



FEATURED ARTICLE

WORKERS' COMPENSATION BOARD TIGHTENS IME REGULATIONS

The right of an insurance company to utilize its own medical experts and to use such experts to introduce unfavorable medical evidence in a Workers' Compensation claim is perhaps the most irksome to a New York Workers' Compensation claimant. Said another way, I have yet to meet an injured worker who was overjoyed by the thought of having to attend what is colloquially known as an "IME." While this right remains as the Board continues to evolve in the wake of the 2007 reform, the requirements that must be met for such evidence to be admissible before the Board have been tightened considerably to the benefit of the injured worker in what has been the most sweeping amendment of Rule 300.2 in recent memory.

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RECENT RESULTS

\$1.95 million recovered for 71-year-old woman. Vascular surgeon negligently performed abdominal aortic aneurysmal repair, injuring the renal vein and ureter and causing permanent kidney damage and disability.

\$1.375 million recovered for 72-year-old woman with history of heart disease. Heart doctor neglected the signs, symptoms and complaints of heart attack and heart failure, causing substantial permanent heart damage and disability.

\$675,000 awarded by Arbitrator for 21-year-old pedestrian struck and killed by motor vehicle operator that did not observe pedestrian crossing the street.

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PROTECT YOURSELF AND YOUR FAMILY

DO I HAVE ENOUGH AUTO INSURANCE COVERAGE?

New York State law requires all licensed motorists to carry insurance for their vehicles. There are various types of coverage drivers can obtain, with minimum requirements.

For liability insurance, the minimum requirements are \$25,000 for bodily injury or \$50,000 for any injury resulting in death and sustained by any one person in any one accident; \$50,000 for bodily injury sustained by two or more people in any one accident, or \$100,000 for any injuries resulting in death sustained by two or more people in a single accident; and \$10,000 per accident for property damage protection. This protects you and anyone who drives your vehicle when someone files a claim against you, alleging negligence or otherwise at fault, for an accident that results in bodily injury or property damage.

For no-fault coverage, a minimum of \$50,000 is required. This type of coverage is generally used to cover medical fees, lost earnings and other expenses that may be incurred as the result of a driver, pedestrian or passenger who may be injured by your vehicle. Additional no-fault coverage is available up to \$175,000.

Uninsured motorist coverage is also required by law in New York State, in the minimum amount of \$25,000 per person or \$50,000 per accident for bodily injury. This protects you in the event that you are involved in an accident with another driver who has insufficient or no coverage. Spousal coverage is also available for a minimum fee.

Although a minimum amount of coverage is required, it is recommended to carry a policy with more coverage. This must be balanced against what is affordable and the amount of your personal assets you need to protect. Also keep in mind that the higher the deductible, the less expensive the policy is. If you have a lot of assets you wish to protect, then you should consider an umbrella policy. This kicks in after the limits of your car insurance or homeowner's policy have been exhausted and provides an additional layer of protection from lawsuits or damages. It is highly recommended that you carry at least enough coverage to equal the amount of your assets.



PRACTICE AREAS

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IN THE SPOTLIGHT



MEET ALAN W. CLARK

Managing Partner

Nominated Super Lawyers 2014 – 7 consecutive years!

The legal profession fascinated Alan W. Clark at an early age. Before his 27th birthday, he founded his own practice. Now, more than 35 years later, Mr. Clark, the founder and managing partner of Alan W. Clark & Associates in Levittown, has a thriving practice with six attorneys and staff of eleven. The firm concentrates its practice areas in medical malpractice, personal injury, Workers' Compensation, Social Security Disability, unsafe products and medications, nursing home abuse and injury and business torts.

Mr. Clark earned a Bachelor's of Business Administration from the University of Miami in 1973, where he met his wife Madeleine, and his law degree from New York Law School in 1977. In this spotlight, Mr. Clark will discuss his reason for choosing the legal profession, as well as the challenges and perceptions of being an attorney.

WHY DID YOU BECOME AN ATTORNEY?

When I was growing up, I read stories and watched movies that spurred me to trial law. It's a highly respected profession. My earliest mentor was one of my law school professors, Alfred S. Julien, who later became my boss when I worked at Julien & Schlesinger. He was a shining example of what a good trial lawyer should be.

I became a trial lawyer not to make a lot of money, but to make a difference in people's lives. I like to think that what we are doing is helping those who were wronged and holding doctors, big institutions and corporations accountable for their wrongful actions.

IS YOUR FAMILY ALSO INVOLVED IN THE LEGAL PROFESSION?

Yes. My son Brandon, who attended my alma mater, New York Law School, is an associate with my firm. His practice area is Workers' Compensation. My son Rory, who is also an alumni of New York Law School, is a licensed attorney, and the vice president of a residential real estate company.

WHAT IS THE MOST CHALLENGING PART OF THE JOB?

The most difficult part of my job is when you have to tell someone we can't take their case. For every ten possible medical malpractice claims that are brought before us, there is one we will take on. There are times when someone tells us of the death of a child, elderly parent or grandparent due to medical negligence or lack of safe care. As heartbreaking as it is to hear their story, from a legal perspective, too often, we can't take on the case because the law limits recovery.

Lots of people ask us how much they will get for their case. I tell them the same answer: I don't know. That's for a jury to decide. I cannot guarantee that we can win the case, only that we do our best.

In the event we take on the case, we pay all expenses up front, with no guarantee of success. We only get paid for a successful outcome.

WHAT MAKES YOUR PRACTICE DIFFERENT?

We will spend countless hours answering people's questions and giving good practical advice. Our efforts are dedicated to advocating for patient health and safety and reducing negligent medical errors that result in preventable injuries. I seek accountability, fair and just compensation for those victims who have suffered serious injuries, disabilities and/or economic loss caused by the unsafe practices and wrongdoing of doctors, hospitals, and big business. Through meticulous investigation, comprehensive research and diligent preparation, we have achieved much success.

WHAT DO YOU LIKE TO DO IN YOUR SPARE TIME?

I like music, especially jazz. I play the saxophone and the clarinet. Having been born in the Bronx, I am a lifelong Yankee fan. I read a lot about American history and I like to keep up on current events. My favorite outdoor activity is golf.



FEDERAL GOVERNMENT TO INCREASE TRANSPARENCY ON U.S. HOSPITAL MISTAKES

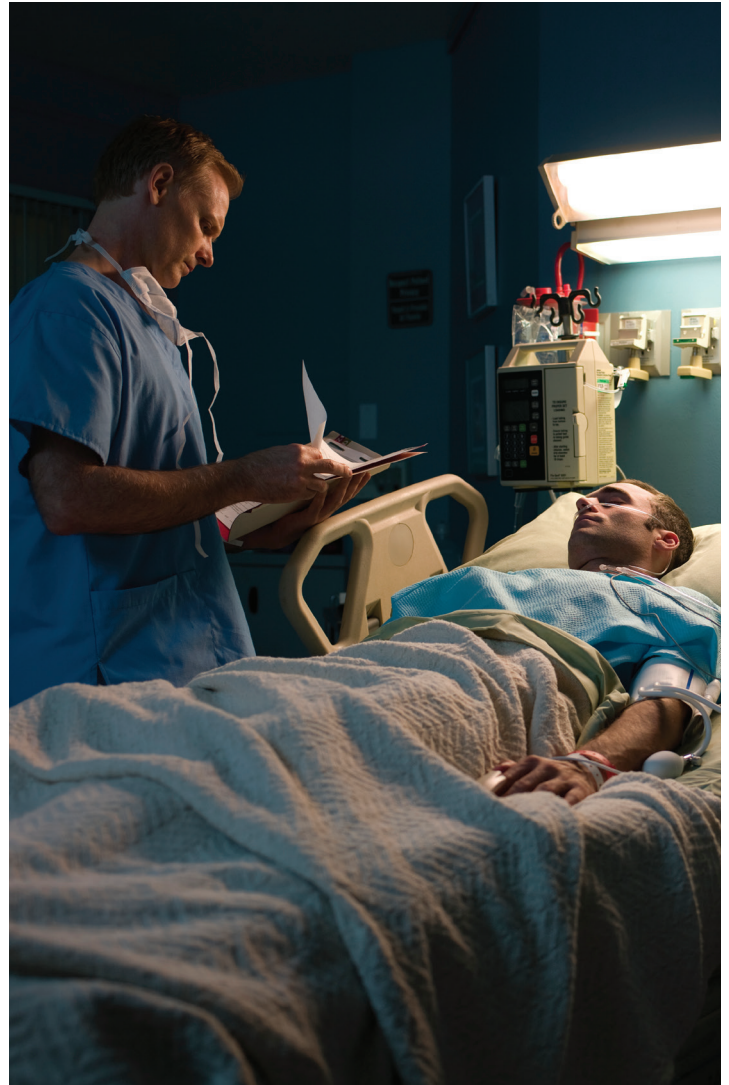
According to a *USA Today* report, federal regulators will resume publicly releasing data on hospital medical errors, including when foreign objects are left in patients' bodies or people get the wrong blood type.

This resurrection of transparency comes after a lengthy hiatus by the Center for Medicare and Medicaid Services (CMS), in which they stopped publicly reporting a number of life-threatening medical errors that were made by hospitals.

Apparently, the informative data was removed last summer from CMS' hospital comparison website. The data was substituted for a spreadsheet document which contained little context, thus making it very difficult for an ordinary individual seeking general information on hospital errors to understand. Now, however, data on eight hospital-acquired conditions (HACs) will be made available on its website, according to CMS. HAC refers to an undesirable situation or condition that affects a patient that arose during a stay in a hospital or medical facility.

Before the data was removed, the Hospital Compare website listed how often many hospital-acquired conditions occurred at thousands of acute-care hospitals in the United States. Essentially, acute-care hospitals refer to hospitals at which patients stay up to 25 days for treatment of a severe condition or while recovering from surgery. After the change, CMS merely reported the rate of occurrence for 13 conditions, including infections such as MRSA and sepsis after surgery, excluding other important information, like the number of instances in which a sponge was left in a patient's body.

In the spring of 2013, *USA Today* reported that foreign objects may be retained after surgery twice as often as the government estimates, or up to 6,000 times a year. Sponges, which can be embedded in a patient's intestines, account for more than two-thirds of all incidents. For patients who survive, the complications can last a lifetime, leading some to lose parts of their intestines.



If you or a loved one have been the victim of medical or hospital negligence or malpractice, contact an experienced medical malpractice attorney at Alan W. Clark & Associates, LLC. Quality representation by a skilled advocate can result in compensation for pain and suffering, lost wages, future lost earnings, and other damages.

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Perhaps the most important of the new requirements on IMEs which works to the benefit of the injured worker and the worker's healthcare providers is the one that now requires the carrier's expert or IME entity to serve copies of the IME report on every physician who has treated the claimant within the six months preceding the IME. This is an important addition to the regulation because there are many injured workers who concurrently treat their injuries with a variety of medical specialists, i.e., orthopedists, neurologists, pain management specialists, internists, etc. In the past, the regulation required service of a copy of the IME report on one treating physician only. The new regulation achieves the worthy goal of extensive disclosure in affording each of the claimant's attending providers an equal opportunity to be aware of the carrier's expert's position on medical issues and to treat and respond if required as appropriate. In my recent experience applying this new requirement at the Board during hearings, I am pleased to report that the Administrative Law Judges have been finding a failure of the expert or IME entity to serve all treating physicians with the IME report in accordance with this new requirement to be tantamount to a failure to substantially comply with Workers' Compensation Law § 1373 and thus have been precluding such reports as inadmissible. Hopefully, the Board Panels that are now reviewing appeals regarding this issue will affirm the Law Judges' appropriate application of this new requirement.

Another significant amendment to the regulations now requires, for the first time, disclosure of an expert report of a records review without exam to the Board and all interested parties at least three business days prior to a hearing. This is a tremendous improvement from the past, when no such disclosure was required whatsoever and

when claimants and their attorneys were thrust into the position of having to respond to such a report during a hearing, having never seen it before. The new regulation provides a much-appreciated semblance of due process to injured workers and their attorneys who now have an opportunity to adequately vet and respond to a carrier's records review report prior to the hearing.

There are other improvements to §300.2, including one which requires a carrier's consultant or IME entity to disclose and attach an intake sheet or questionnaire filled out by a claimant at the time of the exam together with the expert's report. Hopefully, these improvements are part of a greater movement to return to protecting the rights of injured workers in the wake of the 2007 overhaul of the Workers' Compensation Law which many can agree has been unfavorable on the whole at best for claimants at large.

Stay tuned for my next article, which will discuss a renewed effort by the Board and the Courts to enforce the presumption of compensability pursuant to Workers' Compensation Law §21.



BY BRANDON CLARK

THE LAW FIRM OF ALAN W. CLARK & ASSOCIATES, LLC



Pictured are the attorneys and staff at Alan W. Clark & Associates, LLC.



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For over 35 years, our firm has grown and prospered for the following reasons:

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- We only do what we know best. We don't practice tax law or securities law. We concentrate our practice in medical malpractice, personal injury, Workers' Compensation, Social Security Disability, unsafe products and medications, nursing home abuse and injury and business torts. Because we limit our practice, we have the experience and depth of knowledge to serve you best.
- When we do go to trial, our meticulous preparation and commitment to excellence enables us to succeed in many cases that other attorneys thought were "too difficult" to win.
- We maintain the highest legal standards of professional representation. We also take pride in providing excellent service and personal attention by learning and caring about the details and circumstances of your individual case.



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