

 **MEDICAL
MALPRACTICE UPDATE****what's inside****page 2**

When to tell your own insurance company you've had an accident

Don't let your past come back to haunt you

page 3

Why the nurse case manager isn't your friend

Notice – If you get hurt at work, tell your employer.

February faq

page 4

We get questions

We're hearing a lot about "tort reform" and "medical liability reform" these days from politicians, pundits and journalists in the context of the political fight over healthcare. What do they mean? What are they trying to do? And how does this affect regular Americans – families who have lost a loved one because of an HMO's negligence, a child diagnosed with cerebral palsy because a doctor violated a patient safety rule, or a worker paralyzed because of hospital medical errors?

At its core, tort reform is about saving insurance companies and for profit healthcare corporations money. A number of proposals try to save these corporations and insurance companies money by limiting or decreasing the amount they have to pay in damages when a hospital, doctor or HMO is negligent and one of their patients is severely injured or killed.

And these "damage caps" as they are often called, would apply to every single case – no matter how severe the injury and no matter how reckless the malpractice was.

But think about whom that would hurt. It would hurt exactly the people who deserve justice. Patients who have been catastrophically injured often need a lifetime of medical care and treatment. But for profit healthcare corporations,

insurance companies and their highly paid lobbyists want to "cap" their justice by legislation – changing the law so that people and families they cannot fully recover for their harms and losses.

And they want the federal government to do this.

Sadly, many states, including Virginia and Maryland, have already restricted the amount an injured patient can recover. Virginia has what is called a hard cap – no one in Virginia can recover more than \$2 million dollars total for even blatant medical malpractice that kills or catastrophically injures someone. That sounds like a lot of money, but what if the malpractice was so horrific that the patient's future medical care needs are \$3 million? What if the patient needs 24/7 hospitalization and her medical bills are already over \$1 million? And if an insurance company knows that is the most it will ever have to pay (on its worst case, after a trial and appeal to the Supreme Court of Virginia), why would they offer that much to settle a catastrophic case?

And it gets worse. In Virginia, this cap only applies to victims of medical malpractice. So if you aren't looking and run over a doctor and he is hurt, he can sue you for \$10 million – there is no cap on the damages you have to pay if your negligence causes a doctor's injuries. ■

WHEN TO TELL YOUR OWN INSURANCE COMPANY

you've had an accident



You've just heard us say that you should never talk to the other driver's insurance company, never give a recorded statement to

the insurance adjuster or investigator, and never sign any paperwork after you've had an accident – all because the other driver's insurance company is looking for ways to minimize the amount of money they may have to pay for your injuries.

But when should you talk to your own insurance company about an accident? Immediately – even if it wasn't your fault.

Why? You may have benefits on your own policy that can help pay for things such as towing expenses, rental car, and repairs and you may be able to get those benefits quicker than if you waited for the other driver's insurance company to do the right thing.

You may have Personal Injury Protection (PIP) or Medical Payments (med pay) coverage that will pay lost income and medical expenses while you recover from the injuries.

Another reason it's important to contact your insurance company is if the driver who caused the accident didn't have insurance or let it lapse, or didn't pay his premium. If that's the case, you should have uninsured or underinsured motorist coverage under your own policy to step in and pay for your harms and losses. ■

DON'T LET YOUR PAST COME BACK TO haunt you

If you have been hurt in a car or truck accident, chances are good that you are mainly focused on how to heal from your current injuries and how to handle your medical bills.

Chances are also good that you aren't really thinking about prior injuries or accidents that you've had. However, your injury and accident history is critical information that could end up limiting your ability to recover fair value for the harms and losses the other driver caused if you don't share it up front. Why is that?

Well, for starters, the insurance company will stop at nothing to limit the amount of money it has to pay out for claims, and you can bet that its investigators will be digging up every bit of information they can find to use against you. They have a database of prior insurance claims, accident reports and lawsuits – sometimes your name will come up just because you owned a car that was involved in an accident or someone on your insurance policy reported a claim.

The insurance company's goal will be to try to show a link between your current injuries and some accident or injury you've had in the past. The key is to let your attorney know about any previous accidents or treatment. For us, that gives us time to get additional medical information, analyze the prior treatment, and talk to experts about the condition so we can prepare for and deal with these arguments and tactics.

Never let the insurance company be the first one to know about your history. Be 100 percent honest with your attorney about your past and give yourself the best opportunity to collect for your injuries.

Never give the insurance company a recorded statement. The only reason they have trained investigators take and record a statement (really a question and answer session) is to try to trip you up. Some of the recorded statements we've seen ask the same question 4 or 5 different ways until the person makes a mistake the insurance company can use against them. ■

WHY THE NURSE CASE MANAGER isn't your friend

What is the role of a “nurse case manager” when you get hurt at work, need medical treatment and can't work?

Well, you'll usually get a nice letter from the nurse explaining how her goal is to facilitate treatment options, ensure necessary tests are performed and referrals to specialists are authorized and approved by the insurance company. And then you'll get a call from the nurse, going over your medical history, how the injury happened, and your medical treatment. She'll suggest doctors or specialists who can help you.

All sounds great so far.

The catch? These nurse case managers work for the

insurance company and only the insurance company. And the nurse case manager has several jobs she can do for the insurance company. She tries to get people back to work before they are ready, mostly by calling and meeting with your doctor to intimidate, beg or harass him to release you to go back to work – usually because she “forgot” to tell him about what your job really requires. She tries to talk the doctor out of referring you for a test, outside treatment or to see a specialist. And of course, she tries to get you to one of the insurance companies' doctors in the first place – this usually makes her other jobs easier.

Had a bad experience with one of these nurse case managers? Let us know. We'd love to hear about it.

notice IF YOU GET HURT AT WORK, TELL YOUR EMPLOYER.

We just got a call from an injured worker, hurt at work in D.C. doing a physical job. It could be a serious back injury that may require significant medical treatment and possibly surgery. This worker may not be able to work for long periods of time and ultimately may not be able to work in this field at all because of this injury.

Okay, so this is the kind of case we handle for injured workers every day. But we didn't take the case. This worker never told a supervisor about the back injury. The worker was relatively new on the job so didn't report it, just used health insurance for the treatment and leave for

the time off work. Over several months, the condition continued to progress and get worse. Now additional medical treatment and time off are necessary, but it won't be covered by workers comp insurance.

If you know anyone who was hurt at work, make sure they tell a supervisor what happened. Sometimes there are ways around this, but why take that risk with what could become a serious injury?

Protect your rights. That's what it's all about. ■

FAQ



Can a workers' compensation doctor be held liable for medical malpractice?

Yes. Any doctor who violates a patient safety rule and deviates from the accepted standard of medical care and injures a patient can be held liable for malpractice, including doctors treating patient who have been hurt on the job. It doesn't matter what type of doctor you go to see or what condition prompts you to seek medical attention. ■

February Important Dates

February is also Black History Month

February 21 — Presidents' Day

February 14 - Valentine's Day

February 6 — Super Bowl Sunday

February 2 — Groundhog Day

Donahoe Kearney, LLP

One Farragut Square South
Suite 500
1634 Eye Street, N.W.
Washington, D.C. 20006
202-393-3320
www.DonahoeKearney.com

accident



WHEN TO TELL YOUR INSURANCE
COMPANY – SEE PAGE TWO.

This publication is intended to educate the general public about workers compensation, medical malpractice, personal injury and other issues. It is for information purposes only and is not intended to be legal advice. Prior to acting on any information contained here, you should seek and retain competent counsel. The information in this newsletter may be freely copied and distributed as long as the newsletter is copied in its entirety.

we get questions

Do you or someone you know have a question about medical malpractice, patient safety, medical malpractice, accidents or work injuries? How do those systems work and what has to be done to protect your rights?

We get calls from other lawyers with questions about our focused practice areas all the time, and we're always happy to help. If you have a question or concern, email it to us at info@dkllp.com.

We'll do our best to answer your questions and post the question and answer at www.donahokearney.com (anonymously of course). ■

Visit us at www.DonahoeKearney.com