

**Henry E. Dugan, Jr**  
**Dugan, Babij & Tolley, LLC**  
1966 Greenspring Drive, Suite 500  
Timonium, MD 21093  
Ph: (410) 308-1600  
[www.medicalneg.com](http://www.medicalneg.com)  
[hdugan@medicalneg.com](mailto:hdugan@medicalneg.com)

## **WHEN A LITTLE IS TOO MUCH!**

By Henry E. Dugan, Jr

### **Contributory Negligence in Maryland**

#### **The Doctrine of Pure Contributory Negligence:**

The fundamentals of this law are that if a person's own negligent behavior, bad judgment, irresponsibility, etc., contributes in any way to causing an accident or injury to themselves, he/she can't collect any damages from another person or party who subsequently and ultimately caused the accident. Traditionally, contributory negligence was viewed by the judicial system as a complete and total deterrent to recovery of any damages in a lawsuit, for this contribution in fact precipitated the injury or further aggravated the medical condition, and by so doing, disqualified the individual from compensation. Historically, this doctrine came into law as a safeguard or protection against overly sympathetic juries who often ruled in favor of plaintiffs in personal injury cases. However, this doctrine often produced decidedly unfair results as a person who might only be slightly negligent was prevented from recovering any damages at all—even from the party who was found to be much more at fault.

Maryland adopted this Contributory Negligence Doctrine in 1847. It later modified the doctrine slightly however to include exceptions for injured persons under five years of age, and in cases where it was apparent that the defendant could have exercised a sufficient amount of care to avoid consequences of a plaintiff's own negligence. Contributory Negligence was a commonly accepted and widely applied doctrine at the time, however 46 states have now replaced it with Comparative Negligence alternatives that allow juries to apportion individual culpability to both plaintiff and defendant if necessary. The District of Columbia, Virginia, Alabama and North Carolina still adhere to the Contributory Negligence Doctrine however.

**Henry Dugan of Dugan, Babij & Tolley in Timonium, Maryland is a leading Medical Malpractice attorney that has been practicing for over 42 years. He has this to say about it:**

“Maryland's Court of Appeals, as recently as July 2013, once more refused to tackle the agreed upon inequity of Maryland's Tort Law Doctrine of Contributory Negligence.

Although a scathing dissent suggested that “the fossilized doctrine of contributory negligence” should be relegated to a “judicial tar pit”, the unwary or unprepared can still



be totally immobilized by the doctrine's tar.

In short, the slightest touch of the contributory negligence tar no matter how blatant and overwhelming that of the tortfeasor, is a total bar to recovery.

The child on the bike in the wrong lane, the elderly pedestrian just outside the cross-lane can easily have their cases succumb to this injustice. Since the jury is the ultimate arbiter of both negligence and contributory negligence, the practitioner may sometimes be able to free a plaintiff from this tar by arguments as to what is reasonable and prudent under the circumstances, but that is a two-edged sword that the defendant may just as successfully employ. At the same time, of course, a pro active judge may decide that it is contributory negligence as a matter of law, so that situation always has to be anticipated.

In medical malpractice in Maryland, there is something of a saving grace in that any alleged contributory negligence that occurs prior to that of the tortfeasor is no bar from recovery and no defense. Thus if a plaintiff engages in somewhat questionable behavior in the use of a ladder which results in his or her fall prior to medical malpractice in treating the injuries from the fall, the alleged contributory negligence is no defense to the malpractice. If, however, another tortfeasor caused the fall from the ladder prior to the malpractice in treatment, both are jointly and severally liable to the plaintiff.

Having dealt with this issue or contributory negligence over the course of forty plus years, it is my opinion that in fact most juries do take into account the issue of contributory negligence by reducing the size of the verdict unless they believe that the contributory negligence was of critical importance in which case they will find for the defendant based upon the doctrine and the Court's instructions. What you end up with, consequently, is the jury de facto applying comparative negligence! Ultimately, juries try to be fair even in the face of a clearly inequitable doctrine."

[Nota bene: A tortfeasor is an individual who, intentionally or unintentionally, inflicts injury on another individual]