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Our Martindale-Hubbell rating

Monsees, Miller, Mayer, Presley & Amick 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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Why has our name changed?

Where do we begin? In April 2001, **Kirk R. Presley** and **Brian J. Amick** joined the firm as partners. The additions of Kirk and Brian are a major enhancement of the services our firm now offers. Shortly thereafter, however, **Dan DeFeo** regrettably left the firm to pursue his own practice. While we will miss the many years of association we enjoyed with Dan, our practice and the services we offer remain uncompromised. We continue to serve our clients and their families in a broad range of personal injury litigation practice areas, including product liability, nursing home liability, medical malpractice, aviation crash litigation; and for injuries related to all types of transportation accidents, including tractor-trailer, automobile, all-terrain vehicles, and watercraft.

We are **Monsees, Miller, Mayer, Presley & Amick**, a professional corporation of trial attorneys, specializing in serving the needs of those who have suffered from serious personal injury or the death of a loved one.

Medical errors

Managed-care organizations and hospitals do not comply with federal programs requiring them to protect patients from incompetent doctors.

According to the National Practitioners Databank, 84 percent of all managed-care organizations—1,176 out of 1,401—have never reported a single disciplinary or censure action. Further, between September 1, 1990, and September 30, 1999, only 715 actions were actually reported. With 100 million individuals enrolled in managed-care organizations, and hundreds of thousands of doctors and dentists associated with them, fewer than 1,000 incident reports in more than a decade serves, for all practical purposes, as nonreporting. The Institute for the Advancement of Medicine reported that medical errors lead to approximately 98,000 deaths annually.

How can you select a good doctor?

- Get referrals from people you trust and verify hospital admitting privileges.
- Call state medical boards and consumer groups for names of disciplined physicians.
- Check credentials in the American Medical Association's *American Medical Directory*.
- Consult an attorney with any questions.

Serving you and your family in times of need.

Americans and their courts

Most Americans recognize the value of preserving the right of each citizen to a trial in court by a jury of their peers. They also know that our civil justice system can force businesses or individuals behaving irresponsibly to compensate those they injure. Each of us is entitled to our own measure of justice.

But did you ever wonder just how and why many Americans actually go to court? *American Demographics* magazine reported a 1999 National Center for State Courts survey in which respondents gave answers.

- ★ 40 percent went to trials as observers just to see what happened.
- ★ 27.5 percent were called as defendants or plaintiffs in civil lawsuits.
- ★ 32 percent were summoned to traffic court.
- ★ 22 percent were embroiled in criminal proceedings.
- ★ 32 percent said they had not made an appearance in court in five years.
- ★ Only 17 percent could correctly name the Chief Justice of the United States Supreme Court.
- ★ **80 percent felt the U.S. justice system was the best in the world.**



Testing the waters— MTBE warning

Clean water is one of our nation's most precious commodities, and it is under siege by methyl tertiary butyl ether (MTBE).

MTBE is an organic chemical that manufacturers add to gasoline to improve air quality. Although it improves octane and reduces dangerous car exhaust emissions, MTBE has another effect which is harmful. It has been seeping into America's underground water supply since 1979, when it was first used.

The trouble with MTBE is that the U.S.

Environmental Protection Agency classified it as a potential human carcinogen, but is unsure about its potential health risk. What is certain is that MTBE at concentrations as low as five parts per billion gives pure water a turpentine taste and odor, rendering it unfit for consumption. Studies in Maine showed high concentrations of MTBE in groundwater where no gasoline infiltration was found.

MTBE class-action litigation to help protect and clean up groundwater supplies is under way in California, Connecticut, Florida, New Jersey, and New York. If research is valid, MTBE may be contaminating thousands of wells in the nation and compromising public and private water supplies. If you suspect contamination in your water supply, please contact an attorney as well as local environmental protection agencies.

Medical examinations...and privacy

Doctors and their patients have a set of expectations about medical examinations. Physicians expect their patients to arrive on time and to bring requested records or specimens. They want patients to honestly answer questions about symptoms or how they are feeling, and to understand all care, including diagnosis, treatment, and medical consequences. Doctors expect patients to comply with medical counsel or prescription directions. They also want patients to make arrangements to pay promptly.

Patients also have expectations. During routine or emergency medical examinations, they want to be treated with concern and respect, and obtain timely medical care in an appropriate medical setting. They expect their physician to provide all the care and treatment benefits that their medical coverage contract permits. They expect privacy during the examination and confidentiality regarding medical record access or release approval. They also want to be able to comment, complain, and seek redress when care doesn't meet their reasonable expectations.

Invasion of privacy

During an appointment, an oncologist permitted a pharmaceutical salesperson to sit in on the examination of a patient being treated for breast cancer. After the embarrassed patient sued for invasion of privacy, a state appellate court held that a salesperson's presence during the examination was sufficient to support a claim for intrusion based on a violation of a patient's right to, and expectation of, privacy.



All-terrain vehicle safety

Four-wheeled all-terrain vehicles (ATVs) are heavy, motorized machines designed for off-road riding. They are powerful and fun, but can be dangerous to children. According to the most recent U.S. Consumer Product Safety Commission report, which covers 1985 through 1997, 3,200 people died from ATV accidents and children under age 16 accounted for about 40 percent of the 887,000 ATV-related injuries.

Parents should encourage ATV safety by encouraging their children to

- ✓ observe manufacturer safety guides.
- ✓ take safety courses and wear helmets with face protection.
- ✓ ride only with adult supervision.
- ✓ obey traffic and safety laws and ordinances.
- ✓ never ride with passengers.
- ✓ drive at safe speeds and avoid taking risks.
- ✓ ride only during daylight and stay off paved roadways.

Parental supervision

On the basis of *negligent entrustment*, a state appeals court ruled that a parent who owned an ATV was liable for serious injuries sustained by a girl who rode as a passenger. The judge made this ruling even though the injured teenager was riding with a driver, unrelated to the owner, who had received permission to drive the ATV from the owner's son.

SAVE YOUR BREATH

Most of us usually take breathing for granted, since our lungs run on autopilot pretty much all the time. We notice breathing when we over-exert ourselves, breathe poor-quality air at work, or suffer colds or other illnesses that affect our ability to fill our lungs with air.

The American Lung Association (www.lungusa.org) and other organizations that promote lung health encourage us all to become aware of special issues and practice good respiratory health.

Asthma—Sufferers need to understand their chronic disease, know what triggers attacks, and take medications faithfully and carefully.

Tobacco use—Everyone needs to live as smoke-free a life as possible. Smokers can work at quitting smoking through counseling, nicotine replacement, and other therapies.

Environmental considerations—We can stay indoors on high ozone days; reduce radon gas, asbestos dust, and particulates in home and work air; and support local lung health associations.

Medical care—Cardiopulmonary assessments should always be included in doctors' checkups.

LUNG DISEASE

No matter how well we pay attention to our breathing and lung care, we can still run into difficulties. After a man passed away from lung cancer, his wife and estate won a medical negligence suit against a family doctor for failing to diagnose the cancer in a timely manner. The plaintiff's attorney alleged that the physician failed to examine suspicious x-rays or read radiology reports warning of possible cancers.

Insurance fraud and the elderly

We live in a time when our elderly are prime targets of fraud and misleading sales pitches. Criminal wrongdoers often victimize seniors by luring them into money-stealing scams involving charities, sweepstakes, home mortgages, investments, and many other dishonest schemes.

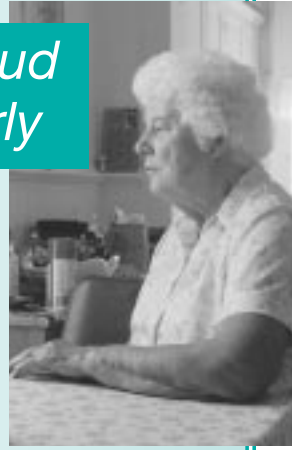
Increasingly, the elderly are falling for fraudulent insurance policy con games. One is surrendering years-old, high-cash-value whole life insurance policies for *low-value, final-expense life insurance* that allegedly pays higher benefits. Unscrupulous agents tell the elderly that this will reduce debts for their heirs. Known as "churning," this sales practice serves only to generate multiple commissions for agents and increase insurance coverage costs.

Another fraudulent practice is defrauding older policy owners with so-called viatical settlements. Originally created to help sick patients raise cash for medical and other expenses, viatical settlements let a third party purchase an insurance policy from someone who is terminally ill and then collect the death benefits at their death. Full of scam potential, viaticals rank among the top ten frauds, according to The North American Securities Administrators Association.

A third scam is sale of insurance to the elderly that purports to have fixed premiums, but in actuality rapidly rises in cost over time. Cagy agents lowball initial premiums, but as premiums rise, so do policy cancellations. Agents collect commissions and companies benefit from canceled policies.

Advocates for the elderly

State insurance commissions and consumer advocates are fighting fraud through monitoring and education. In many cases, trial lawyers bring class- and individual-action lawsuits on behalf of seniors and their families to seek compensation for fraudulent practices. If you suspect an elderly relative or friend has suffered losses due to suspicious insurance coverages, please contact legal counsel.





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PLAYGROUND SAFETY

Kids love playgrounds where they can climb, slide, swing, and have fun. But U.S. Consumer Product Safety Commission data show that more than 200,000 playground accidents occur annually, with many requiring emergency room treatment for injured children. More frightening is that in 1999 and 2000, nearly 150 child

fatalities occurred among children under age 15 at playgrounds—with 70 percent on home playground equipment and the rest at public-use facilities.

The National Program for Playground Safety suggests precautions parents can take to make sure their children are as safe as possible at home and at public playgrounds.

- An adult should supervise all play and assist in emergencies.
- Encourage children to play on equipment designed for their ages.
- Safety-inspect ground surfaces for hardness or hazards such as broken glass or other sharp objects.
- Monitor ladders, steps, platforms, handrails, ropes, barriers, and swings, slides, seesaws, and merry-go-rounds for condition, looking for sharp edges, loose connections, missing parts, and other dangers.
- Report and repair all hazards.

Injured children

Despite all precautions, child injuries may occur—but parents have legal remedies. A three-year-old in a Headstart program suffered head, neck, and brain damage from a fall off a jungle gym. The child's parents received a structured settlement after their attorney demonstrated that the preschool operators were negligent for failing to provide adequate adult supervision of children at play.

BEWARE... TOXIC MOLD

Like a horror-movie monster, slimy and toxic mold has been creeping through homes, schools, and other buildings throughout the nation.

Stachybotrys, *aspergillus*, *chaetomium*, and *penicillium* molds, which start to grow from unchecked plumbing or roof water leakage, can ruin structures and furnishings, aggravate respiratory conditions, and lead to serious health problems, including mental anguish. Several sufferers have actually burned their homes down to rid themselves of mold.

Insurance companies have already settled more than \$85 million in claims in Texas alone, with one jury compelling an insurer to pay a client \$32 million for mold damage to her 22-room mansion. Other insurers have eliminated coverage in 30 states and are forcing victims of home mold to enter binding arbitration for settlements. Increasingly, home warranties include mold-free requirements.

Anyone suspecting mold problems at home or work should contact their physician and attorney.