

FAILURE TO DIAGNOSE/ MISDIAGNOSIS

Time lost treating an ailment due to misdiagnosis or failure to diagnosis can be costly to the victim and families. We rely on doctors to make accurate recognition of the symptoms we are having and the ability to make a timely diagnosis. The law does not require the doctor to make a correct diagnosis every time. Conditions can be difficult to diagnose and affect different patients in different ways. However, physicians use a process of elimination to diagnose their patients and must use good judgment to make a conclusive judgment. The standard of care is what a reasonable doctor's course of action would have been under similar circumstances. Expert witnesses are most important in trying to prove a claim. It is important to note that even the most successful doctors are wrong from time to time, therefore a wrong diagnosis is not enough for a successful claim. Further, just because a patient was treated successfully does not mean there is no actual harm. Doctors are expected to explore all possible options to determine the correct diagnosis.

Damages:

- Medical bills
- Lost employment
- Pain and suffering

Forms of harm:

- Additional medical problems
- Additional expenses
- Stress
- Anxiety

Types of misdiagnosis:

1. **Failure to diagnose a subtype** (need to get sub type and not just a broad condition)
2. **False positive** (the physician incorrectly tells a patient that he/she has a condition when they in fact do not)
3. **Diagnosing a symptom and not the underlying condition** (failure to dive deep enough into the health complaint)
4. **False negative** (patient does have the disease but the physician failed to diagnose the condition)

Commonly misdiagnosed diseases:

- a) Diabetes

- b) Heart attack → didn't order the right test, misread test results, or fail to notice warning signs
- c) Bacterial meningitis → can cause organ failure, brain injury, seizure, blindness, and amputation
- d) Cancer types → breast, lung, testicular, cervical, ovarian
- e) Pulmonary embolism → has similar conditions to pneumonia or heart attack

Why cancers get misdiagnosed?

- Failure to ask important family medical history
- Misinterpreting patient test results
- Ignoring patient complaints
- Failing to follow up with patient
- Lymphoma has same symptoms as the common cold

What do you need to prove?

1. That a doctor patient relationship existed between the plaintiff and defendant
2. The doctor was negligent (goes beyond just providing the wrong diagnosis)
3. The doctor's negligence caused actual harm to the patient

Delayed diagnosis: must prove the condition worsened more than it would have if the diagnosis had not been delayed and the worsened condition is causing the treatment to be less effective