

# Breakfast Burritos and Torts

By Tish Vincent

Participants at the ABA Commission on Lawyers Assistance Programs conference enjoyed breakfast on the 17th floor of the Fairmont Hotel in Vancouver, British Columbia. A beautiful blue sky was the backdrop for a forest of high-rise apartment buildings. As we ate, I discussed with two clinicians and four attorneys the relationship between state discipline systems and lawyers' assistance programs.

A discipline attorney at our table wondered how new lawyers are taught to be practice ready and how they are inculcated with a sense of responsibility to practice in an ethical manner. He compared legal training in a big firm to medical training during a doctor's first postgraduate year. Having spent his early years as an attorney in a big firm, he recalled that the new associates were in one large room, working 80 or more hours every week. Unless a partner needed them to go to court, they rarely worked outside of that room. When it was time for a court appearance, a partner would choose one associate from the room and provide a clean shirt to wear. Once court was over, it was back to the room.

He observed the medical field's more humane practice of limiting the number of hours a training practitioner can work. In truth, this rule for training physicians evolved after a lawyer-journalist's daughter died while being treated by an exhausted and poorly supervised intern in a major New York hospital.<sup>1</sup> In *Zion v New York Hospital: 1994-95*, the jury found that the administration of the painkiller Demerol by an intern and second-year resident was a proximate cause of Libby Zion's death and that the two doctors were negligent.<sup>2</sup> The jury also found that New York Hospital was negligent for the workload assigned to the intern. Because Libby Zion had taken cocaine and had not included this fact in her

health history, the jury assigned 50 percent responsibility to her and 50 percent to the hospital. New York Hospital ended up paying \$375,000 for the professional negligence that caused the college freshman's death.

In 1996, a Manhattan district attorney took the case before a grand jury to consider murder charges against the doctors. The grand jury did not indict them, but criticized "the supervision of interns and junior residents at a hospital in New York County."<sup>3</sup> Experts evaluated the training procedures and recommended changes to reduce work hours and establish staffing guidelines to allow physicians to get some sleep.<sup>4</sup>

In 2003, the Accreditation Council for Graduate Medical Education mandated a decrease in the number of hours training physicians can be required to work.<sup>5</sup> The new standards did not magically produce the necessary changes, but they did establish a standard that training programs must adhere to or face tort actions if the standard is compromised and someone dies as a result of a hospital's or doctor's negligence.

Returning to the discussion about inculcating legal ethics and training new lawyers to be practice ready: Is the medical field different because it is humane? No. The medical field is different because providers and entities were found liable in tort. A lawyer's daughter died because of negligence, and he sued on her behalf.

Newly licensed lawyers work extremely long hours, often with little supervision and great demands. Would any acknowledge that their work is inferior because they've worked too many hours, eaten very little, or need a shower and a good night's sleep? Would aggrieved parents or spouses realize that inferior work had damaged them or someone they loved and bring a similar action? The discipline lawyer I spoke with mentioned his experience in a large firm. What about the solo practitioner strug-

gling to make a living without any professional guidance?

What is the legal field's equivalent of the Accreditation Council for Graduate Medical Education? Does anyone oversee the ethical training of new lawyer graduates? How do they learn to avoid grievances and take care of themselves? Is one Professional Responsibility course in law school sufficient? If employers use new hires to earn big money, who criticizes their failure to adequately supervise? Who holds them accountable for ethics and skills training?

No one in our discussion group could answer these questions. I walked away from the table realizing that the discipline attorneys are concerned about the people they deal with and are puzzled why some don't seem to want to get better. I hope they better understood how lawyers' assistance programs foster personal change by managing cases with a balance of accountability and support. ■



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## ENDNOTES

1. Lerner, *A Case That Shook Medicine*, Washington Post (November 28, 2006), p 2.
2. Encyclopedia.com, *Zion v New York Hospital: 1994-95* <<http://www.encyclopedia.com/law/law-magazines/zion-v-new-york-hospital-1994-95>> (accessed November 16, 2016).
3. *A Case That Shook Medicine*, p 2.
4. *Id.* at 3.
5. *Id.*