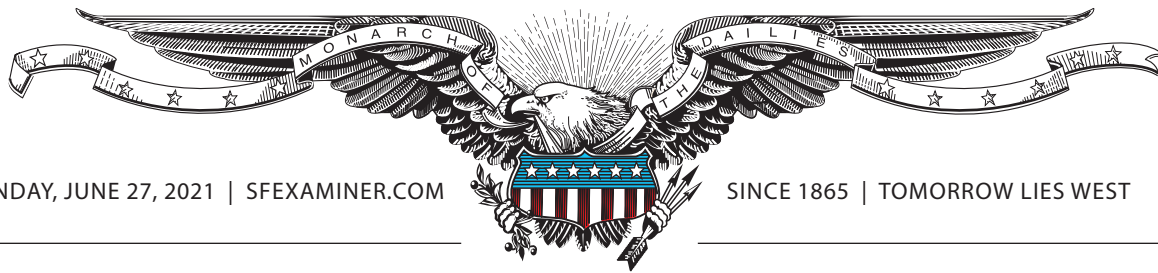


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SINCE 1865 | TOMORROW LIES WEST

Loss Of Consortium: Compensating Spouse and Family of the Injured.

By Christopher Dolan and Megan Irish

Alejandro C. from Sunset writes: A good friend of mine's wife got into a really bad car crash, where she broke her leg and got a concussion. The accident was not her fault, she was hit by a drunk driver who ran a red light. It has been almost two years, and she is still not back to normal. She walks with a limp, and she is forgetful and cranky with him and their children. My friend also told me he and his wife have only been intimate a handful of times since the cast was taken off her leg. He is at his wits end and I do not know what to tell him, nor how to be supportive of him through all this. Do you have any advice?

Dear Alejandro: I'm so sorry your friend's family is going through these horrible injuries, but it is wonderful that you are there for him and want to be as supportive as possible. First, your friend's spouse, we can call her Jane, has a claim for her personal injuries. She can, within two years, make a claim for her medical bills and lost wages in addition to her pain and suffering against the driver who hit her. Now your friend, we can call him John, has a claim for his loss of consortium against the driver who hurt his spouse. The California Civil Code allows John to make a claim, assuming 1) his marriage was valid and lawful at the time of Jane's injuries, 2) his spouse suffered a tortious injury, 3) he suffered a loss of consortium, and 4) his loss was proximately caused by the tort defendant's act. John's loss of consortium claim will be valued based on his loss of his spouse's love, companionship, comfort, care, assistance, protection, affection, society, and moral support; as well as the loss of the enjoyment of sexual relations and/or the ability to have children. (In this context "loss" can also mean a change to, or diminished amount of the attributes listed above.) John's claim would be for both the past loss of these elements in his relationship with his spouse, as well as what he is reasonably certain to suffer in the future. Because of the changes you have mentioned in their relationship, a loss of consortium claim appears reasonable for John to make. In deciding to make this type of claim

they would both have to evaluate the loss and make a joint decision if they want to discuss the changes in their relationship with attorneys and potentially a jury. It can be very private and sometimes, despite the validity of the claim, couples elect not to proceed with it. Alternative forces that change the relationship and/or pre-existing issues, if any, would need to be openly discussed with counsel to make a more complete recommendation in proceeding with a loss of consortium claim before any litigation is commenced. It is also important to note, that despite the similarities of the companionship, care, comfort, society etcetera in the relationship between parents and children, a loss of consortium claim is only available to married spouses. Jane and John's children would not be able to make a claim for the changes in their relationship with their mother because of her injuries.

Now, separate and apart from the legal claims Jane and John may elect to bring, there are many additional resources you can help your friend locate. Throughout the state, and nationally there are numerous support groups for both traumatic brain injury patients and their families. First, your friend can check with his health insurance coverage. The insurance provider's website may direct him to support groups, literature, or individualized help. John can also look to the county level, as most counties have resources for injured persons. To demonstrate the breadth of options,

San Francisco General Hospital as well as many private local hospitals run a Traumatic Brain Injury support group that meets weekly/monthly. The Brain Injury Association of California educates and provide many resources for survivors, caretakers, family, friends and others. As well, the National Alliance of Mental Illness has many resources for brain injury survivors and their families. Many of these resources are available now, despite the pandemic, through video conferencing.

Your friend should evaluate the options and figure out with his spouse, which if any of these groups, organizations and resources may aid them, as this decision is an individual one to be made by your friend and his spouse based on their families' needs.

As a friend it is wonderful you are there to support him, listen and help when he needs it. We are very sorry for the loss your friend's family is enduring, and wish him the best in locating resources that will help his family forge their way forward.

Christopher B. Dolan is the owner of the Dolan Law Firm, PC. Megan Irish is a Senior Associate Attorney based in our Oakland CA office. We serve clients throughout the San Francisco Bay Area and California from our offices in San Francisco, Oakland and Los Angeles. Email questions and topics for future articles to: help@dolanlawfirm.com. Each situation is different and this column does not constitute legal advice. We recommend that you consult with an experienced trial attorney to fully understand your rights.



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Nursing Home Nightmare: Sexual Abuse in Care Facilities

By Christopher Dolan and Cristina Garcia



This week's question comes from David K. in San Francisco: My older sister, Lucy, is forty-one years old and suffers from physical and mental impairments. She uses a wheelchair and has trouble communicating. A couple of years ago, my parents and I made the tough decision to place her in a nursing home, as my parents could no longer care for her. We researched the facility, and it appeared to be a well-equipped facility for my sister's needs. I would visit my sister on the weekends. I observed a male resident who seemed friendly and often engaged in conversation with Lucy during my visits. At the time, I thought it was nice for Lucy to have a friend in the facility. However, this all changed during one of my visits when I found this male resident in her room. They were by themselves, and he was lying in bed with her, which I found completely inappropriate. I immediately asked him to leave. I then spoke to one of the nurses and notified her of the incident. She apologized and assured me it wouldn't happen again. Lucy's nurse also stated that this male resident had exhibited inappropriate sexual behavior to other female residents. When I heard this, I was utterly disgusted. I have seen news stories about health providers who have sexually or physically abused residents. However, I am not sure what to do in this situation as the person abusing Lucy was another resident. Can the facility be held accountable for the other resident's behavior, as they previously knew about his sexual tendencies?

David, it is terrible that you and your family had to go through this experience. As you mentioned, many news stories discuss physical or sexual abuse by health providers. However, it is the nursing home's responsibility to ensure the safety of all residents, not only from health providers but also from other residents.



Under the Elder and Dependent Adult Civil Protection Act ("EADACPA"), codified as Welfare and Institutions Code Section 15600 et seq. A "Dependent Adult" is defined as "any person between the ages of 18 and 64 who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or who physical or mental abilities have diminished because of age." Cal. Welf. & Inst. Code § 15610.23(a). The law further defines "dependent adult" to include any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility. Cal. Welf. & Inst. Code § 15610.23(b).

Based on the information you have provided, it appears that Lucy is a dependent adult who relied on the nursing home staff to protect her from harm. Under Cal. Welf. & Inst. Code Section 15610.57, "Neglect" includes the "failure to protect from health and safety hazards."

Furthermore, "Abuse" is defined as "the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." The nursing facility was negligent in the care of Lucy because they failed to protect her from health and safety hazards. Despite having knowledge that the male resident had sexual tendencies, the facility did not properly monitor the resident and allowed him to continue interacting with female residents without supervision. In addition, the facility's conduct would fall under "abuse" as defined by the EADACPA because a reasonable person in a like position would not allow the male resident to interact with Lucy without supervision and should not have allowed them to be alone in her room. Once the facility became aware of the sexual tendencies of the male resident, they should have taken precautionary measures, including monitoring his behavior and whereabouts to ensure he was not left alone with other residents he could harm.

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You too, Us too: the strength in numbers.

By Christopher Dolan and Vanessa Deniston



I am a woman of color working at a big tech company in the Bay Area. I have been stuck in the same position for nearly seven years, while several of my white, male co-workers and even subordinates have been given opportunities for advancement. I'm worried my supervisor doesn't consider me a serious candidate for a promotion, despite my excellent performance reviews. When there is a menial task to get done, it always seems to be assigned to me. At company events, my supervisor introduces me by first name only to corporate representatives, though he introduces the male members of my team using their full names. In meetings, I am frequently interrupted by male team members when I am trying to share feedback or ideas. I am hesitant to approach HR about this. I feel I will be told I have no proof and I am just imagining things. I've heard rumors that women in other departments have had similar experiences, but I'm not sure who they are and I'm too worried about my job security to go asking questions. Do I have any options here?

Thank you for your question, Fatima. Let me assure you that you are not alone in your experiences. What you have described, a mixture of gender and potentially race-based discrimination and microaggressions, is being experienced on a grand scale throughout the tech industry by women. Men continue to outnumber women at every level and women are promoted at a lower rate than men, making up only about 38% of managers. While many companies couch themselves as "progressive" and profess to have inclusive diversity platforms, the disparities in the workplace between men and women and, disproportionately, women of color, persist.

Most recently, a group of both current and former Apple employees dissatisfied with the internal responses to their

complaints of harassment, discrimination and retaliation have banded together and called for a collective exchange of stories and experiences in the workplace, spurring the #AppleToo hashtag on social media. The group's website urges its coworkers at every level to collectively call for systemic change in the workplace, stating that, "when our stories are collected and presented together, they help expose persistent patterns of racism, sexism, inequity, discrimination, intimidation, suppression, coercion, abuse, unfair punishment, and unchecked privilege."

In circumstances such as yours, Fatima, there are several actions you can take to both protect yourself and connect with other women and/or persons of color with similar experiences. First, it is essential to document any incidences or circumstances you feel could be related to gender or race discrimination, including discussions with your boss regarding your interest in advancement opportunities and his response, instances of microaggressions and/or evidence of disparate treatment in the workplace. If possible, your written record should be created contemporaneously with the incidences they document and be marked with a date and time stamp. Contemporaneous records, especially those bearing a date and time stamp, are afforded more credibility than ones created after the employee suffers a termination or a disciplinary meeting. Your description



should include the date, time, setting, potential witnesses involved and what was said. Be a meticulous historian and leave emotion out of it, if possible. Always assume an outsider, with no knowledge of you, your character, or your performance record, may someday be reading and evaluating your account of what occurred. While you can certainly share how the experience made you feel, resist the urge to vent.

The second step you can take is keeping your eye out for allies and sharing your experiences with them in a safe environment outside the workplace. It may feel intimidating to ask other women or persons of color if they, too, feel discriminated against or marginalized in the workplace. Therefore, it is often easier to share your own experiences with them first. If they have faced something similar, they are more likely to feel comfortable volunteering it on their



own terms than they would if you questioned them about it directly. If they do end up sharing similar experiences, approaching human resources together can be a powerful approach. It is easier to dismiss one employee's experience as an outlier, than it is to dismiss two or three similar ones, especially where the reporting structure is shared.

Nonetheless, if you find you are your only reliable witness, go to HR and report your concerns, preferably in writing. Do not operate under the assumption your concerns will be dismissed. Even if they are, it is unlawful for your company to retaliate against you for voicing your complaints about suspected gender and/or race discrimination. Your company has a vested interest in responding to discrimination claims appropriately, as a failure to investigate, only increases their liability. As always, documenting all communications you have with your supervisor and HR is an important tool to keep track of what has occurred and protect yourself should retaliation occur after filing an informal or formal complaint.

If you feel you are being harassed, discriminated against, or retaliated against because of your race or gender, contact an attorney that specializes in employment law. Making real, transformative change in the struggle against institutionalized implicit bias and overt bias, takes courage and numbers. The good news is the tech industry does not lack either.

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Legislation That Encourages Bicycle Safety: Bill (AB 122) and the “Idaho Stop”

By Christopher Dolan and Emile Davis



This week's question comes from Ian T. from San Francisco:

I am a San Francisco resident and bicycle commuter. I ride to work daily and find it frustrating and unsafe to stop at a four way stop when it is clear for me to proceed. Often, when multiple cars are at the intersection, I feel I am slowing things down waiting my turn, and I have to rely on drivers seeing me and “allowing” me to take my turn in order to be safe. I don't need the hassle of a ticket or people yelling, so I follow the law and stop, even though I am putting myself at risk. I think bicyclists should follow traffic laws, but there should be exceptions, or different rules for cyclists where it makes sense. Are there any changes coming? How can I help push for this type of change?

Thank you for your thoughtful question, Ian. As a cyclist myself, I share your concerns and observations that better rules which recognize the way cyclists use the road, particularly as it relates to bicyclists at stop signs. There is a potential solution on the

horizon in California. The Safety Stop Bill (AB 122) has made its way through the legislature and waiting for Governor Newsom to sign.

The Safety Stop Bill would change the requirements of cyclists at a stop sign. It would be lawful for a cyclist to treat a stop sign as yield sign, allowing them to proceed through so long as the intersection is clear. However, if other vehicles are at the intersection, or a pedestrian is in the process of crossing, bike riders must yield the right-of-way.

California is not the first state to consider this type of law. Idaho was first, adopting a law in 1982 that allowed cyclists to treat a stop sign as a yield sign, and a red light as a stop sign. This “Idaho Stop” stood alone for many years until other states began to see the wisdom of adopting commonsense changes to the vehicle code to appropriately treat the different issues that cyclists bring to the roadway. More recently, Washington, Oregon

and Colorado have adopted similar legislation allowing cyclists to proceed through stop signs when it is safe to do so. Legislation of this type is often met with a knee-jerk negative reaction from non-cyclists who are not used to the dangers and difficulties cyclists must interact with regularly. There are many reasons that laws of this type, and AB 122 in particular, are grounded in sound policy. Safety may be the most important reason. Studies have shown that where these types of laws go into effect, the rates of bicycle related accidents decrease. These laws just work. Cyclists have a clear view of the intersection without obstruction and, by necessity, have a keen awareness of the proximity of other vehicles. The bill would also conform the law to what is common practice which encourages respect for the law in general. This would have the added benefit of minimizing inequitable enforcement of laws and minimize pretextual stops of minorities for what is common behavior by all. A law of this type would bring us into conformity with our Pacific neighbors, Washington and Oregon, which have already enacted this type of law.

It is no surprise that this law is supported by the local bicycle coalitions including, Bike East Bay, the San Francisco Bicycle Coalition, and the Marin Bicycle Coalition. Getting involved with these types of organizations is a good way to help be part of an organized push for cycle friendly legislation. Here, at the Dolan Law Firm, we have a long history of support of these organizations and the work they do on behalf of cyclists.

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