



# THE LEGAL INSIDER

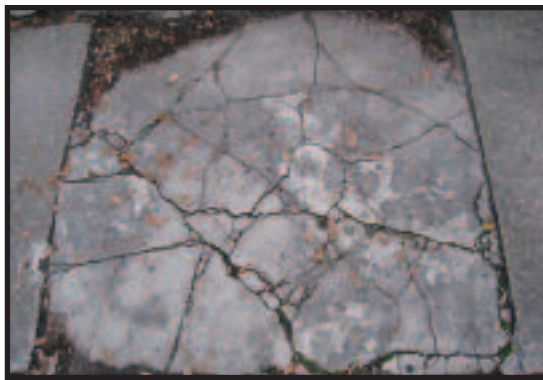
Serving the Delaware Valley for Over 35 Years

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## SIDEWALK LIABILITY

Pennsylvania law provides that property owners must keep their sidewalks in a "reasonably safe condition for travel by the public." Whether a sidewalk is properly maintained and is safe is determined on a case-by-case basis, with an examination of the surrounding circumstances of each case.



In a recent case, a woman won damages against a small insurance agency after she fell, spraining her ankle, tearing her meniscus, and suffering bruises. Following a light snow, the woman had been on her way into the building to speak to one of the agency's employees about a personal matter when she fell on an uneven portion of the sidewalk.

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## AUTOMOBILE INSURANCE UPDATE

When is your automobile insurance company entitled to raise your premium? Can the company completely cancel your coverage?



Pennsylvania law provides consumers with some firm protections against premium increases and policy cancellations. Your premium can be increased by the company if you or someone else in your household insured under the policy is involved in an accident and is at fault for the accident or is convicted of moving traffic violations. However, your insurance company may not increase your premium just because a claim is made against someone insured under your policy.

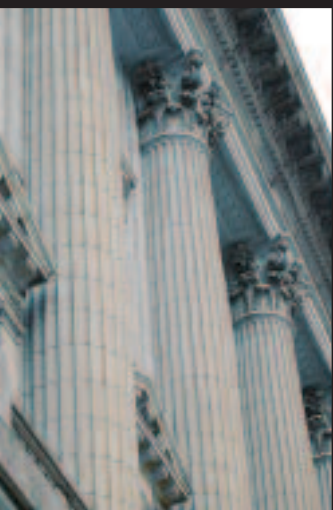
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## SIGNS OF NURSING HOME ABUSE OR NEGLECT

What are the signs of nursing home abuse or neglect to look out for? Although a number of things might indicate that there are problems, common signs of possible trouble include:

- bedsores;
- soiled bed linen or the smell of feces or urine;
- unexplained bruises or cuts;
- use of physical or chemical restraints;
- weight loss;
- dehydration; and
- unexplained fear or anxiety.

Trust your feelings. People can often sense trouble before they can identify a specific problem. *Don't ignore your instincts.*



## BE VERY CAREFUL WHAT YOU PUT ON SOCIAL MEDIA SITES LIKE FACEBOOK - - IT MAY BE USED AGAINST YOU!

More and more frequently, defense attorneys and insurance companies are asking Courts in Pennsylvania to allow them complete access to an injured plaintiff's Facebook or other social media accounts. Some Courts have required injured parties in negligence cases to provide their personal login information to opposing attorneys, opening up even private messages, photos and conversations with "friends".

Our Courts have been split on when and whether to allow discovery of private postings on sites such as Facebook; however, the trend in Pennsylvania has been to require login information if anything is posted publicly (including photographs) which the



Court deems "relevant" to the case. For example, one court recently held that, because there were "public" photos on Facebook showing the plaintiff doing activities which, the defense claimed, showed that the plaintiff was not as injured as she claimed, the plaintiff had to provide all login information for her Facebook account to the opposing attorney.

Therefore, if you are involved with an injury claim you should be very careful about what is posted (publicly or privately) on any social networking site, because any postings can come back to haunt you. In fact, it may not be a bad idea to shut down the site until the case is concluded.

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## WELCOME TO OUR NEWEST ATTORNEY!



Renata T. Pabisz recently became the newest associate/attorney at Dorian, Goldstein, Wisniewski & Orchinik, P.C. Renata graduated from the Widener University School of Law in 2011, after having graduated from the University of Marie Curie-Sklodowska School of Law in Rzeszow, Poland with a Master of Laws in 1999. While attending Widener, Ms. Pabisz served as a judicial extern in the Philadelphia Court of Common Pleas, Orphans' Court Division, working for the Honorable Joseph D. O'Keefe. Renata has been with the firm since 2008 and, during that

time, she gained valuable experience in various fields of the law. She concentrates her practice in the areas of Estates, Estate Probate and Administration, Wills, Elder Law and Immigration. Ms. Pabisz is admitted to practice in Pennsylvania and New Jersey. She is a member of the Philadelphia and Bucks County Bar Associations, the American Immigration Lawyers Association (AILA) and the Jagiellonian Law Society. We are very happy that she has chosen to join our team of experienced attorneys.

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### Sidewalk Liability Continued from Page 1

On appeal from a jury's award of the damages to the injured woman, the agency claimed that the defect in the sidewalk was "trivial" and that the injured woman was thoroughly familiar with the condition of the sidewalk because she lived in the neighborhood and regularly walked past the agency.

The appeals court recognized that the law imposes liability on property owners to maintain their sidewalks but does not create liability for the "elevations, depressions or irregularities" that are trivial. No "definite or mathematical rules" define what is trivial; it is decided on the facts of each case. Finding that a defect of only two inches can be unreasonably dangerous, the appeals court upheld the jury's verdict. The court also noted that the pedestrian's knowledge

of an area of a sidewalk does not excuse an owner's failure to maintain it. Pedestrians are not responsible for "keeping their vision continually fixed on the ground" in front of them, although they are responsible for using reasonable care. A pedestrian who is familiar with a bad stretch of sidewalk can be found contributorily negligent by a jury, barring some or all of the pedestrian's entitlement to damages.

If you own a sidewalk, Pennsylvania law requires that you keep it safe for pedestrian traffic. Repair defects promptly, and post clear warning signs of dangerous conditions pending the completion of repairs. When walking on a sidewalk, assume that you have a reasonable obligation to look out for your own safety. Property owners are not strictly liable to pedestrians; instead, they are responsible only for conditions that are carelessly dangerous.

Your insurance company can add an extra charge, called a surcharge, onto your existing premium for a chargeable accident or moving traffic violation. Your insurance company has a "surcharge disclosure plan" that it must make available to you when you first purchase the policy. If you want to know more about the potential consequences for accidents, ask your insurer of a copy of its plan.

When an insurance company increases a premium due to the insurer's at-fault accidents or moving violation convictions, the insurance company must provide the insured with a detailed summary of how the premium increase was calculated and how long it will be imposed.

If you are in an accident but are not at fault, the insurance company cannot use the accident as the sole reason to cancel or refuse to renew your policy. While the law permits an insurance company some leeway in deciding whether you were at fault, there are certain kinds of accidents which give rise to the presumption that the insured was not at fault. Those include (1) accidents where your vehicle is parked when struck; (2) accidents where you are struck from behind and are not cited for a motor vehicle violation; (3) accidents where the other driver is convicted of a moving violation and you are not; (4) accidents in which you are struck by a hit-and-run vehicle; (5) accidents in which you recover monetary compensation from the other driver; (6) and accidents in which you hit an animal. You can also avoid cancellation if you were involved in an accident while responding to an emergency and you are a paid or volunteer member of a police or first responder squad.

If your accident does not fall within one of the exclusions listed above, your insurance company has a fairly broad right to cancel your coverage if you are involved in an accident, especially if you are involved in two or more accidents.

Your insurance company may always cancel your policy if you breach the policy by failing to pay your premiums, or if your driver's license or vehicle registration is suspended or revoked.

Your insurance company may also cancel your policy if the company discovers that you made false statements about important facts. Insureds are expected to complete the policy application and any subsequent questionnaires truthfully and accurately. Failing to disclose a speeding ticket or physical disability in response to a question on an application or an inquiry from the company can lead to cancellation. An insured's innocent omission on an application or questionnaire is not enough to support policy cancellation. The company must prove that the insured knew that he or she was acting dishonestly and also must prove that the misrepresentation relates to an issue the company regularly considers when deciding whether to issue a policy of insurance. The law specifically prohibits insurance companies from canceling your insurance based on your age, your residence in a certain community, your race, sex, occupation, religion or marital status. If a husband and wife are insured on the same policy, facts which justify canceling as to one spouse do not entitle the company to cancel the policy. Instead, the company may cancel coverage only as to one spouse.

Some protections against cancellation by the company do not apply if you are already in an insurance high-risk pool, if you have more than four cars on your policy, or if you have certain kinds of commercial insurance for service stations or parking garages. Some extra protections exist if you have been insured for more than three years without problems or if the accident is your very first accident.

The insurance laws and administrative regulations are complex, and they provide procedures by which premium increases, cancellations, and refusals to renew can be challenged by insureds. Before considering any challenge, it is wise for insureds to secure as much information as possible from their insurance company in support of the company's decision.

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## **FRATERNITY HAZING**

A University of Pittsburgh student won the right to sue the fraternity's chapter advisor after the student suffered renal failure, seizures, and hypertension requiring three weeks of hospitalization and kidney dialysis due to injuries caused by protracted "paddling" during his fraternity initiation.

The Pennsylvania Superior Court held that while a national fraternity and its regional offices weren't liable to the student, the individual assigned by the national fraternity as the chapter advisor was responsible to see that the national fraternity's policies against hazing were enforced locally. Given the tragic history of death and serious injuries following fraternity initiation, the court found that national fraternities, local chapters, and any individual in fraternity administration are all potentially liable to injured students.

student must be able to show actual knowledge or actual failure to act on the part of each defendant. Because the injured student in the case before the court proved that the local advisor had not exercised sufficient supervision and control over the local chapter, the court permitted the student's claims against the local advisor to go to trial. All claims raised by the student against the national chapter and regional administrator were dismissed because the student could not prove any knowledge or failure to act on the part of those defendants.

Hazing and abusive initiation practices aren't limited to fraternities - they are encountered by students in sports, at camps, and in high schools. Groups, schools, coaches, administrators, and fraternities not only are legally required to issue policies banning hazing but are also responsible to take affirmative steps to prevent hazing. Individuals and groups found to be aware of hazing can be held legally responsible to those injured by this illegal practice.

However, to prevail on a claim against all defendants, an injured



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Unlike some law firms, we do not advertise on TV. Slick TV commercials by lawyers do not provide much information to consumers, and many of those TV ads are for lawyers and law firms not even based in Pennsylvania.

Many of our clients come to us because of a recommendation by past clients or another attorney. We are very grateful to those who have recommended our legal services. We certainly appreciate their confidence and trust.

If you or someone you know has been injured or needs legal help, please call us.

For detailed information about our law firm and our attorney's please go to our website at [www.doriangoldstein.com](http://www.doriangoldstein.com).



## **DORIAN, GOLDSTEIN, WISNIEWSKI, & ORCHINIK, P.C.**

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