

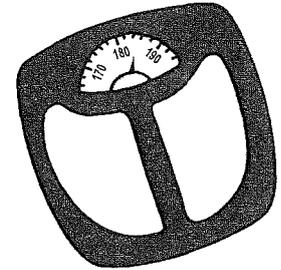
... And Justice For All

A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

Moore, O'Brien, Jacques & Yelenak

SPRING 2006

WEIGHT LOSS SURGERY: DREAM COME TRUE OR NIGHTMARE?



To millions it seems like a miracle – instant weight loss through a few hours of surgery. But to others gastric bypass has proved more like a nightmare. And in some cases, a deadly one.

For Ann P. the stories she had heard about gastric bypass were exciting. Since adolescence Ann had struggled with her weight. So when the 43-year old State mental health worker who supported her teenage daughter and elderly father, heard that a local hospital was offering gastric bypass she immediately inquired. Ann learned that despite endorsements of the surgery by celebrities such as Today Show personality, Al Roker, and singer Carrie Wilson, there were risks to the operation. First, it would be necessary to attend pre-operative classes on bypass and to discuss the surgery with patients who had undergone the procedure to gain a realistic expectation of what was to come. For there to be long-lasting benefits the surgery would have to be followed by a regimen of eating right and exercising regularly. Ann was ready for the challenge. She complied with all pre-operative requirements and was found to be a good surgical candidate. What Ann didn't expect was that the greatest hazard she would confront was the surgeon who would perform the operation.

As the surgery date approached Ann looked forward to a new slimmed-down figure and to the curing of her health problems: hypertension and diabetes, which commonly accompany obesity. She entered the hospital and underwent the surgery without apparent complication. Within two days she was discharged home. However, within 24 hours Ann began vomiting dark material which resembled coffee grounds. Then through her abdominal drainage tube there began to flow blood tinged and then, green fluid. Concerned, Ann's family contacted Dr. M. who made a house call. Upon examining Ann and the drainage Dr. M. declared this was all part of the normal post-operative recovery from bypass surgery. Ann, having placed her trust in Dr. M., was reassured. However, the next day the pain around the surgical incision increased and spread over her entire abdomen. She also now had difficulty breathing.

Dr. M. was called again. And again, rather than having Ann come to the hospital, he made a house call. More reassurance was given that all was normal. But now Dr. M. ordered an oxygen tank to the house. By day three Ann's mounting symptoms included alternating chills and fever. After urgent calls Dr. M. arrived once more and yet again assured Ann and her family that she was fine and that readmission to the hospital was unnecessary. At this point, Ann's confidence in Dr. M. remained unshaken, but her family wasn't buying it. They called an ambulance and Ann was returned to the hospital. Within one hour of arriving Ann was dead.

In the following days an autopsy revealed the cause of Ann's death as an intestinal infarct. Something Dr. M. had done during the weight loss surgery caused interrupted blood supply to Ann's intestines. Had Ann been re-hospitalized sooner exploratory surgery would have diagnosed the injury and Ann's life would have been saved. Ann's family contacted Moore, O'Brien, Jacques & Yelenak who filed a lawsuit.

"This was a surgical error. And with proper post-operative vigilance by the surgeon, a preventable death," says lead partner, Garrett Moore. "Too many people with weight problems are vulnerable to unrealistic claims of miracle obesity cures. And too many doctors who lack sufficient experience see the surgery as a popular moneymaker." Since Ann's death Dr. M. has given up his operating privileges at the hospital and has moved to another state where he continues to perform surgery. Ann's case is scheduled for trial in early 2007.

TOP HOME SAFETY HAZARDS TO AVOID

Every year 300,000 homes are damaged and lives lost when appliances go up in flames. Any product – even a TV or VCR – can ignite, warns the National Fire Protection Association. What follows are the most common home appliance blunders that put your family at risk.

THE KITCHEN

More than 200 Americans die each year from stove fires. The most obvious blunder – leaving a stove unattended. However, merely placing objects such as wooden cutting boards, plastic bags and oven mitts near a stove flame or heating surface or even failing to wipe up grease can set your house ablaze. If shopping for a range, choose a model with indicator lights that signal that the stove is on even before the element has attained full heat. And if you have young children choose a stove that has dials. They're harder for kids to manipulate.

Toasters and toaster ovens are a major hazard. Yearly hundreds of toaster fires are caused by people who hold the pop-up mechanism down to make toast. This causes the heating elements to overheat and melt adjacent parts. Pitch any toaster or toaster oven that has overheated. The latest toaster products can actually sense a jammed carriage lever or fire inside and automatically cut the power.

LAUNDRY ROOM

That harmless-looking fluff on dryer filters causes thousands of yearly blazes. When lint builds up, it clogs the airflow and dryer components overheat. Not checking the lint filter and neglecting the outflow duct are the most frequent causes of dryer fires. If your dryer is old and doesn't have heat-sensor technology that automatically shuts the dryer off at unsafe temperatures, be extra cautious. If the time it takes to dry your clothes is unusually long it probably means the duct is clogged – a fertile ground for fires.

FAMILY ROOM

When television, VCR and stereo components heat up, there may be a fire in the making. These appliances cause 2,000 blazes per year. Using your TV as a shelf for a pile of magazines can block the air vents and water dripping from overhead plants can short out wires. If you smell burning, unplug the appliance and have it checked before using it again.

BEWARE THESE NEW RIP-OFFS

It may be true there's a sucker born every minute. But today's cons are more devious than ever. If you think you've heard it all, beware – these latest growing frauds might just surprise you.

CHILD IDENTITY THEFT

Each year 400,000 children have their identities stolen – and most child I.D. thefts are perpetrated by family members. Children's unblemished credit and absence of criminal history make them ideal victims. Some crooks use children's names and Social Security numbers to ring up massive debts; others use children's identities in place of

their own when caught committing other crimes. And still others sell information on the black market to illegal immigrants and fellow criminals. Keep your children's Social Security and other identification information locked away. If there is evidence your child might be a victim of identity theft, order credit reports on them from the three nationwide credit bureaus; Equifax, Experian and TransUnion. Also, contact local law enforcement immediately and visit the Identity Theft Center's website at idtheftcenter.org.

THE FAKE JURY DUTY SCAM

Nobody likes jury duty – but the new fake jury duty scam is worse. The con begins when you receive a phone call, supposedly from your local court, stating that a warrant has been issued for your arrest because you failed to show up for jury duty. The caller just needs your Social Security number and date of birth to check the court records. And, of course, you comply. The scammer now has what he needs to steal your identity. Fact: Real courts correspond only by mail. Not by phone. And your Social Security number is never needed.

MEDICARE FRAUD

The Medicare prescription drug program that took effect in January is confusing – but it also administers a lot of money. This draws con artists who bilk seniors by selling phony plans, while others pose as insurers selling Medicare drug benefits. No legitimate Medicare prescription drug plan will send salespeople to your door uninvited. When it comes to this scam, leave your checkbook in the drawer.

IT'S PROBABLY NOT THE IRS

Each month, nearly one quarter of home computers receive a scam solicitation – many as messages that appear to be from the IRS claiming you are either due a refund or there is a problem with your tax return. The message appears to be on the actual Internal Revenue Service cite and looks official. But in reality it's a fake designed to collect your private information. According to an IRS spokesperson, the IRS does not send unsolicited e-mail.

THE SCHOLARSHIP HOAX

Perhaps no one is more vulnerable to a financial windfall than cash-strapped college students and their parents. Crooks capitalize on this by claiming that you qualified for a government grant or scholarship and that all that's required is the payment of a processing fee or a credit card number to hold the award. The fact is that government grant agencies and scholarship organizations never initiate correspondence. So if it seems too good to be true it probably is.

Steer Clear of these latest con games by these general tips:

The only time it's ever acceptable to reveal personal information over the phone is if you initiate the call; don't respond to e-mails requesting personal information no matter how official they look; shred old checking statements and even credit card offers to prevent identity theft; and most importantly, if you're asked to send money, take a pass. And if you've been victimized, contact your local Attorney General's Office, the Federal Trade Commission or the National Fraud Center (fraud.org).

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.

DEATH AT UNDERAGE DRINKING PARTY: \$1,650,000

In July 2004 two teenage brothers decided to throw a party at their house in Stamford while their parents were away on a brief vacation. Although underage, the boys managed to purchase kegs of beer for the party, to which all of their college classmates were invited, including our 19-year old client. At the party beer from the kegs was to be made available only to revelers who purchased cups at \$5.00 a piece. Once word of the party got around, the house was overrun by teenagers from all over town. And things quickly got out of hand. The police were called by neighbors and partygoers were disbursed, including our client who left in a car driven by a friend. While proceeding home the car left the roadway and crashed into a utility pole on the other side of the street. Our client was ejected from the vehicle and died at the scene.

It was later learned that the driver had a blood alcohol level nearly twice the limit for intoxication and was substantially exceeding the speed limit.

Partner Garrett Moore brought a wrongful death lawsuit against the teen driver and his parents with whom he lived and against the brothers who threw the party and their parents. Also, a prejudgment attachment of the parents' house was filed. The total available insurance was \$1,500,000. However, with an additional contribution of \$150,000 from personal funds of one of the defendants, the case was settled for \$1,650,000.

ICE AND GLASS INJURY YIELDS \$250,000

Our client, a teacher, suffered from a laceration of her right arm when she slipped on accumulated ice on the front steps of her apartment. In the fall, her arm went through a plate glass window. The resulting laceration was deep and caused significant blood loss as well as permanent nerve damage. Necessary surgery resulted in medical bills of \$15,000. Partner Brian Flood sued the landlord for his failure to timely clear the steps of ice and snow. Within six months of filing the lawsuit the case was settled for \$250,000.

ROUTE 8 ACCIDENT VERDICT \$18,779

In July 2002 our client had just entered Route 8 southbound in Derby when he was rear-ended by another vehicle. Amazingly, defendant flatly denied responsibility

for the accident until the eve of trial. Our client treated for his injuries for six months with a chiropractor and was assigned a 5% permanent partial disability of his low back. The defendant's insurance company, Allstate, offered \$8,000 to settle the case. However, partner Joe Foti decided to let the jury decide and an \$18,779 verdict was rendered.

ATTORNEY FOTI STRIKES AGAIN

In another rear-end motor vehicle accident, which also occurred in July 2002, our client was hit on Heritage Road in Southbury. Although he suffered neck and low back strains that required treatment by a medical orthopedist, Allstate (again) offered a settlement of only \$10,000. Attorney Foti tried the case in the Waterbury Court and won our client \$28,000.

\$800,000 FOR DELAY IN DIAGNOSIS OF SKIN CANCER

In May 2000 the wife of our client noticed a mole on his low back. It was removed by a surgeon and submitted for analysis to a central Connecticut hospital. The pathologist reported that the mole was non-cancerous and therefore, no follow-up treatment was rendered. Two and one-half years later our client noticed a swollen lymph node in his groin. A biopsy of the node revealed metastatic melanoma, the most deadly form of skin cancer. This prompted a reexamination of the 2000 mole by the original pathologist as well as four of his colleagues at the hospital. It was discovered that the original diagnosis was wrong.

In the lawsuit, plaintiffs' experts testified the features of the mole met every criteria for melanoma and, therefore, the misinterpretation in 2000 by the pathologist was clearly negligent.

The two and one-half year delay in diagnosis had reduced our client's ten-year statistical survival from 64% to 47% – a change from a probability of his survival to a probability of his death. The defense claimed that other reasonable pathologists could have also misinterpreted the mole as non-cancerous and that the defendant pathologist performed five recuts of the mole in the course of his original analysis. Defendant also claimed that at the time of the medical negligence the cancer had probably spread and, therefore, a timely diagnosis would not have made a difference in treatment or in our client's likelihood of survival. Since the time of the diagnosis and treatment our client had unfortunately undergone five negative body scans for cancer. At mediation partner Steve Jacques settled the case for \$800,000.

CHRONIC EAR RINGING = \$360,000

In a motor vehicle accident our client was rear-ended at a moderate speed and there was minimal body damage to his car. Nevertheless, the plaintiff suffered neck and back sprains as well as headaches. In addition, and perhaps the most significant claimed injury was a condition only very rarely associated with trauma; tinnitus,

which is otherwise known as unrelenting ringing in the ears. Although our client's pain and headaches resolved within months of his tinnitus worsened to the point he had to quit his job with the State and, abandon his hobby of flying and motorcycling.

The defendant's lawyer all but dismissed the tinnitus claim as groundless. However, with the support of some of the most qualified medical experts in the field, partner Gregory O'Brien obtained an arbitration award of \$360,000.

**TOWN'S FAILURE TO CLEAR
ICE YIELDS \$562,000**

In 2001 our client, a UPS employee, fell on a patch of black ice on an entry ramp to the Town of Winsted's Board of Education office while making a delivery. The construction of the building, years earlier, allowed run-off water from the roof to pool on the ramp and freeze in cold weather. Our client paid the price for this long-standing, dangerous condition by sustaining significant neck injuries that required neurosurgery. Partner Bill Yelenak pursued the case and obtained \$562,000 for our client.

**LOSS OF EYE IN \$1,000,000
PAINTBALL INCIDENT**

In the summer of 2003 our teenage client went to his friend's house to shoot paintballs in the woods behind

the home with his other buddies. Things predictably got out of hand and one of the boys complained to the friend's father that the boys were shooting paintballs at one another. In response, the parent did nothing. The behavior continued and in an instant our client was hit in the eye with a paintball. Despite heroic measures by doctors the eye could not be saved. A lawsuit was brought against the boy who fired the ill-aimed shot and the homeowner father. The defendant's insurance company's position was that because the paintball shot that caused the injury was intentional the incident was not covered by insurance. Nevertheless, a settlement was reached by Attorney Chris Flood, which will provide our client with more than \$1,000,000 over his lifetime.

**ATTORNEY KRUPNIK TURNS
\$5,000 INTO \$31,000**

In 2004 our 44-year old Spanish speaking client was driving West on Main Street in Waterbury when another driver coming from the opposite direction suddenly tried to make a left turn in front of him. The accident totaled our client's car and caused him to sustain a 10% permanent partial disability of his low back. The defendant claimed he had the green arrow to make the turn and that, in any event, our client had significant pre-existing back problems. On the eve of trial \$5,000 was the defendant's take it or leave it settlement offer. Attorney Tricia Krupnik, along with her client, decided to leave it and at trial she obtained a \$31,400 verdict.

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