



... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

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TRAGEDY OF THE TELEPHONE DIAGNOSIS

It was about dinnertime on a cold February evening when Elizabeth J. first became concerned that there was something terribly wrong with her husband. She had called Jim from the living room to come to the table. But there was no reply. Upon entering the living room to see what might be wrong, Elizabeth was startled to see her husband seated on the couch gazing blankly into space. The muscles on the right side of his face had a strange droop. She immediately called an ambulance. Jim was taken to a central Connecticut hospital.



Upon his arrival at the emergency room, the doctors had already been alerted that Jim was probably having a stroke - - a bleed or blockage in a blood vessel of his brain. Jim now had weakness in his right arm and left leg and, although he was conscious, he couldn't speak. He was also mentally confused.

Upon noting these symptoms, the ER doctor immediately phoned the neurologist who was on call for emergencies and explained the situation. He presumed that the neurologist would immediately come to the ER to see Jim. However, the neurologist incredibly said there was no need to come in because it was clear Jim was not suffering from a stroke. Instead, he was having a minor seizure that would probably pass. Jim would therefore not be given TPA, the dramatic clot-busting drug that can stop strokes in their tracks. Instead of being given TPA or any treatment for stroke, Jim was just placed in a bed and observed overnight by nursing staff.

By early next morning Jim's condition had drastically deteriorated. What was the evening before a small stroke had now become a massive blockage of blood flow to Jim's brain. A different neurologist who examined Jim that morning immediately diagnosed the stroke and wrote in Jim's chart that it was now "too late" to give TPA.

The on call neurologist who the night before dismissed Jim as suffering only from a seizure caused him serious and probably permanent deficits to his speech, reasoning, memory, vision and physical coordination. As a result, Jim, 55, is no longer able to pursue his profession and business in graphic arts and woodworking.

Tests, including a brain scan, done in the following days showed that, given the timing of the onset of the stroke and its nature (a blocked artery), the drug TPA probably would have successfully stopped the stroke.

"It would have been so simple for the neurologist to come to the hospital and examine the patient," says Moore, O'Brien, Jacques & Yelenak, Partner Stephen Jacques. "That's the doctor's job. It was tragically irresponsible for the neurologist to have made a diagnosis by phone." Following the stroke Jim underwent a course of physical therapy with some improvement. With the dedicated support of his wife, Elizabeth, Jim is continuing with rehabilitation exercises at home.

PREVENTABLE MEDICAL ERRORS: A MEDICAL KILLER OF AMERICANS

Preventable medical errors kill or seriously injure hundreds of thousands of Americans every year. Errors include physician diagnostic mistakes, incomplete or deficient patient records, prescription errors, staff fatigue and procedural safety-check omissions -- to name a few.

Experts believe that if doctors, nurses, technicians and other medical personnel were simply more careful, tens of thousands of lives annually would be saved. Medical errors are the sixth leading cause of death in the United States -- just below heart disease, cancer, stroke and accidents. Reducing errors will also lower health-care costs and doctor's liability insurance by billions; and it will protect the health of millions of patients. The Institute of Medicine study of medical errors estimates that the 98,000 patients who needlessly die every year from medical mistakes cost the health-care system \$29 billion dollars. An incredible one-third of Americans report that they or a close family member has experienced a medical error.

The message is a simple one: reject the insurance industry propaganda that the problem with the system is medical malpractice lawsuits. The plain fact is that the way to reduce lawsuits against doctors and hospitals is to reduce the number of catastrophic errors that give rise to medical claims.

The medical industry's favorite misinformation vehicle is the "lawsuit fable." They spread like fire and few people question them.

Two of these myths are that misled juries award huge outsized monetary verdicts and that medical lawsuits drive local doctors out of business or to other states where the law disfavors suing doctors. The fact is that most medical lawsuits, assuming the patient wins, yield awards of less than \$100,000. And rather than driving doctors away, the American Medical Association reports that the number of doctors has increased in every state for the last ten years. So the next time you read or hear a malpractice myth, keep in mind: the reason for medical lawsuits is clear: there are so many medical errors.

TEENS, PARTIES AND ALCOHOL: PRACTICAL PARENTAL SAFETY TIPS

It's a parents nightmare: what started out to be a safe and sane party hosted by your teen at home or attended by your teen at a neighbor's, turns into a drunken brawl involving police, arrests and even worse. Here are a few

common sense tips that reflect the law and can protect you, your teen and other parents:

- It is illegal for you or anyone to host a party where alcohol is consumed by minors even if you don't learn about the drinking until later.
- Anyone under 21 is prohibited from possessing alcohol on public **OR** private property. (In other words, those kids drinking on the street in front of your house could get you arrested if they wander onto your lawn.)
- Parents who knowingly permit minors (their children or their children's friends) to possess or drink alcohol may be fined or imprisoned and may be liable for resulting injuries and property damage.

Rules for when your teen attends a party:

- Talk to the hosting parents to ensure that alcohol will not be served, made available or consumed by teens. This means lock up the liquor cabinet.
- Set and enforce a curfew on your teens.
- Arrange for their safe transportation to and from the party.
- Be awake when your teen arrives home and aggressively check for signs of alcohol use.

When your teen hosts a party:

- Be alert at all times to be sure alcohol is not brought on to your property, served or consumed. Be the cop on the beat, no matter how loudly your teen complains.
- Limit the number of guests, know who is invited, and enforce a "no-crashing" policy even if it means calling parents or the police. Word gets around fast in this era of text messaging of an upcoming party.
- Do not permit guests to leave and then return to the party.

JURY DUTY IN ECONOMIC HARD TIMES

Moore, O'Brien, Jacques & Yelenak believe that every citizen should serve as a juror to safeguard our liberty, rights and property. Most jurors on criminal or civil cases find the experience rewarding and would like to serve again.

However, during tough economic times, many who are summoned to jury service may face severe financial hardship. If you believe jury duty will harm you financially, when the judge or one of the attorneys inquires, ask to be excused from service. Here are some legitimate reasons to be excused:

- You are unemployed and need to look for work.
- You are recently employed and cannot take time

off now.

- You will miss a mortgage payment because of the lost time at work.
- Your employer, who once paid for jury service, can no longer afford it.

Keep in mind though, if excused you will be called back to serve at a later time.

DON'T GET BURNED: KITCHEN FIRE SAFETY TIPS

Many families gather in the kitchen to share quality time. But the kitchen can be the most hazardous room in the house if you don't practice safe cooking rules. Cooking equipment, most often a range or stovetop, is a leading cause of home fires and injuries. Fortunately, simple safety tips can guarantee that only the food gets cooked at mealtime:

- A recipe for serious injury is wearing loose clothing, especially long sleeves when you cook.
- Never use an extension cord to power a cooking appliance, such as a microwave oven; doing so can quickly overload the circuit and cause a flash fire.
- Always turn pot handles in so you can't bump them and kids can't grab them.
- Declare a three-foot "safe zone" around your stove for children and pets.
- Clean the clutter: keep potholders, food packaging and dish towels off the stovetop.
- Don't cook if you're tired, have been drinking alcohol in excess or are taking medication that makes you drowsy.

CASEFRONT

Moore, O'Brien, Jacques & Yelenak has recently resolved by settlement or verdict the following cases which may be of interest to our clients. Of course, the results here should not be applied to other cases.

RECOVERY OF \$520,000 FOR THREE-MONTH DELAY IN BREAST CANCER DIAGNOSIS

When our pregnant client consulted with her OB/GYN and her primary care physician about a recently discovered lump in her breast, neither doctor was concerned. However, just three months later the grim diagnosis was cancer which had spread to the lymph nodes in her arm-

pit and to other organs. Despite the extremely short delay between when the doctors dismissed the lump and the cancer was found, once a lawsuit was filed the OB/GYN settled the claim against her. At trial the jury made the primary care doctor pay additional compensation, for a total recovery of \$520,000 Partner Joseph Foti tried the case.

5% IMPAIRMENT OF THE NECK AND TWO DAYS LOST WORK EQUALS \$200,000 VERDICT

Our client was a victim of a crossover motor vehicle accident on a windy road in Bethel. He suffered a neck strain and nagging headaches for which he was treated by a chiropractor. His only other medical treatment consisted of a single appointment with a neurologist. Two days of lost work was claimed, but the medical bills (which were nearly \$10,000) were paid by health insurance. Just prior to trial Allstate offered \$29,000 to settle the case. Partner Brian M. Flood obtained a verdict of \$200,000.

FAILURE TO DIAGNOSE HEART CONDITION YIELDS PAYMENT OF \$700,000

In early 2006, our thirty year-old client experienced an episode of fainting which brought him to his local hospital emergency room. He followed up with his family doctor who ordered a cardiac CT scan, which showed an abnormally enlarged aorta, the largest blood vessel in the body. Although in light of that finding the medical standard required the doctor to order annual studies to monitor for further cardiac enlargement, no follow up whatsoever occurred. Two years later, the patient collapsed and died when his aorta burst because it had become so large. If diagnosed in time, surgery could have fixed it. Three weeks before trial, partner Gregory E. O'Brien settled the case for \$700,000.

DRUNKEN REAR-END ACCIDENT: \$128,000

Our client was stopped at a traffic light in Windsor Locks when a drunk driver rear-ended her car at a speed the drunk himself later said was 45 - 50 mph. The impact pushed our client's vehicle all the way through the intersection. However, thinking her neck and shoulder pain would resolve by itself, our client did not seek any medical treatment for several days. After physical therapy failed to help, our client reluctantly underwent painful trigger

point and epidural injections. A pain management specialist ultimately assigned our client a 5% permanent disability of her mid-back. The drunk's insurance company paid the \$50,000 policy limit and the case proceeded as an underinsured motorist claim against our client's insurer Allstate. Medical bills were \$12,600 and the cost of future pain injections was estimated at \$1,800 per year. Allstate offered a paltry \$5,000 to settle the case. Attorney Tom Stevens took the case to trial and a Hartford jury awarded our client \$128,000.

**SURGERY DONE IN REVERSE:
\$450,000 AWARD**

In 2005, our client underwent gastric bypass surgery to lose pounds. Although postoperatively the weight melted away, she was plagued by a number of conditions that adversely impacted her life for years. This was because, as it was discovered later, in the operation the surgeon, after removing a portion of the intestine mistakenly re-connected it backwards. As a result, our client's digestive tract worked in reverse, causing her to experience chronic nausea, vomiting, abdominal pain and very bad breath. After corrective surgeries the condition was remedied. Her medical bills were fully paid by health insurance. The \$450,000 obtained in the case by Partner Bill Yelenak was

strictly for her pain and suffering compensation.

**JURY AWARDS \$180,000
FOR SLIP AND FALL**

In January of 2009 our client slipped and fell in a driveway of her apartment due to ice. She suffered a hip fracture and was treated by several physicians. Ultimately, she was assigned a 12% impairment of her hip by orthopedist Richard Matza, M.D. With medical bills totaling \$58,300 partner Brian Flood took the case against the landlord to trial in Waterbury and convinced the jury that proper compensation was no less than \$180,000.

\$390,000 AUTO ACCIDENT

In March 2008 our client was traveling on Lambert Road in Orange when she was suddenly rear-ended by another motorist. At Griffin Hospital, where she was taken by ambulance, our client complained of back pain. It was serious enough to require surgery. Her medical bills were \$99,189 and she received a substantial rating from both of her treating physicians (28% of the whole person and 25% of the neck). Two days prior to jury selection in Milford partner Tom Stevens settled the case for \$309,000.

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