NEW MEXICO INJURY ATTORNEY BLOG
PUBLISHED BY
COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

June 3, 2011

Joint and Several Liability: Auto Accidents & Negligent Medical Care

In New Mexico, the law generally calls for joint liability for tortfeasors in personal injury cases. In other words, each of the negligent parties will be responsible for the pro rata or proportional share of injuries and damages caused by his or her individual behavior.

However, there are a occasions when one negligent party is jointly and severally liable for subsequent injuries caused by another negligent party. This means that the first party is responsible for both the original injuries caused by his or her negligent as well as subsequent injuries arising out of the first. The second set of injuries are said to flow naturally from the first.

Though there are many, one fairly common example involves an auto accident followed by negligent medical treatment. In a case like this, the negligent party that caused the accident will be held liable for any damages subsequently caused by negligent medical care. The second set of injuries flow from the original auto accident.

The rationale for providing for joint and several liability on the first tortfeasor is that the later injuries are both predictable and somewhat to be expected. This might seem illogical to some who would argue that it is impossible for the first tortfeasor to predict or anticipate the negligence of a doctor. This argument is particularly misguided when viewing the numbers on medical malpractice. In light of the statistics, not only is the negligence predictable, it could be argued that it is to be expected.

it is estimated that up to 98,000 patients die each year as a result of medical malpractice. Countless others are badly injured. The 98,000 figure is actually an old figure. These figures apparently are growing worse. For instance, hospital infections and medication errors are almost routine these days. A report from Health.com found that a random sampling of 100 hospital charts across the country would on average find 40 errors. That for the mathematically challenged is a 40% error rate. In no other

Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

http://www.newmexicoinjuryattorneyblog.com/

profession would such a high level of error not only be acceptable but be met with arguments for less accountability.

The high levels of medical error coupled with caps on medical malpractice claims indeed validate the logic behind joint and several liability in these cases. Moreover, the constant cries for medical malpractice caps and the push toward banning these suits completely as evidenced by laws such as those in Texas providing immunity to emergency room doctors make it clear that the original tortfeasor may offer the best and sometimes only avenue for recovery.

The issue of joint and several liability for negligent medical care following injuries may come up in wide range of personal injury matters. Many of these cases, such as slip and fall accidents, dog bites, construction accidents and so on, involved medical treatment. Far too many end in trips to the emergency room. Judging by the numbers, this may be the most hazardous part of the accident.

Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

http://www.newmexicoinjuryattorneyblog.com/