

YOUR MEDICAL CARE AND YOUR CASE **FOLLOWING YOUR DOCTOR'S ADVICE**

By Kiersta D. Perlee

Larry Leadfoot ran into you with his truck. You are in a lot of pain, but you do not want to miss time from work to see your doctor.

You are the ultimate decision maker about your medical care. You decide whether or not you will see a doctor. You decide whether or not you will follow your doctor's advice. However, your decision may determine whether you are permitted to recover for your pain and suffering from Leadfoot.

Though Leadfoot has injured you, you still have a duty to take reasonable care of yourself. The jury will be instructed that it cannot award you money for harm that you caused to yourself by failing to follow your doctor's instructions or by failing to seek medical care when a reasonable person in the same circumstances would have done so. The jury instruction is CACI No. 517, and it reads:

A patient must use reasonable care to provide for his or her own well-being. This includes a responsibility to follow a physician's instructions and seek medical assistance when a reasonable person in the same situation would do so.

Defendant claims that the plaintiff's harm was caused, in whole or in part, by plaintiff's negligence in failing to follow his physician's instructions and failing to seek medical assistance. To succeed, the defendant must prove both of the following:

1. That plaintiff did not use reasonable care in following the physician's instructions and/or seeking medical assistance; and
2. That plaintiff's failure to follow the physician's instructions and/or seek medical assistance was a substantial factor in causing the plaintiff's harm.

If you end up experiencing pain for five months longer than you would have if you had gotten medical treatment, Leadfoot will not be liable for those five months of pain. If your doctor tells you to take time off work, and you end up more seriously injured because you ignored him and continued to perform a physically demanding job, Leadfoot is not going to be liable for the aggravation of your injury.

At the same time, following your doctor's instructions may not always be reasonable. Your doctor tells you to take time off work. Your employer offers to let you hang out in the office and do

filing instead of construction work. You tell your employer that your doctor took you off work and you are not coming in. The jury will probably refuse to award you the lost income for the two weeks that you could have spent filing at the office where it would not have had any negative impact on your injury.

Additionally, there are certain treatments which come with significant risks. For instance, a risk of back surgery is paralysis. In such cases, you are not going to be penalized at trial for refusing to face this risk, even if your doctor has said your only other option is to live with the pain. Leadfoot will be liable for the cost of your operation if you choose surgery. Leadfoot will be held liable for your pain and suffering if you choose to live with the pain.