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A t t o r n e y s A t L a w

FALL 2003

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8:30 a.m.-5:00 p.m.

Weekends by appointment

TRIAL LAWYERS

- Medical negligence
- Product injuries
- Automobile accidents
- Aviation accidents
- Wrongful death

Christopher T. Hurley & Associates obtains record-high \$7.2 million verdict

Christopher T. Hurley and Michael T. Mertz recently obtained a jury verdict of \$7.2 million in DuPage County for the husband and two children of a 48-year-old Naperville woman who died as a result of medical negligence. The previous record verdict in DuPage County was a \$2 million verdict Mr. Hurley obtained in 1993. The jury found that Dr. Wael McTabi, a family practitioner, his employer, Glen Ellyn Clinic, S.C., and the nurses at Edward Hospital failed to diagnose the patient's pneumonia.

The patient presented to Dr. McTabi, her family doctor, with a two-day history of fever, coughing, nausea, and vomiting. Dr. McTabi needed to order blood tests and x-rays that would have revealed pneumonia. The next morning, after admitting the patient to the hospital, Dr. McTabi examined her, diagnosed her as suffering from alcohol withdrawal, and prescribed Valium and a nicotine patch. At trial, Mr. Hurley cross-examined Dr. McTabi with his own office chart, which confirmed that the patient was not a drinker or a smoker.

Throughout the day, the nurses at Edward Hospital failed to take vital signs and monitor the patient at regular intervals. If the patient had been properly evaluated, the nurses would have been able to recognize that she was slipping into a coma.

The patient was allowed to deteriorate until she was declared brain-dead at 9:30 p.m. The patient was suffering from pneumonia, which turned into a systemic infection that caused low oxygen saturation and low blood sugar, and slowly killed her. Properly treated with antibiotics and oxygen, she would have survived without complications.

After the verdict, Mr. Hurley stated, "Even though this trial took place in one of the most conservative jurisdictions in our country, the jury sent a message that they would not tolerate health-care providers who ignore their patients and refuse to take responsibility for the tragic consequences."

The jury consisted of eight men and four women, including a CEO, a college professor, and an investment company V.P.



WE'VE MOVED!

Christopher T. Hurley & Associates has moved into a new, larger office in downtown Chicago.

Our new address is:

33 N. Dearborn Street, Suite 1430, Chicago, IL 60602

Our phone number is still:

(312) 553-4900

We take your family's safety and security personally.

PHARMACISTS' ERRORS

No one really knows how many patients receive incorrectly dispensed prescriptions annually.

However, what is known is that:

- In 2002, researchers found medication errors in one in five doses administered in 36 health-care facilities in two states.
- The Institute of Medicine reports that hospitals alone are responsible for medication errors that cost more than \$2 billion annually.
- More than 7,000 patients died from medication mistakes in 1993, up from just under 3,000 deaths in 1983, according to a university study.

The health-care industry has embarked on improving medication dispensing by appointing pharmacists to hospital treatment teams and using computerization to verify prescriptions, doses, and timing.

Patients can take an active role in making sure they get the right prescriptions. When picking up any medical prescription:

- Ask the pharmacist to verify that the prescribed medication has been dispensed for the medical condition it will control.
- Confirm the correct manufacturer, form, quantity, strength, and use schedule.
- Question the physician or pharmacist about potential side effects.
- Carefully read all accompanying literature to obtain effective treatment.
- Comply with all directions.
- Check with the physician if there are any questions.

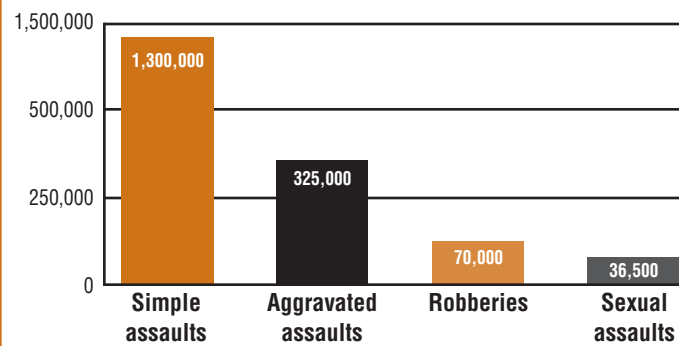
A misfilled prescription

Verify medication correctness with every refill. A diabetic woman who had taken a blood pressure-reducing medication for years was mistakenly given tablets with twice the dosage that the pharmacy's label indicated. After taking an increased dosage for several weeks, she suffered severe reactions and required hospitalization. Although her daughter discovered the medication error and the patient resumed normal dosages, she suffered a fatal heart attack. Her son and daughter sued on behalf of her estate, alleging the pharmacy was negligent and caused wrongful death by misfilling a prescription. Upon retrial, a jury awarded damages.

Workplace violence

Violence in the American workplace is becoming increasingly common. The following chart illustrates types of violent crimes committed in factories, businesses, and retail stores.

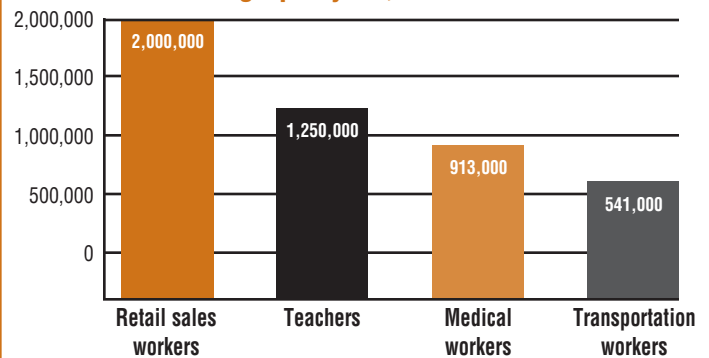
Types of violent crimes committed in workplaces, average per year, 1993-1999



Source: Bureau of Justice Statistics, National Crime Victimization Survey, *Violence in the Workplace, 1993-99* (2001)

Despite what the mass media report, employees at some workplaces are more prone to violence than others.

Types of workers victimized by crime, average per year, 1993-1999



Source: Bureau of Justice Statistics, National Crime Victimization Survey, *Violence in the Workplace, 1993-99* (2001)

Workplace crime takes its toll among workers in the form of injury, mental anguish, and even death. Victims' recourse is usually Workers' Compensation. However, in some cases, employees can seek legal remedy through premises liability, negligent or inadequate security, or from third parties, such as unions, franchisors, or security firms.

The employment manual

The estate of a deceased worker brutally murdered at a steel mill sued for damages. The plaintiff's lawyer won the estate's breach-of-duty-to-provide-employee-security case by using the company employee handbook. The manual stated that the employer would maintain a trained, responsive security force that would keep uninvited individuals—like those who committed the murder—away from the premises.

Pregnancy discrimination

Several key laws, including Title VII of the Civil Rights Act of 1964 and an amendment, the Pregnancy Discrimination Act, require employers who hire 15 or more workers to treat pregnant women the same as other applicants or employees affected with similar abilities or limitations.

Q: Can an employer refuse to hire a pregnant woman?

A: No. As long as she can perform her job's tasks, an employer cannot refuse to hire a woman because of her pregnancy or pregnancy-related condition.

Q: What if a woman is temporarily unable to do her work because of pregnancy?

A: The employer must treat her as it would any other temporarily disabled employee by adjusting job tasks, reassigning other available work tasks, or granting disability leave or leave without pay.

Q: Must an employer grant maternity leave?

A: Yes. Employees have the right to ask for voluntary leave for pregnancy, childbirth, and parenting under a company's short-term disability plan or the Family and Medical Leave Act.

Q: How does pregnancy and maternity leave affect other employee benefits?

A: Employers must treat employees who have pregnancy-related disabilities identically to other temporarily disabled employees for salary increases, accrued vacation, seniority, and other benefits.

Q: How long does an employer have to hold a job for a woman on pregnancy leave?

A: The same length of time as it holds jobs open for other employees on sick or disability leave.



Consult Human Resources or legal counsel for pregnancy-rights questions.

Oral vs. written contracts

For many people, their word is their bond in business transactions or personal deals. So a lot of buying, selling, and bartering is accomplished through oral contracts, which are earnest and mutual promises to do things.

Usually, these kinds of contracts are pledges to provide products or services for money. They are legally enforceable in court if either party, such as a business and a customer, cannot agree that the terms or conditions of the contract were met.

Oral contracts are subject to many misunderstandings. Language confusion is one. "I'll have it ready for you Friday" may mean "this Friday" or "a week from this Friday." Hearing problems can also mix up results. "Part 6D" can be heard as "Part 60." Physicians' poor handwriting has always put them, and pharmacists, at risk for prescription errors.

It's almost always best for anyone involved in a personal or commercial arrangement to document all oral contracts with simple memos or e-mails. That gives everyone a record of the offer to do something, when it should be done, the acceptance agreement, and the consideration—the money or other value—to be exchanged in the transaction.

Problems with oral contracts should be discussed with an attorney.

CREDIT-REPORT ERRORS

Any consumer who wants to obtain a credit card, secure a loan such as a mortgage, or conduct most kinds of business needs to have an acceptable credit rating.

Three major agencies—Equifax, Experian, and Trans Union—compile individual consumer credit data and provide almost all of the credit-reporting services used by businesses, lenders, and anyone else investigating a person's credit quality.

Most credit reports issued by these companies have four parts:

Identifying information, such as name, address, Social Security number, date of birth, and other basics consumers provide when they apply for credit.

Credit information on accounts, including creditor names, dates accounts were opened, credit limits, debt, payment patterns, and other data from companies consumers do business with.

Public record details feature bankruptcy and court records, financial judgments, tax liens, and other information from public sources.

Inquiries identify anyone who has asked for a consumer's credit report.

When agencies err

After information appears in a credit report, it can be difficult to change—even if it's incorrect. A study of more than 100 credit reports found that nearly a third contained serious errors that could have jeopardized getting a car loan, mortgage, or employment.

Litigation has increased over the past several years, and a fairly recent case shows how consumers can fight for their rights. An Oregon woman continually asked Trans Union to remove inaccuracies from her credit report for six years. She sued the agency after she was unfairly denied a mortgage. Her attorney won her the largest-ever award under the Fair Credit Reporting Act; her award included compensatory and punitive damages.

Anyone facing serious credit-reporting problems should obtain legal counsel.

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RECENT SETTLEMENTS AND VERDICTS

\$4,200,000—Verdict for injury to a newborn when physicians failed to treat a blood clot in the boy's leg, resulting in amputation of the newborn's right leg below the knee.

\$2,000,000—Verdict for a seven-year-old girl injured at birth when an obstetrician pulled excessively on the girl's head during delivery, resulting in an injury to the child's right brachial plexus nerve. After the verdict, the defendant agreed to a structured settlement that will pay the girl \$5,674,772 over her lifetime.

\$7,300,231—Structured settlement for a six-year-old girl injured at birth when resident physicians pulled excessively on the girl's head during delivery, resulting in an injury to the child's left brachial plexus nerve.

Auto accidents and DUI

According to Mothers Against Drunk Driving, in 2000 there were 17,380 alcohol-related deaths among the 41,945 total traffic fatalities. In 2001, there were 17,448 alcohol-related deaths among the 42,116 total traffic fatalities. The ratio stayed at 41 percent, but 68 more people died in 2001.

As the nation's most frequently committed violent crime, DUI takes its toll on the young. Among all children ages 0–14 killed in fatal DUI accidents in 2000, nearly half—223—were passengers in a vehicle driven by someone who had been drinking.

DUI and the innocent

Anyone involved in an accident in which another driver was DUI should seek legal counsel. A woman already suffering from a brain injury was struck from behind by a driver who allegedly refused to take a sobriety test, had balance problems, and smelled of alcohol. The jury that heard the case gave the victim an award plus punitive damages.

Christopher T. Hurley was recently elected by his peers to join the list of *Leading Lawyers*. The list of *Leading Lawyers* is the result of thousands of contacts with Illinois lawyers, asking them which of their peers they believed comprised the top five percent of lawyers. Only those lawyers who are most often recommended qualify as *Leading Lawyers*. The lawyers profiled by *Leading Lawyers* have all been selected by their peers as being among the top lawyers in the state. You can view Mr. Hurley's profile at www.leadinglawyers.com.