

BALINT'S BULLETIN

CLIENT LAW UPDATE

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Happy New Year!



THANK YOU!

A big thank you to our clients, friends and colleagues who have referred cases to us. We appreciate them and their confidence in us. Our firm had many successes in 2012 including several very large verdicts and settlements, all of which cases were referrals. We strive to be a place where you and your friends and family can bring your legal concerns. We focus on the legal areas of personal injury, legal malpractice, wrongful death, and medical malpractice. Regardless of the nature of the legal concern, if you bring it to us, we will either help you directly, or refer you to the attorney *we* would use if we were in your shoes. So if you, or your friends or family have questions or need help, just give us a call. It's no trouble, and we'll be glad to speak with you.

America's Death Factories

The title above is meant to get your

attention. In all of last year's debates, we heard from presidential candidates about healthcare reform, but one crucial element was missing: the sloppiness of the care of hospital patients. The most recent information comes from a John Hopkins Institute of Patient Safety. The statistics are not exact but they report that about 100,000 people die each year in the United States from infections that hospitals give patients, and about another 100,000 patients die each year from blood clots caused by the hospital care, and 80,000-100,000 die each year from negligent diagnosis of conditions. The Institute reports that not all of these deaths are preventable but the vast majority of them *are* preventable. Furthermore, this does not exhaust the list of problems in hospitals resulting in fatalities. There are problems where people die because the staff simply does not communicate well with each other, and others because of treatment mistakes. Only cancer and heart disease kill more Americans. By contrast, 38,000 people die on our roads each year. The irony is that when hospitals make mistakes, such as infecting patients, they charge the patient or the insurance company for the cost of fixing the mistake. Even more important, the fatalities listed above do not include a multiple of those numbers of patients harmed, often permanently. Unless the government steps in to

make sure that it would be illegal for hospitals to charge anyone for fixing their mistakes, the problem will likely continue. Another massive flaw in the hospitals is the lack of transparency and honesty. I have reviewed hundreds of medical files on clients who have suffered from obvious mistakes and very rarely are errors documented in the records. A recent article in the Wall Street Journal by a doctor, "How to Stop Hospitals from Killing Us," noted that medical mistakes kill enough people each week to fill four jumbo jets. The author of that editorial pointed out that one of the main inhibitors to correcting the system is that doctors learn early to overlook the mistakes of other doctors. It is difficult, for example -- no matter how obvious the malpractice -- to get a local doctor to be honest enough to testify about the mistakes of other doctors. So I would say to hospitals and doctors in general, "heal thy self."

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This newsletter reports on news and developments in the law. It is offered as a service to our clients and readers and is not a substitute for legal advice.

Beware of Unnecessary Antibiotics!

There is national litigation over the sometimes devastating side effects of the newer forms of antibiotics. These are called fluoroquinolones, the most common versions of which are Cipro and Levaquin. After the company manufacturing Levaquin was faced with lawsuits over nightmarish side effects of their drug, they admitted that they had not fully disclosed to doctors and patients the potential side effects. These new types of antibiotics should be reserved only for the most serious cases of bacterial infection. All too often, however, doctors seem to think that they need the equivalent of an atom bomb to kill a flea. The side effects that have been showing up include detachment of retinas from eyes, kidney failure, severe weakness, uncontrolled shaking, muscle spasms in all parts of the body, rashes, digestive problems, and even central nervous system damage. Some of these reactions have gone away after a period of months but some have permanently damaged the people taking them. If you have an ordinary infection, insist on having a tried and true old-fashioned antibiotic. Even more important, ask what the normal healing period would be for whatever infection you have even without antibiotics.



An Insane Nation

I have not been able to read the detailed account on how the 20 children and 7 adults were killed in Connecticut on December 14. It's

too gruesome. The children were all 6 years old and were shot multiple times. The shooter used guns from his mother's gun collection, first killing her, and then going to the school. This is a nation saturated with gun violence. Politicians are too frightened with the political power of the National Rifle Association to enact meaningful regulations of firearms. There are at least 24 people killed in the United States every day by people with guns killing other people. There are about 9,000 people murdered in the United States every year with guns. If we add in the number of people accidentally killed and those who commit suicide with guns, the total is about 25,000 per year. This is approaching the number of people killed by cars (most all of which are by negligence, not deliberate intent). There are now more Americans killed by private guns than the total killed in all the wars since the Civil War! If you combine the 23 richest countries in the world, the total number of gun deaths in the United States exceeds the number of gun deaths in all of those countries combined. Yes, there are mass murders in every country but none on the scale and frequency of the United States. Just in 2012 alone there were 16 mass murders with guns.

1. 2/22--5 killed at Korean health club in Norcross, Georgia
2. 2/26--1 killed 20 wounded by gangland style shooting into a nightclub in Jackson, Tennessee
3. 2/27--3 killed by classmate at Chardon High School in Ohio
4. 3/8--2 killed, 7 wounded at a hospital in Pittsburgh
5. 3/31--2 killed, 12 wounded at a shooting of mourners in Miami

funeral home

6. 4/2--7 killed, 3 wounded where a University Student opened fire in Oakland
 7. 4/2--3 killed, 2 wounded in Tulsa where white racist decided to kill black men at random
 8. 5/29--5 killed in coffee shop killing here in Seattle
 9. 7/12--3 killed, 7 wounded when an upset group of men open fire at a soccer game in Willington, Delaware
 10. 7/20--12 killed, 58 wounded in Aurora Colorado at midnight screening of "The Dark Knight Rises"
 11. 8/5--6 killed when a white supremacist opened fire inside a Sikh temple in Milwaukee
 12. 8/14--3 killed at Texas A&M University
 13. 9/27--5 killed when a pissed off worker kills coworkers in Minneapolis
 14. 10/21--3 killed, 4 wounded when an angry husband kills his wife and 2 others in a health spa in Brookfield, Wisconsin
 15. 12/11--2 killed when a shooter opens fire in Portland mall.
- The above list was just 2012. If we go back just a short period of time there have been 384 mass shooting in the United States since 2007.

47% of Americans own guns and collectively we own over 300 million guns. This is a culture of death unsurpassed in human history. While many other countries have a high percentages of gun ownership; it is only America that we kill ourselves in such numbers. There are about 200 gun-related deaths in Canada each year. There are 130,000 registered gun dealers in the United States which is more than the total number of supermarkets. The NRA says that we need

guns to stop the kind of violence that we saw in Newtown. However, there has not been ONE single incident in the entire history of mass murders by gun that murders have been prevented by some private citizen taking out their own gun and starting to shoot. At Columbine security guards did fire at the two perpetrators early in their killing spree but missed. There are crazy people in all countries yet it is only in the United States with its lack of political will that we have these kinds of numbers. It is true that we cannot ever eliminate gun violence any more than we can eliminate death and injury from automobiles. However, as in the situation with automobiles we can take safety measures to sharply reduce the number of deaths. We don't need rifles designed for the battlefield on our streets; we do not need unregistered handguns. We do not need to perpetuate the non-requirement of background checks at gun shows and private sales. We do not need to have unmarked ammunition and guns so that they cannot be traced after illegal use. We do not need armor piercing bullets. We can register all firearms and tax them in the same way we tax other destructive but legal substances like alcohol and tobacco. We will look back at this time in American history 50 or 75 years as a time of complete wackiness when it comes to guns. Until that time, I fear that our cowardly politicians will change nothing.

Criminal Case Statistics

In March 2012 the Supreme Court expanded criminal defendant rights to include plea negotiations. What was their rationale? Our firm does not do criminal defense cases so some of this information was new

to us. 95% of criminal convictions are not from full trials but rather from guilty pleas. As Justice Kennedy wrote for the 5 to 4 majority "Criminal justice today is for the most part a system of pleas, not a system of trials." The opinion of the Supreme Court has been deemed to be the most significant criminal justice ruling since the Supreme Court granted the right to counsel to those charged with serious crimes. The Supreme Court ruled that not only must a person accused of a serious crime have the right to counsel in the plea negotiation process but also that that advice of counsel must be competent. This is similar to the requirement that a criminal defendant can get a new trial if he can demonstrate that he had ineffective assistance of counsel. This makes sense, since any work done for a client should meet at least minimal standards of competence. Our firm handles many cases against lawyers for legal malpractice. Negligence that causes harm by lawyers is no different than negligent drivers causing harm to others.

Insurance Coverage for Clinical Trials

On November 8, 2012, Washington joined 29 other states in requiring medical insurance companies to pay for the medical costs associated with experimental trials of medicines and devices. This rule was enacted by our insurance commissioner, Mike Kreidler. The Affordable Care Act will require this in all states in 2014. To be clear, insurance companies are required to pay only the standard care costs associated with the trials, not the expenses of the actual drug or device that is being tested.

In other words the medical care associated with administering these new drugs and devices are covered, but not the actual drug order or testing. Washington is an innovator in new medical treatments, but researchers had trouble finding patients for these clinical trials because of the expenses not covered by insurance. This rule struck home for me because at one point during my cancer care it was suggested that I may need an experimental drug for which I would have to pay out-of-pocket including all the costs associated with it at the Fred Hutchinson Cancer Research Center. Medical insurance companies have stated that, for the most part, this will not raise premiums.



Movie Review – Lincoln

The well-researched movie, Lincoln, is a must see for everyone. The Civil War, and the abolition of slavery is the story of this movie. It was and still is a crucial development in our nation's history. For every period in U.S. history there have been divisive issues, a non-functioning Congress, disputes between the executive branch and legislative branch of our federal government, and the intertwining of the military financing with domestic needs. President Lincoln issued the Emancipation Proclamation in order to encourage soldiers in the North so that they were fighting for something and in order to encourage rebellion in the South. He was on shaky legal ground for issuing this proclamation even under the rubric of his war powers.

He needed a necessary two-thirds vote in Congress to pass the 13th Amendment to the Constitution, the amendment abolishing slavery. It was high drama to watch the politicking to secure Congressional approval which was required to submit the amendment to the states for ratification. Unlike many historical reenactments, this movie made it seem as if I was actually viewing history unfolding. It is a timeless movie that should eventually be seen by all even if you can't get to the theaters.

Good Advice

My thanks to a lifelong friend, Kelly Dodge, for sending me these bits of advice for life.

"Accept that some days you're the pigeon, and some days you're the statue."

"Always keep your words soft and sweet, just in case you have to eat them."

"Drive carefully. It's not only cars that can be "Recalled" by their maker."

"Never put both feet in your mouth at the same time, because then you won't have a leg to stand on."

"When everything's coming your

way, you're in the wrong lane."

"Birthdays are good for you. The more you have, the longer you live."

"Some mistakes are too much fun to only make once."

Palindromes

Lawyers are sensitive to words. An article in the New York Times introduced me to the concept of palindrome. Palindrome is a word or phrase that reads the same in both directions. An example is: Madam, I'm Adam. A variation is: Madam, in Eden I'm Adam. Some common words that are palindromes are: racecar, deed, level, pip, rotor, civic, pop, madam, eye, nun, radar, and toot. Some palindrome phrases are: don't nod; Dogma: I am God; Never odd or even; Do geese see God? God saw I was a dog; Dennis sinned; Campus Motto: Bottoms up, Mac; Oozy rat in a sanitary zoo. A sentence long palindrome is: Are we not drawn onward, we few, drawn onward to a new era? There is even a book, "Palindromania" by Jon Agee if you want to see more of these.

Quote of the Month

"...we must disentrall our-

selves from the sound-and-light show that has diverted the attention of our great democracy from the important issues and challenges of our day. We must disentrall ourselves from the Michael Jackson trial and the Aruba search and the latest sequential obsession with celebrity trials or whatever relative triviality dominates the conversation of democracy instead of making room for us as free American citizens to talk with one another about our true situation--and then save our country." Al Gore

DON'T FORGET

Don't forget our new name, **Balint and Associates, PLLC**, and our new website at www.balintlaw.com as well as our new email addresses shown below under "contact information."

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