



Medical Malpractice Harms 100,000 Patients Every Year. Are You One of Them?



*A Guide to the Evaluation of a
Medical Malpractice Claim In Virginia*

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❧ Disclaimer ❧

As you might expect, lawyers are specialists at providing information, including disclaimers. We have prepared this Book in order to provide the Patient, who is expected to be unfamiliar with the subject of Medical Malpractice and medical negligence, with information to help them understand the basic requirements for the evaluation, filing and prosecution of a Medical Malpractice lawsuit. This book is NOT intended to be a legal dissertation on the subject, as the ultimate decision in any case is highly dependent on the facts and circumstances surrounding each individual claim and Patient. We want you to have enough information to help you select appropriate legal counsel to assist in your claim. Nothing in this book should be considered to be legal advice, specific to your case, as we cannot give you advice unless and until you retain our firm. We welcome the opportunity to represent you, and encourage you to call our office at 757-627-8900, or to email us with your concerns or questions, at GSandler@Sandlerlaw.net.

☞ Why This Book Was Written ☞

The relationship between a patient and their doctor, or other health care provider, is one based upon trust. Necessarily, the patient must trust that the health care provider is a knowledgeable, caring, competent professional who will ALWAYS have the best interests of the patient foremost in his or her thoughts. But sometimes, mistakes occur, negligence is committed by those health care providers and patients suffer severe harm, injury, and even death. When this happens, patients and their families seek legal counsel to learn whether they have been the victim of medical malpractice and whether their health care provider can, and should be held responsible for the harm that they caused.

These cases however, are the most complicated, expensive and least understood cases to bring, and they demand proper evaluation by a knowledgeable medical malpractice attorney, such as those at Sandler Law Group, PC to make sure that a patient and their family has a substantial likelihood of succeeding, before starting down the lengthy, costly and emotionally difficult road to a medical malpractice trial. We hope that by understanding the process, and the factors that affect the success of your claim, that you might be better prepared to make a decision on whether to proceed with your claim.

This booklet will explain the basic concepts and the factors that we, at Sandler Law Group, PC, evaluate in properly advising you about your potential case. We encourage you to read this information and to visit the medical malpractice page at our website at GSandler@Sandlerlaw.net, for answers to many of your questions. Then call Greg Sandler at 757-627-8900 or email him at GSandler@Sandlerlaw.net , your issues, comments, or questions.

There is no obligation and we are certain you will be glad you did.

☞ Does This Sound Like Your Case? ☞

- 1) I went to the ER with severe pains and they said it was gas. The very next day I was back and this time they rushed me to surgery to take out my appendix. I'm glad they caught it in time, I could've died!
- 2) I visited my father in the hospital and found him lying in his soiled bed. I had to find a nurse to come in to clean him up, and they tried to tell me that it had just happened, but I knew better. He was discharged later that day, but he could've got infected if he had laid there for days.
- 3) Something must have gone wrong, because the nurses won't give me an answer. One said that she had never seen this before. I think they are covering up something.
- 4) They tried to give me someone else's medicine. They could have killed me!
- 5) 5. After surgery, I never saw my doctor again, only his partners.
- 6) I found out later on that during my gall bladder surgery, they cut my intestines and had to sew up the cut. No one told me about it for three weeks, when I went for my follow up appointment.
- 7) I had an operation 3 years ago, and I just think that the pains that I have been having all this time, came from something I think the doctor did wrong.

Do any of these sound like your story? Every one of these complaints has been made by patients over and over again during my years practicing medical malpractice law. Surprisingly, to most patients, NONE of these complaints gave rise to a viable medical malpractice case. Medical Malpractice claims and cases are the most complicated, most expensive, and least understood legal matters that can be brought. This report is intended to provide you with a background and structure of the medical malpractice claim under Virginia law, to help you evaluate your situation BEFORE calling a lawyer. IT IS NOT INTENDED TO REPLACE COMPETENT LEGAL ADVICE BY AN ATTORNEY SPECIALIZING IN MEDICAL MALPRACTICE, only to help answer some of your questions, as they may pertain to your potential claim.

☞ How Do I Know If I Have A Case? ☞

Let's first look at your particular situation by asking a two questions. The first is a medical-legal question and the second is a practical question. The quick answers to these questions will give you a general idea of whether to investigate your claim further, and will help you explain your complaint better when you contact us.

1. First the medical-legal question. Can you answer this question in 1 sentence?

“What did Doctor X do wrong, and how did that hurt you?”

Although sometimes the patient can't know the answer, in most instances your ability to condense your case into an answer to that question, will help you focus on what is really at the heart of your case, and can help us, as your lawyer, with where to start our investigation.

2. Second is the practical question.

“Was I hurt bad enough to justify the risks and costs of a lawsuit?”

Although the issues that are involved with Question 1 are detailed and complex, sometimes, the answer to Question 2 really cuts to the chase. If you believe that a doctor failed to properly diagnose you on day one, but you were properly diagnosed on day two and the problem was fixed, then even if the doctor was negligent, the one-day delay is not likely to create harm BIG enough to sue over. And remember,

**YOU CAN'T SUE OVER WHAT COULD HAVE HAPPENED,
ONLY WHAT DID HAPPEN!**

We will discuss the risks and costs of litigation a little later to help answer question 2, but first I want you to understand the issues presented in question 1, because that is what we will have to prove.

☞ Legal Analysis of a Medical Malpractice Claim ☞

In essence, a medical malpractice claim asks the question:

“Did the health care provider breach the standard of care that is owed to the patient by a health care practitioner practicing in that field of medicine, and did that breach of the standard of care proximately cause the patient to suffer damages?”

This rather simple question contains many issues, and reflects the medical-legal question that is at the heart of the case. The first part of the definition is referred to as the issue of “Liability” or what most people call “Fault.” The second part of the definition is referred to as “Damages” and is really why you are even considering bringing a case. The first part involves Question 1 above and the second involves Question 2. These questions present very difficult, practical problems for the patient, and often lead to a very frustrating decision that THERE IS NO CASE!.

Question 1 – Is There Any Liability?

1. Medical malpractice is a claim against a *health care provider* as defined in Virginia Code. This applies to doctors, nurses, hospitals, nursing homes, pharmacists, etc. The first task for your medical malpractice lawyer is to determine who the potential defendant(s) might be. For example, if you believe that you have been harmed by a medication error, was that error committed by the doctor that prescribed the medicine or the pharmacist that filled the prescription? In a surgical mistake case, was the error committed by the surgeon, by the anesthesiologist, by the nursing staff, in the operating room, in post-op, or by attending nurses on the floor. Many times, the liability is shared as responsibility for care is broad. Filing against the wrong party, or failing to file against the correct party, can be fatal to your case.

2. “Standard of Care” is what you will hear throughout the proceedings surrounding your case, and it is truly at the heart of the issue of liability. The Standard of Care is what that health care provider should do or should not do, or did or failed to do,

AS DETERMINED BY AN EXPERT WITNESS IN SAME FIELD OF MEDICINE. It is the standard of behavior and the failure to perform consistent with that standard constitutes negligence. It is simply not legally relevant that the patient or the family “thinks” that something should have been different or that the doctor was negligent. No one, except an expert in the field, can get on the witness stand, and give a jury an opinion that a defendant breached the standard of care. Without expert testimony of what the Standard of Care is, a jury has no basis for determining whether your particular health care provider, complied with that standard, or committed negligence.

3. Causation is the requirement that there be a medical link between the breach of the standard of care, and the harm that the patient suffered. Two things are important to consider. First, there is a HUGE difference between a bad outcome from medical treatment and damages resulting from negligence. All medical treatments and procedures have risks associated with them that range from simply not working as expected all the way up to the death of the patient. These occur even if the doctor performs the treatment perfectly. They occur with some statistical frequency because the human body is not perfect and the same treatment may work on one person and not the other.

Damage from negligence is different and it occurs when the injury is the result of the medical treatment not being performed in accordance with the standard of care. This causation link also requires the expert opinion of a health care provider, and it doesn't matter if the patient “logically” thinks that the damage “must have been due to the doctor”. A common problem occurring with patients, is their feeling that “If A happened, then B must be the result”. This logic often does not apply in medicine, because the subject matter and the science, does not often appear logical to those of us not specifically trained. It is this very reason that the law requires expert witness testimony to guide a jury in their decision-making, and without expert testimony, you have no case.

❧ Why Do I Need Expert Witnesses? ❧

All medical malpractice cases are essentially battles of the experts. Medicine is rarely black and white, and the fact that judgment and art is necessary means that you can usually find 10 doctors to give 12 different opinions about whether some action provides guidance as to what is the standard of care. Virginia law requires that there be medical opinions from qualified experts presented to the jury on both issues:

1. Whether the Defendant breached the standard of care, and
2. Whether that breach caused the patient any harm.

Experts are required to know the standard of care in Virginia, and have had an active clinical practice in the field of medicine of the defendant. You can't use a gynecologist to give an opinion on whether a heart surgeon performed properly. Expert witnesses make medical malpractice cases complex and expensive. These experts must be hired by the patient, and paid by the patient, and they DO NOT COME CHEAP. As you might expect, the Defendant doctors, who are represented by malpractice insurance companies, have unlimited money to hire experts. And since they represent and insure all of the doctors, they will find 2 or 3 experts to say exactly the opposite of what each of your experts are prepared to say, about the standard of care and of causation. Your attorney will guide the selection of experts to use in your case, and it takes competent medical malpractice counsel to build a case with proper expert witness foundations.

☞ Why Don't Most Malpractice Cases Succeed? ☞

Here is the frustrating, confusing and often sad realization from the evaluation of a medical malpractice case:

MOST OF THE TIME, the damage and harm that the patient suffers, is **NOT BAD ENOUGH** to justify the risk and costs associated with filing a malpractice lawsuit.

Here's why:

a. Medical malpractice claims rarely settle without proceeding through the process of litigation. Health care providers are professionals, and no professional, in any field of work, wants to admit that they might, in this one occasion, have not performed as a professional should have. It's a matter of pride and principal.

b. Medical malpractice claims proceed through litigation so that the Defendant can learn exactly what the patients' experts claim was done incorrectly. Quite simply the defendants aren't willing to be "bluffed" into paying a claim, without seeing and hearing what evidence exists against them.

c. Expert witnesses are retained by the patient long before the defendant retains any experts, and therefore the patient has to pay, or be prepared to pay, large sums for experts to review medical records, meet with counsel, write opinions and take time to be examined before trial. The patient's expenses for experts in a malpractice claim can easily start at \$10,000 and go up to \$100,000 depending on the complexity of the case. These are the patient's expenses and they don't get paid back by the defendant if you win.

d. The majority of the cases that actually go through a trial to a verdict by a jury, are **WON BY THE DOCTOR**. There are a lot of factors that contribute to these outcomes, but the bottom line is true:

WITH THESE COSTS AND THESE TRIAL RISKS, THE HARM THAT THE PATIENT SUFFERS MUST BE SIGNIFICANT ENOUGH TO SUPPORT A JURY RESULT THAT IS ECONOMICALLY WORTH IT.

Simply put, would you spend \$20,000 on a 30% chance of winning, if your recovery would only be \$10,000? Not ever. And no prudent medical malpractice attorney should advise you to do.

☞ **How We Proceed to Help You** ☞

We have developed a process in our office, over many years, to properly evaluate a potential medical malpractice case, because we don't believe in causing a client to experience the emotional anxiety and financial expenses associated with these cases, unnecessarily. It is not responsible and does not serve the client well.

The first step in the process for our evaluation of a potential medical malpractice case starts with an initial contact interview on the phone with the patient or the patient's family member to discuss most of the issues that are presented in this report. Please call Greg Sandler at 757-627-8900 or email us with your questions and concerns at GSandler@Sandlerlaw.net. There is no cost to speak with us.

Second, there is an interview in the office to learn of the detailed facts surrounding the claim, and to learn of the complete medical treatment and medical providers. Again, there is no cost for us to meet with the potential client to discuss the facts of the case.

Third, the relevant medical records are obtained by our office, to give a complete picture of what actually happened as it appears in the records (not as the patient remembers). Medical malpractice cases always involve a hindsight review of what happened and the full and complete medical records have to be obtained to give our expert a complete picture. There are costs that must be paid to your medical providers for copies of records and the amount depends on the volume of records requested.

Fourth, an expert in the field of the potential defendant must be hired to review the records and give us a preliminary opinion about whether there is a breach of the standard of care and whether there is causation. Under Virginia law, in order for us to serve a lawsuit on a defendant in a medical malpractice case, we must have a written opinion from an expert that would qualify in Virginia Courts, that there was a breach of the standard of care and that the patient suffered harm from that breach. It is at this stage that the client will be confronted with amounts that have to be paid for expert review. Often this preliminary review can cost in excess of \$1,000.00 and depending on the complexity and volume of records, may reach a substantial sum.

Fifth, if the preliminary opinion is unfavorable, the evaluation will stop there as there will be no basis to continue with the case. Many patients, and many family members of patients that have died, find closure in receiving an expert report that confirms that there is no basis for continuing with the case. If the preliminary opinion is favorable, then a decision will be made **TOGETHER WITH THE PATIENT OR FAMILY**, about whether to file suit and to proceed through litigation.

❧ What Do Malpractice Legal Services Cost? ❧

Sandler Law Group, PC has been representing the interests of injured people for over 45 years. We understand that persons who have suffered injury rarely are in a position to hire an attorney under traditional hourly rate agreements.

We accept all of our medical malpractice claims on a contingency fee basis, which means that, our fee is based upon a percentage of what we are able to obtain for you as compensation, through either settlement or a trial verdict. More importantly for the client, if we do not recover a sum for you, we will not be entitled to legal fees for our services. All of our clients have the benefit of a written retainer agreement that outlines our fee agreement at the outset of your case.

It is important to note, however, that we have discussed in this booklet, that there are a number of costs and expenses that are involved in the prosecution of a medical malpractice case. They include expert witness expenses and fees, filing fees, costs for obtaining medical records, and other litigation costs. Many of these expenses will be paid in advance by our firm, and many are billed to our firm by the providers. Ultimately the costs expended in connection with a case remain the financial responsibility of the client, and the firm will expect to be reimbursed for those costs, separate and apart from any obligation of the client for legal fees.

❧ **Our Goal As Your Lawyer** ❧

Our client relationship philosophy is simple. Medical Malpractice cases are difficult, lengthy, expensive, emotional and complex. We are not going to encourage a patient or the patient's family to launch into this process, unless there is a really good opportunity to succeed. Neither we, nor any responsible medical malpractice attorney can, or should, predict the outcome of your case, or guaranty results. As much as we would like to help our clients, and as devastating as some medical complaints are, it is just not fair to the client to suggest that a claim should be pursued, unless all evidence and signs point to a good chance of recovery.

☞ **Sandler Law group, PC** ☞
-Your Medical Malpractice Lawyers

Sandler Law Group, PC., you will have the advice and assistance of a Medical Malpractice Lawyer that is there, in person, to help you through the process and to listen to your concerns. Knowledge of the process for this highly specialized type of claim, resources to prosecute the claim, and experience and training in the presentation of a claim to a jury, are essential to your success. It is not every personal injury attorney that can properly prosecute a medical malpractice claim. The issues are different from the ordinary injury claim.

Sandler Law Group, PC is here to help you evaluate your potential case and to guide you through the process to help you get the full and fair recovery that you deserve. Call us at 757-627-8900 or email us at GSandler@Sandlerlaw.net. We are there to help.

☞ **Sandler Law Group, PC** ☞
-Representing Injured Persons

Sandler Law Group, PC is a Virginia Professional Corporation, that has for over 45 years, devoted itself to the representation of injured persons. Although our office is located in Virginia Beach, we represent persons who have suffered injury as a result of a variety of causes, throughout Virginia as well as throughout the United States, due to our affiliation with the American Association of Justice.

In addition to representing Social Security Disability Claimants, we also have extensive experience helping those who have been injured as a result of:

- Automobile Collisions
- Motorcycle Collisions
- Medical Malpractice
- Nursing Home Neglect and Abuse
- Traumatic Brain Injury
- Wrongful Death Claims

We are devoted to helping you get your life back and receiving the full and fair compensation that you deserve.

☞ **Gregory L. Sandler** ☞

The principal of the firm is Gregory L. Sandler, Esq. Greg is a lifelong resident of Virginia, and received his B.S. degree from Old Dominion University in Norfolk, Virginia in 1979. He received his Juris Doctor degree from the University of Baltimore in 1982, and passed the Virginia Bar in that same year. He has practiced in Virginia for almost 30 years.

Greg is a longstanding member of the Virginia Trial Lawyers Association, the American Association for Justice and Trial Lawyers for Public Justice, in addition to the Virginia State Bar. He is a graduate of the National College of Advocacy's Trial Advocacy Course at Harvard University and holds the designation of Fellow by that organization.

Greg's practice primarily centers on injuries resulting from automobile and motorcycle collisions (he is an avid motorcycle rider), social security disability claims and medical malpractice claims.

You may reach him at GSandler@Sandlerlaw.net, or at 757-627-8900.