

BerkowitzHanna

Understanding Cerebral Palsy



Understanding Cerebral Palsy

[About 10,000 infants become victims of Cerebral palsy every year in the United States.](#) Cerebral palsy significantly degrades the quality of life of its sufferers, and about ten percent of all cases can be traced to medical malpractice. When this happens, it is imperative that you seek full compensation for the sake of your baby's future.

What is Cerebral Palsy?

Cerebral palsy is the result of a one-time brain injury. It is a chronic condition that degrades muscle coordination and freedom of movement in varying degrees, depending on the seriousness of the injury. Cerebral palsy is not a progressive disease – it does not get worse over time. Nevertheless, it can cause secondary conditions that are progressive in nature. Unfortunately, cerebral palsy is incurable.

Symptoms of Cerebral Palsy

Classic symptoms of cerebral palsy include:

- Clumsiness and lack of muscle coordination
- Involuntary tremors and shaking
- Writhing motions
- Drooling
- Difficulty swallowing
- Exaggerated reflexes
- Uneven muscle tone
- Delays in the accomplishment of early developmental motor tasks such as sitting and crawling.
- Favoring one side of the body over the other

Medical Malpractice and Cerebral Palsy

Because cerebral palsy is so often linked to medical malpractice, your doctor may be reluctant to admit this diagnosis out of fear of a malpractice lawsuit. Nevertheless, there are certain signs that should put you on notice that cerebral palsy is likely or is at least suspected by your doctor.

These signs include:

- A C-section delivery
- Use of vacuum suction or forceps
- CPR administered immediately after birth

- A medical specialist is assigned to treat your baby
- An MRI or brain scan is conducted
- Your baby has seizures within three days of birth

The Statute of Limitations

The [Connecticut statute of limitations](#) imposes a deadline by which you must file a personal injury lawsuit. If you miss the deadline, you will never be allowed to file a lawsuit over the same injury. Of course, this affects private settlement negotiations as well – the defendant will not be motivated to negotiate with you if you lack the power to enforce your claim in court.

The statute of limitations is a bit complex with respect to medical malpractice claims, including birth injury claims:

- **General Statute of Limitations:** The general rule in Connecticut is that you have two years from the date of the injury to file a lawsuit.
- **Discovery Rule:** The “discovery rule” states that the beginning of the two-year period can be delayed past the date of birth, if you did not discover the injury immediately despite the exercise of reasonable care. If you did not discover your baby’s Cerebral palsy until five months after birth, for example, you will have until two years and five months after the birth, rather than two years, to file a lawsuit.
- **Statute of Repose:** The Connecticut statute of repose imposes a hard three-year deadline on your ability to file a medical malpractice lawsuit. Even if you exercised reasonable care but failed to detect your child’s cerebral palsy until the child was 18 months old, you would only have until the child’s third birthday to file the lawsuit (even though a strict application of the discovery rule would have given you until the child was 42 months old). In other words, the statute of repose trumps the discovery rule. This limitation is significant, because the symptoms of cerebral palsy are sometimes delayed well past birth.
- **Breach of duty to warn:** Your doctor has a continuing legal duty to warn you of the malpractice and its consequences. If your doctor, for example, concealed your child’s cerebral palsy or fraudulently refrained from diagnosing it out of fear of a malpractice claim, even the three-year statute of repose won’t apply, and you can file a lawsuit within two years of discovering your child’s condition.
- **Minor Children:** Unlike many other states, Connecticut does not extend the statute of limitations deadline for injuries that occurred when the victim was a minor child (under 18).

What to Do if You Suspect Your Child’s Cerebral Palsy Was Caused by Medical Malpractice

If there is something wrong with your baby and you suspect that it is cerebral palsy, this won’t be an easy time for you. Nevertheless, it is important that you act quickly to preserve your claim and maximize your baby’s chances of full compensation. The following actions are important:

- Seek immediate medical care for your baby, and for yourself if you were injured during the delivery. This has got to be your first priority, especially if you first notice symptoms after you have already been released from the hospital.
- Retain a medical malpractice lawyer to represent you. The sooner you get an attorney involved, the better your chances of full compensation will be.
- If your doctor has not diagnosed cerebral palsy, seek a second opinion, as long as your baby's medical condition permits it, just to make sure that your doctor is not concealing anything.
- Once you retain a lawyer and begin preparing your claim, gathering evidence that is admissible in court is likely to be your next priority. Your lawyer should take the lead in this process; you should cooperate to the extent that you are able.
- Your lawyer will probably attempt to open settlement negotiations with the doctor's malpractice insurance company before resorting to filing a lawsuit. Nevertheless, it is critical that you and your lawyer prepare your claim just as if you were going to court. Insurance companies are most likely to settle when they anticipate losing in court if they don't. Most of this process will be your lawyer's job, not yours.

Frequently Asked Questions (FAQs)

How will cerebral palsy affect my child's life as an adult?

The life of an adult cerebral palsy victim is marked by a number of difficulties that depend to a great extent on the severity of the condition:

- Occupational difficulties: Many occupations are simply unavailable to cerebral palsy victims, and many other occupations can be undertaken only with great difficulty, due to limitations imposed by the condition.
- Arthritis: Adults with cerebral palsy are far more prone to arthritis than the average person is.
- Pain: Mild to moderate pain in the hips, back, knees and ankles are common among adult cerebral palsy sufferers.
- Premature aging: Adult cerebral palsy sufferers often experience symptoms of premature aging, beginning in middle age.
- Anxiety and depression: Anxiety and depression are common among cerebral palsy sufferers of any age.

What are "future damages" and why are they particularly important in a cerebral palsy case?

Average long-term medical expenses are about 10 times as high for a cerebral palsy sufferer as they are for other children, and adult cerebral palsy sufferers experience many disabilities not experienced by other people (see above). This makes it critical to accurately calculate long-term damages – once a settlement agreement is signed or a verdict is issued, there is no way to come back for more money later in life.

How do I prove a medical malpractice case based on a cerebral palsy birth injury?

First of all, you will need to prove that your child is actually a victim of cerebral palsy – which may be a foregone conclusion if such a diagnosis has already been issued. Second, you need to establish medical malpractice. Third, you need to establish a causal link between the medical malpractice and your child's cerebral palsy. This can be proven through:

- Existing medical records
- The results of an independent medical examination
- The testimony of expert witnesses
- Eyewitness accounts

What are the steps necessary to file a cerebral palsy medical malpractice lawsuit?

- Conduct an initial consultation with your attorney
- Collect medical records
- Review medical records from both a medical and legal standpoint
- Retain medical expert witnesses to provide testimony
- Prepare lawsuit documentation
- File the documentation with the court to initiate a lawsuit.

What are the different types of cerebral palsy?

There are four major types:

- Spastic cerebral palsy: Spastic movements and stiff muscles
- Athetoid cerebral palsy: Wriggling and uncontrolled movements
- Ataxic cerebral palsy: Deficient balance and coordination
- Mixed cerebral palsy: Symptoms that combine any two or all three of the foregoing types of cerebral palsy

What qualities do I need to look for in a cerebral palsy malpractice lawyer?

A good cerebral palsy malpractice lawyer will possess the following qualities:

- Rich experience in medical malpractice claims
- Experience in birth injury claims, especially cerebral palsy claims
- A winning track record in court. Although most medical malpractice claims are settled out of court, it is a strong track record of success at trial that ultimately motivates defendants to settle.
- A contingency fee arrangement: Your lawyer's fees should be taken out of your eventual recovery on a percentage basis, rather than billed to you directly.
- Free initial case consultations

Selecting an Attorney

The best sort of medical malpractice attorney will aggressively and relentlessly pursue your claim, while doing his best to keep the experience as stress-free as possible. This allows you to concentrate on caring for your child and tending to your own emotional needs.

If your lawyer is used to winning his cases, he will be willing to offer you a “no win, no pay” fee arrangement in which you owe him nothing unless you actually win your claim and receive money. This is not a “money back guarantee” – it means you won’t have to pay in the first place, and you never will have to pay unless you win your claim.