

# PODIATRY MALPRACTICE OF NEW YORK

## Commonly Asked Questions

*(Answers refer to New York law)*

*Is there a fee for initial consultation?*

NO:

*What is the legal fee in malpractice cases?*

The legal fee, defined by statute, is referred to as a "decreasing sliding scale." The scale starts at 30% of the net recovery, up to \$250,000. Recoveries over that amount see a decrease in the percentage as a legal fee. The net recovery, on which the legal fee is calculated, is the total recovery less any disbursements and expenses the attorney advances to the case. The client is responsible for case expenses.

*What is the time limit for medical malpractice cases?*

The "statute of limitations" is generally two years and six months from the date of the malpractice. However, there are exceptions to this general rule. Sometimes the time limit starts later than the date of the actual malpractice. At times, a shorter time limit applies as with medical malpractice committed at a city, county or state hospital. Only a knowledgeable attorney can advise you as to which time limit applies to the facts of your case.

*How long does a case take?*

The Courts are always reducing the time it takes for a case to get to a trial. Cases in some courts are finished in 18-24 months. In other courts the time may be longer. Once a case starts all courts have built-in standards (time limits) as to how the case must proceed. More important than how long a case takes is how the case is being handled by your attorney given the specific facts of your case.

*Does my attorney have to get all of my medical records?*

Generally, yes. Every record relevant to the case has to be collected and reviewed.

*My new doctor says I have a case and will help me. Is this an advantage?*

Generally, yes. But remember - many doctors who tell their patient they have a case do not know the legal standards necessary for a case. Having your doctor support you in your case is generally helpful because he or she might be a valuable witness on your behalf.

*When you accept my case does that mean I will either win my case or get a settlement?*

No. Always remember that no attorney, or the prior results of an attorney, can guarantee or predict the outcome of a case. Recoveries in similar cases cannot predict the outcome in your case.

*If I signed a consent form, did I waive my right to sue?*

No. Signing a consent form, after you have carefully read it, might indicate that you were made aware by your doctor of the risks and alternatives to treatment (or surgery). But signing it does not mean you gave permission for the doctor to make a mistake, even if that mistake is listed as a "risk" of the treatment (or surgery).

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Malpractice](#)

[Dental  
Malpractice](#)

[Chiropractic  
Malpractice](#)

[Commonly Asked  
Questions](#)

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