

# ... And Justice For All

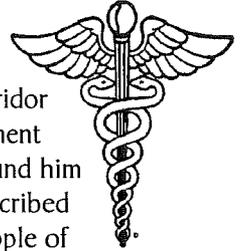
A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

## Moore, O'Brien, Jacques & Yelenak

SPRING 1998

### Moore, O'Brien, Jacques & Yelenak VS. Neglect of the Elderly

Although 81 year old Joseph Doe suffered from senility and other medical problems that confined him to a Connecticut convalescent home, he remained bright and chipper and especially enjoyed spending hours visiting with the personnel at the nursing station on the second floor. Daily, Mr. Doe would negotiate the corridor from his room to the nursing station in his walker. The personnel knew that Mr. Doe, who before his confinement there, loved the outdoors and tended to wander throughout the facility. On one occasion they had actually found him outside in the parking lot. Mr. Doe was regularly visited at the home by his two grown sons, one of whom described him as always wearing a smile and thoroughly enjoying his golden years despite his infirmities. "He was the apple of everyone's eye," says Larry Doe.



However, on July 1, 1997, Mr. Doe died in a tragic accident at the convalescent home caused by the failure of the staff to take a simple precaution. At approximately 5:00 p.m. on the date of Mr. Doe's death, while the nursing home staff was gathering the residents for dinner it was noticed that Mr. Doe was missing. A search of the facility quickly disclosed the tragic end he had met. Mr. Doe had wandered through a security door at the end of a corridor that was armed with a security alarm that should have activated the minute the door was opened. He had tumbled down the stairwell headfirst. Paramedics transported Mr. Doe to the hospital but efforts to revive him were unsuccessful. A police investigation revealed that a nurse responsible for setting the doorway alarm that afternoon had not been trained properly and had deactivated the alarm. This error, coupled with the failure of the staff to monitor Mr. Doe that afternoon resulted in his wandering down the corridor and through the door unnoticed to his death.

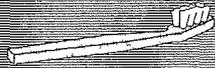
"Such accidents and other types of neglect of the elderly in nursing homes are all too common tragic events in Connecticut and throughout the nation," says senior partner Garrett Moore. "Nearly every day deaths among the aged occur in nursing homes because of understaffing at such facilities or the indifference and callousness of nursing home personnel. It is a scandal of epidemic proportion that must be addressed by Congress, state regulatory agencies and the civil justice system. Millions of elderly people who should be helped to maximize the enjoyment of their waning years wind up simply warehoused in nursing homes. Families frequently suspect their loved ones are not being cared for properly. But there is little they can do. Complaints to watchdog governmental agencies are not timely investigated or are simply ignored."

In the case of Mr. Doe, Moore, O'Brien, Jacques & Yelenak was retained by the family to pursue a lawsuit against the nursing home for the purpose of both obtaining money damages and to send a message to convalescent facilities throughout Connecticut that neglect and abuse of patients will be met with prompt legal action. "Obtaining responsible care for the aging population is a growing dilemma in our society," says Moore. "The good news is that people are living longer. However, this means that a growing number of individuals are dependent for their care on strangers. With the demands on the typical family nowadays, the majority of this care must be delegated to outside professionals."

The array of services available to seniors today is dazzling and includes nursing homes, in-home health aides and community-living facilities that offer varying levels of support care. However, for the children of the elderly choosing the appropriate care and caregivers presents a challenge. Fortunately, every state has an Area Agency on Aging (AAA), which offers references on everything from housing for the elderly to attorneys knowledgeable in elder's rights. A national service called Eldercare Locator (800-677-1116), provides local AAA referrals. In addition, in Connecticut there is an eldercare information line (800-203-1234).

According to experts the worst time to start planning outside care for an aging parent is when a crisis has already arisen. Discussions should start when the senior is still alert and mobile. And before a senior is placed in a nursing or convalescent home, at minimum, the facility should be checked out through the Connecticut Department of Public Health (860-566-5758). According to Attorney Moore, to ensure that an aging parent received proper care there is no substitute for personal vigilance. "Nursing homes today are frequently operated by out of state parent companies. If you are concerned about the care being provided to your parent or grandparent one of the best remedies is to pay frequent unannounced visits to the facility and express your dissatisfactions in writing by registered mail to the corporate headquarters. Be a troublemaker. It may save a life."

## Six Dental Myths



A few years ago, a national television news program reported the alarming story to millions of viewers that dental fillings can release dangerous amounts of mercury vapor. Although fillings do emit small amounts of vapor, subsequent studies have all but dispelled the dangers. Yet, the dental filling myth persists, scaring some people enough to have their fillings drilled out and replaced! False notions about dental care are usually less sensational than this. But they can be just as harmful, causing needless anxiety, poor oral hygiene and improper dental treatment. The following are the most prevalent and pernicious myths about dental care:

1. **Myth:** Only children, not adults get cavities.

**Fact:** While it is true that children and young adults get the majority of cavities, the risk of getting cavities actually reoccurs again in middle-age. This is because gums recede, bridge work and old fillings attract decay and many older people have reduced secretion of saliva which helps fight tooth decay. To protect against aging teeth, you should clean them scrupulously. If your gums are receding, ask your dentist about possible fluoride applications. Your teeth are not out of the cavity woods yet just because you're over 21.

2. **Myth:** To keep your teeth and gums as healthy as possible brush after every meal

**Fact:** Food alone cannot harm the teeth or gums. The real culprit is plaque, the sticky bacterial film that coats the teeth and generates harmful acids. The prevention of plaque from building up stops the increase in these acids. Because it takes up to 24 hours for teeth to collect plaque, brushing after meals is unnecessary. In fact, the most effective schedule is to brush and floss before going to sleep and then brush upon awakening. After consuming sugary or starchy snacks, rather than brushing, experts say you should simply rinse your mouth.

3. **Myth:** The more vigorously you brush and floss the healthier your teeth and gums will be.

**Fact:** Plaque is so soft that brief, gentle pressure with the brush or floss, combined with the abrasives in toothpaste, easily wipe it away. Vigorous brushing can actually damage sensitive gum tissue, causing it to recede and expose tooth roots. Most of us grew up being told to brush vigorously with a hard bristled toothbrush. Quite the opposite is true. Take it easy on your teeth when brushing, but be thorough.

4. **Myth:** Cavities should always be filled.

**Fact:** Many dentists recommend drilling at the slightest sign of tooth decay. However, it takes an average of four years for decay to spread from the enamel into the softer, more vulnerable dentin layer of the tooth. Meanwhile, steps can be taken that will actually halt or even reverse the spread of decay in the enamel. These include improved oral hygiene and fluoride applications. Therefore, unless you are especially susceptible to rapid decay, these steps should be taken before having a small decay spot or cavity filled.

5. **Myth:** Root canal treatment is very painful.

**Fact:** Although root canal work involves drilling into the canal within the roots of the tooth and removal of nerve tissue, nowadays, injection techniques and anesthetic agents are so improved that pain during root canal is a thing of the past.

6. **Myth:** Wisdom teeth, particularly impacted ones, must be removed.

**Fact:** Although many dentists routinely extract all wisdom teeth in young adults because they will supposedly always pose future problems, a recent study found that only a very small percentage of impacted wisdom teeth ever cause problems. Further, studies show that only one in one hundred people with an impacted wisdom tooth benefit from preventive extraction. As for normally positioned wisdom teeth, there is no evidence they tend to push other teeth out of alignment. So ask questions before you agree to the removal of wisdom teeth.

## SAFETY ALERT

**Dangerous Toys:** In 1997, The Consumer Products Safety Commission recalled 239 toy and juvenile products. The following toys have been identified as a possible threat of harm to children:

**Choking Hazards:** Baby's First, Second and Third Birthday balloons (uninflated balloons are a choking hazard - parents should never buy latex balloons for toddlers); Madeline Doll by Eden (doll's shoes present choking risk); Bolt N Nut by Fun N Learn (bolts are choking hazards).

**Toy safety consideration:** over 80,000 children under the age of 5 are treated annually in emergency rooms for toy related injuries. In selecting a proper and safe toy for your child you should always consider the following:

- Sharp edges and points. These can cut or impale a child or cause vision loss. Also, beware of toys made of extremely brittle plastic that can snap and expose a dangerously sharp edge to a child.
- Loud noises. Noise making toys can sometimes be so loud as to cause permanent hearing damage.
- Propelled objects. Flying toys can turn into weapons that are especially dangerous to eyesight.
- Electric toys. These should be used only with adult supervision and used only by children over age 8.

The rule of thumb in selecting a toy is to view it as a potential injury-causing weapon. Consider all the possible, and even remote, ways it could injure your youngster.

## TO FOIL A CAR THIEF

Even though auto thefts have declined in recent years, approximately 1.5 million cars are stolen each year. That amounts to about 1 every 20 seconds! There is little doubt that a determined thief can drive off with just about any car, given sufficient time and opportunity. However choosing the most effective car theft

method could make a difference in terms of protecting your second most valuable financial asset.

The type of car you purchase. Statistics show that certain cars are more frequently victimized by car thieves. This may depend upon the value and flashiness of the vehicle. However, other features of a car may play a role in whether you are unpleasantly surprised by an empty parking space. Before purchasing a car, you should educate yourself as to the car theft statistics regarding any model vehicle you are considering. Ask local police or even the car dealer with whom you are dealing.

Auto Theft Devices. Bar locks like The Club can be effective. However, with some of these steering devices a thief can easily cut through the steering wheel. Tests have shown that some of these bar devices can be defeated with a hack saw in less than one minute. As to more elaborate security devices, experts recommend starter disabling systems, devices that cause the parking lights to flash if theft is attempted and systems that feature hood and trunk protection.

## THE SMART WAY TO PICK A PHYSICIAN

Finding a good primary care physician has always been important. This is especially true today with health maintenance organizations (HMOs) playing an ever expanding role in the delivery of healthcare. In most HMOs and other managed care plans, your primary care doctor acts as the "gatekeeper". He/she decides when you can see a specialist, get physical therapy, or be hospitalized. Since many HMO doctors receive financial incentives to keep costs down, it is most important to find someone who will balance the insurance company's desire to maximize profits with your own health needs.

How do you find a good doctor? Whether you belong to an HMO or have traditional insurance coverage, much of the conventional wisdom is misguided. Some experts say to choose a doctor on the strength of his/her credentials. However, while it is sensible to find out where your doctor went to medical school and whether he/she is board-certified, a doctor who graduated in the middle of the class at a top medical school still probably received good medical training. Therefore, credentials alone do not tell the story. Other experts say it is best to ask friends and family members to recommend a doctor. However, some doctors with a pleasant bedside manner do not practice good medicine. A more reliable way to find a good doctor is to get a recommendation from a medical insider. If you know someone who works at a hospital or clinic, that person probably knows about local doctors - - which ones are good and more important, which ones you should avoid. Frequently, finding a good doctor amounts to avoiding the bad ones. Once you have narrowed the field to a few good prospects, you should meet with each one for a brief get acquainted session. Ultimately, though, it is not the doctor's credentials or reputation or what he says that matters as much as how well he practices medicine. If you are looking for a doctor because you have a specific medical condition, start by reading up

on the condition. The more you know, the better your ability to assess a doctor's knowledge and skills. A careful interview of the doctor and the thoroughness of his physical exam of you are the foundation of good medical practice. And these take time. Many medical experts say the amount of time a doctor spends with a patient is the best single indicator of how concerned he is and whether you'll do well to remain his patient.

## CASEFRONT

Moore, O'Brien, Jacques & Yelenak is currently litigating or 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.

### • *Death Of Child Results In \$350,000.00 Settlement*

On August 30, 1993, a 5 year old boy was playing on a boulder and debris-strewn hill behind the Waterbury condominium complex where he lived with his parents. When his playmate, who was standing uphill picked up a small rock, a large boulder became dislodged, striking the 5 year old, killing him. Garrett Moore of our firm filed a lawsuit against the owner of the property on which the accident occurred and the condominium complex where the boy lived. During the lawsuit it was learned that although the property owner had purchased the land many years before the accident, he had never bothered to inspect the property for dangers. The condominium complex, where a large number of children lived, had never provided a play area and, therefore, the children frequently played in the parking lot and on the adjacent hill where the accident subsequently occurred. Two weeks before the trial was to start, our firm settled the case for \$350,000.00.

### • *Failure To Diagnose Cancer Results in \$300,000.00 Settlement*

For four years, our client complained intermittently to his doctor that he was experiencing rectal bleeding. The doctor, who never bothered to perform a complete examination for the problem, dismissed it as hemorrhoids. In February 1995, the client was diagnosed with terminal colon cancer. Our firm sued the doctor, who claimed that on several occasions he had suggested that a thorough examination be performed, but the client declined. Before trial, Attorney Steve Jacques settled the case for \$300,000.00.

### • *Assault At Mall Results In Settlement Of \$200,000.00*

In July 1994, our 26 year old female client was assaulted in her car in the parking lot of a Connecticut mall by her former boyfriend. After rendering her unconscious, he drove her to

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his home and sexually assaulted and stabbed her. She escaped and ran to a nearby home where the police were called and the assailant was shot and killed. Our firm sued the mall alleging that its security patrolling of the parking lot was inadequate. Prior to the assailant abducting our client from the mall parking lot, he had kept her in her car for nearly an hour. During that time, the mall security patrol never passed in the vicinity. During the lawsuit it was learned that despite security procedures, the personnel assigned to patrol the parking lot spent most of their time in the mall flirting with young female shoppers. The mall settled the case for \$200,000.00.

**• Fall In Parking Lot Yields Verdict  
Of \$385,000.00**

Attorney Gregory O'Brien of our firm recently obtained a \$385,000.00 verdict on behalf of a nurse who injured her right leg, hip, low back, shoulder and neck when a metal cover she stepped on as she was crossing a parking lot gave way and she fell into a below-ground electrical junction box. The client required surgery on her right shoulder; her medical bills totaled approximately \$33,000.00. Attorney O'Brien sued the owner of the parking lot, and at trial a witness testified that before the

accident date he had notified the property owner that the metal covering on the electrical box was not adequately secured. An award of \$385,000.00 was returned on our client's behalf.

**• Jury Awards Car Accident Victim  
\$50,000.00**

After two days of trial a jury in New London returned a verdict in favor of our client for \$50,000.00. In September 1994 our client sustained neck and back injuries when a vehicle in which she was a passenger was rear-ended by the defendant. Although responsibility of the defendant for the accident was not in question, the defense claimed that the plaintiff's medical treatment for her accident injuries was unnecessary and unreasonable. The plaintiff's doctor gave her a 5% permanent partial disability of her back from the accident. At the start of trial the defendant offered \$35,000.00 to settle the case. The jury returned a verdict of \$50,000.00.

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