

Medical malpractice refers to a healthcare provider who breaches the appropriate standard of care when rendering services to a patient. The breach must cause an injury to the plaintiff. The standard of care is the term used to define the generally accepted procedures and practices that reasonable healthcare practitioners in the same area and specialty would use under the circumstances when treating a patient with the same condition. The standard of care may vary, depending on a variety of factors, such as the patient's age and health.

Medical malpractice is not simply making a medical mistake. The mistake must have resulted in the patient's injury. The mistake can occur at any point during the treatment process. This process includes providing medical care, diagnosing a patient, prescribing medication or conducting checkup procedures.

In California, plaintiffs in medical malpractice lawsuits are subject to additional procedural requirements and limitations. For example, plaintiffs must give their doctor or other health care provider who they plan to sue a formal notice of this intention at least 90 days before filing the complaint in the case. This notice must provide the following information:

- The legal basis of the claim
- The type of damages sustained
- The nature of the injuries suffered

If this notice is served within 90 days of the statute of limitations (discussed below), the time when the lawsuit should begin must be extended 90 days from the date of serving this notice.

Medical malpractice cases are also subject to caps on attorney's fees. There is a sliding scale limit on the percentage a lawyer can charge on these cases, as described:

- 40% of the first \$50,000 recovered
- 33% of the next \$50,000 recovered
- 25% of the next \$500,000 recovered
- 15% of any over \$600,000

For example, if a person recovered \$750,000 in damages, the maximum attorney fee charge would be \$184,000, as calculated below:

- \$20,000 for the first \$50,000
- \$16,500 for the next \$50,000
- \$125,000 of the next \$500,000
- \$22,500 of the next \$150,000