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How to know if you have a case, what laws that protect you, and exactly what to do next

The Florida Medical Malpractice Victim's Guide

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A bad medical outcome is not always malpractice. Medicine carries real risks, and not every disappointing result means someone was negligent. But sometimes harm is caused by a preventable error. This guide helps you tell the difference, explains the Florida laws that protect you, and walks you through exactly what to do. It is general information, not legal advice.

Medical Malpractice vs. a Bad Outcome

Malpractice is not simply that something went wrong. It means a provider failed to do what a reasonably careful provider would have done, and that failure caused real harm. A medical malpractice case in Florida generally needs all four of these elements:

1. A provider-patient relationship (they owned you care).
2. A breach of the standard of care (they did something a careful provider would not, or missed something one would have caught).
3. Causation (that failure actually caused the harm).
4. Damages (real injury, added treatment, lost income, or worse).

A Bad Outcome Alone Is Not Enough

- A known complication that was properly disclosed and handled.
- A condition that was always going to be hard to treat.
- Dissatisfaction with results when the care met the standard.
- An honest risk of a procedure you consented to.

Warning Signs Something May Have Gone Wrong with Your Medical Care

None of these prove malpractice on their own, but several together are worth having reviewed.

Diagnosis Problems
- A diagnosis was missed, delayed, or wrong, and your condition worsened as a result (cancer, stroke, heart attack, sepsis, infections).
- Your symptoms were dismissed, or you were sent home from an ER and got much worse soon after.

Surgical and Procedure Errors
- Wrong site, wrong procedure, or an object left inside the body.
- Unexpected, severe injury to a nearby organ or nerve, or a second surgery to fix the first.

Medication and Anesthesia
- Wrong drug or dose, a dangerous interaction that should have been caught, or an anesthesia complication from poor monitoring.

Birth Injuries
- Harm to baby or mother during delivery, a delayed C-section, or a diagnosis like cerebral palsy or Erb's palsy.

Hospital and Nursing Care
- Preventable falls, bedsores, untreated infections, medication mix-ups, or being ignored when you raised the alarm.

If You Suspect Medical Malpractice Right Now

Do	Do Not
✓ Keep going to appointments and follow medical advice for your health.	✕ Do not confront or accuse the provider. It changes nothing legally and can tip them off.
✓ Write down what happened while it is fresh: dates, names, what was said.	✕ Do not sign anything or accept any offer without advice.
✓ Start gathering your records and bills.	✕ Do not post about it on social media.
	✕ Do not sign anything or accept any offer without advice.

Laws that Protect Medical Malpractice Victims in Florida

You have more rights than most people realize. These are the key Florida and federal laws working in your favor. (You do not need to memorize the numbers; a good lawyer handles them for you.)

The Law	What It Does for You
Patient's Bill of Rights (Fla. Stat. § 381.026)	Guarantees your right to know your diagnosis and treatment, to be told about alternatives and risks, to refuse treatment, and to receive an itemized bill.
Medical Consent Law (Fla. Stat. § 766.103)	Requires providers to obtain your informed consent, including an explanation of the nature, risks, and alternatives, before treating you. Treating without it can create liability.
Records Access, Practitioners (Fla. Stat. § 456.057)	Gives you the right to obtain copies of your own medical records from doctors and practitioners, on time.
Records Access, Hospitals (Fla. Stat. § 395.3025)	Gives you the same right to your records from hospitals and licensed facilities.
Pre-Suit Records Rule (Fla. Stat. § 766.204)	Once a malpractice claim is underway, providers must hand over your records within 10 business days, at no cost for the first copy.
Standard of Care (Fla. Stat. § 766.102)	Defines malpractice as care that falls below what a reasonably careful, similar provider would give. This is the legal yardstick for your case.
Adverse Incident Reporting (Fla. Stat. § 395.0197)	Requires hospitals to track and report serious errors, creating a paper trail that can support your claim.
No Damage Caps (McCall & Kalitan rulings)	Florida's Supreme Court struck down limits on pain-and-suffering damages, so there is no cap on what you can award in a malpractice case except in very limited circumstances.
HIPAA (Federal)	Backs up your right to access and control your medical records nationwide.
EMTALA (Federal)	Requires ERs to screen and stabilize anyone with an emergency, regardless of ability to pay. Improper "patient dumping" can be a violation.

Know the Florida Rules: Deadlines and Process

Medical malpractice is one of the most deadline-driven, procedure-heavy areas of Florida law. Missing a single step can end even a strong case, which is why acting early matters so much.

The Rule	What It Means for You
Deadlines to File (Statute of Limitations)	Generally, 2 years from when you discovered, or reasonably should have discovered, the injury and that malpractice may have caused it.
Hard Outer Limit (Statute of Repose)	In most cases, no more than 4 years from the date of the negligence, no matter when you discover it. This extends to 7 years if there was fraud or concealment.
Children	For a child harmed before age 8, the outer deadline generally extends to the child's 8th birthday.
Wrongful Death	Generally 2 years from the date of death. This is a separate clock from the date of treatment.
Notice of Intent	Each provider must be formally served and given a 90-day period to review the claim. This pauses (tolls) the deadline while they respond.
Cost to You	Reputable malpractice firms, including Freidin Brown, work on a contingency fee basis. You pay nothing up front and owe no fee unless there is a recovery.

What to Do About Your Medical Malpractice Case, Step by Step

Request Your Complete Medical Records
- Ask every provider in writing for your full records: charts, test results, imaging, medication logs, and nurses' notes. The law gives you the right to them.
- Include the two years before the event as well, since Florida's pre-suit process requires them.

Get an Independent Second Opinion
- Have another qualified provider review your care. It protects your health and helps show whether the standard of care was met.

Preserve Everything
- Keep one organized file: records, bills, receipts, discharge papers, and a written timeline.
- Note every name involved, including doctors, nurses, and facilities. Identifying all responsible parties early matters.

Track the Impact
- Document new treatment, lost income, and how the harm has changed your daily life.

Talk to a Malpractice Lawyer Early
- Call before deadlines run out and before you speak to the negligent healthcare providers or their representatives. These cases need expert medical review before a suit can even be filed, and that takes time.

Who Can Sue in a Florida Medical Malpractice Case?

Who can bring a claim, and what they can recover depends on whether the patient survived. Florida's rules for a death caused by medical malpractice are unusual and strict, so this is worth understanding early.

If the patient survived the injury

- The injured patient can sue for their own damages.
- A parent or legal guardian can sue on behalf of a minor child or a patient who cannot act for themselves.

If the patient died (wrongful death)

- The estate's personal representative files the claim, not individual relatives. They bring one action on behalf of the eligible survivors and the estate.
- Recoverable losses can include the estate's economic damages (such as medical and funeral bills and lost financial support) and, for eligible survivors, non-economic damages like companionship and pain and suffering.

Important: Florida's 'Free Kill' Law (Fla. Stat. § 768.21(8))

- In a medical malpractice death, only a surviving spouse or a child under 25 can recover noneconomic damages (pain, suffering, loss of companionship).
- Adult children (25 or older) and the parents of an adult child (25 or older) generally cannot recover non-economic damages in these cases, even when the negligence is clear.
- Economic damages, such as funeral and medical bills, may still be recoverable.
- This limit is unique to medical malpractice and does not apply to other wrongful death cases.
- This law is controversial and has faced repeated repeal efforts, but it remains in effect. Because the rules are harsh and fact-specific, speak with a lawyer even if you have been told you have no case.

What to Expect When You Start the Medical Malpractice Claim Process

Medical malpractice cases follow a defined path in Florida. Here is what each stage means, in plain language, so there are no surprises.

Stage	What Happens
1. Free Consultation	You meet with the firm, share your story and documents, and they give an honest first read on whether you have a case. No cost, no obligation.
2. Investigation	The firm gathers your complete records and has qualified medical experts review the care to see if it fell below the standard. This is the heart of a strong case.
3. Expert Affidavit	If the experts agree there are reasonable grounds, they sign a sworn written opinion. Florida law requires this before a claim can move forward.
4. Notice of Intent	Each responsible provider is formally notified of your claim. This opens a 90-day pre-suit period and pauses your filing deadline.
5. Pre-Suit Period	For 90 days, the providers and their insurers investigate and respond: they may reject the claim, offer to settle, or request to arbitrate.
6. Filing the Lawsuit	Most cases settle before trial. If the defendants do not offer a fair settlement, our lawyers are prepared to present your case to a jury at trial.
7. Discovery	Both sides exchange evidence, take depositions, and consult experts. Many strong cases settle during or after this stage.
8. Settlement or Trial	Most cases settle for fair value. If the other side will not offer that, your trial lawyers present your case to a jury.

How to Prepare for Your First Meeting With a Lawyer

At Freidin Brown P.A, the first consultation is free, and there is no obligation. You do not need everything below to attend, but the more you bring, the better a lawyer can assess your case. Do not worry if some items are missing; the firm can help you obtain them.

Documents to Bring (If You Have Them)

- **Medical records and test results** from the provider involved and any treatment since.
- **A written timeline** of what happened, in your own words, with dates.
- **All medical bills and receipts** related to the injury, plus proof of any lost wages.
- **Insurance information** and any correspondence with the provider or their insurer.
- **A list of every provider and facility** involved in your care, with names and dates.
- **Photographs** of any visible injuries, and a list of your medications.
- **Your questions** written down, so nothing gets forgotten in the moment.

Questions to Ask Your Lawyer During the First Consultation

- Do you think I have a valid malpractice case, and how strong is it?
- Have you handled cases like mine, and what were the results?
- What deadlines apply to my situation?
- Will my health insurer, Medicare, or Medicaid have to be repaid from my settlement, and do you negotiate those liens before I get paid?
- Who will handle my case day to day, and how will you keep me updated?
- What will you need from me as the case goes on?
- Will my case need to go to trial, or is it likely to settle?
- How long do cases like mine usually take?
- What are the biggest risks or weak spots in my case?

How Freidin Brown Can Help with Your Claim

We have been a Florida trial firm since 1976, focused on catastrophic injury and medical malpractice, with more than $500 million recovered for clients.

- **We investigate for you.** We gather the records, line up qualified medical experts, and handle Florida's entire pre-suit process.
- **We front the costs.** Cases are handled on contingency. You pay nothing up front, and owe no fee unless we win.
- **We take on the giants.** Decades of in-civil trials. experience against major hospitals, insurers, and corporations.
- **We keep it personal.** A boutique law firm with a limited number of caseloads so your case gets real attention. Se habla español.

Why Clients Across Florida Trust Freidin Brown P.A with Their Medical Malpractice Lawsuits

- **Oversees by Philip Freidin.** Our founding partner personally oversees every malpractice case, with 50-plus years of trial experience.
- **A limited caseload.** We take on few cases so each gets the time and resources to reach maximum recovery.
- **Two attorneys per case.** Every matter gets at least two lawyers in planning, so nothing is missed in the pre-suit phase.
- **Board-certified.** Two of our attorneys are Board-certified by the Florida Bar in trial litigation.
- **Career trial lawyers.** Our team has taken 300- plus cases to jury trial; we build every file as if it will be tried.
- **A national expert network.** We partner with leading medical and nursing experts to strengthen your case.
- **Attorney and paralegal oversight.** Paralegals track your case alongside the lawyers, so milestones are met and you stay informed.
- **A legacy of results.** Since 1976, we've had the resources to stand up to the biggest hospitals and insurers in Florida.

Think Something Went Wrong With Your Care?

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