

# The Legal Outlook

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### Consumer News:

## RECALL REPORT



### Nap Nanny by Baby Matters, LLC

## STOP USING THIS PRODUCT!

An eight-month-old baby girl from New Jersey is now the SIXTH child to die in a Nap Nanny accident since the item's release in 2009. Infants fall to the side of the reclining seat and are caught inside straps, sometimes suffocated between the chair and a wall or crib bumper. A voluntary recall took place in 2012, but the product is still available at yard sales, thrift stores, and online auctions. The CPSC urges consumers to immediately discontinue use and dispose of these products.

Baby Matters, LLC is out of business and not accepting returns.



Messa & Associates, P.C. proudly announces that seven of the firm's attorneys have been selected to the 2014 Pennsylvania *Super Lawyers* list! One of those selected was also named Top 100 in Philadelphia and Top 100 in Pennsylvania. Another Messa & Associates attorney was named a Pennsylvania *Rising Star* for 2014. Less than 5 percent of the attorneys in the state are selected by *Super Lawyers*.

In addition to the announcement of the *Super Lawyers* and *Rising Stars* selections, the firm has added client testimonials to [www.whymessa.com](http://www.whymessa.com), a website focusing on former clients describing why they chose to work with Messa & Associates and how the firm obtained justice for them. Among the clients highlighted is Regina Yankanich, a 44-year-old woman who suffered a traumatic brain injury after slipping on icy stairs at her apartment complex. Regina is featured in the firm's Pennsylvania *Super Lawyers* ad.

Founding partner, Joseph L. Messa, Jr., appears on the Pennsylvania *Super Lawyers* list for the sixth consecutive year, recognized in his primary areas of practice: medical malpractice and products liability. Mr. Messa is an AV-rated attorney (highest rating available), listed in the Bar Register of Preeminent Lawyers. He has successfully litigated multiple serious injury cases to seven- and eight-figure verdicts and settlements in medical malpractice, products liability, fire, and construction/work injury matters.

In addition to Mr. Messa, Richard J. Heleniak, Irene M. McLafferty, Eric H. Weitz, Lee D. Rosenfeld, Thomas N. Sweeney, and A. Christine Giordano were also recognized as Pennsylvania *Super Lawyers* for 2014.

Mr. Heleniak concentrates his practice in complex personal injury cases, including medical malpractice and products liability cases. He has had seven prior appearances on the Pennsylvania *Super Lawyers* list and was also selected to the New Jersey *Super Lawyers* list earlier this year. Ms. McLafferty is recognized on the *Super Lawyers* list for the fourth consecutive year, after previously being named to the Pennsylvania *Rising Stars* list in 2005. She has more than 20 years of trial experience in the areas of medical malpractice, products liability and premises liability. Mr. Weitz has been selected to the Pennsylvania *Super Lawyers* list for seven consecutive years, including Top 100 Pennsylvania and Top 100 Philadelphia for 2011, 2012, 2013, and 2014. He concentrates his practice in complex personal injury matters, including medical malpractice cases resulting in traumatic brain injury and other catastrophic injuries. Mr. Rosenfeld's primary practice area is serious personal injury litigation, including automobile/trucking accidents, workplace accidents, and premises liability. He was named to the Pennsylvania *Super Lawyers* list in 2012 and 2013. In her second selection to the Pennsylvania *Super Lawyers* list, Ms. Giordano is recognized in the area of medical malpractice. She holds a Bachelor of Science degree in Nursing and handles complex medical malpractice cases. Thomas N. Sweeney has been named to the *Super Lawyers* list for the first time this year, having been named to the *Rising Stars* list every year since 2006. He concentrates his practice on complex personal injury matters including premises liability, medical malpractice, and products liability cases. Noelle L. Palazzo is a first time honoree, named to the Pennsylvania *Rising Stars* list. No more than 2.5 percent of the lawyers in the state are selected to that list. Ms. Palazzo focuses her practice on catastrophic injury litigation, specifically, medical malpractice.

*Super Lawyers*, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a rigorous multi-phased process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area.



IF YOU WANT PEACE, WORK FOR JUSTICE.

POPE PAUL VI

ASK AN

ATTORNEY



**Q: If HIV or Hepatitis are contracted from a blood transfusion, organ transplant, or tissue donation, who is legally liable?**

-Mike Justice | Salt Lake City, Utah

A: It depends on your state. Some states have statutes that protect blood banks against litigation for infections contracted through transfusions because the legislature deemed that it was important to give immunity to facilities that provide blood services.

Even if your state does not have such a law, it may be difficult to prove that the infection came from a transfusion or procedure rather than from sexual or other contact by the patient.

Our firm has been successful in some cases in demonstrating either (1) a pattern of unsafe practices or cluster of infections to patients from the same facility; (2) that equipment was not properly cleaned; or (3) that the procedures were not in place to prevent infection.

Typically, a hospital, blood bank, or dialysis facility would be judged by the "reasonable person" standard to establish liability. In other words, did the technician do what a reasonable technician would have done under similar circumstances? When it comes to physicians and nurses, many states also require that a professional from the same specialty provide expert support to suggest that negligence caused the patient to develop HIV or hepatitis. It is important to consult with an attorney so that you do not miss any filing deadline or deadline for such a specialist's affidavit of merit.



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## JOURNAL STUDY FINDS ONE IN FIVE MEDICARE PATIENTS INJURED BY NEGLIGENCE

New research released in the peer-reviewed medical journal, *Injury Prevention*, reveals that nearly 1 out of every 5 Medicare patients falls victim to injuries caused by medical negligence. Such injuries include allergic reactions to medications, reactions to incorrectly administered medications, and worsened or heightened symptoms due to treatment.

Lead researcher, Mary Carter, director of the Gerontology Program at Towson University in Maryland, clarified that the injuries being discussed are not caused by underlying or preexisting conditions, but by the medical care and management themselves.

The study also found that around two-thirds, or 62%, of the injuries occurred during outpatient care when treatment is less specialized. Carter noted that while a great deal of effort has been expended to understand medical injuries in hospitals, much less has been done regarding injuries in clinics, doctor's offices, outpatient surgery centers, emergency rooms, and nursing homes. "To really improve our ability to prevent these types of adverse events, we have to focus at least as much on outpatient care as we do on inpatient care," Carter said.

Carter and colleagues collected data on approximately 12,500 Medicare recipients who made medical negligence claims between 1998 and 2005. The average age of the subjects was 76. Data concluded that 19 percent of the Medicare patients studied

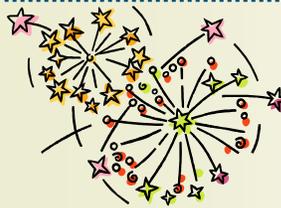
experienced at least one adverse medical event, which is higher than previous research estimates that found a rate of 13.5 percent. Carter believes that the rate of injury is actually even higher than the current estimate.

The study also found that those most likely to fall victim to an adverse medical event were older people, men, those from low-income backgrounds, patients suffering from chronic medical conditions, and patients who were in some way disabled. According to research, a shocking one percent increase in medical injury occurred as age increased monthly, and the death rate among patients who experienced an injury due to medical negligence was almost twice as high as patients who received proper care.

Not surprisingly, healthcare costs increased following the medical injuries due to greater use of medical services, presumably needed to correct the new issues caused by adverse medical events.

Dr. David Katz, director of the Yale University Prevention Research Center and president of the American College of Lifestyle Medicine, said, "We have long known that medical care, while pledged to avoid harm above all, actually imposes quite a bit of it. Medical injury is all too common, and adverse effects of treatment are common, even in the absence of error." Dr. Katz added that a process of consistent assessment and reform is necessary to reduce medical errors.

## Flavor of the Month: Fireworks Safety



Fireworks can be dangerous, causing devastating, permanent injuries when used in a private setting. According to the CPSC, almost half of the injuries caused by fireworks were to children under the age of 15. In 2010, about 8,600 people were treated in emergency rooms for injuries associated with fireworks. Firecrackers caused the most injuries, followed by bottle rockets and sparklers. June is Fireworks safety month and the *National Council on Fireworks*

*Safety* (NCFS) reminds families and professionals alike to stay smart and safe when dealing with fireworks.

- Always purchase fireworks from a reliable source.
- Use fireworks as directed on consumer product safety label; never alter products.
- Observe local laws and use good COMMON SENSE.
- Have a designated shooter to organize and shoot your family's show.
- A responsible ADULT should supervise all firework activities.
- Parents should not allow young children to handle or use fireworks.
- Alcohol and fireworks do not mix. Save your alcohol for after the show.
- Use fireworks OUTDOORS in a clear area; AWAY from buildings and vehicles.
- NEVER carry fireworks in your pocket.
- Wear safety glasses whenever using fireworks.
- Always have water ready if you are shooting fireworks.
- Do not experiment with homemade fireworks.
- Never relight a "dud" firework. Wait 20 minutes and then soak it in a bucket of water.
- Soak spent fireworks with water before placing them in an outdoor trash can.
- Report illegal explosives, like M-80s and quarter sticks, to the fire or police department.

# BREAKING IT DOWN

## KNEE AND HIP REPLACEMENT – BE A SMART CONSUMER!

By **Richard J. Heleniak**

Every day, the lawyers at Messa & Associates evaluate cases regarding knee and hip replacement surgeries. According to research published in *The Journal Bone & Joint Surgery*, the number of total knee replacements performed annually has doubled over the last decade, with the largest increase among young adults. The *Centers for Disease Control and Prevention* estimates that **719,000** total knee replacement surgeries and **332,000** total hip replacement surgeries are performed every year in the United States. While joint replacement surgery can be effective for the treatment of end-stage osteoarthritis (age-related “wear and tear”), rheumatoid arthritis, and post-traumatic arthritis following a fracture, patients who have joint replacement surgery can experience long-term and persistent pain, as well as other severe complications. As knee and hip replacement surgery has become more available, surgical techniques have improved and the types of joint replacement hardware systems have increased. Consequently, the number of surgeons performing knee and hip replacement surgery has increased, resulting in wide variances in the level of training and experience among surgeons who perform these surgeries.

Certain types of joint replacement hardware systems have proven to be defective in design or subject to manufacturing problems, which has caused some artificial knees and hips to break down, deteriorate, dislocate, and in some cases, lead to post-operative infection. Thus, there should be no surprise at the growing number of poor results among patients undergoing both hip and knee replacement surgery. Of course, having joint replacement surgery is not and has never been a guarantee of a pain-free, fully moveable joint and not every negative surgical result is the effect of product failure or surgical negligence. These procedures also carry with them a risk of potential complications which may or may not be related to a defective product or a problem with the surgical technique, including infections, blood

clots, leg length inequality, dislocation/loosening of the implant, nerve damage, fracture, stiffness of the joint, and continued and persistent pain.

If joint replacement surgery has been recommended to you, you can help yourself and decrease your chances of complications by being an informed consumer. When you buy a car, you don’t buy the first car you see on the lot. You find a salesperson and ask as many questions as you can in order to make a purchase that will fit your needs and provide safe transportation. Joint replacement surgery is no different. You must ask your doctor not only to explain the surgery, but to provide you with as much information as possible. You need to know that the doctor performing the surgery and the joint implant being used are both right for you.

Before signing any consent forms, ask the surgeon the following questions and get **complete answers**:

1. *Why is this joint replacement necessary?*
2. *What alternatives are there to surgery? Why are they not recommended?*
3. *What type of implant will be used? What is the name of manufacturer and the type of implant system? Why is this particular model better than others on the market? (Some orthopedic surgeons have arrangements with certain implant manufacturers, through which they are paid to provide training or promotion. Make sure that your surgeon is not using a particular manufacturer simply because of their special financial arrangements.)*
4. *Will you (the surgeon) be performing the procedure in its entirety? Will other physicians be assisting? Are they doctors, residents, or fellows?*
5. *What is the success rate for this particular procedure?*
6. *How many of these procedures have you (the surgeon) performed?*
7. *How many of these procedures do you (the*

*surgeon) perform per year?*

8. *How many of the joint replacement procedures that you’ve performed have required revision surgeries and why?*

10. *What will my recovery time be? What should I do/not do during the time following my procedure?*

11. *Are you (the surgeon) aware of any manufacturer or FDA recalls regarding the intended device?*

12. *What kind of protection do I need against the formation of blood clots post-surgery?*

13. *Where can I find statistics on the post-operative infection rates of joint replacement surgeries at the hospital/surgical center where my procedure is taking place?*

14. *Should I seek a second opinion before going through with the procedure?*

15. *What should I expect after the surgery in terms of: (a) pain, (b) limitations of motion/movement, (c) stiffness, (d) time I will be off of my feet or walk with some sort of assistance?*

The information you obtain from the doctor will be helpful to you in understanding your procedure and in dealing with the problems if they arise. Even if you do not understand everything that your surgeon tells you, the surgeon’s willingness to openly provide information to you and answer your questions may tell you a lot about your doctor’s ability and expertise. An added benefit is that by asking these questions, you will force your surgeon to think about your specific needs in the surgery and may lead to adjustments which will provide a safer and more successful experience.

Richard J. Heleniak (rheleniak@messalaw.com), is a senior partner at Messa & Associates, representing catastrophic injury clients throughout PA and NJ.



## Settlements and Verdicts

### CONFIDENTIAL

**\$11.9 million** settlement for a medical malpractice claim on behalf of a nine-year-old child who became ill at the height of the H1N1 pandemic (Swine Flu). Despite being a high risk patient as described by the Centers for Disease Control and exhibiting many symptoms related to the virus, the girl’s pediatrician failed to vaccinate her and did not bring her in to evaluate her condition after her mother made several calls to the office regarding her daughter’s symptoms.

When the child’s condition continued to worsen, her mother sought emergency care at a nearby hospital. Although the child was admitted, physicians and staff failed to recognize her deteriorating respiratory condition, the use of her accessory muscles to breathe, or the fact that she was not getting enough oxygen to her brain, resulting in fatigue and confusion. The child was not properly monitored or intubated in a timely manner which led to a hypoxic brain injury. She suffered permanent brain damage and now requires 24-hour care in a residential treatment facility.

# AROUND THE OFFICE



Legal Nurse Consultant, Shari Larson, will be participating as a panelist for the UPENN School of Nursing *Speed Table Luncheon*, offering senior nursing students information on alternative careers in nursing. Shari also begins a graduate program at Wilmington University on July 8th to obtain her Master's Degree in Nursing. Go Shari!



Office Manager, Roseann Gomez, celebrates 25 years with Joe Messa this month! *"It's been an amazing journey working with Joe Messa all of these years. I knew Messa & Associates would be successful before we opened the doors because of Joe's dedication to the clients and how high he sets his standards, not only for himself but for anyone who is part of our team. I'm looking forward to many more years with all of the wonderful employees we have, some of whom I consider to be as close as family."* Congrats Roe!



June birthdays are bustin' out all over! Attorneys and staff at Messa & Associates wish the happiest of birthdays to legal secretary—Darla DiCrecchio, paralegal—Brittany Kaplan, and attorney—Jenimae Almquist! Happy Birthday!

## MAIN LOCATIONS

### PHILADELPHIA

123 S 22nd St  
Philadelphia, PA 19103  
P: 215-568-3500

### CHERRY HILL

2091 Springdale Rd.  
Suite 2  
Cherry Hill, NJ 08003  
P: 856-810-9918

## SATELLITE LOCATIONS

### COLLINGSWOOD

475 White Horse Pike  
Collingswood, NJ 08107  
P: 856-833-0600

### GERMANTOWN

6000-6002 Germantown Ave  
Philadelphia, PA 19144  
P: 215-844-1614

### CONSHOHOCKEN

923 Fayette St.  
Conshohocken, PA 19246  
P: 215-940-7700

### LINWOOD

605 New Road  
Linwood, NJ 08221  
P: 609-601-1644

### ROSELLE

520 West First Ave  
Roselle, NJ 07203  
P: 908-300-3900

# Messa & Associates

TRIAL ATTORNEYS WITH A REPUTATION FOR RESULTS

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