

Yes, There Is Justice!

By: Steven I. Kern, Esq.*

One of the State's most notorious plaintiffs' medical malpractice lawyers, Bruce Nagel, was recently rebuked by the Appellate Division for his efforts to stiff a medical expert of his fees. After a jury found no malpractice against an anesthesiologist who allegedly penetrated the dura while administering an epidural injection, Nagel refused to pay his expert witness \$5,950 for his time spent preparing for trial.

An article in the New Jersey Law Journal reported that Nagel's firm had already paid Yaakov Beilin, an associate professor at Mt. Sinai School of Medicine in New York, \$15,625 for reviewing the file, preparing an initial report, preparing for his deposition, and testifying at his deposition and at trial that the defendant had violated acceptable standards of care.

Nagel complained to Beilin that his firm "took a blood bath in this case" with out of pocket costs exceeding \$100,000. He then told Beilin that ". . . what I do with experts over the course [of] almost thirty years is that where you take a huge loss, experts will virtually always work with you."

In a rare insight into the plaintiff's malpractice bar, Nagel revealed that he expects his medical experts to charge him more if the case is won, and to reduce their fees if the case is lost. According to the report in the Law Journal, "expert witnesses who have an ongoing relationship with his firm tend, of their own volition, to increase their bills in the event of a victory and to cut them after a defeat." This expectation, however, may well violate New Jersey law, *N.J.S.A.* 45:9-28, which prohibits a physician from contracting for, charging, or collecting based upon a contingent fee.

One added element of interest in the case is that the plaintiff had claimed that she suffered severe back pain and difficulty walking as a result of the alleged malpractice. However, defense videos showed the plaintiff lifting items and performing normal activities without apparent discomfort. The jury no-caused the plaintiff and an appeal court affirmed.

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