



Options If You Are Unhappy With Your Medical Care

If you believe that a health care professional (doctor, nurse, physician assistant, etc.) made a mistake or acted unprofessionally in your treatment or the treatment of a friend or family member, you may have several options. These options may include: expressing your dissatisfaction or concern to the provider, filing a complaint or grievance with your health insurance, getting a second medical opinion from a different provider, filing a complaint with your state medical board, or filing a lawsuit for medical malpractice. If you suffered harm or injury as a result of your treatment, be sure to speak to a lawyer right away to discuss options, because time limitations exist for medical malpractice lawsuits.

Similarly, if you are dissatisfied with care you received at a hospital or other facility, your options include filing a complaint or grievance with the facility or with your health insurance, seeking care at another facility, or speaking to an attorney about whether the facility can be sued for its employee's actions.

This fact sheet explains options available to you under either of these circumstances; however, because each situation is unique, only you or your family member(s) can decide how to proceed if you are unhappy with the medical care received.

Express your concern directly with the healthcare provider

If you are dissatisfied with the care you received from a medical professional, or disagree with the suggested course of treatment, it could be helpful to speak directly to the individual professional to express your concerns. Doctors and other medical professionals usually want to hear about a patient's dissatisfaction directly from the patient. If you are unhappy with care you received at a healthcare facility, such as a hospital, you can usually contact the facility's patient care or complaint coordinator. Most hospitals and medical facilities have a standard process for filing complaints. Additionally, you could find out whether the facility is accredited (certified) through The Joint Commission (an independent non-for-profit organization that accredits and certifies nearly 21,000 health care organizations and programs in the US) or another agency, and file a complaint with that accreditation agency. You can also file a grievance (complaint) with your health insurance.

Get a second medical opinion from another provider

If you are dissatisfied with the care you received or the course of treatment suggested by a medical provider, you might want to get a second medical opinion. You should verify whether your insurance plan covers the costs of second opinions, because in some states, health insurance



policies are not required to pay for second opinions. If your insurance plan does not pay for second opinions, you can still seek one out, but you may have to pay the entire cost of the visit out of pocket. You can contact your state department of insurance to find out if your health insurance policy is required to cover second opinions. Contact your state Medicaid agency for information on second opinions if you have Medicaid. If you have Medicare, contact your state Health Insurance Assistance Program (SHIP) to learn when second opinions may be covered by Medicare.

File a complaint with your state medical board

Each state has a medical or licensing board, which oversees the licensing and regulation of doctors, surgeons, and other health care professionals in the state. Medical boards and similar regulatory departments provide information about licensed doctors, and oversee the physician complaint process. A medical board may take complaints such as improper medical care or harm, sexual misconduct, prescription complaints, or practicing medicine without a license. If you are considering this option, you may also wish to consult an attorney in your state before filing the complaint. An attorney can help you understand all your options and might be able to provide guidance in the complaint process.

If you wish to file a complaint about a medical provider or facility, you should contact your state medical board. The medical board complaint process varies by state, but it usually involves first filling out a complaint form with the appropriate regulatory agency. Some states have just one medical board, while other states have separate agencies that regulate doctors, nurses, surgeons, pharmacists, and other health care practitioners. Contact your state medical board to learn about the process for filing your complaint. Complaints must usually be in writing.

If you decide to file a complaint, be as clear as possible describing why you believe a medical professional acted improperly. You may be required to sign a release of medical information so the agency can review your medical records related to the complaint. When you first submit a complaint, the regulatory agency will review your complaint and determine whether a health care provider acted improperly. Your complaint will then be forwarded to the state's attorney general, who can investigate and prosecute complaints against medical providers. If the provider is found to have acted improperly, the penalty varies by state and depends on the severity of the doctor's actions. Doctors who are found to have acted negligently could be fined or have their license suspended or revoked. If a doctor is fined, the money is usually deposited in a specified state fund, and not paid to the person who filed the complaint.

If you file a complaint, you will usually be kept informed of the status of the complaint throughout the process. While a medical board complaint might not result in a financial award, it may be a good option if you wish to prevent harm to other patients, if the actions of the health care provider did not amount to medical malpractice, or if you missed the time limit for filing a lawsuit. A single complaint might not result in a medical professional being investigated or fined, but if the medical board receives several complaints against that person, they may be more likely to investigate or take action. If you wish to recover financial losses or be compensated for harm, speak to a lawyer about filing a medical malpractice lawsuit. An attorney can advise you whether to file a lawsuit.

File a lawsuit against a healthcare provider

Doctors are licensed to *practice* medicine, which means they may make mistakes in providing care. If you or someone you know was harmed due to the action or inaction of a healthcare professional, you may have a case for medical malpractice, elder abuse, or wrongful death. In these lawsuits, the person or family of the person who was harmed may be compensated for the harm. There are strict time limits for filing these lawsuits (called “statutes of limitations”), sometimes as short as one year from the date you were harmed. You should begin contacting attorneys in the state where the harm occurred right away because you may need time to think about whether it makes sense to file a lawsuit, and which attorney to hire. If you do not file a lawsuit within the statute of limitations, you can miss the opportunity to sue.

Medical malpractice attorneys often do not require payment up front, but each attorney has his or her own fee structure and can explain what, if any, costs are involved in the case. A lawyer might only require payment if he or she is successful in the lawsuit; this is known as a contingency fee. Contingency fees are commonly around 33%. When interviewing medical malpractice attorneys, be sure to ask how much of the award money you would realistically receive if you win. If your lawsuit is successful, some of the money might be used to pay for expert witnesses, court-filing fees, or to reimburse your health care plan or government program for your medical care. Note that many states have limits (“caps”) on the amount and type of damages that can be awarded in these cases. It might be challenging to find an attorney who will take your case if there is little to no money to be awarded for your harm, since lawyers work on a contingency basis and there are many up-front costs involved in a malpractice lawsuit. If you cannot find an attorney to take your case, you can file a medical board complaint.

Medical malpractice lawsuits

Filing a medical malpractice lawsuit is a different process than filing a complaint with your state’s medical board. To be successful in a medical malpractice lawsuit, you must prove that a healthcare provider failed to treat you with the kind of caution and expertise used by other practitioners in similar circumstances, causing you harm. In other words, the person who was injured must show that the doctor acted negligently, and that negligence resulted in injury. To succeed in a medical malpractice claim, you must prove the following: (1) that there was a professional duty owed to the patient; (2) there was a breach of that duty; (3) there was an injury caused by the breach of that duty; and (4) prove resulting damages. Money damages, if awarded, typically take into account both actual economic loss and noneconomic loss, such as pain and suffering.

The doctor owed a professional duty to the injured person

The first part of a malpractice claim is to show that a doctor-patient relationship existed. A doctor owes a duty only to his or her patients to treat them in a reasonably skillful manner. You cannot sue someone for medical malpractice who was not actually your doctor. If you follow advice that a doctor gave to someone else, you will likely not be able to sue that person’s doctor because the doctor owed you no duty.

The doctor breached his or her duty to the patient by acting negligently

In addition to showing that a doctor owed you a duty as his or her patient, you must also show that the doctor *breached* his or her duty by acting negligently. Negligent means that the doctor fell

below the “standard of care” or was not reasonably skillful and careful. The standard of care depends on the condition being treated, and may vary from state to state and by location, depending on common practices. Courts generally look to the standard of care within the community. An expert will usually need to testify about what the standard of care is within the community and show that the doctor fell below that standard (acted negligently). This is often the crux of the case. Sometimes the negligence is so egregious that expert testimony is not needed. For example, an operation on the wrong limb, removal of the wrong breast in a mastectomy, or placing an implant in the wrong breast (yes, these things really happen!) may be actions considered so bad that they show negligence without needing to prove the doctor fell below a certain standard of care.

The doctor’s negligence caused the patient harm

The third element that must be proved is “causation.” You must prove that the doctor’s negligence caused you harm. Sometimes negligence happens but there is no harm. If a doctor behaves in a way that seems negligent, but you were lucky and his or her actions did not actually injure you, then you will probably not succeed in proving medical malpractice. For example, if a doctor misdiagnosed you, that might not be enough for medical malpractice on its own. You would have to show that the misdiagnosis caused your condition to progress beyond where it normally would have or caused an injury you would not have suffered otherwise.

The patient suffered financial harm or “compensable damages”

To win a medical malpractice claim, you must prove that you suffered an injury, resulting in what are called “damages.” In other words, there must be some way for a court to compensate you financially for harm you suffered. Because there might not be a way to physically restore someone’s health or body, courts will determine monetary damages to compensate injured patients. The calculation of damages takes into account any financial losses you suffered such as medical bills, lost wages from time off work, lost future earnings, and compensation for pain and suffering. Sometimes a court may award punitive damages for especially egregious conduct such as sexual misconduct towards a patient or when the harm was intentional. Punitive damages are usually awarded by a jury when the behavior is something that society wants to deter. In some states, there are caps on the amount of damages awarded in a medical malpractice case, and in other states, there are caps only on non-economic damages such as pain and suffering.

Elder Abuse

Many states have laws that permit lawsuits against healthcare providers who, in the course of their professional care, injure or neglect the basic needs of elderly patients. Typically, “elderly” persons are defined as those 60 years of age or more. Elder abuse lawsuits can continue even after death, and can be brought by the survivors of the elderly person who was harmed. If an elderly family member or loved one was harmed while living in a nursing home, rehabilitation facility, or assisted living facility, you should contact an elder law attorney right away.

Additionally, if you suspect a facility, medical professional, or individual mistreated, harmed, or took advantage of an elderly person, you should contact your local Adult Protective Services department to investigate the suspected abuse, neglect, or exploitation. Certain professionals are mandated (required by law) to report suspected elder abuse, neglect, or exploitation. The elements of elder abuse or neglect are similar to those of a medical malpractice lawsuit.

Wrongful Death

When a person dies because of someone else's negligence or intentional act, surviving family members (spouse, child, or parent), and in some cases non-family members (i.e., live-in partners) or more distant relatives (i.e. grandparents), may also be able to file a lawsuit for wrongful death of a loved one. An experienced attorney in your state can advise you on when and if you can file a claim for wrongful death of a deceased loved one. A medical professional, company, government agency, or other individual may be held responsible for someone's death. In some circumstances, a government agency or official may be immune from lawsuits.

In a wrongful death case, you may be able to recover damages *on behalf of* the person who died (the "decedent"), such as financial expenses and pain and suffering incurred by the decedent before he/she died. You may also be able to recover funeral expenses, as well as the "loss of affection and income" (money that the decedent would have provided *to support the survivor*). Three types of damages may be awarded to survivors in a wrongful death lawsuit: "economic," "non-economic," and "punitive" damages. Economic damages means medical expenses, loss of earnings, and other financial costs. Non-economic or "general" damages means pain and suffering, loss of companionship, or "loss of consortium" from a spouse. Non-economic damages compensate loved ones for lost quality of life, or things that cannot be measured in dollars. Punitive damages are awarded only in egregious cases, and are designed to punish the wrongdoer and discourage certain behavior.

The elements of a wrongful death case are similar to those in a medical malpractice claim. If a person dies as a result of medical malpractice, these claims may be filed together, but you should speak to an attorney experienced in wrongful death or medical malpractice in your state. Just as with medical malpractice, there may be caps on damages, and statutes of limitation vary by state.

I would like:	Who do I contact?
To hold a doctor accountable for his/her actions and receive compensation from the doctor for an injury or death suffered by a patient	Medical malpractice attorney / wrongful death attorney
A healthcare provider investigated for his/her actions or behavior and possibly have him/her reprimanded/punished	State medical board or Adult Protective Services for elderly patient
To make a complaint about poor or inappropriate behavior	The doctor or facility staff directly, or the health plan
A second medical opinion	Health plan, and/or state department of insurance

Resources

For a referral to medical malpractice attorneys, you can contact your local lawyer referral service or the American Bar Association: <https://www.americanbar.org/directories/lawyer-referral-directory.html>

For a directory of state medical boards, please visit the Federation of State Medical Boards: <http://www.fsmb.org/state-medical-boards/contacts>.

Find out if the Joint Commission provides accreditation for facilities in your state: https://www.jointcommission.org/state_recognition/state_recognition.aspx

Medicare State Health Insurance Assistance Program (SHIP) in your state: <https://www.medicare.gov/contacts/>

For factsheets, checklists, and other useful links for patient advocates: The Empowered Patient Coalition, <https://empoweredpatientcoalition.org>

For information sharing and tools for healthcare: EngagedPatients.org <https://engagedpatients.org/>

For a patient advocacy guide: Louise H. Batz Patient Safety Foundation <http://www.louisebatz.org/>

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