



## ACUITY MEDICAL LAW INC.

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# MEDICAL MALPRACTICE FAQ GUIDE

## Medical Malpractice Litigation: FAQs

At Acuity Medical Law, we prioritize keeping clients informed about their case's nature and progress, recognizing clear communication as vital to effective advocacy. Below, we address frequently asked questions about medical malpractice claims.

### 1. How do you prove negligence in a medical malpractice claim?

Medical malpractice claims hinge on proving negligence through specific circumstances, with less reliance on precedent due to their uniqueness (*Crits v Sylvester*, 1956 O.R. 132 (C.A.)).

Three elements must be established:

- **Duty of Care:** The provider or institution owed the patient a duty. This can be straightforward (e.g., a surgeon) but may involve complexities, such as identifying the “most responsible” provider during transfers or determining institutional liability (*Cooper v Hobart*, 2001; *Broome v PEI*, 2010).
- **Breach of Standard of Care:** The provider failed to meet the expected standard of a reasonable practitioner (*Donoghue v Stevenson*, 1932). Expert testimony is critical to define this standard, considering factors like the provider's training, procedure risks, and available resources (*Tiesmaki v Wilson*, 1974).
- **Harm and Causation:** The patient suffered harm caused by the provider's negligence. Proving causation is complex, requiring expert evidence to establish medical causation (e.g., physiological harm from improper device use, *Aynsley v Toronto General Hospital*, 1969 ONCA) and legal causation (e.g., whether intervention would have changed the outcome, *Wilton v Genik*, 1995; *Clements v Clements*, 2012).

### 2. Are medical malpractice cases expensive?

Yes, these cases are costly due to their complexity and reliance on expert opinions. Estimates range from 50k to 100k Canadian Dollars. Claims are prolonged, and defendants are well-resourced. Experts are essential to define the standard of care and medical causation, increasing expenses.

At Acuity Medical Law, we mitigate costs through:

- **Contingency Fees:** We are paid only when you are, taking a standard portion of your settlement, aligning our incentives with your success.
- **In-House Expertise:** Our emergency physician, Dr. Lavranos, reviews medical records to streamline expert involvement, reducing costs by focusing on high-yield evidence and assessing case strength early.

- **Network:** Dr. Lavranos has developed a network of contacts which help guide a case, making access to expertise easier and less costly.
- **Efficiency:** Acuity Medical Law is a small firm that specializes in this work. We are highly efficient, saving dollars for clients and advancing cases quickly.

We welcome discussions about cost concerns and encourage clients to reach out.

### 3. What are the types of medical malpractice cases?

Common categories include:

- **Diagnostic or Treatment Errors:** These occur when providers misdiagnose, delay diagnosis, or err in treatment (e.g., wrong-site surgery, medication errors, or inadequate monitoring). Such errors stem from misinterpretation, poor communication, or negligence.
- **Failure of Informed Consent:** Negligence in obtaining consent, such as not disclosing material risks, violates the “reasonable person” standard (*Hopp v Lepp*, 1980; *Reibl v Hughes*, 1980). Courts require disclosure of significant risks (*Dunn v North York General Hospital*, 1989).
- **Examples of Claims:** Misdiagnosis, surgical errors, anesthesia mistakes, birth injuries, negligent prenatal or post-operative care, failure to monitor, laboratory errors, or inadequate mental health treatment.

### 4. What are the legal steps in a medical malpractice claim?

The process mirrors tort litigation, requiring proof on a “balance of probabilities.” It involves three phases:

- **Investigation:** Gathering client narratives and medical records, with early expert input. Dr. Lavranos’ expertise at Acuity Medical Law streamlines this, filtering weak cases to avoid unnecessary costs, and providing prospective clients with fast feedback.
- **Exchange of Written Evidence:** After starting a claim and serving the defendants, parties exchange the written record. This is a long process as relevant evidence is slow to accumulate.
- **Discovery:** After a claim has started, and written evidence has been exchanged, we advance to gathering oral evidence – in the form of discovery. Discovery is a process of interviewing, under oath, to assess the supplementary evidence not caught in the written records, as well as to gauge credibility of parties.
- **Settlement Pursuit:** Throughout this process we assess for the possibility of settlement. This can be formally pursued through structured mediation, but flexible negotiations occur throughout, aiming to avoid trial’s costs and delays.
- **Trial:** If settlement fails, evidence is formalized, pre-trial motions address admissibility, and trial dates are set. Appeals may follow if either party contests the verdict. Limitation periods and damage types (pecuniary/non-pecuniary) are key considerations, varying by jurisdiction.

## 5. How much is my medical malpractice claim worth?

Tort litigation aims to restore plaintiffs to their pre-harm state through monetary damages:

- **Pecuniary Damages:** Cover financial losses like care costs, rehabilitation, lost income, and future expenses.
- **Non-Pecuniary Damages:** Address pain, suffering, loss of enjoyment, and, rarely, punitive damages for egregious conduct. Aggravated damages may apply in tragic cases of a plaintiff who is vulnerable. Caps on non-pecuniary damages exist, stemming from the 1978 Supreme Court rulings (*Andrews v Grand & Toy Alberta Ltd.*, etc.).

## 6. What separates Acuity Medical Law from other firms?

At Acuity Medical Law, our guiding principles—Logos, Ethos, and Pathos—draw from Aristotelian philosophy to shape our advocacy.

Logos, rooted in reason, drives our meticulous analysis of medical and legal evidence, ensuring arguments are logical and robust.

Ethos, reflecting moral character, underpins our commitment to integrity, transparency, and compassionate client relationships, fostering trust as we navigate complex malpractice cases.

Pathos, the appeal to emotion, acknowledges the profound human impact of medical negligence, motivating us to pursue justice with empathy and dedication.

Together, these principles blend rational rigor, ethical conduct, and emotional resonance to deliver the strongest representation. More specific details include:

- **Medical Accumen:** Dr. Lavranos is a 10+ year practicing emergency physician, as well as a medical malpractice lawyer. This is an especially unique background, distinguishing Acuity Medical Law from other firms.
- **Compassionate Advocacy:** We understand clients seek justice, not just compensation, and provide empathetic support throughout. Dr. Lavranos has been a physician for many years, and has seen the suffering of patients. At Acuity Medical Law, we draw insight from both the legal representation of clients, while still recognizing the clinical consequences of their harms.
- **Efficiency/Empathy:** As a boutique firm doing almost exclusively medical malpractice, we are an efficient firm where you are not a cog in the wheel, but an individual client that we care for.
- **Clinical Expertise:** Dr. Lavranos, an emergency physician with a health-law certification, enhances efficiency through medical record reviews, causation analysis, and cost reduction.

At Acuity Medical Law, we are dedicated to guiding clients through the complexities of medical malpractice with transparency and skill. Contact us to discuss your case.