

INJURY LAW ALERT
WINTER 2006/2007 ISSUE

WHAT IS MEDICAL MALPRACTICE?

“Medical malpractice” is a broad term used to describe a number of different kinds of lawsuits brought against doctors and hospitals. Malpractice can be the failure to properly diagnose a problem, the failure to provide the correct treatment, the failure to provide the treatment in the correct way, and even errors in prescribing medications.

Studies have shown that somewhere between 50,000 and 100,000 people die every year because of mistakes made by their doctors. Some of these deaths could support a lawsuit for medical malpractice. In a general sense, a medical malpractice suit claims that a doctor made a mistake, and that this mistake resulted in his patient’s not getting the level of care that he has the right to receive from a doctor. Although only the sensational cases tend to make the news, the number of different kinds of medical malpractice suits is limited only by the number of different kinds of mistakes doctors may make.

A medical malpractice suit usually must be brought within a specific period of time. However, the complexity of these suits, and the danger that evidence will disappear and memories will fade, makes it advisable to begin long before the legal deadline occurs. Despite appearing to be very straightforward, medical malpractice cases can often be difficult to prove, for several reasons.

First, many medical malpractice cases are never recognized as such because it is difficult for non-doctors to know when a doctor has made a mistake. For every case where the doctor clearly does something wrong (such as amputating the wrong leg or leaving a scalpel in a patient) there are dozens of cases where the doctor’s error is much less obvious.

Second, the complexity of modern medicine means that proof of malpractice usually

requires expert medical or scientific testimony from other doctors, testimony that is difficult for ordinary people to understand.

Finally, because the deceased was often already very sick, it is sometimes difficult to prove that the death was caused by the doctor's mistake rather than by the original illness.

In many malpractice cases, all of the medical experts will agree that the defendant doctor made some mistake, and that this mistake likely was the cause of the injury or death. These cases are frequently settled before going to trial. In other cases, juries believe that a mistake occurred, and they award the plaintiff a substantial sum of money against the doctor.

Health care in our country is considered to be top notch. Although many in the health-care profession would be reluctant to admit it, one of the reasons for quality health care is because of medical malpractice lawsuits. The attention focused on the medical profession as a result of malpractice claims has helped to expose shortcomings that would otherwise go uncorrected. And that benefits all of us . . . patients *and* health-care professionals.

If you suspect that you or someone you love has been injured by a doctor's mistake, call us. We can help, and your lawsuit might just save someone else.

WE CAN HELP

If you suspect that you or one of your loved ones has been a victim of medical malpractice, contact us immediately. Obtaining qualified legal help is especially important because medical malpractice is a very technical area of the law. Unlike other negligence cases, medical malpractice suits are governed by special laws with unique provisions.

In addition to being legally complicated, medical malpractice suits are also factually complicated. The courts require sworn expert testimony from medical experts to prove that malpractice has occurred. Malpractice suits are subject to strict deadlines, and missing any of these deadlines will result in your case being thrown out. *Don't take chances—get the legal help*

you need.

MANDATORY ARBITRATION CLAUSES

Have you ever read the fine print of your credit-card agreement? How about the receipt for the TV you purchased? Your apartment lease? If you do, you may find that the fine print requires you to give up your right to sue if you have a complaint about the transaction and, instead, to participate in arbitration.

Arbitration is similar to a private court, where, instead of presenting your complaints to a judge, you present them to an arbitrator. Arbitration has been around for years and has long been used by large companies to resolve business disputes. Arbitration is also not all bad—it allows parties to resolve their disputes privately, it allows sophisticated businesses to agree in advance on the ground rules for resolving disputes, and it is sometimes a faster means to resolution.

However, in the past decade or so, the number of businesses requiring that all disputes against them be arbitrated has exploded. Although arbitration works well in some contexts, it is usually a bad deal for consumers, for several reasons. First, it is expensive. Unlike in a court (where you do not need to pay the judge for the time he spends hearing your suit), in arbitration you not only pay for your lawyer but you also pay for the arbitrator, who is usually a lawyer and whose services cost hundreds of dollars per hour. Second, the deck can be stacked against the consumer. Arbitration clauses frequently require the arbitration to occur in a distant city or to be conducted by an arbitrator who is a member of a group seen as being “business friendly.” Finally, since companies are the ones to set the ground rules for arbitration, the rules themselves are often unfair to consumers, requiring them to give notice of their dispute within an unreasonably short period of time or precluding their lawyers from taking any depositions to learn about the facts of the case.

Unfortunately, arbitration agreements are usually enforced by the courts. Be sure to read

carefully the fine print of business agreements to determine if you will be bound by arbitration.

WHEN THE INSURANCE COMPANY TOTALS YOUR CAR

More and more people are having the same experience: They are involved in a collision that is not their fault, but, rather than fixing their car, their insurer declares that it is “totaled.” The insurance company pays what it claims is the fair market value of the car and tows it away. However, many people like the car they have and do not want to take a chance with another one. Other people feel that they are not being offered a fair price by the insurer. Do these people have any rights?

When you buy insurance, you sign a contract with the insurer. These contracts always provide that the insurer does not have to pay to repair a car when the repairs will cost more than the car is worth. Therefore, the insurer does have the right to “total” your car in such a case. Depending on the age and the condition of the car, even a relatively small amount of damage may result in the car’s being totaled.

However, if you really want to keep your car and have it repaired, most insurers will allow you to do so. If you do, the insurer has the right to deduct the salvage value of the car from what you are paid. Also, you do have the right to be paid for the actual value of your car, which means the insurer should pay you what your car is actually worth. If you and the insurer disagree about its value, it may be worthwhile to have the car appraised and present the appraisal to the insurer to try to convince it to pay more.

If all else fails, you can hire a lawyer, although you will have to decide whether the difference in values is enough to make it worth your while to hire a lawyer to represent you.

DON'T DO IT YOURSELF

Although many of us enjoy being handy around the house, there is one time when it does not pay to “do it yourself”—when you or a loved one has been injured. Rather than trying to handle a personal injury claim yourself, you should seek the assistance of a personal injury lawyer for several reasons:

EXPERIENCE: By hiring a personal injury lawyer, you can take advantage of the lawyer’s experience. This experience helps evaluate your case and helps determine what you are legally entitled to recover.

LEVEL PLAYING FIELD: You can be sure that the wrongdoer’s insurance company is going to have experienced adjustors and lawyers working *against you*. Often, an insurance company will delay settling claims and even deny valid claims altogether. Even when it does offer to settle the case, the settlement offer may be unfairly low. It pays to have a lawyer on your side to prevent the wrongdoer from paying you less than you deserve.

PAY ONLY IF YOU WIN: Most personal injury lawyers work for what is called a “contingent fee,” which does not require money up front. Contingent fees allow injured persons with valid claims but little money to get good legal representation. Most contingent fee agreements provide that you have to pay the lawyer’s fee only if you win.

OTHER ISSUES: Your lawyer can also help you with other matters, such as providing referrals to competent doctors and repair shops.

AVOID “PHISHERMEN”

If you have an e-mail account, chances are that you have already been subject to a phishing attack. “Phishing” (sometimes called “spoofing”) is an attempt to get you to reveal private information about yourself (usually your Social Security number or financial information) by sending you an official-looking e-mail.

Phishers usually tell you that the sender must “confirm” your identity or “verify” your account information, and then ask you to e-mail this information back to them. Some phishers are getting even more sophisticated—one trick is to claim that you missed jury duty, then threaten that you will be arrested if you do not send certain requested information to clear up the matter.

Because phishers rely on the cooperation of their victims, it is easy to protect yourself. Legitimate companies never ask for information by e-mail. Be very suspicious if you receive such a request. If you want to find out if the request is a legitimate one, do not respond to the e-mail or follow any computer links it contains (some phishers go to the trouble of creating fake websites). Instead, pick up the phone and call the company that supposedly sent the e-mail. If the company does need to contact you, it should be able to help you over the phone.

DANGEROUS DRUGS: PAXIL

According to many studies, the drug Paxil, a commonly used antidepressant that is also used to treat a number of mood disorders, may have many serious side effects. These studies suggest that Paxil significantly increases the risk of suicide in users aged 18 to 30.

Other studies have linked Paxil with an increased risk of birth defects in the hearts of fetuses of mothers taking Paxil, an increased risk of coronary artery disease in adult users, and withdrawal symptoms (including severe headache, anxiety, dizziness, indigestion, pain, insomnia, and hypersensitivity to light) leading to heavy users’ becoming virtually addicted to the drug.

As a result of these studies, the FDA has issued a warning about Paxil use by young people, and has also asked the maker of Paxil to reclassify the drug so that it will not be used by pregnant women. Although these are positive steps, they do nothing to help those who have already been injured, or even died.

If you or someone you love took Paxil and suffered adverse side effects, please contact this office. We will assist you in evaluating whether you have a case.

THANKS FOR THE REFERRALS

Despite this modern age of marketing and advertising, the best source of our new business is word of mouth. We are grateful that many of our clients and friends feel confident in recommending our firm.

Unfortunately, when many people need a good lawyer, they do not know where to turn. If you or someone you know has been injured and needs legal help, call us.