

Legal Matters

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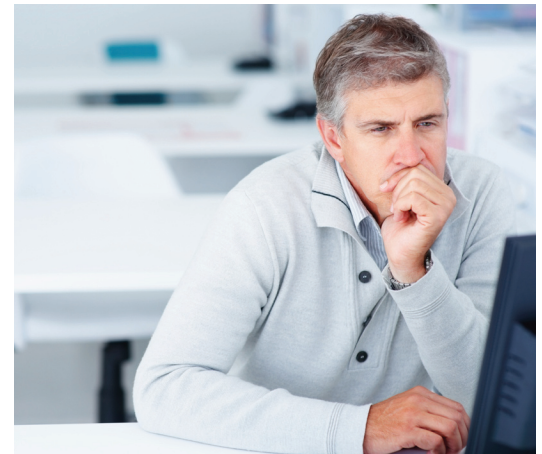
clients wonder: WHAT TYPES OF COMPENSATION CAN I RECEIVE FOR MY INJURIES?

When we sit down to discuss a client's personal injury case with them, many times they are dealing with not only financial losses as a result of their injuries, but also from the devastating emotional impact a serious accident can have.

A successful personal injury claim can enable a victim to recover both monetary and non-monetary damages.

Some common examples of monetary damages (which are also known as special damages) include:

- **Lost wages**, including wages lost while recovering from an injury or loss of future earning capacity.
- **Medical expenses**, which can include both past and future medical care, and rehabilitation costs.
- **Costs associated with living with a disability**, such as the cost to make a home wheelchair-accessible.
- **Costs of property damages** as a result of an accident.
- **Funeral expenses.**



Examples of non-monetary damages (also known as general damages) include:

- **Pain and suffering.** Victims can receive compensation for the actual pain from their injuries as well as the emotional distress caused by them.
- **Loss of consortium.** Spouses of personal injury victims can receive damages for being deprived of the emotional and physical elements of a marriage.

If you have questions about the types of compensation you may be owed, please call our office to speak with one of our experienced attorneys about your specific situation. ■

malpractice cap RULED

UNCONSTITUTIONAL IN ILLINOIS

The Illinois Supreme Court recently ruled that the state's cap on malpractice damages was



unconstitutional, bolstering the argument that judges and juries – not legislators – should be responsible for determining appropriate damages in malpractice cases.

The decision was based on a tragic case of a baby born with severe impairment as a result of mistakes allegedly made by doctors attending her mother. The baby, Abigaile Lebron, was born in 2005, and suffered severe brain injury, cognitive mental impairment, cerebral palsy, and the inability to develop normal neurological function. Doctors allegedly failed to perform tests on her mother which would have indicated the need for an immediate delivery and too much time passed until Abigaile was delivered by Cesarean section.

The court ruled that the cap on damages put in place by the state legislature was a violation of the separation of powers, and intruded on the authority of judges to make sure that jury verdicts are in line with the evidence presented in malpractice cases. This is the third time since 1976 that the Illinois Supreme Court has ruled that malpractice caps are unconstitutional.

The 2005 statute had capped jury verdicts at \$500,000 against doctors found liable and \$1 million against liable hospitals. ■

foreign manufacturers

MAY FACE NEW ACCOUNTABILITY RULES

According to recent analysis by the American Association for Justice (AAJ), foreign manufacturers accounted for 83 percent of the 377 product recalls announced by the Consumer Product Safety Commission (CPSC) in 2009. The figures in 2008 were similar, as 84 percent of the recalls that year were from foreign manufacturers.

To make matters worse, even though foreign manufacturers export billions of dollars of products to the United States each year, they do not face the same level of accountability that U.S. manufacturers face when defective products injure or kill Americans.

A movement is afoot to help remedy that situation, as a group of U.S. representatives has introduced bi-partisan legislation – the Foreign Manufacturers Legal Accountability Act – aimed at making it easier for U.S. consumers to hold foreign companies accountable for defective products.

According to the AAJ, the new legislation would:

- Require manufacturers to have an “agent” located in at least one state where the company does business that would accept service of process for civil and regulatory claims.
- Require that companies consent to state and federal jurisdiction, holding foreign manufacturers accountable to those judicial standards.
- Cover products regulated by the CPSC, such as children’s toys; the Food and Drug Administration (FDA), including prescription drugs and medical devices; and the Environmental Protection Agency (EPA), including pesticides.

For more information on product recalls, please visit www.cpsc.gov. ■

WHY ARE HOSPITALS failing patients?

Make no mistake about it; a qualified and adequate nursing staff is required by any facility to ensure safe and appropriate patient care. Unfortunately, hospitals in America are facing a historic nurse shortage that is projected to worsen as baby boomers continue to age and require increasing medical care. Even worse, hospitals are not doing anything about this dearth of nurses and the repercussions are being seen by you, the patient.

The numbers are astounding. According to reports by the American Health Care Association and the American Hospital Association, as of July 2007, there were more than 135,000 total registered nurse positions unfilled, translating to a national registered nurse vacancy rate of 8.1 percent. Dr. Peter Buerhaus, in the July/August 2009 issue of Health Affairs, projected this figure to climb to more than 260,000 available nurse jobs by 2025.

Not only are hospitals taking virtually no steps to curtail this crisis, but the government is not alleviating the problem either. Alarming, House Bill 4138, The Registered Nurse Safe Staffing Act of 2007, is no longer current and must be reintroduced and pass in order to become a federal law. This Bill would have amended the Social Security Act to improve minimum nurse staffing ratios in hospitals participating in Medicare program. An updated version of this legislation, Senate Bill 54 - The Registered Nurse Safe Staffing Act of 2009, was introduced in January 2009 and now resides in the Senate's Committee on Finance. Again, this vitally crucial law was stalled during the latest legislative session.

While the government does not seem to be making the passage of Senate Bill 54 a priority, certain states have taken it upon themselves to pass smaller scale legislation to address some of these issues. Unfortunately, these are only small-scale attempts at rectifying a problem that requires sweeping, national reform.

Citing numerous studies to support their claim that safe staffing is at the core of patient safety, the American Nurses Association has long been an advocate for nurse staffing reform for more than a decade. Knowing first hand the traumatic effects of inadequate staffing levels on patient care, not to mention the well-being of nurses themselves, it was the ANA that helped introduce and support H.R. 4138.

Without some sort of reform, the effects of a continued nurse shortage will be devastating for a healthcare system

that will see a generation age into its twilight, and another generation gain access to healthcare at historic numbers. The ongoing increase in patient visits and hospital stays is already stretching depleted nursing staffs dangerously thin. As nursing staffs become emasculated, safe patient care is in jeopardy.

While the effects of burnout and stress on a nurse's life can be dangerous and far-reaching, it is the side-effects of fatigue that can cause safety issues for patients. Not only are hospital nursing staffs' understaffed; the nurses that are there are often dangerously overworked and tired. It only takes one exhausted nurse or one less nurse to cause serious health risks to those patients in need. When you have an entire country full of weary nurses and understaffed healthcare facilities – the results can be catastrophic. How many preventable injuries, needless medication errors, and deaths can be attributed to these failures? It is frightening what the statistics show!

Hospital administrations must do a more diligent job when assigning nurse staffing levels for their facilities and departments. By not properly monitoring nurse workloads and staffing needs, hospitals are placing patient safety at a huge risk.

But hospitals are not alone – the federal government must also shoulder some of the blame. The failed bill, H.R. 4138, would have required safe, baseline nursing staff numbers for healthcare facilities on a national level. Although there have been similar laws addressing a portion of these concerns passed at the state level in Illinois, Florida, Texas, Massachusetts, Michigan, and New York: federal law is paramount to national patient safety.

With instances of medical error and negligence continuing to rise in the United States, patients must be aware of the demands and limitations of those nurses providing their healthcare. As always, patients are encouraged to be proactive in their medical care and treatment. If a patient believes that their nursing staff is fatigued, short staffed, or incapable of providing safe and reliable care, they must be their own patient advocate. Patients must always ask questions, and demand appropriate answers. ■

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April Important Dates

April 1 - April Fool's Day April 2 - Good Friday April 4 - Easter Sunday April 15 - Tax Day

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the best way to lose

YOUR ACCIDENT CASE

It doesn't matter how good your case is, if you lie to your lawyer or the insurance company about past injuries and accidents, the jury is going to make sure you lose.



Remember, the insurance companies have access to vast databases about your private life, including past lawsuits, claims, and injuries. And nowadays, with the popularity of social media sites like Facebook and Twitter, there is even more information out there about you that can fall into the wrong hands.

As always, honesty is the best policy.

Tell your lawyer all about past claims and injuries, so that he or she can deal with it. The worst thing is for your lawyer to be the last one to know! ■

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