

Medical Liability Reform Kit

(Bringing Virginia Patients and Doctors Together to
Fight the High Cost of Medical Care)

There is no need to wait for any "tort reform" or "medical liability" reform legislation to be enacted. Any Virginia patient who thinks that these reforms are a good idea can reach a private agreement with their doctor, right now.

Doctors have pledged to "first, do no harm."

Current law requires that doctors obtain the "informed consent" of their patients before embarking on a course of treatment or surgery that may be harmful to the patient.

The attached form will help doctors obtain the full informed consent of their patients to proposed medical liability reforms.

No Virginia Legislator should vote for any further erosion of patient protections before personally signing up their family for tort reform using the attached form. (Please discuss with spouse and children before signing—valuable rights are being waived.)

Medical Authorization and Consent to Limitation of Damages

(Bringing Virginia Patients and Doctors Together To Fight the High Cost of Medical Care)**

Warning: Tort Reform affects your rights! Please do not sign this form unless you have had a face-to-face discussion with your doctor about tort reform.

Dear Dr. _____, I understand that I (or my child _____) will shortly be undergoing the following medical care with you:

Surgery _____ Anesthesia _____ Important medical exam/treatment _____

On behalf of me and/or my minor child, I agree as follows:

It's a Good Idea to Limit Awards in Medical Malpractice Cases

Like you, I am worried about the high cost of health care. Although I never really thought about it before, I think that it's a really good idea that if you cripple me or my child for life, that my opportunity to recover damages from you be limited.

Virginia's Current Laws Do Limit Damages—But It's Not Enough

In Virginia we already have laws which limit my recovery from you, no matter how many doctors are careless. For example, no matter how much my medical bills and lost wages are, my recovery from you is currently "capped." Now you are asking that my recovery be further "capped" at \$250,000 for damages other than medical bills and lost wages.

You (the doctor) Can Sue Me For Everything—That's OK

You have told me, on the other hand, that if I cripple you on the highway with my car, that you can sue me and recover for all of your medical bills, lost wages, and pain and suffering, without limit. This seems to treat you better than me but I am willing to sacrifice my family's well-being for yours.

I'll Have to Pay Back What I Get from You to My Own Insurance Company

You have also explained to me that in certain circumstances, my own health insurance plan will want me to deduct from my recovery, and send to it, 100% of the medical bills it paid for my injury. I also understand that if the reason you are treating me is for a work related injury that my worker's compensation insurance company will have a claim for all of the money it spends for my medical care and lost wages. What these insurance companies are owed will be deducted from my recovery against you.

You (The Doctor) Support New Restrictions on my Right to Get On With My Life

You have carefully explained to me that these laws aren't enough for you and that you support new changes to the laws in Virginia that will further restrict any recovery that I or my child may be entitled to. To be clear and direct, if you blind me, paralyze me, or burn me and I am disabled or in severe pain for the rest of my life, that the most I could recover from you (after paying back my own health insurance plan) is \$250,000.

I Looked But I Couldn't Find Them—Just Where Are Those "Big Verdicts Anyway?"

I asked you for, but you were unable to produce a list of the so-called "outrageous medical malpractice jury verdicts" in Virginia. If you find any please let me know.

Feel Free To Photocopy and Distribute This Form and Modify it For States Other Than Virginia

I Can't Wait—I Want to Agree to These New Laws Right Now!

I realize that it may take a long time for the new laws further restricting my right to sue you to pass since there is a great deal of debate about whether there is any relationship whatsoever between malpractice claims in Virginia and your insurance premiums so I am willing, in order to make it more affordable for you to practice and your family to eat, to **AGREE IN ADVANCE** that these new proposed restrictions apply to my case. After all, we all need to pitch into solve your business profit problem.

So, in order to help you, your family and your business I hereby solemnly agree if you hurt me or my child then:

- No matter what happens, the most your insurance company will ever have to pay for my claim is \$1,750,000.
- If any of your colleagues, other health care providers, the hospital and/or the nurses also participate in my injury, you can split the \$1,750,000 amongst you, but I will get no more.
- That out of any recover from you I may have to pay back by own health insurance or disability insurance company for everything they paid because of my injury.
- That even if I or my child are crippled, disfigured, blinded or in chronic severe pain for the rest of my/our life that the most you will have to pay for my pain, suffering, humiliation and embarrassment is \$250,000.
- That if my total medical bills and lost wages exceed the “cap” that I will either pay the extra myself or go on welfare. I promise that if because of your “cap” I run out of money, I won't make another claim against you later.

Secrecy Agreement

I hereby agree in advance, that if you hurt me or my child and we settle my claim, that we will keep the claim and the settlement secret so that no one else will find out that you have settled my case. I also agree, as is required in most settlement agreements, that I will pay you back a large portion of the settlement if word leaks out that you paid me.

_____ Date _____

Patient name (or parent if patient is a child)

Doctor's Name: By signing this form the doctor promises that he/she has had an open and honest discussion with the patient about tort reform and has disclosed to the patient all prior claims paid by or on behalf of the doctor for medical malpractice. The doctor has also disclosed all pending claims so that the patient can make an informed choice about who to trust his/her life to.

****This form is authorized to be used by any doctor and any patient in Virginia. It is designed so that health care providers can have an honest discussion with their patients (and parents of child patients) about the impact of tort reform on patient care. It is also designed so that those who can't wait for tort reform to pass on a national or statewide basis can go ahead and enter into a private contract with their doctor for an upcoming treatment or surgery. It is hoped that if a doctor can get every patient to agree to this that maybe the doctor can get a better rate on his insurance and thus whatever the patient ends up paying for out of his pocket for injury can be passed along as a savings to the rest of society in terms of lower cost medical care.**

This form is provided as a public service by Benjamin W. Glass, III in an effort to educate the public (www.BenGlassLaw.com). To get a free copy of “Why Most Victims of Medical Malpractice Never Recover a Dime”, call 1-800-561-1670 Ext. 475.

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To the Editor:

Senator Ken Cuccinelli's proposal to "cap" non-economic damages in medical malpractice cases is a slap in the face to Virginians who sit on juries and the judges who oversee medical malpractice trials. Virginia already has a cap on malpractice awards that often prevents even full repayment of medical expenses. His proposal that the government further limit such awards says to juries and judges: "I don't trust you to do your job." Ironically, these are the same judges and juries that he does trust to impose the death penalty in criminal cases.

Despite popular rhetoric that attributes the high cost of medical care to "runaway juries," the truth is that outrageous awards are simply not a problem in Virginia. Virginia juries tend to be among the most conservative in the country when it comes to medical malpractice claims. In the rare instance in which a jury may make an award that is unreasonably high, Virginia judges have the power to decrease the verdict. The truth however, is that the Senator would be hard pressed to show even one case in Virginia in the last decade where a jury in a medical malpractice claim returned a verdict for what he calls a "ridiculous monetary claim." If the Senator were to speak to Virginia's judges, he would probably also hear that in addition to conservative monetary verdicts in cases where there is an award to the patient, Virginia juries also tend to side with the doctor in all but the most egregious cases. In other words, if Virginia doctors are paying more for their insurance, it's not because of high verdicts.

While there is no "medical malpractice crisis" in Virginia, there is no doubt that doctors are caught in a real squeeze between health insurance companies who set incredibly low reimbursement rates and their malpractice insurance companies who charge increasingly exorbitant premiums. This is a very serious issue for doctors and their families, but it is not one that can reasonably be attributed to jury awards in Virginia malpractice trials.

What Senator Cuccinelli and the doctors need to do is to ask this question of the malpractice insurance companies in Virginia: Where are the big, "runaway" verdicts in Virginia? They simply don't exist and Senator Cuccinelli, instead of limiting recovery to the most seriously injured in Virginia, would do well to spend his time investigating just

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why doctors pay so much for their insurance in a state where “runaway” verdicts just don’t happen.

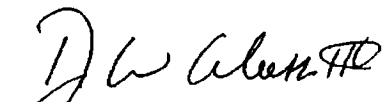
The “doctors are leaving” message is a scare tactic to convince people that their access to health care is in danger and to relinquish their rights. Remember President Bush’s campaign message that doctors were leaving Pennsylvania because of insurance prices? When investigative reporters in that state’s newspaper, *The Allentown Morning Call*, investigated the claim they found that not only had doctors not left the state in droves in 2002, but that their numbers had actually increased by 800 and in the previous eight years had expanded by nearly 2000.

The Senator is proposing a very serious law change on [his words] the “hope that this bill will help doctors, which in turn would provide you and your family with more access to affordable medicine.” Before proposing legislation which takes away the legal rights of Virginia families on the “hope” that health care costs will be reduced, he ought to read the report of the non-partisan Congressional Budget Office that concluded that even if all the costs of medical malpractice—all the payouts, all the insurance costs, all the medical expenses—were eliminated, the savings would be no more than one-half of one percent.

The truth is, even if there were a “malpractice crisis” in Virginia, the overwhelming evidence is that imposing damage caps is not the answer to rising insurance premiums. First, the insurance industry has made it clear that it makes no promise of lower premiums in those states that impose caps. Second, according to the Medical Liability Monitor, states with caps on damages have average insurance premiums that are 9.8% higher than insurance premiums in states without caps on damages. In the five states that recently passed new medical malpractice caps (MS, NV, OH, OK and TX), premiums rose at nearly double the rate as states that did not pass a damage cap.

Still, the people of Virginia are free, on an individual basis, to give away their rights to the insurance industry. For those who think that tort reform is a good idea for their families, forms for entering an agreement with their doctor are available at www.tort-reform.com.

Very truly yours,



Benjamin W. Glass, III

BWG/tgp

Full disclosure: The author is a medical malpractice attorney in Fairfax. Further information is available at www.BenGlassLaw.com