MondayMonday

All Doctors Are Not The Same

February 10, 2014

To those of you who follow such things, there is much talk in the legal education world about shortening the time needed to achieve a J.D.,, the declining rate of students choosing to attend law school, and the necessity of experience-based legal education, *i.e.*, working in the real world like a lawyer. Since we do not write this week's edition on Monday, for technical reasons, we've had the opportunity to read Judge Lippman's concept of a final semester in the 3L year of *pro bono* work, rewarded by the opportunity to take the bar exam in February rather than waiting until July.

The answer, dear Brutus, is not in the stars, but in ourselves. We from dear old Flatbush Law know the answer to this question. While the white-shoe rookies at the top law schools were learning the sort of stuff that spelled billable hours and getting to carry someone else's litigation bag to a deposition in a foreign (read: outside of New York City) city, we were working, like real, live lawyers. We were answering calendars, doing motions, interviewing clients, writing briefs, being abused by clerks and earning money while doing it. By the time we graduated, we were lawyers, requiring only the ticket of admission to sell that skill to the world (or at least Aunt Yetta and her canasta group.)

So, what's the frequency Kenneth? It's replacing that 3rd year of law school with a real life clerking experience for pay. It may well be that some lawyers don't need it, but would be better off learning skills that support the billable hour. For them, permit them to stay in school that extra year, but let the diplomas of those that clerked reflect their special skills denoting a "Clerkship" endorsement.

Speaking of learning the minutiae of New York practice through the wonder of an effective clerking experience, we are all well-aware of the limitations of CPLR 2106, which only allow affirmations in lieu of affidavits by certain medical professionals. Absent among these are chiropractors, who do not enjoy that privilege and must find a hungry notary somewhere in order to be believed.

Enter now the Land of Oz, where nothing is as it seems, and that isn't half bad. In *Perez v. Fitzgerald*, 2014 NY Slip Op 00744 (1st Dep't, 2/6/13), Justice Sweeny teaches us another lesson on the distinctions among medical professionals. Nancy Perez, the victim in a car accident, was treated by defendant, a chiropractor, for pain in her neck radiating down her arms. The chiropractor ordered MRIs and relied on the radiologist's report, but never viewed the films herself. While the report mentioned several herniated or bulging discs in plaintiff's neck, it failed to diagnose the tumor in her spine. Plaintiff treated numerous times with others and a defendant chiropractor, but the tumor was not discovered until another chiropractor referred her to an orthopedist who, with a fresh MRI, found the tumor. Neurosurgery followed.

In the subsequent malpractice action (for failing to refer plaintiff for a second MRI,) the first chiropractor, the defendant, moved to dismiss the complaint as time-barred. After all, the action was brought more than 2 1/2 years after the date of accrual.

If you see this coming, then good for you. CPLR 214-a, the truncated, "doctors are leaving New York," malpractice SOL, applies only to "medical, dental or podiatric malpractice." All other professional malpractice is governed by the 3 year SOL in CPLR 214(6) - - and that means chiropractors too. Motion denied. Referral by a physician would have changed that result, we're told.