... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

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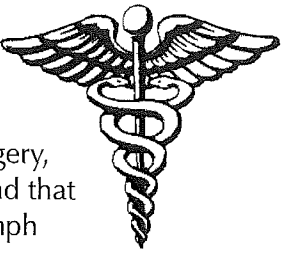
THE $14,000,000 WOMAN



In 1995 our client, Mary D., was told by her gynecologist that the pathology analysis of her uterine tissue showed that she had a rare and deadly form of uterine cancer. Treatment of the cancer would require surgery to remove her uterus, fallopian tubes and ovaries. In the surgery, the uterus would be removed and examined in another room by a pathologist. Only if he found that the cancer had spread would the surgery continue for the purpose of removing the nearby lymph nodes in Mary's pelvis.

This shocking news, plus the unusual type of the cancer, prompted Mary to ask if she should get a second opinion. Her doctor told her that was unnecessary. He would have a renowned cancer specialist perform the surgery and before anything was done there would be a pre-operative review of the uterine tissue by an independent pathologist to confirm the original cancer diagnosis.

As the doctor promised, a few weeks before the surgery Mary's uterine tissue was reviewed by a new pathologist. However, contrary to what the first pathologist found, the new pathologist concluded that Mary might not have cancer at all – the tissue showed two possible benign conditions. However, this vital new information, that Mary might be cancer free, was never obtained by the doctors involved in her upcoming surgery!

Three weeks later, the surgery went forward as scheduled, based upon the erroneous conclusion that Mary unquestionably had uterine cancer – and that it was just a matter of whether it had spread and whether her lymph nodes would need to be removed.

In the surgery, Mary's uterus, fallopian tubes and ovaries were removed. Her uterus was sent to the hospital lab for the pathologist to determine if the cancer had spread. However, while the uterus was undergoing examination further miscommunication between the doctors occurred. They weren't told they were to wait for the pathologist's opinion on whether the cancer had spread before removing the nodes. As a result, the surgery to remove the nodes was proceeded prematurely. Two lymph nodes were removed from Mary's pelvis. To control bleeding, the surgeon placed more than three dozen permanent metal clips in Mary's pelvis. Moments later the pathologist announced over the operating room loudspeaker that there was no cancer whatsoever in Mary's uterus and therefore, no cancer had spread. However, the placement of the metal clips had already caused irreversible nerve damage.

It got worse: Following the surgery, all of the tissue specimens were sent to the hospital's pathology lab for analysis. It was determined that there was no evidence that Mary ever had uterine cancer in the first place. But no one told this to Mary.

During numerous post-operative medical appointments with her doctors, Mary was told the surgery had been a success and she was now "cured" (of the cancer she never had). However, due to unrelenting pain from the nerve damage, Mary had her medical records and pathology slides reviewed by an out of state pathologist at another hospital. This was when Mary first learned that she never had cancer. It had been covered up.

A lawsuit was filed. Two trials, five years apart, ensued. In the second trial, the jury awarded Mary a total of $5.2 million dollars. Because our firm had filed an Offer of Judgment for $1,499,999 soon after the lawsuit was filed, pre-judgment interest was added to the verdict for a total award of $11,086,000.

The defendants appealed the case to the Connecticut Supreme Court. Late last year oral argument was held. A decision is expected soon. If Mary prevails, the current amount of her award will be approximately $14,000,000.

IT'S NOT THE LAWSUITS

Don't believe the news stories and op-ed columns that claim doctors are exiting the state in favor of jurisdictions where tort reform makes it more difficult to make medical malpractice claims. The argument is that the threat of frivolous lawsuits and malpractice insurance rates cause doctors to seek jurisdictions that restrict the right of patients to sue. The truth is that medical malpractice insurance rates are not affected by the legal climates of particular states.

Moreover, there is no connection between insurance rates charged to doctors and the number of doctors in a given state. The most significant actual correlation is the relationship between the number of doctors in a state and the per-doctor income. It looks like, more than anything else, doctors go where the most money is to be made.

HEAD INJURY: THE SILENT KILLER

Last winter, the news that actress Natasha Richardson fell on a bunny slope while skiing and, just a few hours later, was brain dead seemed unbelievable. It certainly increased awareness and concern among parents about childhood falls and head injuries and how to separate a benign head injury from a potentially fatal one.

Though head traumas account for 600,000 emergency room visits per year, "more than 90% of children's head injuries turn out to be minor and resolve on their own," reports a neurologist at a major New England medical center. "It's fairly predictable who will develop problems and who will not, if you know what to look for."

If your child has any type of head injury, an immediate medical visit is required. Doctors will look at the following factors to determine the level, if any, of concern and follow up:

- **Mechanism of the injury:** A fall from 5 feet or greater, a high speed car crash, head trauma from falling off a bicycle without a helmet or getting hit by a hard-thrown baseball are more worrisome than an average fall with a bump on the head.
- **The age of the patient:** The smaller and younger the patient the thinner the bones and the more difficult to assess how the child is feeling. All babies under three months should be seen.
- **What part of the head has been injured:** The back or front of the head is less worrisome than an injury to the side of the head or temple, where the skull is thinner.
- **No loss of consciousness and mild headache:** These signs usually place a young patient at low risk for serious intracranial injury.
- **Passage of time without problems:** The great majority of the time, symptoms of serious head injury will appear in the first 4-6 hours. Absence of worrisome symptoms after 24 hours usually rules out brain injury.

You should be alert for the following signs following head trauma to protect your children:

- Loss of consciousness
- Seizure
- No memory of accident
- Protracted vomiting
- Marked irritability in younger children
- Severe pain/headache
- A large hematoma/bruise (but less so when it is on the forehead)
- Pupils unequal
- Weakness, dizziness or walking strangely

"If you're concerned about your child's head injury, go to a hospital that has an emergency physician who specializes in pediatric emergencies. Children often manifest injury differently than adults," advises the Medical Center specialist. "If your child exhibits any warning signs of an intracranial injury, seek immediate medical attention. The first 4-12 hours are critical."

KNOWING YOUR WAY AROUND A WILL

A recent survey showed that nearly half of Americans 45 and older don't have a will. This can mean needless court costs and attorney's fees eating into millions of inheritances. Benjamin Franklin once said that a fool makes a doctor his heir. It's probably even more foolish to let the State decide how and to whom your property will be distributed. But that's what can happen if you don't have a will.

Although not everyone needs a will, everyone should do some planning for the disposition of their property when they die. Here are a few practical insights:

Your Will Won't Dispose of All Kinds of Property

Wills control the disposition of only probate property, which is property that you individually own. Assets you co-own with someone else are not probate property. Also, property held in a trust is not controlled by your will. Your accounts at a bank or investment firm with beneficiary designations and insurance policies and your 401(k) retirement accounts are also not passed on by your will.

Your Will Governs Transfer of Only Certain Real Estate

If you and your spouse own a home you're likely to own it in joint tenancy. That means that when one of you dies, the house passes directly to the surviving spouse. If, however, you share ownership of property with other relatives, friends or partners as "tenants in common," you can use your will only to dictate who gets your share of the property.

It is probably not always a good idea to add your children as joint tenant owners of your home so upon your death it can pass to them directly. This is because if a child goes bankrupt, gets sued, divorced, or ends up on welfare, your house can be taken to satisfy the obligation. There can also be major tax disadvantages to children who get the house by gift (which is what adding them as owners amounts to) rather than inheriting it.

Your Will Doesn't Alter Provisions in Other Documents

For example, life insurance proceeds go to the beneficiary named on the policy no matter what your will may say. If

the policy beneficiary is an ex-spouse, even if you disinherited them at the time of the divorce, the ex will get the money. Be sure beneficiary designations on your insurance policies and bank accounts are up to date.

Keep Your Will Up to Date

No matter how specific your instructions in your will, with time you'll need to revisit it to be sure the provisions are still relevant. You can't bequeath a painting you no longer own. Similarly, make sure those named to carry out the will (your executors) are still willing and able to take on that responsibility. It's generally a bad idea to name co-executors because if they disagree it may wind up in court.

A Will Won't Take Effect Before You Die

It sounds obvious, but remember that a will doesn't provide instructions for when you're disabled, unconscious or otherwise unable to manage your affairs. So in addition to a will, you'll need powers of attorney or even a living will or healthcare proxy.

Yours, Mine and Ours

Conflicts arise, especially when couples blend families, bringing children from previous marriages. Although you and your spouse want your assets to provide for the other's needs if you die, you may both want your respective children to be your ultimate heirs. In such cases, it may be wise to establish a trust to benefit children, so that only certain portions of your assets, such as income from them, are paid to your surviving spouse for his or her lifetime. And upon death, what's left goes to your children.

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.

ILLEGAL LANE CHANGE COSTS TRUCKING COMPANY $110,000

Our client was traveling home from work on Interstate 84 in Danbury two summers ago when a speeding tractor trailer overtook her on the left and changed lanes, crashing into her vehicle and forcing it off the highway. Although she did not at first believe she was injured, it was later found that the accident had torn her shoulder rotator cuff and she had sustained emotional trauma. The trucking company initially resisted the claim, contending there was no evidence the truck had come into physical contact with our client's car. When we produced post-accident photos of a truck hubcap imprint on the car's driver's side door, partner Bill Yelenak settled the case for $110,000.

FAILURE TO READ HOSPITAL CHART COST SURGEON $950,000

In 2005 our retired 68 year-old client was diagnosed with colon cancer. His family doctor referred him to a surgeon and ten days later our client underwent removal of the cancerous portion of his colon. However, the surgeon failed to fully review the patient's medical chart which indicated that due to a history of blood clots in his legs he took daily blood thinning medication. The chart clearly indicated that the medication needed to be restarted immediately after the operation. Because the surgeon was not aware of the blood thinners, he never restarted them. Within two days the patient experienced shortness of breath. His right calf became swollen. He was diagnosed with blood clots and died after they traveled up to his lungs. Partner Garrett Moore settled the case for $950,000.

CANDLEWOOD LAKE MVA VERDICT: $400,000

On a late fall evening in 2006 our client was driving on Federal Road near Candlewood Lake in Brookfield when she was rear-ended by an inattentive driver. Conservative treatment for her neck injuries racked up medical bills of $11,000 and future surgery, in which a neck disc would need to be removed, carried an estimated cost of $50,000. Plaintiff's chiropractor assigned a 15% impairment to our client's neck. Although the surgery had not yet even been scheduled, partner Joe Foti obtained a jury verdict on our client's behalf of $400,000.

$600,000 FOR FOOT DROP

In the spring of 2006 our 59 year-old client, a former construction worker, presented to the emergency room of a Southern Connecticut hospital with debilitating back pain and problems urinating. He was immediately diagnosed with a non-urgent low back disc protrusion, although no X-ray, CT scan or MRI was performed to confirm it. Given pain medication, he was sent home. Two days later he returned with increasing pain and, again, was denied an X-ray of his back. He was advised to make an appointment with an orthopedist. Five days later, after being unable to obtain a prompt orthopedic appointment, he was returned by ambulance to the hospital E.R. This time it was found that all along he had been suffering from cauda equina syndrome – compression on vital nerves from a herniated disc. Untreated, he had sustained permanent damage, including foot drop. The key to proving the malpractice was the first visit complaint of trouble urinating. This should have raised a red flag that immediate surgery to remove the pressure was required. After filing a lawsuit partner Steve Jacques settled the case for $600,000.

BOTCHED THIGH LIFT SURGERY = $300,000

When our 76 year-old client underwent cosmetic thigh lift surgery by a top New York plastic surgeon she thought she was in good hands. Although the surgery was success-

ful, in the post-operative days our client experienced and complained to the doctor of tightness and burning in her thighs. It seemed as if the bandages had been wrapped too tightly. Despite reassurances from the doctor, when the bandages were removed it was discovered that two layers of our client's thigh tissue had died because of excessive compression. In his defense, the doctor claimed that in post-operative conversations our client declined offers of appointments, and that later repair surgeries had significantly improved the scarring. Partner Steve Jacques settled the case for $300,000.

APPLICATION OF OVERHEATED COMPRESS YIELDS $75,000 SETTLEMENT

Our 70 year-old client was undergoing minor surgery when, as a result of an intravenous line, she developed swelling in the back of her hand. To treat it, a surgical nurse applied a moist compress heated in the operating room microwave oven. As a result of overheating, the compress caused second degree burns and scarring to the hand. Partner Brian Flood settled the case for $75,000.

DANBURY JURY QUADRUPLES DEFENSE SETTLEMENT OFFER

Our client was rear-ended in Danbury by a driver who, once the lawsuit was filed, changed his story and claimed that our client had stopped suddenly and that her brake lights were not working. With $9,000 in medical bills and treatment only by a chiropractor, our client's neck and back injuries were rated at 6% and 8% respectively. Four days before trial the defendant's insurance company made a settlement offer of $28,000. The court, at a settlement conference, recommended a payment of $45,000. There was no agreement so the case went to trial where the jury handed our client a total of $190,000. Partner Brian Flood tried the case.

$395,000 CROSSWALK ACCIDENT

When our 50 year-old client was struck by a motor vehicle in a crosswalk, she suffered multiple leg fractures. Although she had to undergo two surgeries, aside from using a cane when walking long distances, she made a good recovery. The driver's insurance company promptly paid the $50,000 policy limit, which left our client to seek additional compensation from her own insurer. Despite strong evidence to the contrary, the company astoundingly took the position that our client was not in the crosswalk when she was hit. Just prior to trial, partner Greg O'Brien took over the case and, after taking depositions of five accident witnesses, refuted the bogus defense. An additional $345,000 in compensation was paid by her insurance company.

Moore, O'Brien, Jacques & Yelenak
700 West Johnson Avenue
Cheshire, Connecticut 06410
203-272-5881

Mr. Shawn Burns
30 Cheryl Lane
Prospect, CT 06712