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CHAPTER 1
WHAT THIS BOOK CAN DO FOR YOU

I am hopeful that this book will answer some questions most people have about medical malpractice and prevent any misunderstandings about what medical malpractice is and how a medical malpractice case works. In a perfect world neither you nor anyone close to you would ever need the information in this book. But the reality is that incidences of medical malpractice are becoming more common.

In all likelihood, if you are reading this your life has been touched by the carelessness of someone in the health care industry.

I am also hoping the information you will learn will prevent you from making the same mistakes many people make when faced with medical malpractice.

- Trying to deal with it yourself
- Calling the first lawyer whose ad you see on T.V.
- Doing nothing

If you or a loved one have been the victim of medical malpractice, you need useful information you can trust. If you try to deal with the doctor, hospital, or insurance company yourself, you risk the chance of getting hurt again. (I can't tell you the number of people that have called my office after giving compromising information to the insurance company while trying to handle it themselves). Doctors and hospitals don't want to settle, even if they say they do, no matter how egregious their negligence was. The whole tort reform movement is about escaping accountability and being above the law.

If you call the first lawyer whose ad you see on television you may not be doing yourself any favors. It's easy, I'll grant you that, but you are probably signing on for a whole new set of problems, legal problems instead of medical problems.

Finally, the easiest thing of all is to do nothing. Some people have bought into the propaganda that you shouldn't be the "suing type," whatever that is. Apparently, it didn't occur to the doctor that he shouldn't be the "careless" type. The problem with doing nothing is that you may be limiting what resources are available to help you or your family live with the injuries or disability. Or, you may have to live with yourself when you find out that your doctor did the same thing to somebody else and also caused that person to be seriously injured or disabled.

In writing this book, I tried to give straightforward, honest information that you can read and review in the privacy of your own home or office. However, it is not a substitute for a consultation with a medical malpractice attorney.

CHAPTER 2
WHY SHOULD YOU LISTEN TO ME?

Since 1984, I have been representing everyday people who have been injured or who died because doctors, nurses, technicians, hospitals and other medical professionals were careless, didn't follow safety rules or procedures weren't in place to prevent obvious dangers.

During that time, I have been involved in the trial or settlement of some of the largest medical malpractice cases in Ohio. I have also been involved in cases that have changed the law in Ohio regarding medical malpractice cases.

I am a member of the Ohio Medical Malpractice Alliance and the Million Dollar Advocates Forum. You become a member of these groups by meeting strict criteria and only by invitation.

I am listed in Best Lawyers in America, Best Lawyers in Cleveland and Ohio Super Lawyers for medical malpractice. You cannot buy your way onto any of these lists. Finally, since 1861, a company called Martindale-Hubbell has been in the business of listing, evaluating and ranking lawyers. You cannot receive a ranking unless your peers agree to it. Since 1999, I have earned an AV rating, Martindale-Hubbell's highest rating for both professional ability and ethical standards, and am listed in its Bar Register of Pre-Eminent Lawyers.

CHAPTER 3

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.

CHAPTER 4
WHAT IS MEDICAL MALPRACTICE

Medical Malpractice is when a doctor, nurse or any other medical professional is not reasonably careful and causes harm to a patient.

Medical professionals like the rest of us are required to be careful to avoid injuring their patients.

Doctors, as part of their Hippocratic oath vow "to do no harm" to their patient. Seems pretty simple, right? When a doctor of hospital takes you on as a patient and receives a monetary benefit from that relationship there is a legal duty to avoid injuring their patient.

Who and what are "medical professionals" are defined by statute. If you are suing a person or corporation named in the statute, then it is a medical malpractice case.

However, reasonably careful is not defined by statute. A jury in a medical malpractice case must decide what reasonably careful means in each case depending on the facts and circumstances. This is where doctors and hospitals will hire expert witnesses to cloud and muck up this issue to convince the jury that what the doctor did or didn't do was "reasonable" even if it caused an injury to the patient.

As long as the jury doesn't get lost, they will understand that the doctor or nurse must be "careful" and everyone knows that being careful means being cautious, taking precautions, going out of one's way to avoid injuring another person. In most instances, there are safety rules that doctors and hospitals must follow just like the rest of us on our jobs.

Unfortunately, a lot of people are injured every year by medical malpractice. A study conducted by the Institute of Medicine documented that as many as 98,000 patients die each year as a result of preventable medical errors. Medical malpractice is the 6th leading cause of death in this country and people aren't just dying from medical malpractice. The Congressional Budget Office found that there were 181,000 severe injuries attributable to medical negligence just in 2003 alone.

Even worse, is that doctors and hospitals are getting away with committing malpractice. One reason is that most people who are injured by malpractice never even file a lawsuit. Studies have shown that only a small percentage of malpractice victims ever do anything about it.

CHAPTER 5

HOW DO I KNOW IF I HAVE A CASE

You need to have all three pieces of a medical malpractice case to file a lawsuit. Those three pieces are negligence, causation and serious and disabling injuries.

1. Negligence is not being reasonably careful.
2. Causation means the injuries are a result of the negligence.
3. Serious and/or disabling injuries includes death, paralysis, loss of limb, organ or other body part, disfigurement, inability to work, loss of bodily function, inability to care for yourself, coma, decreased life expectancy, vegetative state, loss of sight, hearing or other physical or mental condition that is life altering.

If you have any of these injuries and they resulted from care you received in the hospital or from a doctor, you should contact a medical malpractice attorney to investigate whether you have a case.

It is very difficult to determine if you have a case without reviewing your medical records and consulting with at least one medical expert.

In Ohio, a medical malpractice lawsuit cannot be filed unless a certificate of merit is attached to the lawsuit.

A certificate of merit is a notarized, legal document called an affidavit that is sworn to and signed by a medical expert.

So, you don't have a medical malpractice case until you have a certificate of merit signed by the appropriate medical expert.

CHAPTER 6
HOW LONG IS THE STATUTE OF LIMITATIONS

The statute of limitations for a medical malpractice case in Ohio is one year. This is the shortest statute of limitations in Ohio for any cause of action.

The only explanation for such a short statute of limitations in medical malpractice cases is that the doctors, hospitals and their associations have strong and powerful lobbies.

The one-year statute of limitations begins to run from the later of one of two points in time. One point in time is the termination of the physician-patient relationship. So if you are suing a doctor, it runs from the last time you saw that doctor. If you are suing a hospital, the statute of limitations would begin running on the day you are discharged from the hospital. The stipulation is that it is the termination of the relationship with that doctor or hospital for treatment of the condition, which is the subject of the malpractice.

The second point in time is when you discover the injury.

The classic example of this is when a clamp or sponge is left behind after a surgery and is not detected until years later when you get an x-ray for a completely unrelated reason. Even though you were hospitalized years earlier and haven't seen the doctor for years, the one-year statute of limitations does not start running until you discover that the foreign object has been left inside of you.

Another more common example would be where a nodule or abnormality may have been missed on an x-ray or disregarded by a doctor and months or years later, a diagnosis of cancer with a poor prognosis is

made. Often if the diagnosis would have been made at the time of the x-ray, when the nodule was small or precancerous, the condition was completely curable. In that example, the one-year begins to run at the time of the proper diagnosis, which is the discovery that you have been injured even though the malpractice occurred more than one year earlier.

Many times you will not know the final outcome or prognosis until six months or a year have passed. That will not stop the statute of limitations from running.

When a child is injured by medical malpractice, the statute of limitations does not begin to run until his or her eighteenth birthday. In other words, the lawsuit can be filed up until their nineteenth birthday.

By and large though when medical malpractice causes the type of severe disabling injuries discussed in Chapter 2, you know it and the clock begins ticking on your case. The clock continues to tick on the one year even though you may require many months of follow-up care, even though you are unable to return to work and have to find other means of supporting yourself, even though because of your injuries it may be difficult to walk, drive or go anywhere.

If you think you have been injured by medical malpractice, it is important to contact a medical malpractice attorney right away. Don't put if off. As you can see, it is often difficult to determine when the statute of limitations will run. One year will pass before you know, and once the statute of limitations runs out, it is a complete defense to your case and the case cannot be filed or if it is, the court will throw it out.

Also, you or your lawyer will want to begin collecting your medical records as soon as possible. It's amazing or really not so amazing how often

records get “lost” or “clarified” or even changed after a patient has been seriously injured.

I was involved in a case once where the doctor completely whited out sections of his office notes and added back in language to make it seem like the patient had refused treatment.

Also, the more time that passes after the malpractice the more legitimate the “I don’t recall” answer becomes for the nurses, doctors and technicians involved in your care when they are questioned about what happened.

One final thing to take note of is that the statute of limitations in a medical malpractice case can be extended by 180 days by sending a special letter to the doctor, hospital, or any other person or entity you are thinking about suing. The purpose of the letter is to put the person or entity on notice that you are considering suing them.

There are several traps and pitfalls associated with these “180 day letters” and the wording of the letter must meet the requirements of the statute allowing this extension, and most medical malpractice lawyers use them only as a last resort. It is not something you should try on your own without first contacting an attorney.

It is far better to contact a medical malpractice attorney early and file your lawsuit within the one-year limitation.

The best course of action is to consult with an attorney early on even if it is just to determine when the statute of limitations runs.

CHAPTER 7
WHY DO I NEED A LAWYER

The insurance companies that insure hospitals and doctors are very good at defending medical malpractice lawsuits. Insurance companies have virtually unlimited resources to fight you. They will hire as many expert witnesses as they can get away with, they have a contact list full of experts who are willing to give whatever opinions are necessary to defend the doctor or hospital. They spare no expense defending the case and will make you jump over every legal hurdle out there. Time is on their side. They make money while holding on to your money and they will hold on to your money as long as they possibly can.

Because of these advantages, they win over 70% of the cases that go to trial.

In all likelihood, you don't have the resources to go up against the insurance industry.

If you hire a good medical malpractice lawyer this is what he or she will do for you.

1. Request and obtain all your pertinent medical records. This includes not only the records that are the subject of the malpractice but also medical records of later treatment for the injuries caused by the medical malpractice. Also, any prior medical records of conditions that are causally or historically related to your injuries from the malpractice will be obtained.

2. Personally review those records in great detail.

3. Identify and contact appropriate medical experts who are willing to review and give expert opinions on the medical treatment you received and

if there was negligence, whether there is legal causation between the negligence and your injuries.

4. Analyze the legal issues involved including comparative negligence and whether punitive damages may be warranted.

5. Determine the effect of your injuries on your daily activities, your ability to care for yourself, your ability to work or be employed, and how long into the future your injuries will continue.

6. Obtain wage records, employment records, hospital and all medical bills relating to the medical malpractice.

7. Identify and hire expert witnesses such as life care planners, economists, vocational experts, rehabilitations counselors, psychologists, grief counselors to explain to the jury the exact nature and extent of your injuries and their impact on you and your family's life.

8. Prepare the case to be filed in court by writing a Complaint with a Certificate of Merit attached.

9. Go to Court and obtain a trial date. Meet periodically with the Court to discuss the progress of the case.

10. Draft requests for documents from the doctors and hospitals involved.

11. There are many records that are not kept with medical records that also should be obtained in many cases. Those records include telephone logs, radiology procedure logs, operating room schedules and logs, transcription records, there are records that show what time tests were ordered and what information was given at the time. Also what time tests were reported and to whom.

12. Questions and answer sessions, called depositions, must be held not just with the doctor, but with everyone involved with your care that might have information relevant to your case.

13. None of this information is voluntarily turned over. In fact, quite often there are protracted legal battles to get access to the information requiring legal research, briefing and court hearing and conferences.

14. Your lawyer will fully prepare you for your deposition and be by your side during the entire proceeding.

15. Your lawyer will also meet with any fact witnesses who are not employed by the doctors or hospitals to find out what information they have.

16. Prepare for and attend the depositions of the expert witnesses that will be testifying for your side. Often this requires out of state travel.

17. Research the background of the expert witnesses testifying for the defense to find inconsistencies with what they are saying in your case.

18. Depose the defense expert witnesses. This most often requires out of state travel to the location where the expert witness practices.

19. Prepare the case for trial. Prepare trial exhibits and demonstrative exhibits. This requires countless hours and in the weeks leading up to trial consumes almost every hour of every day.

20. After the trial, the losing side may appeal. There are always more motions filed as the insurance companies continue to try to hang on to your money.

CHAPTER 8

HOW MUCH WILL IT COST

There are 3 categories of expenses in a medical malpractice case.

1. Litigation Expenses
2. Attorney's Fees
3. Subrogation

Litigation Expenses. The litigation expenses covers all out of pocket expenses associated with the lawsuit. It would include the cost of medical records, having your medical records copied and mailed to the experts, court filing fees, court reporting fees for deposition, travel expenses, service of subpoenas, costs associated with copying and mailing records, materials used for demonstrative exhibits. However, the biggest expense in medical malpractice cases are the fees charged by the expert witnesses.

The expert witnesses hired by your lawyer will charge for their time spent reviewing your medical records, preparing affidavits, reports, preparing for their deposition and preparing for their testimony at trial. Your lawyer will also have to pay the expert witness hired by the defense for their time during their deposition.

I once took the deposition of Dr. Oz, who is now a television celebrity. At the time, he had only made a couple of guest appearances on Oprah. He charged me $1,200.00 per hour to take his deposition! Imagine what he would charge now that he has his own T.V. show.

Attorney's Fees. Litigation expenses do not include the time and energy spent by your attorney(s) working on your case. Medical malpractice

cases are extremely labor intensive and the number of hours spent on a single case can easily reach into the thousands.

Almost all medical malpractice cases are handled with a contingent fee agreement between the lawyer and the clients.

A contingent fee agreement can mean two things. For sure it means that if the lawyer does not obtain a recovery for the client through either a settlement or jury verdict, then the client does not owe any money for attorney's fees.

At our firm, it also means that if we do not obtain a recovery for you not only do you not owe an attorney fee, but you do not have to reimburse us for the litigation expenses. However, other firms still expect to be reimbursed for litigation expenses even if there is no recovery. This point needs to be made very clear before you sign a contingent fee contract.

Also, some firms charge an "investigation fee" or require you to spend some of your own money as part of the initial investigation. This could include the cost of obtaining the initial medical records and review of those records by an expert. Our firm does not require you to pay an investigation fee or fund your own case as this is beyond the financial resources of most people.

Subrogation. The third category of expenses that will reduce your recovery is subrogation. Subrogation means that when you settle or get a verdict against a doctor or hospital your health insurance company will want to be paid back all of the money they paid out for your medical expenses.

Most of us get our health insurance through our employers and very few of us read the insurance contract. However, despite the fact that the insurance company gets paid a premium to cover your health care expenses, it

will include in the insurance contract with your employer a paragraph granting it subrogation or reimbursement rights in certain situations. Almost all insurance companies have these clauses in their contracts.

Medicare and Medicaid also by law have to be paid back by law for any money they paid for your medical expenses if you settle or recover money from a third party.

You are probably wondering if after subrogation, litigation expenses and your attorney's fees if there will be any money left for you. That's why at The Mellino Law Firm, we personally guarantee that your recovery, after litigation expenses and your health insurer are reimbursed, will always be more than the amount of attorney fees paid to us.

CHAPTER 9

OHIO'S ARTIFICIAL LIMIT ON YOUR RECOVERY FOR MEDICAL MALPRACTICE

Since 2003, Ohio has placed an arbitrary and artificial limit on the amount of compensation an injured patient and their family can recover in a medical malpractice case.

The limit applies to non-money damages for things like pain, disability, companionship, loss of function, loss of sight, etc. The maximum the injured person can recover for these injuries is $250,000 or 3 times the total money losses, but no more than $350,000. The family of the injured person, regardless of the size of the family, cannot be awarded more than $250,000 themselves but the total amount awarded for all claims including the injured patient cannot be more than $500,000.

However, if the injury to the patient involves permanent and substantial physical deformity, loss of use of a limb, loss of a bodily organ system, or leaves the person unable to care for self or perform life sustaining activities, then the artificial limit is $500,000 for the injured patient and $500,000 for his or her family, again regardless of size.

There is no limit on the amount that can be recovered for money losses, like lost wages or the future cost of nursing or medical care.

CHAPTER 10

THE REASON MOST MALPRACTICE VICTIMS RECEIVE NOTHING

Despite popular opinion about the "skyrocketing" increase in malpractice suits and awards, the number of suits has not increased since 1996, and in most cases, plaintiffs receive nothing. There are a variety of reasons why patients do not recover any compensation for injuries received during their medical care. Most of these issues stem from general misconceptions about medical malpractice. It is important to understand these issues while seeking an experienced medical malpractice attorney.

1. *Patients don't know they are victims of medical malpractice*. Studies show that roughly 2.9 to 3.7 percent of admitted hospital patients suffer some sort of preventable injury as a result of medical management (i.e., not from the original medical condition). Up to 98,000 patients are **killed** each year as a result of preventable medical error. Medical malpractice is the sixth leading cause of death in the United States, yet only 10,000 cases are filed each year. (Some "epidemic," huh?) In the vast majority of cases, however, the fact that malpractice occurred is hidden from the patient and the patient's family.

2. *No autopsy was ever performed*. In a situation where we claim that the malpractice caused death, we must prove the carelessness of the health care provider directly resulted in the patient's death. In a medical malpractice case that results in death, it is very difficult to prove that the death occurred because of the malpractice without an autopsy. This is because there are so

many reasons why a person might have died, but we must prove that the one reason why they died is because of the negligence of the health care provider.

3. *Even though the doctor committed malpractice, the disease or illness likely would have resulted in death anyway.* Sometimes cancer or other deadly illnesses may go undiagnosed for months or even years. A late diagnosis of cancer does not always mean, however, that the doctor is responsible for the patient's death. An experienced malpractice attorney can help determine whether the cancer or other serious illness should have been detected "in time" to save the patient.

4. *A physician's poor bedside manner is not malpractice*. In the vast majority of cases, even egregiously poor bedside manner does not determine whether a physician committed malpractice in providing treatment. We have reviewed many cases where arrogant physicians provided care and the patient was injured. It just doesn't matter that the doctor was a jerk. (A lot of times arrogant doctors do commit malpractice and boy are they fun to get in front of a jury.) We must prove, from a scientific and legal standpoint, that it was carelessness, not bad bedside manner, that caused the injury.

5. *The patient suffered no significant damages*. While we understand that every case is an important case to the patient, the legal system is stacked against "small" medical malpractice cases. We decline hundreds of cases a year where it appears that the doctor was careless, but the resulting injury is not significant. So yes, doctors can get away with committing malpractice as long as they don't cause too much damage. A pharmacist may incorrectly fill the prescription, for example. That error may make you violently ill for a week. If you have a good recovery, however, you probably don't have a case to pursue. This is because the costs of pursuing the case will be greater than

the expected recovery. Our court system may not be perfect, but it does act as a filter to keep out all but the most serious cases of medical malpractice.

6. *The injury suffered was not necessarily caused by the physician's or hospital's mismanagement*. As discussed earlier, it is often very difficult to prove that medical mismanagement was the reason the patient suffered the injury that he or she did. The insurance companies always claim the standard defenses including, for example, that (1) the injury was a unpreventable result of the initial condition/injury (e.g. "If the tumor had been diagnosed six months earlier, it would not have made a difference."); (2) the injury was due to the patient's noncompliance with medical advice (e.g. "I told him to return to the office if his symptoms did not clear up, but he didn't."); (3) the risk of the patient's particular injury was an acceptable one (e.g. "He got infected in surgery, but 2% of all patients undergoing that surgery get an infection."); (4) some other party was responsible for causing the injury, or (5) the injury was caused by a previous illness or disease. Most of the times these defenses don't apply, but we won't take a case in situations where these defenses do apply. Medical malpractice plaintiffs must show a very clear connection between the defendant's misconduct and the claimed injury.

7. *The plaintiff has not retained an experienced attorney.* Medical malpractice litigation is a world unto its own. It has its own special rules and laws. There are very few lawyers in Ohio who specialize in medical malpractice claims. We believe that it is imperative that you be represented by an experienced medical malpractice attorney or an attorney who is "teaming up with" or co-counsel with an experienced malpractice attorney. You cannot "dabble" in medical malpractice and be successful. The malpractice insurance companies and the doctors' lawyers know who the

"real" plaintiffs' (patients') malpractice lawyers are. They know who will have the experience and brains to battle them in court and who doesn't. The insurance lawyers billing by the hour will string out the inexperienced, poorly prepared lawyers for as long as they can before beating their brains in at court. In malpractice cases, perhaps more than in any other type of case, experience and prior results do matter.

Do not be afraid to check out the experience and results of your medical malpractice attorney. It's your responsibility to ask. The bar association does not prevent an attorney from advertising for malpractice cases. If you end up in inexperienced hands, it's your fault! For our results, visit ***www.mellinolawfirm.com*****.**

8. *The statute of limitations has expired.* Each state has its own statute of limitations for filing a medical malpractice suit. These are strict time limits! If the statute of limitations has expired, you can't file a case. The Ohio Statue of Limitations is *one year*. The important question is "One year from when?" A more complete discussion is contained in Chapter 6 of this book, but your actual time to sue may be longer than one year from the specific date of the negligence. The "statute of limitations" can be tricky and should not be left to novices or other inexperienced attorneys. **One reason that you should consult an experienced medical malpractice attorney early is to determine when the statute of limitations expires in your case. You may not need to hire an attorney now, but you should get an attorney's advice now as to when your statute of limitations expires!**

9. *Jurors have been mislead by the insurance industry.* The insurance industry has spent millions funding bogus "research" to suggest that there is a widespread problem with medical malpractice lawsuits. These studies

"prove" that excessive verdicts are causing malpractice insurers to raise their premiums, forcing physicians out of the medical profession. Jurors who often hear these messages often award lower verdicts that they would have a decade ago. Far from "runaway" verdicts, Ohio is known as a very conservative state in terms of jury awards. Unfortunately, malpractice victims sometimes receive less from the jury than is necessary to pay their medical bills for treating the injury caused by the malpractice.

10. *The plaintiff is unable to hire good, qualified experts.* You cannot win most medical malpractice cases without one or more very qualified medical experts. They can be hard to find. It is becoming increasingly difficult to find doctors who are willing to stand up for what is right. It takes time and money to find the best experts for your case. This is one area where the insurance companies have a tremendous advantage. If they have a case that is particularly bad for their doctor, they may show the case to many experts before they find one to support (or simply concoct) the defense. They can afford to hire many experts. Most patients cannot afford to have 10 experts look at their case in order to determine which expert will work "best" for them.

11. *The patient contributed to the injury.* Ohio has a comparative negligence statute which means as long as your negligence contributed 50% or less to your outcome you can still recover damages but the amount of damages will be reduced by the percentage of your negligence. As a practical matter, jurors are not very forgiving of any patient who they think contributed to their own injuries. If you were negligent and contributed to your own injuries, you are likely to receive very little or nothing from a jury even if your percentage of negligence was small.

12. Local doctors almost never testify against other local doctors. One of the things that makes medical malpractice cases so expensive is that local doctors, including your treating doctors, will not testify against another doctor. This will require you to hire an expert from out of Ohio. Local doctors know each other, socialize with each other and refer patients to each other, they may also be insured by the same insurance company. Hospitals may also have rules written or unwritten discouraging doctors working at their facilities from testifying for patients in medical malpractice cases. Local doctors are however more than happy to testify for the defense for all of the reasons I just mentioned.

CHAPTER 11

HOW DO I FIND A QUALIFIED MEDICAL MALPRACTICE ATTORNEY?

An attorney is someone whom you will need to trust to help you put your life back together, after it has been shattered by medical malpractice. The decision certainly should not be made on the basis of advertising alone. The Yellow Pages are filled with ads – all of which say basically the same thing. You should not hire based solely on advertising. You would not hire an employee from the Yellow Pages or off of a T.V. commercial. Anyone can buy a slick commercial, even *if they have never successfully tried a malpractice case in front of a jury*. Heck, you shouldn't even hire me until you trust that I can do a good job for you.

You also cannot rely on the recommendations of friends and family. The fact that Attorney Jones did a good job on Uncle Joe's DWI case or Cousin Sue's divorce does not make him a qualified, experienced medical malpractice attorney. I cannot say it too often: medical malpractice cases are different and difficult.

CHAPTER 12
HOW DO YOU CHOOSE?

How do you find out which attorney is the best in Ohio for your case? I believe that there are key questions to ask that will lead you to the best attorney for your medical malpractice case. It will involve some time on your part, but that's a fair price to pay.

The world of medical malpractice claims is much too specialized for someone who does not regularly handle these cases. Too many times we have looked at cases that other – inexperienced – attorneys have handled. You should be aware that the insurance companies that defend malpractice cases know which attorneys in Ohio actually go to court to try cases and which do not. The insurance companies use that information to evaluate their risk. One of the first questions some insurance adjusters will ask when a serious claim comes in is: Who is representing the plaintiff? **Since this information is important to the insurance company, it should be important to you.**

How Do You Find Out Who Is Good In Your Area?
10 Keys to Successful Hiring

1. First, while your attorney should be licensed in Ohio, do not limit your search geographically. There are a small handful of attorneys in Ohio who concentrate their practice on medical malpractice cases. Find the best attorney in Ohio for your case and don't concern yourself with where in Ohio the attorney's office is located. Our firm handles cases throughout Northern Ohio. Our size and small caseload allow us to deliver terrific service whether you are ten minutes or two hours from us.

2. Results matter. While past results in major malpractice cases do not mean that a similar result will be achieved in your case, the lack of *any* significant verdicts or settlements in malpractice cases ought to be a huge red warning flag. Ask your attorney about results. Don't accept the "it's all confidential, I can't tell you" argument. It is simply not true that an attorney cannot publish or talk about past results.

3. Get a referral from an attorney whom you do know. He or she will probably know someone who specializes in your area of need. If you don't know anyone at all, go to *www.bestlawyers.com*.

4. Beware of internet "directories" promising to get you a qualified lawyer. We get solicited almost daily from companies who will offer to place us in their directories for a hefty fee. Most of these "directories of specialists" are a joke. There is rarely any screening of attorney qualifications at these sites.

5. The *Yellow Pages*. Not everyone advertises in the Yellow Pages. Most of our cases come from referrals from other attorneys or from satisfied clients. Be careful about the ads that tout many different specialties; no one can be a master of all. Be careful about the full-page ads. This advertising typically attracts a lot of case inquiries, including the small cases that we do not accept. Make sure that the attorney you hire is selective enough with his or her cases that your important case does not become just one more file in the pile.

6. Just like you should check the Court's docket to see if your doctor has been sued, you should also check the Court docket to see if a lawyer you are considering has been sued for legal malpractice.

7. Your local bar association probably has a lawyer referral service. Understand that lawyers have signed up **and paid a fee** to be listed in certain specialties. Their names come up on a rotating basis. The bar association is not making any judgment about who is a good attorney or not. We could sign up our firm as "divorce attorneys" if we wanted to, and no one would check to see if we had ever handled a divorce case! It is your responsibility to ask questions.

8. Interview several attorneys. Ask each attorney who else he would recommend for your case. If they won't give you names, leave. Ask this question of each attorney. The names you see showing up on different people's lists are probably good bets.

9. Ask each attorney if they have a book like this and/or a web site so that you can find out more about qualifications and experience *before* you walk in the door.

10. Forget fancy slogans and hype. Slogans like "we are aggressive," "we care for you," we fight for you," are absolutely meaningless. After all, aren't these the things that you would expect from your attorney?

11. Here are factors and good points to look for and questions your attorney about. Note that not every attorney will meet all of these criteria, but the significant absence of the following should be a big question mark.

- **Best Lawyers in America.** You can't apply for or buy your way into this directory of the best lawyers in America; you must be invited in. (www.bestlawyers.com.)
- **Experience.** Obviously, the longer you have been practicing a particular are of the law, the more you will know. Experience can be a big factor in many cases and is vital in an area as specialized

as medical malpractice. Forget about the ads that brag about "combined experience," such as "29 years' combined experience in practicing law." This means they have added up the number of years of experience of each lawyer in the firm. It's meaningless.

- **Experience actually trying cases.** Ask the attorney how many cases he has actually tried. Has he or she achieved any significant verdicts or settlements? The greater number of cases actually tried and substantial verdicts and settlements achieved, the more likely the insurance companies will respect your attorney.
- **Respect in the legal community.** Does the attorney teach other lawyers in Continuing Legal Education courses? Organizations such as Martindale-Hubbell (www.martindale.com) provide names of lawyers certified by independent groups and peers as highly qualified, and conduct themselves professionally and ethically.
- **Membership in trial lawyer associations.** In our area, you can certainly find a lawyer who is a member of the Ohio Association for Justice, the Cleveland Academy of Trial Lawyers and the American Association for Justice (AAJ). All three of these organizations provide extensive education and networking for trial lawyers. Why would you hire an attorney who is not a member when there are so many good, experienced attorneys who are members?
- **Publications.** Has your attorney written anything that has been accepted for publication in legal journals? This is another sign of

respect that the legal community has for his or her skills, experience and acknowledge.

- **Legal malpractice insurance.** Does the attorney hold a legal malpractice insurance policy? This is a sign of accountability. Anyone can make a mistake and you should not make the mistake of hiring an attorney who does not have malpractice insurance. Remember, an attorney is not required to carry malpractice insurance. Don't get burned by an attorney who does not think enough about his clients to carry malpractice insurance.
- **Professionalism.** Has the attorney been the subject of any disciplinary proceedings by the state bar? In Ohio, this information is available from The Ohio Supreme Court.

CHAPTER 13
WHY SHOULD YOU HIRE ME?

There are plenty of ads for lawyers on T.V., radio and in the Yellow Pages. I have never had to rely on advertising to get clients. Most of my clients come to me because they are referred by happy clients or other lawyers. Why would you want to hire someone who needs to advertise to get business? I've found that those ads attract a certain type of client, and jurors usually ask during jury selection "you're not one of those lawyers that advertises on T.V. are you?" I am happy that I am not. There is a reason that information is important to jurors.

We are very selective in the cases that we agree to take on. We turn down hundreds of cases a year. Our small caseload allows me to work on your case. Obviously, some of the things described in Chapter 7 that we do for you are done by my assistant or associate, but I am aware of and in charge of all aspects of your case.

When you are trusting a highly valued and highly personal matter to someone, the question is do you want an impersonal relationship like you have at a bank or a big firm where although there is a face that you can talk to, there are many people who will touch your file. We don't offer that.

But if you want to know that the lawyer you hired is the lawyer who will be working on your case from that first visit to his office, through settlement or trial, until your matter is finally resolved, that is what we offer.

We offer you my personal 25 years of hands on, in the courtroom, experience concentrated on medical malpractice cases. I've taken on The Cleveland Clinic, University Hospitals, Kaiser and in fact, I can't think of a

hospital in Cleveland that I haven't handled a case against. At our Firm, we have a small staff of quality people who are trained to follow our systems to get the best results for our clients.

CHAPTER 14
WHAT CASES DO WE HANDLE?

We only handle cases when the malpractice is bad and the injuries are severe and permanent.

People think because of my practice that I must have it out for doctors. I don't. Many of my friends are doctors. Most of the malpractice in this country is committed by a small number of doctors, but anyone can make a mistake, any doctor can have a bad day and most of the time a devastating injury can be avoided by doing simple things, ordering a test, giving a medication, checking the dosage, following a safety rule, or checking on the patient more frequently.

When those simple things aren't done there has to be accountability. Without accountability people keep overlooking the same things, making the same mistakes, ignoring the same safety rules. It's human nature.

CHAPTER 15

WHAT CASES DON'T WE TAKE?

Because we get so many calls and referrals, we have found that the only way to provide personal service is to decline those cases that do not meet our strict criteria.

We focus on only the most serious cases of medical malpractice.

Therefore, we generally do not accept the following types of cases:

- Cases where nobody did anything wrong even if there are serious injuries.

- Cases where the injuries are minor or can be treated. We don't take a case unless the injuries are severe, disabling and permanent. We cannot do any good for you if the cost of bringing the lawsuit will be more than you recover.

- Cases where the patient contributed to his or her own injuries either by not following the doctor's directions or not being careful with their own health.

- Cases where the patient has an extensive list of other medical conditions that will make it hard to prove causation.

- Cases where the statute of limitations is about to run out.

- Cases that have been filed by other lawyers. We have a certain way that we like to do things. A lot of things that are done in a lawsuit can't be undone. If you have done your homework, choosing a lawyer as outlined in this book, then you should stick with him or her.

CHAPTER 16

WELL, ARE THERE ANY CASES LEFT?

Yes, there are, and that's just the point. Just look at our results.

We Concentrate Our Efforts on Increasing the Value of Good Cases – Not Filing and Chasing Frivolous Ones

We represent many clients but only those with valid claims. When we devote our time and resources to representing only legitimate claimants with good claims, we are able to do our best work – getting "bogged down" in lots of little cases, each with a "special problem," is not good for clients with legitimate claims

CHAPTER 17
WHAT CAN YOU DO FROM HERE?

The most important thing you can do as a potential medical malpractice plaintiff is to collect and maintain all of your hospital records. Any attorney who ends up representing you will need to have as extensive a record as possible. Keep a journal of events, and note the date, time, and circumstances of your developing situation. Details are *very* important – malpractice cases may involve looking back at years of the patient's medical history, particularly if the insurance company argues that your injury was a result of a pre-existing medical condition, rather than from malpractice.

Obviously, by requesting this book, you have begun your search for experienced malpractice counsel. Remember, in Ohio, the statute of limitations could expire is as little as one year (or earlier, if the guilty party is part of the government). The legal process does take time – you should weigh your options for counsel carefully, but you should begin your investigation immediately.

CHAPTER 18

OUR CASES AND VERDICTS

Here is a sampling of medical malpractice cases that I have handled. There are others at our website at www.mellinolawfirm.com. Remember that each case is different. I can only guarantee my best effort. Ultimately, a lot depends on who is on your jury when the case is tried.

However, you want your case to be in the best possible hands and in the best possible light with the strongest evidence brought forward before the case is turned over to the jury.

We believe you cannot accomplish this without significant trial experience. Also, unless the insurance company adjuster knows your attorney is capable of convincing the jury to decide in your favor and award full compensation, your chances of settling the case are nil. With these disclaimers in mind, here are some of the cases I have worked on.

$3,995,000 Verdict for Little Boy Injured During Birth

The obstetrician used forceps to pull on the baby when he was still too high in the birth canal causing the baby's shoulders to get stuck in the birth canal.

There was a significant delay in delivering the baby and in the interim, his brain was not getting blood flow or oxygen for several minutes. This resulted in permanent injury to the boy's brain.

$12,500,000 Settlement for Man Who Had Cardiac Tamponade

A 47 year old husband and father of five minor children had heart bypass surgery. After surgery, one of the bypass grafts was leaking causing a pool of blood to form in his chest that kept getting bigger. It caused his blood

pressure to drop and difficulty breathing. None of the medical professionals taking care of him recognized the problem. Eventually, the pool of blood became so large it caused enough pressure on his heart that it stopped it from beating, then he stopped breathing. He went without oxygen for several minutes causing irreversible brain damage and now lives in a persistent vegetative state.

$1,500,000 Verdict Against a Hematologist and Orthopaedic Surgeon

Our client went into the hospital for a bone marrow biopsy. During the biopsy, the hematologist cut into an artery in his hip. The artery continued to bleed over the next 5 days. Before the artery was fixed, he had lost one-half of the entire blood volume in his body.

The orthopaedic surgeon was called during this time but he chose not to investigate the problem.

All of the bleeding caused a permanent injury to our client's sciatic nerve, which caused him to have a foot drop, leaves him to live in extreme pain, on morphine and his leg is paralyzed from the knee down.

$500,000 Settlement Against Surgeon for Disfigurement of Woman's Legs

Our client, a 38 year old woman, was referred to this doctor by her medical insurance company for treatment of varicose veins. The doctor had trained as a heart surgeon but was unsuccessful in that field and was doing this as part of a general surgery practice.

His treatment on the varicose veins caused chemical burning and scarring to our client's legs. We discovered during the case, that the doctor had over 10 prior lawsuits against him for medical malpractice!

$4,300,000 Verdict Against an OB/GYN Doctor for Delayed Diagnosis of Uterine Cancer

The doctor in this case was warned by the pathologist that a biopsy of the patient's uterus had abnormal tissue called atypia.

The biopsy was done because the patient kept having vaginal bleeding. But, the doctor told the patient the biopsy was normal and she had nothing to worry about. The patient experienced intermittent bleeding for two to three years after the biopsy, which the doctor assured her was nothing to worry about. Then, because the doctor was out of town, the client was seen by the doctor's partner. He immediately did another biopsy, which showed uterine cancer. Surgery was done but the cancer had already spread and her prognosis was poor at that time due to the three-year delay.

$1,750,000 Settlement During Trial for the Death of a Retired Police Officer

Our client's father was having surgery to remove his prostate gland because he had been diagnosed with early prostate cancer. Because he had risk factors for heart disease, he needed to have his heart checked out to see if it was up for the surgery. The surgeon and internist both agreed that he needed cardiac clearance for surgery but neither actually did the necessary tests. They both thought the other one had done them. Obviously they failed to communicate with each other. During the surgery, the patient suffered a heart attack and died on the table.