



Uploaded to the VFC Website

▶▶▶ 2016 ◀◀◀

This Document has been provided to you courtesy of Veterans-For-Change!

Feel free to pass to any veteran who might be able to use this information!

For thousands more files like this and hundreds of links to useful information, and hundreds of "Frequently Asked Questions, please go to:

[Veterans-For-Change](#)

If Veterans don't help Veterans, who will?

Note:

VFC is not liable for source information in this document, it is merely provided as a courtesy to our members & subscribers.



2015

Pocket Guide to VA Medical Malpractice Claims in New Mexico



Collins & Collins, P.C.
Albuquerque, New Mexico
(505) 242-5958
www.CollinsAttorneys.com

Table of Contents

1.	Introduction	iii
2.	Common Misconceptions about Veteran Rights in VA Medical Malpractice Claims	iii
2.1	Misconception #1: Feres Doctrine – No Right to Sue?	iii
2.2	Misconception #2: Family Members Cannot Sue the VA.....	iii
2.3	Misconception #3: Only a Family Member Can Sue on a Veteran’s Behalf.....	iv
2.4	Misconception #4: Definition of VA Medical Care.....	iv
2.5	Misconception #5: Medical Malpractice Claims are Easy	iv
3.	Governing Law: State and Federal.....	v
3.1	Medical Malpractice Claims Against the VA are Governed by State & Federal Law	v
3.2	State Law Governs the Medical Malpractice Claim Itself.....	v
3.3	Federal Law Governs Claims Against Federal Entities Such as the VA.....	v
4.	Deadlines on Medical Malpractice Claims Against the VA	vi
4.1	Statute of Limitations is Only 2 Years Under the Federal Tort Claims Act (FTCA)	vi
4.2	The Administrative Claim Requirement	vi
4.3	The Discovery Rule	vi
5.	Basic Elements of a Medical Malpractice Claim Under New Mexico Law	vii
5.1	Doctor Patient Relationship	vii
5.2	Negligence	vii
5.2.1.	Medical Expert Opinion Required	vii
5.2.2.	Need for Expert in Administrative Claim v. Lawsuit in Federal Court.....	viii
5.3	Injuries (Damages).....	viii
5.4	Causation/Fault.....	viii
5.5	Agent/Employee/Contractor of the Medical Provider (VA in this Case)	ix
6.	Administrative Claims Requirements and Procedure.....	ix
6.1	Filing the Claim - Standard Form 95.....	ix
6.2	Administrative Decision and Deadlines on Subsequent Lawsuit.....	x
6.3	Amount Claimed is the Limit of Recovery	x
7.	Tolling of the Statute of Limitations.....	x
7.1	Discovery Rule	x
7.2	Fraud/Concealment	xi
7.3	Continuing Care.....	xi
8.	Who Can Sue?	xi

8.1	Incapacitated Veteran.....	xi
8.2	Deceased Veteran	xii
8.3	Individual Claims by Spouses and Children related to Veteran’s Injuries/Death	xii
8.4	Family Members for Medical Negligence in Their Own Care	xii
9.	Who to Sue	xii
10.	First Steps in a Medical Malpractice Claim	xiii
10.1	Obtain All Medical Records	xiii
10.2	Have the Records Reviewed by a Medical Expert.....	xiv
10.3	Be Alert to All Possible Deadlines	xiv
11.	The Feres Doctrine: What it Is and What it Isn’t.....	xv
12.	Medical Malpractice Case Evaluation	xv
12.1	Medical Record Review	xv
12.2	Case Criteria: Risks, Costs, and Possible Compensation to the Veteran	xv
12.3	Medical Records are Necessary for both Attorney and Expert Case Evaluation	xvi
12.4	Collins & Collins, P.C. – Strict Case Review	xvi

Pocket Guide to Medical Malpractice Claims against VA Medical Providers/Facilities

1. Introduction

[Medical malpractice](#) can occur in any medical setting including the VA. Studies have shown that the rate of medical malpractice in VA facilities is actually less than in private medical care. This is remarkable in light of all the news that has come up over the last few years regarding what appears to be systemic negligence in VA Healthcare.

This is not to suggest that VA medical providers do not commit malpractice. It does happen. However, what the recent stories suggests in light of the lower than normal rates of medical malpractice among VA medical providers is that the negligence is systemic beginning at the top administrative levels and filtering down through administrative personnel. This is reflected in the news regarding falsified wait times, very long wait times, falsified medical records and so on. These intentional acts are way beyond negligent potentially causing innocent veterans and families catastrophic harm or death.

The bottom line is if a veteran or a veteran family member suffers serious harm or death under VA medical care, the veteran and family need to understand their rights and how to protect and enforce those rights. There are many misconceptions about what those rights are so we will address those first.

2. Common Misconceptions about Veteran Rights in VA Medical Malpractice Claims

2.1 Misconception #1: Feres Doctrine – No Right to Sue?

First, and most harmful to a veteran and family, is the misconception that a veteran and/or family member has no right to sue the VA at all for medical malpractice. It is not clear why this is so commonly misunderstood.

Perhaps, it arises from the draconian Feres Doctrine which veterans no doubt learned about while in the military. The [Feres Doctrine is a grossly unjust rule](#) that prevents active military from suing military hospitals for medical malpractice.

Make no mistake, the Feres Doctrine does not apply to veterans or family members under VA medical care. Veterans can sue. Family members can sue on behalf of veterans. Family members can sue on their own behalf for negligent medical care provided to the family member.

2.2 Misconception #2: Family Members Cannot Sue the VA

As mentioned, this is also incorrect. Family members can sue the VA in a number of capacities.

First, a family member can bring a claim on behalf of an injured or deceased veteran. In both cases, there a number of steps that would need to be taken. In case of an injured veteran, the family member could sue as the conservator which requires an appointment through the state courts. In the case of a wrongful death claim, the family member could sue as the personal representative of the veteran's estate. This again would involve the state courts requiring the appointment of the family member as personal representative under the New Mexico Wrongful Death Act. Each of these requires legal procedures that would suggest obtaining the services of an attorney.

Second, the family member can sue on his or her own behalf, or on the behalf of a child negligent VA medical care. In case of injury, this is fairly straightforward. The family member would file in his or her own name or as the parent of a child. In case of wrongful death, the family member would again need to be appointed personal representative of the child's estate under the Wrongful Death Act. [Wrongful death claims have unique requirements](#), it is important to understand and follow the necessary steps for initiating a claim.

2.3 Misconception #3: Only a Family Member Can Sue on a Veteran's Behalf

This is again incorrect. A veteran, living or deceased, has the same legal rights as any other patient. Folks other than family members can fulfill the same roles set forth above as conservator or personal representative. This may be necessary for any number of reasons that need not be stated here.

2.4 Misconception #4: Definition of VA Medical Care

The definition of what constitutes VA medical care seems to be widely misconstrued as well. The bottom line is that the VA Healthcare System is vast. The VA doesn't just have hospitals and clinics. It has medical and mental health clinics, substance and alcohol abuse treatment programs, a wide spectrum of services addressing mental health issues and community-based supportive services for combat veterans (Vets Centers) and family supportive services. Harm suffered under the medical care of any of the various programs could give rise to a medical malpractice suit.

There are additional complications as well. The VA is heavily reliant on outside medical providers for a vast array of medical services. The involvement and negligence of these outside parties can complicate things. In short, it is important to identify these providers and to name them in any lawsuit along with the VA.

2.5 Misconception #5: Medical Malpractice Claims are Easy

Medical malpractice is widely and wildly misunderstood by the public. This is based upon the grossly distorted myth of an epidemic of frivolous medical malpractice claims. Without belaboring the issue, it is estimated that as many as 440,000 patients die each year in U.S. hospitals from preventable medical error. The fact is that a very tiny

fraction of these result in any kind of claim. A tiny fraction of these result in compensation to the patient or family.

The fact is medical malpractice claims are extremely difficult, expensive and risky for lawyers to take on. As a result, attorneys must screen these very carefully on the presence of malpractice as well as the degree of harm suffered by the patient and/or family.

This issue is particularly problematic in VA claims for one very significant reason. The Federal Tort Claims Act strictly limits the attorney fees on claims against the federal government including the VA. These fee restrictions limit the fees to about one-half of the typical attorney fees for medical malpractice claims

The fee restrictions are purportedly for the protection of injured folks against the “greed” of their lawyers. In fact, it is simply a way of keeping them out of the courthouse to begin which means many valid claims will never be heard unless the victim pursues the claim on his or her own which is challenging to say the least.

3. Governing Law: State and Federal

3.1 Medical Malpractice Claims Against the VA are Governed by State & Federal Law

Medical malpractice claims against the VA will be governed by both state and federal law. State law will govern the medical malpractice claim itself.

Because the VA is a federal agency, the claim will also be governed by the Federal Tort Claims Act. Both are extremely important and both sets of rules, requirements and procedures must be met.

3.2 State Law Governs the Medical Malpractice Claim Itself.

This is a vast topic best left for individual case analysis. However, there are a couple of basic points for a patient to understand.

Basically, a patient harmed by VA medical malpractice in New Mexico will have all the protections afforded patients under New Mexico law. Likewise, the New Mexico patient will be governed and held to all the same standards that would apply to non-VA medical malpractice claims.

3.3 Federal Law Governs Claims Against Federal Entities Such as the VA

Because the VA is a federal agency, it receives a fair amount of protection under the Federal Tort Claims Act. The FTCA has a number of special requirements not present in claims against other non-federal entities. These are primarily related to [deadlines and filing procedures for VA claims under the FTCA](#).

4. Deadlines on Medical Malpractice Claims Against the VA

In any medical malpractice claim, deadlines are critically important. It is no different in claims against the VA. This is the first important distinction between claims against the VA and claims against private medical providers.

4.1 Statute of Limitations is Only 2 Years Under the Federal Tort Claims Act (FTCA)

Again, claims against the VA are governed by the FTCA. The most important requirement under the Federal Tort Claims Act is the 2 year statute of limitations. This is significantly shorter than the 3 year statute of limitations on New Mexico medical malpractice claims against private medical providers.

This means that a claim must be filed within 2 years or it will with very exceptions be barred completely. There are a number of finer points to the statute of limitations that must be understood by patients and their families: the Administrative Claims requirement under the FTCA and the Discovery Rule which governs the date that the statute of limitations begins to run on New Mexico medical malpractice cases.

4.2 The Administrative Claim Requirement

Under the FTCA any legal claim against a federal governmental entity including the VA must begin with an administrative claim with the agency in question. This should not scare off a patient or family. It is a rather simple requirement to meet and can actually benefit the patient/family possibly avoiding the time and expense of moving forward with a protracted, stressful and expensive lawsuit in federal court.

In short, the patient/family must file a claim with the proper VA entity. The claim must be filed with the Office of General Counsel for the VA region in which the case arose. For New Mexico, this is the Phoenix office which you can find here along with all other regional offices: <http://www.va.gov/OGC/RCOffices.asp>. You can also find useful information and forms necessary for filing a claim with the VA.

The patient/family must exhaust the administrative claims process before filing suit. This means filing the claim with the Office of General Counsel and awaiting the decision. Failure to do so will result in dismissal of the claims by the federal district court judge. The administrative claims process will be discussed in greater depth below at section 6.1.

4.3 The Discovery Rule

The “discovery rule” is critically important to the rights of patients and families harmed by medical negligence. Not all states follow the discovery rule. New Mexico does which means the statute of limitations on any claim arising in New Mexico will be governed by the discovery rule.

The discovery rule, in a nutshell, means that the statute of limitations will not begin to run until the patient knew or should have known of the medical negligence. This is crucial to the rights of patients and families harmed by medical negligence since without the discovery rule, the statute of limitations can and often does run before the patient is ever aware of the medical negligence (think failure to diagnose cancer).

In sum, the discovery rule applies in New Mexico based VA medical malpractice claims so that the statute of limitations does not begin to run until the patient knew or should have known of the medical negligence. This determination can get a little bit complicated particularly under the “should have known” prong. It is important to understand and identify the relevant dates.

5. Basic Elements of a Medical Malpractice Claim Under New Mexico Law

There are number of [basic elements and requirement for a medical malpractice claim in New Mexico](#). Each of the elements below is set forth in New Mexico’s Uniform Jury Instructions. Each must be met or the claim will fail under New Mexico law.

5.1 Doctor Patient Relationship

There must be a doctor patient relationship. Without this relationship, there can be no medical malpractice claim against the provider. This requirement can on occasion get somewhat convoluted but for the most part it is pretty straightforward and the doctor patient relationship is clear.

5.2 Negligence

The medical provider must have been negligent. More to the point, the medical provider’s medical services must have fallen below the “standard of care”. The standard of care is a local standard governed by what is referred to as the locality rule. This means the medical provider is held to the standards in the particular field of medicine in the locality where the alleged negligent actions occurred. Specialists are held to a higher standard and must meet the standard of care established for each particular specialty.

Although general practitioners are not held to the higher standards of specialists, one very important requirement is that the medical provider refer the patient to a specialist when the need for a specialist is indicated. Likewise, this referral to a specialist must be made in timely manner. This in fact may be one very big issue for VA medical care in light of the delays in treatment.

The VA like any other New Mexico medical providers will held to both local and well defined national standards which have been adopted in the local medical community.

5.2.1. Medical Expert Opinion Required

Medical malpractice claims of every kind in New Mexico no matter who the defendant medical provider require medical experts in a particular field of medicine that will testify that the defendant's conduct fell below the relevant standard of care. In many cases, there may be the need for more than one medical expert.

An appropriate medical expert should be enlisted early in most cases. It is surprising how often medical providers of every stripe will deny wrongdoing even in the most outrageous and clear cases of medical malpractice. This means that the expert should be enlisted in most cases well before the commencement of litigation in anticipation of the fact that medical providers simply cannot accept or admit that they did something wrong no matter how clear it is to everyone else.

5.2.2. Need for Expert in Administrative Claim v. Lawsuit in Federal Court

An administrative claim can begin and actually resolve without the necessity of medical experts. However, this would be pretty uncommon. On the other hand, a report from a medical expert will often help the case toward fair resolution at the administrative stage prior to filing a federal court lawsuit. Once the lawsuit is filed, there are no exceptions, there must be a medical expert to support the patient's contention of medical malpractice. Without an expert, the suit will be dismissed summarily by the federal district court judge (i.e. dismissed on the inevitable motion for summary judgment).

5.3 Injuries (Damages)

There are countless cases of medical negligence. In order to have a medical malpractice claims there must be not only negligence but injuries caused by the negligence. These are referred to as damages in a lawsuit. There are a [number of possible compensable damages](#) including include physical injuries, permanence of injuries, past and future medical expenses, and past and future loss of income among others.

Fortunately, the great majority of instances of medical negligence result in little or no harm to the patient. If there is no harm or other damages to the patient, there may be a legitimate complaint against the provider but there is no medical malpractice claim.

Moreover, in cases resulting in little harm or damages, because of the time, expense and risks of medical malpractice claims it may be hard to find an attorney to take the claim. This is especially true in VA claims where attorneys must reduce significantly under the Federal Tort Claims Act.

5.4 Causation/Fault

Causation is a basic requirement of any personal injury claim, including medical malpractice. This means that the negligence caused the harm suffered by the patient. If the harm was the result of some other cause, then there is no claim. This can be a rather complex determination since there can be numerous contributing causes.

New Mexico follows the comparative fault doctrine. This means that if there are a number of causes, including the patient's own actions, the fault will be apportioned between the various responsible parties. However, even with comparative fault, the injured patient must show that but for the alleged negligence, the injuries would have not occurred. In other words, the [medical provider must have contributed to the injuries](#).

Beginning with that basic premise, the calculation of comparative fault will lie at the heart of the ultimate compensation to the patient and family. It can get rather complex but it is manageable regardless of the number of negligent parties and the degree of fault attributed to the patient.

5.5 Agent/Employee/Contractor of the Medical Provider (VA in this Case)

In order to sue the VA, it must be shown that the medical provider was the agent or employee of the VA. In most cases, this is clear since most medical services are provided in-house by VA employees and staff. Other cases can be slightly more complicated and may require a little sorting out in cases of third party medical contractors. The use of third party medical providers is fairly common so it is definitely something to keep in mind.

This should be relatively straightforward with the occasional complex case where the VA and/or the private medical provider are denying the relationship.

6. Administrative Claims Requirements and Procedure

Again, the FTCA requires that an administrative claim be filed and exhausted prior to filing a federal court lawsuit. This means that a claim must be filed first with the Office of General Counsel's Regional Counsel Office in the VA region where the claim arose which can be found here along with instructions and forms on how to file a claim: <http://www.va.gov/OGC/RCOffices.asp>.

The deadline for filing the administrative claim is 2 years from the date of negligence or the date of discovery whichever applies under the circumstances. Failure to do so results in a bar to the claims.

It should be noted that the statute of limitations on VA claims applies to filing of the administrative claim.

6.1 Filing the Claim - Standard Form 95

The filing requirement is very easy to meet. The claim can be filed using a Standard Form 95. For claims arising in New Mexico, SF 95 would be filed with Regional General Counsel – Phoenix Office – Region 19. You can find the proper regional office at the VA

Office of General Counsel website if you are not in New Mexico. You can also find forms and instructions on filing the Form 95 [through their site](#).

6.2 Administrative Decision and Deadlines on Subsequent Lawsuit

These claims are often, if not routinely, denied. It is important to know when and what must happen next.

The VA Regional Counsel has 6 months to make a decision. If the VA does not make a decision within 6 months, the patient/family can move forward with the federal court lawsuit. Whether or not to do this is an important decision.

Likewise, if the VA denies the claim, the patient/family has 6 months from the date of denial to file a lawsuit. Failure to file within the 6 months will bar the suit.

6.3 Amount Claimed is the Limit of Recovery

One interesting aspect and possible trap under the FTCA is that the amount of compensation demanded in the Standard Form 95 is the limit of recovery. This means that you cannot raise the amount that you are asking later in a federal court lawsuit.

This means that you should err on the high side since you cannot later raise the amount if and when a suit is necessary.

7. Tolling of the Statute of Limitations

The statute of limitations typically begins to run on the date of the negligent act. Tolling of the statute of limitations means that the statute of limitations will not begin to run until some triggering event other than the negligent act itself.

There are a few things to keep in mind regarding possible tolling of the statute of limitations on VA medical malpractice claims. Some of these are particularly relevant to VA claims in light of the rather abhorrent administrative practices revealed over the past few years such as falsified waiting lists, long wait times for appointments, falsification of refusals of care, and so on. These tolling provisions may be all that is standing between injured veterans, their families and justice.

7.1 Discovery Rule

The discovery rule was discussed above. Again the discovery rule under New Mexico law provides that the statute of limitations does not begin to run until the negligence is known or should have been known by the injured patient/family.

In light of what appears to be systemic concealment, deceit and fabrication of negligent and dangerous practices, the discovery rule is perhaps as vital to the protection of patients under VA medical care as any other healthcare setting.

7.2 Fraud/Concealment

Fraud and concealment will result in the tolling of the statute of limitations on most every kind of claim, including personal injury and medical malpractice claims. Again, in light of the systemic deceit, concealment and fraud in the VA medical system, this may be a good candidate for tolling of the 2 year statute of limitations.

As with the discovery rule, and in fact a variation on the discovery rule, the statute of limitations will not begin to run in cases of fraud or concealment until the patient “knew or should have known” of the concealed negligence.

7.3 Continuing Care

The continuing care concept relates to both the discovery rule and fraud/concealment. The continuing care doctrine will apply where the patient is misled either deliberately or innocently by the medical provider regarding medical progress. This would apply in cases where the medical provider tells the patient that the problems, pain, symptoms... are simply part of the recovery process when in fact they are not.

This scenario is often unintentional. This is of no consequence. In fact, this may constitute medical malpractice in itself. This is actually not too uncommon in medical malpractice cases generally, not just within the VA.

For instance, surgical errors are often made that are known risks of the surgery, such as damage to adjacent organs and nerves. It is not the surgical error that constitutes the medical malpractice but the failure to detect or otherwise diagnose the error in a timely manner to avoid further unnecessary and often catastrophic consequences to the patient.

8. Who Can Sue?

In order to file a lawsuit, a party must have standing to sue. In cases where a veteran has been harmed, the veteran can certainly file on his or her own behalf. The issue gets slightly more complicated when the veteran is incapacitated or deceased.

8.1 Incapacitated Veteran

In the case of an incapacitated veteran, an interested party, usually a spouse, adult child, other family member or friend may act on the veteran’s behalf with a proper power of attorney. Hopefully, this is obtained prior to the veteran becoming fully incapacitated.

In case there was no power of attorney, and the veteran has become incapacitated, the interested party can petition the court for appointment as the veteran’s guardian with a Petition for Guardianship.

8.2 Deceased Veteran

In case of a deceased veteran, New Mexico law requires the appointment of a personal representative under the New Mexico Wrongful Death Act. This is typically, in the absence of dispute, a fairly straightforward process. The individual, usually a family member, will simply file for appointment with the appropriate New Mexico District Court. The process takes a couple of months.

8.3 Individual Claims by Spouses and Children related to Veteran's Injuries/Death

In addition to the veteran's or his estate's claims for personal injuries or wrongful death, the veteran's children and spouse may have claims of their own for losses associated with the injuries or death to the veteran. These are called [loss of consortium claims](#).

Loss of consortium are basically claims for loss of the relationship and companionship with the veteran. They can be filed for both personal injury claims and wrongful death claims. In cases of spousal loss of consortium, whether or not to bring a claim can be somewhat complex since [a loss of consortium claims will often bring some very uncomfortable, highly private and sensitive questioning](#) of the spouse both before trial and at trial.

The loss of consortium claim can take the focus off of the medical malpractice of the VA and the harm to the veteran, instead creating a soap opera style inquest into the private lives of the veteran and his or her spouse. It can in fact harm the veteran's claim. It is not an easy decision and should be made with care.

8.4 Family Members for Medical Negligence in Their Own Care

If a spouse or child is treated through VA and suffer injuries from medical negligence, they can sue for these injuries under the Federal Tort Claims Act. In addition, many spouses and children of active military personnel are treated at VA medical facilities. They too can sue for their injuries. They are not excluded by virtue of the Feres Doctrine. In fact, spouses and children generally are not prevented from suits against military hospitals or VA hospitals for injuries they suffer themselves as a result of medical malpractice.

9. Who to Sue

As with any medical malpractice claim, it is important to identify each and every possible negligent medical provider. This may be a mix of private, state/local, and VA medical providers. Each must be dealt with appropriately.

The use of outside medical providers is very common. This is particularly true of specialists and specialized services. The important point is to understand that each and every medical provider that has acted negligently and thereby caused harm must be identified and named in the lawsuit.

In cases against the VA, once past the administrative stage, the federal court lawsuit must name the United States in addition to the other defendants.

10. First Steps in a Medical Malpractice Claim

There is no need to discuss the entire complex and lengthy process involved in a medical malpractice claim. What is important is to understand what must be done and how to do it in order to get started. It is seemingly simple but it can take time so it is very important to start right away as soon as you suspect medical negligence.

10.1 Obtain All Medical Records

This seems simple enough but in actuality it can be quite cumbersome, time-consuming and in some cases expensive. In those cases where only the VA is involved, these should be easily obtained through the VA. IF the VA is for some reason uncooperative, they can be obtained through the filing of the administrative claim with the VA. These are provided at no costs to the veteran or his or her legal representative.

However, it is often not just the VA that holds the medical records. There may be records spread across multiple medical providers. These must be identified and requested individually. In cases involving non-VA medical providers, these records can be expensive to obtain based upon cost per page charged by the provider or records custodian.

HIPPA is an ever-present issue in the collection of medical records. It is critical in cases where the veteran is incapacitated or deceased. In order to obtain the records, the person requesting them must have proper authority. This could be under a medical power of attorney if the veteran executed one prior to incapacitation. Unfortunately, this is the exception and there is typically no medical power of attorney in place.

Instead, the person requesting the records must get court authorized permission through appointment as guardian/conservator in case the veteran is living or appointment as the personal representative under the New Mexico Wrongful Death Act in case the veteran is deceased.

The records collection process can take a long time depending upon the medical provider and the court processes necessary for HIPPA compliance. The time necessary to collect records must be considered in light of the other deadlines and delays in the evaluation of the claims.

10.2 Have the Records Reviewed by a Medical Expert

In any medical malpractice claim, including those against the VA under the Federal Tort Claims Act, you do not get out of the gate without the appropriate qualified medical expert. In fact, failure to obtain an expert will result in a summary dismissal of your claims. You will not ever get to trial or anywhere near it without an expert. Your case will be dismissed early upon the VA's inevitable Motion for Summary Judgment.

Experts are expensive and often very slow. This means you must act immediately to identify the right expert. This is typically done through an attorney who will first review the records before expending money on the expert.

10.3 Be Alert to All Possible Deadlines

This might have gone first in the steps due to its importance. Deadlines are deadlines when it comes to Federal Tort Claims Act cases and medical malpractice claims. Missing a deadline can seriously jeopardize if not completely bar your rights to compensation.

Understanding deadlines is especially important in medical malpractice claims. The reason for this is the amount of time it takes to collect medical records and then get the case reviewed by a competent and appropriate medical expert.

Collecting medical records can take several months under the best of circumstances. Other times it may take much longer depending upon the medical provider and the records custodian. To make matters worse, there may be providers implicated in other records of which the veteran is not aware. When this occurs, it is then necessary to obtain those records and so on.

An expert review of the records can take months longer. Most credible experts have day jobs in the medical field. Often times, those same experts have teaching engagements at medical schools. In short, their time is limited and their time is their own.

The important point to take from all this is that you must act right away. Most attorneys, including Collins & Collins, P.C., will be very reluctant to get involved in a case that has short deadlines.

11. The Feres Doctrine: What it Is and What it Isn't

The Feres Doctrine is a national disgrace. It is horribly unjust to active military injured in the course of medical care at a military or VA medical facility. When it applies, it is virtually impossible to get around.

On the other hand, its scope is apparently widely misconstrued by veterans, active military and families who believe it to be a complete prohibition of claims against the VA and/or military medical facilities for medical malpractice.

It is not a prohibition on claims by veterans, their spouses or their children harmed by VA medical malpractice. It is not a bar to the spouses and children of active military personnel for harm suffered by the spouses and children in the course of their own medical care through military or VA medical facilities.

12. Medical Malpractice Case Evaluation

12.1 Medical Record Review

The claims evaluation process is seemingly simple. Our attorneys review the medical records to determine if we believe there might be medical malpractice with consequent serious injuries or death. Because neither a judge nor the VA cares one iota about what lawyers think about the matter, if the case appears to involve medical malpractice with serious or deadly harm, we then send the records to the appropriate medical expert(s) to get an expert opinion on the merits of the claims.

It is surprising how often we are wrong and the medical expert indicates that there was no medical malpractice and/or the injuries were not related to the medical malpractice. This has happened on cases with catastrophic or deadly consequences where the negligence seemed indisputable. To this day, there are several that we are still shaking our heads about.

However, we have learned by trial and error not to go against our expert. Going against our experts has led to rather disheartening outcomes for both our firm and our client. As such, we do not go against our expert.

12.2 Case Criteria: Risks, Costs, and Possible Compensation to the Veteran

As suggested above, medical malpractice claims are generally very difficult, expensive and risky for attorneys to pursue. This is never truer than in cases against the VA because of very strict and low attorney fee limitations. The allowable fees are about one-

half the typical fee charged by medical malpractice attorneys making it doubly important to carefully screen cases.

This means that many veterans with valid claims may have trouble finding an attorney to take on the claims. Attorneys must review the case in terms of not just the presence of medical malpractice but also the degree of injuries and other losses. It may sound callous but unfortunately the cases must be reviewed in terms of costs necessary to pursue the claims, the risks of losing and the possible compensation to the veteran which in turn dictates the compensation to the attorney. Cases that do not involve very serious injuries or death in all but very rare cases are difficult to justify in terms of these considerations.

12.3 Medical Records are Necessary for both Attorney and Expert Case Evaluation

As mentioned above, it is absolutely essential that all relevant medical records are available for review by the attorney and then the expert. As also suggested, in cases involving multiple medical providers other than the VA, this can be both cumbersome and expensive.

In those cases, Collins & Collins, P.C. may depending upon what the available records show require that the veteran or family pay for the costs of the records collection in advance.

12.4 Collins & Collins, P.C. – Strict Case Review

Collins & Collins, P.C. is happy to review the information you provide. However, please understand that we strictly screens all medical malpractice cases including those against the VA. There must be clear medical malpractice along with serious injuries or death. Due to the costs, time and risks associated with medical malpractice claims, there is simply no way to get the strict screening of cases.