

Why Most Medical Malpractice Victims Never Recover a Dime

(An insider's report on medical malpractice claims)

**BENJAMIN W. GLASS, III
ATTORNEY AT LAW
3915 OLD LEE HIGHWAY, SUITE 22-B
FAIRFAX, VA 22030
703-591-9829**

WWW.BENGLASSLAW.COM

BEN@BENGLASSLAW.COM

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Why Most Medical Malpractice Victims Never Recover a Dime

Who is Behind This Book - and – “Why Should I Listen to You?”

You have done yourself a giant favor by obtaining this book. The information I give you here will help you if you believe you or a loved one has been injured or killed by medical malpractice. I personally guarantee it.

There’s a lot of misleading information out there about medical malpractice claims. There are folks out there who try to believe that they will “get rich quick” for every perceived disservice done to them by a doctor, hospital or other health care provider. Some lawyer advertising makes it sound that way, doesn’t it?

On the other hand, there are people out there who couldn’t be happier if malpractice lawsuits were simply banned. These folks work to change the laws to make it extremely difficult for even legitimate cases to see the light of day in a courtroom.

I wrote this book so that you could have good, solid information about malpractice lawsuits, hiring an attorney or dealing with an insurance company. Forget the hype. This book is not about hype. It’s about the tough, tough world of medical malpractice and what you can do to improve your odds of winning if you have a legitimate case. I can’t help you if you are a cry baby who thinks you should get millions because the doctor looked at you wrong. Believe me, I have gotten plenty of those calls. Even if the doctor committed malpractice, I can’t help you if your case is too small. The way the malpractice laws are written, there simply is no room for small cases.

If the doctor did commit real malpractice and you have been seriously or permanently injured - I can help.

My name is Ben Glass and since 1983 I have been representing individuals against doctors and hospitals. I spent the first five years of my career working for the malpractice insurance companies. When I saw how heartless and money driven these companies were, I stopped doing their work. Today I only handle large malpractice and injury cases. If you want a divorce or a will, or have a traffic ticket, I can't help you.¹ I am listed in *Best Lawyers in America* and I am one of the few Virginia Lawyers certified by the National Board of Trial Advocacy. (For more information about lawyer certifications, ask for our Special Report on Lawyer Advertising.) I am frequently invited to speak to other lawyers on a variety of topics at continuing legal education programs around the country. I have written numerous articles for lawyers and consumers. My firm's award-winning web site has a lot of useful consumer articles and links on a variety of subjects. Visit www.BenGlassLaw.com.

Why Did I Write This Book?

Simple.

I am tired of insurance companies taking advantage of people before they have a chance to talk to an attorney. I am also tired of slick and misleading lawyer advertising that dangles dollar signs in front of patients that makes it sound like a malpractice claim is some sort of a lottery. If you or a loved one have been the victim of medical malpractice, what you need is useful information that you can trust. Try to deal with the doctor, hospital or

¹ If you live in Virginia, Maryland or the District of Columbia, call us anyway. We can usually provide you with the name of other attorneys who may be able to help with your situation. We do not charge for this service.

insurance company yourself and they will just slap you again. (I wish I had a dollar for every person who first tried to deal with their case by writing the doctor a letter because they just “knew he would want to settle”). Respond to some ad paid for by a lawyer who “says” he handles malpractice cases and you will end up in the hands of someone who has never been in a malpractice case in his life.

Stop right here!!! Put this book down and pick up the yellow page telephone directory. Count up the number of lawyers who advertise that they handle malpractice cases. I promise you that many have not. How can a consumer tell? At page [], I outline exactly the process you can go through to make an informed decision.

I wrote this one-of-a-kind book so that you could have good, honest, useful information to review and study in the comfort of your own home.

No Hype.

No pressure.

Frankly, this book also saves me time. I get many calls each day from people asking me to represent them in their medical malpractice claims. I’ve packed a ton of information into this book and it saves me hours each day by not having to talk to all of the potential clients who call me. I can’t accept every case. If I gave a “free consultation” for each new potential case, there simply would not be enough time to get any work done. Look again in the yellow pages at all of the lawyers who offer a “free” initial consultation for all new malpractice cases. Folks, a good initial meeting takes at least two to three hours. How busy can these other lawyers really be with their actual cases if they are offering “free consultations” to everyone who calls? Writing this book gives me a chance to “talk to you” about what you need to know about malpractice claims so that you can make an informed

decision about what steps to take with your case. Even if I cannot accept your case, I would like you to be educated about the process so that you don't fall victim to the insurance companies.

This Book is Not Legal Advice

I know the arguments the insurance company will make—and so should you—even before you start your claim. When you were injured, you entered into a war zone. The insurance industry has spent hundreds of millions of dollars to inflame the public against you and me. If I accept your case, we will be in this together. I am not allowed, however, to give legal advice in this book; I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice about your case until you have agreed to hire me AND I have agreed, in writing, to accept your case.

What is a Medical Malpractice Case?

You may have a medical malpractice case if you are injured as a result of preventable error or negligent care while receiving medical treatment. The Harvard Medical Practice Study done in 1999 revealed that over half of all injuries caused by medical management (i.e., those not caused by the patient's initial injury) were preventable, and another quarter of those incidents were caused by negligence.² Medical malpractice can occur at virtually any stage of

² Institute of Medicine, National Academy of Sciences, TO ERR IS HUMAN: BUILDING A SAFER HEALTH SYSTEM, 25 (National Academy Press 1999).

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treatment, and one-fifth of medical management errors occur outside of the hospital and inside a doctor's office.

Interest groups pushing for "tort reform" would like people to believe that "frivolous" lawsuits are resulting in increasing costs for members of the health care industry. Medical malpractice insurance is not the problem -- medical malpractice is. Contrary to the interest groups' arguments, not every doctor is susceptible to "phantom lawsuits" -- only a small fraction of the physician community is responsible for a substantial number of malpractice claims.³ According to the editor of one malpractice study, "the majority [of plaintiffs] lose their jury trials and never receive a dime."⁴ (I write about the "myths" of malpractice lawsuits in almost every issue of my newsletter. Back issues are available at www.BenGlassLaw.com or by calling my office.) If this book was mailed to you from my office, then you are automatically eligible for a free subscription and one has been started for you. If you got it somewhere else and would like a free subscription, call my office at 703-591-9828 and request one. This offer is limited to residents of Virginia, Maryland, and Washington, D.C.

Even plaintiffs who receive awards that seem extraordinarily large often never see the amount granted by the jury. In some cases, the Virginia "cap" on damages cuts the verdict. Other awards are drastically reduced on appeal, to less than half of what was originally awarded, and many awards are overturned. These reduced or overturned awards are almost never reported by the media. In fact, when the "Lost to the Economy" of medical malpractice verdicts is reported, the figures used are almost always the reported initial verdicts and never

³ Lawrence Messina, *Malpractice Claims Have Decreased: Study's Findings Run Counter to Medical Association Allegations*, SUNDAY GAZETTE MAIL, Feb. 25, 2001.

⁴ David Boxwold, *Jury Verdict Research*, Mar. 20, 2003.

the reduced or overturned verdicts. This is all a part of the misleading rhetoric of the insurance industry and “tort reforms”.

What Must be Proven to Win a Case?

Medical malpractice cases are among the most difficult a lawyer will ever handle. Studies show that **patients will only win 23-39% of cases**⁵ that go to trial in front of a jury. For those who do win, the **median jury damage award is only \$254,000**.⁶ A medical malpractice case requires the patient, the “plaintiff,” to prove that his or her doctor or hospital, the “defendant,” deviated so far from what is accepted as “standard” diagnosis and treatment that the law considers them to have been “negligent.” The plaintiff is also required to prove that the doctor's negligence was the primary cause of the injury that the plaintiff has.

Because of the tremendous hurdles of obtaining a recovery in a medical malpractice case, most experienced malpractice lawyers agree that the injury suffered by the plaintiff must be significant. The court system is simply not set up to handle “small” medical malpractice cases. We believe that either the monetary damages (medical bills and lost wages) must exceed \$100,000 or you must have suffered a significant and permanent disability or disfigurement to warrant the expense and risk of prosecuting a malpractice case.

⁵ Jury Verdict Research, *Medical Malpractice: Verdicts, Settlements and Statistical Analysis* (2002); Department of Justice, *Tort Trials and Verdicts in Large Counties, 1996* (2001).

⁶ Brian Ostrom & Neal Kauder, National Center for State Courts, *Examining the Work of State Courts, 1998*, 30 (1998). As we have noted, such initial awards are also frequently reduced or vacated at the appeal stage.

Your case must be proven by expert testimony. That is, other doctors in the same specialty as the negligent doctor must be willing to say that the conduct of the defendant fell below accepted standards. Simply making a mistake or getting a bad result is not enough – we must prove that it was a really major error which directly led to your injury. Yes, it's true. Doctors sometimes “get away with” malpractice because the injury they have caused is not severe. I can't do anything about that

Remember, too, that just because serious injury or even death resulted from a doctor's care, this does not mean that malpractice occurred. People get sick and die each day from reasons other than malpractice.

How Do You Know You Really Have a Case?

In order to determine whether you have a case, we must first gather all of the pertinent medical records involved in your care. We also must have a complete, honest statement of facts from you - please don't hide anything from your lawyer.

Once all of the records are received and reviewed and you have been interviewed, we will tell you if it looks as though there is a provable case of medical malpractice. If the case looks meritorious, experts in the appropriate specialty must be consulted and retained by us. Again, these experts must be of the opinion that the medical care received was substandard and that the substandard care caused major injury or death.

Once we have retained experts who are prepared to testify on your behalf, other records, including employment records and tax returns, must be obtained. These will aid us in proving the damages which have been suffered due to the malpractice. Your financial and unemployment records must be full, complete and credible in order for us to include them in your claim that you have suffered financial damages as a result of malpractice.

Virginia's Artificial Limit on Recovery in Malpractice Cases

The Commonwealth of Virginia imposes an additional limit to recovery for medical malpractice cases. No matter how seriously injured you are, the maximum recovery you can obtain is currently \$1.65 million. The amount increases by \$50,000 each year. This is true even if your medical expenses alone exceeded that amount. The cap applies per patient, not per doctor. Virginia was one of the first states to pass such a law. It protects only health care professionals. This means that if you were to seriously injure a doctor with your car, he could recover millions from you, but if he injures you with his scalpel, your recovery against him is artificially “capped.”

Each year, Virginia doctors argue that the cap should be even lower. For more information about medical malpractice “caps” visit www.tort-reform.com.

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