

The 2026 Guide to Medical Malpractice Litigation in New York

Your rights. Your recovery. Your future. · **Free Case Review: (212) 869-3500**

Misdiagnosis · Surgical Errors · Birth Injuries · Hospital Negligence · Wrongful Death

\$116M+

recovered for medical malpractice victims

40+ yrs

serving injured New Yorkers

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When you undergo a medical procedure or receive care in a hospital, you trust that your doctors, nurses, and other providers will meet accepted professional standards. When that trust is broken and a preventable error causes serious injury — or the death of a loved one — New York law gives patients and families the right to seek accountability and compensation.

This guide explains how medical malpractice litigation works in New York: what qualifies as malpractice, the most common types of cases, how these claims are proven, the deadlines that apply, and the compensation available. It is provided for general information only and is not legal advice — every case turns on its own facts, so consult a qualified attorney about your situation.

1. What Is Medical Malpractice?

Medical malpractice occurs when a doctor, nurse, or other healthcare professional fails to meet the accepted standard of care, causing harm instead of helping. These errors can lead to permanent injury, disability, or death. Medical errors are widely cited as one of the leading causes of death in the United States, and NYC medical malpractice is more common than most patients realize.

Liability is not limited to physicians. Nurses, hospitals, diagnostic imaging technicians, pharmacists, and even medical-device manufacturers may all be responsible parties. Establishing who is liable — and proving that their conduct fell below the accepted standard — is the core of every malpractice case.

2. Five Common Types of Medical Malpractice Cases

Medical errors include far more than mistakes made during treatment. Failures to diagnose or to recommend the proper course of care are errors of omission that can be equally devastating. Most New York malpractice claims fall into one of the following categories.

Birth Injuries

Also known as obstetric injuries, these arise when errors during pregnancy, labor, or delivery harm the mother, the baby, or both. Common claims include prolonged or arrested labor, improperly monitored gestational diabetes or preeclampsia, anesthesia errors, and delivery injuries such as nerve damage or shoulder dystocia. These often result in **cerebral palsy, Erb's palsy, hypoxic-ischemic encephalopathy (HIE)**, or, in the most tragic cases, maternal or infant death.

Medical Misdiagnosis

Misdiagnosis cases fall into three categories: **delayed diagnosis** (the correct diagnosis eventually comes, but too late), **failure to treat** (an accurate diagnosis without appropriate follow-up care), and **outright misdiagnosis** (the wrong diagnosis or none at all).

- Cancer & gynecological cancer misdiagnosis
- Stroke misdiagnosis
- DVT (deep vein thrombosis) misdiagnosis
- Pulmonary embolism misdiagnosis
- Meningitis misdiagnosis
- Abdominal aortic aneurysm (AAA) misdiagnosis

Hospital Negligence

When malpractice is caused by a hospital employee, a claim may be brought against the hospital itself — including surgical errors, nursing malpractice, pediatric malpractice, plastic-surgery malpractice, and emergency-room malpractice. Because physicians are often independent contractors rather than employees, whether the hospital can be held liable is fact-specific and worth reviewing with an attorney.

Medical & Surgical Errors

Even routine procedures can go wrong. Qualifying errors include anesthesia and prescription errors, abdominal or organ injuries, cardiac-catheterization errors, infections from improperly sterilized instruments, retained surgical instruments, wrong-site or wrong-procedure surgery, and inadequate post-surgical care.

Medical Product Liability

Patient harm is not always caused by provider error — it often stems from dangerous drugs or defective devices. The firm handles claims involving Depo-Provera, Elmiron, Ozempic, Exactech joint implants, transvaginal mesh, and recalled Philips CPAP machines.

Did a Medical Error Harm You or Your Family?

Our attorneys review medical malpractice cases for free, with no obligation. Call (212) 869-3500 or visit www.fuchsberg.com.

3. Malpractice in Government & Correctional Facilities

Medical negligence does not only happen in private hospitals. Claims against federal, military, and correctional facilities follow distinct legal procedures that require experienced counsel.

VA Hospitals & Military Medical Centers

Care provided at federal facilities falls under the **Federal Tort Claims Act (FTCA)**, which requires a Standard Form 95 administrative claim, strict deadlines, and bench trials before a federal judge rather than a jury. These cases frequently raise sovereign-immunity issues that demand advanced legal knowledge.

Prison & Jail Medical Facilities

Incarcerated individuals have a right to adequate medical care under the **Eighth Amendment**. Delayed diagnosis, denied treatment, and inadequate emergency care behind bars can support claims for deliberate indifference as well as medical malpractice.

4. Proving a New York Medical Malpractice Case

The burden of proof rests with the patient to show a direct link between the provider's conduct and the injury. New York also requires a **Certificate of Merit** — a sworn statement that the attorney consulted a qualified medical expert who supports the claim — and expert testimony to establish the standard of care. A valid claim must satisfy four elements:

Duty of care. A provider-patient relationship existed, creating a legal obligation to treat.

Breach of care. The care fell below what a similarly trained provider would have delivered in the same situation.

Causation. That breach — not some unrelated factor — directly caused the injury.

Damages. The patient suffered actual harm (physical, financial, or emotional) as a result.

5. Statute of Limitations — Time Limits in New York

Deadlines are among the most critical aspects of any malpractice case. Missing one can permanently bar recovery, no matter how strong the claim.

Situation	General Deadline	Key Notes
Adult patient	2.5 years (30 months) from the act of malpractice	CPLR §214-a
Continuous treatment	Clock starts after treatment for the condition ends	Continuous-treatment rule
Retained foreign object	1 year from date of discovery	Discovery rule
Cancer / tumor misdiagnosis	2.5 years from date of discovery	Lavern's Law (outer limit applies)
Injured minor (child)	Tolled until age 18; not beyond 10 years from the act	Infancy toll + 10-year cap
Municipal / public hospital	Notice of Claim within 90 days	General Municipal Law §50-e

Lavern's Law allows certain cancer-misdiagnosis claims to run from when the patient knew or reasonably should have known of the negligence, subject to an outer time limit. These rules are fact-specific and affected by concealment and delayed discovery — do not rely on this table alone; consult a qualified attorney promptly.

6. Compensation in New York Medical Malpractice Cases

New York recognizes two categories of compensation for patients who prevail, and — unlike many states — **does not cap non-economic damages** in medical malpractice cases.

Economic Damages

- Past and future medical expenses
- Lifetime care and therapy costs

- Lost wages and lost earning capacity
- Home modifications and assistive technology

Non-Economic Damages

- Pain and suffering (past and future)
- Loss of consortium
- Loss of enjoyment of life
- Punitive damages (rare; egregious conduct)

New York Medical Indemnity Fund (MIF)

For children with severe neurological injuries caused by malpractice, the MIF can provide lifetime benefits for rehabilitative care, medical equipment, and home modifications. Navigating the fund and structured settlements requires experienced legal counsel.

7. Notable Results — The Fuchsberg Firm

Our attorneys have recovered more than **\$116 million** for medical malpractice victims, holding providers accountable in New York's most complex cases.

\$8.0M Patient left paralyzed after a neurologist failed to diagnose an autoimmune disease.

\$7.5M Failure to order an MRI resulted in the permanent paralysis of a 14-year-old boy.

\$7.14M Infant left neurologically impaired as a result of a failure to perform a timely C-section.

8. Frequently Asked Questions

Is a Certificate of Merit required to file in New York?

Yes. New York requires the attorney to certify that a qualified medical expert was consulted and supports the claim, filed with or shortly after the complaint.

What is Lavern's Law and how does it affect my deadline?

Lavern's Law lets certain failure-to-diagnose cancer claims run from the date the negligence was (or should have been) discovered, rather than the date of the error — subject to an outer limit. Timing is fact-specific.

Can I sue the hospital, or only the individual doctor?

It depends. Hospitals are generally liable for their employees, but many physicians are independent contractors. An attorney can review whether a hospital-negligence claim applies.

How long does a medical malpractice case take in New York?

Most cases take a few years, with discovery alone often running 12–24 months. Many resolve by settlement; others proceed to a jury.

How much does it cost to hire a malpractice lawyer in NYC?

Reputable firms, including ours, work on contingency — there is no fee unless we win.

Put a Top-Rated New York Team in Your Corner

If you suspect a preventable medical error harmed you or your family, don't wait — legal deadlines apply. Our attorneys review your case for free and are available 24/7.

 (212) 869-3500

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