

# A Guide to Medical Negligence

Section 11 of the Constitution provides for the most fundamental of all human rights: the right to life. Along with this right comes the right of access to health care (Section 27). This means that people should have the opportunity to receive health care and that health care services should be available, usable, and effective. But what happens when health care fails us?

There are some exceptions when it comes to providing sufficient health care, for instance, certain medical services are limited to the resources available at the hospital or clinic, which means that there might be no grounds for legal action.

But what is medical negligence? It refers to the faulty conduct of a medical practitioner or hospital staff whose conduct was unlawful and/or negligent. It is however important to note that not all bad outcomes are as a result of negligence.

It must be shown that there was negligence on the part of the doctor and/or hospital staff, that the patient has suffered damages and that the damages suffered are causally linked with the proposed negligent conduct.

Medical negligence can take the form of the following:

1. misdiagnosis;
2. errors of judgement;
3. failure to inform the patient about the diagnosis;
4. failure to refer the patient to another practitioner;
5. failure to follow up on the patient and provide further treatment; and
6. negligence occurring during operations.

Women tend to be the regular victims of medical negligence relating to gynaecology and obstetrics. In some cases, injuries to the foetus can occur before or during delivery which can lead to the gynaecologist or obstetrician being held legally liable for the damages.

Lastly, there is a limitation on the damages one is able to claim.

1. Past hospital and medical expenses;
2. Future hospital and medical expenses;
3. Loss of support; and
4. Pain and suffering.

There is more to it than just instituting legal action against your doctor and/or hospital. It is quite the extensive process which can take years to complete and requires a lot of patience.

Do not think that medical practitioners are above the law.

(Note that this guide is only for brief informative purposes)