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OSHA in Healthcare: Out of Sight and Out of Mind?

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At a Glance

There are millions of employees across thousands of sites; they have the highest illness and injury rates in the nation; there are millions of healthcare-associated infections and fatalities each year; and there are few inspections and low penalties. Healthcare might feel exempt, but it looks like we finally got OSHA's attention. A formal Request for Information and Regional and National Emphasis Programs might be just the start. Hint: "A weak culture of worker safety in this sector…"

Introduction

Healthcare workers (HCWs) represented approximately 11 percent of the U.S. workforce in 2010, including 13.7 million professionals, technicians, support workers, and others not directly providing patient care (i.e., maintenance and laundry), with approximately 4.6 million of those in hospitals (BLS 2011). In the May 6, 2010, *Federal Register*, OSHA published a Request for Information (RFI) to collect information from the healthcare industry on "occupational exposure to infectious agents in settings where healthcare is provided." This includes hospitals, outpatient clinics, clinics in schools and correctional facilities and "healthcare-related" settings, ranging from laboratories that handle potentially infectious materials to medical examiners' offices to mortuaries. OSHA is specifically interested in current infection control strategies and practices, and will use the information to "determine what action, if any, the Agency may take to further limit the spread of occupationally-acquired infectious diseases in these settings" (DOL 2010). The deadline for comments was August 4, 2010, and the responses, which are still under review, totaled 502 (USA.gov 2011).

OSHA Inspection Priorities

With only one inspector for every 66,258 covered employees (AFL-CIO 2010), in 7 million regulated workplaces in the U.S., DC, Puerto Rico and the Virgin Islands, OSHA prioritizes inspections by: (1) imminent danger situations, (2) fatalities and catastrophes, (3) complaints and referrals, (4) "programmed" or planned investigations of high-hazard industries or those with high injury and illness rates and follow-ups (DOL 2002). They also develop National Emphasis Programs such as for combustible dust (following a series of grain and sugar dust explosions) and microwave popcorn manufacturing facilities (exposure to butter-flavoring chemicals) to address

newly recognized hazards (DOL n.d.).

OSHA "Myths" Frequently Encountered Within Healthcare

Healthcare is Exempt from OSHA Coverage

"OSHA uses the term 'general industry' to refer to all industries not included in agriculture, construction or maritime. General industries are regulated by OSHA's general industry standards, directives, and standard interpretations" (DOL 2011).

OSHA Does Not Inspect Healthcare Facilities

In FY2011, federal OSHA conducted 40,453 inspections (DOL 2012), of which 138 (0.34%) were hospitals (DOL 2012), while state OSHA programs conducted 56,733 inspections (DOL 2012) of which 233 (0.41%) were hospitals (DOL 2012). Gross annual numbers of inspections by state and federal OSHA have remained reasonably flat (see Exhibit 1) (DOL 2012).

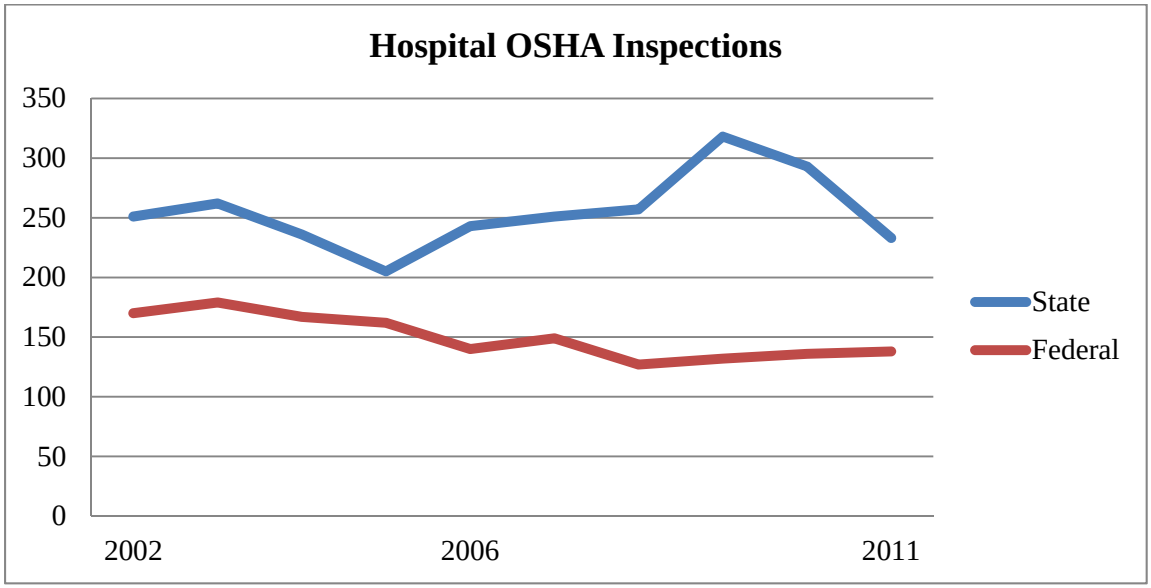

Exhibit 1. This chart summarizes the numbers of annual federal and state OSHA inspections of hospitals (SIC 8062) for FY2002–2011. (*Source:* DOL 2012)

Even with no prioritization for high incidence rates or complaints, at 3.6% of the workforce, these 371 inspections represent far less than a prorated "fair share" of the 97,186 performed, which would have been 3,499 hospital inspections—an 843% increase.

OSHA Does Not Cite Healthcare Facilities

Federal OSHA issued 436 citations to hospitals in FY2011. Top findings were bloodborne pathogens, hazard communication, electrical and forms (DOL 2012). OSHA data also revealed that, while states collectively conduct more hospital inspections than federal OSHA, the efforts are not evenly distributed. Four states did no inspections of hospitals that year. Five states inspected but issued no citations, while the remaining 16 both inspected and cited (see Table 1) (DOL 2012).

AK	3/18	IA	3/3	MI	11/15	NC	8/0	UT	3/0
AZ	4/4	IL*	1/9	MN	9/4	NY*	10/10	VA	6/4
CA	69/41	IN	2/0	NJ*	0/0	OR	12/10	VT	1/0
CT*	1/0	KY	2/6	NM	2/1	SC	0/0	WA	11/12
HI	0/0	MD	2/9	NV	13/6	TN	36/98	WY	0/0

Table 1. This table summarizes FY2011 state OSHA inspections/citations of hospitals by state. *(*Note: These state plans cover only public sector employees.)* (*Source:* DOL 2012)

Trends in state citations vary by state. For example, in Maryland, the top findings were formaldehyde, no chemical information list, hazard communication and annual summaries (DOL 2012), while Tennessee led with bloodborne pathogens, documentation of sharps injuries, 300 log maintenance, and woodworking machinery requirements (DOL 2012).

Our Incidence Rates Are Low

From OSHA, "General medical and surgical hospitals (NAICS 6221) reported more injuries and illnesses than any other industry in 2007—more than 253,500 cases" (BLS 2008). In 2010, the private healthcare sector as a whole experienced 1.5 times (×) the injury and illness rate for private industry, with hospitals at 2× and nursing homes at 2.4×. Rates for state facilities were even higher, at 3.4× and 4.3× respectively (see Exhibit 2) (BLS 2011). Hospitals again held the number one position in injury and illness cases with 258,200 reported (BLS 2011).

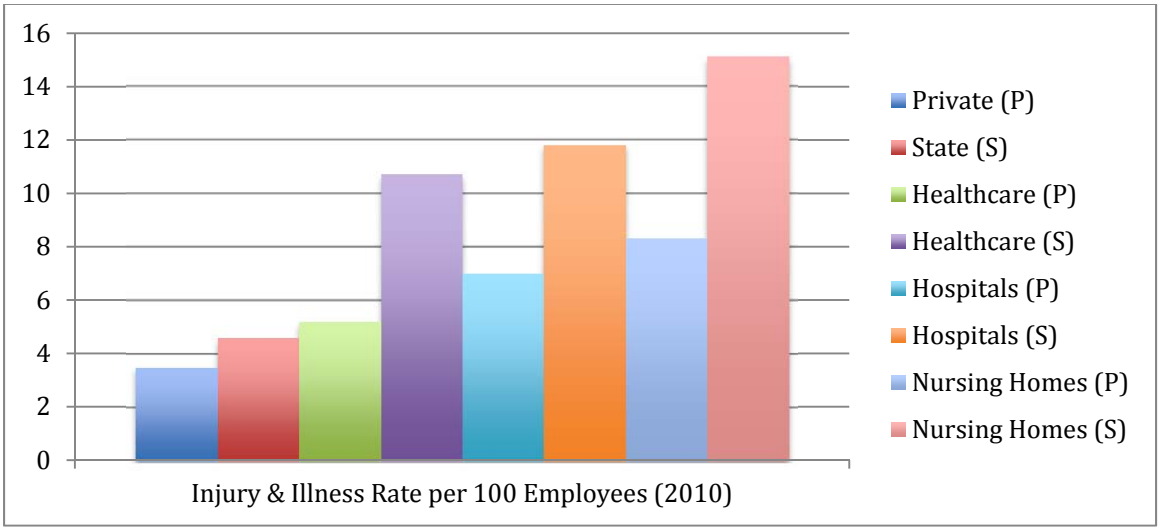

Exhibit 2. This chart summarizes 2010 injury and illness rates per 100 employees for the indicated sectors. (*Source:* DOL 2012)

We Have Few Complaints

From FY2007 through most of FY2010, for both federal and state OSHA, approximately half of inspections done at hospitals each year were driven by complaints (DOL 2011). In FY2011, fed-OSHA identified 55% of their hospital inspections as coming from complaints (DOL 2012), while for states collectively the value was 48% (DOL 2012). If unfamiliar with OSHA whistleblower protections (DOL 2007), it should be noted that OSHA is unforgiving of retaliation for safety complaints.

We Have No High-Profile Issues

In the 2010 RFI, OSHA describes healthcare as having "a weak culture of worker safety" related to a lack of data on the prevalence of infections among HCWs and "a lack of effort by healthcare employers" in tracking or documenting them. OSHA thinks too many HCWs are getting sick at work, and that voluntary standards are not working, largely due to poor safety programs and lack of regulatory oversight. This might also be an attempt to address healthcare-associated infections (HAIs), "among the leading causes of death in the United States, accounting for an estimated 1.7 million infections and 99,000 associated deaths in 2002," through protecting healthcare employees, since OSHA prominently notes that infectious agents are transmitted between employees and patients (DOL 2010).

For perspective on the relative magnitude of 99,000 annual HAI fatalities, consider these statistics on fatalities that generate many more headlines and much more public reaction:

- 9,406 from AIDS in 2009 (CDC 2012)
- 22,400 from drug overdoses in 2005 (Paulozzi 2008)
- 3,000 from foodborne illness (average) (CDC 2011)
- 10,878 from emphysema in 2009 (CDC 2012)
- 12,996 from murder in 2010 (FBI 2011)
- 34,925 from highway, rail and aviation crashes in 2010 (NTSB 2011)
- 4,547 from workplace injuries in 2010 (BLS 2011)

These sources nominally represent 98,152 fatalities per year. Thus, based on OSHA's estimate, healthcare-associated infections—the things you catch while you're there for something else—***kill more people in the U.S. every year than AIDS, drug overdoses, foodborne illness, emphysema, murder, highway, rail and aviation crashes, and workplace fatalities COMBINED.*** Society annually spends billions on awareness and prevention, security, treatment, safety engineering, research, gun control, regulations, government and private investigations, training, lawsuits and media coverage on these threats, but when is the last time we heard more than passing mention of hospital-associated infections?

OSHA Can Just Use the General Duty Clause for Infection Control Issues

In FY2011, federal OSHA used the General Duty Clause (GDC) 3,314 times (DOL 2012). Only one was for a hospital, a case of workplace violence in New Jersey (DOL 2012). Based on its rare use at hospitals and the magnitude of the issue as framed in the RFI, infection control will almost certainly be addressed by specific regulatory action, not subjective GDC citations.

Joint Commission Covers OSHA Requirements

The most often repeated and perhaps most dangerous myth. The Joint Commission (TJC) standards do reference some OSHA requirements, i.e., MSDSs, proper labels for hazardous materials (TJC 2009), fire protection, exits and life safety (TJC 2009). However, the most common federal OSHA violations in hospitals (bloodborne pathogens, hazard communication,

electrical, forms) are not addressed by TJC, with the exception of the mentioned labeling requirements. Let's be clear on this point: A perfect TJC score and full accreditation with no additional effort guarantees a failed OSHA inspection. We have to understand that TJC is focused on patient safety, not employee safety. OSHA compliance is simply not their job.

We Have Their Attention

Years of non-compliance, chronically high incidence rates, and neglect for employee safety have finally paid off, and we are getting OSHA's attention. As part of an Ergonomic Enforcement Plan (EEP), a 2012 Nursing Home NEP (National Emphasis Plan) will focus on ergonomic hazards related to patient handling, as well as exposures to bloodborne pathogens and TB, and slips, trips and falls. Under the NEP, approximately 1,000 nursing homes with the highest incidence rates will be inspected by specially trained teams. Enforcement for ergonomic hazards will be under the general duty clause (DOL 2011). Through a Data Initiative, the second part of OSHA's EEP, injury and illness data collected from approximately 80,000 establishments will identify those with the highest rates (DOL 2011). Hospitals are certain to make that list since their rates, though well below those of nursing homes, are consistently double the national average for general industry. Considering that incidence rates in healthcare are commonly thought to be under-reported, the already high rates are expected to climb following this enforcement effort.

More than 380,000 sharps-related injuries occur annually in hospital settings, and an estimated 600,000 to 800,000 such injuries occur annually across the healthcare sector. Again, the high rates of injuries and noncompliance drove OSHA action. Region 4 OSHA has a Regional Emphasis Program in effect through September 30, 2012, focused on bloodborne pathogen exposures and sharps/needlestick injuries at Ambulatory Surgical Centers (ASCs), emergency care clinics and primary care medical clinics (DOL 2011). More than half of surgeries in the U.S. are performed in ASC facilities, and in the last 10 years, over 130,000 patients served at ASCs were notified of potential hepatitis and/or HIV exposure due to "unsafe injection practices and lapses in infection control" (ICT 2011).

Penalties

It remains to be seen how many citations will be issued or how much the penalties might be related to these or other emphasis programs aimed at healthcare. Frankly, it probably depends on what it takes to make us "straighten up." Looking at FY2011 the cost per citation works out to only $838 (DOL 2012), not exactly enough to scare a facility into compliance. Before anyone starts thinking that's cheap enough to write off as the cost of doing business, consider the options OSHA has to ramp up the pain. Serious violations (likely to harm or kill and the employer knew or should have known) can go up to $7,000 per violation. Willful violations (knowingly committed) have a minimum of $5,000 and can go up to $70,000. Repeat violations also go up to $70,000. Failure to abate (not correcting the violation on time) is worth up to $7,000 (DOL 1996). And yes, you can get hit with a combination of these (think repeat serious, which easily becomes a willful…). Further, willful or repeat violations may also subject you to criminal or civil action. OSHA has some discretion in assessing penalties, but if it becomes apparent that low penalties are fueling disregard for the program, the easy fix is just to start adding zeros. It is in everyone's best interest not to make them go there.

Conclusion

This is a wakeup call for healthcare. OSHA is using blunt language in characterizing healthcare as very poor safety performers. With 13.7 million employees across thousands of sites, incident rates far higher than general industry norms, low inspection rates, complaints driving half of hospital inspections, millions of HAI infections and 99,000 fatalities per year, healthcare makes an attractive target. The new emphasis programs for nursing homes, residential care facilities and ASCs/clinics are probably just the beginning and, even if we were to get only our prorated share, that's *an additional 10,000+ inspections per year*. Do we really want to force OSHA into that position?

An industry view of TJC accreditation as the only program that matters, combined with the relative lack of OSHA inspections and low penalties, has marginalized occupational health and safety programs within healthcare, created high incidence rates and nurtured the myths discussed in this paper. Healthcare may see OSHA as an abstract concept, but OSHA has marked healthcare as a high-hazard industry.

The poor RFI response rate only strengthens OSHA's perception that healthcare is not serious about infection control. The setting begs for regulatory intervention, which OSHA asserts in the RFI was very successful in similar circumstances for bloodborne pathogens and TB. There are no healthcare exemptions to the OSHA requirements, and years of operating under the honor system have not worked. Healthcare must put the same emphasis on OSHA programs as they currently give The Joint Commission. To do otherwise is negligence.

Bibliography

AFL-CIO. "Number of OSHA Inspectors by State Compared with ILO Benchmark Number of Labor Inspectors." *AFLCIO.org*. 2010. http://www.aflcio.org/issues/safety/memorial/upload/_40A.pdf (accessed June 10, 2011).

Bureau of Labor Statistics (BLS). "Table 1. Incidence rates of nonfatal occupational injuries and illnesses by case type and ownership, selected industries, 2010." *Occupational Injuries and Illnesses (Annual) News Release*. October 20, 2011. http://www.bls.gov/news.release/osh.htm (accessed February 15, 2012).

___. "Table 2. Numbers of nonfatal occupational injuries and illnesses by case type and ownership, selected industries, 2010." *Occupational Injuries and Illnesses (Annual) News Release*. October 20, 2011. http://www.bls.gov/news.release/osh.htm (accessed February 15, 2012).

___. "Census of Fatal Occupational Injuries Summary, 2010." *Economic Releases.* August 25, 2011. http://bls.gov/news.release/cfoi.nr0.htm (accessed February 15, 2012).

___. "Workplace Injuries and Illnesses in 2007." *News*. October 23, 2008. http://www.bls.gov/iif/oshwc/osh/os/osnr0030.pdf (accessed June 10, 2011).

Centers for Disease Control and Prevention (CDC). "Deaths: Final data for 2009, tables 10, 11.", *FastStats: Chronic Obstructive Pulmonary Disease (COPD) Includes: Chronic Bronchitis and Emphysema.* January 2012. http://www.cdc.gov/nchs/fastats/copd.htm (accessed February 15, 2012).

___. “Deaths: Final data for 2009, tables 10, 11.” *FastStats: AIDS and HIV*. January 2012. http://www.cdc.gov/nchs/fastats/aids-hiv.htm (accessed February 15, 2012).

___. “CDC 2011 Estimates: Findings.” *CDC Estimates of Foodborne Illness in the United States.* April 19, 2011. http://www.cdc.gov/ncidod/eid/vol10no9/03-0403.htm (accessed February 15, 2012).

Department of Labor (DOL). “OSHA FactSheet (OSHA Inspections).” n.d. http://www.osha.gov/OshDoc/data_General_Facts/factsheet-inspections.pdf (accessed June 21, 2011).

___. “FY2011 Search Results – Federal – All SIC.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.search?p_logger=1&sic=&naics=&State=All&officetype=Fed&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&owner=&scope=&FedAgnCode= (accessed February 15, 2012).

___. “FY2011 Search Results - Federal - SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.search?p_logger=1&sic=8062&naics=&State=All&officetype=Fed&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&owner=&scope=&FedAgnCode= (accessed February 15, 2012).

___. “FY2011 Search Results - All States - All SIC.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.search?p_logger=1&sic=&naics=&State=All&officetype=State&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&owner=&scope=&FedAgnCode= (accessed February 15, 2012).

___. “FY2011 Search Results - All States - SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.search?p_logger=1&sic=8062&naics=&State=All&officetype=State&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&owner=&scope=&FedAgnCode= (accessed February 15, 2012).

___. “Search for Inspection Activity by FY and SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.html (accessed February 15, 2012).

___. “FY2011 Search Results – Federal Citations for SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/citedstandard.sic?p_esize=&p_state=FEFederal&p_sic=8062 (accessed February 15, 2012).

___. “FY2011 Search Results – MD - SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.search?p_logger=1&sic=8062&naics=&State=MD&officetype=State&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&owner=&scope=&FedAgnCode= (accessed February 15, 2012).

___. “FY2011 Search Results – TN - SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.search?p_logger=1&sic=8062&naics=&State=TN&officetype=State&Office=All&endmonth=10&endday=01&endyear=2010&startmonth

=09&startday=30&startyear=2011&owner=&scope=&FedAgnCode= (accessed February 15, 2012).

___. “FY2011 Search Results – Federal Citations for SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.search?p_logger=1&sic=8062&naics=&State=All&officetype=Fed&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&owner=&scope=&FedAgnCode= (accessed February 15, 2012).

___. “FY2011 Search Results - All States - SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/industry.search?p_logger=1&sic=8062&naics=&State=All&officetype=State&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&owner=&scope=&FedAgnCode= (accessed February 15, 2012).

___. “FY2011 Search Results – Federal GDC – All SIC.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/GeneralSearch.search?p_logger=1&stdquery=&sic=&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&category=&InspNr= (accessed February 15, 2012).

___. “FY2011 Search Results - Federal GDC - SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/GeneralSearch.search?p_logger=1&stdquery=&sic=8062&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&category=&InspNr= (accessed February 15, 2012).

___. “FY2011 Search Results – Federal Citations for SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/citedstandard.sic?p_esize=&p_state=FEFederal&p_sic=8062 (accessed February 15, 2012).

___. “FY2011 Search Results – Federal GDC – All SIC.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/GeneralSearch.search?p_logger=1&stdquery=&sic=&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&category=&InspNr= (accessed February 15, 2012).

___. “FY2011 Search Results - Federal GDC - SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/GeneralSearch.search?p_logger=1&stdquery=&sic=8062&Office=All&endmonth=10&endday=01&endyear=2010&startmonth=09&startday=30&startyear=2011&category=&InspNr= (accessed February 15, 2012).

___. “FY2011 Search Results – Federal Citations for SIC 8062.” *Data and Statistics*. February 15, 2012. http://www.osha.gov/pls/imis/citedstandard.sic?p_esize=&p_state=FEFederal&p_sic=8062 (accessed February 15, 2012).

___. “Search Page for Inspection Activity by state, FY and SIC 8062.” *Data and Statistics*. February 9, 2012. http://www.osha.gov/pls/imis/industry.html (accessed February 9, 2012).

___. “OSHA’s Ergonomic Enforcement Plan.” *OSHA.gov*. 2011. http://www.osha.gov/SLTC/ergonomics/enforcement_plan.html (accessed February 15, 2012).

___. “OSHA’s Data Initiative.” *OSHA.gov*. 2011. http://www.osha.gov/SLTC/ergonomics/initiative.html (accessed February 15, 2012).

___. “General Industry.” *Safety and Health Topics*. 2011. http://www.osha.gov/SLTC/generalindustry/index.html (accessed June 10, 2011).

___. “Search Results for 2007 through June 2011 - All Types - SIC 8062.” *Data and Statistics*. June 10, 2011. http://www.osha.gov/pls/imis/industry.search?sic=8062&sicgroup=&naicsgroup=&naics=&state=All&officetype=All&office=All&startmonth=06&startday=10&startyear=2011&endmonth=06&endday=10&endyear=2007&opt=&optt=&scope=&fedagncode=&owner=&emph=&emphtp=&p_start=&p_finish=0&p_sort=&p_desc=DESC&p_direction=Next&p_show=20 (accessed June 10, 2011).

___. “OSHA Regional Notice, Directive Number: CPL 11/03 (CPL 02-03).” *OSHA.gov*. March 25, 2011. www.osha.gov/dep/leps/RegionIV/Sharps-Injuries_fy12.doc (accessed February 15, 2012).

___. “Request for Information: Infectious Diseases.” *Federal Register Online*. May 6, 2010. http://edocket.access.gpo.gov/2010/2010-10694.htm (accessed June 10, 2011).

___. “OSHA FactSheet (Your Rights as a Whistleblower).” *OSHA.gov*. November 2007. http://www.osha.gov/OshDoc/data_General_Facts/whistleblower_rights.pdf (accessed June 22, 2011).

___. “OSHA Inspections (OSHA 2098).” *OSHA.gov*. 2002. http://www.osha.gov/Publications/osha2098.pdf (accessed June 10, 2011).

___. “OSH Act, OSHA standards, Inspections, Citations and Penalties.” *OSHA.gov*. May 1996. http://www.osha.gov/doc/outreachtraining/htmlfiles/introsha.html (accessed February 15, 2012).

Federal Bureau of Investigation (FBI). “Expanded Homicide Data.” *Crime in the United States, 2010*. September 2011. http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/offenses-known-to-law-enforcement/expanded/expandhomicidemain.pdf (accessed February 15, 2012).

Infection Control Today (ICT). “OSHA Most Frequently Cites ASCs for Bloodborne Pathogen Violations.” *Infection Control Today.com*. November 1, 2011. http://www.infectioncontroltoday.com/news/2011/11/osha-most-frequently-cites-ascs-for-bloodborne-pathogen-violations.aspx (accessed February 15, 2012).

National Transportation Safety Board (NTSB). “U.S. Transportation Fatalities Estimated at 34,925 in 2010.” *NTSB News and Events*. December 16, 2011. http://www.ntsb.gov/news/2011/111216.html (accessed February 15, 2012).

Paulozzi, L. J. “Testimony on Trends in Unintentional Drug Overdose Deaths.” *HHS.gov*. March 12, 2008. http://www.hhs.gov/asl/testify/2008/03/t20080312b.html (accessed June 10, 2011).

The Joint Commission (TJC). *Hospital Accreditation Program; 2009 Chapter: Environment of Care (EC:02.02.01)*. Oakbrook Terrace, IL: The Joint Commission, 2008.

___. *Accreditation Program: Hospital Life Safety*. Oakbrook Terrace, IL: The Joint Commission, 2008.

USA.gov. “Search Results for ‘osha-2010-0003.’” *Regulations.gov*. June 10, 2011. http://www.regulations.gov/#!searchResults;dct=PS;sd=true;rpp=10;so=DESC;sb=docketId;po=0;s=osha-2010-0003 (accessed June 10, 2011).