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Legal Matters®

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Schools may be responsible for harm to students

Schools are supposed to be safe, secure environments that promote learning, and most of them certainly are. But it's important for parents to know that if a school doesn't live up to its responsibility to provide such an environment, it can in some cases be held responsible for the harm that results.

In particular, schools generally have a legal duty to look after students' physical safety. If a child is injured because of something dangerous on the premises – ice on the steps, faulty playground equipment, lack of precautions in a lab class, etc. – the school could be legally liable.

This is particularly true when it comes to sports programs and after-school activities. For instance, a Florida student collapsed while trying out for a school baseball team. Unfortunately, the school's athletic department had neglected to have a defibrillator easily accessible for such situations, and as a result, the boy died. A jury ordered the school district to



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pay the boy's parents a substantial judgment.

In another Florida case, a young girl was sexually assaulted by classmates, and a jury decided that the school was responsible because it had carelessly failed to supervise the students.

It's also important to know that students don't have to be physically harmed for schools to be held accountable – emotional and psychological harm can count as well. For instance, a lot of attention has begun to be paid

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Get all the facts before you agree to robotic surgery

Robotic surgery is a new technique that allows doctors to perform complicated surgeries such as gall-bladder removals, hysterectomies, heart-valve replacements and prostate-cancer operations while making smaller and fewer incisions. The doctor, seated at a video-game-style console looking at a high-definition display, remotely controls the mechanical robot arms that perform the surgery. A 3-D camera allows the doctor to see inside the patient in order to guide the work.

Hospitals that offer robotic surgery say it provides numerous benefits, including a shorter recovery period, less risk of infection, and less scarring. It's also supposed to give the surgeon a better ability to see inside the patient and perform the procedure with more precision.

Intuitive Surgical Inc., the company that makes and sells the robots, has launched an aggressive marketing campaign to convince hospitals to buy the robots at a price tag of about \$1.5 million each. It's also helping hospitals to market robotic surgery to patients. And the marketing has been very successful, with the number of robot-assisted operations jumping by 60 percent in the last three years.

However, robotic surgery may also have a downside, which has led the Food and Drug Administration to take a hard look at the procedure and its marketing.

For example, a hospital in Denver launched a sub-

stantial media campaign when it opened a robotic surgery center several years ago, and since then one doctor has performed several hundred operations with the robot, which boosted the hospital's profits. But at least 10 patients have complained of severe injuries or complications over a three-year period, including punctured or torn arteries, nerve damage, and objects being left inside the patients, one of whom died. Now the doctor faces possible discipline by the state medical board for unprofessional conduct, including failure to advise patients on alternatives to the robot.

Nationally, reports of injuries linked to robot surgery have skyrocketed over the past year. And a recent study by Bloomberg Business News suggests that thousands of injuries are going unreported. Plus, some physician groups are claiming that the marketing kit that Intuitive Surgical gives to hospitals can mislead patients and leave them unable to make an informed decision.

In response, the FDA has stepped up efforts to survey surgeons about their experiences, while issuing a warning letter to Intuitive Surgical about its marketing.

So far, the FDA hasn't drawn any conclusions about the general safety of robot surgery at this point. But if you're a candidate, it's very important to make sure your doctor advises you of the pros and cons of both robotic surgery and standard surgery so you can make a fully informed decision.



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U.S. tries to limit crashes caused by tired truckers

Few things sound more frightening than a drowsy trucker dozing off while piloting an 18-wheeler on a busy highway. That's why the Federal Motor Carrier Safety Administration has imposed new rules shortening truck drivers' workweeks, limiting how many nights they can stay on the road, and mandating rest breaks throughout the day.

As a result of these new rules, truckers will be limited to 70 hours of driving time per week, down from

the old maximum of 82 hours. The government plans to enforce these rules by requiring drivers to submit their work logs, and fining trucking companies up to \$11,000 (and drivers themselves \$2,750) for each violation.

This should be a big boost for highway safety across the country.

By the way, the phenomenon of overworked truckers is another example of why you should always have a lawyer investigate any motor vehicle accident, and not just listen to the other driver's insurance company. It might well be that in addition to the other driver, there are other people or companies who are legally liable to compensate you for your injuries – such as an employer who bent the rules by asking a driver to work too many hours.



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Schools may be responsible for harm to students

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recently to school bullying. Although bullying has been around forever and some people still shrug it off as a rite of passage, it can cause serious damage to the victim and has been linked depression, anxiety, eating disorders, drug abuse and other problems.

In recent years – in the wake of several high-profile suicides by bullying victims – bullying has finally been given the attention it calls for. In fact, a number of states have passed laws requiring schools to take measures to prevent bullying and to address it effectively when it occurs. This includes both face-to-face bullying and online “cyber-bullying.”

A school’s failure to take reasonable steps in response to a bullying problem could lead to legal accountability. In one case, an Alaska couple won a very large judgment against a school district after the district failed to protect their child from repeated bullying, and the child suffered brain damage in a suicide attempt.

Similarly, a Washington state jury found a school district liable after a wheelchair-bound student was tormented for four years by classmates due to her disability.

A school can also be held responsible if a student is sexually harassed by other students, if the school is aware of the harassment but doesn’t take adequate steps to stop it.

Increasingly, schools are attempting to protect themselves from legal accountability through the use of written waivers. Many schools now require parents to sign a waiver form before a child can

participate in a school activity such as a sport or a class trip, saying that the school is not responsible if the child suffers any harm as a result.

You should realize, though, that just because you signed a waiver doesn’t mean that it’s necessarily impossible to sue a school if it does something wrong.

For instance, many courts have decided that while a waiver can protect a school from the inherent risks of an activity, it cannot protect a school if it does something to enhance those risks.

So if a parent signs a waiver for a ski trip, the waiver might protect the school if a child is injured while skiing. But it might not protect the school if an injury occurs because the school provided the child with substandard ski equipment, or because there was a bus accident on the way to the slopes.

Recently, the Iowa Supreme Court invalidated almost all school field-trip waivers in the state, ruling that they were unfair because parents cannot fully understand the nature of all the risks posed by an outside-of-school activity.

These are only a few of the legal situations that can arise regarding a child’s safety in a school setting. If you have any questions or concerns, or know someone who does, we’d be happy to help.



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Hip implant complications are leading to lawsuits

The Stryker Rejuvenate, an implant used in hip replacements, has an unusual two-piece design – consisting of a separate “neck” and “stem” that fit inside each other – that is supposed to provide the patient with a better fitting, more customized artificial hip than a traditional one-piece implant.

But it turns out that when the two pieces rub together, they can release microscopic metal debris, causing the device to fail and creating physical problems for the patient. That’s why the Food and Drug

Administration pulled the Stryker Rejuvenate from the market in 2012.

Now thousands of lawsuits are pending in courts across the country claiming that the manufacturer designed a defective product and put it on the market without proper testing.

If you’re one of the many patients fitted with a Stryker Rejuvenate implant, it’s a good idea to consult your physician to determine if you could potentially suffer problems as a result.



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Government may be liable for unsafe road conditions

Jason Rhoades was driving across an icy bridge on Interstate 81 in Syracuse, New York when his vehicle slid across the roadway and vaulted up a snowbank that had accumulated against a concrete barrier. His car went up the bank, fell off the bridge, and landed on the road below. The 28-year-old father of two – who was also the mayor of a neighboring town – died from his injuries.

Less than two days later, William Gardner, a retired Air Force colonel, was killed in a similar accident at the exact same spot.

The families of both men sued the state, arguing that it had carelessly failed to plow the snow away from the guardrail barrier, thus leaving the bridge without any protection if a car slid toward the edge.

Initially, a judge threw out both cases,

ruling that the state couldn't have known about the danger in time to fix it.

But an appeals court sided with the victims. It said a similar crash had occurred in the past on the same bridge, which should have put the state on notice that its plowing methods were dangerously inadequate. It also said the state should certainly have removed the snow after Rhoades' accident, but instead it plowed more snow against the barrier, increasing the odds of the same thing happening to Gardner.

While this particular case involved snow plowing, you should know that governments can potentially be sued for all sorts of road maintenance problems that cause injury – including potholes, broken traffic lights, lack of signage, overgrown trees and bushes that reduce visibility, and even poor planning that makes a curve or an intersection more dangerous than it should be.

