



PATRICK MALONE & ASSOCIATES, P.C.

May 5, 2010

Dr. Stephen Austin
621 4th Street, SW
Washington, DC 20024

Re: Retainer Agreement

Dear Dr. Austin:

It was a pleasure meeting today with you, Benjamin Dukes, Peter Masciola and Eric Montalvo, concerning your potential legal claim against the Department of Veterans Affairs (VA) hospital in Atlanta, Georgia for delayed diagnosis of your hypothyroid condition with associated dementia.

This letter sets out the terms by which our firm, along with others whom we may work with, will represent you in this matter, which falls under the Federal Tort Claims Act. We will charge a contingency fee of 20 percent of the gross recovery if recovery is achieved at the administrative claim stage of the proceedings, or 25 percent of the recovery if a suit is filed (whether or not the recovery is by settlement or judgment), plus reimbursement of all expenses. The fee will be divided 75 percent to PM&A and 25 percent to Peter Masciola, Esquire, subject to revision depending on the amount of work done by each of our two firms. The division of fees will not affect the overall fee charged to you.

This fee schedule will also apply to any settlement which involves periodic payments instead of or in addition to a lump-sum payment. The fee on such settlement will be 20% or 25%, as applicable, of the present cost of funding the entire settlement, and will be payable at the time of the settlement from the lump-sum portion of the proceeds.

You further agree that in addition to the above attorney's fee, all court costs, subpoena costs, depositions, court reporter fees, expert witness fees, expert reports, photocopying at \$.20 a page, long-distance telephone, courier services, travel, and all other out-of-pocket expenses incurred investigating or litigating this claim will be advanced by the law firms and will be reimbursed by you out of any recovery.

The expenses advanced by the law firms will be deducted from the proceeds of the recovery, after payment of the attorneys' fee.

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I understand you were told in approximately August or September 2007 of a diagnosis of dementia of undetermined cause, and you did not learn until September 2009 that you had low thyroid function test results. After that, you reviewed your old records from the VA and discovered some abnormal test results from thyroid functioning, plus some other thyroid tests that were ordered but never done. So you did not discover until the fall of 2009 any connection between your medical care and the dementia. Assuming these facts are accurate, I advised you that you would have two years from September 2009, or until September 2011, to file a form 95 with the VA starting your administrative claim process. However, the VA is likely to try to claim that you should have known you had an injury in August/September 2007, which would mean the time for filing your claim has already expired before you sought our advice or Mr. Masciola's. I think you have the better of that argument based on my understanding of your facts and my understanding of the case law. I think it would be prudent, however, to file the form 95 within the next month, rather than allowing any further time to pass. This is different from my normal process, in which we do a thorough legal and medical analysis before we agree to represent a client in a malpractice case. In this case, you should understand that this agreement to represent you depends on the outcome of our ultimate investigation, and that we reserve the right to withdraw from representation once we have the results of our analysis. If we go forward with the representation, then this letter will govern our agreement with you.

If for any reason there is no recovery, there shall be no attorney's fee charged by Patrick Malone & Associates, P.C.

Since you have dementia issues, please go over this letter carefully with Dr. Dukes or another trusted advisor before you sign it. If this is agreeable, please return this letter to me after signing.

Sincerely yours,



Patrick A. Malone

PAM/ads

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Agreed:

Stephen Austin

Date: _____

cc: Peter Masciola, Esquire