

# MONSEES MILLER MAYER PRESLEY & AMICK

A PROFESSIONAL CORPORATION • TRIAL ATTORNEYS



WINTER 2002/03

Brought to you by  
Monsees, Miller, Mayer,  
Presley & Amick  
A Professional Corporation

Web site:

[www.mmmpla.com](http://www.mmmpla.com)

## 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

### CLAIMS/CASES

- Automobile Accidents
- Dangerous Products
- Medical Malpractice
- Employment Matters
- Nursing Home Negligence
- Industrial Accidents
- Construction Accidents
- Recreational Accidents
- Explosions, Electrocution
- Insurance Claims
- ...and many others.

## Our Martindale-Hubbell rating

Monsees, Miller, Mayer, Presley & Amick has earned an AV rating, the highest possible, 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.

Copyright © 1996-98 Reed Elsevier Inc.

## Insurers responsible for medical malpractice "crisis"

### So-called "reforms" benefit insurers, hurt patients

Recently the U.S. Senate defeated a draconian medical malpractice and product liability proposal introduced for the benefit of the insurance industry. And yet, even more dangerous anti-patient legislation has been proposed in the U.S. House and in many states.

The federal legislation would preempt all state laws more favorable to patients and drastically limit the rights to those most severely injured by medical malpractice, dangerous medical products, HMOs, and nursing homes. Most bills express distrust of juries by limiting the amount of compensation a jury can provide malpractice victims. Advocates of damages caps falsely say doctors' insurance premiums will go down as a result, even though the American Insurance Association admits premiums won't be lowered. Nevada even recently limited awards for the most severe injuries to \$350,000, and insurers said they had no intention of lowering rates.

### An HHS study gets it all wrong

Last summer, President Bush announced the release of a new report by the U.S. Department of Health and Human Services (HHS) which alleged that unnecessary medical malpractice litigation had created a health care insurance

premium crisis in our nation.

With all due respect, President Bush is wrong. The HHS report is a thinly veiled

plea for special government protections for the insurance industry, at the expense of mothers whose babies were brain-injured in botched deliveries and the families of elderly relatives abused in nursing homes. Insurers are courting Congress to bail them out for decades of poor industry investment and business decisions by

limiting what they must pay the most severely injured victims of medical malpractice. Much of the evidence in the HHS medical malpractice study is highly suspect or just plain wrong.

■ Instead of including all 50 states, HHS hand picked only 10—which had the highest medical malpractice insurance premium increases—and ignored 20 of 29 states that do not cap juries' awards to medical malpractice victims in which insurance premiums did not go up.

■ HHS erroneously reported that West Virginia doesn't limit what

juries can award—although, in fact, it does—and claimed its 30 percent increase medical malpractice insurance premiums was a result of having no caps.

■ HHS also left out most facts and evidence that contradicts its pro-insurance industry premise.

■ A law professor HHS cited numerous times as a medical malpractice legal expert took \$67,000 from the insurance industry to promote its cause in various court cases.

### The real problem?

Medical malpractice occurs too frequently. It's the eighth leading cause of death in America—killing more people than AIDS, breast cancer, or automobile accidents. Reports show that up to 98,000 patients die—and many more are injured—in U.S. hospitals each year as a result of preventable medical errors.



Serving you and your family in times of need.

# CHILD DAY CARE

For dual-income career couples who have children, day care is fundamental. In choosing a care provider, parents cross a threshold into a new world of experiences and relationships with their child. Entrance into child day care also requires understanding the serious responsibilities that both parents and day-care providers share regarding the health and welfare of a child.

Here are some guides for parents in selecting and monitoring day-care operations.

- Ask to see the facility's license.
- Spot-check the facility for sanitation and safety.
- Inquire about management and staff qualifications and experience.
- Read all the background information you receive.
- In order to see how things work, visit the center several times before enrolling your child.
- Get and stay involved in your child's care.
- Ask your child frequently for comments on his or her experiences.
- Later, make unannounced visits to see your child.
- If you have any concerns, talk to the facility's director.



## BE VIGILANT

No matter how carefully a family previews and monitors a day-care facility, problems can always arise. After a six-month-old suffered permanent brain damage, cerebral palsy, and blindness, his mother sued the day-care operator and owner, alleging assault and battery. A jury awarded damages after finding both the owner and operator responsible for the child, who was a victim of shaken baby syndrome.



## Attorney-client privilege

**Q: What does attorney-client privilege mean?**

**A:** Without the client's permission, an attorney may not disclose confidential information that a client has communicated to him or her.

**Q: Is every communication covered by privilege?**

**A:** No. Attorney-client privilege protects only that spoken or written information conveyed to an attorney hired by the client, and which is communicated when the client is seeking the attorney's legal counsel on a matter. Counsel unrelated to a legal matter is not privileged.

**Q: What about cell phones or e-mail communication?**

**A:** Care must be taken with their use, since third parties may eavesdrop even on supposedly secure or encrypted communications.

**Q: Who "owns" the privilege?**

**A:** Only the client, who breaks it by inadvertently communicating the information to a third party.

**Q: Must an attorney's employees honor the privilege?**

**A:** Yes, other members of the firm—attorneys, legal assistants, paralegals, and clerical staff—honor attorney-client privilege.

**Q: How long does privilege exist?**

**A:** Only a client's authorization or a court's ruling can break it.

## LEGAL LEXICON

Many clients find the legal terms used in court puzzling. From time to time, we'll offer some easy-to-understand definitions to help clear things up. This time, you'll learn the meanings of several important terms used in courts to help you better understand our trial and jury system.

### Testimony

Statements of fact about a case that a witness declares are true while under oath or affirmation.

### Direct examination

Preliminary questions that lawyers ask witnesses who have been called by their client and who support the issue and welcome any questions. Lawyers use direct examination to establish the basics of a case.

### Cross-examination

Probing inquiries by the opposing attorney about the testimony of direct examination witnesses in order to weaken or counter the testimony and other side's case.

### Redirect examination

Questions asked of witnesses about testimony and matters brought up during cross-examination to validate key points or contest misimpressions.

# HEART HEALTH

## Cardiac pacemakers

In implant use since the 1950s, pacemakers regulate heart rhythm disturbances and help millions of people lead normal and productive lives. Pacemakers work by directing minute electrical impulses to aid the heart's muscles in relaxing and contracting normally.

Technological advancements have improved pacemakers' electronic circuitry and have reduced their size and weight. Battery life has also been extended greatly.

In the past, pacemaker implants were done only in hospital operating rooms under general anesthesia. Today, the procedure, while still a major medical undertaking, is often performed in electrophysiology laboratories under local anesthesia.

Pacemaker recipients return to normal life within days of the procedure, but must obtain periodic cardiac assessments. Physicians can monitor pacemaker function by telephone transmission.

### Ongoing cardiac care

A key element of pacemaker implant care is follow-up medical attention. Following a patient's artery bypass, valve replacement, and pacemaker implant therapies, a hospital staffer improperly removed the pacemaker's wire leads. The patient's attorney filed suit and won a settlement from the hospital by demonstrating that a nurse's negligent removal of pacemaker wires tore the patient's heart tissue, caused dangerous complications, and led to additional surgeries.



# FOR YOUR SAFETY

## Recalled product roundup

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

- ✓ **PM International Ltd.** has recalled 22,000 international two-prong adapter plugs, which can separate upon removal and pose an electric shock hazard to users.
- ✓ **Whirlpool Corporation** recalled 17,000 combination washer and gas dryer units, whose dryers can overheat and catch fire.
- ✓ **Candle-lite** called back 80,000 Martha Stewart Everyday® Brand ceramic potpourri simmering pots. Candle flames can flare from ventilation holes and burn consumers.
- ✓ **Graco Children's Products, Inc.**, has asked consumers to return 152,000 toy tracks attached to children's activity centers. The track can break and then cut, pinch, and choke young children.

### Recalls are rising

It's more important than ever to try to stay up-to-date on product recalls, which are increasing. In 2001, Food and Drug Administration recalls jumped by 24 percent (up to more than 4,000), and the Consumer Product Safety Commission (CPSC), which has jurisdiction over more than 15,000 varieties of consumer products, had more recalls in 2001 than in any year since 1990. At the same time, however, consumers are not always heeding recall messages. The CPSC says that returns on some recalls have been below 20 percent.

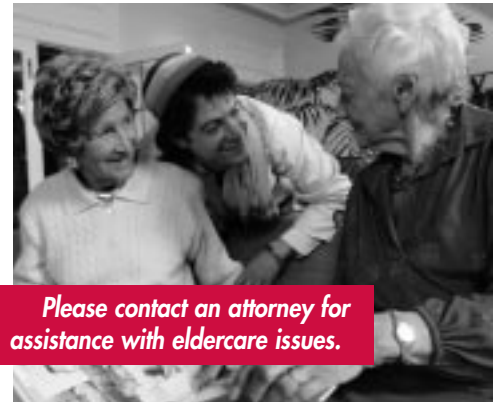
# ELDERCARE

## Assisted-living residences

One of the privileges of family life is helping a beloved elder family member find an assisted-living residence to meet their daily living, health-care, nutritional, social, and spiritual needs. Seniors' residences vary in both offerings and qualifications, so it's important for a family to review several residences before making a selection.

Here are some screening guides:

- Ask for records of licensure, quality assurance planning, association memberships, inspection certificates, and continuing education for staff.
- Investigate resident needs assessments and a progress plan.
- Identify facility assistance available to memory-impaired or disabled residents.
- Inquire about physician and hospital availability.
- Obtain a listing of all services and activities, from medication assistance and laundry to social activities and group outings.
- Be sure to understand all costs and fees.



Please contact an attorney for assistance with eldercare issues.

### When care fails

Assisted-living centers that conduct health-care testing have a particularly important responsibility to residents. After an 84-year-old was placed on a cardiac medication, he underwent testing to evaluate results. Although the test lab faxed notice of abnormal value readings to residence medical staff, they took three days to notify the resident's physician. When the resident became ill and died, his family brought a medical negligence suit against the testing lab and the assisted-living facility. A jury awarded significant damages as a "clear statement" that the resident's life had value despite his advanced age.



4717 Grand Avenue, Suite 820  
Kansas City, MO 64112-2258

RETURN SERVICE REQUESTED

PRESORTED  
STANDARD  
U.S. POSTAGE PAID  
MAILED FROM ZIP CODE 17604  
PERMIT NO. 242

© Copyright 2002. Newsletters, Ink. Corp. All rights reserved. Printed in the U.S.A. www.newslettersink.com

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.

## Asbestos update



**M**anufacturers knew asbestos products were hazardous to employees and consumers as early as 1930. However,

they concealed health dangers from workers and the public. Exposure to asbestos dust can cause mesothelioma (a deadly cancer of the lining of the lungs) cancers of the lung and colon, and other illnesses. The federal government limited asbestos use in the 1970s.

Millions of Americans have been poisoned, but corporations won't take responsibility for treatment of their employees. Manufacturers continue to wage legal and public relations battles to avoid accepting blame for wrongdoing.

The asbestos industry and other companies have been seeking congressional protection from those they have hurt.

### If you are concerned

If you suspect you or a loved one has been injured by asbestos, see your physician and contact an attorney right away. The law limits the time sufferers have to act.

## Childbirth injuries

**P**arents want their child's birth to be a beautiful experience. They also hope and pray that their new infant will enjoy a normal and natural childhood.

However, in some cases, birth-trauma injuries shatter parents' dreams and children's lives. Some cerebral palsy and birth-trauma injuries to infants may be preventable through appropriate and timely medical intervention or nursing care.

### Cerebral palsy

A jury awarded a Wisconsin couple a medical malpractice verdict when their attorney demonstrated that their physician mishandled their son's birth, causing him to develop cerebral palsy. The verdict will help the family pay for physical, occupational, vocational, and other necessary therapies their son will require for the rest of his life.



*Had this couple's son been born several months later, subsequently enacted state caps on "noneconomic" awards for pain, suffering, and other damages in medical malpractice suits would have reduced the jury's verdict to less than half.*

## Lawsuit



**Q:** *How can I tell if I have a legitimate claim for a lawsuit?*

**A:** The best way to see if you have a viable legal claim is to consult an attorney.

**Q:** *Why is that?*

**A:** A lawyer knows the law and is thus in a better position to evaluate the details of your situation to make a professional determination of the claim.

**Q:** *What will it cost for a lawsuit?*

**A:** It all depends, though a common approach is a contingent fee contract. This is when an attorney represents a client and bases compensation on a percentage of the amount recovered in the suit, plus costs. The client faces no out-of-pocket expenses. You pay the lawyer only if he or she wins your case.

**Q:** *Are there other financial arrangements?*

**A:** Yes. Depending on the issues in the case, some clients prefer to pay for services on an hourly basis, a retainer basis, or a combination of the two.