

When can you claim malpractice for plastic surgery?

All surgery carries an inherent risk, whether it's elective or not. However, when the cause of a botched cosmetic or reconstructive surgery is clearly due to negligence by medical staff, the patient can pursue a medical malpractice claim.



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This is according to Kirstie Haslam, partner at DSC Attorneys, who says that whether it is cosmetic or reconstructive, when plastic surgery goes wrong, it can end up leaving scars and deformities that negatively affect patients for the rest of their lives.

Studies over a 10-year period by The Doctors Company, a leading malpractice insurance company in the United States revealed that 29% of plastic surgery malpractice claimants were not satisfied with the results of their procedure and 14% of claimants had come away from their surgery with scar deformities.

Some other findings from the study include:

- 14% of claims were for emotional distress
- asymmetry, death and burns made up 5% of the claims
- chronic pain was alleged in 3% of the claims
- infection was the basis for claiming in 14% of the cases
- localised and mass swelling attributed to 2% of the cases
- allergy, DVT, PE, and foreign bodies made up only 1% of claims

Haslam says that liposuction, in particular, has an alarmingly high death and complication rate because it is too often treated as a routine procedure, rather than the complicated and invasive procedure that it is.

A report from the United States pinned the mortality rate for liposuction at 1 in every 5000, compared to the general rate for other surgical procedures of just 1 in 100,000.

Medical malpractice and plastic surgery in South Africa

Haslam says that there have been a number of successful claims against plastic surgeons in South Africa.

Plastic surgeon, Dr Hennie Roos, faced 26 complaints between 1994 and 1998. One complainant was awarded R692,000 after a face and forehead lift performed by Dr Roos resulted in bad scarring.

She adds that a more alarming case involved a woman who died as a result of negligence after liposuction surgery in 2001. “It was alleged that Dr Jan van Almenkerk failed to react in a reasonable manner when she became ill after the procedure, despite concerns being raised by her family members. The doctor was found guilty of culpable homicide and fined R240,000.”

Along with hundreds of thousands of women around the world, as many as 300 South African women were affected after plastic surgeons performed their breast augmentations using defective silicone breast implants, supplied by French company, Poly Implant Prothèse (PIP). “The implants leaked and, even worse, were found to contain industrial-grade mattress silicone – a potential carcinogen,” Haslam explains.

“The faulty implants led to multiple class actions around the globe, with South Africans among those who were compensated.”

The first faulty implants were used in 2010. Today, cases of rupturing implants supplied by PIP are still continuing to emerge.

Types of plastic surgery complications that can be grounds for a claim

If plastic surgery does not go according to plan, these are some of the complications or injuries that Haslam says could be grounds for pursuing a medical malpractice claim:

- infection caused by the surgery or procedure
- scarring caused by the surgery
- complications from the anaesthesia
- nerve damage or loss of mobility
- death

She points out that medical malpractice claims can be against the doctor who performed the procedure, other medical professionals who assisted or even the hospital or medical facility. For a claim to be successful, negligence needs to be proven.

“This can take the form of errors during diagnosis or treatment, clerical errors resulting in improper treatment, poor health management before, during and after the procedure, early discharge or failure to get informed consent from the patient, to name just a few,” says Haslam.

If you believe you have grounds for a medical negligence claim, you have the right to look at your own medical records, charts and information in order to build your case. “Medical malpractice cases can be lengthy and arduous, so it’s important to make sure you have a strong case and sufficient legal representation and support,” she concludes.

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