MARTIN & JONES PLLC
Attorneys at Law

# Our Lawyers Represent Patients and Families Who Have Suffered Losses Caused By Defective Medical Devices

When you seek treatment or take a loved one to the hospital for surgery, you expect a positive outcome. Given today's medical knowledge and technology, negative patient outcomes should be rare.

Some medical device manufacturers, however, do not take the steps necessary to avoid putting dangerous devices on the market. While those manufacturers may eventually issue recalls, they often come too late for patients who have received them.

## Defective Medical Device Lawyers Serving North Carolina

If a defective medical device has harmed you or a loved one, we may be able to help. Our lawyers have extensive experience representing patients and families in North Carolina. We have successfully handled cases against medical device manufacturers, and our client-focused approach ensures that we seek maximum compensation for each individual client's device-related injuries.

## What Makes a Medical Device "Defective?"

Like all product manufacturers, companies that manufacture medical devices have an obligation to ensure that their products are safe for their intended use. If a product is not safe for its intended use, it can be classified as "defective" under North Carolina law.

There are four main types of medical device defects:

- Design Defects – Some medical devices suffer from defects in design. If a medical device is supposed to be safe but isn't because of its form, construction or the materials used to make it, then the device may have a design defect.
- Manufacturing Defects – Even if a medical device's design is safe, it can become defective due to issues with the manufacturing process. From flaws during assembly to inadequate quality control, various problems can lead to doctors, hospitals and patients receiving medical devices that have manufacturing defects.
- Packaging Defects – Certain types of medical devices must be carefully packaged to preserve their safety. For example, failure to properly seal implantable medical devices in their packaging may cause oxidation. This oxidation can lead to premature degradation, which can, in turn, lead to infections, internal injuries and the need for replacement surgery.
- Labeling and Warning Defects – Due to their complexity and the nature of their use, many types of medical devices require detailed instructions and clear warnings. If a manufacturer fails to adequately label its devices or include appropriate warnings, this is also classified as a product defect.

Within these four categories, there are *numerous* specific issues that can cause medical devices to fail or cause patient injuries. This includes everything from programming and calibration issues with robotic surgery equipment to the use of dangerous materials in implantable medical devices, and/or from pumps that overdose or underdose patients to devices that simply don't work as advertised.

## Examples of Defective Medical Devices

Our firm handles certain cases on behalf of patients in North Carolina involving certain types of defective medical devices. This includes joint replacements and other implants, as well as surgical equipment and other medical tools. Here are some examples of medical devices that have been discovered to be defective in recent years:

- Hip Replacement Implants
- Knee Replacement Implants
- Transvaginal Mesh
- Hernia Mesh

## Understanding the Relationship Between Medical Device Defects and Recalls

In many cases, we hear from patients who have recently learned that their medical device has been recalled. Medical device recalls are alarmingly common, and the U.S. Food and Drug Administration (FDA) maintains a database of recalled devices.

Here are some important facts you need to know about recalls:

## 1. There are Three "Classes" of Medical Device Recalls

Medical device manufacturers may recall their devices independently or at the request of the FDA. In both cases, the FDA assigns a"classification" to the recall based on the severity of the issue involved:

- Class I Medical Device Recalls – Class I medical device recalls are the most serious. If the FDA labels a recall as Class I, this means that "there is a reasonable chance that a product will cause serious health problems or death."
- Class II Medical Device Recalls – The FDA labels recalls as Class II in two different scenarios. A recall will be classified in this category if either (i) the medical device "may cause a temporary or reversible health problem" or (ii) "there is a slight chance that it will cause serious health problems or death."
- Class III Medical Device Recalls – Class III medical device recalls are the least serious. A Class III recall means the FDA has determined that the device, "is not likely to cause any health problem or injury."

Of course, even if a defective medical device isn't *likely* to cause problems, problems are still possible. As a result, if you have a medical device subject to a Class I, II or III recall, you should consult with your doctor and speak with a lawyer if you experience adverse effects or other complications.

## 2. Device Manufacturers Use Recalls to Try to Minimize Their Liability

While medical device manufacturers may claim that they are trying to protect the public by issuing recalls, the reality is that most companies use recalls to try to minimize their liability. For example, when issuing recalls, manufacturers will often encourage patients to send their products back for a refund, or they may even offer to cover certain out-of-pocket expenses.

But, what companies *don't* advertise is that to receive refunds or modest payments, patients typically have to agree to waive their legal rights. By hiring lawyers to help them fight for just compensation, patients and families can seek full compensation for their:

- Current and future medical bills

- Other out-of-pocket expenses
- Lost earnings and earning capacity
- Pain and suffering
- Loss of companionship, consortium and enjoyment of life

### 3. You Can File a Claim Regardless of Whether Your Device Was Recalled

If you have concerns about a medical device defect, you should speak to a lawyer. At Martin & Jones, our lawyers can investigate to determine if you have a claim.

## FAQs: Filing a Lawsuit for a Defective Medical Device

### Who Can File a Defective Medical Device Lawsuit?

Patients can file defective medical device lawsuits when they suffer harm due to a defect, and family members can file claims when their loved ones suffer serious or fatal complications. If you have any questions about your eligibility to file a lawsuit, we strongly encourage you to contact us for a free consultation. You may have grounds to file a defective medical device lawsuit if:

- A healthcare provider used a defective medical device resulting in injury
- Your (or your loved one's) implanted medical device caused an injury
- Your (or your loved one's) implanted medical device worsened a pre-existing condition
- A defective medical device is responsible for your loved one's death

### What Should I Do if My Implant or Other Medical Device has Been Recalled?

If you have a joint replacement implant or other medical device that has been recalled, you should consult with your doctor. You should also speak with a lawyer about your legal rights. Your doctor will be able to determine what treatment is necessary (if any), and your lawyer will be able to determine if you have a claim for financial compensation.

### Can I Sue My Doctor for Implanting a Defective Medical Device?

Whether you can sue your doctor for implanting a defective medical device depends on whether your doctor knew (or should have known) about the defect. If so, you may have a claim for medical malpractice. But, in many cases, doctors have no reason to suspect that a medical device is defective until patients complain or the manufacturer issues a recall. In these scenarios, patients are more likely to have claims against the device's manufacturer.

## Have Your Defective Medical Device Issue Reviewed by a Lawyer in North Carolina for Free

If you need to know more about filing a claim for a defective medical device in North Carolina, we encourage you to get in touch. Please call 800-662-1234 or contact us online to arrange a free consultation.

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