

Clifford's Notes



Clifford's Corner

Bob Clifford has been invited to serve on the Board of Directors for WTTW, Chicago's public television station. He has sponsored closed captioning at the station for the past five years. Mr. Clifford also has been invited to serve on the Loyola University Council of Regents along with a number of civic-minded people from the Chicago area.

Bob Clifford recently spoke at the 35th Annual Rainbow PUSH Coalition Conference.

In August, Bob Clifford will become Chair of the ABA Standing Committee on Strategic Communications, having been appointed by the incoming President of the ABA, Karen Mathis of Denver, Colorado.

Clifford Law Offices received the Commitment to Excellence Award by the Pro Bono Center for Disability and Elder Law in April. This prestigious award is presented to those who have demonstrated an outstanding commitment to pro bono for those who are of low income, the elderly and the physically challenged.

Avoidable Negligence Chicago Tribune, Letter to the Editor, May 3, 2006

The deaths of up to 20,000 patients a year from "germy hands" certainly is a disturbing statistic, and the *Tribune* is to be commended for exposing this avoidable travesty (Editorial, April 22).

But it is equally disturbing for patients to hear the *Tribune* speak out of both sides of its editorial mouth. On the one hand, it is exposing an "appalling scandal in the nation's hospitals" in this recent editorial.

On the other, it is asking that those who die from this avoidable negligence be made to suffer the consequences for it rather than those who are responsible for such conduct.

For years, the *Tribune* has espoused caps on damages. In fact, when the Illinois legislature voted last year to cap injured victims' non-economic damages as a result of medical malpractice in this state, the *Tribune* supported the move ("Ending the exodus," Editorial, Aug. 26).

Now on the same editorial pages, the *Tribune* takes to task the same doctors, hospitals and health-care workers who are killing literally thousands of innocent patients simply because the workers didn't take proper precautions in something as simple as washing their hands before handling a patient in an environment they are to keep sterile.

Sadly I have represented several women who have given birth to babies in what have been touted as some of the Chicago area's finest hospitals only to find them infected by a deadly flesh-eating disease that eats away at their skin. Before it is detected, these new mothers are at death's door, disfigured and facing years of painful surgeries to try to put their lives back together—all because the operating rooms were not properly cleansed or hospital workers or doctors did not take proper precautions.

If the *Tribune* is to stand behind its study that links thousands of deaths to hospital infections, it should not simultaneously stand behind the careless culprits who avoid responsibility for their negligent actions.

Certainly education on better hygiene is a positive step in the right direction.

But it is unfair to deprive the victims of a full and fair court process at the hands, literally, of those who don't do what they are supposed to do.

*Robert A. Clifford
Partner, Clifford Law Offices*

Press Room



Robert A. Clifford welcomes three new associates to the firm. Pictured from left: **Colin H. Dunn**, **Robert A. Clifford**, **Mary C. Sweeney** and **Sean P. Driscoll**

Congratulations to **J. Ryan Potts** named as one of the Top 40 Under 40 Attorneys in Illinois.

Michael Krzak was appointed Chair of the Chicago Bar Association Aviation Committee.

Jeffrey Kroll is speaking at an Illinois Continuing Legal Education seminar in Chicago next month entitled "Jury Success Strategies." He is addressing "Trial and Error: Post Trial Analysis." Jeff also is moderating a program in Hawaii at the American Bar Association's Annual Meeting on "Using Experts to Teach and Persuade at Trial."

Kevin P. Durkin elected the 130th President of the Chicago Bar Association. *See inside for details.*

Keith A. Hebeisen speaks out as the Immediate Past President of the Illinois Trial Lawyers Association. *See back page.*

Matthew Willens has spoken in several venues on various subjects including traumatic brain injury at the Lake County Center for Independent Living. He has been appointed to serve as a member of the Tort Law Section Council for the Illinois State Bar Association. Matt also serves as a member of the Chicago Bar Association Judicial Evaluation Committee, of which **Tim Tomasik** serves as Chair.

Robert Walsh was named to the Million Dollar Advocates Forum, a nationwide group limited to trial lawyers who have obtained verdicts or settlements of at least \$1 million dollars.



Vivian Tarver-Varnado (above) was appointed Vice-Chair of the Medical Legal Committee for the CBA.

Final Judgment

Robert Clifford and Timothy Tomasik obtained a \$16.7 million settlement on behalf of an orthopedic surgeon who was left partially paralyzed following a spinal anesthetic negligently administered at a major Chicago hospital.

The case was tried for three weeks in 2002 when a jury reached a verdict in just two and a half hours. The defendant, Rush Presbyterian St. Luke's Hospital, appealed the case, first to the appellate court, and then to the Illinois Supreme Court which upheld the jury's decision that included nearly \$4 million in interest which had accumulated.

Dr. James York went in for knee surgery but the anesthesiologist negligently punctured his spinal cord, leaving his right leg partially paralyzed. Dr. York, the plaintiff, often traveled to Africa to help the poor with his surgical skills but can no longer due so following the incident.

"The Illinois Supreme Court made the right decision for the right reasons," Clifford said following the state's highest court issuing its opinion in June. "Dr. York has been patient but justice has finally been done."

The case now stands for the proposition that a patient who reasonably relies upon a hospital to provide complete care through its staff will be held vicariously liable for any services even if they are not hospital employees through the doctrine of apparent agency.



Kevin P. Durkin

130th President of the Chicago Bar Association

Kevin P. Durkin, partner at Clifford Law Offices, was sworn in as the 130th President of the Chicago Bar Association (CBA) on June 22. Here are some of the highlights slated for his 2006-07 term:

- Conference of World Bar Leaders – This year Chicago will host the Fourth Conference of World City Bar Leaders, Sept. 14-16. Nearly 75 bar leaders from the world's largest cities—London, Paris, Seoul, New York, Los Angeles, Milan, Tokyo, Mexico City, Rome, Madrid, Brussels, to name a few—will be meeting to discuss a number of important topics. Speakers will be covering areas such as international arbitration, international trade, human rights, global transport and aviation treaties.
- The establishment of a Mentoring Program for young lawyers, a new initiative for the CBA. The Young Lawyers' Section together with the CBA Mentoring Committee will join efforts to teach younger members the craft and skills necessary to be successful and ethical lawyers. The future of our profession depends upon such efforts. As I was mentored by my partner, Bob Clifford, so, too, the CBA must promote those with experience, making better lawyers of a new generation.
- Given the new mandate of the Illinois Supreme Court requiring lawyers to report their pro bono hours, the CBA wants to stand for volunteerism and pro bono services. A committee already is working on carrying on the second Pro Bono Week in October featuring a volunteer sign-up fair. The CBA intends to create a greater awareness of all the good that lawyers do through their pro bono work.
- A new Public Affairs Committee has been formed that will help educate the public through developing a greater trust and understanding of lawyers and the profession. This will be accomplished through the media as well as through educating the children in our schools.
- The CBA intends to be at the forefront of helping lawyers manage their mandatory continuing legal education requirements. For just \$125 per year, members can attend more than 150 CLE seminars, some featuring top lawyers in the profession.
- Through the Abraham Lincoln Marovitz Lend-A-Hand Program, the CBA intends to try to improve literacy rates in Chicago's schools, particularly in the Englewood community. Please stay tuned for how you can help to make a difference in the lives of many of these schoolchildren through mentoring.
- Already 400 new members from governmental agencies have signed on as new members, and I will continue to encourage more lawyers to join this fine organization.



Kevin P. Durkin



Judge Michael B. Hyman, Kevin P. Durkin



Kevin P. Durkin, Justices Charles and Justice



Judge E. Kenneth Wright, Jr., CBA 2nd Vice President, Kevin P. Durkin and Terry Murphy, CBA Executive Director



The swearing in ceremony



Irene Bahr, Illinois State Bar Association President, Kevin P. Durkin and Judge Ruben Castillo



Kevin P. Durkin and Victor P. Henning



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Keith A. Hebeisen
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Susan A. Capra
Richard F. Burke, Jr.
Robert P. Walsh, Jr.
Jeffrey J. Kroll

Robert A. Strelecky
Michael S. Krzak
Timothy S. Tomasik
John T. Karnezis
Matthew L. Willens
Managing Partner:
Thomas K. Prindable

Communications Partner:
Pamela Sakowicz Menaker
Counsel to the Firm:
Robert P. Sheridan
Of Counsel:
George S. Bellas

Associates:
Brian T. Nash
J. Ryan Potts
Craig J. Squillace
Vivian Tarver-Varnado
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P. Durkin and Robert A. Clifford



The Durkin family



Freeman and Thomas Fitzgerald



Judge Michael B. Hyman hands gavel to Kevin Durkin



Anderson, CBA 1st Vice President



Joy Cunningham, former CBA President, and Robert A. Clifford

PHOTOS BY BILL RICHERT AND JOE AMENTA

Kevin P. Durkin has distinguished himself as one of Chicago's leading trial attorneys. As a partner at Clifford Law Offices, he has achieved numerous large jury verdicts and settlements in state and federal courts in cases that are highly complex and often high profile. For example, he tried the case of a mother and her two children who were involved in a devastating truck-car collision on Interstate 90 near Rockford. A four-year-old girl was killed and her two-year-old brother was permanently brain damaged when they were involved in a snowy pile-up in 1999. Their mother suffered facial injuries that required 31 surgeries. After a month-long trial in the Cook County Circuit Court, Mr. Durkin received a \$38.3 million verdict on behalf of the family in March, 2004. The verdict was the largest in the country in 2004 involving a motor vehicle crash and was featured as one of the Top 100 Verdicts in the *National Law Journal* in 2005.

His trial accomplishments include serving as co-counsel in the highly publicized case of internationally-acclaimed violinist Rachel Barton who was severely injured when a Chicago commuter train dragged her for more than 300 feet. After taking dozens of depositions and a pain-staking investigation for more than four years, the month-long trial resulted in a \$30 million verdict. He also tried a tragic Sioux Falls automobile accident case in South Dakota on behalf of a man who suffered permanent brain damage. The case resulted in that state's largest personal injury verdict, \$7.5 million. He was involved in the highly publicized \$10 million settlement on behalf of a suburban police officer who was struck by a speeding hearse that ran a red light while the officer was on routine patrol. It made headlines because of the so-called "black box" that was discovered in the hearse that recorded the speed and contradicted the driver's story to police. Mr. Durkin has been very involved in the litigation involving a tragic high-rise fire in the Cook County Administration Building that killed six people and injured many more. He has taken the lead on behalf of the victims in hiring experts. He is unafraid to ask the hard questions and seek out the world's top forensic experts in attempting to find the cause of the October 17, 2003 fire. He was very involved on behalf of several men who were severely burned in a power plant explosion in Hammond, Indiana, and received multi-million-dollar settlements on behalf of the injured workers.

He has had a long relationship with the CBA, having served in numerous positions and on many committees including Chair of the Judicial Evaluation Committee and the Board of Managers. He also served on the Board of Directors of the Chicago Bar Foundation. He also finds time to carry out the work of the American Bar Association, having served for four years as Co-Chair of its Aviation Committee and serving as the current Co-Chair of the Mass Torts Litigation Committee.

Mr. Durkin is considered one of the city's top trial attorneys, having received a number of record verdicts and settlements, particularly in the area of transportation litigation. He has been a lead counsel in several commercial and aviation disasters around the country as well as small plane crash cases. Currently, he is preparing for trial in the case of Bob Collins, the city's most popular disc jockey on WGN, who was killed in a small plane crash.

Kevin Durkin, 50, lives in Orland Park with his wife and three children where he coaches them in nearly every sport—from softball to soccer.

Advertising Material Only

Clifford Law Offices has prepared this newsletter for its many friends, clients and colleagues world-wide. It is purely a public resource of general information. Although it is not intended to be a source of either solicitation or legal advice, it must be regarded as an advertising or promotional communication in the terms of the lawyers' professional responsibility law. Accordingly, it is necessary that certain information be supplied to and noted by the reader.

This newsletter should not be considered as an offer to represent in any legal matter, nor should it be the basis of legal hiring decisions. Thus, the reader should not consider this information to be an invitation for an attorney-client relationship, should not rely on information provided herein, and should always seek advice of competent counsel.

All lawsuits are different, and Clifford Law Offices makes no representation or promises that it can obtain the same results as reported in this newsletter in other legal matters. Nothing in this newsletter constitutes a guarantee, warranty or prediction regarding the outcome of any future legal matter. Further, it should be noted that even where the fee arrangements are on a contingency basis, clients will still be responsible for payment or reimbursement of the costs and expenses of litigation.

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Finally, this newsletter is disseminated to our many friends around the world. We hope you find the information here useful and informative. Anyone, however, who does not wish to receive future newsletters can contact us at the numbers or locations listed here, and the matter will be promptly attended to.

Very Sincerely Yours,

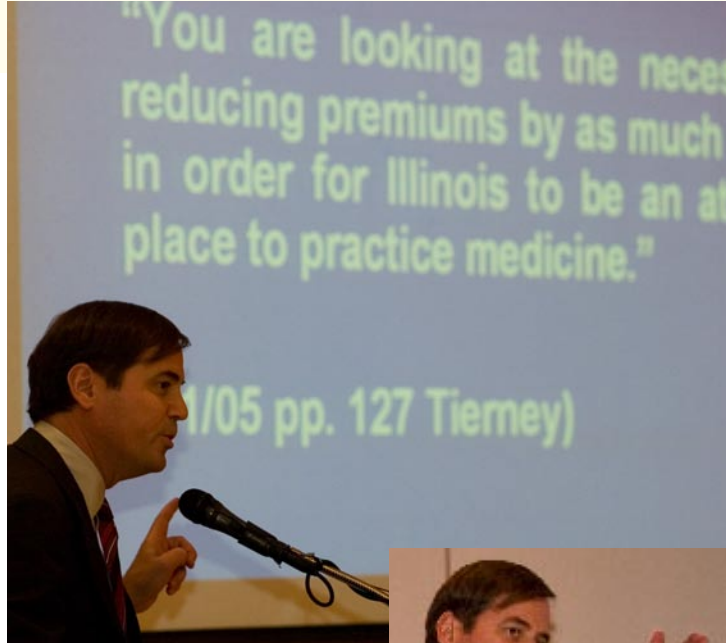
Thomas K. Prindable

Thomas K. Prindable, Managing Partner, Clifford Law Offices, P.C.

Keith A. Hebeisen

2005-2006 President, Illinois Trial Lawyers

Doctors' malpractice premiums have increased by 50 percent since 2002. The lobbyists for the Illinois State Medical Insurance Exchange (ISMIE), the largest malpractice insurer in the state, said that for Illinois insurance premiums to be on par with neighboring states, "you are looking at the necessity of reducing premiums by as much as 50 percent in order for Illinois to be an attractive place to practice medicine." In arguing for a cap on damage awards, ISMIE said "that a cap on non-economic damages is the single most important reform that could be enacted" and that "limiting non-economic damages will help resolve the medical litigation crisis in Illinois by lowering liability premiums."



Keith A. Hebeisen pictured here at a recent speech at Northern Illinois University.

Remember when President Bush came to Illinois in 2005 advancing the myth that too many "frivolous lawsuits" were driving doctors out of Illinois and that a cap on damages was the "silver bullet"? By Memorial Day weekend, the silver bullet had been delivered and became law (PA 94-677) in August. ISMIE responded by raising rates on its corporate policies over 20 percent.

PA 94-677 was promised to be the "silver bullet" for improving access to healthcare by keeping doctors in Illinois by lowering their malpractice premiums. In 2005, ISMIE's claims paid in Illinois fell 5.3 percent, after they had dropped in 2004. Claim payouts in 2004 were lower than they were in the two previous years. Since 2003, annual claims payments have dropped 14.3 percent. The average amount ISMIE paid on a claim in 2005 was 20 percent less than it was in 2003. The 2005 and 2004 averages were less than the 2002 average. In 2005, ISMIE's net income more than doubled, and its net paid losses fell by 22.3 percent. ISMIE estimated paying out \$230 million for claims on its 2005 policies but took in over \$400 million in premiums that year. The previous few years show a similar discrepancy.

Despite all this, ISMIE admitted during a rate hearing November 9 that it has no intention of reducing premiums at all. And in 2006, ISMIE again raised corporate rates 25 percent, is raising rates for seven specialists between five and 22 percent and is raising rates by 13 percent in Winnebago County (only 50 cases filed there in 2005) and by 20 percent in Grundy County (only four cases filed there in 2005).

ISMIE's real priorities are very clear: collecting a 6.5 percent broker's fee from the one third of its policyholders that don't use a broker, contributing over \$2.5 million of its policyholders' premium dollars for political campaigns, and continuing extravagant



executive compensation while its policyholders have seen huge spikes in premiums.

Q. Is it your position that caps [on damages] will reduce the cost of malpractice insurance?

A. The answer is no. We have never made the claim that a cap is going to lower insurance rates.

(Ed Murnane, President of the Illinois Civil Justice League, *Law Bulletin* Tort Reform Summit, May 17, 2005.)

So the President's cap on damages gave the doctors nothing. Instead the Bush administration recently gave the doctors another cut in Medicare reimbursement, which will lead to cuts in reimbursements from private health insurers. This is the insidious and cynical policy the insurance companies and

political tort-deformers pursue—the real "access to health care" problem. With more cuts in their income and no malpractice insurance relief in sight, doctors should be wondering who is telling the truth—the insurance companies and politicians who use the legal system as a made-up excuse for doctors' financial problems or those who say that the doctors' problems arise from the reimbursement policies of the government and the business practices of the insurance companies acting against the best interest of their policyholders.

