

EXPAT COUNSEL

## Medical malpractice in Thailand: Part 2

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Last week, we introduced you to the legal definition of medical malpractice, which is professional negligence by an act or omission of a healthcare provider where the treatment falls below the accepted standard of practice in the medical community and causes injury or death of the patient. We outlined both the civil and criminal laws that govern medical malpractice lawsuits, and the possible compensation one could receive depending on the injury suffered. Today, we would like to delve further into what happens when medical malpractice occurs, as well as legislation currently before parliament that offers additional protections to victims of medical malpractice.



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The primary oversight body for the medical industry is the Medical Council of Thailand. The council is comprised of 18 doctors, half of whom are given seats based on their positions in the Public Health Ministry, directorships of health in the Royal Thai Navy, air force, army or police, as well as those

who are deans of prominent medical schools. The other half of the council is elected from the general membership; comprising every registered doctor in Thailand as well as practitioners in several other medical fields recognised by the council. The medical industry in Thailand is a self-regulating profession, and as such, tends to raise questions of impartiality, which have been voiced by the Thai Medical Error Network and other related organisations.

When a patient claims to be a victim of medical malpractice, the council first investigates the claims against the doctor or doctors in question to determine whether malpractice occurred. The council can then alert the police to initiate a possible criminal investigation, and will provide the patient with the information gathered in their inquiry so that the victim can begin the process of pursuing legal recourse.

If you think you have been the victim of medical malpractice, you should collect as much evidence as possible, including medical records, secondary medical opinions establishing error and receipts for all sums paid.

Medical malpractice claims need to be filed quickly as the statute of limitations governing when you can bring suit is relatively short in the civil court system; one year from the date when the wrongful act become known to the person. Avoid signing anything until you have proper legal representation. Once a patient's claim is substantiated by the Medical Council of Thailand, most often the affected party and the doctor or hospital will negotiate a settlement out of court. Otherwise both parties begin preparing for trial.

If your case proves successful, awards are calculated based on actual quantifiable harm such as lost income both present and future, as well as medical and rehabilitation costs. Unlike their Western counterparts, punitive damages are not awarded in Thai courts in medical malpractice cases. However, compensation for actual damages can be quite significant. In a landmark 2012 medical malpractice case involving a mother who died after being left unsupervised under anaesthesia following the birth of her son, the court awarded an unprecedented eight million baht life-maintenance package to the family of the victim. The sum included compensation for the husband, the son, two brothers, the deceased's parents, all legal expenses and the traditional funeral costs with consideration to the deceased's social status.

Although it is uncommon for accusations of medical malpractice to make it all the way through the court system without a settlement being negotiated somewhere along the way, when they do, the awarded damages can be substantial.

Pending legislation in parliament is designed to provide additional protections to both doctors and patients by creating a non-tort avenue for alleged malpractice plaintiffs to receive just compensation without holding the doctor in question directly responsible.

The Medical Malpractice Victim's Fund Bill, introduced in 2010, is a mechanism through which government hospitals as well as private facilities that wish to be covered, can allocate funds for victims of malpractice (cosmetic surgery is not covered) to seek redress for their injuries without pursuing legal action against the doctor or hospital.

As with most pieces of legislation involving the allocation of funds, the malpractice bill proved highly controversial upon its introduction in parliament, and was shelved until after the national elections in 2011. Although differences still remain between representatives of the medical industry and victims' rights advocates in terms of the wording and potential implications of the bill, sources

knowledgeable in parliamentary proceedings have stated that it is currently being revisited with hopes of a floor vote by the end of the year.

The vast majority of medical procedures in Thailand are successful and all parties are satisfied. If this were not the case, Thailand would not be one of the top medical tourism destinations in the world.

However, given the sheer number of patients entering hospitals for either necessary or elective medical procedures, mistakes are all but inevitable.

Medical malpractice legislation is designed to provide redress when this does occur; giving the victim (and perhaps his or her family) the compensation they rightfully deserve.

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