

HEALTH QUARTERLY

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Memorial Clinic assists the sleep deprived

By Amy Gillentine

amy.gillentine@csbj.com

Sleep — catching some z’s, visiting the land of nod, 40 winks. Whatever you call it, scientists know that sleep is essential to perform at peak physical and mental condition.

But most of us don’t get the necessary eight hours of sleep — and operate with a sleep deficit every day. While science has said that the lack of sleep most people get isn’t harmful, a few people are operating on serious sleep deficiencies that affect their livelihoods and their health.

“Lack of sleep has been associated with hypertension, diabetes, heart disease, neurological problems,” said Dr. Tim Rummel, medical director of the Sleep Disorders Center at Memorial Health System. “We try to figure out what the underlying problem is — insomnia, sleep apnea, restless legs — and work on solving that. It doesn’t get people off their high-blood pressure medicine, but it will reduce their medicine.”

Memorial’s sleep clinic can see eight patients a night, and is booked out for months in advance. Most people they see have sleep apnea — problems breathing while they are sleeping, associated with chronic snorers. People who wake up as tired as they went to bed might actually stop breathing during their sleep.

“Imagine how tired you would be if, four or five times a night, you choked and had to wake up to start breathing again,” he said. “Usually, sleep apnea can be solved by losing weight, but sometimes that’s not possible so we have other interventions.”

At the sleep clinic, patients are hooked up to several monitors — everything from their oxygen levels, heart rate, and limb movement is tracked while they sleep.

While most people at the clinic have sleep apnea, insomnia is the most common sleep disorder, but people seldom see a doctor until it gets very severe.



Photo by Amy Gillentine

John Grayson and Ryan Bachman work as technicians at Memorial’s Sleep Disorder Clinic. The two practice putting on the many monitors patients sleep with while at the clinic. The sleep clinic recently moved to a new location at Memorial’s north campus.

“Usually they only come here if it’s intractable, long term and they haven’t responded to treatment from their regu-

lar doctor,” he said. “Usually they only come here if it’s intractable, long term and they haven’t responded to treatment from their regu-

Imagine how tired you would be if, four or five times a night, you choked and had to wake up to start breathing again.

lar doctor,” he said.

Sleep is important for healing, for physical and mental health, he said. Poor sleep has been associated with poor daytime functioning, causing accidents at home, at work and while driving.

Rummel says studies about sleep show some interesting patterns. For instance, one study took away all modern distrac-

tions — electric lights, televisions — and computers. All they had to do was sleep as much as they wanted. At first, they slept about 14 hours a day, but then a new pattern emerged. Once subjects caught up on their sleep deficit, over a period of days, they’d sleep for about nine hours — with a few hours of being awake in the middle of the night.

“In older stories, the 17th century, you read about people writing or painting in the middle of the night,” he said. “It

seems our normal pattern, without the modern distractions, would be to sleep about nine hours, with an awake period in between.”

Instead, modern Americans tend to stay up late, get up early and “rob” the sleep bank, he said.

“And you can’t do it,” he said. “The deficit just continues to build. Some people try to make up the sleep deficit over the weekend, but really, it would take days to catch up.”

The good news for people struggling with sleep issues is that there are a number of treatment options.

For apnea, weight loss works about half the time. There are surgical options, a dental appliance and pressure masks to help cope with it as well.

Insomnia can be more complicated. The latest studies show that meditation could be an alternative to Ambien.

Two new studies suggest cognitive behavioral therapy can change people’s attitudes about sleep — meditation can help insomniacs get to sleep without pills.

To these researchers, insomnia is a “24-hour problem of hyper-arousal.” Teaching people to relax helps them sleep.

“Results of the study show that teaching deep relaxation techniques during the daytime can help improve sleep at night,” says researcher Ramadevi Gourineni, director of the insomnia program at Northwestern Memorial Hospital.

Gourineni’s study examined the effectiveness of practicing meditation as an insomnia treatment in 11 people with insomnia.

The participants were divided into two groups. One group was trained in kriya yoga, in which meditation is used to focus internalized attention, and the other received general health education.

Two months later, the results showed that the meditation group experienced improvements in sleep quality

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Practice summer safety so everyone stays healthy and happy

Summer, summertime! It's a great time to enjoy outdoor activities with family, friends including gardening, hiking, biking, swimming, barbecues, holiday celebrations, events and company picnics.

Practicing common sense safety tips while enjoying the many activities that you choose to get involved with will keep you and your family, friends and colleagues healthy and happy adding to your fun in the sun memories during this 2009 summer season.

Data shows that warmer weather increases the risk of foodborne illness. Common foodborne illnesses during the summer months include: salmonella, campylobacter, shigella and shiga-toxin producing *E. coli*. From 2005 – 2008 the greatest number of these cases were reported in the months of July and August in El Paso County. If you've ever had a foodborne illness, it's an event that you are likely to remember and can attest to how serious the symptoms can be — you even though you may have been hospitalized.

Symptoms can range from a mild upset stomach to fever, headaches, violent vomiting and diarrhea. Hospitalization may be required for people with more severe illness or dehydration. While the food supply in the United States is one of the safest in the world, the Centers for Disease Control and Prevention estimates that each year 76 million cases of foodborne illness occur, more than 300,000 persons are hospitalized and

5,000 die. In 2008, shiga-toxin producing *E. coli* alone resulted in 14 hospitalizations and one death in El Paso County.

Foodborne illness prevention tips

■ **Clean, separate, cook, chill and keep your hot foods hot and your cold foods cold.**

■ **Clean:** Wash all produce. Rinse fresh fruits and vegetables in running tap water to remove visible dirt and grime. Remove and discard the outermost leaves of a head of lettuce or cabbage. Because bacteria can grow well on the cut surface of fruit or vegetable, be careful not to contaminate these foods while slicing them up on the cutting board, and avoid leaving cut produce at room temperature for many hours. Don't be a source of foodborne illness yourself. Wash your hands with soap and water before preparing food.

■ **Separate:** Don't cross-contaminate one food with another. Avoid cross-contaminating foods by washing hands, utensils, and cutting boards after they have been in contact with raw meat or poultry and before they touch another food. Put cooked meat on a clean platter, rather than back on one that held the raw meat.

■ **Cook meat, poultry and eggs thoroughly.** Using a thermometer to measure the internal temperature of meat is a good way to be sure that it is cooked sufficiently to kill bacteria. For exam-

ple, ground beef should be cooked to an internal temperature of 160 degrees. Eggs should be cooked until the yolk is firm.

■ **Chill:** Refrigerate leftovers promptly. Bacteria can grow quickly at room temperature, so refrigerate leftover foods if they are not going to be eaten within

four hours. Large volumes of food will cool more quickly if they are divided into several shallow containers for refrigeration.

Warmer weather helps mosquitoes hatch and brings the emergence of, West Nile Virus in our community. In El Paso County the first reported human infections occurred in 2003. During

the years, the health department led many community agencies in an effort to reduce the risk of WNV and prevent infections, and the number of WNV human infections has been lower in comparison to many Colorado counties.

This year financial constraints do not allow us to respond to complaints about standing water, dead birds, testing of birds and monitoring and reducing mosquito populations. Even though most people who get infected with WNV experience mild illness, some people can experience serious symptoms such as neck stiffness, disorientation, convulsions, muscle weakness, numbness and

paralysis. These symptoms may last several weeks, and neurological effects may be long term. If you've been bitten by a mosquito and experience these symptoms contact your health care provider. Protecting yourself from mosquito bites and reducing mosquito populations is your best defense.

WNV prevention tips: Practice the d's!

■ **Drain** standing water weekly since that's where mosquitoes lay their eggs. Stagnant water you can't drain should be treated with larvacide, which is available at garden and home improvement stores.

■ **Limit** outdoor activities during dawn and dusk when mosquitoes that carry the virus are most active.

■ **Dress** in protective clothing such as long sleeves and pants to prevent mosquito bites.

■ **Use** a mosquito repellent with DEET (even when gardening) and always follow the instruction labels carefully.

We offer much more detail and information about public health summer safety topics on our Web site: www.elpasocountyhealth.org. Your Health Department wishes you a summer filled with lasting memories that include happiness and good health.

Kandi Buckland is executive director of El Paso County Department of Health and Environment.



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Caregiver bias lawsuits growing

Dolan Media Newswires

An increasing number of discrimination claims are being brought by pregnant women, parents of young children or employees who are caring for a sick relative.

These “family responsibility discrimination” claims are an emerging trend in employment law.

Although there is no federal law protecting employees who are caregivers against discrimination in the workplace, employees are filing claims under a variety of statutes, including Title VII, the Americans with Disabilities Act and the Family Medical Leave Act.

Whether the trend is attributable to the growing number of women in the workplace who are the primary caregivers at home, or the rise of the “sandwich” generation — those taking care of both young children and aging parents — the number of cases continues to climb.

In the decade prior to 2005, these claims rose 400 percent, according to Cynthia Calvert, a management side attorney with Work Life Law in Washington, D.C.

Since 2006, “the numbers have continued to go up, and this year they have started to jump like crazy. 2009 is so far proving to be a very dramatic year,” Calvert said.

But employers are still “at the beginning of the learning curve” on this issue, said Marc Antonetti, a partner

with Baker & Hostetler in Washington, D.C. who advises employers and recently moderated an ABA teleconference on this topic.

The EEOC released a guidance on caregiver discrimination in 2007 and just recently issued a guide to best practices for employers on this topic.

Two jurisdictions — Alaska and Washington, D.C. — have statutes protecting caregivers, and a number of other states are considering legislation that would give varying degrees of protection against family responsibility discrimination.

Legal claims

Here’s a look at the kinds of legal claims plaintiffs are raising:

■ Title VII

The bulk of claims arise under Title VII and allege sex discrimination or gender stereotyping, such as when a pregnant woman is fired or a mother is passed over for promotion based on an employer’s stereotypes about her commitment to her job.

These cases are hard to prove because gender stereotyping is not always blatant and may be subconscious on the part of the decision-maker and hard to draw out, said David Webbert, a plaintiffs’ employment attorney with Webbert & Johnson in Augusta, Me. who recently handled a claim on behalf of a mother of triplets who was denied a promotion.

The 1st Circuit concluded that she could sue under Title VII for gender stereotyping, even though the decision-maker never mentioned her gender and the person who got the promotion was also a mother.

In that case, the decision-maker told the employee that the reason she didn’t get the promotion was “nothing you did or didn’t do. It was just that you’re going to school, you have the kids and you just have a lot on your plate right now.”

■ ADA

Another potential legal basis for a family responsibilities discrimination claim is the ADA’s “association” provision.

Such a claim might be asserted if an employee is caring for an individual with a disability.

An example of this, said Rae Vann, general counsel of the Equal Employment Advisory Council in Washington, D.C., would be if “I’m terminated because the company knows I have a child who is severely disabled. Maybe the employer is concerned about my commitment to my job or rising health care costs, but the reason I’m fired is not my own disability but my association with a person with a disability.”

Until recently these cases were difficult to prove, but they may be easier because of the broader definition of “disability,”

See **LAWSUITS** page 11



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Consumers claim denture cream unhealthy

Dolan Media Newswires

BOSTON, MA — Consumers suing over injuries from using PoliGrip and Fixodent denture cream will seek consolidation before a multi-district litigation panel.

The plaintiffs claim they suffered neurological damage from zinc in the products.

“Over time, the usage of large amounts of denture cream can create zinc poisoning,” said Eric Chaffin, a partner at Bernstein Liebhard in New York, who has filed 17 cases in federal and state court.

He estimates that the total number of cases nationwide will be in the hundreds.

Scott Wm Weinstein, managing partner in the mass torts and consumer class action department of Morgan & Morgan in Fort Myers, Fla., has filed two cases and is holding off on the 2,000 cases he is investigating until the MDL panel decides where the cases will be heard.

The motion seeks to consolidate the cases in U.S. District Court for the Southern District of Florida. Alternative venues proposed by plaintiffs include Colorado or the Eastern District of New York, Chaffin noted.

Copper deficiency

The lawsuits allege that the dental

cream that is used as an adhesive to hold dentures in place contains zinc, which causes damage to the peripheral nerves, pain in the limbs and loss of balance.

The suits — which allege product liability, negligence, failure to warn, fraud and consumer protection claims — name GlaxoSmithKline, which manufactures PoliGrip, and Proctor & Gamble, which makes Fixodent, as defendants.

In one suit filed April 27, 60-year-old Ellen Isaacs claims she suffered permanent injuries as a result of using Super PoliGrip Original.

The suit alleges that GlaxoSmithKline added zinc to its ingredients in the 1990s even after it was medically accepted that excess zinc causes copper depletion or “hypocupremia.”

“It’s well-documented that when there is too much zinc, it reduces the level of copper. The body has receptors for copper but when the body takes in excess zinc, zinc binds to those receptors and there’s nothing to carry the copper, so the copper gets expelled,” said Weinstein.

He represents 61-year-old Florida resident Ronald Beaver who claims he developed permanent neuropathy from excess zinc after using PoliGrip Extra Care with PoliSeal for 10 years.

Chaffin also cites two adverse event

reports in 2005 linking PoliGrip with zinc poisoning.

Plaintiffs’ lawyers say that not all the plaintiffs are older consumers whose symptoms may be attributable to other causes.

“Don’t assume the plaintiffs are all older. One case we filed is [on behalf of] a woman in her early 30s. The cases run the gamut,” said Chaffin.

Weinstein agreed.

“There are younger people with poor dental hygiene that are using the products,” he said, noting that cases with younger plaintiffs are less complicated because they tend to have a more limited medical history.

2008 study

A 2008 study published in the journal *Neurology* concluded that “denture cream contains zinc, and chronic excessive use may result in hypocupremia and serious neurologic disease.” Each of the four patients in the study with hypocupremia used “very large amounts of denture cream chronically,” the study noted.

Weinstein noted that people with ill-fitting dentures tend to use more denture cream.

Proctor & Gamble said in a statement

that “a small amount of zinc is used in Fixodent to help the denture stay in place securely so our consumers can eat, chew and talk more confidently.”

The statement also said that “we are not aware of any case where denture cream has been definitively linked to a health effect from zinc.”

GlaxoSmithKline did not return a call seeking comment in time for this article.

A statement from the Consumer Healthcare Products Association, a trade association for makers of over-the-counter medications, said that the cases of zinc toxicity involve consumers who “chronically used vastly more product than instructed on product labeling, us[ing] two or more tubes of the product each week for a period of years, as opposed to one tube over the course of three to 10 weeks.”

Another defense argument may be that there is no proof that zinc from denture cream is absorbed in the body.

But Chaffin plans to point to tests showing elevated zinc levels and low copper levels in the plaintiffs’ blood.

He also noted that when individuals stop using denture cream, their zinc and copper levels begin to normalize, even though the neurological damage is permanent.

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Calcium intake needs to increase as women age

Drink your milk — it's often a message to children, but adults can also benefit from this advice.

Drinking milk and eating yogurt, leafy green vegetables, nuts, seafood and fortified juices and cereals are all great ways to boost your daily intake of calcium, a mineral that plays a vital role in maintaining the body's structure and function. Calcium builds bones and keeps them strong. It also helps muscles to contract, blood to clot, and your heart to pump.

Getting enough calcium combats the bone loss that naturally increases with age. This is especially important for women, who are much more likely than men to have problems related to weak bones. Eighty percent of the 10 million Americans who have osteoporosis, a debilitating disease marked by porous, fragile bones, are women. Another 37 percent to 50 percent of women older than 50 have osteopenia (low bone mass). Both conditions put sufferers at risk for bone fractures, which can take longer to heal as you age and can cause major mobility problems, or sometimes death.

You may be at higher risk if you have a personal or family history of bone fractures, eat a diet low in calcium, do not exercise, weigh 127 pounds or less, have

a history of falls, are Caucasian, are in poor health, or use alcohol and tobacco. Regardless of whether risk factors are present, many women are unaware that their bones are brittle until they break one.

To prevent fractures and identify bone weakness, ACOG recommends that women age 65 and older or women who have had a fracture be tested for bone mineral density. Postmenopausal women with one or more risk factors for osteoporosis should also be tested.

The average American only gets 500 to



**Thomas
BOWDEN**

750 milligrams of calcium each day, far short of the recommended daily intake. Premenopausal women, or menopausal women who take estrogen, need 1,000 milligrams of calcium per day. Post-menopausal women who do not take estrogen should get 1,500 milligrams. Daily intake of vitamin D, the fat soluble vitamin that helps the body absorb calcium, should be between 200 and 600 IUs (International Units) depending on a woman's age. Drink milk, eat vitamin D-fortified foods, or get 15 minutes of sun exposure on your hands and face or arms a

few days a week to ensure you get enough. Your doctor can also suggest a calcium and vitamin D supplement if you don't get enough from your diet alone.


You can further help strengthen bones by engaging in weight-bearing exercise, such as walking, tennis, dancing, yoga, or Tai chi. Additionally, certain types of hormone therapy and other drugs containing bisphosphonates, estrogen, and calcitonin can also help prevent fractures. Talk to your doctor about medications that may work for you.

Gerald F. Joseph Jr. is president of The American College of Obstetricians and Gynecologists.

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Court rules med-mal expert can't testify on new theory of liability

Dolan Media Newswires

An expert in a medical malpractice case could not testify regarding a hospital's negligence in treating a patient because the plaintiff had originally premised liability on the institution's accrediting of the treating physician in the case, the 1st Circuit has ruled.

The plaintiffs' father died of a heart attack after being admitted to a hospital emergency room for treatment of gastrointestinal bleeding.

The plaintiffs filed a wrongful death suit, alleging that their father's treating physician was negligent in providing care and that the hospital was negligent in granting staff privileges to the treating physician.

During pretrial proceedings, the plaintiffs' expert rendered an opinion regarding the hospital's alleged negligence in accrediting the treating physician.

However, the plaintiffs settled with the treating doctor and, at trial, the expert sought to testify regarding negligent care provided by hospital employees.

The 1st Circuit decided that the trial judge properly excluded this testimony and granted the hospital a directed verdict.

"The record reveals with conspicuous clarity that the plaintiffs attempted to reformulate their theory of liability (and, thus, dramatically shift the focus of their expert's opinion testimony) once they settled with [the treating physician]. That reformulation transpired after the time for filing expert reports had passed. The new allegations of negligence were not based on freshly discovered evidence, and the plaintiffs have not advanced any plausible justification for the belated emergence of these allegations. The shift amounted to the propagation of a brand-new theory, not merely a refinement of an existing theory," the court said.

Seniors: Should plan on being cautious in the sun

June brings the official start to summer along with picnics, trips to the beach and a long list of fun.

But sun can be dangerous — especially for senior citizens.

“While sunshine is healthy, too much sun is dangerous, especially for seniors because their skin is more sensitive,” said Rocky Bowman, vice president of operations for Senior Helpers, a Colorado Springs in-home senior care provider. “Don’t forget, a suntan is your skin’s way of showing damage. The deeper the tan, the more sun damage and the more skin is trying to protect itself.”

There are plenty of misconceptions about the summer sun. The Centers for Disease Control and Prevention reports:

Myth 1: Seniors need constant sun to supply Vitamin D. Seniors only need 15 minutes or less of sun exposure two to three times a week on their faces and hands for their bodies to produce an adequate supply of Vitamin D. It can also be found in foods and in multivitamins. Seniors should always wear sunscreen, a hat and light clothing that covers their skin when they are in the sun.

Sun Myth 2: Seniors only need to ap-

ply sunscreen once a day. Sunscreen needs time to work. Seniors should apply it about an hour before going out into the sun and reapply about every two hours. They should reapply more frequently if they are swimming. They should use a broad spectrum sunscreen that blocks both UVA and UVB rays. UVA rays cause tanning and wrinkling while UVB rays cause sunburn, aging, wrinkling and skin cancer. Use sunscreen with a sun protection factor of at least 15. Use SPF 30 or higher if you have a history of skin cancer or have fair skin. The risk for cancer increases as you get older. Seniors should especially

pay attention to moles and other skin abnormalities.

Sun Myth 3: Seniors only need sunscreen at the pool or beach.

Seniors should wear sunscreen everywhere if they go outside longer than 15 minutes. Seniors need to exercise but to avoid too much sun, they can walk in malls, casinos, movies or museums.

Sun Myth 4: The sun isn’t a problem on cloudy days.

The sun doesn’t feel as hot when it’s cloudy, but the UVA and UVB rays that tan and burn your skin are still shining down and being absorbed. Seniors’ skin is more sensitive. The sun’s rays are more intense in the summer so even on a cloudy day, seniors should still wear sunscreen and sun protection.

Sun Myth 5: There’s nothing seniors can do if they get sunburn. The bad news is that’s partially true. The CDC recommends aspirin, acetaminophen or ibuprofen to relieve pain, headache and fever. When seniors are exposed to too much sun, they’re at severe risk for dehydration. They should drink six to eight glasses of water a day and eat fresh fruits and vegetables. They can also take a cool bath and use an aloe cream to moisturize skin.

Sun Myth 6: Sunburn is the only sun problem seniors should worry about.

The sun can also hurt your eyes. The UV rays can cause cataracts, macular degeneration and skin cancer around the eyes. Seniors should always wear sunglasses. Choose brown, gray or green lenses and the darker and larger the lens the better. Seniors should choose glasses that wrap around their eyes and block a high percentage of UV rays. ■ *CSBJ*

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Sleep: Disorders

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and quantity, according to their sleep diaries. They also took less time to fall asleep, woke fewer times, and had fewer symptoms of depression.

Although the effects and study size were small, researchers say the findings suggest that meditation may be an effective alternative insomnia treatment.

The second, larger study looked at the effects of a cognitive behavioral therapy-insomnia (CBT-I) program designed to treat insomnia in 115 people. The program included evaluating the person’s habits, attitudes, and knowledge about sleep.

During the treatment sessions, participants learned about sleep scheduling, creating the proper environment for sleep, reducing stimuli that may interfere with sleep, relaxation training, and mindfulness training.

“CBT-I teaches strategies to ‘reset’ the bodily systems that regulate sleep,” researcher Ryan Wetzler, PsyD, of Sleep Medicine Specialists in Louisville, Ky., says in a news release. “Since these systems also play a role in regulation of mood, pain, and other bodily processes, skills developed through CBT-I may also have a positive impact on mood, anxiety, pain, and other associated medical or psychiatric conditions.” ■ *CSBJ*

Living with Rheumatoid arthritis

Living with any form of arthritis can make life more difficult. Accomplishing simple tasks, such as opening a jar or turning a key, can be painful and laborious. Rheumatoid arthritis, one of the most painful and debilitating forms of arthritis, can be helped with early detection and proper treatment which will help ensure a long and fulfilling life.



Chara Solich

Rheumatoid arthritis is an inflammatory disease in which the synovium, or lining of the joint, becomes inflamed. This is caused by white blood cells that infiltrate the synovium and cause inflammation. RA is associated with swelling, pain, tenderness and stiffness in the joints throughout the

people, are living with RA. While the root cause of RA is not yet known, there are certain genetic and lifestyle factors that appear to predispose individuals to have RA, or worsen its effects. Cigarette smoking, for example, is believed to aggravate symptoms and may be a contributing factor to its cause. Gender plays a clear role as nearly three times as many women than men are affected. RA can develop at any age, although it most commonly occurs between the ages of 40 and 60. Children can also be affected by a juvenile form of the disease.

Fortunately, there are more treatment options than ever before. Disease modify-

Rheumatoid arthritis is an inflammatory disease in which the synovium, or lining of the joint, becomes inflamed.

body. Overtime, the inflammation can erode into the bone causing holes or erosions and eventual deformities. In the early stages, RA typically affects smaller joints, such as the wrists, hands and feet, later spreading to other areas of the body, including the shoulders, hips and knees. Long term effects of untreated RA can cause damage and deformity of joints and bones and may even affect the internal organs in some patients.

It is estimated that nearly 1 percent of the U.S. population, or about 2.5 million

ing medications can improve joint pain, swelling and stiffness and slow the progression of the disease process. In addition, other symptoms, such as fatigue, improve once the disease is adequately treated. In many cases, the medications can delay the development of joint erosions and prevent long term disability. Patients who are diagnosed and started on treatment early tend to have the best outcomes.

Chara Solich is a physician with Colorado Springs Health Partners.

Lawsuits: FMLA is basis

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under the new ADA Amendments Act, said Webbert.

■ **FMLA**

The Family and Medical Leave Act can also be the basis for a caregiver discrimination claim.

For example, in one of the first gender discrimination trials under the Act, a male state trooper won \$375,000 because he was denied leave to care for a newborn based on his employer's assumption that men are not primary caregivers.

However the FMLA is more limited in coverage than the other statutes, because once employees have used up their 12 weeks of FMLA leave, they are not eligible for any more leave for 12 months, said Vann.

■ **Lily Ledbetter Act**

A family responsibilities discrimination claim that might otherwise be time-barred could be linked to a claim under the newly revised Fair Pay Act.

"If I was a mother who took leave five years ago, then didn't get a promotion because my employer had the impression I would be out a lot, or I didn't get a bonus or pay increase because my hours were lower," a plaintiffs' lawyer might be able to link a family responsibilities discrimination to

the Lily Ledbetter Act, said Antonetti.

Separate policy needed?

There is disagreement over whether employers need a separate policy to address family responsibilities discrimination.

"I wouldn't go so far as to say an employer has to have a policy. [That's] a little dangerous because employers can get confused into thinking this is a new, legally protected characteristic," said Vann.

Calvert, on the other hand, recommends employers adopt "a policy that says we don't discriminate based on family responsibilities."

"By having a policy in place, employers have to talk about it, think about it and train on it," she noted.

It's important that employers make sure their existing policies for attendance, promotion, leave or flex-time don't disproportionately impact women, who tend to be the primary caregivers.

For example, some courts have held that policies that say an employee can't take sick leave in the first year disproportionately impact women, because they may become pregnant, said Calvert.

"If you have a flex work policy, make sure it's open to all employees, or if it's only available to certain employees make sure the eligibility criteria make sense and are uniform and non-discriminatory," cautioned Vann.



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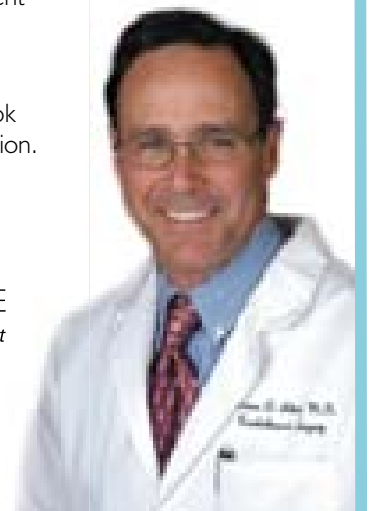
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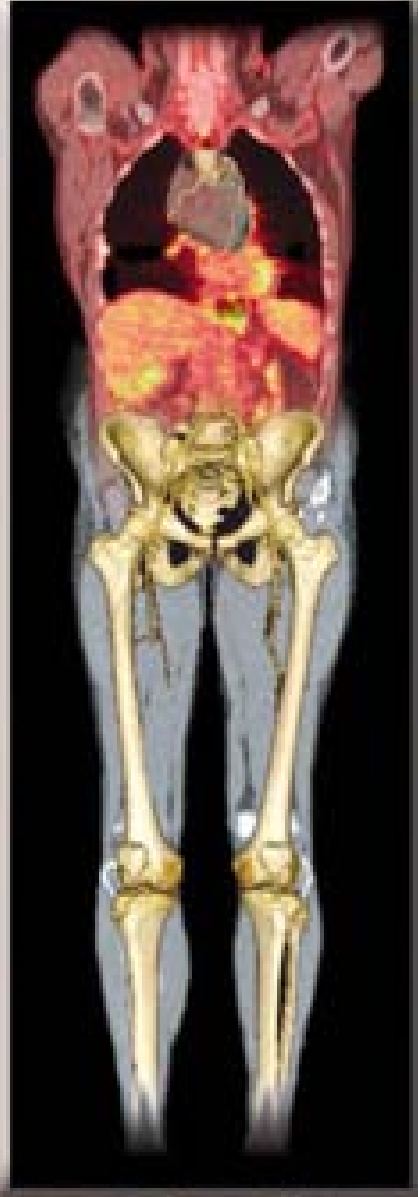
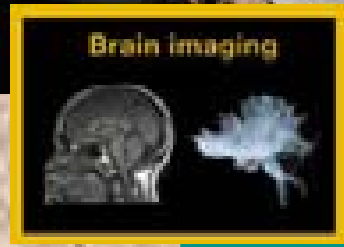
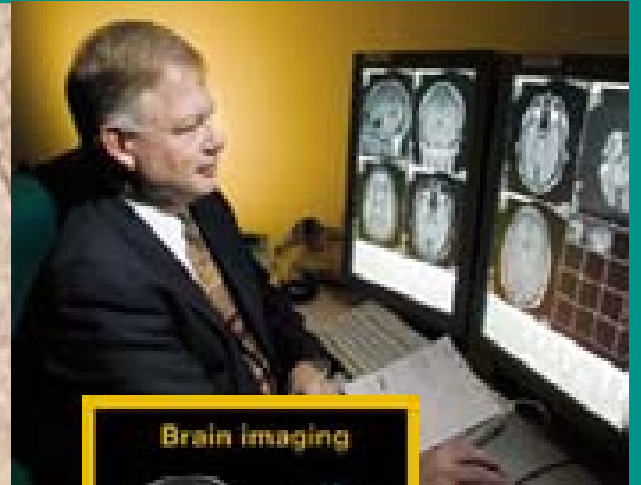
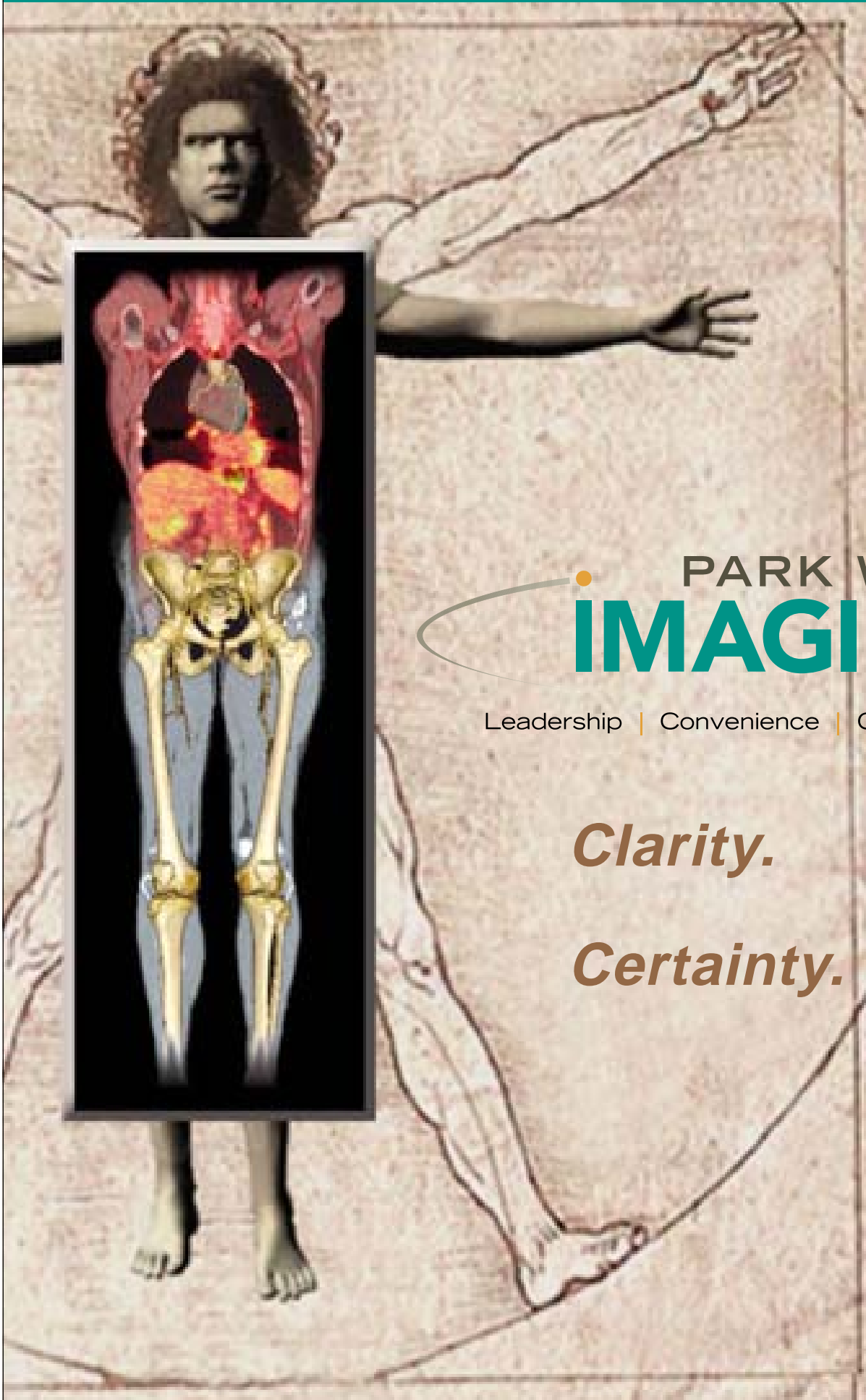
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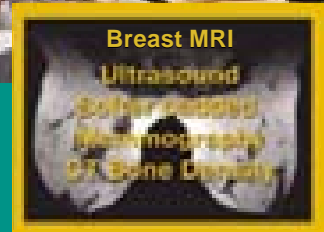
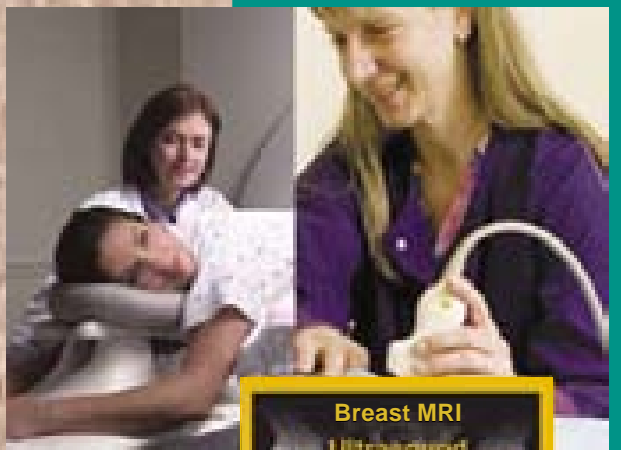


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