

Recovery & Resolution

A LEGAL NEWSLETTER FOR
HEALTH CARE PROFESSIONALS



Graham Lundberg & Peschel *Founded 1979*

Pedestrians/Motor Vehicle Accidents

Inside
this
month's
R&R...

Medical
Liens - Not
Always
Complete
Protection
on page 2

Injuries
at Sea
on page 3

We Wrote
the Book
Your
Patients
Need...
"Crash!
Course"
on page 4

Recently, there has been a rise in the number of pedestrian/motor vehicle accidents in the Seattle area. Washington State law has strictly defined the duties of pedestrians crossing roadways. The duties of a pedestrian vary depending on the pedestrian's location on the roadway and the control signals present at that location.

Too often we, as pedestrians, are in a rush to get to our intended destination, especially in downtown Seattle. What happens if you are in a rush, walking downtown, and you *quickly* step out into the street at a marked crosswalk, that is or is not regulated by a traffic control signal, and you are hit by a car? Who is at fault? According to RCW 46.61.235(2), "No pedestrian or bicycle shall *suddenly* leave a curb or other place of safety and walk, run, or otherwise move into the path of a vehicle which is so close that it is impossible for the driver to stop." As you can see by this law, there are many situations

where the pedestrian, not the driver of the vehicle, would be found at fault.

What is a pedestrian's duty if there isn't a marked crosswalk and the pedestrian is not at an intersection? According to RCW 46.61.240(1), "Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an *intersection shall yield the right of way* to all vehicles upon the roadway."

Walking outside of a marked crosswalk, or diagonally across an unmarked intersection, otherwise known as "J-walking" is strictly prohibited under RCW 46.61.240(4) and (5). The laws states, "no pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices" and "between adjacent intersections at which traffic-control signals

continued on page 3



Keep an eye on upcoming issues of this newsletter for information on our complimentary...

Legal Educational Seminars

Medical Liens – Not Always Complete Protection

Any health-care provider treating a patient with traumatic injury due to the fault of a negligent tortfeasor may file a lien in the county where treatment was provided in order to protect against a settlement taking place without the provider receiving payment for services rendered. However, filing a lien may not always guarantee complete protection for the health-care practitioner, and in some cases may not be effective at all.

First, although RCW 60.44.010 provides for the filing of a lien, it also states that “all the said liens for service rendered to any one person as a result of any one accident or event shall not exceed 25% of the amount of an award, verdict, report, decision, decree, judgment or settlement.” This situation can crop up when a tort victim has incurred significant expenses from many health-care providers and yet does not fully recover for his medical expenses because of liability problems or preexisting injuries. In those situations a jury, arbitrator, or insurance adjuster may determine that, because of comparative negligence or preexisting conditions, much of the medical treatment was not reasonable or necessary or is

not the responsibility of the tort victim. This usually occurs when there are many

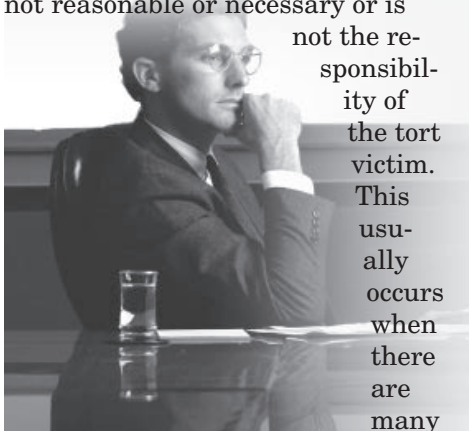
health-care practitioners seeking payment of bills that are far in excess of 25% of the recovery. In such a case, all practitioners only receive a pro rata portion of the 25% of the recovery. Then the practitioner must look to their own contractual agreement with the tort victim to obtain a complete payment of their outstanding balance for services rendered.

Another situation which can arise, and which is difficult to protect against, is when a tortfeasor’s insurance company sends a settlement check directly to the tort victim and patient, also naming the health-care practitioner on the check as a payee. Although it does not happen often, if temptation gets the better of the patient and they forge the endorsement of the health-care practitioner, the insurance company and tortfeasor’s responsibility to pay for the health care caused by the tortfeasor’s negligence is discharged under the law, since they attempted to pay but were prevented by the patient’s cashing of the check. Although the health-care practitioner did not get any of the money, the lien is not enforceable because the insurance company did make a check payable to the health-care practitioner protected by the lien. The only recourse in such a situation is for the health-care practitioner to proceed against their patient and/or report the crime and seek restitution.

In the case of a patient being the victim of a negligent uninsured tortfeasor, a health-care practitioner lien is not effective against the insurance company for the patient who is making an uninsured motorist claim. As the statute clearly states, the health-care practitioner

“shall have a lien upon any claim, right of action or money to which such person is entitled *against any tortfeasor and/or insurer of such tortfeasor* for the value of such service.” Thus, although uninsured motorist coverage protects the tort victim, any lien filed would be effective only against the tortfeasor, who is unlikely to have many assets against which to proceed, and because there is no insurance company for that tortfeasor there is not much point in filing a lien against them.

Finally, a question arises regarding enforcement of a lien more than one year after settlement, although within one year of refileing the lien. This factual scenario can occur when a settlement takes place but the health-care practitioner does not learn of the settlement until after refileing a lien. Although there is no case law on point, some insurance attorneys have raised the issue claiming that RCW 60.44.060 only allows a first lien to be enforced within one year after the filing of such lien. Some insurers now resist paying any lien that is sought to be enforced more than one year after a settlement, even when the lien has been refiled before one year has elapsed from the first filing. The issue will likely revolve around whether the lien can be considered the same lien after it is refiled, or whether each filing creates a new lien which must be enforced within one year. Although there is no appellate law on this subject, it is a wise idea to be aware, through discussions with your patient or his attorney, of the course of settlement discussions and resolution of the tort claim by your patient.



Injuries at Sea

Do you have patients who sustained injuries while working as a seaman? Did you know that the vessel owner is responsible for paying for treatment? The law of maritime injuries is a unique and interesting area. An injured seaman is entitled to benefits under the Jones Act and/or general maritime law. Once it is proven that the person is a seaman, the seaman is typically entitled to maintenance, cure and unearned wages. Maintenance is payment to a seaman for the cost of his room and board, payable when he becomes injured until he/she reaches the point of maximum cure. This is a daily living allowance, but not compensation for the personal inju-

ries. Cure means medical care. The vessel owners are required to pay for the injured seaman's medical bills up to the point where his or her condition reaches maximum medical improvement. Both of these benefits are paid while the injured seaman is receiving treatment.

The seaman is entitled to make additional claims for damages under general maritime law if the vessel was unseaworthy or, under the Jones Act, under a negligence theory against the employer. The seaman can make a claim for typical damages for lost income, past and future; pain and suffering; and the nature and extent of their injuries. The interesting aspect of negligence claims in maritime law is

that the seaman only needs to prove that the vessel owner was just the slightest degree negligent. This is a lower standard than typical tort cases such as for motor vehicle accidents.

Many issues may arise in a maritime case. Sometimes the vessel owner does not offer maintenance and cure as required. Sometimes the vessel owner will discontinue paying maintenance and cure after determination by a doctor of their choice that the seaman has reached maximum medical cure. In these scenarios, a seaman would be served by speaking to a maritime attorney regarding their rights and to determine whether they have a claim for additional damages.



Pedestrians/Motor Vehicle Accidents, continued from page 1

are in operation pedestrians *shall not cross at any place except* in a marked crosswalk." This law invokes a monetary penalty to pedestrians who are caught J-walking. If an accident involving a vehicle occurs while the pedestrian is in violation of this law, the pedestrian may be found at fault for the accident.

What happens if you get hit by a vehicle? Is there insurance to cover you for your injuries? Yes, if the driver of the at-fault vehicle has Personal Injury Protection (PIP) insurance coverage on his/her vehicle, the injured party may use the

driver's PIP insurance to pay the medical bills related to injuries they sustained in the pedestrian/motor vehicle accident. Using the driver's insurance can be complicated and will inevitably create a complex dichotomy between the driver's insurance company and the injured pedestrian. Caution should be used when determining whether to use the at-fault driver's PIP insurance.

While Washington State has several laws to protect pedestrians in the event they are involved in an accident with a vehicle, there are

also laws that pedestrians must abide by as well. Pedestrian accidents involving motor vehicles can be complicated. If you find that your patient has been injured in a pedestrian/motor vehicle accident, a referral to a reputable personal injury attorney should be made immediately.





Attorneys at Law

We are a team of legal professionals working together to advocate for the injured while being recognized in the community for providing the highest level of service.

Our Attorneys

John Graham
 Scott F. Lundberg
 Brian J. Peschel
 Kenneth B. Golden
 Cydney Campbell Webster
 Sean A. Ayres
 Angela DeWig
 Kenneth Barry Dore
 John Webber
 *John Williams
 Rodney G. Zerr
 Tara Eubanks – Intern
 Tim Jones – Intern
 Ben Lambert – Intern
 *admitted in Ohio only

Our Paralegals

Patricia Clanton
 Patti Cryder
 Kimberly Cutting
 Johnnie Dano
 Juli Dorgan
 Kathleen Gottlieb
 Judy Hanson
 Lora Harris
 Grace Stephens
 Heather Webb

Our Administration

Arlene Bolger
 Tamara Briggie

Administration, cont.

Diane Daniel
 Ann Harris
 Thelma James
 Heather Kelly
 Martha McDonald
 Becky Moilanen
 Lucinda Pieczatkowski
 Tom Reger
 Paula Rhyne
 Krystal Starwich
 Celine Cloquet Vogler
 Marie Wohler

CONVENIENTLY LOCATED

For the convenience of your personal injury patients, we offer several meeting locations throughout Puget Sound and Peninsula communities. Attorney consultations are encouraged and always free.

- Auburn 253-931-1111**
- Bellevue 425-827-1111**
- Burien 206-241-1708**
- Everett 425-252-1111**
- Federal Way . . 253-946-1111**
- Gig Harbor . . . 253-853-5005**
- Lakewood 253-274-1111**
- Lynnwood 425-775-1111**
- Marysville 360-658-1111**
- Port Orchard . 360-876-5005**
- Puyallup 253-845-1112**
- Renton 425-235-1111**
- Seattle 206-448-1992**
- Tacoma 253-627-7701**

Or Call Toll Free

North Puget Sound area including King & Snohomish Counties
800-422-4610

South Puget Sound area including Pierce, Kitsap & Thurston Counties
800-273-5005

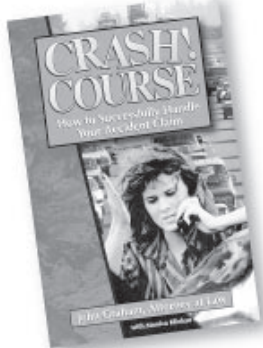
or visit us online...
www.glpattorneys.com

Are Your Patients Asking Questions About Their Recent Accident And You Don't Know Where To Turn For Help?

YOUR PATIENTS NEED...

Crash! Course

By John Graham
How to Successfully Handle Your Accident Claim



Call our office for your complimentary copy at (800) 422-4610



Attorneys at Law

500 John Street
 Seattle WA 98109

PRSR STD
 US POSTAGE
 PAID
 #34
 SEATTLE WA