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Texas Law Alert

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Day Care Can Be a Dangerous Place

It is an unfortunate fact that those most vulnerable and least able to protect themselves are often the ones at the highest risk for abuse or neglect. Elderly persons confined to nursing homes, the mentally ill and the retarded, and the very ill are

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often targets for abuse or the victims of neglect because they are least able to protect themselves. To this list, we can add one more group: children in day care. While the vast majority of day-care facilities and day-care providers are trustworthy and responsible, cases of abuse or neglect, while rare, do occur.

Preventive Measures

The good news is that such abuse or neglect is usually prevent-

able. Before enrolling a child in day care, be sure to visit the facility. It may be a good idea to drop by without an appointment, so you can see how the center operates when it is not expecting outside visitors. Make sure parents are welcome in all areas of the facility and that it does not have any "no-go" areas.

Ask whether criminal background checks are performed on all of its employees and volunteers, and ask whether other, noncriminal issues such as drug abuse or emotional problems are screened for.

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Warning Signs of Day-Care Abuse

- Unexplained bruises or other injuries, especially if recurring.
- Frequent crying before the child is taken to day care.
- Unusual emotional behavior, ranging from complete emotional withdrawal to being overly "clingy" or extremely fearful.
- Bleeding or bruising around the genitals or the child's asking to wear additional layers of unnecessary clothing to day care.

Note that Texas law requires anyone who suspects that a child is being abused to report the suspected abuse to the proper authorities. If the report has been made in good faith, the person making the report will not be liable if it turns out to be false. The Texas Department of Family and Protective Services' Abuse Hotline to report suspected cases of abuse is 1-800-252-5400.

Day-Care Abuse

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Ask how discipline is handled at the day-care facility—when children may be disciplined, by whom, and how. Make sure that the children being cared for appear to be relaxed, happy, and engaged in constructive activities such as learning or play.

You may also want to take steps to guard your child against dangers that could occur outside the facility itself. If the children are taken on field trips, check to see whether the transportation is safe and find out how many adults typically accompany the children to ensure that everyone returns unharmed.

Find out what the day-care center's policies are about having children picked up at the end of the day and who will be allowed to claim your child. It is a good idea to identify, in writing, who is allowed to take your child from the facility. Find out what will be done if your child becomes seriously ill while at the day-care facility, and what steps will be taken if the facility cannot get in touch with you immediately.

Check for Licensing

Check to see that the facility is listed with or licensed by the Texas Department of Family and Protective Services (DFPS). Depending on its size, a day-care center must either be listed with, registered with, or licensed by the DFPS. Although some smaller facilities may not be subject to DFPS inspections, larger ones must be licensed and are regularly inspected to be sure that state standards are being met. Among other things, these regulations require that an appropriate number of adult day-care providers are available to take care of the children. A list of licensed day-care

providers in your area is available from the DFPS (toll-free 1-800-862-5252 or www.dfps.state.tx.us), as well as information regarding complaints made against a facility.

Avoid Abuse

Additional steps should be taken to ensure that your child is not the victim of intentional abuse (as opposed to neglect) while he or she is at the day-care facility. When you visit, check to see that the bathrooms do not contain areas where children can be isolated, and find out how the facility handles toileting issues. Approximately two-thirds of all cases of child sexual abuse at day-care facilities occur in the bathroom. Also make sure that children are well supervised during naptime. Day-care providers will sometimes leave the room when the children are sleeping, increasing the opportunities for someone to abuse a child.

It is important that any contact between the children and those not working at the facility is strictly supervised. Abuse often is not the work of the day-care teacher but of those not directly involved in caring for the children, such as bus drivers, janitors, and relatives of those who operate the day-care

center. One study suggests that as many as one-third of reported abuse incidents occur in the hands of the day-care provider's family members who do not actually work for the day-care center.

Keep your eyes open for the warning signs of abuse or neglect. If you suspect that your child has been abused or neglected at a day-care facility, it is important to act promptly. If your child is old enough, try talking with him or her to find out what happened, keeping in mind that children are sometimes not entirely reliable sources of information. You might also contact other parents who use the same day-care facility and ask whether they have noticed any of the same signs of abuse or neglect in their children as you have seen in yours. If you still suspect something is wrong, contact the DFPS or, if the matter is very serious and places your child or others in immediate danger, contact the local police.

If the investigation reveals that abuse or neglect has occurred, call our office. We know how important your children are. We will go to work for you to get you everything you deserve under the law AND to prevent the same problem from happening to someone else.

We Prefer You to Refer!

The period of time following an accident is one of confusion and uncertainty. There are many things to take care of. Hiring a good lawyer is one of them.

Many times, people don't know where to go when they need legal help. If you or a loved one has been injured in an accident, call us. We will vigorously represent you and make sure that you are justly compensated for your injuries. That's our job.

Drug Recalls: A Flawed System

FDA Lacks Recall Authority

Questions about drug safety have been in the news a lot recently in connection with the massive recall of millions of tainted bottles of Benadryl, Motrin, and Tylenol. The federal agency charged with the responsibility for ensuring that prescription and nonprescription drugs sold in the United States are safe to use is the Food and Drug Administration (FDA). However, despite being responsible for drug safety, the FDA lacks what to many seems like a very basic power: the ability to *force* a drug company to recall dangerous or tainted drugs.

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Other federal regulatory agencies, such as the Consumer Product Safety Commission and the National Highway Traffic Safety Administration, have the authority to force companies that they regulate to recall dangerous consumer products or automobiles. The FDA does not have this recall authority—all it can do is publicize voluntary recalls by the drug manufacturers.

So why doesn't the FDA have similar powers? The answer is probably the same as the answer to most questions about Washington—someone with money and influence made sure that the law did not give the FDA recall power.

The FDA also lacks a number of other potentially useful powers.

When drug makers announce a recall, they usually do so by “lot number.” Lot numbers are assigned when the drug is made, but there is no fixed definition of what constitutes a “lot,” so it is often impossible to tell how widespread the problem is and how many people are affected.

The FDA cannot force manufacturers to tell the public what stores sold the drugs, often leaving people uncertain whether they are affected. Because the manufacturer decides whether or not to recall a drug, it can try to hide the problem (as Johnson & Johnson did when it tried to secretly buy up affected lots of Tylenol before announcing a recall) or it can delay communicating the decision to recall a drug for

days or even weeks, potentially endangering users.

Finally, there is a related problem—how to publicize the recall. When a drug is sold by prescription, it is often possible for pharmacies to contact their customers and tell them of the recall. However, when the recalled drug is sold over the counter, it is not possible to contact everyone who bought it directly, leaving the mass media as the only way to “spread the word” about the recall. This may mean that some consumers unwittingly will continue to use a recalled and potentially dangerous drug because they did not happen to hear or read about the recall.

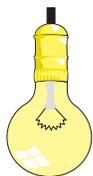
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Looney Marriage Laws

The purpose behind most laws is clear and sensible, but sometimes you have to wonder what legislators were thinking. Here are nine unusual laws relating to marriage:

1. In Montana, it is legal for both the groom and the bride to be represented at their wedding by a proxy.
2. New Orleans forbids palm readers and fortune tellers from officiating at a wedding.
3. In Delaware, a marriage can be annulled if it was done “because of a jest or dare.”
4. In Hartford, Connecticut, it is illegal for a married couple to kiss in public on Sundays.
5. In Salem, Massachusetts, it is illegal for a married couple to sleep nude in a rented room (although there does not seem to be a penalty for being nude if the couple is not sleeping).
6. Truro, Massachusetts, requires a prospective groom to “prove himself manly” by hunting and killing birds.
7. In Wichita, Kansas, a man's mistreatment of his mother-in-law is grounds for divorce.
8. Kentucky makes it illegal to remarry the same man four times.
9. Finally, South Carolina forbids a man over the age of 16 from proposing marriage if he doesn't mean it.

“Off” May Not Mean Off



When we turn off an appliance or a piece of electronic equipment, we expect it to stop using electricity. However, this often is not the case. Up to 75% of the electricity used to power home appliances is used when the appliance is off! This is because many items powered by electricity do not actually shut off, but rather go into a “standby” mode that continues to use electricity as long as the plug is in the socket. Sometimes, such usage is practical, such as to power a clock or a timer, a remote control sensor or an LED, but often the power is just wasted.

You can reduce your electric bill by refusing to feed these “energy vampires.” The easiest way to make sure that an appliance or a

piece of equipment is really off is to unplug it when not in use. In order to make this easier, you may elect to plug a number of related electronic items into a single power strip, and then turn the strip off when the items are not in use. Some stores even sell smart power strips, which cut off the flow of electricity once the electronic item has been shut off.

Another strategy is to look for Energy Star-qualified products. Energy Star is a rating system, and only those appliances and electronics that are energy efficient receive this rating. Energy Star products tend to consume less power when in standby mode than their non-Energy Star counterparts do.

Small changes in your energy usage can add up to big savings on your electric bill every month.

Drug Recalls

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What Can You Do?

If the FDA is powerless, what can you do as a consumer? Most importantly, use your eyes, ears, and nose. Report to your pharmacist any pills that seem “off,” and keep your ears open for publicity about recall notices. It can also help if you buy all of your drugs from a single pharmacy, a practice that will make it easier to get notices of recalls and know whom to talk to if you have any questions or concerns.

If you have e-mail, you can sign up at www.recalls.gov to receive e-mail alerts about recalled products from all federal safety agencies. Finally, you can contact your representatives in Congress to support changes to federal law that will give the FDA greater powers to recall dangerous drugs.

Actual resolution of legal issues depends upon many factors, including variations of facts and Texas law. 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.