

Medical negligence claims fall into a number of different areas. Generally it involves the negligence of a medical practitioner or a medical provider such as a hospital in failing to provide treatment which would be reasonably expected of a competent practitioner or provider resulting in that breach of duty of care to the patient or consumer.

The negligence may take a number of forms and in particular:

- failure to warn of the risks of an operation or procedure
- failing to diagnose a specific condition
- failing to perform a procedure with reasonable care and skill as expected of a practitioner;
- failing to refer a patient to an appropriate specialist
- failing to provide adequate post-operative care

In Queensland the Health Rights Commission will consider complaints from consumers of medical services within 1 year of the procedure or diagnoses taking place.

The Health Rights Commission is an independent body which will investigate a complaint. By making a complaint to the Health Rights Commission it does not prohibit a patient from taking their own personal action against a medical practitioner for negligence, which results in damages being suffered by the patient.

In Queensland there are strict time limitations regarding the reporting of negligent actions. You must within 1 month of consulting a solicitor or the date of the alleged negligence or when it became evident, lodge a notice of claim.

One of the most common negligent actions against a medical professional is a failure to warn of risk. Under the current *Civil Liability Act 2003* it clearly states that a doctor does not breach a duty owed to a patient to warn of risks before that patient undergoes any medical treatment unless that doctor at that time fails to give or arrange to be given to the patient information about the risks that a reasonable person in the patients position would in all the circumstances require to enable them to make a reasonably informed decision and information the doctors knows or to reasonable know the patient wants to be given before making the decision whether to undergo the treatment.

A doctor does not breach a duty arising from the provision of professional service if it is established that the professional acted in a way that at the time that service was provided was widely accepted by peer professional opinion by a significant number of respected practitioners in the field.

It is important to note that peer professional opinion does not have to be universally accepted, but considered to be widely accepted.

Medical negligence claims by their nature are often complex and defended vigorously by the medical practitioners and their solicitors.

It is important that if you believe you have suffered any injury as a result of medical negligence you obtain advice as soon as possible in relation to your legal rights. It is important to also ensure that all information and evidence is retained as often it becomes very important in Court proceedings.

The new Civil Liability Act and the Personal Injuries Proceedings Act both encourage early resolution of claims where possible.

At Ferguson Cannon Lawyers, we understand and appreciate that these types of matters can be very upsetting to the person who has suffered the risk and often their families. We will endeavour at all stages to resolve the matter to the client's satisfaction in a timely and efficient manner where possible.

If you have any questions, please contact Glenn Ferguson.