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# Understanding Birth Injuries



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About [one in 30 live births](#) involves some type of birth trauma. A serious birth injury can overwhelm the otherwise joyous occasion of the birth of a child with fear, sorrow, and financial distress. Sometimes birth injuries are simply unavoidable. About half the time, however, they are the result of medical malpractice on the part of the health care provider.

Some birth injuries involve only temporary trauma. Others, such as cerebral palsy, result in lifelong disability and sometimes early death. When this happens, justice demands a response in the form of full compensation for your baby's injury. Birth injury claims don't magically turn themselves into cash, however – they must be enforced, and enforcement typically requires substantial expertise.

## Most Common Birth Injuries Caused by Medical Malpractice

The mechanics of the delivery procedure dictate that some birth injuries are more common than others. In some cases, the very nature of a birth injury can raise a legitimate suspicion that it was caused by medical malpractice. [Some of the most common](#) malpractice-caused birth injuries (including birth injuries caused by negligent prenatal care) include:

- Erb's palsy, also known as brachial palsy
- Klumpke's palsy
- Cerebral palsy
- Persistent Pulmonary Hypertension of the Newborn (PPHN)
- Shoulder dystocia, which can cause Erb's palsy, Klumpke paralysis, hypoxia, and death for the baby (and can also injure the mother).
- Brain damage
- Bone fractures

## How Birth Injuries Happen

There are a thousand mishaps that might occur in a delivery, although in most cases none of them do. The most common causes of birth injuries arising from medical negligence, however, are:

- Failure to treat maternal infections during pregnancy
- Misuse of forceps and other tools
- Oxygen deprivation (failure to properly monitor oxygen intake)
- Excessive use of force

- Improper administration of medication
- Inadequate monitoring of indicators of fetal distress
- Failure to treat a prolapsed umbilical cord
- Failure to carry out a C-section when necessary
- Inadequate post-delivery follow-up (failing to control excessive maternal blood loss, for example)

## Damages

When a birth injury is caused by medical malpractice, the injured party (normally the baby but sometimes the mother) are entitled to damages for their respective injuries. In Connecticut, damages are classified as follows:

- Economic damages (current and future medical expenses, lost wages, and other easy-to-quantify losses).
- Non-economic damages (pain and suffering and other intangible losses).
- Punitive damages (awarded only in cases of outrageous misconduct).

Sometimes, high awards for non-economic damages such as pain and suffering can cause the total award to amount to far more than the amount awarded for medical expenses.

## Wrongful Death

Tragically, sometimes a birth injury will result in the death of the infant or, less frequently, the new mother. When this happens, a wrongful death lawsuit is in order. Connecticut allows a representative of the victim (in the case of an infant, a representative appointed by the court) to file a wrongful death lawsuit within two years of the date of death.

Wrongful death recoveries go to the victim's estate and are generally distributed to surviving relatives under [Connecticut's intestate succession laws](#). Damages can include amounts for:

- Medical expenses for the victim
- Funeral and burial expenses
- Lost earning capacity (if the mother is the victim)
- Pain and suffering
- "loss of the capacity to enjoy life's activities"

## What to Do in the Event of a Birth Injury

The occasion of a birth injury, especially a serious one, can be a time of grief and distress. Nevertheless, you need to act decisively to ensure that your loss is fully compensated.

- Your first course of action, of course, is to seek immediate care for your infant – and for yourself, too, if necessary.
- Your second course of action is to hire a medical malpractice lawyer to represent you.
- If you suspect that your doctor may be concealing the true nature of your baby's condition out of fear of a malpractice lawsuit, you should seek a second opinion, to the extent that your baby's health permits it.
- The most common course of action when beginning a birth injury medical malpractice claim is to gather evidence for your claim that is admissible in court (your lawyer can assist you with this).
- You will probably be seeking compensation from the defendant's malpractice insurance company. Although a private settlement is generally preferable to a court battle, the best way to keep your claim out of court is to prepare your case well, so that the defendant won't dare face you in court.

## Frequently Asked Questions (FAQs)

### What's the difference between a birth injury and a birth defect?

A birth injury is caused by a medical error before, during or immediately after birth. A birth defect, according to the [Centers for Disease Control and Prevention](#), is caused by genetic defects, environmental factors (maternal smoking during pregnancy, for example) and external trauma unrelated to medical error. Some examples of birth defects include:

- Down syndrome
- Cleft palate
- Congenital heart defects

### How do I tell the difference between a birth defect and a birth injury?

Some types of abnormalities, such as Down syndrome, are almost always birth defects rather than birth injuries resulting from medical malpractice. One red flag that should put you on the alert for medical malpractice is the doctor's failure to report to you any fetal abnormality prior to birth (since doctors are required by law to report any abnormality they discover).

### What do I have to prove to win a medical malpractice claim?

You must prove:

- A birth injury actually occurred
- A doctor-patient relationship existed
  - this is normally quite straightforward
- The doctor failed to meet a professional standard of care
  - this is normally where the conflict lies in a medical malpractice lawsuit

- The doctor's failure actually caused the birth injury

These principles can be modified to apply to any health care provider (nurses, etc.)

## **What is a “professional standard of care” in the context of a medical malpractice claim?**

Doctors are held to a higher standard of care than an ordinary citizen rendering first aid, and specialists (such as obstetricians) are held to an even higher standard of care. Specifically, a health care provider is obligated to exercise the care and professional skill of a reasonably competent health care provider under similar circumstances.

## **How is the standard of care determined in a birth injury claim?**

Exactly what a “professional standard of care” means in a birth injury claim, and in your particular case, can be a complex and ambiguous issue (e.g., whether a reasonable doctor would have performed a C-section under your circumstances). The standard of care in your case will be determined by a jury based on the testimony of medical experts (usually other doctors). Should your case go to trial, both sides will be entitled to call expert witnesses.

## **How is evidence gathered in a birth injury case?**

In a birth injury claim, the truth only matters to the extent that you can prove it with admissible evidence. In a birth injury case, [evidence is typically gathered through:](#)

- Medical records (your lawyer can compel the other side to release medical records whether they want to or not)
- Witnesses
- Expert witnesses (usually doctors who testify on complex medical issues)

## **Are expert medical witnesses paid? If so, how will this affect their credibility?**

Expert witnesses typically are paid, and a good malpractice lawyer will take their fees out of the client's eventual recovery rather than charge the client directly for them. At trial, the opposing attorney will certainly bring the witnesses' paid status to the jury's attention. This normally does not represent any great disadvantage, however, since the other side's expert witnesses will probably be paid as well. The use of paid expert witnesses is routine in medical malpractice lawsuits.

## **What are future damages and why do they matter?**

Future damages are damages that you or your baby may suffer after the conclusion of the lawsuit. Many birth injuries, such as cerebral palsy, are lifelong conditions. Although it can be

challenging to quantify these damages, you must calculate and demand them in your initial claim, because you won't be able to come back and ask for more later.

## **Who receives the damages award if my child wins a birth injury lawsuit or settlement?**

If your child was injured, damages will be issued in your child's name, typically in the form of a trust. In a wrongful death lawsuit, damages will go to your child's probate estate and will be eventually distributed to close relatives under [Connecticut's intestate succession law](#). The child's parents will probably receive most or all of it.

## **What qualities do I need to look for in a birth injury malpractice lawyer?**

You should look for the following attributes:

- [Experience handling medical malpractice claims](#)
- Experience handling birth injury lawsuits
- A successful track record, both at trial and at the negotiating table
- The lawyer's fees come out of your recovery, not out of your pocket.

## **Hiring an Attorney**

The occasion of a birth injury is a difficult time for any parent. You should choose an attorney who will aggressively pursue your claim, while keeping the experience as stress-free as possible for you. One way your lawyer can do this is through a "no win, no pay" compensation system where you owe nothing until and unless you receive money for your claim. The lawyer should also offer a no-charge, obligation-free initial consultation.

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