

Medical Malpractice:

Are Women Of Color More Likely To Suffer From Misdiagnosis?

A WHITE PAPER PRESENTED BY

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Maybe you are getting ready to have your first child, preparing for a battle with cancer or trying to figure out why you are in pain. Whatever the reason is behind a trip to the doctor, you expect the medical professional to help treat your illness, injury or condition. What's more, the medical community itself expects your doctor to provide quality care, and their failure to do so can result in the doctor facing repercussions ranging from mandatory additional training to revocation of their professional license. Every state has a system in place to hold medical practitioners accountable if they fail to meet this standard – but what about the patient? What happens when a doctor's failure to treat their patient results in serious injury?

The legal community has developed an answer: the medical malpractice claim. While this legal framework provides a pathway for patients to seek justice, recent research has found that some may need to use it more than others. This is particularly true when it comes to certain types of medical errors. Women of color, in particular, are at a greater risk of suffering from medical errors.

What Are The Challenges For Women Of Color In Health Care?

The research noted above has found that misdiagnosis impacts 12 million adults in the United States every year. Of this group, women and minorities are 20% to 30% more likely to get misdiagnosed than white men. This issue is often rooted in stereotypes and biases. Even the most well-meaning medical professional is at a disadvantage, as the vast majority of literature used in medical schools contains illustrations of white men. Less than 5% of these illustrations use patients with dark skin. This means that physicians may feel less confident diagnosing Black patients.

This lack of representation impacts more than just the diagnosis of skin conditions. The COVID-19 pandemic brought attention to the fact that even pulse oximeters – devices used on a patient’s finger tip to measure oxygen levels – are inaccurate for those with dark skin. This is because the device shines light through the skin and does not account for differences in melanin levels when making its reading. These failures, combined with the individual biases of treating physicians, are just a few contributing factors to the higher number of delayed and missed diagnoses for Black patients.



Common examples of misdiagnosis that are especially prevalent for Black women include:

- Failure to treat pain during labor and delivery
- Failure to believe their symptoms
- Failure to provide prompt treatment



The statistics are sobering. A recent piece from ProPublica and National Public Radio (NPR) reports that, compared with a white woman, a Black woman is:

22%

more likely to die from heart disease

71%

more likely to perish from cervical cancer

243%

more likely to die from pregnancy or childbirth related causes



Failure To Treat Pain During Labor

Black women have reported longer wait times for epidurals during childbirth. This delay is sometimes attributed to the unfounded perception that they are more likely to be drug addicts, which can lead to a lack of timely pain management. In addition, some in the medical field falsely believe that Black people have “less sensitive nerve endings, thicker skin and stronger bones.” This can lead to their failure to help Black patients receive the pain management they need, resulting in delayed or denied epidural analgesia for Black mothers in labor.

Failure To Believe Symptoms

Another important concern is the failure of medical professionals to believe Black patients when they explain their symptoms. In one instance, a Black woman repeatedly sought medical care for herself after giving birth to her daughter. Symptoms included weakness, fatigue, difficulty breathing and a cough. Medical providers who examined the woman blamed postpartum depression and the flu. After weeks of dealing with these ailments, she finally consulted a physician who took her symptoms seriously and determined that she was suffering from heart failure. In another example, a medical professional herself entered an emergency room and approached the front desk. She states that, as a Black woman, she needed to introduce herself as a physician to make sure she received the care and compassion she needed. She knew that the test results warranted admission and that her symptoms could worsen and become even more dangerous if the treating doctor sent her home – something it appeared he was going to do before she advocated for her care.

These cases are especially heartbreaking because the compensation allowed by the state may not reflect the true damage done to the family. For example, in a tragic case in Texas, a child of color died from meningitis due to a misdiagnosis by the treating physician, who failed to follow the accepted standard of care when responding to the listed symptoms. Instead of testing for and treating meningitis, as a reasonable physician in the same situation would have done, this physician dismissed the symptoms, which tragically progressed, leading to the death of the child. This case underscores both the failure to take Black patients seriously and the limitations of economic damages in medical malpractice cases. With damages capped at \$250,000 for noneconomic and punitive damages, families face significant barriers in seeking justice, as this cap bars them from receiving just compensation for their losses.

Just compensation should do more than just cover the bills; it should also provide funds for future **life care costs**, including those for nursing care, additional medical expenses, any required medical devices, and even structural alterations to the home to ensure proper accessibility for the victim.



Failure To Take Prompt Action

Failure to intervene and stop the progression of medical conditions can also result in serious injury to the patient. An example of this is the failure to treat kernicterus in Black infants. This rare condition occurs when there are high levels of bilirubin in the blood, which, if left untreated, can cause newborn brain damage and severe disability. In Black children, who have higher melanin levels, the main symptom, jaundice, may not appear “yellow enough,” leading to potentially dangerous delays in treatment. Skin tone is not the only indicator. A treating physician should also examine the color of the eyes, as they may appear yellow if the body is not removing bilirubin, and, if there are concerns, order labs. Physicians note that during medical training, they are often taught that instances of kernicterus are rare in Black children – something that is not backed by research. Although kernicterus is not common, Black infants suffer a disproportionate number of untreated cases. Early detection and treatment are crucial in preventing long-term damage, which, if left untreated, can lead to a lifetime of medical and care expenses.

Additional injuries that result from a failure to take prompt action regarding jaundice and other medical conditions can include:

Oxygen deprivation-related conditions:

- Hypoxic-ischemic encephalopathy (HIE)
- Cerebral palsy, particularly spastic CP, which is linked to oxygen deprivation
- Seizure disorders, developmental delays and intellectual disabilities

Infections that should have been detected or treated:

- Group B streptococcus (GBS) infection
- Neonatal sepsis, meningitis, congenital syphilis, HIV transmission, hepatitis B transmission

Prematurity-related conditions:

- Respiratory distress syndrome, bronchopulmonary dysplasia
- Intraventricular hemorrhage, necrotizing enterocolitis
- Vision and hearing impairments

Jaundice-related brain injury:

- Kernicterus, hearing loss
- Permanent neurological damage

Blood and circulatory conditions:

- Fetal anemia, stroke in newborns
- Clotting disorders worsened by delayed intervention

Birth trauma and physical injuries:

- Brachial plexus injuries (Erb's palsy), shoulder dystocia injuries
- Skull fractures, facial nerve damage

Maternal conditions that affect the baby if untreated:

- Preeclampsia/eclampsia, gestational diabetes
- Rh incompatibility, placental abruption, umbilical cord compression

Medication and monitoring errors:

- Failure to stop labor-inducing drugs when distress occurs
- Incorrect dosing of oxytocin (Pitocin)
- Delayed response to abnormal fetal heart tracings

These injuries can escalate, leading to tragic consequences. Data shows that Black women's risk of death during pregnancy is four times higher than that of non-Hispanic white women. The causes largely point to a failure to believe symptoms and intervene as a result of systemic biases, and doctors are more likely to make decisions based on these biases when they are rushed or under significant stress. Few in the medical field are put into more rushed and stressful situations than those who are helping a mother in labor. This need for an automatic response often activates the biases discussed above, increasing the possibility that Black women will not receive the care they need.





What Is Medical Malpractice?

Medical malpractice occurs when the actions or inaction of medical professionals causes harm to their patients. A medical malpractice claim is a legal tool that helps patients hold these professionals responsible for the resulting injuries. Victims can use this tool to call to account not only the treating physician but also medical practices, hospitals and hospital systems.

This type of claim provides compensation to affected individuals for their injuries and associated costs while also serving as a deterrent, encouraging health care providers to adhere to best practices and maintain high standards to prevent future errors. Ultimately, medical malpractice plays an important role in protecting patient safety and fostering trust in the health care system.

There are many types of medical malpractice, one of the most common being misdiagnosis.

What Is Misdiagnosis In Relation To A Medical Malpractice Claim?

Misdiagnosis involves a health care professional failing to correctly identify a patient's condition. This error can lead to delayed or inappropriate treatment and may result in harm to the patient. If left untreated, the illness will likely progress, and if the patient receives unnecessary treatments, they may experience adverse effects. Misdiagnosis can occur for many reasons, including the following:

- **Inadequate examination**
- **Failure to order appropriate tests**
- **Misinterpretation of test results**

Misdiagnosis happens more than people think. A study out of Johns Hopkins School of Medicine finds that approximately 371,000 people die every year from misdiagnoses, and 424,000 are permanently disabled. Recent research also indicates that race can be a factor, with Black patients suffering a higher rate of injury due to misdiagnosis compared with their white counterparts.



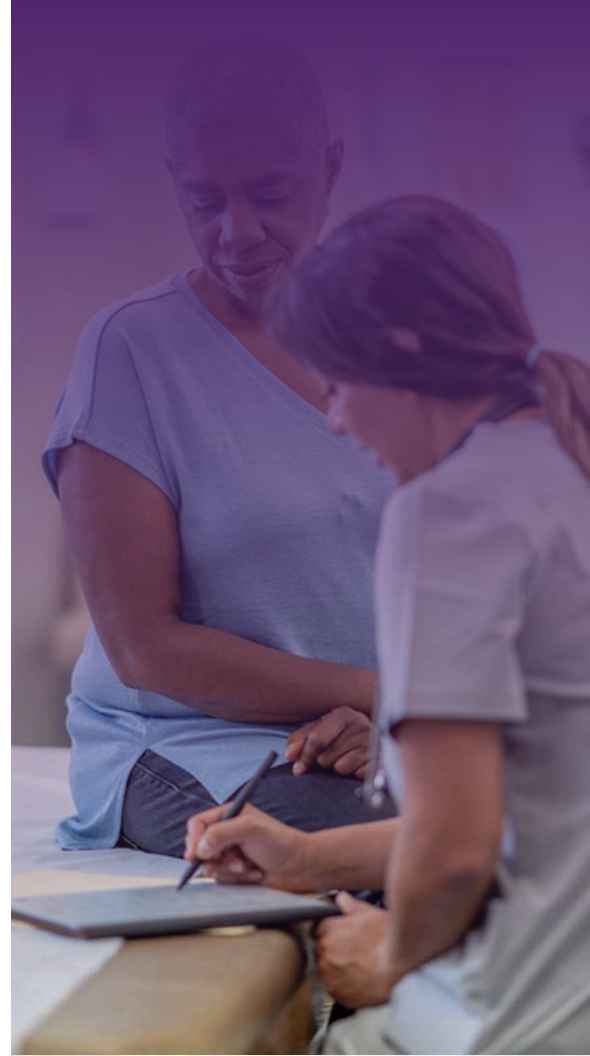
How Do You Hold A Medical Professional Liable For Misdiagnosis?

If your illness worsened or you suffered injury as a result of a misdiagnosis, then you likely have grounds for a medical malpractice claim. There are time limits to these claims, referred to as statutes of limitations. The particulars vary by state, but in Texas, the law generally provides victims two years from the date of the misdiagnosis to file a claim. There are some exceptions and additional rules, so it is important to discuss the case with legal counsel to determine the best course of action for your situation.

These types of cases are based on negligence, which requires the victim to establish four elements:

1. **Duty:** The physician owed the patient a duty of care. If there is a patient/doctor relationship, then this is fairly easy to establish.
2. **Breach:** The physician breached this duty. This can require expert testimony to explain the expected standard of care and how the physician failed to meet this expectation.
3. **Causation:** The breach caused injury to the patient, such as the progression of cancer due to a missed diagnosis or avoidable harm due to the implementation of unnecessary medical treatment.
4. **Damage:** The injuries resulted in damages, including medical expenses and lost wages due to missed work.

It is helpful to gather copies of medical records and other relevant documents to help build a strong case.



What Are Your Options If Race Played A Role In Your Legal Case?

It is important to find support. There are professionals within the legal field who focus on this type of work, carving out a niche to seek justice and right these wrongs. Larry Taylor Jr., founder of tailormadeaw.com and managing partner at the Cochran Firm in Texas, is one such professional. Larry is a fierce advocate for justice and a dedicated leader in both the legal field and his community. As the attorney overseeing our mass torts, birth injury, employment and civil rights practice areas, Larry blends strategic legal experience with an unwavering commitment to empowering everyday individuals. Known for his transparency, accessibility and compassion, he ensures that clients remain informed and supported throughout some of the most challenging experiences of their lives.

Larry's legal work spans major mass tort litigation and high-impact individual cases that profoundly affect the lives of ordinary citizens. His drive for justice is rooted in his upbringing in Duval County, Florida, and Harris County, Texas – specifically, the neighborhoods of 3rd Ward, Acres Homes and Greenspoint. Growing up in these communities gave Larry a firsthand understanding of the struggles faced by underserved populations, fueling his determination to protect the rights of people in both urban and rural settings.

His dedication deepened after his own personal experience involving legal representation against a corporate giant. This life-changing moment reinforced his belief in client-centered advocacy, so he works to ensure that fairness, compassion and clear communication guide every case he handles. In recent years, he has doubled down on advocacy for Black women and is a leading voice in the fight against medical malpractice that disproportionately impacts women of color.

“ A kid like me shouldn't be here. I am like a weed that grew out of the concrete and turned into a flower. I should never have made it. I wasn't watered. I wasn't nurtured. But I didn't realize I was a weed. And one day I bloomed and became a flower. I refuse to allow my circumstances to prevent me from making the world a better place.

– Larry Taylor ”





A Path Forward

Addressing systemic flaws requires a collective effort. Individuals and communities can come together to create meaningful change. We are fostering an open dialogue through online discourse at our website, Her Health Talk. We are expanding this site to provide a platform for women of color and their loved ones to discuss these issues with trained medical professionals. We also have a foundation, the 1060 Foundation, that provides financial assistance to women and their families who are victims of this disparate treatment.

The 1060

Foundation is a nonprofit organization based in Cedar Hill, Texas. It is dedicated to supporting the well-being and stability of single mothers impacted by breast cancer. Services provided include:

- Meals
- Cleaning services
- Child care

Options vary depending on the family's needs. In one example, the 1060 Foundation provided a grant to pay off a single mother's mortgage while she battled breast cancer.



Fight to Be Heard: My NICU Wake-Up Call On Bias And Infant Care

When my daughter was born, she showed signs that something wasn't right – she had discoloration and difficulty eating. We were terrified. As new parents, we trusted the medical team, but it felt like our concerns weren't taken seriously at first. The doctors and nurses didn't seem alarmed until we spoke up and insisted that something was wrong.

Eventually, our daughter was admitted to the NICU and placed under heat lamps. Thankfully, she made a full recovery. We are deeply grateful for that outcome. But the experience left a lasting impression. No parent should have to fight to be heard when their child's health is at risk.

That experience is why I truly understand what many parents facing birth injuries are feeling. It's the pain of not being believed. The fear of knowing something is wrong but feeling dismissed. And the helplessness of realizing that only when you raise your voice are you finally taken seriously.

At the same time, it's important to acknowledge that while all parents share this fear, not every child is treated the same way. Medical signs like discoloration can present differently depending on a child's skin tone. Applying the same visual standards to all babies, without considering those differences, can lead to delayed diagnoses and serious harm.

True, compassionate medical care requires seeing each patient as an individual. When those differences are ignored and concerns are dismissed, the consequences can be devastating. Listening to parents, honoring their instincts and recognizing differences in presentation are not just best practices; they are essential to safe and ethical medical care.

Now, as an attorney, I channel that experience and my legal training into fighting for families who have faced similar medical injustices, helping to better ensure their voices are heard, and they receive the advocacy and justice they deserve.





For attorney Larry Taylor, becoming a legal advocate for people of color who have experienced medical malpractice is more than a professional calling; it is personal. He has experienced the frustrations that accompany a life-changing medical diagnosis, as he worked through these very same concerns while his wife battled breast cancer. He knows how deeply personal these challenges are and how difficult it is to fight them in your most vulnerable moments.



He believes that it is time to push forward, to take on those who continue to fail to provide quality medical care to women of color. By working together with him, you can use the legal system to move forward. In addition to pushing for policy change within the health care sector, it is essential to hold accountable those responsible for perpetuating the problems. This will help ensure that justice is being served while also deterring future misconduct by medical professionals and facilities.

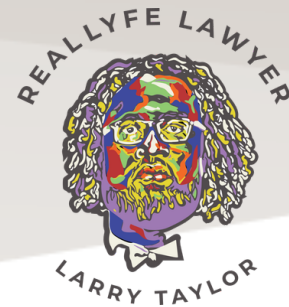
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