to go forward with a claim or suit.

WHENEVER YOU NEED HELP DECIDING WHETHER OR NOT TO SUE FOR MEDICAL MALPRACTICE, DO YOURSELF A FAVOR – CALL TODAY. AT IANELLO & BRITTAIN P.C., CONSULTATIONS ARE ALWAYS FREE.