



# FLANZIG & FLANZIG, LLP

Attorneys At Law

## LEGAL UPDATE

SUMMER 2003

A newsletter from  
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## Please pardon our appearance

As always, you can find  
Flanzig & Flanzig, LLP,  
at our building located at

**323 Willis Avenue  
Mineola, New York.**

We are in the process of completing an  
extensive remodeling project. Please bear with  
us while the renovation is being completed.



## LEGISLATIVE UPDATE

### The U.S. House of Representatives passes Anti-Patient Bill

#### *House passes bill placing limits on jury awards in malpractice suits*

On March 13, 2003, the U.S. House of Representatives passed a bill (H.R.5.) that, if enacted, will severely limit patients' rights.

This bill would place a nationwide arbitrary cap of only \$250,000 on pain and suffering—regardless of the severity of the injury—impose a one-year statute of limitations on most cases, and do away with joint and several liability, among many other dangerous, discriminatory, and unfair provisions. Similar legislation is expected to be proposed in the Senate.

In 1999, the Institute of Medicine released a report that estimates that as many as 44,000–98,000 people die in U.S. hospitals each year as the result of medical errors. An article in the *Washington Post*, dated December 3, 2002, found that since this report was released, little has been done to reduce death or injury at hospitals. The article detailed the lack of progress made to reduce instances of medication errors, wrong-site surgeries, and hospital-acquired infections.

At a time when up to 98,000 people die each year in hospitals as a result of preventable medical errors alone, curtailing patients' access to the civil justice system and preventing victims from being able to obtain fair and just compensation is unjustified. The solution proposed by the medical lobby and the insurance industry is to reduce victims' rights, rather than address the wrongs against them.

**WE REPRESENT  
CLIENTS WHO  
HAVE SUFFERED  
SIGNIFICANT  
INJURIES AS A  
RESULT OF:**

- Automobile Accidents
- Motorcycle Accidents
- Construction Accidents
- Medical Malpractice
- Defective Products
- Police Job-Related Injuries
- Firefighter Job-Related Injuries

#### ***What you can do***

Go to the New York State Trial Lawyers Association Web site, [www.nystla.org](http://www.nystla.org), at the site's Legislation Action Center, which enables you to contact your local representative and send them a pro-consumer e-mail.

**516-741-8222**

# The medical malpractice insurance situation

## What's it really all about?

Newspaper front pages and television news reports create an impression that outrageously high jury awards are the reason for the huge increases in doctors' medical malpractice insurance. As with some media reports, digging a little deeper for information unearths facts and details that tell a very different story.

Here are several aspects of the so-called medical malpractice insurance crisis in which the media have been sketchy in their reporting.

- An underreported factor contributing to medical malpractice insurance premium increases is the poor investment decisions that insurance industry executives have made in the past 10 to 15 years. They have to raise premiums to maintain profit margins.

- Medical malpractice insurers waged intense price-dropping wars with competitors over the past decade by artificially lowering premium prices and undercharging physicians for policies. However, when insurers got caught short by Wall Street's performance slump in the late 1990s, they decided to levy large premium increases.

- Although medical care costs saw a dramatic 75 percent

increase from 1988 to 1999, medical malpractice premiums increased by less than six percent in the same period.

- Medical malpractice insurance premiums account for only 3.5 percent of the average physician's annual revenue.

- When legislators impose medical malpractice case damages limits, insurance companies do not reduce premium rates for physicians' policies. In states with

damage caps, the average internal medicine physician's insurance premium is \$7,887 per year. In states without caps, the average internal medicine physician's insurance premium is \$7,715.

- Medical malpractice awards are not exploding. The current average insurance payout is about \$30,000, which hasn't changed in more than a decade.

- According to the *Philadelphia Inquirer*, doctors are not fleeing the profession as some other media have reported.

- A small number of doctors are responsible for most malpractice cases—in Kentucky, 16 percent of the state's physicians accounted for 100 percent of the medical errors leading to medical malpractice cases in the past decade.

- Very, very few doctors are ever disciplined by state medical societies for their errors.



## REFERRALS

We want you to think of us as your law firm. If you have a legal matter that needs attention, let us know. If we can't handle the matter, we will refer you to a competent firm that can. Please feel free to refer us to your friends and family for their legal needs. We welcome the opportunity to help.

## Recent settlements and verdicts

### \$250,000 recovery

**Daniel Flanzig** obtained a \$250,000 recovery for a 41-year-old New York City Fire Department Lieutenant who was injured while in the line of duty. The firefighter sustained second- and third-degree burns to his head, ears, and hand. The fire started as a result of the negligence of the restaurant owner, who placed a bug defogger adjacent to an open pilot light in his restaurant. After a jury was impaneled, the matter was settled in the Supreme Court, Queens County, for \$250,000 of the defendant's \$300,000 insurance policy.

### \$320,000 recovery

**Daniel Flanzig** obtained a \$260,000 recovery for a 66-year-old woman and a \$60,000 recovery for her 68-year-old husband who were involved in an automobile accident with a truck driver in Queens, New York. The husband was operating the vehicle in which his wife was a passenger.

The woman sustained fractures of her pelvis, right clavicle, and posterior rib. Her husband sustained a herniated lumbar disc as well as a bulging cervical disc.

The settlement occurred immediately prior to the jury being selected in the Supreme Court, Bronx County.

*Lawsuit outcomes may vary. All verdicts and settlements are based on the individual facts of each case.*



## CONSUMER ALERTS

Each year, there are roughly 25 toy-related deaths and 255,000 injuries among children. Compiled from lists by two research groups, the top ten most dangerous toys of 2002 are listed here:

### Ten most dangerous toys of 2002

- Brio's Curios George
- Digital Monsters Digimon Bank
- Little Stars Lamaze—My First Dollhouse
- Pottery Barn Kids—Critter Mobile
- Fisher-Price Creative Coaster
- Baby Had a Little Lamb—Cuddly Buddy
- Hot Wheels Sling Shotz Blaster
- Snoopy & Friends Sno-Cone Machine
- Bull's Eye Mini Pellet Shot
- Bob the Builder—Counting Hammer

### Toy hazards to watch for:

- small parts
- projectiles
- sharp edges or points
- long cords
- flammable or toxic materials
- electricity

Visit the WATCH Web site at <http://www.toysafety.org> for continuing updates.

### What you can do

Follow the watchdogs. There are independent organizations that test products. Consumer Union (CU) tests about 75 categories of consumer products each year for safety and performance. The results are published in CU's magazine, *Consumer Reports*.

## NO-FAULT UPDATE

Based upon a recent amendment to the New York State Insurance Law, a claimant has only 30 days from the date of their accident to file a claim with their own insurance carrier. Under New York State no-fault law, an accident victim's own insurance carrier is responsible for making payment of their medical bills and lost wages. It is important to seek the advice of an attorney promptly to ensure that your rights are protected.

## You can protect yourself

Please check with your insurance agent to make sure your automobile policy contains **Supplemental Uninsured Motorist Coverage** and **Supplemental Spousal Liability Insurance**.

**Supplemental Uninsured Motorist Coverage** protects you and your family if you are involved in an automobile accident with an uninsured or underinsured driver. While bodily injury liability insurance protects others if they are injured as a result of your negligence, **Supplementary Uninsured Motorist Coverage** is a relatively inexpensive way to make sure both you and your family are protected if they are involved in an automobile accident with someone who either has no insurance or the minimum amount of insurance.

**Supplemental Spousal Liability Insurance** permits one spouse to make a claim for injuries or death against another spouse as a result of the negligence of that spouse. Unless this coverage is purchased, one spouse may not sue another for their negligence in causing injuries or death.

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The information included in this newsletter is not intended as a substitute for consultation with an attorney. Specific conditions always require consultation with appropriate legal professionals.

## Medical malpractice

### *Failure to diagnose cancer*

One of the most frequent types of cases seen in medical malpractice is the failure to diagnose cancer. In the case of a potentially deadly disease such as cancer, the key to a cure is early detection.

Most cancers are curable, if caught early enough. This is why there are mammograms, sonograms, and fine-needle biopsies to detect breast cancer in its early stages. It is why we have chest x-rays and CAT scans to detect lung cancer and Hodgkin's disease early on. It is why patients undergo rectal exams to check for blood that may be hidden in their feces, and colonoscopies to detect colon cancer. Even a simple blood test can often provide enough information to alert a doctor to the possibility that cancer is present.

Unfortunately, even when a patient does the right thing and goes to the doctor for routine screening or to discuss a new symptom or physical findings, his or her concerns may not be addressed appropriately.

Sometimes, physicians do not order the right tests to determine whether cancer is present. Additionally, even when the right tests are ordered, the results are sometimes misread.

When such mistakes cause a delay in diagnosis, the possibility of a malpractice case exists.

Given various aspects of New York State law, if one wishes to investigate the possibility of medical malpractice in a case for a delay in diagnosing cancer, it is important to begin the investigation promptly.

When someone is denied the opportunity for complete cure, it is essential to fight zealously to protect and advance their legal rights. If you or a loved one feels that they may have a claim for failure to diagnose cancer and you would like their medical treatment investigated, please feel free to contact us.

## Mass tort litigation update

### *Breast-implant litigation*

While appeals are still pending in the DOW CORNING breast-implant litigation, claim forms are being sent out to claimants to ensure that all the claimants have their claims properly filed. It is very important that you let our office know if you have a change in address or telephone number so that we can ensure the timely filing of your claim. While the Dow Corning settlement facility is currently sending out the claim packages, the appeal process will continue to go forward, and no settlement checks will be issued until the appellate process is completed.

## Our newsletter

Our newsletter is published as a service to our clients and friends. We hope to provide you with updated information about legal issues. We also wish to thank those who ask us to represent their legal needs and those who recommend us to others. Feel free to share this information with friends and neighbors.

Information in this newsletter should not be viewed as a substitute for legal counsel. If you have legal questions, please call for a free initial consultation.