SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 96, NO. 2

2139
PALM BEACH LAKES BLVD.
WEST PALM BEACH
FLORIDA 33409

800-780-8607
(561) 686-6300
FAX: (561) 478-0754

P.O. DRAWER 3626
WEST PALM BEACH
FLORIDA 33402

NOTE: The accounts of recent trials, verdicts and settlements contained in this newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case.

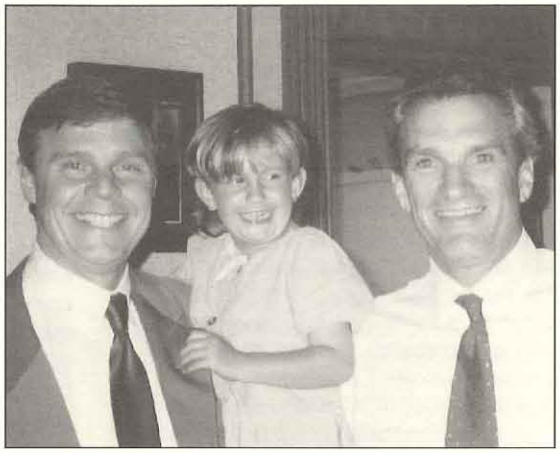
Physician Incompetence Exposed In $8.2 Million Settlement

HOSPITAL ALLOWED UNQUALIFIED PHYSICIANS TO PERFORM HEART CATHETERIZATION ON INFANT

Chris Searcy and Chris Speed have successfully negotiated an $8.2 million settlement on behalf of 4-1/2 year old Baby Doe and her parents. This settlement was reached during the third week of trial in Central Florida.

Baby Doe suffered mild to moderate brain damage and significant injury to her spinal cord when she was eight days old. This occurred during the course of a heart catheterization negligently performed by Dr. X at ABC Hospital.

Baby Doe was born with a congenital narrowing of her aorta. Dr. X, a pediatric cardiologist, determined that it was necessary to do a heart catheterization in order to properly visualize the anatomy of the aorta prior to surgery being performed to cure that condition. Neither Dr. X, nor his partner, Dr. Y, had the appropriate recent training, experience, or competency to do the catheterization on this very young baby. Their only experience during the preceding ten years had been with older children. ABC Hospital knew of the lack of ability of these two cardiologists, yet allowed them to proceed with the catheterizations of very young and fragile neonates (babies less than 30 days old). The hospital's motive was the great amount of revenue generated by these procedures and the subsequent surgeries.



Attorneys Chris Searcy and Chris Speed with young client.

Continued on Page Two.

Overcoming Damage Caps

SUCCESS IS OFTEN IN THE DETAILS

In Florida, health care providers benefit from the protection of a cap on non-economic damages that no other group is given. In medical malpractice cases, a defendant can admit liability and request arbitration on the issue of damages. If the plaintiff consents to arbitration, non-economic damages are limited to $250,000. If the plaintiff refuses to arbitrate, the limit is $350,000. Plaintiffs in medical malpractice cases are permitted to recover their full non-economic damages only if arbitration is not requested.

Arbitration is frequently requested when the economic damages are small and the medical negligence is blatant. In such cases a substantial portion of the claim is often for non-economic damages such as pain and suffering, physical impairment, disfigurement and the loss of capacity for the enjoyment of life. Capping those damages leads to unjust results.

Since Florida courts have upheld the statutes providing a monetary cap on non-economic damages in medical malpractice cases, we must develop strategies to combat the effect of arbitration demands. One of Cal Warriner's recent experiences warrants sharing.

Continued on Page Three.

The Meeting Corner:

Cal Warriner

Cal Warriner was an honors graduate from the University of Florida School of Law. He came to the law firm in 1988 with five years experience defending personal injury cases including medical malpractice and products liability. An alumnus of Leadership in Palm Beach County, Mr. Warriner is active in both the state and local Bar associations having served two terms on the Board of Governors for the Young Lawyers Section of the Florida Bar and on the Civil Procedure Rules Committee. He is Board Certified in Trial Advocacy by the National Board of Trial Advocacy and by the Florida Bar. Additionally, he is a Diplomate of the American Board of Professional Liability Attorneys. He has been recognized in "Who's Who Among Rising Young Americans" and frequently lectures on legal matters. Cal Warriner was raised in Panama City, Florida and moved to West Palm Beach in 1983. ■

John C. Hopkins

John C. Hopkins is a paralegal/investigator with Searcy Denney Scarola Barnhart & Shipley, P.A. Having joined the firm in 1993, he works primarily with Cal Warriner, assisting in the investigation and evaluation of cases, trial preparation and negotiation of settlements. Mr. Hopkins' nearly two decades of litigation experience encompasses thousands of cases from both the defense and plaintiff's sides. His claim handling experience began in 1977 as Senior Claims Examiner and Claims Manager for Ohio Fair Plan Underwriting Association. Moving to Florida in 1986, he worked for Rumger Insurance Company as Director of Risk Management and Vice President. Mr. Hopkins' expertise is in the areas of legal malpractice, property adjustment, medical malpractice and fire investigation. ■

UPDATE:

Governor Signs Hungerford Claims Bill

Palm Beach County agreed to its largest payout ever, $3 million, for a claim by Billy Hungerford who was impaled by a metal post after his car ran into a guardrail. Due to a state law placing a $200,000 limit on injury claims against local governments, a claims bill was required. Senator Bob Wexler and Representative Suzanne Jacobs introduced the $2.8 million claims bill in the state legislature.

Because of the catastrophic nature of the case, the claims bill received bi-partisan support in both houses of the legislature. Governor Chiles signed the bill on May 17th enabling Billy Hungerford to receive the full $3 million.

The guardrail contractor previously agreed to a $1 million policy limits settlement. Jack Scarola is proceeding with litigation against a general contractor, a guardrail installer and a surveying company. ■

Baby Doe...*Continued from Page One*

Although Dr. X never intended to advance the catheter past the aortic arch, he inadvertently moved the catheter into the heart, and then negligently pushed the catheter through the heart wall of the left ventricle. It should have been obvious that he had perforated the heart and that blood was filling the space between the heart and the pericardial sac. However, it took him and his partner nearly twenty minutes to recognize what had caused Baby Doe to experience cardiac arrest and to relieve the problem. Because of this significant time delay, the baby received very poorly oxygenated blood to her brain and spinal cord for an extended period of time. That deprivation of blood supply and oxygen to the brain caused injuries which will permanently affect her throughout her life.

In addition to her moderate mental retardation, Baby Doe has no control of her bladder and needs to be catheterized every four hours. She has a loss of sensation in her lower legs, needs to wear lower leg braces to be able to do a minimal amount of walking, and has no control of her bowels. Part of her settlement has been placed into a structured annuity so that she will have a lifetime of income to provide her with the necessary attendant medical care and supervision which her injury will require.

The thrust of the defense was that she was born with a number of congenital abnormalities, including the abnormality in her heart, and one in her kidneys, and that she also had an underdevelopment in her brain, which was the cause of her mental retardation. ABC Hospital, and Drs. X and Y also contended that substandard care was provided to her at the referring hospital, DEF Hospital, and by its pediatrician, Dr. Z. They contended she suffered her brain injury on the day prior to her catheterization when seen at DEF Hospital.

If the case had not settled when it did, it was predicted the trial would have continued for an additional six weeks. Both Mr. and Mrs. Doe were very gratified with the settlement amount and with the elimination of the risks posed by a jury decision and potential future appeals. ■

Overcoming Damage Caps...

Continued from Page One

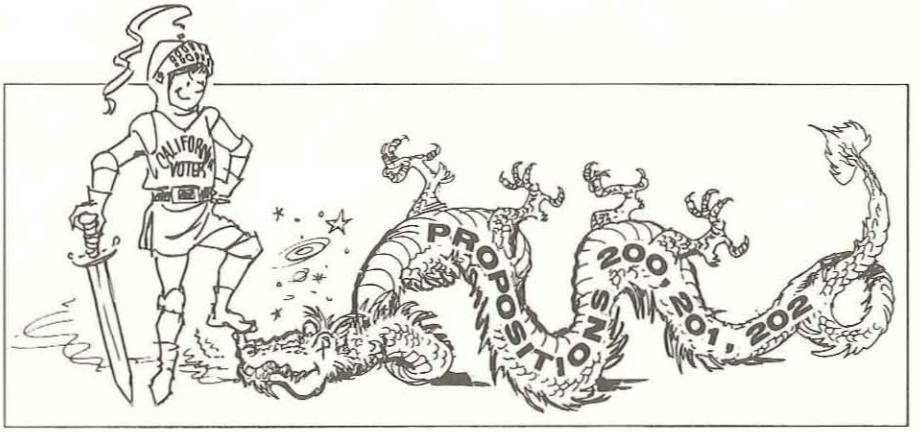
Joseph White, 56, and his wife retired to Melbourne intending to start an electrical subcontracting business with their two sons. Mr. White began experiencing fatigue, nausea, pain in his chest and sweating. He was seen by Richard Nelson MD, a physician employee of a local professional association. He reported classic angina symptoms but the internist diagnosed esophagitis and prescribed Tagamet. Relieved, Mr. White resumed work but the symptoms persisted. Two weeks later he returned to the doctor reporting the same symptoms and he received the same diagnosis. No stress test was performed or discussed. Three weeks later Mr. White suffered a massive heart attack while at work and died immediately. Economic damages were small and speculative since the new business was in its infancy.

As expected, on the last day permitted, the in-house insurance counsel responded by demanding arbitration for the negligent doctor. Our investigation revealed there were serious problems with the economic loss claims and several factors which would be subject to intense scrutiny. It was imperative the arbitration demand be defeated. The very limited appellate experience of the statute's nuances provided no relief. Fortunately, plaintiffs' claim included separate letters of intent to both the professional association and the negligent doctor. A careful reading of the defendant's arbitration demand revealed a demand on behalf of the negligent doctor only, not the professional association. The defense attorney had mistakenly demanded arbitration for only one of two mutual clients with similar interests.

Cal Warriner was able to settle the case for more than three times the $250,000 cap. The client's net settlement was more than double the expected arbitration award. ■

"Men are not hanged for stealing horses, but that horses may not be stolen."

- - George Savile, English Politician



California Voters Repudiate Corporate Interests On No Fault, Tort Initiatives

DECISIVE DEFEAT OF *PROPOSITIONS 200, 201, 202* WILL HAVE NATIONAL IMPACT

(Excerpts reprinted from Public Citizen News Alert, *March 27, 1996)*

In a stinging rebuke to the decade-long, national campaign by corporations to limit consumer-protective tort laws, California voters have defeated a package of ballot initiatives that would have limited plaintiffs' attorney fees, required consumers who sue for investment fraud to pay the defendants' legal fees, and established a "pure" no fault auto insurance system for California.

Powerful corporate interests, ranging from Silicon Valley tycoons, banks, insurance companies, high-tech manufacturers and oil companies to Wall Street investment firms, spent over $11 million on *Proposition 200, 201* and *202*. Their campaign for the measures concentrated on "lawyer-bashing" and the contention that there is too much litigation — themes corporate lobbying groups like the AMA, the insurance industry and the manufacturers lobby have assiduously cultivated in their efforts to promote similar legislation in Congress and throughout the nation.

Opposed to the measure were consumer advocates, including Ralph Nader and every consumer group in California, as well as the California Nurses Association, environmental, senior, taxpayer and labor organizations, and the Consumer Attorneys Association — one of the broadest coalitions ever assembled in California.

Consumer advocate Ralph Nader, who campaigned against the measures, said: "This popular repudiation of a massive corporate power grab shows once again that if California voters get the information and the facts about the propositions and who's behind them, they will invariably vote the right way."

According to the latest tabulations, *Proposition 200*, no fault, was defeated 35 to 65%; *Proposition 201*, which would have limited lawsuits for securities fraud, was rejected 41 to 59%; *Proposition 202*, contingency fee limits, was defeated 49 to 51%.

Consumer advocates said that the defeat of the propositions would serve notice on the California Legislature, Congress and other state legislatures that the public does not support no fault or other legislation to restrict civil justice protection laws. ■

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.
Attorneys at Law

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 96, NO. 2

Decisions....Decisions...Decisions...

REPORTED "DECISIONS" OMITTING CLIENTS' AND/OR DEFENDANTS' NAMES ARE AS A RESULT OF REQUESTS FOR ANONYMITY.

JOHN DOE v. FLORIDA NEWSPAPER AND JANE DRIVER

Early one morning plaintiff, John Doe, a 33 year old carpenter, was walking along a county road. He was on his way to catch a ride to work from a co-worker. Defendant Florida Newspaper's employee, Jane Driver, was driving the company van making deliveries on very little sleep.

She left her lane of travel, crossed the 3-1/2 foot safety zone to her right, went off the paved roadway surface, and struck Mr. Doe as he walked along the path beside the road. He was thrown 28 feet in the air and came to rest well off the roadway. Jane did not stop. She corrected the direction of the van, got back on the road and fled the scene. Mr. Doe was discovered one hour later by a passing motorist. Suffering from a severe closed head injury and multiple trauma, he was taken to a nearby hospital where he was in a coma and in critical condition for several weeks.

Jane Driver failed to report the accident to the police in violation of Florida Newspaper's policy, and failed to stop at the scene in violation of Florida Statutes. Her employers also failed to report the incident to the police. It was not until 5 days later that the investigating Florida Highway patrolman was able to implicate Jane Driver and Florida Newspaper in the accident.

The Plaintiff contended that Jane Driver was chronically fatigued, had little sleep, and drifted off the road when she fell asleep at the wheel. Her typical day consisted of working at a local supermarket from 10:00 a.m. until 5:00 p.m. She would get a few hours of sleep and then get up and go to her second job at Florida Newspaper. She would make deliveries from 1:30 a.m. until 6:30 a.m. She kept this schedule six days a week.

Ms. Driver said she was forced off the road by a phantom vehicle, and that she thought she hit a mailbox. Florida Newspaper knew that many of its employees work two jobs, some with two full-time jobs. It had no policies or mechanisms to assess which employees might be a danger because of chronic fatigue. While investigating this case, Plaintiffs also established that Florida Newspaper had failed in the past to enforce their policy of reporting accidents to the police and waiting at the scene.

John Doe suffered a grade III closed head injury and brain damage. After awakening from the coma, he had to learn how to talk and walk again. The delay in getting medical treatment for an hour before he was found made the brain injury worse. He suffers from partial right-sided hemiparesis, physical deficits, neurologic deficits, major cognitive deficits, emotional deficits, and behavioral problems. He will never be gainfully employed in the future and requires 24-hour supervision.

Chris Searcy and Michael Kennedy obtained a $5.5 million settlement at the conclusion of the first week of an expected two week trial. ■

LUCAS, WILLIAMS, COOK et al v. CITY OF DELRAY BEACH

A federal jury in West Palm Beach awarded $760,000 to six current and former African-American police officers with the City of Delray Beach. The verdict followed a two week trial in which the officers proved that the City had subjected them to a racially hostile work environment and denied them access to lucrative overtime details disproportionately controlled by white officers.

The evidence showed that the officers were the subject of repeated racial jokes by their fellow officers and supervisors. Racially offensive postings were frequently placed in common areas such as briefing and report-writing rooms. This conduct was not only offensive, it was dangerous. Racist elements inside the department used their police radios to intimidate and spread their hate anonymously. As a result, African-American officers targeted for this conduct had their radio transmissions jammed, sometimes to the point where they could not communicate with dispatchers or other officers. The City tolerated this type of conduct for years.

The plaintiffs also proved that the City intentionally denied them equal access to overtime details, including overtime details at a federally-funded housing project. White officers were given first crack at most overtime details. Once they obtained them, the City permitted the white officers to control access to those details by placing them in charge of assignments to the details. This sys-

tem, which went largely unregulated until recently, cost each plaintiff several thousands of dollars in overtime income.

Three of the plaintiffs also established that they were subjected to retaliation and special treatment by the City as a result of bringing the City's discrimination to light. One of those officers, Michael Lucas, had truly been a "top cop" inside the department. Lucas had distinguished himself as a narcotics officer and member of the City's tactical unit. For his police work, he was the winner of dozens of commendations and awards. When he joined the other plaintiffs in pursuing claims of discrimination, his world at work changed. Superiors who were the beneficiaries of the entrenched system of overtime distribution showed their displeasure by removing him from preferred work details and processing bogus claims of discipline against him. When this conduct continued, he was forced to resign.

At trial, the plaintiffs prevailed on every claim, including the very difficult claim that the City's conduct was intentional. David Sales, who represented Lucas and Sergeant Ivery Williams, acted as lead trial counsel for the team of plaintiffs' attorneys that included Art Schofield (for Sgt. R.J. Ritfeld), Steve Weiss and Ken Minnerle (for Julius Mitchell) and Cary Klein (for Verna Cook and James Cook). As a result of their victory, the plaintiffs are also entitled to attorney fees and injunctive relief. Presently, they are seeking to have the Court impose controls on the Department to prevent any future discrimination. ■

PLAINTIFF v. DEFENDANT HOSPITAL/DOCTORS

In 1989, Plaintiff gave birth to her first child and, after the delivery, developed a condition called Adult Respiratory Distress Syndrome (ARDS). ARDS is a life threatening disease which causes the lungs to stiffen and fill with fluid. It requires swift and aggressive treatment if a victim is to survive. Her physicians intubated her quickly, and she achieved a full recovery.

Eighteen months later, Plaintiff gave birth to her second child under the care of Dr. A, her obstetrician. While recovering from her Cesarean section, she again developed ARDS. Dr. A called in Dr. B, a pulmonary specialist. Even though Dr. B had participated in her previous ARDS treatment, he elected not to intubate. Instead, he employed a pressurized oxygen mask treatment called CPAP. The doctor chose this method of treatment even though some of the nurses later testified that they had told the doctor they were completely unfamiliar with its use. The defense experts testified that CPAP was appropriate in this case, and that the reason for the intubation in 1989 was because she vomited and aspirated stomach contents into her lungs, and had a respiratory arrest.

Over the next four days, Plaintiff continued to be treated by Doctors B and A. Even though her condition worsened and she was placed in intensive care, Dr. B only saw fit to visit her once per day on his daily rounds. Dr. A, however, continued to follow her closely, although he was outside his area of expertise. In spite of her worsening condition, Dr. B did not alter his plan of treatment. While Plaintiff was in the hospital, the nurses failed to follow their own critical care protocols in ordering arterial blood gases, failed to relay changes in the patient's condition to Dr. B, and failed to follow the protocol on the treatment of critically ill respiratory patients.

Dr. B finally recognized Plaintiff's desperate condition and intubated her. However, Dr. B's efforts came much too late, and she died of ARDS that same day. She was survived by her husband and two young sons.

The doctors and hospital defended this case by asserting that ARDS is a deadly disease that is almost impossible to cure. All the defendants asserted that, regardless of the treatment, for the past fifteen years the mortality rate for ARDS has been sixty percent (60%), or greater. In addition, the defendants emphasized that Plaintiff's oxygen saturations were maintained at an acceptable level up until the day she was intubated and died. The defendants employed no fewer than fifteen of the most recognized physicians in their field to testify. Greg Barnhart and William Norton litigated this case for several years before obtaining a settlement shortly after mediation of $1,375,000 plus $70,000 from the first hospital for a total of $1,445,000. ■

LOZANO v. SASSER AND SOUTHERN BELL

Rosa Lozano, 34, was stopped at an intersection in western Palm Beach County. As she was waiting for traffic to clear, she was struck in the rear by the defendant, Barry Sasser. Mrs. Lozano was wearing her seat belt, but the force of the impact caused her to strike her head on the windshield pillar. She was treated at the emergency room and later went to her physician, complaining of neck pain and headaches. She also began experiencing pain, popping, and cracking in her jaw. Her family dentist referred her to a specialist who performed outpatient laser surgery on both of her temporal mandibular joints. She had a record of pre-existing TMJ problems.

The Defendants put on a lengthy defense which asserted that Mrs. Lozano's injuries were pre-existing. Bill Norton settled this case for $85,000 at mediation. ■

*Decisions...***Continued on Page Six.**

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 96, NO. 2

Decisions...Decisions...

Continued from Page Five.

ROE v. THE HOSPITAL, DR. A, DR. B, AND DR. C

Jane Roe presented to The Hospital at about 6:30 one morning at 38-1/2 weeks gestation. She had advised Dr. A that she had not felt the baby move since early afternoon of the previous day. Upon admission, she was placed on an external fetal heart monitor in order to assess the well-being of the fetus. The fetal heart monitor showed an abnormal heart tracing which required immediate attention and further observation. Dr. A claimed that The Hospital's nurses did not properly advise him about the abnormal fetal heart tracing. Dr. A went off-duty shortly after 7:30 a.m. and advised Mrs. Roe that his partner, Dr. B, was finishing a surgery at another local hospital, and that Dr. B would arrive shortly to follow with the delivery of her baby.

Shortly before 9:50 a.m., the fetal heart monitor showed a slowing of the fetal heart rate down to a very abnormal 60-70 beats per minute. The slowing of the fetal heart rate lasted for 4-1/2 minutes, indicating that the baby was in trouble, not getting enough oxygen, and may need to be delivered immediately via an emergency C-section. Dr. B and The Hospital's nurses continued to monitor both mother and fetus. It was not until 10:33 a.m. that the decision was made by Dr. B to perform an emergency C-section.

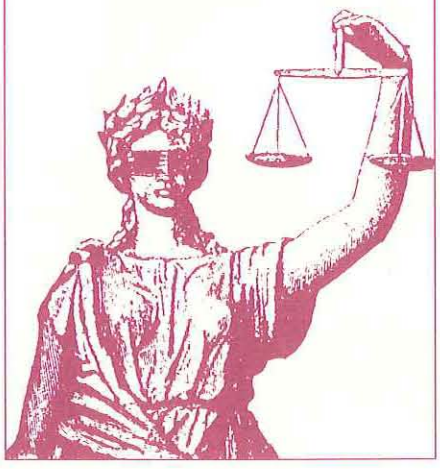
Baby Roe was born at 10:43 a.m. via C-section. She did not take her first gasp of breath until 10:50 a.m. She was intubated, placed on a mechanical breather, and transferred to the hospital nursery. Her blood sugar level at 12:40 p.m. was 0. She was supposedly given Lactated Ringers and Sublimaze to replenish her blood sugar, but at 12:58 p.m. her blood sugars remained at 0. There was a serious question as to whether she ever actually got the sugars that were ordered. It is well known that diminished blood sugars in an already fragile baby can and often does contribute to brain damage.

While Baby Roe was in the nursery she had to be intubated. Unfortunately, the endotracheal tube was placed too low and she was not being properly ventilated. It was not until a subsequent chest x-ray was taken that The Hospital nurses and Dr. C realized that she had a collapsed lung as a result of the improperly placed breathing tube.

Baby Roe now suffers from permanent brain and neurological damage. She is developmentally delayed, and will require specialized support services throughout her lifetime. She will require continued occupational therapy, physical therapy, and speech therapy, as well as future medical care. Michael Kennedy and Chris Searcy obtained a $2.5 million settlement from all defendants. ■

"Let the judge answer on the law; the jury on the question of fact."

- - Latin legal phrase



MR. BANK v. DR. X

Mr. Bank, a 79 year old bank executive, retired to South Florida with his wife where he enjoyed an active lifestyle. Suffering from chronic diverticulosis/diverticulitis, he consulted Dr. X, a surgeon, who performed an exploratory laparotomy and sigmoid colon resection. After the surgery, Mr. Bank began experiencing excruciating pain. Dr. X did not realize that he had caused severe injury to the ureter during the surgery. Mr. Bank's pain mounted and a massive infection continued unabated because extremely toxic materials were being spilled internally. Additional surgery failed to remedy the problem. Mr. Bank was ultimately transferred to Massachusetts for extensive surgery involving the removal of a kidney. After two years, Mr. Bank is slowly returning to retirement activities. Unfortunately, the urologic damage has rendered him sexually impotent. Earl Denney settled the case for $250,000. ■

MRS. X v. WELLESLEY INN

Mrs. X, a 30 year old Bahamian woman, came to West Palm Beach to buy school supplies for her two daughters. She stayed at the Wellesley Inn on Palm Beach Lakes Boulevard for its convenient location near shopping. Upon returning to the hotel after shopping, she exited the elevator on the second floor and was confronted by a man with a gun. He forced her into her room where he raped and robbed her. To date, her attacker has not been apprehended.

The hotel was well aware of its security problems. There had been 58 reports of crimes at the hotel, including 10 robberies. Two of the robberies occurred the same month Mrs. X was raped. The hotel hired a security guard to patrol the premises but not full-time. The hotel should have had around-the-clock security, given the history of criminal activity on the premises. The hotel's offer to settle the case for $150,000 was refused. John Shipley obtained a jury verdict of $425,000 for the woman and was also awarded attorney fees and costs. ■

Decisions...
Continued from Page Six

SMITH v.
HOSPITAL X
AND
CHILDREN'S CLINIC

Jane Smith was diagnosed at birth with spondyloepiphyseal dysplasia, a form of dwarfism. As is often the case with dwarfs, Jane developed an orthopaedic problem at an early age which involved an instability of the cervical spine. Her condition necessitated a cervical fusion.

Jane's parents were told not to give her anything to eat or drink past 11:00 p.m. the night before the scheduled surgery. The surgery was performed the next morning seemingly with no adverse occurrences. Jane was taken to the recovery room where she was slow to awaken from the anesthesia. After several hours someone thought to check her blood sugar. It had now been in excess of 15 hours since she had received any nourishment.

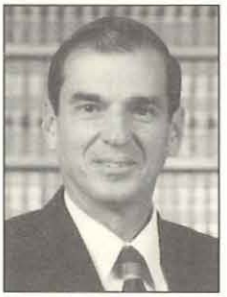
The blood sugar test indicated she was suffering from hypoglycemia. Hypoglycemia or low blood sugar is a dangerous condition and can cause brain damage just as easily as lack of oxygen. Once it was discovered Jane was hypoglycemic, a glucose solution was started and her blood sugar elevated to normal quite rapidly. However, her extended hypoglycemia had caused massive and irreversible brain damage.

Experts testified that simply running an I.V. containing glucose during the surgery or a simple monitoring of the patient's blood sugar during surgery would have prevented this disaster. In fact, a simple "finger stick" can be used to monitor blood sugar.

Jane remains completely disabled, depending on her parents for all activities of daily living, including bathing, dressing, mobility and feeding. Jane had been physically healthy in every way prior to this tragedy, and would have developed normally as a "little person."

This case was settled by Chris Searcy and Earl Denney for $6.75 million. ■

Welcoming...



William B. King

William B. King joins our firm from the law firm of Moyle Flanagan Katz Fitzgerald and Sheehan where he was a partner. His practice areas are commercial litigation, personal injury litigation, and criminal law.

The holder of an undergraduate degree from Duke University, Mr. King received his law degree from Rutgers University. He served as an editor of the Rutgers University Law Review and as law clerk to the Honorable G. Clyde Atkins, U.S. District Court in Miami from 1973 to 1975. He also served as Assistant State Attorney in Palm Beach County from 1975 to 1980. He was an Assistant United States Attorney for the Middle District of Florida from 1980 to 1983 where he served as Chief of the Narcotics Section. Mr. King practiced law in West Palm Beach with Moyle Flanagan et al from 1983 to this year.

William King is a member of the Florida Bar and the New Jersey Bar. He has been active in the coaching of youth sports for over fifteen years and has served as a member of the Board of Directors of the South Florida Science Museum. ■

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
Attorneys at Law

OF COUNSEL

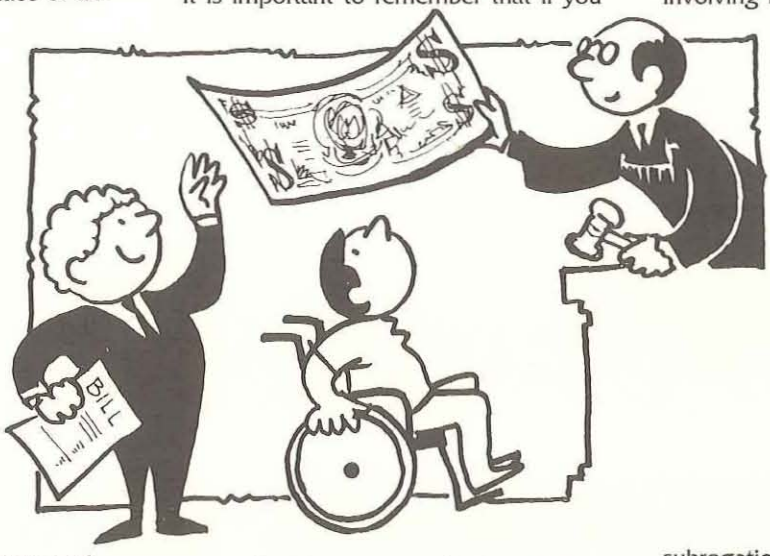
QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL.96, NO. 2

Insurance And You...

The Importance Of Subrogation

Subrogation is a word of no meaning to us in our daily lives. However, in civil cases it becomes important and can have a substantial impact.

Subrogation is defined as the substitution of one person in the place of another. If you have been injured by someone and your resulting medical bills are paid by an insurance carrier, then the entity that actually paid the bills may have a claim for reimbursement against the wrongdoer who caused the injury.



In cases we bring against wrongdoers, often substantial medical bills have been incurred for serious injuries sustained. These bills are often paid by Medicare, Medicaid, health insurance carriers, workers' compensation carriers and others. At some point in time, these entities with subrogation interests will request reimbursement of their payout if a recovery is made.

Your lawyers have a right to seek recovery for your economic damages which include past medical expenses. Clearly, if our client is responsible for these medical bills himself, then we simply include that claim in our client's case. If the individual has not paid those bills himself, most insurance contracts require that your lawyers pursue that claim for the entity that paid those bills. It is important to remember that if you are a client in a personal injury action, your lawyers will be duty bound to pursue recovery for your health insurance carrier, Medicare, Medicaid, etc.

Quite often, these entities who have paid your bills negotiate their liens wherein they only recover a small portion of what they have paid out on your behalf. For example, you will pay attorneys fees and costs out of any recovery you achieve. These entities must bear the same reduction in their reimbursement as does the individual. In most cases, they will also reduce their recovery as a result of difficulties involving liability, causation, and damages.

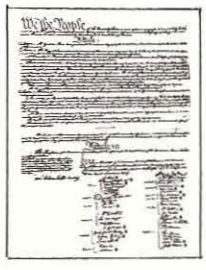
While the concept of subrogation has been around for a long time, we are experiencing a more aggressive attitude towards reimbursement on the part of health insurance carriers, workers' compensation carriers, Medicare, Medicaid, etc. They are becoming increasingly involved in intervening in these cases.

It is important that you discuss this principle with your lawyers, because subrogation may become a factor in your case. Subrogation usually becomes an issue when settlement negotiations begin and distribution of your recovery is made. It is better to discuss this with your lawyers in advance to avoid any misunderstanding when a substantial portion of your recovery may be repaid to Medicare, Medicaid or other insurance carriers. ■

The signers pledged to each other, *"..our Lives, our Fortunes, and our sacred Honor"*, in the cause of American Independence.

"While the Declaration was directed against an excess of authority, the Constitution was directed against anarchy."

- -Robert H. Jackson



"The greatest single effort of national deliberation that the world has ever seen."
- - John Adams

Announcing...


OF COUNSEL

Firm Receives National Communicator Award

The firm won an Honorable Mention "Communicator Award" for our newsletter, **'Of Counsel.'** It was presented by a national organization that recognizes outstanding work in the communications field. Entries are judged by a panel of professionals who look for companies and individuals whose talent exceeds a high standard of excellence and whose work serves as a benchmark for the industry. There were approximately one thousand entries from 34 states in the 1995 Print Media Competition. ■

Greg Barnhart

Greg Barnhart recently spoke at a conference of Florida Family Lawyers on the subject of *"How to Try a Spouse Abuse Case."* His lecture was given in Tampa and Miami.

The tort of spouse abuse is a new area of the law. Only recently, because of a Supreme Court decision, has one spouse been able to sue the other for spouse abuse. Greg Barnhart has both prosecuted and defended cases of spouse abuse. ■

Medical Director Complains Of Poor Patient Care And Is Fired

Dr. Richard Barfield, the long-time director of emergency services at JFK Medical Center, was abruptly fired after complaining about dangerous situations in the emergency room at that facility. He wrote letters to administrators warning that overworked, exhausted and incompetent physicians were endangering emergency room patients. Three days after receiving the letters, Barfield's contract was terminated by Coastal Physician Services of South Florida, a subsidiary of Coastal Health Care Group, Inc., in Durham, North Carolina.

For 20 years, Dr. Barfield, a Board Certified Emergency/Trauma Physician headed the group which staffed the emergency department at JFK Medical Center. JFK was acquired by Columbia Hospital Corporation, who then contracted with Coastal to assume responsibility for operating and staffing the emergency department. Columbia requested that Dr. Barfield be retained as Medical Director and Barfield contracted with Coastal to remain at JFK in that position. Barfield identified numerous problems caused by an overburdened emergency room and the emergency physicians supplied by Coastal. He attempted for many months to negociate a resolution of these problems with Coastal administrators. Dr. Barfield's attorney, David K. Kelley, said that Barfield had legitimate concerns regarding quality assurance matters and, in general, the way in which emergency medicine was being practiced at JFK since the Columbia/ Coastal take-over.

Finally, in April, after his compaints were ignored and the problems were unresolved, Dr. Barfield wrote two letters to Coastal complaining about the care being provided to patients by Coastal evergency doctors. He wrote, "ER physicians are being scheduled for shifts at Columbia JFK Medical Center immediately after, or, within hours of a shift at another emergency room. It endangers patients' lives and well-being, no matter how good the ER physician is. Fatigue sets in and errors are made."

Coastal officials contend Dr. Barfield's critical letters, oral complaints and his refusal to accept substandard practitioners in the emergency department were not the reason he was fired. Hospital officials say Barfield's contract was terminated because he let his malpractice insurance lapse. David Kelley has stated, "He was fully insured. This is nothing more than a sham to fire him." Kelley is pursuing Dr. Barfield's claim against Coastal and supports his attempts to ensure quality emergency medicine is once again practiced at JFK Medical Center. ■

"He has honor if he holds himself to an ideal of conduct though it is inconvenient, or unprofitable..."

- - Walter Lippman

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
Attorneys at Law

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 96, NO. 2

Over Thirteen Thousand Questionable Doctors Cited For Disciplinary Actions

(Excerpts reprinted from the April, 1996 Public Citizen Health Research Group Health Letter)

Many state medical boards and other regulatory agencies have either entirely failed to catch doctors guilty of incompetence, drunkenness, or patient abuse, or have let them get away with slaps on the wrist such as fines or reprimands.

For just as long, doctors and their ostensible gate-keepers have failed to realize that consumers need to protect themselves. They have either refused to provide information on those shoddy doctors they have spotted, or they have made it awfully hard to get.

Information in the one Federal repository of disciplinary actions by State medical boards and Federal agencies—the National Practitioner Data Bank—is kept secret from both patients and from almost all physicians. It is partially in protest to this congressionally-mandated secrecy that Public Citizen's Health Research Group has established our own publicly-available data bank of doctors who have been disciplined. What follows are just a few of the main findings from our study of the data as reported in the national version of **13,012 Questionable Doctors** and in the State versions:

* 13,012 doctors disciplined by either State medical boards or Federal agencies are listed in the national books.

* These doctors had a total of 25,069 disciplinary actions taken against them, the most common of which were probation (5,211 times), license revocation (2,321 times), license suspension (2,425 times) and license surrender (1,876 times).

* An analysis of the 1,208 doctors who were the subject of Drug Enforcement Administration disciplinary actions revealed that 376 or 31% were not the subject of any state disciplinary action even though their Federal narcotics license had been revoked or restricted.

* Similarly, of the 1,715 Medicare doctors who were the subjects of the 1,752 Medicare disciplinary actions, 520 or 30% were not disciplined by their state boards even though most (98.6% of actions) had involved exclusion from Medicare.

Thus, many states are not acting promptly, if at all, against physicians about whom a Federal agency has already compiled sufficient information to discipline them for very serious offenses.

Even for those states which do discipline doctors, for most of the serious offenses, some states frequently do little more than slap physicians on the wrist, leaving the majority free to practice with few if any restrictions.

* The only offense for which more than one-half of the disciplined physicians were at least temporarily taken out of practice was sexual abuse of or sexual misconduct with a patient, including some cases of rape. In this category, 70% of the 264 physicians listed in the book had licenses revoked, suspended or they surrendered their licenses, but 30% (79 doctors) did not have to stop practicing at all. Many more of the 185 other doctors, especially those whose licenses were just temporarily suspended, are probably back in practice again.

* For the other four most serious offenses, the majority of physicians against whom disciplinary actions were taken escaped even a temporary cessation of their practices.

Substandard care, incompetence or negligence: 1,622 doctors. Only 33% of these physicians had to stop practicing, even temporarily. 67% or 1,087 were not required to stop.

Criminal conviction (includes plea of guilty or no contest): 1,913 doctors. Only 42% of these doctors had to stop practicing, even temporarily. 58% or 1,109 were not required to stop.

Misprescribing or over prescribing of drugs: 1,378 doctors. Only 32% of these physicians had to stop practicing, even temporarily. 68% or 937 were not required to stop.

Drug or alcohol abuse: 1,059 doctors. Only 39% of these doctors had to stop practicing, even temporarily. 61% or 646 were not required to stop.

Thus, it is likely that most of the doctors in these above four categories of very serious offenses are currently practicing medicine, with few if any of their patients aware of these offenses.

Precisely because regulators provide so many protections for these health care practioners, the Congressional Office of Technology Assessment concluded that a formal disciplinary action against a doctor provides a good reason to question his or her care.

Our study of the nation's medical quality control system led us to conclude that:

* Too little discipline is still being done. Less than one-half of 1% of the nation's doctors face any serious state sanctions each year.

* Far too few state medical board disciplinary actions are for medical negligence or incompetence.

This country's system for ensuring medical quality needs to be made much stronger.

* Most states need to strengthen their medical practice statutes, restructure their medical boards, and dramatically increase both funding and staffing. Most states should also establish programs to audit and weed out bad doctors so that patient injuries can be prevented rather than simply reacted to.

RECOMMENDATIONS:

* Congress should require cooperation and routine data-sharing between state medical boards, Medicare Peer Review Organizations, state Medicaid agencies, and the Drug Enforcement Administration in catching and sanctioning malfeasant physicians.

* The National Practioner Data Bank, which began collecting information on questionable doctors in September, 1990, should be opened to the public. This change will require legislation.

* The Drug Enforcement Administration should routinely tell the public and pharmacists which doctors' controlled substances prescription licenses it has pulled or restricted.

* State medical boards should be required to promptly make public all their disciplinary actions and the offenses for which their actions were taken, and to regularly distribute lists of actions to consumers, the press, and other health care consumer organizations. ■

FLORIDA DOCTORS:
Public Citizen's Questionable Doctors report lists 1,234 Florida-licensed physicians who have been disciplined. Fifty-two of the doctors are from Palm Beach County and 10 are from Martin and St. Lucie counties. The Florida edition of the report is available for $15 plus $4 for postage and handling. **Call (202) 588-7734.**

Taking... *Time to Care*

Greg Barnhart, a model for Legal Aid Society

"And Justice For All" Evening

Members of the legal community recently gathered for the eighth annual Pro Bono Recognition Evening of the Legal Aid Society of Palm Beach County. The event honored lawyers and other community members who volunteered their time to provide legal assistance to the disadvantaged. Following the awards ceremony a fashion show was held featuring local attorneys, including our own Greg Barnhart.

The Legal Aid Society is dedicated to ensuring access to our judicial system for all persons regardless of their financial or physical limitations. It provides free legal assistance in civil matters to disadvantaged, disabled, elderly, children and HIV-infected individuals in Palm Beach County. Searcy Denney Scarola Barnhart & Shipley salutes the Legal Aid Society for providing quality legal assistance to the most needy members of our community. ■

THE REAL COMMUNITY SPIRIT...***TAKING TIME TO CARE***

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 96, NO. 2

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 96, NO. 2

COUNSEL

SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY, PA
Attorneys at Law

P. O. DRAWER 3626
WEST PALM BEACH
FLORIDA 33402-3626

BULK RATE
U. S. POSTAGE
PAID
WEST PALM BEACH,
FLORIDA
PERMIT NO.
3076

We represent over 30 open-heart surgery patients of Holmes Regional Medical Center who suffered serious wound infections which resulted in disfigurement and death...

...and we are looking for information from community members who may have experienced a similar problem or any person who may have information helpful to our continuing investigation.
Your call will be kept strictly confidential.

1-800-780-8607

Ask for attorney Cal Warriner, or Suzanne: ext. 215, or John: ext. 183.

(If you are currently employed by Holmes Regional Medical Center, please do not call.)

SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY, PA
Attorneys at Law