

LAW OFFICES

# GLUSING & MUHER, LLC

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## Injury Law Alert

Summer 2010

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### Preventable Infections on the Rise



According to the federal Centers for Disease Control (CDC), patients in American hospitals come down with over 2 million hospital-acquired infections each year, 90,000 of which result in death. Nor are nursing home patients immune: The CDC estimates that this population suffers another 1.5 million preventable infections each year, for a total of 3.5 million facility-acquired infections annually. While these numbers are grim enough on their own, they become even more so when you realize that, by comparison, the incidence of new AIDS infections ranges from 38,000 to 56,000 per year, while AIDS deaths number about 16,000 per year. Given the lack of news coverage regarding the number of deaths caused by infections, it could be called a silent epidemic.

The number of such infections has been on the rise in recent years, although experts disagree about the reasons. Some point to the rise in the number of infectious agents that are resistant to some or all of

the antibiotics used to treat infections. Others point to the increasing prevalence of HMOs, which can result in patients' not being treated by a specialist trained to recognize an infection until after it has become established, when it is more difficult to treat. Others claim that the infection rate is the same as it has always been, and it is just that reporting has gotten better.

Many authorities reject hospitals' traditional response to complaints about infections acquired in their facilities—that a certain number of infections is inevitable—and have concluded that most of these infections result from the failure of the hospital or its staff to strictly follow the rules intended to prevent the infections.

#### Revolutions

The response to this information has led to a legal revolution that will hopefully bring about a health-care revolution. More than half of the states have passed laws requiring hospital-acquired infections to be reported to state health authorities, so people have a better idea of the scope of the problem.

The CDC itself has given the issue much more attention than it ever did in the past, and has recently issued guidelines that hospitals and nursing homes should follow to prevent infections in their patients. So has the Joint Commission, a body that gives hospitals their accreditation and whose regulations are considered by many to be a good statement of the standards that hospitals should follow.

These changes are not just regulatory, but also legal. Lawyers who

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### Thank You

*Thank you for trusting our firm with your legal needs. If you or someone you know has been injured due to somebody else's carelessness, please call us. We want to help.*

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# Case by Case

## Negligent Truck Driver

A woman was killed when a truck lost part of its load: a 4,200-pound weight used to counterbalance construction cranes. The weight hit the woman's car, smashing the car and causing her death.

The trucking company claimed that the accident was not its fault. It pointed to the fact that when the weight fell off, the truck driver was going 30 miles an hour in a 55-mile-an-hour zone, and it blamed the accident on a fault in the road that caused the load to become unbalanced and fall off.

It was discovered that the 21-year-old truck driver did not have the license that federal law requires to drive the truck, and the trucking company admitted that it had no procedure to train its drivers in securing loads. Further checking showed that the heavy load was secured by only two chains instead of the four chains required by federal law. Finally, an expert could find no defect in the road.

Rather than allow the victim's family to argue that the trucking company's driver was negligent and that the trucking company had tried to falsify its records to hide the driver's lack of qualifications, the company settled on the eve of trial. The family will divvy up a \$16 million settlement.

## Lack of Planning

We have all heard the phrase "accidents happen." This might be true some of the time, but, more often than not, accidents can be prevented by foresight and planning. A recent case illustrates this point.

A company was using four cranes to move a 1,200-ton load. While the load was being moved, it slipped, sending the boom of one

crane into the cab of another. That crane's operator was pinned in the cab for more than two hours and, once freed, he bled to death on the way to the hospital.

The evidence showed that the crane operator's death was the product of a series of preventable mistakes. The ground over which the cranes were driving was muddy, causing them to slip. The company did not hire a professional to do a lift plan (relying instead on an inexperienced employee), nor did it remove obstructions in the cranes' paths. Because the obstructions were not removed,

the cranes had to change the angles of their booms.

The employee who did the calculations did not know that changing the booms' angles would change the load that the cranes could carry. As a result, the cranes had to bear more than their capacities. The evidence also showed that the company "lost" a video that had been taken of the incident.

All of these mistakes caused the crane operator's death. The death cost a family its husband and father, and the company \$11 million. A little planning and common sense could have prevented all of this.

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# Breakdown Safety Tips

Most of us at some point will have to deal with a car that has broken down. Whether the problem is a simple flat tire or something more serious, here are some safety tips for handling a breakdown:

- If you notice a problem with your car while driving, REMAIN CALM. Keeping a level head is the most important thing in any emergency.
- Be sure to steer to a safe spot before stopping. Park the car as far from the flow of traffic as you can before getting out to check on the problem.
- If you cannot fix the problem, it is usually safer to stay with your car than to set out on foot, especially in an area you are not familiar with. Use a cell phone to call for help or wait for the police to come by.

- Carry flares and reflectors to mark your location on the side of the road, and be sure to turn on your car's hazard lights any time you stop beside a roadway.
- If the problem is something you can repair, move to a safe place before trying to fix it. The cost of replacing a flat tire or even your wheel rim is minor, especially when compared to the cost of a serious injury.
- If you have to drive in severe weather or in a remote area, consider putting together an emergency kit. Items such as a blanket, nonperishable food, and water can make all the difference if you break down far from help.

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## Don't Do It Yourself

Although many of us enjoy being handy around the house, there is one time when it does not pay to “do it yourself”—when you or a loved one has been injured. Rather than trying to handle a personal injury claim yourself, you should seek the assistance of a personal injury lawyer for several reasons:

**EXPERIENCE:** By hiring a personal injury lawyer, you can take advantage of the lawyer’s experience. This experience helps evaluate your case and helps determine what you are legally entitled to recover.

**LEVEL PLAYING FIELD:** You can be sure that the wrongdoer’s insurance company is going to have experienced adjustors and lawyers working *against you*. Often, an insurance company will

delay settling claims and even deny valid claims altogether. Even when it does offer to settle the case, the settlement offer may be unfairly low. It pays to have a lawyer on your side to prevent the wrongdoer from paying you less than you deserve.

**PAY ONLY IF YOU WIN:** Most personal injury lawyers work for what is called a “contingent fee,” which does not require money up front. Contingent fees allow injured persons with valid claims but little money to get good legal representation. Most contingent fee agreements provide that you have to pay the lawyer’s fee only if you win.

**OTHER ISSUES:** Your lawyer can also help you with other matters, such as providing referrals to competent doctors and repair shops.

## Household Chemicals

Although most of us would think twice before moving in downwind from a chemical plant, many do not think twice about willingly bringing dangerous chemicals into our homes. Almost any household chemical can be dangerous if swallowed or spilled. Potentially dangerous chemicals include such common items as ammonia, bleach, drain cleaner, furniture polish, oven cleaner, paint, turpentine, and common garden pesticides.

Household chemicals are usually safe if used properly, but they can cause injury or even death if care is not taken when using them.

- NEVER sniff or taste household chemicals. Keep them away from your skin and your eyes.
- Ensure that all household chemicals are kept away from children and pets, preferably in a locked cabinet.
- Do not store household chemicals in a nonapproved container. Chemicals can react with the materials of a new container in unpredictable ways.
- Use household chemicals in a well-ventilated area to prevent a buildup of fumes.
- Periodically dispose of bottles of household chemicals that you do not use anymore or that are almost empty. Make sure to do so in an environmentally safe manner.

If someone in your house is exposed to a harmful household chemical, flush the affected area with water and get the victim to a hospital. If the chemical is swallowed, read the label to determine whether to induce vomiting, then call poison control and get the victim to a hospital immediately.

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## Dangerous Drugs

The FDA has recently issued an alert about the dangers of exposing pregnant women to valproate sodium, most commonly sold under the name Depakote.

Depakote and related drugs, such as Depacon, Depakene, and Stavzor, are most frequently used for the treatment of seizures, such as those associated with epilepsy, although they are also prescribed for the treatment of manic-depressives, for individuals suffering from migraines, and for other, off-label conditions.

The dangers associated with the use of Depakote, such as liver failure and suicidal thoughts, are well known. However, Depakote has

also been linked to various kinds of birth defects, including defects in the development of a child’s brain, spinal cord, face, heart, or blood vessels.

The FDA has issued several guidelines for Depakote use. Women taking the drug who do not plan to become pregnant are urged to use effective birth control. Women who wish to become pregnant, or who do become pregnant, are urged to contact their doctors immediately. However, women taking Depakote are advised not to simply stop taking it, even if they are pregnant, because suddenly stopping a regime of valproate drugs can cause serious problems.

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## Infections

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counsel hospitals and nursing homes have taken these standards seriously, and they advise their clients to enact protocols to ensure that these standards are met, rules that can include something as simple as requiring the staff to wash or otherwise disinfect their hands when moving from one patient to another.

Lawyers also advise hospitals to regularly screen patients for the presence of drug-resistant organisms and to regularly use instruments that have been pretreated with antibiotics to prevent infections before they occur. In recent years, based on these recommendations, many facilities have overhauled their policies and procedures that are intended to prevent infections, even imposing penalties on doctors and staff who are caught failing to obey the new, stricter rules.

## Lawsuits

However, because not all hospitals and nursing homes have gotten the message, and because some of them allow profits to come before patient care, another legal avenue is being pursued: litigation. With the problem of hospital-acquired infections now well known, and with the enactment of many new regulations designed to address the issue, hospitals are finding it harder to avoid liability when a patient does become infected.

In some rare cases, juries are awarding tens of millions of dollars to patients who contracted serious bacterial infections while they were patients at hospitals or nursing homes, infections that often involve drug-resistant, flesh-eating bacteria and that lead to death or to the loss of limbs and organs. Most experts agree that the publicity given to the problem has also made jurors more aware of the problem, and so less tolerant of a hospital's

lack of a similar awareness and concern.

Despite increased awareness, lawsuits regarding facility-acquired infections can be difficult to win. Although the fact of the infection is known, the cause is often difficult to pinpoint. In some cases, the medical records allow experts to determine the likely source or cause of the infection, but, in others, it is not possible to know exactly where the infection came from and, therefore, who is at fault. This uncertainty means hospital infection cases must be handled very carefully by experienced lawyers to ensure that the injured patient or his or her surviving family have their day in court.

If you feel that you or someone you love may have been a victim of a preventable infection, contact us. We can help you determine the best course of action under the circumstances.

*Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*