

GUEST EDITORIAL PREFACE

# Notes on Legal Recourse for Brain Injury

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We have prepared a short guide on what to look for in a great attorney for those with a brain injury. You may feel that your medical care has nothing to do with your legal representation. Unfortunately this could not be farther from the truth. Hiring the right lawyer for a brain injury case may be the most important initial decision you make about your care.

Legal representation can affect compensation and the level of care that is available for you over a lifetime. Many individuals needlessly lose jobs, assets and positions due to a brain injury. The law can protect you from many of these scenarios but the law is only as useful as the expertise that he is rendered to apply it. Both of us lost major assets, positions and employment opportunities needlessly because those we were associated with did not have regard for us or the law. It is our desire to save you the kind of excruciating pain and humiliation that we experienced because of the disregard, ignorance and violation of our legal rights (West et al., 2011).

Your successful rehabilitation may depend on the type of legal representation that is presented on your behalf. Your attorney needs to be specialized in brain injury law as he or she will have to interact not only with the courts

and your insurance company but also with the multiple governmental and medical agencies who claim to be acting on your behalf. General lawyers lack sufficient education and experience to handle brain injury claims and it is important for you to have a lawyer who you trust and feel comfortable with.

It is good to remember that with a brain injury your ability to think quickly and react appropriately in your own best interests may be compromised. Additionally litigation is stressful and can make the effects of a brain injury much worse. A great attorney is like a bridge that spans the gap between need and care on your behalf (Capps et al., 2005).

Most brain injury attorneys will work on a contingency basis which means that they will wait until your case is won before accepting payment and this will be based on a percentage of the case minus expenses. If the case is lost you will not be held responsible for the legal costs incurred. For your legal appointments it is good to take someone that you trust with you to be an extra set of ears and to help explain to you anything that you have not understood.

Here are some important questions you can ask an attorney to determine if he or she is the right choice for you.

1. It is good to ask what percentage of the lawyer's practice consists of similar cases and injuries to yours and how many of these cases this legal professional handles each year.
2. Ask the attorney the outcome of the last 5 cases that involved injuries that were similar to yours.
3. Is the attorney willing and financially able to hire experts to analyze and present your case and if so look up these experts to see how well known are they in the field?
4. Is this lawyer willing to go to trial on your behalf?
5. What recent conferences has your attorney attended concerning brain injury and what in his/her estimation were the defining take-home points in the presentation?
6. Have the attorney list 3 textbooks that he or she regularly reviews when considering a traumatic brain injury case.
7. Has your lawyer thoroughly reviewed all the facts of your case before giving you specific legal advice?
8. Do you feel comfortable with this legal professional and are they completely answering all your questions and concerns about your traumatic brain injury case?

You may want to get a copy of the book *Understanding Traumatic Brain Injury* by Richard H. Adler. Information about this book can be found at <http://www.adlergiersch.com>. This book is a simple guide to navigating a brain injury and it is filled with many helpful resources (Adler, 2009).

## REFERENCES

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- West, T., Bergman, K., Biggins, M., French, B., Gallately, J., Hinkle, J., & Morris, J. (2011). *Care of the patient with mild traumatic brain injury: AANN and ARN Clinical Practice Guideline Series*. Glenview, IL: American Association of Neuroscience Nurses, Association of Rehabilitation Nurses.

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