



# MEDICAL MALPRACTICE

---

WHAT YOU

**NEED**

TO KNOW



*Chelsie King Garza, Esq.*

# What is Medical Malpractice?

Medical malpractice is when a medical professional treats or fails to treat a patient in ways that cause injury or harm. When the nurse or physician fails to diagnose a condition or fails to treat a condition, it is referred to as medical negligence.

## Hundreds of Thousands of People are harmed by Medical Neglect Each Year

Each year in the United States, approximately 225,000 people DIE as a result of medical malpractice.



It is estimated that over ONE MILLION injuries happen annually, due to medical errors in U.S. hospitals.

Medical Malpractice is the THIRD leading cause of death in the United States.

# Proving Medical Malpractice:

---

## The Basics

### 1. What is the Standard of Care?

Evidence of the physician's legal duty of care is the first step in determining whether or not there is a potential medical practice claim. The duty of care means that the patient was under the physician's care at the time of the alleged malpractice. And, the physician violated the duty of care during treatment.

Standard of Care: the caution that a reasonable professional in similar circumstances would exercise when providing care to a patient.

### 2. Did the Doctor Breach the Standard of Care?

Once you have proven duty of care, the next step is to determine whether there was a breach of the standard of care. The medical standard of care is the level and type of care that health care providers should provide for all patients.

Is there evidence that the care provided by the physician was inferior or out of the norm, compared to the care that would have been provided by another physician in the same field with similar training?

### 3. Did the Breach Cause Your Harm?

The healthcare provider's failure to meet the standard of care must have caused your harm. For example, prescribing penicillin to a patient who is allergic, causing the patient to suffer anaphylaxis shock.

# **What Damages Are Available?**

---

## Compensation for Your Losses after Malpractice

There are various types of medical malpractice cases ranging from surgery on the wrong body part, to misdiagnosis of a disease. There are three main types of damages that may be awarded:

- Compensation for physical harm due to a failure to comply with the standard of care, whether that be the harm resulted from a missed diagnosis, prescribing the wrong medication, or other error;
- Pain, suffering, and/or mental anguish
- Financial harm that can include: past and future medical care, past and future medical supplies & equipment, and past and future lost wages



# **Tort Reform Has Changed Medical Malpractice in Texas:**

---

## **Damages Are Capped & Costs Are Greater**

In 2003, there was a change to the Texas laws regarding the amount of damages that can be awarded in medical malpractice cases. Specifically, the law put a limit on non-economic damages in medical malpractice cases.

Non-economic damages were capped at \$250,000 per provider. So, if multiple providers were found to have harmed a patient, such as a doctor's office and a hospital, the damages could be as high as \$250,000 from each provider, up to \$500,000.

### **Non-Economic Damages**

Some examples of non-economic damages include:

- Pain, suffering, mental anguish, and unwanted changes to your everyday life,
- changes in relationships with family members or the loss of the relationship with your loved one, and
- the changes to your life and the resulting depression from the loss of who you once were.

### **Economic Damages**

The change in the law did not apply to economic damages, which include any future medical care equipment and/or supplies needed as a result of the harm or neglect, lost wages for victims who are no longer able to work, and future medical care ranging from prescription costs, to in home nursing care, to future doctor's appointments. Economic damages can include having to remodel your home to install ramps or other adaptive equipment, or even moving to a new home due to changes in mobility.



# Statute of Limitations

---

## When to File a Suit

For any legal claim, the statute of limitations is the deadline to file the lawsuit for damages. The length of time varies by type of claim and by state.

- **Two Year Time Limit to File Suit** - For medical malpractice claims in the state of Texas, the statute of limitations is two years from when treatment is completed, or the date of injury/misdiagnosis or other potential harm.
- **The Discovery Rule** - In some cases, the date may be extended to the date the error is discovered, if the patient is able to prove the hospital already knew about the error, which may extend the statute of limitations and allow for the case to still be filed.
- **Statute Runs from Date of Death** - If the patient dies due to the injury caused by medical malpractice, the statute of limitations begins on the date of injury, not the date of death.



# What Is Not Malpractice?

---

## Not all Bad Results Are Caused by Neglect

### What is NOT Medical Malpractice?

As mentioned earlier, there are specific guidelines and qualifications that must be met for an injury to be considered medical malpractice. It can be difficult to evaluate what constitutes malpractice. It is not a determination a patient should make on their own.

There are a few things that do not mean malpractice has been committed. Those include:

1. **Poor Bedside Manner** - There are situations when a patient has a negative experience while under their doctor's care that does not qualify as medical malpractice. For example, a medical professional's poor bedside manner on its own does not constitute malpractice.
2. **Apologizing** - In addition, if a physician, nurse, or medical staff member states that they made a mistake or they apologize for an error, there is not necessarily a potential medical malpractice case.
3. **Paying your Medical Bills** - Similarly, if the mistake or error results in the clinic or hospital offering to pay medical bills, that does not mean that there are grounds to file a malpractice claim.

# What Are the First Steps?

---

## Where Does the Claim Process Start?

### ✓ Obtaining Your Medical Records

Knowing the process and what to expect during a medical malpractice case will make the process easier to understand. The first step is gathering medical records related to the potential claim. The legal team will request your help to obtain authorizations to allow the hospital, clinic, or doctor's office to share your medical records. Once the authorizations are complete, requests will be sent to obtain copies of your medical records; there may be fees involved. As the records are received, the legal team will confirm that the records are complete. There may be multiple sets of records involved so the process from start to finish, may take several months.

### ✓ Medical Expert Will Be Hired to Evaluate the Potential Claim

Next, the legal team will hire a medical expert to review the medical records and offer their opinion about whether or not the evidence is sufficient to prove medical negligence and/or malpractice. Once that is complete, the team will assess whether the potential damages make pursuing the case cost effective.

### ✓ Will the Claim Cost More than it's Worth?

Following the 2003 changes to the law that capped non-economic damages at \$250,000 per provider, increased requirements were put in place that made the process more expensive. The 2003 changes now mandate hiring medical experts before the beginning of the case.

As a result, many potential claims cannot be pursued because the costs would outweigh the potential damages.





## **Chelsie King Garza**

---

### **Medical Malpractice Attorney**

Chelsie King Garza has worked for larger firms including, Riker, Danzig, Scherrer, Hyland & Peretti in New Jersey, and Porter & Hedges, in Houston. Chelsie spent the majority of her career as the only female attorney working with Abraham, Watkins, Nichols, Sorrels, Agosto & Friend, the oldest plaintiffs firm in Texas. . She has since started her own firm handling a variety of matters.

Devotion is the consistent theme that transcends every aspect of her life. Outside of the office, Chelsie Garza's life is dedicated to her husband and two children.

Not only does Chelsie have an extensive background in helping those who have suffered horrible injuries; she has also worked on pro bono cases and dedicated her time to humanitarian causes. One such pro bono matter positively changed the rules benefiting police officers with regard to workers' compensation for the entire State of Texas Chelsie's efforts to improve the community include her fundraising work for the Tahirih Justice Center. This organization was founded in 1997 to provide legal assistance to immigrant women and girls.

Chelsie practices personal injury law on behalf of plaintiff's who have been injured. Her practice includes medical malpractice cases, including those involving birth injuries. Chelsie's personal injury background includes handling workplace and vehicular accidents, among others.

**WARNING:** This eBook is for your personal use only.  
You may **NOT** Give Away, Share or Resell This Intellectual  
Property in Any Way

## **All Rights Reserved**

**Copyright © 2016 – Chelsie King Garza. All rights are reserved.** You may not distribute this eBook in any way. You may not sell it, or reprint any part of it without written consent from the author, except for the inclusion of brief quotations in a review.

## **Disclaimer**

The following eBook is authored by Chelsie King Garza, an attorney, whose principal office is located in Houston, Texas.

The information provided is for general informational purposes only and is not a substitute for professional legal advice based on your individual circumstances. Laws change frequently and may have changed since this book was authored, therefore Chelsie King Garza cannot warrant that all representations are correct.

You should always consult with an attorney directly before making legal decisions concerning your own unique legal issues.

The offer of the information in this program does not create an attorney / client relationship.

An attorney/client relationship with this law firm can only be formed by executing a written contract with Chelsie King Garza or her firm that is signed by the client and a representative of the firm.