

Electronic Newsletter

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The Law Firm of Stephen M. Reck Wishes You a Safe and Joyous Holiday Season



RI Hospital Fined, Ordered to Install Cameras Due to Surgical Errors



"Rhode Island's largest hospital was fined \$150,000 and ordered to take the

What is "Defensive Medicine" Anyway?

Answer: Insurance Fraud and Malpractice

[Attorney Ben Glass](#) of Fairfax, VA shares some thoughts on the healthcare debate and the claim by some doctors that they routinely practice "defensive medicine" to avoid being sued. He notes that medical malpractice law requires only that a doctor practice in accord with the "standard of care," which is simply the care that would be required by a "reasonably prudent physician acting in the same or similar circumstances. . . .When a doctor does or fails to do something required by the standard of care, then he or she is negligent. If harm results from that negligence, then he or she is responsible to the patient for that harm."

Glass says "Doctors and patients act as a team. The doctor does an assessment of the situation, takes into account the information reasonably available at the time, and recommends a treatment. The standard of care requires that a doctor explain to the patient both the risks and the benefits of the proposed course of treatment. Ultimately, it is the patient, being fully advised, who makes the decision as to the course of treatment." So how is it all of these doctors are supposedly ordering tests and procedures that aren't medically necessary but are done to protect the doctor?

"Think about it. Anyone who says he or she routinely engages in defensive medicine is admitting that they practice outside the standard of care. They admit that they routinely engage in conduct that is, by definition in every state, medical malpractice. Indeed, they are admitting that in their discussion with the patient about the next step to take in their health care, they are lying when they disclose the risks and benefits of the proposed treatment."

"Second, any doctor who admits they engage in 'defensive medicine' is admitting they are engaging in insurance fraud. . . . A health insurance company is generally bound by contract to pay only those claims that are reasonable and necessary to treat illness or injury. The practice of 'defensive medicine' is, by definition, an admission that two people are being lied to and victimized by fraud: the patient and the insurance company."

CT's 'Adverse Event' Reporting Law Lets Hospitals Avoid Scrutiny

Blumenthal Calls for "Sweeping Changes"

The [Hartford Courant](#) reported that a Connecticut law "intended to protect patients by making them aware of hospitals' errors has ended up making it easier for hospitals to avoid scrutiny." Currently, "under the state's 'adverse event' reporting law, hospitals are required to inform the state Department of Public Health when patients suffer certain serious unintended harm," but "public access to hospitals' adverse events has fallen 90 percent since the legislature redrafted the law" in 2004, and "hospitals now report a fraction of the mishaps they once revealed." According to the Courant, "that secrecy was written into the law after hospitals balked at the state's original adverse-event legislation, which gave the public broad access to reports of medical errors and accidents."

In a related piece, the [Courant](#) reported that even though "more than 1,200 adverse-event reports have been filed by Connecticut hospitals since the law was changed in 2004, including at least 116 in which patients died," only "about one in four are investigated, down from half of cases investigated before the law was revised." Although "the Department of Public Health launched investigations in most cases in which doctors performed surgery on the wrong body part or the wrong patient, as well as cases in which patients were killed or seriously harmed as the result of a medication error," Connecticut "officials investigated only about half the reported sexual assaults on patients, and half the cases in which sponges or other foreign objects were left inside patients after surgery."

Following these articles, CT Attorney General Richard [Blumenthal called for "sweeping changes"](#) to the state's 'adverse event' reporting law for hospitals," saying "the law should be rewritten to promote greater disclosure of errors and accidents by hospitals and greater transparency to help patients evaluate medical facilities." In addition, Blumenthal "called for an increase in the number of state investigators, as well as statutory authority for his office to seek civil penalties against hospitals that do not comply with the law."

extraordinary step of installing video cameras in all its operating rooms after it had its fifth wrong-site surgery since 2007, state health officials said" last month. Read [more](#).

Op-Ed: Trial Lawyers Not the Enemy in Healthcare Reform

In a [CNN](#) op-ed, Anthony Tarricone wrote, "Somehow, the fringes of the GOP have made health care about trial lawyers and medical malpractice. Instead of focusing on how to fix our broken health care system, opponents of real reform would rather limit the legal rights of injured patients." Tarricone observes that instead of "saving money for consumers, tort reform has served as a sop to the insurance industry, allowing them to make record profits off the backs of doctors and patients." He adds, "Next time you hear a baseless attack on trial attorneys or calls for 'tort reform,' remember what health care is all about: patients. And restricting patients' legal rights won't make anyone safer or healthier, nor will it lower costs or cover the uninsured."

Computer Virus Transfers Child Porn

An AP investigation "found cases in which innocent people have been branded as pedophiles after their co-workers or loved ones stumbled upon child porn placed on a [personal computer] through a virus. It can cost victims hundreds of thousands of dollars to prove their innocence." Read [more](#).

CVS Pays for Selling Expired Products



New York officials announced an \$875,000 settlement with CVS Pharmacy "to stop sales of expired products - including food, medicine and baby formula." Read [more](#).



Blumenthal "said the vast majority of medical decisions and procedures are done correctly, but the minority that's driving down the state's high standards of care should be readily disclosed so the public can make 'informed decisions' about where they should seek care," the [Connecticut Post](#) reported. The attorney general stated, "We have now a culture of secrecy and concealment that is completely unjustified by any of the rationales given," adding that "the public needs as much information as possible from doctors, hospitals, and the state Department of Public Health." Blumenthal also stressed the "need for monetary penalties to hold hospitals responsible."

Woods Alleges Malpractice in Wrongful Death Case

The [AP](#) reported last month that a lawyer for actor James Woods says Kent Hospital in Warwick did not do enough to care for his brother Michael Woods "when he went to the emergency room complaining of a sore throat and vomiting in 2006." Michael Woods died at Kent Hospital on July 26, 2006, after going into cardiac arrest on a gurney. "Even after an EKG came back abnormal, he was not given oxygen, aspirin or hooked up to heart monitoring to track further deterioration -- all part of the standard of care in treating someone in Woods' condition."



Researchers: Hospitals May Not Disclose Adverse Events

[MedPage Today](#) reported, "When hospital patients suffer adverse effects from treatments, they seldom get explanations from medical personnel, even though the disclosure may improve patients' ratings of care," according to a [study](#) appearing Nov. 9 in the *Archives of Internal Medicine*. The survey of 2,582 patients showed that "more than 60 percent of the time there was no explanation for adverse events," even though "patients who were told about adverse events were twice as likely as others to rate the quality of care highly." But, those who were "told about preventable events, those that cause discomfort, and those that still affected patients at the time of the survey were less likely to rate their care highly."

Tips to Avoid Hospital Errors

[CNN](#) reported on Kerry Higuera, who went to a hospital after she started bleeding three months into her pregnancy, and was mistakenly given a CT scan of the abdomen after the hospital confused her with another patient, exposing her unborn child to radiation. These types of preventable errors are all too common. Some tips to avoid them happening:

1. Identify yourself to every doctor, nurse and technician you encounter by full name, date of birth and the reason you're there ("My name is Mary Smith, my date of birth is October 21, 1965, and I'm here for an appendectomy."). You might feel stupid doing so, but it will help prevent mistaken identity.

2. Also say: "Please check my ID bracelet."

One of the ways a hospital is supposed to confirm your identity is by checking your bracelet. "Of course, you should check your bracelet to make sure the information on it is correct."

3. Say: "Please look in my chart and tell me what procedure I'm having."

"Make sure the nurse is looking at your chart when she tells you what procedure or test you're having," says Ilene Corina, president of PULSE, New York, a grass-roots patient safety organization.

4. Say: "I want to mark up my surgical site with the surgeon present."

Hospitals these days often hand patients a pen and ask them to mark where they're going to have surgery. Corina says you should do it in front of the surgeon who will be with you in the operating room, and not just in front of the person who hands you the pen.

"If you mark it and the surgeon doesn't know about the marking, what's the point of marking it?" Corina asks.

5. Be impolite.

"If the nurse comes in and says, 'Are you Mary Jones?' and you're really Miriam Jones, you might just nod your head and say yes because you're too polite to correct her," Foster says. "Don't be polite."

WSJ Criticizes Decision on 9/11 Terrorism Trial

[The Wall Street Journal](#) describes Attorney General Eric Holder's decision to move the 9/11 terrorists' trial on war crimes from a military courtroom at Guantanamo Bay to a civilian federal court in NYC "intellectually and morally confused, dangerous and political to a fault." Read [more](#).

School Shootings: The Worst Case for Gun Control

Criminologist Gary Kleck has an article in *American Behavioral Scientist* titled "Mass Shootings in Schools: The Worst Possible Case for Gun Control." He states that "The most frequent policy lesson drawn following the Columbine school shootings was the need for more gun controls. Review of the details of both Columbine and other contemporary school shootings indicates, however, that the specific gun control measures proposed in their aftermath were largely irrelevant and almost certainly could not have prevented the incidents or reduced their death tolls." Get the article [here](#).



"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

--Justice Louis Brandeis

'Gun Control' on Military Bases Didn't Stop Ft. Hood Killer

A Clinton Administration revision to Department of Defense Directive 5210.56 - [Army Regulation 190-14](#), dated 12 March 1993 - permits the Secretary of the Army to authorize military personnel to carry firearms "on a case by case basis" for personal protection within the continental United States, but forbids military personnel to carry their own personal firearms. The law requires "a credible and specific threat" before firearms may be issued for military personnel to protect themselves.

The rules obviously didn't

Investigation: Chicago Psychiatrist has "Worrisome Record"

Patient Deaths Linked to Over-Medication

The [Chicago Tribune](#) reported on Dr. Michael Reinstein, "one of the most prolific providers of psychiatric care in Chicago-area nursing homes and mental health facilities, even as he is trailed by lawsuits and complaints." An investigation "by ProPublica and the Tribune found that Reinstein has compiled a worrisome record, providing assembly-line care with a highly risky drug." His "unusually heavy reliance on the drug clozapine -- a potent psychotropic medication that carries five 'black box' warnings -- has been linked to at least three deaths." Records "also show he is getting government reimbursement for seeing an improbably large number of patients." It was also [reported](#) that AstraZeneca paid him "\$490,000 over a decade to travel the nation promoting its best-selling antipsychotic drug, Seroquel. In return, Reinstein provided the company a vast customer base: thousands of mentally ill residents in Chicago-area nursing homes."

Power Windows Endanger Kids

In the "Wheels" blog at the [New York Times](#), Christopher Jensen wrote, "A consumer group says the National Highway Traffic Safety Administration is greatly underestimating the number of people - including children - injured or killed by power windows." [KidsAndCars.org](#) of Leawood, KS, "wants the federal agency to require automakers to equip all power windows with an auto-reverse feature, so that a window would automatically stop and open if it encountered an obstruction while closing."

CPSC Records Reveal iPod Fire Incidents

[KIRO-TV](#) Seattle, WA reported on its website: "It took more than 7-months for KIRO 7 Consumer Investigator Amy Clancy to get her hands on documents concerning Apple's iPods from the Consumer Product Safety Commission because Apple's lawyers filed exemption after exemption. In the end, the CPSC released more than 800 pages which reveal, for the very first time, a comprehensive look that shows, on a number of occasions, iPods have suddenly burst into flames, started to smoke, and even burned their owners." Of all the people interviewed for Clancy's report, "including three consumer safety experts, all of them agree that the public should at least be aware of this potential problem, no matter how rare the cases might be."

Maclaren Knew of Stroller Defect for "At Least 5 Years"



The [New York Post](#) reported, "Maclaren knew for at least five years that its strollers could lop off a child's finger, but did nothing about the dangerous defect until federal regulators all but forced it to, The Post has learned." Despite recently issuing a recall, Maclaren "failed to notify the Consumer Products Safety Commission when it first became aware of even a 'potential danger,'" and could "face a fine of \$1 million or more, sources said." Robert Moro, an engineer and former compliance officer with the CPSC, "testified in 2007 that 'this stroller contains a substantial design defect when compared to other types of designs of strollers intended to be used by children.' The way the stroller was designed and manufactured in China violated federal guidelines intended to prevent a gruesome 'scissoring effect,' Moro said."

New Law Bans Genetic Discrimination

The [Los Angeles Times](#) reported that the Genetic Information Nondiscrimination Act, which has been called "the most sweeping federal anti-discrimination law in nearly 20 years," went into effect last month. The law prohibits employers "from hiring, firing or determining promotions based on genetic makeup," and also forbids health insurers from using genetics as

stop the Ft. Hood killer, and probably prevented victims from defending themselves. News reports indicated the murderous rampage continued until an armed responder shot the suspect, suggesting that the carnage could have ended sooner had firearms been readily available to those who needed them.



Recall Central

To read about recent recalls and product safety news from the U.S. Consumer Product Safety Commission, click [here](#).

Get the latest recall information from the National Highway Traffic Safety Administration [here](#).

The Dept. of Agriculture's Food Safety and Inspection Service regulate meat, poultry products and processed eggs. Check their recalls [here](#).

Click [here](#) for Food and Drug Administration recalls, market withdrawals and safety alerts.

For updates on the peanut products recall click [here](#).



Fewer New Vehicles Get Top IIHS Safety Rating



The [Wall Street Journal](#) reported that the Insurance Institute for Highway Safety has given only [27](#) 2010-model vehicles its highest safety rating, compared with 94 in 2009. The decrease relates to a new roof-strength requirement.

RI Bans Texting by Drivers

a basis for denying coverage or setting insurance rates. The [New York Times](#) calls the law "an important step in protecting people who have inherited a predisposition to disease," which "removes a significant obstacle to genetic testing."



Last month, Rhode Island joined 18 other states in banning text messaging by all drivers. For details on cellphone and texting bans in all states, click [here](#).

NFL to Change Policy on Concussions



Former Chiefs QB Trent Green lies motionless after a tackle in 2006 that left him with a concussion. He missed eight weeks.

Sources with knowledge of the plan said the NFL "will soon require teams to receive advice from independent neurologists while treating players with brain injuries." Read [more](#).

The Hartford Loses Class Action

A Stamford jury returned a \$15 million verdict last month in a class action brought by auto body shops against The Hartford Insurance Co.. The insurer "was accused of shutting out independent appraisers and violating unfair trade practice laws." Read [more](#).

Freedom Isn't Free

Remember the sacrifice of those who earned it...



George Washington's Christmas Eve Crossing of the Delaware River

...and still fight for it.

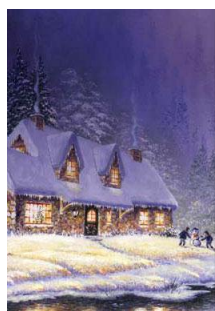


Troops Spinal Injuries Increase

USA Today says "Afghan insurgents are using roadside bombs powerful enough to throw the military's new 14-ton, blast-resistant vehicles into the air, increasing broken-back injuries among U.S. troops." Read [more](#).



About Our Firm



At [The Law Firm of Stephen M. Reck](#), justice is our mission. Our firm is well known and well respected for its ability to handle personal injury, wrongful death, and professional malpractice cases in Connecticut and Rhode Island. Call today or visit us on the web at www.stephenreck.com.

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