

## ... And Justice For All

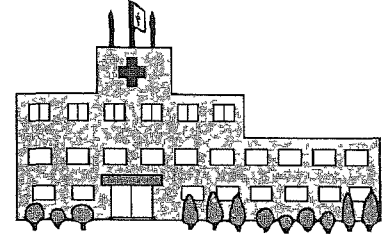
A LEGAL NEWSLETTER FROM THE LAW OFFICES OF

# Moore, O'Brien, Jacques & Yelenak

WINTER 2008

### Rush to Judgment in the E. R.

August 12, 2003, was just another hot and stressful workday for 58 year-old businessman, Bruce M. – until he felt the sudden grip of crushing chest pain while rushing to catch a train. Bruce thought nothing of it. But upon arriving at his beachfront home later that night the pain returned. However, now it radiated from his chest into his neck and down his arm. And it was accompanied by shortness of breath, nausea and sweating so profuse that it drenched his shirt. Bruce knew the warning signs of a heart attack. He called an ambulance.



Upon arriving at the E. R. of a major Connecticut hospital, Bruce was triaged and administered strong pain medication. The history Bruce provided to the E. R. staff should have been at least as worrisome as his presenting complaints. Bruce had nearly every cardiac risk factor known to medicine: He was a middle-aged, overweight, diabetic male with a smoking history, high-pressure job and a sedentary lifestyle. Also, he had hypertension and high cholesterol. His mother and father died of blocked coronary arteries; his brother had undergone two coronary artery bypass surgeries. Bruce was a walking time bomb.

The E. R. doctor in charge of Bruce's care was certainly thinking heart trouble – over a three-hour period he conducted two EKG's and a blood test to check for Troponin, an enzyme excreted into the blood stream if there is heart damage. Except for a slight irregularity on one of the EKG's, all tests were within normal limits. However, what the E. R. doctor failed to appreciate is that a patient can be on the verge of a heart attack and yet have normal EKG's and no Troponin in his blood.

The standard of care, given Bruce's presenting complaints and medical history, required the E. R. doctor to assume that Bruce was having a coronary emergency until it was proven otherwise. The standard also called for Bruce to be administered clot dissolving drugs such as a Plavix and to have serial Troponin tests over an eight-hour period. Instead, once the EKG's and the single Troponin came back negative, the E. R. physician dismissed the cardiac diagnosis and looked for other causes. And he found one: the doctor found a sore spot of tissue near Bruce's breastbone and even though Bruce had no history of muscle strain or trauma, declared that the chest pain was due to chest muscle strain. Bruce was given a prescription for a muscle relaxant and discharged.

Two weeks later Bruce suffered a major heart attack. He was returned to the same hospital. A cardiology consult promptly yielded the diagnosis of unstable angina caused by nearly total blockages of two of his three coronary arteries. One of these blockages was medically known as the "widow maker." Emergency angioplasty successfully opened one of the arteries. But Bruce had gone into cardiogenic shock and had to be placed in a coma. He remained hospitalized for two weeks and then underwent cardiac rehabilitation and surgical reopening of the other blocked artery.

Bruce consulted with partner Stephen Jacques who, in consultation with a cardiology expert, concluded that if the appropriate medical work-up had been done in the emergency room Bruce's blocked arteries would have been diagnosed and cleared and the heart attack avoided. "We recognized that no amount of money could compensate Bruce for the permanent damage that was done to his heart muscle," says Attorney Jacques. "But we like to think we also sent a message to this hospital and doctor to be more careful with other chest pain patients."

At a recent mediation the case settled for \$1,000,000.

## ALLSTATE NAMED AMERICA'S WORST INSURANCE COMPANY

We were not surprised to learn that the American Association of Justice, in its recently released report entitled *The Ten Worst Insurance Companies In America*, names Allstate as the country's worst insurer. Allstate gained this status through its "deny, delay, defend" claims practices, and from documents in which a top consulting firm advised Allstate how to deny policy holders billions of dollars in claims. A report even shows how insurers profited by denying Hurricane Katrina claims which forced the financial burden on taxpayers. Other insurance companies who made the top ten worst are State Farm (#4), Farmers (#7), and Liberty Mutual (#10).

## PROTECTING YOURSELF DURING YOUR HOSPITAL STAY

It has been a few years since the federal government revealed that 100,000 patients die each year in hospitals due to medical mistakes. Unfortunately, the numbers have not improved. Here are some sobering facts about many hospitals. And some ways to protect yourself and your family in the event of a hospital stay.

### Your experience may start in the hospital emergency room.

Just entering an E. R., life-threatening delays in treatment aside, can endanger your health. First, it may start in the air. Approximately 70% of the air in today's E. R.'s is re-circulated and spreads airborne infections. According to the Centers for Disease Control, hospital-acquired infections kill thousands annually. If you have the choice, select a hospital E. R. that features isolation rooms, with circulation systems that keep a patient's germs from spreading.

**Choose a hospital with a fully computerized medical system.** The majority of a doctor's hospital time is spent seeking patient information because many hospital's records are still kept on paper. Most hospitals have computer systems less advanced than those at your local supermarket! Computerized records and imaging studies enable your doctor to review your entire medical record on computer screens located throughout the hospital.

**Avoid unnecessary imaging studies.** Medical radiation is a powerful tool; a CT scan can detect kidney stones, coronary blockages and brain tumors. But they also expose you to radiation. A CT scan of the abdomen delivers 50 times more radiation than an x-ray. And it is estimated that 1%-2% of all cancers may be linked to CT scans. Ask your doctor if a CT scan is necessary. Perhaps another test, such as an ultrasound, could be substantial. Also, make sure the imaging facility is accredited by the American College of Radiology, which requires the lowest possible doses of radiation. Also, ask if the dosage on a CT scan can be adjusted for children or small adults. Finally, avoid repeat imaging procedures. If your doctor insists on another one, ask why.

**In choosing a surgeon don't assume that the biggest is the best.** Often the most prominent physician, such as the department chairman, are not the best clinicians. This is because they spend most of their time being administrators and no

longer primarily focus on caring for patients. Don't necessarily be impressed with titles.

**Avoid Friday afternoon surgery.** The day after surgery is when most problems arise. If the next day is Saturday, hospital units will be understaffed and E. R.'s overwhelmed because doctors' offices are closed.

**After dark is prime time for hospital errors.** Studies have shown that mistakes multiply on the night shift. Babies born late at night are more likely to die. Cardiac patients too. More medication errors occur at night. The reason is not surprising. Fewer staff with less experience. Also, fatigue is a factor. Self protection as the sun sets involves the following:

- Keep a list in plain sight of all medicines and the doses you are taking.
- As night approaches, ask the names of the nurses who will be working the upcoming shift so if you have a problem you can ask for one by name.
- If you are concerned about the level of night time attention you're receiving, ask a friend or family member to stay with you. Many hospitals allow this. Hiring a private nurse is also possible.
- Check out your local hospital in advance of need on [hospitalcompare.hhs.gov](http://hospitalcompare.hhs.gov).

## CAT SAFETY TAKES A GREAT LEAP FORWARD

Partner Joe Foti recently blazed a legal trail in protecting the public from the cat population of Connecticut. In a lawsuit that went all the way up to the Connecticut Supreme Court, a cat named Baxter who regularly fought with the neighborhood cats attacked our client's arm. When she tried to remove Baxter with her other hand, Baxter bit that one too. She suffered infections, torn ligaments, incurred over \$20,000 in medical bills and underwent multiple surgeries to repair the damage.

At trial, the Court dismissed the case because the law held that an owner cannot be responsible for damages unless the cat had previously displayed a vicious disposition. Baxter, the Court reasoned, had never displayed vicious tendencies toward people. But the Supreme Court held that a cat owner cannot escape responsibility for injuries inflicted simply because the cat has no history of attacking people.

## THREE QUESTIONS TO AVOID MEDICAL MISDIAGNOSIS

Despite vigorous training in diagnosing disease, the fact is that doctors make misdiagnoses all the time. Nearly one in five patients is misdiagnosed. And half of those face serious harm because of it. Contrary to the belief that misdiagnosis results from technical foul-ups, such as mislabeling x-rays or mixing up blood specimens, most cases arise from mistakes in the doctor's thinking. Too often doctors seize upon the first symptoms or test result to make a diagnosis. Or they may assume that a previous experience with a different patient explains your condition. Finally, doctors can fall prey to stereotypes, such as assuming in the elderly that all complaints are due to age-related conditions. To help your doctor – and yourself – pose these three simple questions:

- What else could be responsible for your signs/symptoms?

This helps prevent a diagnosis being reached too quickly.

- Could two conditions be responsible for the symptoms? In medical school doctors are taught to identify a single cause to explain a variety of complaints. But sometimes a patient has two medical problems simultaneously. Physicians may stop searching once they find an initial problem and the more serious problem is missed.

- Ask if there is anything in your physical exam or test results that do not fit with the doctor's diagnosis. Physicians tend to discount information that contradicts their hypothesis. This bias can lead your doctor down the wrong path. Asking the doctor to confront evidence that challenges his diagnosis may save your life.

## TOY SAFETY ISSUES CAN BE AN UGLY HOLIDAY SURPRISE

When shopping for children's toys this holiday season, put safety at the top of your list. Experts say the major risks to be alert for are small pieces and broken or easily breakable parts. The Consumer Products Safety Commission does not screen toys or other children's products before they go on the market. Toy manufacturers are supposed to ensure that toys meet government safety regulations. These rules are meant to guard against toys that present laceration, entrapment and strangulation hazards. When toys meet these rules, they have markings indicating they meet ASTM F963. CPSC does catch some imported toys that don't comply with federal rules, such as certain products from China. However, to protect your children at holiday time, follow these simple tips in your purchases of toys.

- Abide by the age guidelines on toy packaging. When a product label says it is for children of only a certain age or older, there is an important safety reason for it. Similarly, there is a good reason why a toy requires adult supervision.
- Inspect toys before purchase to see if they could easily break into small swallowable parts.
- Keep toys for children of different ages separate, and instruct older kids which toys are off limits for underage kids.
- Read and review instructions carefully with children, babysitters and others who will use the toys.

## 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.

### SETTLEMENT FOR TEEN HURT IN MVA: \$1,115,000

At age 15, Barbara R., was a passenger in a vehicle that was rear-ended in Wallingford in May, 2002. As a result of the accident, Barbara suffered from post concussion syndrome, neck pain, mid-back pain, headaches and claimed that her fibromyalgia was aggravated to a much higher level. The defense claimed that many of Barbara's injuries pre-dated the accident. Her medical and school records revealed a long history of complaints of pain from fibromyalgia. Prior to trial, partner, Joe Foti mediated Barbara's case, resolving it by way

of a structured settlement in which the young woman will receive in periodic payments a total of \$1,115,000 plus monthly checks for the rest of her life in the amount of \$1,800.

### MILLION \$ MOTORCYCLE ACCIDENT

On the morning of July 21, 2007, 42 year-old David B. was driving his motorcycle on a city road when suddenly an oncoming driver turned left directly in his path. Having no time to react, David struck the side of the car. As a result of the collision, David suffered multiple open fractures to his left arm, acute carpal tunnel syndrome, right knee fracture with complete tears of his medial collateral and anterior cruciate ligaments and a pelvic fracture. He underwent multiple reconstructive surgeries.

Despite being found at fault by the investigating officer for not yielding the right-of-way, the driver incredibly claimed that David was to blame for not avoiding the collision. This assertion did not last long with Garrett Moore refusing to back down from the insurance company. The case was settled after filing suit for \$1,250,000.

### MEDICAL CHART MIX-UP: \$620,000

Our client was diagnosed by an ophthalmologist as having significant risk factors for a retinal detachment. As a result, he warned her that she should immediately bring to his attention certain signs and symptoms. Approximately eight months later, when these symptoms appeared she promptly scheduled an appointment with the doctor. However, at the appointment the doctor's assistant mistakenly wrote down the symptoms in a different patient's chart. As a result, the doctor examined and treated our client for a different and erroneous set of complaints. Four days later the retina in our clients left eye completely detached. Despite three surgeries she never regained anything approaching full vision in the eye. Steve Jacques settled the case for \$620,000.

### REAR-ENDER ON I-95: \$900,000

Our 51 year-old client was rear-ended while stopped in heavy traffic on I-95 in Stamford. He was treated and released from a local emergency room with a diagnosis of cervical strain; however, in his follow-up with an orthopedist a herniated neck disc was discovered. Urgent surgery was performed by a world-renowned New York City surgeon in which our client underwent a spinal fusion. The total medical bills were \$158,000; lost wages were \$26,000. Our client faced a probable second surgery at some point in his life. Partner Gregory O'Brien settled the case at mediation for \$900,000.

### DENTIST HURT IN CAR CRASH GETS \$337,500

Michael T., a dentist, was involved in a rear-end motor vehicle accident in 2004. As a result, he suffered neck and back injuries as well as headaches. At the time of the accident, Dr. T. had contemplated retiring and selling his business, but decided against it. He did not lose a lot of time from his practice but described at his deposition how his practice is limited now due to pain. Joseph Foti negotiated a \$337,500 settlement on his behalf.

**FAILURE TO DIAGNOSE DEADLY HERNIA:  
\$500,000 SETTLEMENT**

Following hip replacement surgery our 70 year-old client was admitted to a rehabilitation center in central Connecticut. At the time of her admission a complete body exam was performed which disclosed the presence of an abdominal hernia. Over the course of the five-day stay she suffered from worsening nausea and vomiting as well as fever and elevated blood count. Staff, as well as her attending physician, attributed the deterioration to a possible post-operative hip infection. In fact, strangulation of the intestine secondary to the hernia was the cause of the symptoms. By the time the diagnosis was made the patient was too weak for surgery and died. Brian Flood settled the case against the doctor and the facility for \$500,000.

**\$525,000 SETTLEMENT FOR BIRTH INJURY**

Our client was born in December 2002, during which his shoulder became impacted against his mother's pubic bone. As a result, the ob-gyn had to perform a number of vigorous maneuvers to free him. In the process, a group of nerves in our client's shoulder was damaged, requiring surgery and years of physical therapy. In the lawsuit it was claimed that in the delivery, the doctor panicked upon encountering the impacted shoulder and pulled too hard, causing the injury. Also, in light of the mother's prenatal excessive weight gain, history of a previously large infant and gestational diabetes, the standard of care called for a C-section delivery. The doctor contended that he had performed the standard indicated maneuvers for remedying a shoulder impaction. Two weeks

before trial Stephen Jacques settled the case for \$525,000.

**MOTOR VEHICLE ACCIDENT NETS CLIENT \$34,000**

On a late Fall day two years ago our client was travelling north on Wolcott Street through an intersection in Waterbury when she was broadsided from her left by another motorist. Our client clearly had the right of way; however, although she incurred \$12,000 in medical bills her orthopedist assigned her only a 7% permanent partial disability of her shoulder. Attorney William Yelenak filed an Offer of Judgment for \$20,000, which was rejected by the defendant's insurance company. At trial the jury awarded \$24,583 which, with the addition of \$8,600 in interest and costs increased the judgment to \$34,000.

**FAILURE TO FULLY TREAT ARM  
INJURIES YIELDS \$325,000**

At Christmas time, our telephone company client fell off a ladder while stringing holiday lights on his home. After being seen at the emergency room of a local hospital, he underwent surgery by an orthopedic surgeon who diagnosed a dislocated elbow and fractured wrist. A metal plate was inserted at the wrist and our client was discharged. A few months later it was discovered that his wrist had healed in a deformed position and his elbow dislocation had recurred because it had not been anchored correctly. In addition to the physical injuries, our 47 year-old client claimed that he was repeatedly passed over for job and wage promotions with his company. Four days prior to trial Stephen Jacques settled the case for \$325,000.

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