

NEW YORK INJURY TIMES



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THE HOSPITAL DILEMA

*WHY YOU NEED
AN ADVOCATE*

Page 1

OUR NEW TRIVIA GAME!

TEST YOUR
KNOWLEDGE OF
MALPRACTICE &
INJURY LAW

Page 2

Pharmacy error nets \$8 million jury award

Page 1

& More legal news

We're back from a brief hiatus. December & January were busy but now we're back with our monthly newsletter! Our articles, our trivia game and my never-ending fictional story are sure to entertain!

THE HOSPITAL DILEMA

WHY YOU NEED AN ADVOCATE

The accident happened within seconds. The airbag deployed, but you blacked out momentarily. The next thing you know, you're in an ambulance, on a stretcher and can hear the shrill whine of the siren telling cars to clear a path to get you to the emergency room as soon as possible.

Once you arrive at your unexpected destination, if you are awake, you will be bombarded with questions from doctors and nurses, all trying to figure out whether you are conscious, in pain, and basically alive. Their job is to make sure you remain alive. Your job is to make sure they don't do anything to jeopardize those chances of keeping you alive and safe.

There are many times in the hospital when you need to question what medications and/or treatment you are about to receive since there can be communication gaps between your doctors and nurses. I can't stress enough that you must be ever-vigilant, if you are physically able to, about what treatment you are receiving. The smallest medication error can have devastating effects. While the health care givers are oft-to-say they are just human, those human tendencies must be carefully watched and reviewed at any time you are a patient in the hospital.

Have your family members question the nurses about what medication you're getting. Make sure your spouse or significant other understands why your

Pharmacy error nets \$8 million jury award

**Kidney received in
transplant was
harmed by incorrect
dosage**

LANCASTER, S.C. - A jury has awarded a Lancaster woman nearly \$8 million after she lost the use of her only kidney when a local drug-store gave her five times the amount of medication she was supposed to take.

continued at p. 2

doctor has recommended a procedure and the benefits you will likely receive from it. Only by fully understanding and being fully informed of your treatment options can you make informed decisions about your medical care.

Last month I overheard a conversation while visiting a friend in the emergency room. The patient was told he needed surgery to his back because he had a spinal problem that was very dangerous. If he went home without having surgery that day his condition would likely worsen. If he had surgery, he'd be fine and be able to go home in a few days. The patient couldn't make up his mind about what to do. His wife came and despite the doctors telling him not to eat, he decided that his hunger was far more important than his neurological condition. You see, once he ate lunch, the neurosurgeons couldn't operate for at least 8 hours because of the significant risk he would throw up during surgery, inhale that material, and possibly die from it. Therefore, any effort to operate was now gone and their treatment plan had to change.

Good luck in your quest for justice!



TRY OUR NEW TRIVIA GAME!

Test your knowledge of medical malpractice and personal injury law. Answers appear at the end of this newsletter.

1. IF A LAWYER STEALS MONEY FROM A CLIENT, HE WILL
 - a. Be brought up on criminal charges
 - b. Be brought up on disciplinary charges
 - c. Lose his license to practice law
 - d. Be required to reimburse the client and/or the State for what he stole
 - e. All of the above

2. AN ESCROW ACCOUNT IS
 - a. A hedge fund for lawyers
 - b. A 'trust' account set up specially to hold a clients' money-separate and apart from the attorney's money
 - c. A regular bank account
 - d. A bank account to confuse clients about where their money goes

3. LAWYERS IN NEW YORK are required to take continuing legal education classes to keep up to date on new developments in the law.
TRUE OR FALSE?

4. IN A MEDICAL MALPRACTICE JURY TRIAL the number of medical experts you bring in has more value and appeal than the quality and sincerity of what each witness has to say.
TRUE OR FALSE?

5. DURING A TRIAL, the jury is told about settlement negotiations by the attorneys and the Court to influence their decision making process.
TRUE OR FALSE?

6. JURORS ARE ALLOWED TO DISCUSS THE DETAILS OF A CASE WHILE AT lunch with the fellow jurors, even though the case is not finished. TRUE OR FALSE?

7. JURORS ARE ALLOWED to bring in medical books and do their own research about the topic they're listening to while sitting on a medical malpractice jury. TRUE OR FALSE?

8. IN SOME COURTS IN NEW YORK, JURORS ARE ALLOWED to ask the the witnesses questions during the trial by submitting them to the Judge first. TRUE OR FALSE?

9. IF A JURY AWARDS YOU an amount of money that is unrelated to the extent of your injuries, the award can be reduced or discarded, and a new trial can be held to evaluate your injuries. TRUE OR FALSE?

BONUS QUESTION:
JURORS ARE MORE LIKELY TO AWARD MONEY during the holidays than at any other time of the year.

Pharmacy error, from p. 1

Following a two-week trial Eckerd Corporation was ordered to pay Tiffany Phillips \$7.7 million for its role in the medicine mix-up.

Co-defendant CVS, reached a confidential settlement with Phillips for an undisclosed amount as the jury deliberated.

In 2002, Tiffany Phillips, now 28, went to Eckerd in Lancaster to get a prescription for an anti-rejection drug for her kidney transplant. Phillips had the transplant to replace the one kidney she was born with.

Eckerd didn't have enough of the steroid, prednisone, so a technician called a Lancaster CVS store to fill the prescription, according to the suit. But a miscommunication between the two stores resulted in Phillips being told to take 1250 milligrams a day of the drug for three days rather than 250 milligrams, the lawsuit said.

The CVS computer system flagged the prescription but a worker filled it using a manual override. Phillips was soon hospitalized and again needing a new kidney.

The transplant to replace the damaged kidney with her mother's kidney failed. The next transplant succeeded, using a kidney from an organ donor, but it wasn't as good as the first transplant.

"The initial transplant was a perfect match," After taking too much of the steroid, Phillips is unable to use dialysis. Plus, she cannot have a third kidney transplant. "The net result is this has reduced her life expectancy."

No CVS employee had been disciplined because of the incident.

Eckerd had no comment when contacted but during the trial the company said Phillips, who has taken medication much of her life, should have known the amount given to her was wrong.

Eckerd, which has asked the judge to put the judgment aside, argued during the trial that Phillips was to blame for the problem.

The jury, however found the drug stores 90 percent at fault and ordered a \$2.7 award for damages plus \$5 million in punitive damages.

The jury originally awarded Phillips \$6.35 million from CVS, but the company settled with her for less. The jury awarded punitive damages, because Eckerd never admitted it had done something wrong.

The jury found Phillips 10 percent at fault for not noticing the correct prescription on her hospital discharge papers.

Fake plastic surgeon maims woman; jury awards her millions

A woman disfigured by a man pretending to be a licensed plastic surgeon won some measure of justice this week when a jury awarded her \$4.6 million.

Reinaldo Silvestre, dubbed the Butcher of South Beach by the television show *America's Most Wanted*, abruptly abandoned his practice in Miami Beach in 1999. He was arrested five years later in Belize, where he was performing surgeries and even teaching in a medical school.

Silvestre was convicted earlier this year of practicing medicine without a license, grand theft and aggravated battery.

One of his victims, Jinette Bernal, sued Silvestre and the woman who posed as his medical assistant in civil court.

Bernal went to Silvestre to get breast implants but instead, he removed almost all of her breast tissue, leaving her looking as if she had undergone a double mastectomy.

Silvestre represented himself in the case and is currently in prison. "He admits to practicing without a license but said that all the complications that people had are explainable things, just complications,"

Bernal had to have \$100,000 in reconstructive surgery done and was left with dramatic scars.

Texas Judge Cuts Vioxx Award to \$7.75M

HARLINGEN, Texas — A judge in a Texas widow's lawsuit over the Merck & Co. drug Vioxx on Thurs-

day reduced a \$32 million jury award to about \$7.75 million, citing Texas' recently enacted caps on punitive damages.

The state jury in April found Merck & Co. liable for the death of Leonel Garza, a 71-year-old man who had a fatal heart attack within a month of taking the since-withdrawn pain-killer.

The company was ordered to pay the Garza family \$7 million in non-economic compensatory damages and \$25 million in punitive damages. But Judge Alex Garza, ordered the punitive damage reduced as required by state law.

The Texas law caps punitive damages at twice the amount of economic damages _ lost pay _ and up to \$750,000 on top of non-economic damages. Because Garza was retired, the jury awarded no economic damages, so Merck was ordered to pay the most the family could receive under state law.

Jury awards cyclist hit by bus \$11Million

A Manhattan jury has awarded \$11 million to a Bronx bicyclist whose right foot had to be amputated after it was run over by a city bus that kept going until police stopped it.

Following a trial in Manhattan Supreme Court, jurors found that a Metropolitan Transportation Authority bus driver should have stopped once he spotted cyclist Angelo Lopez in his rearview mirror staggering because he had ridden into the bus on 125th St. at Seventh Ave.

Lopez, 29, suffered a crushed right foot in the September 2003 accident when he fell under a tire of the 38,000-pound bus - which continued for five blocks until being stopped by police.

"He saw this guy in his mirror wobbling and out of control. Nevertheless, he continued going forward," "The bus driver had an obligation to stop."

Bus driver Luis Jimenez testified that he didn't hit the brakes - even after hearing an "unusual noise" and seeing Lopez wobbling just inches from the bus - because he was concerned about the safety of his passengers and pedestrians.

"I didn't have no knowledge of no accident and no emergency," Jimenez said, according to a transcript of his testimony. "So I didn't have to have no reason to stop." An attorney for the MTA said the agency will appeal the multimillion-dollar verdict. "It's totally unjustified," said MTA attorney Wallace Gossett. "We'll be appealing, no question about it."

Lopez, who also separated his right shoulder in the accident, was in a wheelchair for 10 months after losing his foot.

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**Call me with any legal questions about injuries
from any accident or medical care. I promise to
give you a straightforward and honest answer.
That's my guarantee.**

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GERRY'S FICTIONAL STORY

Continued next month in March 2007 newsletter

To be continued...

ANSWERS TO TRIVIA GAME
1. E 2. B, 3. TRUE, 4. FALSE 5. FALSE, 6.
FALSE, 7. FALSE, 8. TRUE, 9. TRUE, Bonus:
Not true.