

Frequently Asked Questions – Medical Malpractice

Why does Bailey Glasser handle medical malpractice claims?



The medical malpractice team at Bailey Glasser believes that every West Virginian has a fundamental right to receive quality healthcare. We are passionate about our role in holding physicians, hospitals, and other health care providers accountable for medical errors that have led to serious injury or death.

Pursuing medical malpractice claims is arguably more important now than it has ever been. In 2016, a study by Johns Hopkins University, one of the preeminent medical centers in the United States, concluded that **medical errors were the third leading cause of death in the United States behind only cancer and heart disease.** The study was only the tip of the iceberg as it focused only on deaths from medical errors, not the catastrophic injuries often seen because of medical negligence. Unfortunately, despite the recognition to the number of deaths attributable to medical errors, medical malpractice continues to be a serious problem affecting countless families every year in West Virginia and across the nation.

The medical malpractice team at Bailey Glasser has dedicated their careers to directly addressing this national crisis by aggressively pursuing claims of medical malpractice and holding doctors, hospitals, and other health care providers accountable for improper care and treatment and to make sure those affected by medical errors receive the compensation they deserve.

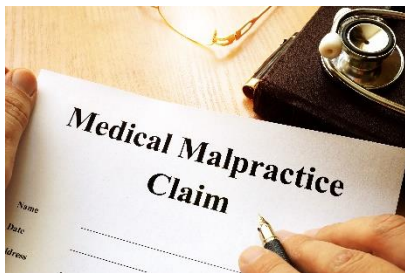
What sets Bailey Glasser apart as the firm to best get you the compensation you deserve?

Experience matters. The medical malpractice team at Bailey Glasser has over 50 years of combined experience focusing on medical malpractice claims. This experience translates into the ability to see what is not only obvious, but how to identify medical mistakes that a lot of other lawyers may not recognize.

The Bailey Glasser medical malpractice lawyers formerly represented physicians and hospitals prior to our decision to represent those injured by medical negligence. We have “seen behind the curtain” of how the complex health care system works and where hidden information can be found to uncover medical mistakes that have affected clients’ lives.

Bailey Glasser has the resources to go toe-to-toe against those that would try to avoid accountability from medical malpractice. While our roots are firmly planted in West Virginia, we bring to bear the strength of a national law firm that has the financial resources and aggressiveness to fight for you against the powerful medical system.

How do I know if I have a medical malpractice claim?



The first question we often receive from clients that have experienced a bad outcome following medical care is how to determine if they have a medical malpractice claim. The question is simple, but the answer is often complex. The medical malpractice team at Bailey Glasser has the experience to guide you through the process and efficiently advise you on whether you have been the victim of medical negligence.

Practically speaking, medical malpractice involves more than simply suffering a bad result following the receipt of medical care. Unlike workers compensation, where one generally only needs to show an employment relationship and an injury, medical malpractice claims require specific elements be met in order to prevail. These elements include:

- Was there medical negligence (i.e. medical malpractice)?
- Did the medical negligence cause harm?
- What is the extent of the injuries to the patient?

In West Virginia, as in most states, the injured party must prove that the healthcare provider was negligent, meaning they violated the appropriate standard of care owed to a patient. The “standard of care” is a legal term of art that is defined as conduct that a reasonably prudent health care provider would have done under the same or similar circumstances. Once an injured party establishes that negligence has occurred, he or she must then prove that the negligent care caused or contributed to an injury or death.

How can I afford to pay an attorney to pursue a medical malpractice case for me?

When our team at Bailey Glasser investigates and pursues a medical malpractice case on your behalf, we are paid only if we get money for you by way of settlement or trial. This is what is generally referred to as a contingency fee arrangement. This is the best arrangement for clients, who would otherwise not have the financial resources to pursue a medical malpractice claim.

Does the signing of a consent form mean I cannot pursue a medical malpractice case?



You may recall during your care and treatment that you signed a consent form that identified certain complications which possibly could occur from the medical treatment provided. It is important to know that simply because you consented to the medical care provided does **not** relieve a health care provider from negligence and should not deter you from speaking with our team. In fact, Bailey Glasser

believes that physicians, who are aware of potential complications from treatment, have a duty to take all necessary safety precautions to make sure the complication does not occur.

When should I speak to an attorney regarding my medical malpractice claim?

It is critical that you speak to an attorney as soon as possible regarding your potential medical malpractice claim. There are deadlines that can impact the ability of our team to properly evaluate and file your claim. For example, in West Virginia, an injured party must file a medical malpractice claim within two years of the date of the injury or death. There are limited exceptions, however, they are not automatic and are ultimately subject to judicial discretion.

The medical malpractice team at Bailey Glasser has the resources necessary to request the medical records needed to evaluate your claim as quickly as possible. With that being

said, the evaluation process does take time and the sooner you contact our team the better positioned we are to serve you.

What types of injuries or damages are recoverable in a medical malpractice action?



The tort reform process in West Virginia, as in other states across the country in which we practice, has intentionally made it more difficult for patients to file medical malpractice cases and by imposing limitations or “caps” on the amount that can be recovered.

For example, in West Virginia, there is a cap on pain and suffering and for the sorrow you may have experienced over the loss of a loved one. However, there is usually not a limit or cap on the economic damages to which you may be entitled. Economic damages encompass such things as the following:

- Past lost wages
- Loss of future earnings
- Medical bills you have incurred because of the medical error
- The cost of future medical care you may need

There are very limited exceptions to these caps, such as where the medical care was so bad as to be considered by the jury as reckless. However, the evidence necessary to prove recklessness is very high.

Regrettably, tort reform limitations and caps, as well as the costs associated with pursuing a medical malpractice claim, sometimes make even a valid claim for negligence difficult to pursue, such as where the injuries and damages aren’t substantial or permanent in nature. Unfortunately, that was the intended result of the tort reform measures and there are now fewer attorneys that are willing to file medical malpractice cases as a result.

This is where our unique network, extensive experience, and financial resources come into play. At Bailey Glasser, we have the financial resources to compete with the largest defense firms and insurance companies in the country to pursue the best possible result for you and your family.

What are the steps taken prior to filing a medical malpractice action?

Investigation

The first step in reviewing your potential medical malpractice claim is the client interview. The initial consultation is free of charge and we will never ask for any payment unless we obtain a settlement or verdict on your behalf. Our experienced attorneys will understand the nuances of your case and have most likely handled a similar matter previously. That experience will be evident during the client interview and throughout the remainder of your case.

Medical record review

Once we complete the client interview, our team will begin gathering the medical records necessary to evaluate the medical care at issue. Completing the medical record review is critical and is followed by consultation with an expert medical doctor regarding the care at issue.

In West Virginia, as in most states, tort reform has imposed an additional hurdle to filing a medical malpractice case. Before we are allowed to file your medical malpractice claim, we are required to obtain a sworn statement from a health care provider, who is qualified and competent to determine if medical negligence has occurred. Our experienced medical malpractice team has worked with countless expert medical witnesses on a wide variety of medical specialties and are the best prepared team to have your care reviewed as aggressively, quickly, and efficiently as possible. Identifying who the best expert medical doctors are to review your case is invaluable to effectively pursuing your case.

What to expect once the lawsuit is filed?

Once the pre-suit investigation is complete and your suit is filed, our focus is on working to achieve the best possible result, either through settlement or verdict. There is a trend in West Virginia, as in most other states, that the majority of cases settle prior to having to proceed to a trial. However, if the case doesn't settle before trial, you need to have attorneys that know their way around the courtroom and who can present your case to a jury to get you the money you deserve. Bailey Glasser attorneys have the experience you need and deserve and have taken over 100 cases to trial.

Discovery

After your case is filed, we will work with you to navigate the “discovery phase” of your case. This phase is simply the opportunity for both sides of a lawsuit to discover facts about the case. Discovery involves written questions that must be answered, documents that must be produced, and an opportunity to question witnesses under oath by the opposing attorney, a process known as a deposition. Rest assured, we will also work extensively with you to assist with answering all written questions and to prepare you for your deposition.

Part of the discovery phase is that each side of the case will hire medical expert witnesses to testify about the care that was provided and the injuries and damages you have experienced as a result of improper care. A hallmark of medical malpractice cases is that no matter how straightforward your case appears to be, the defendant hospital or doctor will find a witness that testifies the care and treatment rendered was reasonable and appropriate. As a result, medical malpractice cases routinely become a “battle of the experts”, making it critical that your attorney interview and select the best possible expert witness for your case. As attorneys who previously defended doctors and hospitals, the medical malpractice team at Bailey Glasser is uniquely positioned to interview and select the best possible expert medical witnesses for your case. It also gives us the background to aggressively challenge medical experts hired by the defense to defeat your claim.

Mediation

Once the discovery phase is at or near completion, almost all cases then proceed to mediation. At mediation, a neutral third-party (the mediator) will bring all the parties, the attorneys, and the insurance company representative together for a meeting to try and resolve the case. The medical malpractice team at Bailey Glasser has negotiated countless settlements in medical malpractice cases and are well-prepared to negotiate a settlement at mediation on your behalf. In the event mediation is unsuccessful, the trial lawyers at Bailey Glasser are ready, willing, and able to try your case to a jury.

The medical malpractice team at Bailey Glasser believes that you are entitled to quality healthcare as a fundamental right and have dedicated their careers to holding hospitals and health care providers accountable when they fail to deliver. That is our mission, and we are always here for you.

[Contact](#) the medical malpractice team at Bailey Glasser to discuss your potential case today.