

SEAN J. DOOLAN

Attorney At Law

OFFICE NEWS

Sadly, after a long illness, my mother passed away on February 1, 2005.

I wish to extend a sincere thank you to all of those who supported me and my family during that time and sent their sympathies and flowers. These were greatly appreciated.

NEW OFFICE

I am pleased to announce that the Law Offices of Sean J. Doolan has opened an office in Rockland County in the offices of Fellows, Hymowitz & Epstein at the Bennigan's Building, located at 254 South Main Street, New City. Client conferences at this office will be by appointment only.

STAFF NEWS

Monica Agosto, certified paralegal, is now in the final stretch of law school. She was honored to be on the Dean's List last semester, carrying a GPA of over 3.4. Because she was chosen as the Arthur Matthews Scholar and remained in the top 25% of her class throughout her time at Albany Law, she received a full tuition waiver for all 3 years of law school. Monica will be graduating on May 28, 2005 and is scheduled to take the bar exam in July 2005. If successful, Monica will be admitted to the practice of law in January 2006 and plans to join our firm as an associate.

Maureen Anshanslin, our real estate paralegal, attended Manfred Real Estate School this past fall and has passed the New York State licensing exam. She is now a licensed agent.

Maureen is also currently enrolled in Concord University of Law, an online law school. She is working toward her JD degree as a part time student.



Kathleen McCarthy, R.N., M.A., is consulting to the office as a registered nurse and will be providing expert review and opinions on select personal

injury and nursing home cases. Before moving to Windham full time, she worked downstate as a pediatric and surgical nurse.

NEED A SPEAKER?

Do you belong to a service or civic organization that schedules guest speakers? If so, we can help you make presentations on a variety of topics, particularly on the subject of nursing home litigation.

SPRING 2005



*Brought to you by the
Law Office of Sean J. Doolan*

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CASES OF INTEREST

NURSING HOME CASE OF JEAN SPAKOWSKI

On January 3, 2005, a favorable decision was issued by Judge Sise, of Montgomery County Supreme Court, denying the Defendants' (the nursing home) attempt to exclude

from evidence the nursing home's own incident reports. These reports describe in detail the circumstances surrounding the accident that resulted in Ms. Spakowski falling from her

wheelchair resulting in a fractured femur. This decision was published in a national law journal as a precedent to be used by other attorneys and professionals.

LIFE AND DEATH DECISIONS

The case of Terry Schiavo in Florida has brought the issue of end-of-life decision making into the headlines across our country. In the Schiavo case, it was necessary for her family members to go through protracted court proceedings, including multiple trials and appeals, in order to determine what her intent was with regard to being kept alive by artificial means. That does not have to be the case.

Since 1991, states have had the right to pass new laws allowing individuals to designate an agent to speak for them in situations such as the one that Schiavo was in. This important law created the Health Care Proxy, which in New York is a very user-friendly document that allows an appointment of an agent to make decisions when someone is unable to do so for them self. One should always con-

sider appointing alternate agents, and providing the agent with instruction on what types of treatments are desired and other health care decisions. Careful consideration should be given to those decisions that need to be made when the quality of life that you consider acceptable is no longer attainable.

In addition, a Living Will, is a statement of intent with regard to life sustaining treatment. It doesn't have the authority of statute in New York, rather it is a factor which would constitute "clear and convincing evidence" should a court be called upon to make a decision. The more powerful document is the Health Care Proxy, and if you have an agent to appoint, you should appoint them through the proxy. If there is absolutely no one that you would trust to make that decision for you,

then you may consider the use of only a Living Will.

In our office we recommend the Health Care Proxy as the only document, and simply include the same language that could be put into a Living Will into the body of the Health Care Proxy. Neither of those documents should be confused with a "Do Not Resuscitate Order", which directs that medical providers not bring someone back to life after their heart has already stopped. This type of directive is most often signed in hospitals, but can be put in place by individuals living at home should they wish not to be resuscitated.

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*Photo by Dr. Jeffrey M. Levine, M.D.
Title: Home Bound Elder
Taken October, 2004 in Zuni, New Mexico*

This photo, taken at the Zuni Reservation, is by Dr. Jeffrey M. Levine, a colleague who specializes in the field of geriatric medicine. Dr. Levine, a practicing physician, acts as a geriatric medical consultant on nursing home cases, and is an avid photographer in his spare time. We hope to continue to showcase his endearing photos in future newsletters.



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CASES TO WATCH

ASSISTED LIVING FACILITY CASE OF ELIZABETH PELLETIER

Ms. Pelletier, an 89 year old woman, wandered from an upstate assisted living facility in February, 2003. She was missing for four hours before staff noticed and contacted authorities. Unfortunately, by the time she was found, she had died due to exposure to the winter elements. An investigation by the Law Offices of Sean J. Doolan revealed that the facility was not licensed by the Department of Health even though they advertised as an assisted living facility. The facility claims it was acting as a landlord, and as such, owed no duty to Ms. Pelletier. This case illustrates the need for regulation of assisted living facilities.

See article to the right on the new legislation concerning assisted living facilities.

NEW LEGISLATION

The Assisted Living Reform Act

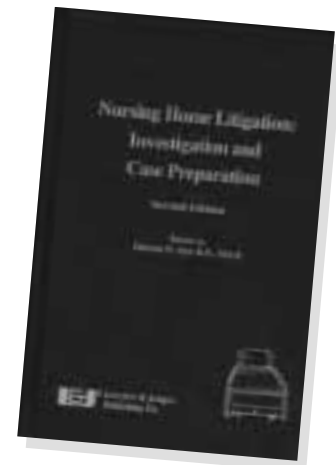
In August 2004, the State's Legislature passed the "Assisted Living Reform Act" which will add Article 46-B to the Public Health Law for New York. This measure creates a true assisted living law for the first time in New York. The passage was the result of a five year effort by Governor George Pataki, who had originally submitted the proposed Act to the Legislature in 1999. The Act took effect February 23, 2005. Among its many provisions, it:

- Defines assisted living and assisted living residences as separate from adult homes.
- Requires look-a-likes to become licensed or face serious criminal penalties (class A misdemeanor, plus civil penalties), and provides incentives if they apply for licensure quickly.
- Requires full disclosure to consumers and their families interested in locating to an assisted living facility of at least nine points of information, including ownership by the facility operator (in excess of 10%) of any company which provides goods or services to residents, as well as, ownership by any such company in the facility.
- Establishes a 16-point residents' bill of rights.
- Creates a permanent, ongoing task force to deal with the many issues involved in assisted living, including the care of special populations, the development of appropriate patient assessment instruments, regulations, and other matters.

NEW BOOK ON NURSING HOME LITIGATION

Sean and Monica co-authored a chapter in a new book entitled, **Nursing Home Litigation: Investigation and Case Preparation, 2nd Edition**, published by Lawyers & Judges Publishing Company. Their chapter involves litigation strategies. They were honored and privileged to be chosen by the editor, Patricia Iyer, RN, MSN, LNCC, to participate in the preparation of this book. It is anticipated that the book will be released in May 2005.

Phone orders for this book can be placed at (908)788-8227 or online at www.medleague.com/Publications/Webstore.htm. Click on the link for Nursing Home Litigation then click on the link for the book's name. Books ordered through Med League will be personally signed by the editor. Pre-orders of the book can be placed at www.lawyersandjudges.com. Search by Keyword for "Nursing Home Litigation."



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PROPOSED TORT REFORM TAKE ACTION!

President Bush recently demanded that Congress take immediate action to reform tort litigation. More specifically, he has proposed a "hard cap of \$250,000" for non-economic damages in medical malpractice actions.

Non-economic damages include, for the most part, pain and suffering. If this legislation is passed, it will have a draconian effect on nursing home residents and their families for the following reasons: **1)** many nursing home cases involve some sort of

medical malpractice and, therefore, would be effected by this legislation; **2)** in most nursing home cases, there are no economic damages because the resident is typically elderly and retired; and **3)** after litigation expenses, attorney fees and Medicare/Medicaid liens are deducted from any settlement or verdict, that \$250,000 will likely be exhausted, leaving little, if any, for the resident and/or family. For these reasons, most residents and their families will

choose not to endure the additional emotional hardship of litigation, leaving them with no legal recourse.

We encourage you to contact your local representatives to voice your opposition to the so-called tort reform. Your local representatives can be found at www.house.gov and www.senate.gov. If you would like to view a sample letter, go to www.PeopleOverProfits.org.

RECENT SPEAKING ENGAGEMENTS

January 25, 2005, Lectured on the topic of *Assisted Living Facilities* at a Nursing Home Negligence Conference sponsored by Lorman Education Services. The conference was held at Pace University in Manhattan before a crowd of about 75 other professionals.

January 19, 2005, Spoke to the Greene County Department of the Aging on the topic of *Assisted Living Facilities*.

A brief description of the Assisted Living Reform Act can be found in this newsletter on page 3.



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Sean being a good samaritan, lower Manhattan, January 25, 2005.