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# Legal Matters®

Consumer Safety  
spring 2017

## Make sure to be on the lookout for these dangerous products

**W**hether we're talking about surgical devices, medications or everyday consumer products we buy in the store, we expect two things out of whatever's put on the market: that they'll work as they're supposed to work and that they'll be safe.

Sometimes, however, products can contain defects, and defective products can be very dangerous. Some defective products can hurt us and others can even kill us. That's why it's important to stay informed about safety issues in common products and pay attention to those that have been recalled.

Here are some potentially hazardous products that have been in the news recently:

### ► Sorin Stockert 3T Heater-Cooler System

This is a device used during open-heart surgery to regulate the patient's body temperature, raising or lowering it as necessary. It's an important device for doctors, but in the last couple of years there have been rumblings that it may be causing complications.

In 2015, the federal Food and Drug Administration (FDA) advised the public that some of these devices could be linked to



“nontuberculous mycobacterial (NTM)” infections. A year later, the FDA issued another warning that specific patients who'd undergone open-heart surgery using this device had come down with NTM infections. These are lung infections characterized by cough, fatigue

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# Banks can be held accountable for injuries on ‘zombie properties’

“Zombie properties” are among the most jarring visual reminders of the financial meltdown of the late-2000s and the ensuing recession. These are homes that residents abandoned after receiving foreclosure



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notices, and they often sit vacant and uncared for until the foreclosure process is complete.

In many states the foreclosure process can take months or even years, and in the meantime these homes deteriorate

and can become fire hazards, magnets for criminal activity or simply accidents waiting to happen.

In most states, the owners of a piece of property — even if they’re paying a mortgage on it — must maintain it. Depending on the circumstances, they may be held accountable if someone gets hurt due to a condition on the property.

But what happens if someone is hurt as a result of a hazard posed by a “zombie property?”

In New York State, at least, it appears the bank that’s foreclosing on the property may be responsible. That’s because the New York state legislature recently passed a law giving banks the duty to maintain residential properties abandoned by their owners. Under this law, banks have that duty even if they haven’t yet foreclosed.

The law specifically requires a bank to inspect a home within a certain time after the owner has stopped making mortgage payments and conduct basic maintenance if it’s determined that the property is abandoned.

If the bank doesn’t comply, state and local authorities can take action. However, because the bank now has a legal obligation to maintain the property, someone who’s hurt on the property may be able to seek compensation.

This is a very new law, so no cases have been decided under it yet. It also only applies in New York. But other states may recognize the ability of injury victims to hold banks accountable in similar situations. If you’re wondering what the situation could be where you live, give your lawyer a call.

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## Mom who accidentally overdosed daughter can sue CVS

A woman who accidentally gave her daughter an overdose of prescription pain medication can bring an emotional distress claim against the pharmacy that allegedly mislabeled the bottle, a federal judge in Virginia has ruled.

Sara Holley says she brought her 5-year-old daughter home from having her tonsils out and followed instructions for giving her Roxicet, a mixture of oxycodone and acetaminophen, to ease her discomfort.

According to Holley, the doctor prescribed a 2.5 ml dose of the medication every 4 to 6 hours as needed. But somehow, despite state and federal safeguards designed to avoid the mislabeling of prescriptions, CVS allegedly mislabeled this one and directed Holley to give her daughter 2.5 teaspoons instead of milliliters. Holley followed those instructions, administering potentially lethal doses.

Though her daughter was ultimately OK, Holley claims she suffered ongoing sleeplessness, anxiety

and depression from the incident itself, as well as from emergency room doctors’ shocked reactions and the “cool and accusatory” attitude expressed by CVS corporate management when she brought the issue to their attention.

CVS asked the court to throw out Holley’s claim, pointing out that she suffered no physical injury. The company argued that to bring a claim for emotional distress Holley had to show that the pharmacy’s conduct was “malicious, outrageous or offensive,” which it said she failed to do.

But the judge said that the mother had alleged a “complete and utter breakdown” of CVS’s multilevel safeguards, including giving out medication without a measuring device, failing to double-count the prescription and failing to provide medication counseling. While none of these alleged missteps on their own met the standard for outrageousness, taken as a whole the entire sequence may have. That means the case can go to trial, the judge concluded.

## Be on the lookout for these dangerous products

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and weight loss, and while fatalities are very rare, it can seriously impact a patient's quality of life. NTM infections can also be more dangerous in older adults or those with other health issues, which includes a lot of people who would require open-heart surgery.

If you are a heart patient who needs surgery, it's critical that you talk to your doctor about the potential use of this device and the risks it poses. If you or a loved one has contracted an NTM infection and you think it's connected to the use of such a device during surgery, talk to an attorney where you live to see what rights you might have.

### ► Safety 1st "Step and Go" Travel Systems Stroller

Safety 1st is a popular maker of baby gear, including car seats and strollers. Its "Step and Go" travel system — a stroller/infant carrier combo — is very popular because of its versatility and ease of use. However, the federal Consumer Product Safety Commission recently reported that a manufacturing defect could render the product unsafe.

The Step and Go features a built-in folding tray for the child when he or she is sitting in the stroller. The tray also supports the detachable infant carrier/car seat when parents are using the stroller for a much younger child. But due to a manufacturing defect, this tray can become disengaged when supporting the carrier, which could potentially cause injuries if the carrier falls out with a baby in it.

Fortunately there have only been about 3 dozen

reports of this happening and no child has been hurt yet. But more than 20,000 of the systems were sold with this defect between May 2015 and June 2016, and the manufacturer has voluntarily recalled them. If you believe your system might be affected, be sure to get in touch with Safety 1st to receive a repair kit.

### ► Homeopathic teething products



Belladonna, otherwise known as "nightshade," is a plant that has been used for centuries as a pain reliever and muscle relaxer. More recently, small doses of belladonna have been used in homeopathic (natural) teething remedies for babies and toddlers. The FDA has reported more than

400 instances of children suffering seizures, breathing difficulty, lethargy and sleepiness, constipation, difficulty urinating and agitation after using homeopathic teething gels and tablets.

Major drugstore chains like Walgreens and CVS have pulled these products from their shelves. But if you see the products elsewhere, you may want to avoid them and stick to massaging your baby's gums or giving him or her a teething ring or a wet washcloth from the freezer.

## Teen accident victim can recover for harm that won't occur for years

Michigan teenager Iyana Brown injured her back in an auto accident in early 2014 and had to receive an "L1-L3" spinal fusion as a result.

Despite the accident and the procedure, Brown was able to start basketball training within three months and ended up having her best season ever. She also set personal records in the 100-meter dash and long jump as a track athlete.

But even though Brown had clearly healed, she was still able to hold the driver that caused the accident accountable in court for significant damages for harm that hasn't occurred yet but which will be traceable directly back to the accident.

As Brown's medical experts proved in court, the procedure that seemed to heal her so quickly will most likely cause severe degeneration of her spine later in life. This will lead to intense pain and the need for physical therapy, pain prescriptions and even more surgery by her mid-thirties.

A case like this provides an important lesson: If you've been hurt in an accident that was someone else's fault, talk to an attorney, because just because you feel better today doesn't mean you're going to be 100 percent OK in the long run. If that's the case, you may have the right to hold whoever is at fault accountable.

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## Act early if you think you've experienced medical malpractice

Most of us have a lot of respect for our doctors and trust them unconditionally. That's why when we suffer a bad medical outcome, we're reluctant to consider the possibility that our physician made a mistake. But if

you think you or a loved one has suffered from medical malpractice it's important to talk to a lawyer right away, because if you wait too long the statute of limitations will have run and you'll lose your right to hold the provider responsible.

In fact, you should call an attorney even if you think it's too late, because it might not be.

In a recent case from Massachusetts, a boy had tumor in his leg that a doctor tried to remove through a "radio frequency ablation" procedure. The procedure caused severe burning that required doctors to amputate the boy's leg below the knee.

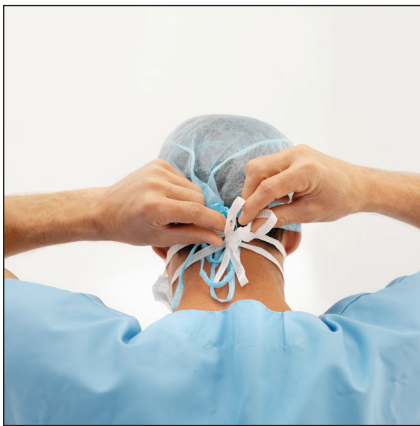
The parents ultimately tried to take the doctor to court, but more than three years had gone by since the procedure took place. (The doctor's medical group was

still treating their son all that time.) Massachusetts has a three-year statute of limitations for medical malpractice claims, so a trial court judge dismissed the case.

The Massachusetts Appeals Court reversed the ruling on appeal, adopting a "continuing treatment doctrine." Under this doctrine, the clock does not start on the statute of limitations while the doctor is still treating the patient for the same condition or a related one. That doesn't happen until either the treatment ends or the patient realizes that the physician's substandard care caused the injury.

Massachusetts' highest court later decided the boy's parents still couldn't bring their case because they should have known at an earlier time that the doctor's conduct had hurt their son. Also, it said that even though the doctor's group continued to treat the boy for more than three years after the procedure, the doctor himself did not.

Still, this decision shows that statutes of limitation don't always work the way we think they do and it's never too late to talk to a lawyer to find out what rights you might have.



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