

Thinking the Unthinkable: Preparing for a Future Lawsuit While Caring for a Burn Patient

BY NEAL DEYOUNG

When my son was severely burned while trick or treating on Halloween, one thought went through my mind, “Please don’t let my son die.” When the emergency room doctors informed me that it would take at least 48 hours before they would know whether he would survive his wounds, that thought and prayer remained, constantly, like a mantra. Needless to say, I stayed awake and in shock for that entire period. Through the tears, however, I began to take steps to ensure that my son’s trauma was properly recorded should a lawsuit become necessary. It was an obligation that seemed ludicrous at the time, but as families of burn survivors well know, the rehabilitation process for the burn survivor and their family is a prolonged and traumatic one. There is never a convenient time in this situation to address the concerns of some future lawsuit, and, yet, taking a few simple steps, such as quickly contacting an attorney, can ensure that your family is properly compensated for any wrongs that may have caused your loved one’s burn trauma.

WHEN A LOVED ONE IS BURNED BY A PRODUCT

My son was seriously burned when his Halloween costume became engulfed in flames. During his initial hospitalization, despite the fog of fear and lack of sleep, I still contacted the police and colleagues to ensure that the remnants of his costume were not discarded. I also made sure that any packaging for the

costume product, as well as the proof of its purchase, was safeguarded. If the product is of limited availability, one may want to arrange for legal counsel to purchase several samples of the product. These pieces of evidence could be very important should a future lawsuit focus on either the faulty design or improper manufacture of the product (known as a product liability lawsuit). Sometimes the government, through the Consumer Product Safety Commission (CPSC), commences an investigation of the product to determine its dangerousness and such information will be of import to that agency.

WHEN A LOVED ONE IS BURNED BY THE ACTIONS OF OTHERS

In almost every situation involving serious burn injuries, police, fire, and/or emergency medical professionals will be present at the scene of the incident. Each department will generate a report of the incident. The reports typically include the names of the professionals involved at the scene, the identity of other professionals or witnesses at the scene, and a description (accurate or not) of the circumstances surrounding the incident.

It is important for you or your legal counsel to obtain copies of such records to the extent they are available. They may describe the actions of other persons involved in the incident which may better explain the circumstances causing the injuries. An

attorney will sometimes hire an investigator to obtain the fresh recollections of such professionals and witnesses regarding the incident.

HOSPITALIZATION

There are two unfortunate but unvarying characteristics of hospital care for a severe burn patient. First, the rehabilitation process will be a long one. Second, the hospitalization (and posthospitalization) experiences will be extremely painful and complex, generally involving a multitude of procedures and operations, such as skin grafting, escharotomies (cutting into burned skin area to relieve tightness and swelling), and possible amputations. Due to concerns about the threat of infection, burn patients also must endure repeated dressing changes over the wound areas, one of the more painful aspects of burn care. Because of the ever presence of pain, pain management (i.e., sedatives, pain and anxiety-related medications) plays an important role in any burn patient's hospitalization. Consequently, the burn patient may not be in a mental state either to properly record or even remember significant periods of his or her hospitalization. Burn survivors may also not want to remember the high pain levels experienced during their hospitalization. Hospitals, however, tend not to fully describe the nature and magnitude of the burn patient's pain experiences, except for periodically recording its presence with impersonal notations of pain level and whether the pain was addressed with medication. It will fall on the burn survivor's loved ones to maintain a more complete history of this trauma.

A family member may want to consider keeping an objective diary of events through photographs, videotape, and writings. Many burn centers will also photograph the course of treatment for teaching purposes. If this circumstance occurs, one should advise his or her attorney to obtain copies these materials from the burn care professionals.

As the burn survivor begins the slow process of rehabilitation, the nature of his or her injuries will change considerably, from active wounds to scars, and from heavily bandaged open wounds to post-grafted skin. Although one should first confer with legal counsel, a family member could maintain a written or photographic diary of such events and other changes that may not be well documented in a hospital's records. Although hospital records will provide a detailed history of the patient's medical procedures and other medically relevant information, those

records do not memorialize many of the patient's personal struggles and fears (i.e., anxieties about relationships, fears about upcoming procedures and dressing changes, nightmares, gastrointestinal problems, and other discomforts). A diary in this situation, however, should not be a personal journal. One's subjective perspectives, opinions, and conjecture should be left out, particularly since lawyers for the other side (the product manufacturer or negligent actor) generally will be able to demand an inspection of your writings and other records.

POSTHOSPITALIZATION

Once a burn patient is released from the hospital, his rehabilitation process will in all likelihood continue to be extensive and prolonged. Daily record-keeping, however, will no longer be provided by hospital staff. Further, many expenses may no longer be covered by one's insurance and the daily expense of burn care (and maintaining its history) will fall on the family.

Since many burn survivors suffer from hypertrophic and keloid scarring, scar management will be a daily and expensive part of the posthospitalization recovery process. Burn survivors, for example, may be required to wear pressure garments for a majority of the day (to reduce the thickening of burn scars). Massage and physical therapy may also be required for extended periods of time.

Record keeping and memorializing important events in a diary becomes even more crucial during this stage. Keeping expense accounts for the purchases of bandages, creams, and pressure garments should be maintained, as these expenses will quickly mount over time. Burn survivors tend to have new sensitivities to heat and the sun, therefore the purchase of special apparel should be recorded. Such records not only maintain a history of care-related expense, but will help tell the story of the continued difficulties associated with a burn survivor's rehabilitation.

For children, years of physical therapy may be necessary to address burn wound issues, such as the difficulties associated with growing while their skin remains restricted by grafts and scarring. For adults, occupational therapy and vocational retraining can be a long-term and frustrating experience. There will also be a multitude of psychological complications and ramifications for not only the burn survivor but for his or her family which may have to be addressed, including the substantial costs of psychotherapy and psychopharmacology.

Needless to say, a burn injury to a loved one affects the entire family. In fact, the burn survivor may not be the only party to a future lawsuit. If other members of the family were present at the event, they too may be entitled to bring claims against the wrongdoer. Accordingly, maintaining a history of their trauma and care may be of importance.

POSTSCRIPT

Not every burn incident involves a wrong that should be redressed in a lawsuit. However, many incidents may be caused by a defective and dangerous product or by the negligent act of a stranger, misconduct that might not be immediately apparent, or may require some investigation. Taking steps to

ensure that the first years of rehabilitation for a burn patient are not lost in the ether of time and trauma is an obligation that the burn survivor may not be in a position to undertake; such an obligation may therefore become your responsibility. As mentioned, since one's notes, photographs, and records may be examined (and refuted) by attorneys and experts for the other side in a lawsuit, it is important to obtain legal advice at an early stage.

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