

When Is a Surgical Error Considered Medical Malpractice?

Injured in South Florida? We'll fight for the justice and compensation you deserve

Surgery always carries risks. Even with the most skilled surgeons, complications can happen. But not every surgical mistake is a normal risk. When a surgeon, anesthesiologist, or operating room staff member makes an avoidable [surgical error](#) that causes serious harm, it may be considered medical malpractice – not just a complication.

[Historical research](#) suggests that approximately one wrong-site surgery occurs per 100,000 procedures in the United States. Even more alarming, some investigations suggest that medical errors are underreported and often omitted from death certificates, which masks the true extent of the problem.

So, when does a surgical error become more than just an unfortunate outcome? And how do you know whether it qualifies as medical malpractice? If you or a loved one was harmed due to a surgical error, a Palm Beach County [medical malpractice lawyer](#) at the Law Offices of Casey D. Shomo can determine if you have a strong case and explain your legal options.

What qualifies as a surgical error?

A surgical error is a preventable mistake that happens before, during, or after a surgical procedure. These errors often result from negligence, poor communication, lack of planning, or technical failure. They often leave patients with permanent injuries, extended recovery time, or the need for additional surgeries.

While some complications are unavoidable, surgical errors usually stem from human mistakes that proper care could have prevented.

Common examples of surgical errors that lead to medical malpractice include:

- Operating on the wrong part of the body
- Performing surgery on the wrong patient
- Leaving surgical tools, sponges, or clamps inside the body
- Damaging nerves, organs, or arteries due to improper technique
- Giving the wrong dose of anesthesia or failing to monitor the patient during sedation
- Failing to sterilize tools, causing avoidable infections
- Rushing a procedure or skipping pre-op safety checks

Medical malpractice occurs when a healthcare provider fails to follow the accepted standard of care, resulting in injury or harm to a patient. The standard of care refers to what a reasonably competent healthcare provider would do under similar circumstances.

When does a surgical error become medical malpractice?

Complications can happen even when surgeons do everything right. The key is whether the error resulted from a clear deviation from accepted medical practices.

A surgical error becomes malpractice when:

- The surgeon failed to follow safety protocols or skipped steps that other competent surgeons wouldn't have missed.
- The patient suffered harm that proper care could have prevented.
- The error wasn't a known risk of the procedure but the result of avoidable negligence.

For example, if a patient consents to back surgery but the surgeon operates on the wrong disc, it's a preventable error. But if the same patient experiences nerve pain afterward despite a properly performed surgery, that may not qualify as malpractice.

How do you prove a surgical error was malpractice?

Proving that a surgical error crossed the line into malpractice requires more than showing that something went wrong. You need solid evidence, expert testimony, and a clear explanation of how the malpractice occurred.

To prove medical malpractice, four elements must be present:

- **Duty of care:** The surgeon or provider had a professional responsibility to treat the patient.
- **Breach of duty:** The provider failed to meet the accepted standard of care.
- **Causation:** The breach caused the patient's injury or worsened condition.
- **Damages:** The patient suffered measurable harm, such as physical injury, emotional distress, or financial loss.

Key steps in proving malpractice include:

- **Obtaining medical records:** Operative reports, surgical notes, anesthesia logs, and post-operative records help establish what happened during the procedure.
- **Hiring expert witnesses:** Independent doctors review the case and explain what the standard of care required, and how the provider deviated from it.
- **Comparing to accepted medical standards:** Guidelines from professional organizations help show what a competent surgeon would have done in the same situation.

- **Linking the error to the injury:** You must demonstrate that the surgical mistake (not a pre-existing condition or known risk) caused your harm.

Who can be held liable for a surgical error?

While the surgeon often holds primary responsibility, multiple parties may share liability for a surgical mistake, depending on how the error occurred. For example:

- Anesthesiologists can be held accountable for improperly administering sedation or failing to monitor a patient.
- Nurses or surgical technicians can be liable for failing to follow protocols, mislabeling charts, or missing tool counts.
- Hospitals or surgical centers can face liability for inadequate staffing, negligent hiring, lack of training, or faulty equipment.
- Third-party contractors (such as companies that provide medical devices, surgical implants, or support services) can share responsibility if their products or personnel contribute to the harm.

What compensation can I seek in a surgical malpractice case?

If a surgical error caused you harm, you may have the right to recover compensation for both economic and non-economic damages. Compensation for medical malpractice typically includes:

- **Medical expenses:** These are costs for corrective surgery, rehabilitation, hospital stays, and future medical care.
- **Lost income:** These are wages missed during recovery and the potential loss of future earning ability.
- **Pain and suffering:** This accounts for physical pain, emotional distress, and loss of enjoyment of life.
- **Permanent disability or disfigurement:** This includes compensation for long-term injuries or scarring.
- **Wrongful death damages:** If a loved one dies due to a surgical mistake, surviving family members may recover funeral costs and loss of companionship.

Hurt by a surgical mistake? Let us help you find answers and justice

If you or a loved one was hurt because of a surgical mistake, you deserve answers, justice, and fair compensation. However, knowing how to pursue a claim can be confusing, especially when medical personnel deny wrongdoing and insurance companies try to keep their costs down.

That's where the Palm Beach County medical malpractice lawyers at [The Law Offices of Casey D. Shomo, P.A.](#) come in.

We know you're going through a lot physically, emotionally, and financially. We're here to stand beside you every step of the way. We work with top medical experts and build strong cases to help our clients recover maximum compensation for their damages. Our results speak for themselves, including a [\\$2.25 million recovery](#) in a case involving wrong-site surgery.

You don't have to worry about legal costs. We offer free consultations and work on a contingency fee basis – you only pay if we win your case. Whether you're in West Palm Beach, Wellington, Boca Raton, Delray Beach, or anywhere in South Florida, we're ready to help. [Contact us online](#) or call us today to set up a free, confidential case consultation with one of our attorneys.

"Casey Shomo and staff handled my case in a completely professional way. Working with them was a breeze and an amazing experience. Highly recommended." – DM, ★★★★★