

# Clifford's Notes



## Clifford's Corner

Robert A. Clifford has been appointed to serve as Chair of the American Bar Association Fund for Justice and Education that supports more than 200 public service and educational programs throughout the world.

Clifford also was appointed as a Board Member to the Advocacy Institute, a national group that gives law students the opportunity to develop and practice their advocacy skills through the guidance

of distinguished members of the local bar and bench.

Clifford once again is one of the Top 100 Who's Who in Crain's Chicago Business.

Clifford Law Offices sponsored the annual fundraiser benefitting students at Cristo Rey Preparatory School in Waukegan.

Bob Clifford was an author of the Fourth Edition of Business and Commercial

Litigation in Federal Courts that includes 17,000 pages of text contained in 14 hardbound volumes and more than 2,000 pages of tables of cases, laws, and rules. Mike Krzak co-authored the chapter with Clifford on Aviation Law.

Clifford has resumed writing a column for the newly redesigned Chicago Lawyer publication that has a subscription base of thousands of lawyers. (See his column below left that appeared in the October issue.)

Chicago Lawyer, October 2016

## The True Cost of Medical Errors Should the CDC list mistakes as America's third top killer?

By Robert A. Clifford

Martin Makary, a cancer surgeon and professor of health policy and management at Johns Hopkins University School of Medicine, has recently asked the Centers for Disease Control to correct its records and list medical errors as the third most common cause of death in the United States, after heart disease and cancer. Currently, chronic lower respiratory disease holds the third spot. Makary examined four separate studies involving medical error from 2000 to 2008 and found that more than a quarter of a million (251,454) U.S. hospital patients die each year as a result of a medical error.

As a trial lawyer who has handled dozens of tragic medical-malpractice cases over my 40-year career, this comes as no surprise to me. But it may to you, because the CDC does not allow physicians, medical examiners, coroners and funeral directors to list medical error as a cause of death, resulting in under-estimation of these numbers, according to Makary.

Makary describes medical error as falling in one of four categories:

- An unintended act or one that does not achieve its intended outcome;
- The failure of a planned action to be completed as intended (an error of execution);
- The use of a wrong plan to achieve an aim (an error of planning);
- A deviation from the [standard or accepted] process of care that may or may not cause harm to the patient.

In a paper published in the British Medical Journal, he goes on to say "the U.S. government and private sector spend a lot of money on heart disease, research and prevention. They also spend a lot of money on cancer research and prevention. It is time for the country to invest in medical quality and patient safety proportional to the mortality burdens it bears."

I couldn't agree with him more. Not only would acknowledgment of the depth of this problem by both the CDC and the health-care community be a gigantic step forward, it would also be a way to reduce costs associated with medical error. Medical errors cost taxpayers some \$4.4 billion each year, according to the Department of Health and Human Services.

In the meantime, conservative politicians and insurance companies continue to spin their fabricated story that lawsuits against doctors and hospitals are the reason health-care costs rise. In fact, the civil justice system is the only mechanism in place to hold those accountable who make tragic, often deadly, mistakes.

Yet, as Makary points out, hospitals are more interested in attributing cause of death to a medical coding system designed to maximize billing for services. Hospitals are not interested in collecting accurate health statistics for the purpose of maximizing medical benefits to those in need of medical care. And one could easily state that their failure to admit to the death toll from medical error is because they would rather protect the bottom line than the patients they serve.

What does this mean? When a patient dies from cancer that went undiagnosed, the hospital will likely code it as cancer, when in fact the real cause of death may be medical error and that patient may have been saved had the diagnosis been made in time. The result is that the same mistake is likely to happen over and over again, with hospitals and health care providers ignoring the underlying problem.

Currently, what the CDC finds as the leading causes of death – heart disease (614,348 deaths per year), cancer (591,699), and chronic lower respiratory disease (147,101) – receive the bulk of the country's research funding. However, deaths due to mistakes made in hospitals surpass those related to respiratory disease by over 100,000 deaths per year. Preventative measures to avoid these errors should be a primary focus in providing adequate health care.

Not all deaths due to medical error are caused by bad doctors, even good doctors who have a bad day. As Makary points out, "Developing consensus protocols that streamline the delivery of medicine and reduce variability can improve quality and lower costs in health care."

Without doubt, hospital staff often require oversight, direction and safety nets when they vary from protocol, but none of this will happen unless those in the medical field themselves are willing to admit that mistakes are made. Transparency will bring about better medicine, will start to rein in medical costs and will help patients undergoing a procedure in a hospital setting feel more safe.

## Press Room

Clifford Law Offices once again captured a top spot in the Chicago Lawyer publication's annual 2016 Settlement Survey, having garnered \$133 million in non-confidential settlements in the Chicago area in the last year.



Kevin Durkin has been named to the Chicago Police Memorial Foundation Executive Committee. Durkin has been active for years with the Foundation that helps families of fallen and injured Chicago police officers. Durkin also sponsors a team every year in the Chicago Police Memorial "Run to Remember," a 5K race that is its major fundraiser. Clifford Law Offices is a member of the Foundation's Gold Star Society that remembers the 575 officers who have given the ultimate sacrifice for Chicago's citizens.

Pamela Sakowicz Menaker was appointed as a member of the American Bar Association Young Litigator Task Force. She also was elected as a Board Member of the Public Interest Law Initiative (PILI). She also was selected to serve on the board of the Center for Conflict Resolution (CCR).

Sean Driscoll was profiled as an Emerging Lawyer in a story entitled "Some Injured People Need Help – and That's Just the Kind of Trial Lawyer He Is."

Tracy Brammeier was elected to the Illinois Trial Lawyer Association (ITLA) Board of Managers.

Kim Halvorsen was part of the Auction Committee of the Annual Fundraiser of the Chicago Bar Foundation where she serves on the Young Professionals Board.



Michael Krzak spoke at the American Bar Association (ABA) in Washington, D.C. in a program entitled "Tips from Cockpit to Courtroom." Krzak has successfully handled

numerous commercial litigation crash cases at Clifford Law Offices – from the crash at Amsterdam's Schiphol Airport to the crash of a jetliner near Buffalo, New York. Mike is Chair of the American Association of Justice Aviation Law Section. Mike also has been named to the Advisory Committee of the Lawyers Assistance Program Board of Directors.

Clifford Law Offices is ranked as a 2017 "Best Law Firm" by U.S. News & World Report and Best Lawyers with a National Tier 2 ranking as well as a Tier 1 ranking in the Chicago metro area in Plaintiffs' Mass Tort Litigation/Class Actions, Commercial Litigation, Medical Malpractice, Product Liability and Personal Injury.

## Final Judgment



Bob Clifford (center) and Colin Dunn (right) are congratulated by two of their clients, Greg Powers (left) and Tony Carillo (other man in t-shirt), both from Belleville, Illinois, for their lawyers obtaining an \$18.5 million settlement on behalf of the two men who were badly burned in a flash fire during a haz-mat derailment cleanup near West Point, Kentucky.

Bob Clifford and Shannon McNulty settled a case for \$16.5 million on behalf of a 69-year-old former coach and high school teacher who was erroneously prescribed an incorrect dosage of long-acting insulin causing permanent brain damage.

Keith Hebeisen and Sarah King obtained a \$3.3 million verdict against Northwestern Hospital following a one-week trial in the fatal overdose of a patient. The jury deliberated less than two hours before returning the verdict for the family of Michael Vandelinde, 56, of suburban Detroit.

Keith Hebeisen and Bradley Cosgrove obtained a \$7.75 million verdict in Cook County Circuit Court against a doctor whose patient died of cardiac complications hours after spinal surgery. Susan Capra, nurse and partner at the firm, worked up the case.

Turn the page to see Bob Clifford's reflections as he marks his 40th anniversary as a Chicago lawyer.

# Bill of Particulars

These interesting news items have been taken from the blog that appear on the website of Clifford Law Offices, [www.CliffordLaw.com/blog](http://www.CliffordLaw.com/blog)

## Talc mining company named in ovarian cancer lawsuits



In recent years, some women who used talcum powder as part of their daily routine have developed ovarian cancer. Presently, more than 1,000 women and surviving family members have filed suit against Johnson & Johnson, the makers of Johnson's Baby Powder and Shower to Shower. In 2016, juries in Missouri ordered Johnson & Johnson to pay \$72 million and \$55 million in

cases involving long-time talc users who developed ovarian cancer.

While Johnson & Johnson is the sole defendant in most cases, another company will be joining Johnson & Johnson as a defendant in some of these cases. In early September, the U.S. subsidiary of Australian mining company Rio Tinto was named along with Johnson & Johnson in a lawsuit filed in Louisiana. This claim was filed on behalf of four women with ovarian cancer and the surviving family members of a woman who died of the disease. The plaintiffs claim that Luzenac America, Rio Tinto's American subsidiary, mined the talc that led to these women developing ovarian cancer.

The plaintiffs state that both Luzenac and Johnson & Johnson failed to warn talc users of the risks associated with its product. Although Johnson & Johnson has repeatedly denied the link between talcum powder and ovarian cancer, there are a number of peer-reviewed studies that show a connection. The first of these studies was published in Wales in 1971. The first American study was published in 1982. In recent years, additional studies have reaffirmed this contention.

Johnson's Baby Powder is 99 percent talc, according to the U.S. Department of Health & Human Services Household Products database. From a liability standpoint, if juries can hold Johnson & Johnson liable for manufacturing and marketing a product that is 99 percent talc, it seems more than plausible to hold the company that mines talc similarly accountable for injuries that occur as a result.

As these lawsuits make their way through the legal system, it is likely that more claims will arise in the future. If you or someone you love used talcum powder and has ovarian cancer, you may have a claim for damages. Based in Chicago and serving clients across the United States, Clifford Law Offices is known as a leader in class action litigation.

## Self-Driving Cars - Let's Not Rush the Technology

Tesla, the leading electric auto maker, announced in October that it is equipping all of its vehicles, including the Model 3, its first affordably priced car, with the hardware needed for fully autonomous driving.

Tesla's president announced that its software will allow these cars to navigate even the most complex city streets and that by the end of 2017 all new Tesla vehicles will be able to drive coast to coast without anyone ever having to touch the steering wheel.

In September, the U.S. National Highway Traffic Safety Administration (NHTSA) released a set of guidelines, with Transportation Secretary Anthony Foxx and National Economic Council Director Jeffrey Zients making the announcement.

Just four states, California, Florida, Michigan and Nevada plus the District of Columbia, allow vehicles with limited self-driving capabilities to activate them on major highways.

But how safe are these cars? In May, a fatal crash involving a Tesla Model S using the company's limited Autopilot feature occurred in Florida. There also have been crashes with the self-driving mode Tesla this year in California, Beijing, Germany and the Netherlands. Tesla's crash-avoidance autopilot system is being examined to determine if some of these crashes were caused by this or another type of failure in the braking system.

This new type of car has some safety experts concerned, particularly in light of the recent statistics that show the motor vehicle deaths in 2015 were 8 percent higher than the year before, the largest year-over-year percent increase in 50 years, according to the National Safety Council.

Let's hope that lives are not going to be compromised in the rush of auto makers trying to get this new technology on the road.

If you have been injured as a result of a self-driving car, please contact Clifford Law Offices regarding your legal rights.

## CLIFFORD LAW OFFICES CONTINUING LEGAL EDUCATION PROGRAM



Now in its 11th year, Clifford Law Offices is sponsoring a continuing legal education program free to all Illinois lawyers. "The Ethics of Social Media Inside the Courtroom and Out" offers two hours of professional responsibility credit as accredited by the Illinois Commission of Professionalism. Panelists for the program are the Hon. Lynn Egan of the Cook County Circuit Court and member of the Executive

Committee that oversees all Illinois Supreme Court committees; John Barket, partner, Shook, Hardy & Bacon, Miami, Florida, and author of several books on professionalism; and Mark Palmer, Professionalism Counsel for the Illinois Supreme Court Commission on Professionalism. Robert Clifford will moderate the Feb. 16 program. To register, go to [www.CliffordLaw.com](http://www.CliffordLaw.com) and click on the CLE box.

## Four Major Airlines Fined for Allegedly Providing Misleading Info on Being Bumped from Flights and Lost Baggage



Four major airlines, including American, United and Southwest, were fined in August by the U.S. Department of Transportation (DOT) for allegedly misleading passengers about the compensation they provide when problems arise, including being bumped from flights.

Clifford Law Offices is often contacted by people when they are told outdated information on what they can recover after they suffer lost baggage or get bumped from flights - whether it be mechanical issues or other non-weather related matters.

What about the 141 United Airlines passengers on Aug. 28 who were delayed 10 hours in a flight from Glasgow, Scotland, to Newark, New Jersey, when two of the pilots were found to allegedly exceed the alcohol limit in order to fly a plane. Their 9 a.m. flight didn't take off until 7 p.m. with two new pilots, and passengers told the media they were just glad they made it home safely.

Robert Clifford took on Delta Airlines early in his career on behalf of former Illinois Supreme Court Justice Thomas Kluczynski who was bumped from a flight. The day Clifford received the letter from the bar examiners that he had passed the Illinois bar exam, Justice Kluczynski swore him in so he could take the judge's deposition in the case.

"I was doing all the background work on the case before I was sworn in. His was the original airline bumping case. That's why we all have rights today," said Clifford, who was sworn in as a lawyer in 1976. (See his thoughts on four decades of practicing law on opposite page.)

The amount of compensation for bumps, delays, baggage losses and other irregularities when people fly is now closely regulated by the government, particularly in light of airlines regularly overselling flights in order to ensure that flights don't fly with empty seats.

Compensation available to customers was revised by DOT in August, 2015, but the agency said that American Airlines, United Airlines, Southwest Airlines and Alaska Airlines all misled their customers about the compensation available. For example, American Airlines was fined \$45,000 in civil penalties for failing to provide passengers with accurate information about how much they could receive for being denied boarding if a plane was overbooked.

Airlines are required to tell passengers the recourse they have and how much they may be owed. The DOT said in a press release that regulations almost always require that the airlines pay the denied-boarding compensation immediately at the desk or gate, and it must be paid in cash or an "immediately negotiable" check.

"We are committed to ensuring that air travelers know the rules and have accurate information about compensation when they are bumped from flights and for lost, damaged, or delayed baggage," DOT Secretary Anthony Foxx said in a statement.

# Approach the Bench

## Robert A. Clifford

Steve Jobs and Michael Wozniak founded Apple Computer. The Blues Brothers debuted on Saturday Night Live. Peyton Manning was born. A gallon of gas was 59 cents. Jimmy Carter was elected as President. The country celebrated its bicentennial.

The year was 1976. It also was the year that I was sworn in as a lawyer. Obviously, a lot has happened since then, in the country, around the world and in each of our lives.

I have taken in every day as a learning experience, enjoying the fulfillment of having a profession that let's me get up in the morning and look forward to going to work. I have the same vigor and enthusiasm of making the civil justice system

a bit better today than I did as that idealistic young 20-something lawyer just passing the bar exam.

I recall my first case – being sworn in ahead of everyone else – so that I could take the deposition of a federal court judge and go on to win his case after he was unceremoniously bumped from a flight without any compensation from the airlines. That law still stands today for everyone.

Of course, I remember the cases that garnered the big headlines – Rachel Barton, the violinist's trial against Metra that was on the front page and lead story for a month; the record settlement against Cook County for a fire that killed several people and injured many more in a stairwell blocking their exit; the scaffolding collapse from the John Hancock Building that killed innocent people below.

But it is also every person who I've had the opportunity to counsel, to talk to, to comfort throughout the years. People who have relied on my experience and my common sense to seek answers to questions when simply they didn't know to whom to turn. That's where I felt that I have had the greatest impact on a day-to-day basis outside of a courtroom.

I take greatest pride, though, in my family. Although my parents are no longer with us, nor my wife's parents with whom we were so close, life moves on to the next generation, and I find myself talking endlessly about my daughters and son in law. It seems like just yesterday they were babies as we picnicked in our back yard in



Bob Clifford with his family when his wife Joan recently received a Star of Recognition at the Chicago Goodman Theatre Walk for her philanthropic work on its Board including a two-year presidency.

our tiny apartment on Chicago's Northwest side.

Now, my oldest, Erin, is a lawyer. How proud does that make a dad feel knowing that one of your children follows you in your footsteps as she clerks for an appellate court justice. My youngest daughter, Tracy, followed her dream to become a fashion stylist, traveling the world and married to the best son in law one could ever ask. He, too, is a lawyer, and takes care of my daughter like every father in law could only dream.

And my wife Joan of 43 years surprises me every day with her love, her loyalty, her unending philanthropic work, her support of me and what I do. I have

no greater friend and no closer person in my life than someone who has stood by my side watching me as I worked full time going through law school, raising two beautiful daughters with me and now looking forward to many more years to come as we enjoy the fruits of our labor.

I still love working every day, seven days a week, mentoring the younger lawyers at our firm and the challenge of winning that critical motion in court. It never gets old. I like the strategizing, the intellectual challenge, the professional sparring. I also enjoy giving back to the community in many ways, supporting our bar associations through my own efforts and that of my firm's lawyers. Having served as the American Bar Association Chair of its State Delegation for nine years, the President of the Illinois Trial Lawyers Association, the President of the Chicago Bar Association and so many other positions I held with pride as I felt the responsibility of representing the profession.

Has our profession changed? Obviously, the internet in the last 40 years has put everything we do at warp speed, but really the fundamentals of what we do is the same. We must keep up with the law, do our best in representing those who count on us, and communicate with our clients to make sure that they understand the importance of a justice system that was created to give them their day in court in an equitable manner.

That will never change.



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# Clifford's Notes

A Newsletter from **Clifford Law Offices, P.C.**, a Chicago Law Firm

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Clifford Law Offices serves clients nationally and internationally with 21 personal injury attorneys. Our personal injury law firm concentrates in:

Personal Injury	Transportation	Consumer and Health Care Fraud
Wrongful Death	Aviation	Whistleblower Litigation
Medical Malpractice	Premises Liability Law	Mass Torts/Class Actions
Product Liability	Commercial Litigation	

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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.

The owner of this newsletter is a law firm licensed to practice only in Illinois. In preparing and disseminating this newsletter, Clifford Law Offices has made a good faith effort to comply with all laws and ethical rules of every state into which it may be sent. In the event, however, that it is found not to comply with the requirements of any state, Clifford Law Offices disclaims any wish to represent anyone desiring representation based upon viewing this newsletter in such state.

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,  
Hon. Henry R. Simmons (Ret.),  
Managing Partner, Clifford Law Offices, P.C.

## Clifford Law Scrapbook



**Bob Clifford** spoke on torts at Northwestern University Law School's first year class of Professor Ellen Mulaney. In addition to some educational war stories in his 40 years of practice, Clifford told the class that "it will be up to young lawyers to help society answer questions – from mass torts to driverless cars – in the future."



**Clifford Law Offices** was a 4-Star Sponsor of the 8th Annual Chicago Fire Fighters Picnic that raises money to help those are injured in the line of duty. Bradley Cosgrove grew up in a family of firemen. His grandfather, father and uncle were Chicago firefighters and his brother is an active Chicago firefighter on Engine 116, Local 2.



**Brad Cosgrove** spoke at the Illinois Trial Lawyers Association (ITLA) Update and Review Seminar in Chicago on trucking accidents. Cosgrove recently received a \$5 million verdict and a \$20 million settlement in trucking accident cases. He also received a \$1.25 million settlement for injuries of a trucking accident victim as the trial was underway.



**Keith Hebeisen** (right) received a Trial Lawyer Excellence award at the Jury Verdict Reporter's annual reception and awards ceremony at the Chicago Cultural Center from Peter Mierzwa. John Kirkton, also of the Law Bulletin Publishing Company, is pictured in the center.



**Keith Hebeisen** spoke at the Illinois Trial Lawyers Association Medical Malpractice Seminar. Hebeisen, a former ITLA President and Editor of its Medical Malpractice Trial Notebook for the past 25 years, has received numerous record-setting med mal verdicts and settlements in his 33 years as a practicing attorney.



**Robert Clifford** participated in an all-star panel at Northwestern University School of Law on "Interplay Among Courts, the Parties, Counsel, and Media in High Stakes Litigation." The Hon. Henry Simmons (retired), Managing Partner at Clifford Law Offices (left), attended the program.