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**TO: MEMBERS OF THE LONG ISLAND JEWISH
ORGANIZED MEDICAL STAFF**

The continuous treatment doctrine – yes – continues to find its way into an untold number of court decisions. The latest case of interest was reported this last month and deserves review.

In analyzing the facts argued it brings to mind an effort which was undertaken some years ago which would have permitted judicially appointed independent panels of persons of a particular profession to determine the merits of designated claims brought against a member of that profession. It would have eliminated determinations by non-professionals in certain fact-finding matters which would be best determined by one's peers. Needless to say the proposal was derailed by the plaintiff's bar.

The matter under discussion contained a claim by plaintiff that defendant physician had failed to diagnose and treat a benign brain tumor and ignored her complaints of headaches and blurred vision. Plaintiff later underwent a left frontal parasagittal craniotomy and suffered loss of vision.

*There is, of course, a statute of limitations of 30 months within which to commence a malpractice claim – but there is an exception – the continuous treatment doctrine. Was the patient being treated under a continuous course of treatment. If so, the 30 month statute of limitations does not begin to run as the treatment is being continued and there has been no cessation of treatment. To avail oneself of the exception the patient must establish that the treatment was **FOR THE AILMENT ALLEGEDLY MISTREATED** – it is not enough, for example, to claim continuous treatment doctrine relating to the ear if you returned to the physician complaining of back pain!*

In a split decision the Court found in favor of the plaintiff. The majority rejected the dissent which had stressed that many of the visits were for routine annual checkups and had nothing to do with treatment for the illness; that there were gaps in treatment over the years. The majority found that the law does not require so-called "regular" appointments to establish a continuous course of treatment. It is disheartening to see any erosion of an attempt which had been made to shield physicians.

We have previously mentioned the maxim that hard cases make bad law. This would seem to be a classic example of the maxim. We strongly suggest it would also be a case best determined by professional peers rather than by jurists – but – unfortunately that is not our system nor is it likely to be part of our system for the foreseeable future and beyond.

Respectfully submitted,

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