



BROOKS LAW FIRM

Personal Injury • Job Injuries • Product Liability

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PRACTICE AREAS

- Auto/Truck Injuries
- Defective Construction
- Environmental Law
- Negligence
- Personal Injury
- Pharmaceutical Litigation
- Product Liability
- Property Damage
- Toxic Torts
- Workers' Compensation
- Wrongful Death

Physicians' malpractice insurance gouges doctors Falling claims, rising premiums

Special interests claim that getting control of increasing physicians' malpractice insurance premiums requires restricting patients' lawsuits, regardless of how serious the injuries or the extent of the medical negligence. It's literally blaming the victims for wrongdoing.

However, a new Center for Justice and Democracy study, "Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry," puts the responsibility for increasing premiums where it belongs—with the insurance industry. This landmark research shows that insurers have significantly and consistently overcharged physicians for premiums, despite the decline in insurance claims payments since 2000.

Although industry lobbyists and public relations experts have labored to convince legislators, doctors, and the public that insurers needed to raise current premiums to counter anticipated future losses, the reasons insurers give to support their claims are fuzzy. The research examined all 15 of the largest AM Best-rated national medical malpractice insurers. Findings are based solely on information from annual statements filed under oath with state insurance departments. Here are findings in three critical areas:

Malpractice claims payouts

Over the past five years, claims payouts have declined. Even so, insurers doubled doctors'

malpractice premiums. Moreover, premium increases were more than 20 times as large as increases in claims payments.

"Incurred" losses

Incurred losses are claims insurers forecast

they may pay in the future on current policies. To increase rates more than actual claims payments justify, insurers must argue that they need increases to build reserves for anticipated higher claims. The report showed, however, that some insurers actually upped premiums while both current and projected claims payments decreased.

Surplus

Insurers like to accumulate a surplus, or "cushion," on top of estimated future claims. Surpluses are excess profits. They invest surpluses to improve profits. Because they increased premiums while claims payments declined, top malpractice insurers bloated surpluses by 33 percent in three years. They now charge doctors more for malpractice insurance than either current or future malpractice case payments can legitimize.

In response to the report, Connecticut's Attorney General said, "The numbers underscore the need for much tougher, more aggressive oversight to prevent and punish profiteering."

For the full report, go to www.centerjd.org.



We know your rights.



Child injuries

All parents make special efforts to protect their children from harm. We buckle them in car seats and monitor them at play. We safety-proof our homes and select age-appropriate toys, riding vehicles, and games.

However, when children are at school, they can get all kinds of scrapes and bumps, most of which are minor. However, if a child is seriously hurt, most parents feel a more than casual sense of responsibility to find out what and why it happened—and to prevent such injuries from recurring.

Here are questions that an attorney might ask of teachers and administrators to learn about a child's injury:

- What kind of precautions did the school take to protect children from injury during classes and activities?
- How quickly did administrators and staff recognize that an injury had occurred?
- How fast did school personnel come to the child's assistance?
- Was first aid provided?
- Did a school nurse or other professional administer medical treatment?
- Was the child hurt during an age-appropriate activity?
- Were other children involved in the injury? How?
- Where and how did the injury occur? At recess? In gym class? On the stairs? In a science lab? On playground equipment?
- Were there witnesses?
- How quickly were the parents notified?

Please contact an attorney for additional information about parents' rights.

FOR YOUR SAFETY Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **Graco Children's Products, Inc.**, has recalled one million Duo Tandem and 143,000 MetroLite strollers. Both models can fail to latch and unexpectedly collapse, injuring children in the strollers and those pushing them.
- ✓ **Belkin Corporation** is asking consumers to return 10,300 Li-Polymer battery packs sold with Bluetooth Global Positioning System (GPS) Navigation Systems. Batteries can overheat, rupture, catch fire, or explode and harm users.
- ✓ **Dorel Juvenile Group** noted a warning about 250,000 Safety 1st Tubside Bath Seats. When used with nontraditional or sunken bathtubs, the bath seats can break, tip over, and injure children.
- ✓ **LG Electronics, Inc.**, and **Sears, Roebuck and Co.** have called back 20,000 LG and Kenmore Elite® Trio™ Three-Door Refrigerators with condenser fan motors that can short-circuit, catch fire, and burn consumers.
- ✓ **Nautilus, Inc.**, is voluntarily recalling 10,000 Nautilus NT 1020 Exercise Benches, which have bench-seat welds that may separate from the frame, collapse, and injure exercisers.

Mail fraud

A recent survey revealed that two-thirds of Americans had lost confidence in the way their personal information was being handled in the marketplace.

Each person can take a number of important steps to decrease the likelihood of identity theft and manage his or her personal financial and other information by better protecting their mail. Here's how:

- Secure the mailbox with a lock.
- Remove mail promptly.
- Mail payments or other important items at a post office or public mailbox, not in your own mailbox.
- Switch to electronic bill-paying when possible.
- Stop mail when going away for more than a day.
- Shred all mail and other documents that contain information anyone could use to defraud you.
- Report mail theft to postal authorities.



Two-thirds of Americans have lost confidence in the way their personal information is being handled in the marketplace.



Taking medications

After a physician prescribes a medication and a pharmacist fills that prescription, it's up to you to comply with instructions to make sure the drug works safely and effectively.

Here are several medication-safety guidelines:

- ✓ Tell all prescribing practitioners and pharmacists the medications you take, including over-the-counter products, vitamins, supplements, herbals, and birth-control pills.
- ✓ To keep up-to-date records and anticipate emergencies, list all medications, noting drug names, prescribing physicians, filling pharmacists, dosages, and how and when to take them.
- ✓ Try to fill all prescriptions at one pharmacy.
- ✓ Never share medicines with others.
- ✓ Read instructions and warning labels.
- ✓ Keep drugs in original containers, away from children or pets.
- ✓ Never mix different pills in one container.
- ✓ Know what to do for side effects or cross-medication reactions.
- ✓ Discard outdated medicines.

Medication errors

Even though patients may do their best to take medications safely and effectively, errors may occur. Doctors sometimes prescribe incorrect medications. Office or hospital staff may administer the wrong drug. Pharmacists can misfill prescriptions. In many cases, errors may be small and have little effect.

However, when patients suffer injury because of medication errors, they can seek assistance through our civil justice system. A patient suffered two cardiac arrests and restricted work activity after a nurse negligently injected an incorrect medication during an operation. The hospital settled after the patient sued, alleging the hospital was responsible for the nurse's wrongful administration of the drug.

Disability insurance

According to the Health Insurance Association of America, one in three of us between the ages of 35 and 65 is likely to suffer a disabling incident lasting at least 90 days sometime during our careers. What disabling events can put a career off track? Problem pregnancies, broken arms, and anxiety conditions, to name just a few.



Because most employer-issued disability insurance policies provide only a percentage of salary and put caps on benefits, many people purchase private disability insurance policies to fill the income gap.

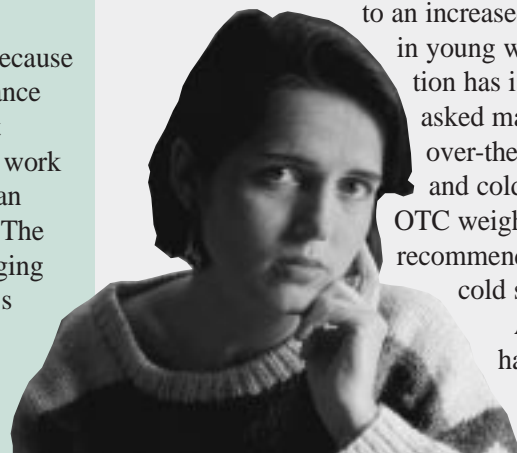
Bad faith

When insurers arbitrarily terminate promised payments on policies clients have been paying premiums on for years, our civil justice system can provide plaintiffs with recourse.

A venture capitalist who paid premiums on a guaranteed renewable disability insurance policy for many years became disabled. Although the insurer paid benefits for a year, underwriters subsequently determined that a "lack of objective medical evidence" showed its client's chronic fatigue syndrome was not authentic and stopped payments. The insured man asked for ways he could prove his disability, even offering to take any medical tests the insurer requested. The insurer declined. The venture capitalist sued his insurer and its holding company for breach of contract, bad faith, and lost benefits. After hearing all evidence, a jury awarded the plaintiff damages against the insurer and significant punitive damages against the holding company.

Cold and flu season... ...and phenylpropanolamine

As this winter's cold season arrives, consumers should be particularly aware of the potentially serious side effects of cold medications that contain phenylpropanolamine (PPA).



A 2000 Yale University School of Medicine study showed that PPAs lead to an increased risk of hemorrhagic stroke, particularly in young women. The Food and Drug Administration has issued PPA public-health advisories and asked manufacturers to discontinue using them in over-the-counter (OTC) and prescription cough and cold medications as a decongestant, and in OTC weight-loss products. A pharmacist can recommend remedies that do not contain PPA to cold sufferers.

Anyone suspecting that they or a relative has been harmed by PPA should consult an attorney.



RETURN SERVICE REQUESTED

Our Martindale-Hubbell rating

Brooks Law Firm has earned an AV rating in the *Martindale-Hubbell® Law Directory* for our legal capabilities and devotion to professional ethics. Since Martindale-Hubbell bases assessments on surveys of members of the bar and of judges, we take pride in our colleagues' recognizing and respecting the quality of our legal work.

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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.

Anesthesia

Patients undergoing surgery should fully understand the benefits and risks of anesthesia. Unlike being asleep, an anesthetized patient is under the effect of very potent and potentially poisonous medications.

To protect patients, anesthesiologists should carefully assess a patient's health, detailed medical history, anesthesia records, medication allergies and sensitivities, and the timing of their most recent meal.

Patients should ask any questions that will help them feel they are receiving the highest standard of care from an anesthesiologist.

Faulty equipment

A patient, who can no longer walk, work, or take care of her family, sued the manufacturer of anesthesia machinery used in her hysterectomy. Her attorney demonstrated, based on documentation, that the manufacturer knew the equipment produced carbon monoxide but failed to warn physicians using it. The court found the defendant breached its duty of care and ordered a substantial award, which included past and future pain and suffering and loss of consortium with a child.

If you are arrested

Being arrested is frightening and distressing. Here are several ways to help protect your legal rights under the law:

- Be polite to law-enforcement officers. Do not resist. Never disrespect them. That can only worsen your case.
- Ask for legal counsel each time you speak with different law-enforcement officers.
- Make no oral statements, no matter how much pressure anyone puts on you, until your lawyer approves.
- Never sign typed statements or documents until your lawyer reviews and approves them.
- Call your attorney as soon as you can. Many legal defenses succeed because a defendant notified his or her lawyer right away. Lawyers' experience with arrests and ability to investigate criminal cases quickly and thoroughly are important to maintaining one's rights and seeking fair legal outcomes.



Americans on the move

Moving van rental

Millions of Americans rent small and large trucks every year. They hire small vans to pick up patio sets at home centers, and 25-foot trucks to move household furniture to other states.

No matter what size their rental, drivers expect vans and trucks to be safe and reliable. Truck rental companies generally strive to properly maintain equipment, routinely inspecting tires, brakes, steering, engine and transmission, mirrors, turn signals, and lights.

An unsafe rental

When a rental truck is *unsafe*, those injured have recourse under our civil justice system. A driver, stopped at an intersection and struck from behind by a rental truck, suffered neck and back injuries. His attorney sued the truck's driver, claiming negligent operation, and the rental company, alleging negligent failure to properly maintain brakes. A jury awarded significant compensatory damages, and the parties reached a confidential settlement during the punitive-damages phase of the trial.