

# The INSIDE STORY

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## Whistleblower – Are you protected?

By Jennifer Turco Meyer

When most people hear the term “whistleblower” the first thing that comes to mind are scandals like Watergate, Enron and WikiLeaks, or names of individuals that are famous/infamous for whistleblowing activities like Frank Serpico, Linda Tripp or Edward Snowden. However, very few people have any specific knowledge of the dozens and dozens of state and Federal whistleblower laws in the United States or how those laws protect them.



The most common example of a whistleblower is usually a government or private employee who exposes mismanagement, corruption, illegality, or some other wrongdoing of their employer.

Employees who act as whistleblowers are often the subject of discrimination and/or retaliation by their employers, typically disciplinary action, demotion and discharge.

In Nebraska, all employees are generally protected from whistleblower retaliation by the Nebraska Fair Employment Practices Act. Specifically, Section 48-1114(3) prohibits an employer from discriminating or retaliating against an employee who has either (1) opposed an illegal practice or (2) refused to carry out any unlawful action. Additionally, employees who work in particular job fields, like healthcare, banking or insurance, can also be protected under Nebraska case law. As in most employment law cases, there are certain steps and deadlines that must be met in order to pursue a claim for whistleblower retaliation. An experienced attorney can help guide you through these legal requirements. We are here to help; call if you have any questions.

  
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## The 4 D's of a Medical Malpractice Claim

By Greg Thomas

All of us have either known someone that had a bad result from a medical procedure or after receiving care from a doctor or hospital. There may be questions if appropriate care was provided. It's often difficult to decide for yourself if the problem was the type of complication that can happen with the best of care or was the result of medical negligence or malpractice.

Keeping the "4 D's of Medical Malpractice" in mind might help you decide if you were the victim of medical negligence. They are:

**1. Duty-** Before you can pursue a medical negligence claim, you have to establish a duty that extends from the doctor to the patient. Usually this is through a doctor/patient relationship. However, it also extends to a hospital that provides care through its employees, like nurses or lab technicians. The duty is easy to see in a case like a surgeon who operates on a patient. It may be harder to think of with some doctors who may not even see the patient during the course of treatment. For example, a radiologist who reads an x-ray or other diagnostic study has a duty to do so correctly even if the radiologist never personally sees the patient.

**2. Dereliction-** The 2nd "D" indicates that the health care provider was derelict in the performance of his duty. This can often be referred to as a breach in the care that should have been provided. In almost all cases, the dereliction or breach is proved by showing that the health care provider failed to provide the type of care a reasonable health care provider would have provided in a similar situation. This doesn't mean all doctors will or have to provide the same treatment approach. Different doctors can approach the same health care issue in different ways. For example, 3 different doctors may see the same patient with back pain. One may recommend physical therapy, one may prescribe a muscle relaxer and pain reliever, and one may recommend physical therapy and a pain reliever. The fact they recommended different approaches doesn't indicate two of them are wrong in their approach. All 3 approaches may be reasonable for that patient.

Proving that one of the doctors in the above example was unreasonable in his treatment approach almost always has to be done through an expert witness. This is usually another doctor or health care provider that has reviewed the case and is willing to testify that the treatment choice was unreasonable or fell below the standard of care that a patient has a right to expect. In short, the doctor or health care provider was derelict or breached the duty referred to in no. 1 above.

**3. Direct Cause-** Direct Cause or Causation refers to the idea that it's not enough that a doctor or health care provider did something wrong or was derelict in their duty. The dereliction must have a bad result. For example, if a nurse gives you aspirin instead of the Tylenol the doctor ordered, she has clearly done something wrong and was derelict in her duty. However, if the dereliction or breach of duty was not a direct cause of a negative impact on the patient, you are missing one of the 4 D's necessary to establish a medical malpractice claim.

## One Pot Spaghetti - by Lori Schmidt

When you need to feed your family quickly, and time for clean-up is limited, this recipe aims to please. I'm certain you won't find anyone in Italy making this recipe, but its simplicity has made it a keeper for my family on busy nights.

- 1 lb. ground beef or sometimes I use ½ lb. ground beef and ½ lb. Italian sausage
- 1 onion, finely diced\*
- 1 clove garlic, minced\*
- 2 - 14 oz. cans low sodium chicken broth
- 1 (26 oz.) jar spaghetti sauce
- 1/2 cup water
- 12 oz. spaghetti, broken into pieces
- 1/4 cup grated Parmesan

### Directions:

1. In a large pot, brown ground beef with onion. Add the garlic in the last minute of browning so that it doesn't burn. Drain meat if necessary. \*Note, when I'm really short on time, I use a few shakes of garlic powder and onion powder instead, adding it in when I'm browning the meat.
2. Add broth, spaghetti sauce, and water. Bring to a boil.
3. Add spaghetti and reduce heat to a simmer.
4. Cover and cook for approximately 15 minutes or until your spaghetti is your desired tenderness. You will need to stir the spaghetti occasionally and add more water, if needed. Once the spaghetti is done, stir in the parmesan cheese. Enjoy!

It should be remembered that a bad result is not enough to maintain a medical malpractice claim. The bad result must be caused by the dereliction of duty. For example, a bad post-surgery infection may very well be a bad result, but may not be caused by a dereliction of duty since infections can often happen with appropriate care.

**4. Damages-** The last element that must be established to have a legitimate medical malpractice claim is damages. Damages can be pain and suffering, more care and treatment that leads to additional costs and charges, lost wages or a combination of all of these. In Nebraska, it doesn't matter if another party like an insurance company paid these additional costs, you can still claim them. Iowa uses a slightly different approach. This information provides a bare outline of the elements that need to be established to pursue a medical malpractice claim.

Analyzing the facts of your potential case to see how they fit in this outline can be difficult and requires an experienced eye. At Dyer Law we are ready to help you with that analysis.

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