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Surgical Error Claims

Surgical error litigation arises when negligence by surgeons or medical institutions during a procedure causes harm to the patient. These cases are complex, often emotionally charged, and can involve severe, life-altering consequences, making them among the most intricate medical negligence claims, heavily reliant on expert testimony.

Unique Challenges in Surgery

Surgical errors range from acceptable risks within the standard of care to egregious mistakes causing significant harm.

Three key factors elevate the complexity of these cases:

- **Risk Disclosure:** Surgeons must inform patients of potential risks, such as damage to nearby organs. Failure to obtain informed consent can lead to claims of battery or negligence (Reibl v Hughes, 1980 SCR).
- **Intraoperative Vigilance:** Meticulous monitoring during surgery is critical to catch errors, like misplaced instruments or unintended tissue damage, before they escalate.
- **Postoperative Diagnosis:** Errors may mimic routine complications, requiring careful monitoring for signs like unexpected pain, swelling, or loss of function to distinguish them from typical recovery.

Types of Harms and Damages

Surgical errors can result in varied, often severe outcomes, including:

- Infections leading to sepsis
- Nerve damage causing chronic pain or paralysis
- Major vessel injuries with life-threatening consequences
- Organ dysfunction or loss

Errors may stem from:

- Improper patient selection
- Flawed surgical technique
- Inadequate postoperative care.

These harms impose profound physical, emotional, and financial burdens, including costs for corrective treatments, rehabilitation, and ongoing care. Litigation seeks compensation to alleviate these burdens and address reduced quality of life.

Standard of Care and Causation: Role of Experts

Plaintiffs must prove a breach of the standard of care and a causal link between negligence and harm, both requiring expert testimony. Surgeons are held to the standard of a reasonable practitioner, not perfection (Donoghue v Stevenson, 1932).

Specialists review operative notes, guidelines, and complication rates to assess whether the defendant's actions fell below this standard, as seen in cases involving mismatched documentation (Ter Neuzen v Korn, 1995 SCC).

Expert testimony must meet admissibility criteria (Suwary v Librach, 2015 ONSC):

- Relevance
- Necessity in assisting the court
- Absence of exclusionary rules
- Properly qualified expert

Delayed or subtle symptoms can complicate causation, requiring experts to align with the surgeon's context, as in disputes over equipment use (Miller et al v Dow et al, 2017 NBQB).

Legal Complexities

Surgical error cases demand robust evidence, requiring attorneys to master medical terminology, secure detailed records, and engage specialists. Comprehensive documentation, including consent forms and operative notes, is critical to trace errors and defend against claims of substandard care.

Case law highlights challenges. Inadequate pre-filing preparation can lead to dismissal (Khan v Lee, 2014 ONSC), while causation disputes often require precise jury instructions (Uribe v Tsandelis, 2019 ONSC).

Discrepancies in records among surgical teams add further complexity, as seen in Cheung v Samra (2018 ONSC), where a retrial was ordered due to flawed guidance.

Surgical error litigation requires meticulous medical and legal expertise to address devastating patient outcomes. From proving negligence to navigating intricate evidence, these cases demand skilled representation to secure fair compensation.