

WRONGFUL DEATH (due to medical error)

What is it?

Wrongful death is a legal term for a civil action. It is a situation where the death of a person would not have taken place under the circumstances that it did, except for some negligence that occurred on the part of another. The personal injury claim is then brought by the surviving family members in the wake of a loved one's death. The death of a loved one is not only detrimental to a family but also creates economic and non-economic losses. We put our trust into doctors and nurses to make us feel better. Yet, studies show 100,000 American dies each year as a result of medical errors. Although no type of money can make up for the loss of a family member, this civil action was created to prevent wrongdoers and negligent individuals from escaping liability by causing the death of the victim. Additionally, this action can prevent someone else from suffering the same loss you did.

Causes:

1. Surgical and anesthesia errors
2. Lost or delayed tests results
3. Missed diagnosis
4. Delayed diagnosis
5. Failure to diagnose
6. Prescription medication errors

Common fatal surgical errors:

- Infections
- Objects left in the body from surgery
- Damaging the nerves
- Anesthesia complications
- Punctured organs

What about common high risk procedures?

Certain procedures are high risk generally (like cardiovascular and neurosurgery) and can lead to fatal outcomes even without negligence. However, if there is negligence on the surgeon that directly caused the loved ones death then they might still have the right to file a claim.

Damages:

- Loss of future financial support (usually husband + wife)
- Loss of companionship (loss of happiness)

- Funeral bills
- Medical costs incurred before death

Standard of care:

In the lawsuit, the plaintiff's lawyer must show that the defendant doctor did not use the appropriate level of care at the time of the medical negligence and that the decedent lost his or her life as a result. This standard is defined as the same protocols and practices that a medical professional with similar training and experience in the same area of practice would use.

Under M.G.L.A. 260 §4 → Errors or mistakes against physicians, surgeons, dentists, optometrist, or hospitals shall be commenced only within 3 years after the cause of action accrues and in no event will the action be commenced more than 7 years after occurrence of the act which is the alleged cause of the injury.

Similarly, **G.L. c. 260, § 4** sets forth a seven-year statute of repose for medical malpractice cases including those for wrongful death. Thus, a wrongful death claim would be barred if not filed within seven years of the negligent act.