



# the good and the bad

## OF ANESTHESIA

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We've all seen or experienced firsthand the miracles of modern medicine. Whether it's your child whose broken leg was fixed up after he was hit by a car, the mom who had her life-threatening cancer successfully treated, the construction worker who had his rotator cuff repaired, the fact is that at some point, we all rely on medical professionals, including anesthesiologists, to perform their specialties with great care and expertise.

Anesthesia, when properly administered, allows patients to undergo procedures that would otherwise be impossible if we had to feel the pain associated with surgery. And the vast majority of the time, there are no major complications associated with the use of anesthesia. However, anesthesiologists and other health care providers can and do make bad decisions about keeping their patients safe, and when they disregard patient safety, the results can be devastating.

Recently, the National Institute of Health provided an analysis of a report issued by the American Journal of Anesthesiology published in April 2009, which studied anesthesia deaths from 1995 to 2005. The report cited 2,211 deaths during that time period either directly related to anesthesia, or where anesthesia was a factor.

Several factors contributing to anesthesia mistakes:

- Insufficient or inaccurate medical history obtained by the anesthesiologist.
- Poor monitoring of the equipment or the patient's status during the procedure.
- Inadequate training by the anesthesiologist or medical staff.
- Equipment malfunction.
- Failure to follow procedure.
- Lack of communication between the surgical team during the procedure.
- Inaccurate dosing or dispensing of medication.

Anesthesia mistakes can lead to low blood pressure or inadequate blood flow to major organs including the brain. And many times, the results from failing to properly administer or maintain anesthesia are catastrophic, resulting in heart attack, stroke, paralysis, brain damage, or death. In one case, we learned the anesthesiologist was in his office checking e-mail during a procedure – a tragic example of a physician needlessly endangering his patient by not monitoring her condition and not being there to take action when she needed it. ■

# after a work injury,

## DOCTORS OR INSURANCE COMPANIES REQUEST AN FCE

When you're hurt at work, the workers comp insurance company, defense doctor or your own doctor can request a Functional Capacity Evaluation (FCE) to determine or clarify work restrictions or limitations.

There is nothing wrong with that – as long as the FCE facility is not in the tank for insurance companies – and just like doctors the insurance companies use over and over, some of them are.

An FCE is basically a test of basic work skills and physical abilities. It usually involves walking, climbing stairs, lifting boxes or weights to different heights, putting materials on shelves, reaching overhead and other activities that are supposed to simulate working. It is usually administered by a physical therapist.

Sometimes it helps in documenting an injured worker's limitations. Other times, some of these physical therapists will say things like a worker is "exhibiting pain behaviors" or has "symptom magnification", or is limited because of "pain behavior" and not giving his or her best effort. They'll use categories to say the worker had pain behavior in 3 of 5 activities for example.

Does a physical therapist have the education, training and experience to render an opinion on the psychology of pain or chronic pain? Hell no, but if the insurance company pays for it, they will say it. ■

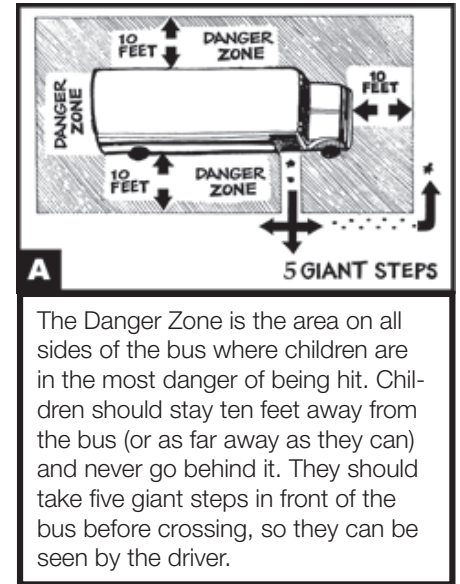
# school bus safety

With school beginning, it's a good time to think about school bus safety. According to the National Highway Traffic Safety Administration (NHTSA), school buses are the safest way for kids to get to school (nearly 8 times safer than passenger vehicles),

but there are still dangers for children, especially when getting on or off the bus.

The NHTSA has the following tips to help parents teach their kids how to be safe around buses:

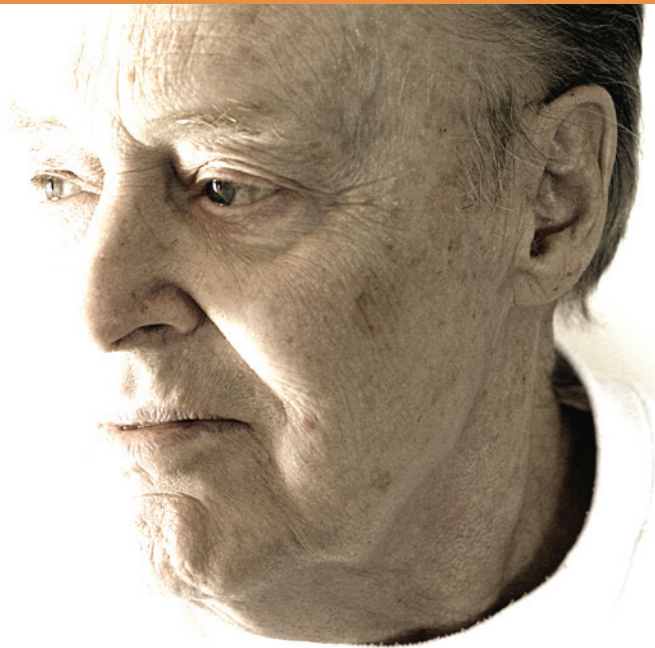
- When getting on the bus, stay away from the danger zone and wait for the driver's signal. Board the bus one at a time.
- When getting off the bus, look before stepping off the bus to be sure no cars are passing on the shoulder (side of the road). Move away from the bus.
- Before crossing the street, take five "giant steps" out from the front of the bus, or until the driver's face can be seen (A). Wait for the driver to signal that it's safe to cross.
- Look left-right-left when coming to the edge of the bus to make sure traffic is stopped. Keep watching traffic when crossing. ■



The Danger Zone is the area on all sides of the bus where children are in the most danger of being hit. Children should stay ten feet away from the bus (or as far away as they can) and never go behind it. They should take five giant steps in front of the bus before crossing, so they can be seen by the driver.

# elder abuse

## DON'T MISTAKE IT FOR ADULT DEMENTIA



Many of us have faced the difficult decision of putting a loved one in a nursing home. For many of us and for many reasons, caring for an elderly person at home is not an option, so families must often entrust the care of their loved ones to nursing homes or other long term care facilities. Many times it's the best decision for the patient and family.

But what happens if you suspect your loved one is not being treated appropriately? According to the National Center on Elder Abuse (NCEA), family and friends may not recognize signs of elder abuse or neglect at first. You might believe that the symptoms are signs of dementia, frailty or just old age. The caregivers may even explain them that way. While the symptoms of elder abuse can mimic those of adult dementia, be careful not to automatically assume that is the case.

According to the NCEA, it is critical to recognize these signs of abuse or neglect:

- Bruises, pressure marks, broken bones, abrasions, or burns.
- Unexplained withdrawal from normal activities or unusual depression.
- Bruises around the breasts or genital areas.
- Sudden changes in finances.

- Bedsores, unattended medical needs, poor hygiene, and unusual weight loss.
- Behavior such as belittling or threatening.
- Strained or tense relationships as well as frequent arguments between the caregiver and the elderly person.

As a loved one, watch for these warning signs. Be alert and visible to the staff at the facility. Ask questions. Ask to speak with a physician or medical director. Visit as often as you can, and monitor finances and medications to ensure that they show no unusual changes.

These facilities are required to keep records and to make those available for review. Ask the questions your loved one cannot and verify the information the home is giving you. ■

## FAQ



**I was hit by a car while riding my bicycle, and I suffered serious injuries. How can I get my medical bills paid?**

The insurance company of the person who hit you would be responsible for past and future medical bills as well as past and future lost wages and past and future pain and suffering. If the at-fault party does not have insurance, you can still recover money through your own car insurance if you have uninsured motorist coverage. As always, just call us if you have questions. We're happy to talk about the specifics of a particular case with our clients or anyone they refer. ■

September Important Dates

Sept 22 – Autumnal Equinox

Sept 18 – Yom Kippur

Sept 12 – Grandparents Day

Sept 11 – Patriot Day

Sept 9 – Rosh Hashanah

Sept 6 – Labor Day

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## anesthesia



THE GOOD AND THE BAD

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# the 6 words that can sink

## YOUR LONG-TERM DISABILITY CLAIM

We often talk about how injured people face an uphill battle when filing claims against insurance companies. The simple fact is that it is not a level playing field, in many cases the law favors insurance companies, health care corporations and large employers. Insurance companies enjoy many built-in advantages, won by their lobbyists and campaign contributions, that enable them to reap monster profits by limiting the amount of money they pay out for legitimate injuries and claims.

A good example of one such advantage: a discretionary clause that may be lurking in your long-term disability policy.

The United States Supreme Court made the decision years ago to allow insurance companies to “reserve discretion” for benefits available from disability insurance plans sponsored by employers.

Bottom line - if you see the phrase “*We have discretion to determine benefits*” in your disability policy, you’ll probably run into big problems if you have to apply for benefits. The discretionary clause gives insurance companies enormous power by making their decisions nearly irreversible by courts. In other words, if the insurance company does not find you to be disabled, their decision will almost certainly stand.

The real tragedy is that most employers are not aware of the serious impact the discretionary clause can have on their employees and often know or don’t object when the insurance company asks to include it in the policy language. Employers have to insist that this discretionary clause is not included in their long-term disability policies.

We don’t handle long and short term disability claims, but will refer anyone who needs a lawyer for this type of claim. ■

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