

# Against The Odds

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When April Wood was at U.S. Army boot camp in 2004, she fell off a rope during a training exercise and broke her ankle. Wood's broken ankle was a serious injury—the break was displaced, and it was severe enough to end her military career. When the ankle failed to heal properly, she accepted an honorable discharge and received care at the Togus Veterans Affairs (VA) Medical Center near Augusta, Me.

With proper medical attention, Wood's ankle should have healed. Instead, she required an ankle fusion in 2006 and a subtalar joint fusion in 2009, but those surgeries left Wood in debilitating pain that became unbearable to the point that she had no choice but to have her leg amputated in 2012. She was only 38.

The VA doctor told Wood that her postoperative complications stemmed from osteopenia, a condition in which bones are less dense than normal, and that there was nothing different he could have done for a successful result. Five months after Wood's amputation, she was shocked when the VA told her that the doctor's negligence, not her osteopenia, caused those failed surgeries and resulting complications.

Wood sued the VA for negligence and other claims, and Denver attorney Dan Lipman, who represents Wood, explained how the broken system failed her. "April's initial injury was a broken ankle," Lipman said. "And a broken ankle is serious—but nobody thought she was going to lose her leg. If appropriately treated, she would probably have had a near full recovery."



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The loss of Wood's leg was not the end of her ordeal. She also suffers from chronic regional pain syndrome (CRPS), which can cause debilitating pain from very light or gentle stimuli. "People who suffer from CRPS will report that bedsheets touching their leg can cause their leg to feel like it's on fire," Lipman explained.

As more information came to light, it became apparent that the VA had known for years that the surgeon who operated on Wood had been committing malpractice. Wood was not the first veteran whom that doctor had injured— there were at least 258 others. In 2009, when the doctor performed that second surgery on Wood, the VA already had serious concerns about the surgeon's professional competence. Choosing 25 of his surgical cases at random, it conducted an investigation to

see whether those patients had been treated properly. That investigation revealed a pattern of negligence in both surgery and postoperative care. In a 2010 report on that investigation, the VA noted that the doctor "demonstrated numerous areas of serious concern." A review of 431 cases, completed in 2012, showed negligence in 60 percent of them.

Internal VA documents showed that the doctor performed unnecessary surgeries, was negligent during surgery, and misled patients when they experienced postsurgical

complications. He was suspended and resigned from the VA a few months later. The VA, however, did not start warning veterans about the doctor until 2013. By the time the VA disclosed this information, the injured veterans had to fight the VA's contention that their claims were time-barred.

Wood's case against the doctor and the hospital also encountered hurdles because of this delay. In January, a federal district court ruled that Maine's statute for bringing claims against health care providers has a three-year statute of repose that is not preempted by the Federal Tort Claims Act (FTCA)—which Wood is suing under—and that it had expired by the time Wood initiated her suit.

Wood contends the statute of repose does not apply to her FTCA claims, but she is not giving up: She is also pursuing a claim of fraudulent concealment against the VA and argued to the court that Maine's statutory tolling provision for fraudulent concealment applies to her claim—meaning that it would not be time-barred because the limitations period would be extended to six years from the date she discovered the VA's fraudulent actions.

The VA moved to dismiss Wood's negligence and lack of informed consent claims, but the district court ruled in February that because a genuine dispute of material fact exists as to whether the VA fraudulently concealed the medical malpractice, it could not yet determine whether the longer limitations period applied to Wood's case.

Lipman explained that servicemembers and veterans who have been injured by VA medical negligence often face an uphill battle to obtaining justice. "Going up against the VA is an uneven playing field for injured veterans," he said. "To make the claim against the VA, a Form 95—otherwise known as administrative notice—must be given to the government. The purpose of the form is to put the government on notice so it can investigate the potential negligence that's complained of. You must be very specific about the negligence—the who, what, where, when—even though at that stage, the VA is likely the one that has the information, not you. And once you get into court, there are other major difficulties, such as the fact that you're not entitled to a jury trial."

There are still obstacles ahead—no depositions have been scheduled despite the court denying a VA motion to limit depositions—but Wood remains steadfast so she and others can finally have their day in court.