# INTRODUCTION

**Background Information About the Firm**

Shevlin Smith is a well-established, highly successful, personal injury law firm. The three lawyers in the firm -- Brian C. Shevlin, Thomas G. Smith, and Michael J. Shevlin – each focus primarily on handling medical malpractice cases for patients injured due to medical negligence. They also selectively handle other accident and personal injury cases, depending on the circumstances. Each attorney has a desire to not only help those who have been injured, but also to improve medical care and raise safety standards for the general public.

After many years spent representing hospitals, doctors, and insurance companies, Brian Shevlin founded the firm in 1986. His sincere empathy for the injured caused him to switch sides from defense to plaintiff's work. He has been helping victims of malpractice find justice for more than two decades. His insight into the inner workings of malpractice defense helps him to channel his talent more effectively, making him a formidable opponent. Negligent health care providers, insurance companies, and defense attorneys now universally respect his abilities, and his strength of character.

Brian's son, Mike, joined the firm in 1994, after several years of prosecuting for Fairfax County. Mike's experience as a prosecutor also fostered great empathy for victims, while honing his skills as a trial lawyer. He earned a reputation for honesty and commitment as he fought for the causes in which he so strongly believed. He continues to fight with great determination, and great success, for those who have been victimized.

Like Brian, Tom originally represented the defense side in medical malpractice cases. In fact, Mike, Brian, and Tom developed a collective respect for one another as opposing counsel. Tom ultimately left his role as an accomplished partner in a defense firm to join Mike and Brian in 1996. His years of experience translated immediately into victories for the plaintiff's side, and he has found even greater personal satisfaction and professional success in helping those who have been injured through medical negligence. Like Brian and Mike, he is known for integrity as well as for possessing powerful negotiation and litigation skills.

Together, these attorneys have represented hundreds of patients who were injured as a result of medical malpractice, as well as their family members. Their strong medical background and decades of experience handling complex cases with catastrophic injuries distinguish their firm from others. Although centrally located in Fairfax, Virginia, all three attorneys are licensed to try cases in D.C. and all over the state of Virginia. However, they purposefully keep their caseload small to maximize the time they give to each case. Their accomplishments have been recognized nationally and locally through various industry awards, such as:

- "Best Lawyers in America"
- Virginia *Super Lawyers*

- Washington, D.C. *Top Lawyers*
- Washington, D.C. *Super Lawyers*
- Martindale Hubbell's top A-V attorney rating
- Top 100 Trial Lawyers in Virginia
- Frequently listed in Virginia's *Largest Verdicts* publication

Their high standards and reputations for excellence are well-known in both the legal and the medical communities.

**How This Book Will Help You**

In the medical field, there is a concept known as "informed consent." A patient has the right to be informed about risks, benefits, and alternatives before giving consent to medical treatment.

In the legal field, there is no comparable right of informed consent before you hire an attorney to represent you. You are responsible for finding your own lawyer, and you probably have never faced that task before. **Do not be intimidated**. If you have a good case, attorneys will want your business. This book should help keep you in the driver's seat and give you confidence as you go through the process of selecting a firm.

If you are lucky, you might have received a recommendation from a trusted source. If you are like most people, however, you are forced to rely on a television ad, or one found in the Yellow Pages or on the Internet. Beware! There are things you should know. For example, the state bar does not prevent attorneys from advertising for medical malpractice despite inexperience. If a firm claims to specialize in too many areas of the law, you should recognize the red flag warning that its attorneys are spread too thin. This book will help you evaluate what you are seeing and hearing, so that you can ultimately select the firm that will best serve you.

Most importantly, you need to understand the essential elements of a medical malpractice case so that you can evaluate your own case. Knowing the strengths and weaknesses of your case will help you to differentiate between attorneys who are being straightforward, and those just trying to get your business. A frivolous case will cost you time, money, and a lot of heartache. You are better off knowing immediately if your case is missing an essential element. No one, including you and the attorney you hire, will benefit from pursuing a case that lacks merit.

We also hope to correct any misconceptions you might have about medical malpractice cases. Over the years, we have heard and seen insurance companies and their lobbyists strategically foster public contempt for medical malpractice cases. They have a vested interest in creating and spreading myths that aim to taint the public against the American civil justice system. By correcting these misconceptions, we hope to dispel some of these myths. We also hope to make you, your family, and your friends feel better about your decision to bring a malpractice suit.

You should know your rights as a client. Attorneys are bound by a professional code of conduct that inures to your benefit. Awareness will enable you to protect yourself and feel more confident throughout the legal process.

We hope this book will be a resource that will help you understand your case, the legal process, and how to hire the right law firm -- the firm that is best qualified to represent you in your particular type of case.

**Disclaimer**

We wrote this book in an effort to educate you about medical malpractice law in Virginia and how to select the right law firm for you. However, unless you have agreed to hire our law firm, and we have accepted you as a client in writing, we are not allowed to give you legal advice about your case. We are only allowed to provide general facts and offer suggestions.

The success of your case will ultimately depend upon the specific facts of your case. Without knowing those facts, and without the ability to determine all of the facts related to your case, our law firm's attorneys cannot begin to provide you any meaningful legal advice. Therefore, this book should only be viewed as a guide, and not as legal advice.

# CHAPTER 1
# THE CHARACTERISTICS OF A GOOD MEDICAL MALPRACTICE CASE

Medical negligence occurs on a daily basis. As many as 98,000 Americans die in hospitals each year as a result of preventable medical errors.[1] The key question that you need answered is "Do I have a meritorious case?"

In this Chapter, we will provide an outline of the general elements necessary for a successful medical malpractice case. When an attorney is reviewing your case, that attorney will be looking for details regarding these elements to determine whether you should pursue your claim, and whether the law firm will accept your case. It is critical that you be one hundred percent candid with the attorney evaluating your case so that the evaluation can be honest and accurate. Remember, you are evaluating the attorney, too, so do not be intimidated by this process. A medical malpractice case is a long, expensive, and emotional experience that should not be undertaken lightly by either the client or the attorney.

## The Essentials:
## (Without these elements, you cannot prevail)

**Your case must be filed within the statute of limitations.**

In Virginia, there is a limit on the amount of time you have for filing your medical malpractice case. This time limit is known as the "statute of limitations." If you have missed the deadline for filing, you have no case, no matter how good it might have been. You should give enough facts to a consulting attorney for him/her to determine when the clock started running on your claim, because it is different for each case. You must then calculate your filing deadline so that you can be sure to file it within the requisite time period. The first critical step to a successful case is that it be filed on time. Seek an attorney's advice to ensure that you know your deadline so that you do not inadvertently miss it.

**Your case must have three important components.**

A plaintiff must show that more likely than not, the healthcare provider was negligent, that the negligence caused injury or death, and the damages flowing from the injury or death.[2] These are the elements of a case. Keep in mind that each of these elements requires the testimony of a professional expert in the same or similar field of medicine as the person or organization being sued. The Virginia Supreme Court has set forth clear requirements for each element.

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1 Institute of Medicine, "To Err is Human: Building a Safer Health System" (1999).

2 See Brown v. Koulizakis, 229 Va. 524, 532 (1985).

**(1) Negligence**

You must first establish a patient-health care provider relationship. This relationship establishes a legal owed to you by the health care provider. Medical negligence occurs when the health care provider breaches that duty by committing an unreasonable error in the course of treating you. A medical expert in the same or related medical field as the defendant must testify that the treatment fell below acceptable standards.[3]

**(2) Causation**

The second essential element that you must establish is causation. To prove causation, you must show that the medical negligence committed was, more likely than not, a cause of the injury you have suffered. Proving that a health care provider made a mistake is not enough. A medical expert must testifythat the mistake caused your injury. For example, if a physician unreasonably delays your surgery, but satisfies a jury that the bad outcome would have been the same with or without the delay, then you will lose on the issue of causation. Negligence might have occurred, but if that negligence is not a, "but for this, that would not have happened" cause of your damages, then the health care provider will not be held responsible.

A bad outcome alone is insufficient to support a medical malpractice case. There are acceptable risks in medical care, and no health care provider is expected to be perfect. You must be able to prove that your damages were the result of substandard medical care, not just that you had a bad outcome.

**(3) Damages**

One of the hardest aspects of medical malpractice law is putting a monetary value on the injuries you have suffered, especially if you have lost someone you love. In truth, no amount of money ever makes the injury or death worth it. Nevertheless, under the American civil justice system, a monetary award is all that a victim of medical malpractice can recover. However mercenary it seems, you must determine whether the cost of litigating a case, both personal and financial, will be worthwhile. If your injuries are relatively minor, despite the fact that the mistakes made were enormous, the outcome will not counterbalance the cost of litigation. Thinking of your injury in such practical terms might be hard, because emotions are involved. However, you really should engage in a clear, reasonable cost/benefit analysis before you commit time, effort, and money to litigation. Pursuing a case for the sole purpose of revenge, or principle, will wind up hurting you, too.

## The Non-Essential Essentials:
## (Without these elements, you might not prevail)

Our experience has taught us that even if a case possesses all of the essential elements to constitute a valid claim, the outcome can be affected by subtle nuances. Many of these characteristics can be addressed with a cooperative effort.

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[3] Virginia Code §8.01-581.20.

**Plaintiff Credibility**

The outcome of a medical malpractice case will often depend on which side the jury believes. Therefore, a critical component of any medical malpractice case is the credibility of the injured party. Protect your reputation for honesty. Avoid exaggerations. Be yourself. It is okay to say that you do not remember something if you truly do not remember. Otherwise, the defense will make the most of inconsistencies. Do not help them to make you look bad.

A jury's faith in the credibility of one side or the other can also be influenced by which side they like. Your attorney's likeability may play a role in the jury's decision. Therefore, before hiring him or her to represent you, as you select the right attorney to represent you, you should assess your attorney's appearance and demeanor.

**Patient Compliance**

In recent years, patient compliance has become an increasingly important issue in medical malpractice cases. Attorneys for health care providers often try to blame patients for their bad outcomes. The "patient noncompliance" defense focuses on the failure of patients to follow the instructions of their health care providers before, during, or after the act of medical malpractice. For example, if a doctor has instructed a patient to return for a follow-up visit in two days, and the patient fails to do so in that time frame, the doctor will often argue that the patient's failure prevented him/her from making the correct diagnosis or providing the proper treatment**.** For legal reasons, but more importantly for medical reasons relating to your health, it is important that you follow the instructions of your health care provider.

**Defendant Distrust**

It will help your case if the defendant is not very likeable. If he or she is arrogant, unsympathetic or dishonest, the jury will find it easier to believe you when it comes to credibility. Your attorney should be sharp enough to pick up inconsistencies in the defendant's records or testimony and capitalize on them. Medical knowledge, experience, and careful attention to detail increase the likelihood that your attorney will discover the inconsistencies, but it also takes sophistication and confidence to use the information well.

Even if the health care provider is obnoxious at trial, we still must establish all of the elements of a valid medical malpractice claim. It has been our experience, however, that the less a jury likes a defendant, the better the outcome will be for the plaintiff.

**Expert Witness Credentials and Credibility**

As previously explained, your case is reliant upon expert witness testimony with regard to the essential elements of negligence, causation and damages. In addition to what they say regarding these elements, your case is also dependent upon your experts' credentials and overall likeability.

For example, if your expert has written the definitive textbook that covers the medical condition at issue in your case, that expert is likely to be viewed as having extra credibility. If your expert has performed the surgery at issue in your case or has made the diagnosis in question hundreds of times, then that expert might have added credibility as

compared to an expert with less experience. If your expert does not have an extensive history of testifying as an expert witness in medical malpractice cases, or does not have a history of favoring one side over the other, then that expert is likely to have added credibility.

Conversely, an expert who has testified too often might lose credibility as a "hired gun." His or her credibility will especially suffer if past involvement has mostly been one-sided, for plaintiffs or for defendants. The amount of money the expert is receiving for his involvement will also be revealed to a jury, which could make the expert look like an employee of the side for which he is testifying. However, a large amount being paid might also make the expert look more important, depending on how it is presented to the jury.

A good medical malpractice attorney will not only know how to pick the best experts for your case, but will also know how to convince those experts to become involved, and what aspects of your expert's credentials is most appropriate to emphasize. As you look for an attorney to represent you, you might ask the attorney to identify the type of expert(s) he/she is considering. You might also request him/her to research medical literature. A search for medical literature will help you in two ways: 1) It will allow you to see which experts are writing the most about the issues in your case; and 2) It might help you understand the issues that you will be facing in your case.

**Support from Other Treating Health Care Providers**

A victim of malpractice must be careful to sue only the responsible health care provider(s), and not everyone involved in his/her medical treatment. Morality and ethics, as well as Virginia's prohibition against frivolous lawsuits, demand that you limit your focus appropriately.

Other treating health care providers can actually add credibility to your case if they are willing to support you. As you might imagine, many treating health care providers will not help a patient who brings a medical malpractice case against a local colleague, regardless of the merit of the case. There are ways to overcome this negative impact, and perhaps even to overcome the physicians' desire for solidarity.

**Severity of Injury**

The simple truth is that if you are more injured, a jury will have more sympathy. There are many components to consider when look at the severity of an injury. Some of the components are as follows:

- Objective evidence of an injury such as disfigurement or deformity;
- An inability to return to work, or return to work in the same capacity as before the injury;
- An inability to perform prior activities of daily life;
- A need for further medical treatment.

# CHAPTER 2
# HIRING THE RIGHT ATTORNEY TO INVESTIGATE YOUR MEDICAL MALPRACTICE CLAM AND REPRESENT YOUR INTERESTS

Medical malpractice is a highly specialized field. Attorneys must possess a great deal of medical knowledge to be able to react quickly in the courtroom and to succeed against the intelligence of health care professionals, their attorneys, and their medical experts. There is no substitute for time and experience in this field. Keep in mind that insurance companies and medical malpractice defense attorneys know which law firms are the best and have the most experience handling medical malpractice cases. Accordingly, your law firm selection will have a significant impact on the value that the defense will place on your claim for both litigation and settlement purposes.

It is far too easy for an attorney to *advertise* that he/she handles medical malpractice cases. A quick examination of the Yellow Page listings under "Lawyers" and Internet website will demonstrate how many attorneys advertise for these cases. Accepting such advertisements at face value, however, would be a major mistake. Finding the right attorney might take some time and effort, but the reward will be worth the investment.

First, you should ask other attorneys about the reputation of the law firm that you are considering hiring. Even if an attorney does not practice in the field of medical malpractice, that attorney might be able to provide a recommendation. The reality is that while many attorneys advertise that they can handle medical malpractice cases, there are only about 15-20 firms in all of Virginia that devote the majority of their practice to these type of cases. Therefore, the law firms that handle medical malpractice cases successfully will most likely have a reputation in the legal world. Cross-referencing with other attorneys will help ensure that you select a firm that is at the top of the medical malpractice field.

Second, you should treat your first meeting with a prospective firm as an interview of them, as well as an opportunity to explain your case. Therefore, we are providing a list of suggested questions to make this process more comfortable and more productive. We will also explain why these questions are important so that you can assess the answers you receive. These questions should help you identify the most capable medical malpractice attorneys and weed out the pretenders. Add some of your own, and bring them into your initial meeting with space to write the answers. You will be better able to compare firms if you are consistent in this initial interview process.

**1. How many medical malpractice cases have you investigated?**

Experience in the investigation process is essential, because the attorney needs to know not only what to look for, but also how to get it.

**2. Of those you investigated, what percentage have you rejected?**

A good medical malpractice attorney will have rejected many cases in addition to having handled many good ones. Those with a strong reputation receive many case inquiries, and therefore can afford to be selective.

**3. What percentage of your cases have you settled in favor of your client?**

Going to trial is hard on the victims of medical malpractice and can be costly. You need to have an attorney who possesses excellent skills in the courtroom, but is also a master at settlement negotiations. If you can avoid a trial, you will save money and a lot of sleep.

**4. How many medical malpractice cases have you taken to trial and what have been your results?**

Again, numbers matter. While it may always be preferable to settle a case, there is no guarantee that the insurance company representing the health care provider will make a settlement offer of any kind, or a settlement offer that is reasonable. In such circumstances, a jury trial is likely to occur. Having an attorney who has had significant trial experience with a good success rate is critical. There are many "trial attorneys" who have never actually tried a case in the courtroom. There are some who are even afraid of trial, and the insurance companies know it. Their lack of courtroom experience will cost you, because insurance companies will low-ball them when they give a settlement offer. You are much better off with an attorney who likes to try cases and is good at it, because insurance companies are more likely to give higher settlement offers, and the attorney is more likely to succeed in court if a settlement can't be reached.

**5. Which insurance companies have you opposed and which insurance adjusters have you worked with or against?**

An attorney who has handled numerous medical malpractice cases will be able to identify a handful of insurance companies who represent the interests of doctors and hospitals in Virginia. He or she will also be able to identify the insurance adjusters who handled those claims, because the same adjusters reappear. This question is therefore a good follow-up to determine whether the attorney has had a lot or only a little experience in the field.

**6. What types of medical malpractice cases have you handled?**

Although each case is unique, it helps to have an attorney who has handled a medical malpractice case in the same area as your case, or at least a similar area. That is not to say that the attorney should have handled your exact medical issue before. However, it is reassuring to know that your attorney has handled a similar issue, because previous knowledge and experience will transfer. Prior experience in the same field will especially help your attorney find the right experts for your case, which is so critical to the success of your case.

**7. How much experience have you had in the court where my case will be filed?**

Prior experience in the same court system can help an attorney to better understand the judges and the jury, as well as the procedure for that particular court. He or she might have earned a good reputation in that area, although the reverse could also be true.

**8. What is your win-loss record for medical malpractice trials?**

No medical malpractice attorney will have a perfect record, unless he/she has not tried very many cases. However, you should try to find an attorney with an 85-90% success rate. Ask about the cases that were lost, and what the attorney learned as a result of those losses.

**9. Can you provide a representative sample of verdicts and settlements that you have achieved?**

This follow up question will help to test the validity of some of the prior answers. While past victories do not guarantee future success, they do indicate the quality of work a law firm is capable of producing.

**10. Can I speak to a former client or review a testimonial from a former client?**

Although the attorney can strategically select the references, hearing about a previous client's experience with the attorney you are considering to hire can be beneficial. You can learn things like how responsive the attorney was to calls made or emails sent; whether the attorney was the primary person communicating with you; and whether the attorney or the attorney's office kept the client well-informed throughout the case.

**11. Have you been recognized publicly by your peers?**

There are a number of organizations that rate attorneys. Some of these ratings relate specifically to a specialized area of law, such as medical malpractice. Others relate to the overall competency of the attorney. Attorneys make especially good judges of the competency of their peers. The following are some of the many ratings available:

- *Best Lawyers in America*: In the Washington, D.C. area, attorney selection is based solely on a peer review process that selects attorneys by their legal specialty. Selected attorneys have no input as to what their recognized legal specialty is; that recognition is made by peer attorneys.
- *Virginia Super Lawyers*: Attorney selection is by peer review and third-party research. Selection is limited to less than 5% of the attorneys in Virginia.
- *Washington, D.C. Super Lawyers*: Selection is made through peer nominations and evaluations, combined with third party research. Each candidate is evaluated on 12 indicators of peer recognition and professional achievement. Selections are made on an annual, state-by-state basis.
- *Martindale-Hubbell*: This legal publication seeks to evaluate attorneys based upon ethical standards and professional ability. Ethic standards are rated on a "V" scale, indicating that an attorney's ethic standard is "very high." An attorney's

professional ability will not be rated unless the attorney has achieved a "V" score. An attorney's professional ability is rated on a scale of "A", "B", or "C" with an "A" scoring being the highest. A combined score of "A-V" is the highest mark an attorney can receive.

**12. Have you had any experience lecturing or publishing in the field of medical malpractice?**

Previous experience as a lecturer does not guarantee, but certainly indicates, a high level of competence as well as confidence. Attorneys are required to take classes called Continuing Legal Education (CLE) classes. An attorney with unusual proficiency in a certain area might be asked to lecture his peers in a CLE. There are other lecturing opportunities for attorneys, and those by invitation should be viewed as a vote of peer confidence. Similarly, publication can serve to indicate not only an attorney's expertise in the field, but also how current the attorney is with new developments in the law.

**13. Do you have a website?**

Whether or not a firm even has a website might be an indicator of its familiarity with technology. An examination of the website might help to double check the answers given to prior questions. It also might demonstrate a firm's commitment to serving you. Good attorneys will try to educate the public in addition to simply trying to advertise their services. A website will also show you how current the law firm is with legal issues in the field of medical malpractice. Changes in the field occur regularly, and a stagnant firm will suffer lost opportunities and mistakes.

# CHAPTER 3
# CASE INVESTIGATION

## Initial Meeting and Basic Fact Gathering

As previously explained, your initial meeting with an attorney provides an opportunity for you to evaluate one another, as well as to exchange information. Medical malpractice litigation is an emotional and time-consuming process. You will be far happier if you are comfortable working together with your attorney. It is okay to let the attorney know that you will be meeting with other firms.

This chapter focuses on the other reason for meeting with an attorney – to explain your case and get his/her initial assessment of it. (***Don't forget to ask about your statute of limitations deadline!***) The most important guidance we can offer is to be completely honest and do not hide anything, even if you think it will hurt your case.

The attorney will most likely explore what you think went wrong and why, as well as how your injuries have affected you. The attorney will want to know the doctors and other health care providers who have treated you both before and after the act of medical malpractice, and their sense of what has happened to you. By the close of this meeting, you should have a general sense about whether you have a case, and you might even have some idea of its value.

## Record Gathering and Review

Before a medical malpractice lawsuit can be filed, your attorney will need to conduct a more in-depth investigation. A hastily filed lawsuit benefits no one. It could end up needlessly costing you thousands, and even tens of thousands, of dollars in avoidable expenses. It could even result in sanctions by the court against you and/or your attorney if your case is determined to be frivolous. Finally, it could unfairly subject a doctor, hospital, or other health care provider to a lawsuit.

In 2005, the Virginia General Assembly passed a law requiring that a medical expert certify that a case has merit before the case can be filed and served on the defendant. Accordingly, not only does common sense dictate that a case be thoroughly investigated before a lawsuit is filed and served, Virginia law now requires it.

The attorney will most likely have you sign an authorization form that will allow the attorney's office to request copies of your medical records from your health care providers, and even speak to some of your health care providers. You might be asked to provide other records, such as employment records or tax records. You will undoubtedly leave with a homework assignment, since your cooperation and assistance in the record gathering process is critical.

After the attorney has gathered all of the relevant records, he/she will review them to determine the next step. If the attorney believes that the records show medical malpractice, then he/she will want to send the records to one or more medical experts for review.

## Expert Witness Review

The decision to send your medical records to an expert witness for review is a joint decision between you and your attorney. If a case is to be pursued, however, it is a necessary step. The expert will provide meaningful insight into the essential elements of negligence, causation and damages. The expert will help identify specific theories upon which the case will be based. Ultimately, if the expert is supportive of your case, the expert will sign the Certificate of Merit that is necessary for the lawsuit to be filed.

At this stage, your attorney might also want to speak with some of the doctors or health care providers who were involved in your actual care and treatment. These "treating" health care providers might have a unique understanding of some of the issues that will become relevant in your case. Their willingness to be involved in your case can be a powerful asset.

## Decision To Pursue A Case

After your attorney has reviewed your records and consulted with experts and treating health care providers, the final step in the investigation stage is to decide whether a lawsuit will indeed be filed. This decision is obviously an important one, and should involve you and your attorney together. At this stage, you will need to decide which health care providers will be named as defendant(s), what the theories of liability will be, where the lawsuit will be filed, and how much monetary compensation will be sought in the lawsuit.

You truly do not want to incur the expense and heartache of a lost case, which is why the preceding steps are important. There is a cost/benefit analysis that will require some soul searching, aided with a practical list of pros and cons. The next chapter should help you with your analysis by helping get rid of any misconceptions you might have about your case.

If you elect to go forward, you need to be prepared to defend your decision. Even in today's enlightened society, there are still people who think losses should lie where they fall, rather than be compensated by insurance companies. Insurance companies definitely promote this archaic view of non-accountability. Some of the myth busters in the next chapter might help arm you against criticism, or might simply make you feel better about your decision to proceed.

# CHAPTER 4
# MYTH BUSTERS

Because each of the attorneys at Shevlin Smith has been specializing in medical malpractice law for over fifteen years, we have heard and witnessed first-hand numerous myths and misconceptions. In this section, we hope to share with you the most common myths and misconceptions in an effort to correct them.

1. **Myth: I must have a strong medical malpractice case, because the quality of the care that I received was so poor.**

   **Truth: Poor quality of care alone does not support a medical malpractice lawsuit.**

In our experience, the most common motivating factor for potential clients to contact us is the poor quality of care that they, or a loved one, received from a health care provider (e.g., doctor, nurse, physician's assistant, therapist, dentist, chiropractor). Perhaps the health care provider did not listen to patient complaints, or did not respond promptly or compassionately. Perhaps the health care provider did not spend enough time discussing the treatment to be offered, or why the patient response to the offered treatment did not go according to plan. Regardless of the exact nature of the complaint, most prospective clients contact us because the care was poor, or at least perceived to be poor.

When we investigate a case, the quality of the care that a patient receives is a very important aspect of our case evaluation process. However, as set forth in Chapter 1, substandard care alone will not win a medical malpractice lawsuit. A poor bedside manner, albeit inconsiderate and insensitive, does not by itself constitute medical negligence. The health care provider's breach of duty must have been a primary cause of your injury.

It is extremely important that anyone considering the pursuit of a medical malpractice case realizes that medical negligence is only one aspect of case. If a health care provider was negligent in providing care, but that negligence did not cause the patient harm, then a medical malpractice case will be lost. In order to have a strong, valid medical malpractice case, we must show both that the quality of care was below the acceptable substandard of care, (i.e., negligent), and that the negligent care proximately caused injury to the patient.

2. **Myth: I must have a valid medical malpractice case because (a) after I saw my health care provider, my injuries became worse, or (b) my health care provider caused me to have a new injury or new injuries that were not there at the original medical visit.**

   **Truth: Even if you were injured, or your injuries worsened, after seeing your health care provider, you might not have a medical malpractice case.**

This myth or misconception is essentially the reverse of the first one. In this scenario, the misconception is that the existence of an injury is proof that a health care provider was negligent in causing that injury. In fact, the law in Virginia is to the contrary. Many judges in Virginia will instruct a jury deciding your case that "the fact that a doctor's or hospital's efforts on behalf of a patient were unsuccessful does not, by itself, establish negligence."[4] This instruction tells a jury that it cannot find in your favor simply because you were injured or your injuries were made worse by your health care provider.

The first reason for this myth-buster is that bad outcomes, although unfortunate, are sometimes perfectly acceptable. Some medical treatment carries an inherent risk, which means that some people will necessarily have a bad outcome. No health care provider is held to a standard of perfection, nor should he/she be. However, he/she must take reasonable precautions to avoid known risks.

Furthermore, some bad outcomes are unavoidable, no matter how good the health care provider is. How unfair would it be to expect health care providers to cure each patient? Unfortunately, some problems have no cure.

As explained in Chapter 1, the elements of negligence and causation must also be present and supported by expert testimony. An injury or medical problem alone is insufficient to support a medical malpractice claim.

3. **Myth: If my attorney writes a letter to an insurance company seeking a reasonable settlement, the insurance company will settle my case without a lawsuit being filed.**

   **Truth: Of the medical malpractice cases that do settle, almost all settle after a lawsuit has been filed and most settle close to the trial date.**

Many personal injury cases, such as automobile accident or slip and fall cases, can be settled through letters and phone calls prior to filing a lawsuit. Medical malpractice cases are different. Insurance companies *rarely* settle them early in the legal process and almost never before the case is filed. In fact, for the vast majority of cases that do settle, settlement does not occur before a formal investigation (known as "discovery") is completed. It does not matter how strong your case is, or how reasonable you are willing to be with your terms of settlement. Most insurance companies simply do not settle medical malpractice cases early.

Settlement money comes from the insurance company, not the doctor. As a result, there are many reasons why insurance companies do not settle these cases early.

First, most insurance policies give the defendant doctor the power to veto a settlement. Even if the case is very strong, the case may not settle because the doctor did not consent to settlement.

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[4] Virginia Model Jury Instruction No. 35.040.

Second, insurers and health care providers often want to see which experts will testify for the victim of medical malpractice, and what those experts will say. The truth is that a great cause of action with poor expert support is a bad case. The identification of these expert witnesses and their testimony does not occur in Virginia until 90 days before trial, which means the trial process is entering its final stages before settlement is even considered.

Third, any settlement is expected to be reported to the National Practitioners Data Bank and the Virginia Board of Medicine. Many do not want the scrutiny of the care they rendered, so they avoid settlement until they feel sure that a case will be lost.

Fourth, insurance companies often seek to hold onto their money for as long as they can in order to continue to earn interest from investments. The interest earned might be greater than the expenses of defending a lawsuit, thereby making procrastination profitable.

4. **Myth: All lawyers who advertise that they handle medical malpractice cases are qualified to handle my case.**

   **Truth: Too many lawyers who advertise for medical malpractice cases are poorly qualified or inexperienced.**

Simply stated, all lawyers are not created equal in terms of their ability to handle a medical malpractice case. Many attorneys would like to break into the field, so they advertise for medical malpractice. However, just as in medicine, some areas of the law are highly specialized and require unique experience, training, and knowledge. Medical malpractice is arguably the most highly specialized area of the law. Just as you would not want a general practitioner or family doctor to perform brain surgery, you do not want a personal injury lawyer or general practitioner to try your medical malpractice claim. Along the same rationale, the more medical malpractice cases tried and the higher the success rate, the better the attorney will be for you.

In Chapter 2, we provided a list of questions that will help you spot the imposters and select the most qualified medical malpractice attorneys. You should not only review the questions; you should actually bring them with you and read them to whichever attorney you are interviewing. You will look knowledgeable and prepared, and it will give you more confidence to have something to serve as a prompt when you meet with prospective attorneys. If you take time to write down the answers, you will control the pace of the meeting and will also have notes to reference when you are trying to make your final decision.

5. **Myth: Because my lawyer charges a contingency fee, I will not face any personal financial risk if my case is lost.**

   **Truth: In Virginia, attorneys are ethically obligated to charge you for litigation costs, regardless of the outcome.**

At the very outset, you need to be aware that there are two types of expenses involved in a medical malpractice case. The first is attorney fees. Attorney fees are almost always charged on a contingency basis, which means you will not owe your attorney a fee for his/her time if your case is not won either through a settlement or a jury verdict. Winning is the contingency upon which the fee is based. The second type of expense involved in a medical malpractice case is litigation costs. Costs are incurred for things like obtaining medical records, having the medical records reviewed by an expert, filing a lawsuit, and payment to experts and court reporters for taking pre-trial depositions. You should discuss all of the potential costs of litigation with your attorney so that there are no surprises. These costs are NOT contingent, nor are they negotiable. The client is responsible for paying case costs, even if the case is lost.

The Virginia State Bar Association, which sets the rules of professional conduct and governs whether an attorney can keep his/her license, does not allow attorneys to pay for litigation costs. Attorneys can advance the money, but must seek to collect it at the conclusion of the case. Therefore, even if an attorney does not bill you each time a cost is incurred, he/she must bill for it eventually. You have the right to be updated about these costs as they accrue, however, so it is always appropriate for you to ask for attorney for cost report.

6. **Myth: The tort liability system is a "lottery" that will help you get rich.**

   **Truth: Too often the money received from a lawsuit does not adequately compensate the victim of medical malpractice.**

How often have we heard our tort liability system referred to as a "lottery"? Sadly, most people do not realize that malpractice victims are almost always disadvantaged, even after a favorable outcome. Consider three thoughts.

First, for victims of medical malpractice, the compensation received never offsets the loss. Does anyone really believe that a child whose parent died as a result of medical malpractice rejoices when there is a settlement or favorable jury verdict? Does a mother whose child was born with lifelong injuries due to medical negligence celebrate the successful resolution of a case? Hardly. Perhaps the money will help ease some of the financial hardships caused by the medical malpractice, but the victim or the victim's family is never better off.

Second, Virginia law places a cap on how much money a person injured by medical malpractice can recover. Currently, that cap is $2 million for acts or omissions that occur on or after July 1, 2008. Va. Code Ann. § 8.01-581.15. That number differs if the medical malpractice case occurred prior to July 1, 2008, so you will need to consult with your attorney to determine the cap that applies to your case. Although $2 million might sound like a lot of money, there are many cases in which a person will need more to cover future medical costs or personal care. There are other cases in which a person's medical expenses or lost wages will total more than $2 million. For these people, a medical malpractice lawsuit

might help them lessen the financial hardships caused by negligence. It will never replace all of the financial loss, and might not even touch the emotional hardship.

Third, our civil justice system, including medical malpractice cases, is about accountability. If a health care provider negligently injures a patient, the laws hold the health care provider responsible for the injuries caused. The health care provider is not legally responsibile for actions that do not constitute negligence, for injuries that were not caused by the health care provider's actions, nor for any injuries that resulted from the patient's own negligence.

**7. Myth: Frivolous medical malpractice lawsuits are a problem in Virginia.**

**Truth: Virginia law precludes frivolous lawsuits.**

Those who argue that there are too many frivolous lawsuits in Virginia simply do not know the law in Virginia. In 2005, the Virginia General Assembly passed a law that effectively prohibits frivolous lawsuits. Under this law, any person who seeks to serve a lawsuit on a defendant must have an expert certify that there is a reasonable belief that a valid case exists.[5] This certifying expert must be in the same medical specialty, or a related field of medicine, as the health care provider who is being sued. For example, if you intend to sue a neurosurgeon for medical malpractice involving spinal surgery, your certifying expert must be a neurosurgeon (or perhaps could be an orthopedic surgeon who actually performs spinal surgery). The certifying expert must also have an active clinical practice, meaning that the certifying expert is actually practicing medicine and seeing patients. He/she cannot be a retired health care provider who has established a second career as an expert paid to testify in lawsuits.

To put it simply, there is no way to bring a frivolous medical malpractice lawsuit in Virginia because you cannot get the requisite expert support for such a case. If filed, it would be summarily dismissed when the attorney could not state that he had a certifying expert opinion.

Finally, it does not pay to bring a frivolous lawsuit. A plaintiff bears more than the emotional cost; he/she also bears the financial cost, as set forth in the myth buster #6. Cases brought merely for the sake of revenge or under some "get rich quick" scheme have a price tag that is too high, both for litigants and attorneys.

**8. Myth: Medical malpractice lawsuits jeopardize the availability of doctors willing to practice in Virginia, and the quality of care patients receive.**

**Truth: Medical malpractice lawsuits improve the quality of medical care in Virginia.**

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[5] Virginia Code §8.01-20.1 and §8.01-50.1.

There is no empirical evidence that supports the claim made by the proponents of tort reform that medical malpractice lawsuits jeopardize the availability of doctors in Virginia (or anywhere else in the United States for that matter). That claim is just a scare tactic used by anti-lawsuit lobbyists, especially insurance companies, to manipulate legislators and public debate. Fortunately, Virginia's legislators have not accepted this rhetoric at face value. Virginia's legislators have shown a long history of wanting to study myths and misconceptions such as this one before enacting new laws.

The fallacy of this argument can be demonstrated by examining the history of Virginia's medical malpractice cap on damages. This cap was first established at $750,000 in 1976. It was then raised to $1,000,000 in 1983. In 1999, it was again raised to $1,500,000 with incremental increases each year until the present cap of $2,000,000 was reached in 2008. This increase in the medical malpractice cap from 1976 to 2008 actually lags behind the rate of inflation over that same time period. Based upon inflation alone, $750,000 in 1976 would be worth over $2,600,000 in 2008. Thus, in real dollars, today's present cap is less than the cap enacted in 1976.

Conversely, the number of doctors and nurses licensed to practice in Virginia has increased dramatically since the establishment of the medical malpractice case cap in 1976. From 1995 to 2007 alone, the number of physicians licensed to practice medicine in Virginia has increased nearly 40% from 17,423 to 24,162.

The increase in medical malpractice insurance rates has been falsely and strategically blamed on increased litigation and exorbitant jury awards. According to J. J. Robert Hunter, director of insurance for the Consumer Federation of America, the real reason insurance companies have raised their malpractice rates is to compensate for poor returns on their investments. In other words, insurance companies are making a profit at the expense of health care providers, and then turning around and blaming malpractice victims. While it may be true that health care providers are paying too much for insurance coverage, the blame lies with the insurance companies for charging the rates that they do. It has very little to nothing to do with cases filed by medical malpractice victims.

# CHAPTER 5
# THE LITIGATION PROCESS

In Chapter 3, we discussed the case investigation process. A good investigation takes time -- often months. Once the decision to file a lawsuit has been made, the actual litigation process will begin. The litigation phase of your case will typically involve 6 phases – lawsuit filing, collection of relevant evidence, written discovery, fact witness deposition, expert witness identification and deposition, and trial.

## Filing of Lawsuit

Once the final decision to pursue a lawsuit has been made, the next step is to file a lawsuit. The attorney will draft the lawsuit, known in Virginia as the "Complaint." The lawsuit will be filed in the courthouse of the county/city in which you and the attorney have decided to bring your case. This location is typically in the county/city where you received the negligent medical care, but there are sometimes other possibilities.

The filing of the lawsuit will trigger the remaining deadlines for your case. In Virginia, most courts will assign a trial date within one year from the date the Complaint is filed. For example, if the Complaint was filed on February 1, 2008, the trial date will usually be sometime before, but close to, January 31, 2009.

Once the lawsuit has been filed, the defendant(s) need to be "served," which means they are officially given a copy of it. A sheriff or a process server will actually hand-deliver a copy. Once served, the defendant(s) will have twenty-one (21) days to file an official response.

## Collection of Relevant Evidence

Additional evidence, such as a diary of events, photographs of the injury, or a video to show its impact, might ultimately be useful. During the pre-trial phase of litigation, your attorney will be gathering all of this evidence. If you have something you think might be useful or relevant, give it to your attorney so that he/she can analyze its relevance.

## Written Discovery

The next phase of litigation involves written discovery. Both parties to a lawsuit – you and the defendant(s) – are permitted to submit written questions and written requests for the production of documents to each other. These questions and requests are known as "interrogatories" and "document requests." Both sides are also allowed to issue subpoenas to other people or entities for documents.

In general terms, the purpose of this phase of litigation is for the parties to the lawsuit to gather background information about each other and information relevant to

the lawsuit. The defendant will typically ask you to provide information concerning your prior health condition, the identity of prior doctors and health care providers, your employment and income history, the identity of people who have information about your case, and the production of medical records and employment records that are in your possession. You and your attorney will typically ask the defendant to provide information such as whether the defendant has been sued before, whether there is insurance coverage that would pay for a judgment or settlement, whether the health care provider was licensed to practice medicine, the defendant's employment records, and the production of your medical records. Depending upon the specific issues involved in your case, both sides will usually ask for additional information as the case develops.

## Fact Witness Depositions

During the written discovery phase, both sides will learn the identity of witnesses who have knowledge of facts relevant to your case. These witnesses are known as "fact witnesses." Parties will typically request to take the deposition of the fact witnesses that the other side has identified. A "deposition" occurs when the parties and their lawyers meet in the same location with the witness, and question that witness under oath about issues relevant to the case. The answers constitute sworn testimony by which the witness will be bound. A court reporter is present for the deposition to record the questions asked and the answers given, and to produce a written transcript of those questions and answers. The purpose of the deposition is to learn facts relevant to your case, and to commit the witness to his/her version of the facts.

## Identification of Expert Witnesses

In virtually all medical malpractice cases, the parties will be required by Virginia law to identify at least one expert witness who will testify at trial in support of their case.[6] Usually, more than one expert witness is required.

As the plaintiff bringing the case, you will be required to identify your expert witnesses first. Virginia law requires that you identify these experts no later than 90 days before trial (although some courts may move this deadline date to an earlier time). The defendant(s) is/are required to identify experts no later than 60 days before trial. The plaintiff can then identify rebuttal experts no later than 45 days before trial.

The identification of experts requires not only the disclosure of the expert's name, but also the disclosure of the opinions of the experts and the facts that the expert is relying upon to support those opinions. Following the identification of expert witnesses, both parties will usually take the depositions of the identified expert witnesses.

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[6] The Virginia Supreme Court has held that expert witnesses are required for virtually every type of Virginia medical malpractice case. See Beverly Enterprises v. Nichols, 247 Va. 264, 267 (1994) (holding that "expert testimony is ordinarily necessary to establish the appropriate standard of care, a deviation from that standard, and that such deviation was the proximate cause of damages").

## Trial

The discovery phase of your case (written discovery, fact witness depositions, expert witness depositions) concludes thirty (30) days before trial. In these last thirty (30) days before trial, you and your attorney will be preparing for trial. Your attorney will be preparing exhibits for trial, identifying witnesses who will testify at trial, subpoenaing witnesses to testify at trial, preparing for witness direct and cross examinations, and preparing you to testify.

The trial of your case will most likely last a number of days – typically from 4 to 8 days. You will need to be present in the courtroom all of those days.

Settlement discussions do not always happen. There are many occasions in which the defendant and/or the defendant's insurance company do not want to settle the case. If there is no interest, either on their part or yours to settle, then obviously there will be a trial. If there is a mutual interest in settling, settlement discussions will often occur in the last 30 days before trial. One of the main reasons why settlement occurs so late in the process is that the depositions of expert witnesses typically are not finished until 30-40 days before trial. Until the expert witnesses are finished, the parties are often unable to assess exactly how strong or weak their case is.

## Appeal

Most medical malpractice cases are NOT appealed. If a case is settled, then by definition, the case cannot be appealed. If the case does go to trial, the vast majority of those cases will be over once the jury reaches its verdict.

If your case is appealed, the appeal must be filed within thirty (30) days after the trial judge officially memorializes the jury's verdict by entering a Final Order. No new evidence is admissible. The appeal is strictly based on the trial record and whether a reversible error was made by the trial court. Most appeals are heard and decided by the Virginia Supreme Court within 9-12 months after the appeal is filed.

# CHAPTER 6
# FREQUENTLY ASKED QUESTIONS

Our website has more detailed questions and answers specific to particular areas of the law. However, we have collected some of the most commonly asked general questions and provided their answers below.

**Q: What is the statute of limitations for a medical malpractice claim in Virginia?**

**A: We cannot advise you as to the statute of limitations for your case without first knowing the facts of your case. Although the statute of limitations for a medical malpractice claim is usually two years from the date of injury, there are exceptions. Additionally, the time at which the two-year period begins to run might vary depending upon the facts of your case.**

One reason you need to seek advice from an attorney familiar with the facts of your case is that there is case law that helps define when the "date of injury" is said to have occurred, thereby beginning your statutory time period. Moreover, there is specific case law addressing wrongful death claims, cases involving children, and cases where the malpractice has not been discovered immediately. Virginia also has a "continuing treatment" rule that can delay the start of the statute of limitations, but the application of which is very case specific.

**Q: If I was injured due to the negligence of another person, should I seek medical treatment or consult an attorney?**

**A: If you were injured due to the negligence of someone else, you should seek prompt medical attention**.

It does not matter whether you were injured in a motor vehicle accident, as a result of medical malpractice, or by some other cause. It is extremely important that you seek medical treatment. Why? Your health is paramount.

First, and most importantly, prompt medical attention will maximize your chance of a full recovery from your injuries. Even in situations in which your initial injuries appear minor, those injuries can develop into worse conditions that are more difficult to treat.

Second, in the event that you later decide to pursue a legal claim against the person who caused your injuries, the timing and scope of medical treatment will likely have a large impact on the resolution of your case. Any insurance company who reviews your legal claim will definitely be skeptical of a claim for permanent injuries if you did not seek prompt treatment. Juries might also view such a claim skeptically. Avoiding

medical treatment for fear that it will adversely impact a potential case is more likely to cause you harm.

Once your immediate medical needs have been addressed, you can focus on pursuing a legal claim for medical malpractice. Speaking to an attorney can help you decide what legal course is advisable. The earlier you speak to an attorney, the earlier an attorney can take steps to evaluate your legal claim, protect your legal rights, and enhance your opportunity for success should a lawsuit be pursued.

**Q: What is the likelihood of my case settling without having to go to trial?**

**A: The chances of settling a medical malpractice case without going to trial are directly related to the strength of your case.**

Historically, national data suggest that only about 15% of all medical malpractice cases go to trial, which means that as many as 85% of such cases are settled. These percentages have undoubtedly changed in the last 5-7 years. Unfortunately, it is now common to encounter an insurance company that has adopted a policy of trying all cases, regardless of the merits. As a result, in Virginia, probably half of the cases settle and half are tried. Case settlement is a product of many factors, the first of which is obviously the reasonableness of the offer. Some other factors are the amount of coverage as compared to the level of your injuries, the strength of your underlying facts, and the strength of your experts as compared to the defendant's experts, and the reputation of the medical malpractice attorney you hire.

**Q: Should I first attempt to settle my case by myself to avoid attorney's fees?**

**A: No. Insurance companies love to see unprotected clients, and you risk an unreasonably low settlement or permanent damage to your case.**

Whether or not you hire our firm, it is imperative that you hire a well-qualified, experienced medical malpractice attorney if you want to maximize the value of your case. Medical malpractice is a uniquely difficult field of law. If you try to settle your case on your own, you might reveal information you should not be discussing with the insurance company, or they might low-ball you. Moreover, as discussed in Myth Buster No. 3, there is a strong possibility that the case will not settle before it has been filed, so you might allow a free "fishing expedition" to the insurance company and still have to hire an attorney to file your case.

You will likely improve your odds of obtaining a settlement offer if you hire a competent attorney, and you will also ensure that your interests are properly protected. Remember that insurance companies often want to see what kind of medical expert support you have for your case prior to settlement, and you will have a hard time finding qualified medical experts on your own. Your attorney will handle all discussions with

the insurance company, the defendant(s), or opposing counsel. You will be kept informed, but you will not have to worry about being put on the spot in unfamiliar territory.

You also protect yourself from making a legal error accidentally. For example, did you know that government entities, like Medicare/Medicaid will often assert a claim for the reimbursement for medical expenses paid on your behalf should you successfully resolve your medical malpractice case? The same is true for some health insurance companies. An experienced attorney can evaluate the validity of any lien claims and handle arguments or negotiations related to them. There are far too many details like that for us to cover in one book. You will be best protected if you hire an attorney who knows the field and how to avoid mistakes that you might make innocently.

**Q: Do I have to pay back my health insurance company if it covered my medical expenses and I later receive coverage through my lawsuit?**

**A: It depends.**

Health insurance companies will often notify you of their claimed right to be paid back. This claimed right is often called a lien, subrogation right, or reimbursement claim. Sometimes the health insurance companies' claims are legitimate; other times, they are not. The legitimacy of the claim will depend upon the language in your health insurance policy, and upon other factors specific to your case.

**Q: What counts when you are figuring out damages for a medical malpractice case?**

**A: The damage aspect of a medical malpractice case will consist of two general components – economic damages and non-economic damages.**

Economic damages are actual financial losses that result from the medical malpractice injury, such as lost wages, future loss of earning capacity (if you are unable to return to your old job in a full capacity), loss of employment benefits (e.g. retirement or health insurance), past medical bills, future medical care costs, and loss of household services (e.g. replacement cost for an inability to perform household services such as grocery shopping, yard maintenance, automobile maintenance, household cleaning).

Non-economic damages constitute compensation for non-financial losses. They include compensation for physical pain and suffering, mental anguish and emotional distress, disfigurement and deformity, and general inconvenience.

**Q: If medical malpractice has caused the death of a loved one, who is able to bring the lawsuit and how is that done?**

**A: A medical malpractice case that causes death must be brought by the person appointed "Personal Representative" or "Administrator" of the decedent's estate.**

Under Virginia law, a medical malpractice case involving the wrongful death of a loved one must be brought by the person appointed by a Virginia court (usually the Circuit Court) as the administrator or personal representation of the decedent's estate. A person can be appointed the administrator or personal representative of the decedent's estate by filing a petition with the court, usually through the probate division of the court. An attorney is usually not required for such an appointment.

# CHAPTER 7
# YOUR RIGHTS AS A CLIENT

1. **You have a right to confidentiality from your attorney and his staff, within the bounds of the law.**
2. **You have a right to be kept apprised of the progress of your case, and to have your questions and concerns addressed promptly.**
3. **You have a right to receive an accounting of your litigation expenses at any point.**
4. **Once you have retained an attorney, the opposing side is not allowed to contact you directly. All communication should be through your attorney to ensure your protection.**
5. **You have a right to be informed of each and every settlement offer, and the power to accept or reject is ultimately yours.**
6. **You have a right to terminate your relationship with your attorney at any time, although you might have to pay the value of the services he/she has already provided you if your case is ultimately resolved favorably to you, and you will be responsible for litigation costs.**
7. **You are entitled to have your attorney handle your case without a conflict of interest.**
8. **Your attorney is required to act in accordance with Virginia's Professional Code of Responsibility.**

# CHAPTER 8
# WHY YOU SHOULD HIRE SHEVLIN SMITH

**Passionate and Tireless Dedication:** We will make your fight our fight with a fierceness born of our passion for justice and accountability. We will do whatever it takes to make sure your story is not only told, but also heard. If we decide to champion your cause, it is because we believe you are right and deserve to win, so we will do everything possible to make sure that happens. We understand that your case is probably the most important thing going on in your life right now, so we make it our priority, too.

**Medical Malpractice Case Experience:** Collectively, we have over 80 years of experience trying medical malpractice cases. We confer on all of our cases, so you will benefit from the unique talents of each attorney in the firm. Together, we make a formidable team with widespread experience in this highly specialized field.

**Involvement and Recognition by our Peers**: We are all members of the Virginia Trial Lawyers Association (VTLA) and the District of Columbia Trial Lawyers Association (DC-TLA) and the American Association for Justice. We have each been selected by our peers as one of the "Best Lawyers in America." Members of the firm have been selected as "Super Lawyers" in Virginia and the District of Columbia. Our firm has obtained Martindale Hubbell's highest rating of A-V.

**Direct Attorney Involvement**: Despite opportunities for growth and expansion, we have chosen to remain a small firm. We like being able to guarantee to you that only experienced, reliable, accomplished attorneys will handle your case from start to finish. Unlike most firms, we do not delegate portions of your case to a law student, a young associate or a lawyer in training. The attorneys at our firm answer your calls and speak to you directly about the issues involved in your case. We know that direct client-attorney contact is vital to prevent miscommunication, and also to ensure that nothing of importance is lost or overlooked. You will benefit from the fact that the attorneys you meet will be the attorneys handling your case.

**Case Selection**: We pride ourselves on careful case selection. We never file a frivolous lawsuit, and never encourage a client to pursue a case that cannot be won. Many prospective clients will tell us that the outcome of the case does not matter to them, that pursuing the case is about principle. No matter how important principle is, principle alone does not win a case.

We reject approximately 85% of the cases we see, many of which have been referred to us by other attorneys. We are selective because we believe the litigation system should not be abused for the sake of making money. We also realize that trying to litigate a case that cannot be won, or one that will have costs that exceed the outcome, benefits nobody.

When we are asked to investigate a case by a prospective client, our case selection focuses on three criteria. First, do your medical records support a case? In our experience, juries often look to medical records as the final arbiter of the events that took place, especially when the victim of medical malpractice and the defendant-health care provider differ in their testimony about what happened. While cases can certainly be won despite the absence of medical record support, these cases are few in number. If the facts set forth in your medical records support your case, then your chances of success increase significantly. Second, is there clear objective evidence that you have suffered a significant injury? The value of your case will be decided not only based upon whether medical malpractice occurred, but the degree to which the medical malpractice injured you. If your recovery has been complete, and the time that it took for you to recover was short, then the damages in your case are likely to be small. In some cases, the damages would not offset the substantial costs of bringing the lawsuit. We avoid taking those cases because neither you nor we will be very happy with the result at the end of the case, even if it is the best result that could have been achieved. Third, will your treating physician support the severity of your injury? A treating physician will often be unwilling to testify that another local doctor committed medical malpractice. That unwillingness can often be overcome. It is important, however, that your treating physician be willing to support the full extent of your injury. Why? Because your treating physician is uniquely qualified to testify about your injury and what you have endured. If your treating physician will dispute the extent of the injury you are claiming, then your case is very unlikely to get far.

**Case Results:** We make a difference. We continue to win sizeable verdicts and garner substantial settlements for our clients. Our website lists a representative sample of those results. The Virginia State Bar requires us to inform you that every case is different, and that past victories do not guarantee similar results for you. However, common sense dictates that past success is an indicator of our competence to handle complicated cases successfully. We have listed some of our successful outcomes on our website in an effort to demonstrate the scope of our practice and our proven ability to handle cases involving substantial injuries.

**Our website substantiates our reputation as a progressive, dedicated, and results-oriented firm:** We invite you to visit our website at www.shevlinsmith.com.

# CONCLUSION

We hope that this guide has been helpful. Our goal is to give you confidence through a better understanding of the system, and how to work within it. We are sincerely sorry for any injury you, or a loved one, might have suffered due to medical negligence. We wish you the best in your recovery from your injuries, and success as you decide how to handle your case.