

# MONSEES MILLER MAYER PRESLEY & AMICK

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## Kansas City Office

4717 Grand Avenue, Suite 820

Kansas City, MO 64112-2258

816-361-5550

800-444-7552

FAX: 816-361-5577

## Springfield Office

1021 East Walnut

Springfield, MO 65806-2301

417-866-8688

800-333-7552

FAX: 417-866-8687

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- Employment Matters
- Nursing Home Negligence
- Industrial Accidents
- Construction Accidents
- Recreational Accidents
- Explosions, Electrocution
- Insurance Claims
- ...and many others.

## VOTE

Register  
and vote  
in 2004.

## Report refutes malpractice insurance "crisis"

A government report issued late last year showed little evidence of a long-alleged "crisis" in patient access to medical care as a result of medical malpractice insurance increases.

The General Accounting Office (GAO), a nonpartisan research arm of Congress, released *Medical Malpractice: Implications of Rising Premiums on Access to Health Care*, which suggested that the American Medical Association (AMA), the insurance industry, and some politicians misled the American people, state and federal legislators, the news media, and even physicians about medical malpractice.

This report was requested by three members of the House of Representatives who promoted medical malpractice limits on the rights of injured patients and who expected results to support their case. When that didn't happen, they saw to it that the report was released late on the Friday of a holiday weekend to minimize news coverage.

The GAO report said that the medical industry wildly overstated its case about the effects of medical malpractice insurance premium increases on access

### Insurance profits soar in 2003

*The insurance industry's property & casualty arena saw a 1,000 percent increase in profits, to \$29.9 billion, in 2003. According to The Foundation for Taxpayer & Consumer Rights, the "increased profits are the result of skyrocketing premiums on doctors, businesses, and individual consumers, as well as a series of new laws around the country further limiting the rights of policyholders and injured victims to file and collect legitimate claims."*



### Insurance surplus balloons in 2003

*With dramatic increases in capital gains and investment returns, the private insurance industry saw its surplus increase to \$61.6 billion in 2003.*



to care. In the nine states studied—all classified by the AMA as "in crisis"—the GAO found that news reports of doctors quitting medicine, moving practices out of state, and of hospitals reducing services because of medical malpractice premium increases could not be substantiated and did not affect health-care access.

The GAO also made it clear that insurers' sharply reduced gains on investments between 1998 and 2001. That meant they had to increase premiums to cover a larger share of operating-cost losses. This followed a period in which premium rates were maintained at money-losing rates to compete in the marketplace. In other words, the report found that market forces unrelated to lawsuits were significant contributors to increases in the cost of physicians' medical malpractice liability insurance.

Just before the report was released, the AMA asked GAO investigators to look at additional malpractice information it had gathered, modify the report's conclusions, and delay issuance.

Much to its credit, the GAO said it could not change its conclusions that much of the AMA's data on medical malpractice rates and their effects were suspect.

*Good people who happen to be good lawyers.*

## HMOs and patient care

To obtain the best care at the lowest cost, HMO members can ascertain their rights and responsibilities from a number of sources.

- At enrollment, members obtain a comprehensive handbook or guide that outlines benefits, treatments, and services the plan covers.
- The HMO plan contract defines benefits, such as deductibles and lifetime limits, with greater specificity.
- The plan's Member Services telephone representatives can advise on what the plan covers, particularly for "out of network" services.
- If HMO coverage is provided through an employer, the company's human resources office can answer questions about plan rules, costs, coverages, appeals, and complaints.
- A state's insurance department can also advise



on HMO patients' rights and responsibilities.

- HMOs customarily pay for services on the basis of specific treatment guidelines, called practice protocols. Members can usually obtain the best medical attention with the highest coverage when participating physicians follow HMO treatment protocols.

### When an HMO plan errs

Most HMOs deliver members' health services as promised in the contracts. When they do not—or deny or delay treatment—members have legal recourse. A diabetic patient with numerous high-risk factors for cardiac disease suffered a myocardial infarction and died. The patient's wife and estate sued the HMO for delaying stress-testing and not prescribing blood-pressure medications. Their lawyer provided evidence that with timely treatment, the patient would have had a near-normal life expectancy. The jury awarded a wrongful-death verdict and damages.

## Manufacturing, employment, and injuries

It's no secret that our nation's manufacturing sector has declined in scope and size over the past decade as productivity has increased and jobs have moved overseas.

Surviving manufacturing companies know that they must continue to make accommodations to remain efficient and competitive. Management may lay off part of its workforce, which means that the fewer remaining employees pick up more of the work. Purchasers increasingly look for suppliers who can provide needed products and services at lower costs. Supervisors may extend or delay maintenance and replacement schedules to get additional months or years of use out of capital equipment. Some companies overhaul and renovate plant equipment rather than replace it.

### Rebuild...with safety

When a maintenance employee crawled beneath a refurbished conveyor system to make an adjustment, the motor's chain drive crushed his wrist and severed part of his pinkie. Since the injury was to his dominant hand, he sued his employer for loss of future wages and inability to do repair work. His attorney argued that the equipment's rebuilder had failed to incorporate an inner chain guard that would have prevented accidental contact with the chain drive. The parties settled.



## Cosmetic surgery



According to the American Society of Plastic Surgeons (ASPS), in 2003 over 8.7 million procedures were performed on patients who wanted to improve their appearance and manage signs of aging—a 32 percent increase over 2002. Invasive surgical procedures grew 5 percent. Minimally invasive procedures, such as Botox® injections, grew 41 percent.

Like all other surgeries, cosmetic surgery involves risk. Reality programs, such as ABC's *Extreme Makeover*, may cause some patients to fail to appreciate the seriousness of cosmetic surgery as well as potential outcome problems and side effects associated with surgery and medications.

ASPS suggests that patients considering cosmetic surgery...

- insist on a physician board-certified by the American Board of Medical Specialties.
- demand safe surgical facilities.
- require a medical examination and evaluation.
- learn all they can about cosmetic surgery.
- seek ASPS-affiliated physicians.
- ask questions.

### Outcome problems

Cosmetic-surgery patients can seek justice in the courts when physicians make preventable mistakes. Following surgery to lengthen his chin, a patient suffered restricted lip movement. The plaintiff's attorney showed that the patient was not warned of the procedure's risk. A jury awarded a judgment, which a judge reduced. The case will be retried.

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## HOME WARRANTIES

Builders who construct new homes usually provide a one-year written warranty through which they agree to correct construction or cosmetic workmanship deficiencies.

In most cases, contractors want to satisfy customers. Many construction companies conduct a premortgage settlement walk-through of a new property, which enables owners to identify contractual omissions or substitutions and final-finish blemishes that builders should repair.

Sometime near the end of the first year, the builder may ask owners for a "punch list" of additional problems to be fixed. This is usually the home buyer's last opportunity to point out serious plumbing, HVAC, electrical, and other concerns. It may take 12 months to discover squeaky floors or steps, drywall screws that have popped up, gutters and downspouts that don't work properly, or more serious issues.

After the first year, some builders will continue to repair problems that they reasonably acknowledge as their responsibility. However, others may feel that the warranty's liability has run its course, noting that defective construction or deficient finish issues have become the owner's maintenance responsibility.

### PERSISTENT PROBLEMS

When problems persist, home owners may find assistance from consumer-protection guidelines or even state liability laws. When these don't solve the problem, home owners have recourse to legal remedies through the justice system. One home owner requested that his builder correct a drainage problem that repeatedly caused flooding and damage to his property. When the contractor refused, the home owner's attorney sued for negligence, breach of warranty, fraud, and nuisance. A jury awarded punitive damages.

## Medical technology and premature babies

Neonatal Intensive Care Units (NICUs) are high-technology hospital departments.

Neonatologists have 24-hour access to computerized physiological data on a high-risk or premature infant's health status. Electronic monitors continually assess and report basics, such as temperature, blood pressure, and respiration. Doctors may request specialized high-tech testing to evaluate a baby's blood oxygenation, cardiac functions, and even vision and hearing capabilities.

Equally important is the time and care that skilled and experienced physicians and compassionate staff give to each infant. Newborns' parents recognize the balance between the masses of high-tech NICU equipment and the quality time caregivers spend touching, talking to, and smiling at babies.

### When errors occur

Although NICUs help many newborns survive, parents have recourse when caregivers make preventable mistakes. A baby was born prematurely at 27 weeks of gestation. The hospital's pharmacy erred in mixing a nutritional glucose solution, which caused the baby to suffer hypoglycemia, seizures, and brain injury. The parents sued for negligence and reached a structured settlement for lifelong care.



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Kansas City, MO 64112-2258

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## Referrals

We want you to think of us as your law firm.

If you have legal matters that need attention, please let us know. If we cannot handle the matter, we will refer you to a competent firm that can.

Please feel free to refer us to your family, friends, and neighbors for their legal needs. We welcome the opportunity to help.



**CALL US.  
YOU'RE GOING TO  
FEEL A WHOLE LOT  
BETTER ABOUT THINGS.**

## Register today

### Vote on

### Election Day, November 2, 2004



Voting trends show that many people don't think their votes matter anymore. But they do.

Many local elections are determined by less than 100 votes. Small numbers of votes count, even in national elections. The extremely close 2000 presidential race, the events that followed in Florida, and the intervention by the United States Supreme Court in Florida's voting methods, records, and recounts bear witness to the importance of each vote.

The 2004 presidential election will in many ways determine the course of our national economy, taxation for the next decade, your children's education, several Supreme Court and appellate court appointments, and many other issues.

### Each vote counts a lot. Yours will too.

If you care deeply about any of the following issues, you have a very important responsibility to educate yourself and to register and vote.

- ★ American world leadership
- ★ Care for the elderly
- ★ Corporate responsibility
- ★ The economy
- ★ The environment
- ★ Equal rights
- ★ The family in America
- ★ Government-official accountability
- ★ Health-care, insurance, and prescription costs
- ★ Housing
- ★ Immigration
- ★ Jobs, unemployment, and worker rights
- ★ Land-use policies
- ★ Local, state, and federal taxation
- ★ Pro-life vs. pro-choice
- ★ Spending on the poor and other social issues
- ★ Your children's and grandchildren's higher education costs