



Law Offices of GARY E. ROSENBERG, P.C.

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TOUGH, HONEST, SMART

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We'll come to your home or hospital.
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- No recovery, no fee.
(Client remains responsible for expenses.)
- Hablamos Español

Personal injury practice

In our personal injury practice, we represent only injured people and their families. We do not represent corporations or insurance companies. We have no conflicts of interest.

Season's Greetings!

May you and all those you love experience a wonderful holiday season. We hope that peace, happiness, and good health come to you and yours throughout the coming year.

We would also like to thank you for seeking out our legal services over the years and for referring your relatives, neighbors, and colleagues to us.

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Insurers responsible for medical malpractice "crisis"

So-called "reforms" benefit insurers, hurt patients

Recently, the U.S. Senate defeated a medical malpractice and product liability proposal introduced for the benefit of the insurance industry. And yet, more dangerous antipatient 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 limit the compensation a jury can provide malpractice victims. Advocates of damages caps say doctors' insurance premiums will go down, even though the American Insurance Association admits premiums won't be lowered. Nevada 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

In the summer of 2002, President Bush announced the release of a new report by the U.S. Department of Health and Human Services (HHS) that alleged that unnecessary medical malpractice litigation had created a health care insurance premium crisis in our nation.

Respectfully, 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 handpicked 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 and claimed its 30% increase in 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 whom 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 is the eighth leading cause of death in America, killing more people than AIDS, breast cancer, or auto 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.

Personal attention for your personal injury.



Unaccompanied minors

Although most parents want to accompany their children traveling by air to vacations, summer camps, or boarding schools, situations may occur in which minors must fly alone.

Most airlines have established programs to help children travel by themselves efficiently and safely.

Parents also can take several steps:

✓ Book reservations early on airlines that agree to greet, escort, and monitor

children traveling alone. There may be additional fees.

✓ Inform your child on how to be safe at airports and on airlines. Tell them not to talk to strangers, to buckle their seat belts, and generally to be aware of their surroundings.

✓ For first flights, talk to your child about airports, airplanes, and what will happen on the trip. Instruct your child about how to use an airplane's bathroom, how to call an attendant, and what to do if lost or in an emergency.

✓ Prepare a carry-on bag for your child. Include a cell phone, phone contacts, medications, medical history, and other necessary documentation. Pack a familiar drink and snack as well as books or favorite electronic games.

✓ During check-in, give attendants instructions and other information, particularly the name and photo of the person who will meet the child upon debarkation. Request that an attendant walk the child to the aircraft.

✓ Remain at the airport until the plane is airborne.

✓ Confirm that your child arrived and was greeted at the destination.

Travel problems

When an unaccompanied minor was allegedly molested by a fellow passenger during a flight, her mother sued for negligent supervision. Although the airline argued it had no duty to protect the child, the court permitted the parent to sue since the airline had assumed additional legal responsibility in creating and charging for a separate class of unaccompanied minor passengers.

Trial by jury

Americans demonstrate their patriotism through military service, voting on Election Day, and serving on juries.

Our firm encourages all citizens to perform jury duty. Throughout our nation, courts are increasingly trying to make jury duty more effective and pleasant.

Many courts provide clearer jury instructions and permit jurors to take notes. Some states have raised the *per diem* pay. Others have set up a "one day, one trial" system that respects jurors' time.

Some Florida courts provide complimentary parking and child-care services.

A California city replaced the coin-operated coffee machines in juror waiting rooms with a centrally located gourmet coffee shop. Another California city operates a mystery-book library for jurors.

In New York's Nassau County, jurors can go online with complimentary wireless access for laptops and even sign up for mammograms or prostate screenings. There's also a blood-donation option.

Litigation explosion?

What litigation explosion?

Special-interest groups have been falsely decrying the existence of a "litigation explosion" for decades. They oppose the way citizen lawsuits and our civil justice system can serve as fair and fundamental checks on the power of businesses and governments.

To minimize accountability for wrongdoers' harmful conduct, special-interest groups and their highly paid lobbyists promote efforts to limit the legal rights of American families, claiming that too many lawsuits have led to excessive costs and delays. They just don't trust the American people.

But there is no litigation explosion.

- Since 1992, lawsuit filings have declined by nine percent.
- Automobile lawsuit filings, which make up the majority of all tort (or personal injury) claims, have fallen 14 percent since the early 1990s.
- Medical malpractice filings per 100,000 persons have dropped one percent.
- In 22 of the 30 states that the National Center for State Courts examined, population-adjusted lawsuit filings declined from 1992 to 2001. The average change in tort filings across all 30 states was a 15 percent decrease.
- The Department of Justice's Bureau of Justice Statistics reported that the number of civil trials decreased by 47 percent between 1992 and 2001.
- The median inflation-adjusted award in all lawsuits dropped 56 percent between 1992 and 2001 to \$28,000.



Con artists and the elderly

Con artists view some seniors as easy prey in their schemes to steal money. American Association of Retired Persons surveys show that more than half of telemarketing-fraud victims are age 50 or older. Other sources claim that more than 14,000 illegitimate telemarketers steal at least \$40 billion from unwary older—and younger—consumers annually.

The most common scams include calls about phony prize notifications, bad-credit clearance offers, fraudulent home inspections and repairs, expensive buyers clubs, deceptive investments, unnecessary and unwanted phone service subscription “slamming,” and others. Some seniors fall for scams claiming the ability to recapture money from the same scammers who took their money the first time.

To be safe from fraud, law-enforcement authorities often offer these guidelines:

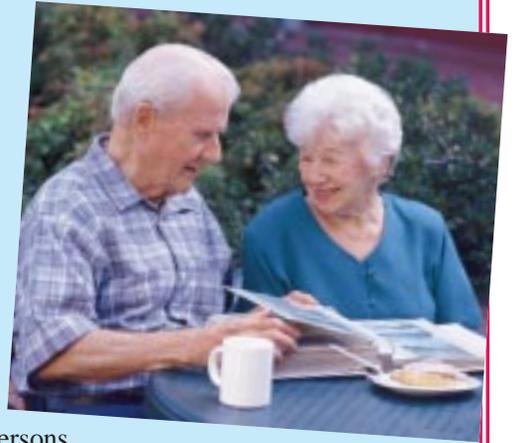
- Never pay up-front fees for prizes or offers.



- Refuse to make payments by wire or through private couriers.
- Always ask for detailed, printed information on any offer.
- Do not release Social Security or credit-card numbers to unknown persons.
- Donate only to known charities.
- If a deal sounds too good to be true, it is.

Life insurance scam

An elderly couple’s insurance agent allegedly promoted a life insurance policy that would provide a \$5 million death payment and other benefits. After the couple pledged \$700,000 in personal assets to collateralize the premium loan, the premium lender demanded an unexpected \$35,000 first-year premium payment, threatening foreclosure on the collateral. When the couple sued for negligence, fraud, securities fraud, and statutory elder abuse, the agent and lender settled before the case went to court.



Auto accident FRAUD

Auto accident fraud—accidents perpetrated by crime rings—drives everyone’s car insurance premiums up. Insurance-industry experts estimate that criminals who plan auto accidents, claim false injuries, and even set up fake health clinics steal hundreds of millions of dollars in insurance payments every year.

Deliberate accidents are so well planned, they even have names:

Swoop and squat—A driver is cut off by a braking car and hits it in the rear. Passengers pretend to be injured.

Drive down—A driver waves another to enter the traffic flow, then rams and blames him or her.

Sideswipe—One car’s driver intentionally strikes another car in two-lane turns at intersections.

Shady helpers—An “eyewitness,” an accomplice, suggests that the victim patronize a complicit body shop, physician, or lawyer following an accident.

Protect yourself

Law-enforcement and insurance professionals encourage drivers to be alert to planned accidents and to follow these steps:

1. Distance your vehicle from others.
2. Call the police right away and get the officers’ names and badge numbers. Obtain a police report.
3. Write down all the details of any accident—car make and year, tag number, registration, driver’s license, phone number, accident description...everything.
4. Write down the names, addresses, and phone numbers of all passengers. Someone not there may claim to have been present. Note if anyone seems seriously injured.
5. Seek medical help if you are injured.
6. Talk to legal counsel.



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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.

RUNNERS

On November 23, 2004, the Nassau County District Attorney reported the arrests of runners, attorneys and medical providers targeting patients in the Nassau University Medical Center.

Employees of the hospital would sell the patients' personal information to the runners, who in turn would contact the patients and steer the patients to medical providers and attorneys associated with the group of runners. The attorneys would pay the runners a fee for each patient referred to them who "successfully" underwent treatment and filed an insurance claim. The fees paid to the runners by attorneys reportedly varied, according to the length of time the patient underwent treatment, the strength of the patient's case, and the potential for a lucrative settlement.

Dear reader: **This is illegal.** You do not need or want an attorney or doctor who gets work this way. You want a team of professionals with a proven track record, not a doctor or lawyer who pays money to buy their cases.

There are other variations of this scam. Runners sometimes drive around with police scanners in their cars. You may have an accident, look up, and there they are. Maybe they offer to drive you to a doctor or lawyer. I have heard of unscrupulous tow-truck drivers or body shops that also do this. There are reports of runners walking hospital hallways and entering rooms, or striking up conversations in hospital waiting rooms, all the while passing out business cards. Runners may call themselves a "Legal Referral Service" or something similar. Please, please, please don't be fooled.

Also, remember one thing. Hospitals don't give you a lawyer. And if a hospital refers you to a doctor at all—rather than tell you to see your family doctor—it will usually give you a list of doctors, with several names to choose from. This, of course, is permissible.

There is nothing wrong with a helpful friend or relative trying to refer you to an attorney or physician whom he or she trusts. But please remember what your mother taught you: "Don't talk to strangers."

Government liability

State and local government officials and employees, and the departments, agencies, and authorities that employ them, may be held responsible for injuries their decisions or negligence causes.

Harm can result from many situations, including poor performance of contracts, false arrest, employment-law violations, racial discrimination, dangerous public-property conditions, and many others.

When health inspections fail

A mother and her two children lived in an apartment that city health inspectors found contained excessively high levels of lead from old paint. Blood testing indicated that one child had high blood-lead levels.

Inspectors advised the mother that the family could safely remain in the apartment during lead-abatement procedures. Following cleanup, inspectors certified that the apartment was lead-free. Soon after, however, both children's blood-lead levels spiked, resulting in diminished IQ, loss of motor coordination, memory impairment, and other serious cognitive difficulties. Their mother sued the city, alleging negligence in advising that the apartment was safe for the children to live in during cleanup, and for certifying that the lead hazard had abated. The parties settled prior to the lawsuit going to trial.