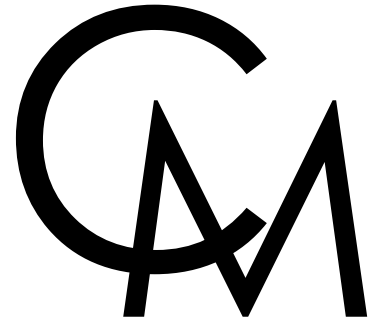


The California Merchant

News for the California Merchant Safety Association



A code of ethics helps your company be all it can be

How important is the role of ethics in your company? Our society has seen a rash of cases over the last five years that suggest corporations could use some ethical improvement. But how can this happen? One of the most problematic questions raised in relation to business ethics is whether or not businesses can become more ethical in the real world. The majority opinion on this issue suggests that government, trade associations, and individual firms can indeed establish acceptable levels of ethical behavior.



The government can try to legislate ethical conduct by enacting more stringent regulations. But, rules require enforcement and when in many cases there is evidence of lack of enforcement even the ethical businessperson will tend to "slip something by" without getting caught. Increased regulation may help, but it surely cannot solve the entire business ethics problems.

Trade associations can and often do provide ethical guidelines for their members. Associations are in an excellent position to guide members away from questionable business practices using peer pressure and opportunities for industry participation. However, association membership - as important as it is - can't always reach into the day-to-day running of a company. That daily leader-

Employees can more easily determine and adopt acceptable behavior when companies provide them with a "code of ethics." Such codes are perhaps the most effective way to encourage ethical behavior. A code of ethics is a written guide to acceptable and ethical behavior that outlines uniform policies, standards and punishments for violations. Because employees know what is expected of them and what will happen if they violate the rules, a code of ethics goes a long way towards encouraging ethical behavior. However, codes cannot possibly cover every situation. Companies must also create an environment in which employees recognize the importance of complying with the written code. Managers must provide direction by fostering communication, actively modeling and encouraging ethical decision making, apart from investing in

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March/April 2011

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How AB 2774 could affect you: What you need to know about the new Cal/OSHA law

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Injury prevention instead of disability management

By Martin Lesperance

It was a warm November Saturday afternoon. Richard was hanging Christmas lights on his house. A couple of feet to go, and the entire house would be lit for the season. He was up about 5 feet up on the ladder when he leaned too far, lost his balance, and came crashing down to the ground. The few minutes it would have taken to move his ladder a foot closer, cost him a fractured pelvis, femur (thighbone) and a smashed kneecap. Richard would be off work for four months as a result of this "accident."

Incidents like this keep thousands of people off work in North America each year. Many organizations do not seem concerned about the cost to productivity and the increased employee benefit expense. They are, however, very concerned about the on-the-job injuries and its associated costs. Yet, they continue to ignore the bottom line detriment of off-the-job injuries.

Last week while instructing a safety course at a gas plant, I noted a sign at the gate: "We Have Gone 1,485 Days Without A Lost Time Injury." Obviously, on-the-job safety is paying off. Then, during my presentation with those employees, I asked if anyone had missed work because of injuries sustained while off the job. In fact, there were several. Two injuries had kept people away from work for two

months. When they returned, they had to be put on restricted duties for another six weeks before they could return to their regular jobs.

In the past seventeen years while working as a paramedic/fire fighter, I've noticed that the majority of the emergency calls I attended were to homes, or related to outside recreational activities. At work, there are safety rules and regulations, which, for the most part are followed. The money, time and effort spent, usually prevents unnecessary injuries. But once a worker leaves for home, the caution, hard hat and steel toed boots are left in the locker room. I've noticed that someone who refuses to use an unsafe ladder at work, may not give a second thought to going home, drinking a few beers, starting up the chainsaw, and standing on a three- legged stool to cut the branches off a tree in his backyard. If the person falls and is injured he will pay with pain and the inconvenience that is to follow. However, his employer will pay financially with worker replacement, increased benefit costs and many more.

How Big of a Problem is This?

I have asked many safety professionals the following question. What is the ratio of off -the-job injuries compared to on-the-job injuries? Most admitted that they didn't measure the problem and they couldn't even guess. Some

estimated that the ratio would be a low of 5-1 to a high of 17-1. The Petro Chemical System Safety Rating Guidelines tell us that the ratio is 10:1.

One large oil and gas company oil and gas company did track their total lost days for the past three years. They were shocked to find out that 95% of their lost days were attributed to non occupational injuries and illnesses.

Do you know how many lost days are attributed to injuries that happen off-the-job compared to on-the-job in your organization?

In the City of Thunder Bay, Ontario, eleven people came into its emergency departments with serious hand injuries. It was the first heavy snowfall of the year. All the injuries were caused by snowblowers.

There are millions of dollars spent every year on safety training and equipment to prevent injuries at the work site. Virtually nothing is spent to help employees prevent off-the-job injuries. Millions of dollars are spent on wellness programs to encourage healthy lifestyles. This is important but the return on investment could be years down the road for these programs. Preventing off- the- job injuries could pay off immediately. It should be included in all wellness programs or in

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Ethics: Foster an environment where workers are heard

Continued from page 1

training employees to make ethical decisions.

Sometimes, even employees who want to act ethically may find it difficult to do so. Unethical practices can become ingrained in an organization. Employees with high personal ethics may then take a controversial step called "whistle blowing." Whistle blowing is informing the press or government officials about unethical practices in an organization. Whistle blowing could have averted disaster and prevented needless deaths in the Challenger space shuttle disaster, for

example. How could employees have known about life-threatening problems and let them pass? Whistle blowing can, however, have serious repercussions for employees; those who make waves sometimes lose their jobs.

So, how can you improve the ethical footprint of your business? Write and enforce a code of ethics, model the right kind of behavior for employees ... and, most importantly, foster an environment where employees know they can come to you with questions and concerns and will be fairly treated.

AB 2774: What you need to know about the Cal/OSHA law

California employers are legally bound to provide employees a safe workplace. California law has authorized DIR's Division of Occupational Safety and Health, better known as Cal/OSHA, to enforce applicable safety and health regulations and issue citations when investigations reveal that an employer has committed violations of those standards, including serious violations that cause an employee to suffer or potentially suffer, among other things, "serious injury or illness" or "serious physical harm". AB 2774, introduced by Assembly member Sandré R. Swanson (D-Alameda), amends labor code section 6432 to define serious physical harm and establishes a rebuttable presumption as to when an employer commits a serious violation of these provisions. The bill further establishes new procedures and standards for an investigation when issuing serious citations. (See IR #2010-28, "Cal/OSHA enforcement strengthened with signing of new law")

Governor Arnold Schwarzenegger signed AB 2774, which went into effect January 1, 2011. The new law is designed to improve Cal/OSHA's citation process by redefining how serious violations are cited. The legislation also clarifies procedures for issuance of a serious citation and procedures for the appeals process when determining if the citation was issued correctly.

"The previous definition was inadequate and made it exceedingly difficult to prove that a serious violation existed," said DIR Director John C. Duncan. "This significant clarification allows Cal/OSHA to better identify serious violations, as well as provide improved guidance for the

Appeals Board in cases where the issuance of a serious citation is in question. The new law also establishes procedures for notifying employers of the possibility that they may face a citation for a serious violation and requires that Cal/OSHA staff consider certain factors before issuing a serious citation."

"This new interpretation of a serious violation will help strengthen the Cal/OSHA program, improve enforcement efforts and better protect California's workers," said Cal/OSHA Chief Len Welsh. "It will help us accurately issue serious citations to more effectively address the most egregious violations."

New factors used to accurately issue serious citations include any training given to employees and supervisors, existing workplace safety procedures, supervision of employees exposed to the hazard, as well as any contributing information the employer wishes to provide to explain why the employer believes that no serious violation exists.

Under the Labor Code, Cal/OSHA can also issue citations for violations that do not meet the "serious" designation. The criteria for a regulatory violation and general violation will remain unchanged. These violations are generally considered not as egregious as a serious violation.

For more information on how AB 2774 could affect you, read a detailed analysis at <http://www.littler.com/PressPublications/Lists/ASAPs/DispASAPs.aspx?id=1586>.

Heart attack! Would you know the signs?

By Martin Lesperance

We were called to a home at 2:00 a.m. A little girl answered the door and led us upstairs. Her Dad was on the floor and her Mom was doing CPR. We did everything we could, but the man died. I will never forget that little girl's fright and I still think how much her life will have changed. This may have been prevented – the man had been complaining of chest pain since 10 p.m. the night before.

Many people who go into cardiac arrest have had warning signs such as chest pain – often for hours. Even if Cardio Pulmonary Resuscitation is started immediately, once you are in cardiac arrest your chances of walking out of the hospital are not good.

Early recognition of a heart attack is crucial. The sooner you realize you are having a problem and the sooner you seek medical aid, the better your chances.

You do not have to be old to have a heart attack! I seem to be attending more and more people who are in their thirties and early forties.

What Happens During A Heart Attack

Like any other muscle, the heart needs oxygen to survive. Oxygen is supplied through the blood, which is carried to the heart via the arteries. Many people have a fatty buildup inside the arteries that restricts blood flow. When the supply of oxygen is impaired or stopped, part of the heart will die and the person will suffer a

heart attack.

What Happens In Cardiac Arrest

If enough of the heart muscle dies, or if there are other problems, the heart may stop. This is called cardiac arrest. When this happens, the heart no longer beats effectively. Death follows quickly unless Cardio Pulmonary Resuscitation and Advanced Life Support are quickly provided. The trick is to get to a hospital before you go into cardiac arrest.

Signs & Symptoms of a Heart Attack

Pain

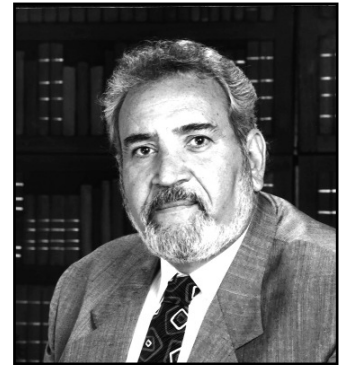
You may have a crushing or squeezing pain, usually in the center of your chest under your breastbone (sternum).

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LAW TALK

By Sam K. Abdulaziz
Law Offices of Abdulaziz, Grossbart & Rudman



Written settlement terms may be inadmissible

In the case *Fair v. Bakhtiari*, Thomas Fair sued his ex wife (Maryann Fair), Karl Bakhtiari (a previous business partner) and other various business entities. Fair believed that they had all left him out of real estate ventures that Fair should have rightfully been involved in and also alleged there was other wrongful conduct, all of which caused him monetary damages.

The complaint was filed, the defendants answered, and the case went to a two-day mediation. Thomas Fair's attorney handwrote a memo of settlement terms including (but not limited to) over \$5 million being paid to Fair, which would be a "...purchase of all T. Fair's stock & interests (as capital gain to Fair)." It also included Maryann Fair giving up community property interest in this same settlement, as well as other items and a paragraph that indicated, "Any and all disputes subject to ... arbitration rules." Each of the parties filed their Case Management Statements with the court and let the court know that the case settled in mediation and that the parties were in the process of getting the formal settlement agreement signed by all.

Shortly before the scheduled Case Management Conference, some of the defendants discovered that Thomas Fair did not believe the agreement for the \$5 million for purchase of his stock and interests applied to some of the business interests. There were also tax issues that were still to be resolved and not addressed. At the Case Management Conference, Bakhtiari's attorney asked for a continuance indicating that they had reached a settlement and were in the process of ironing out some of the complicated tax

issues.

Another Case Management Statement was then filed, which said that the parties "...were ultimately unable to reach an agreement as to the scope and subject matter of the proposed settlement... should be resolved through the regular court process." Fair's attorney demanded arbitration of the matter as per a paragraph of the settlement memorandum signed by all parties at the mediation and filed a motion to compel (force) arbitration. Defendant's counsel stated that the settlement memorandum could not be binding (hold the parties to the agreement) because they had never actually come to a meeting of the minds (full agreement and understanding) on key provisions of the case and the memorandum was therefore inadmissible.

The trial court denied the motion to compel binding arbitration because the settlement papers signed at the mediation were inadmissible and therefore, there was no arbitration agreement. When appealed, the Court of Appeal reversed the trial court's decision because they saw the provision, "...[a]ny and all disputes subject to ... arbitration rules" to mean that all parties meant for the settlement memorandum to be enforceable. The Court of Appeal indicated that since the memorandum included "words to that effect" it was admissible.

This matter was then taken to the Supreme Court of California. The same statutes were reviewed as well as the case of *Weddington Productions, Inc. v. Flick*, which had a similar situation and discussed that "consent" and "mutuality" must be in an agreement. Because of the ambiguous language in the settlement memorandum, there is

no definitive mutual consent in the settlement memorandum – particularly on the issue of what all of Fair's stock and interests were.

The Supreme Court of California agreed with the trial court, overturning the Court of Appeal. There was no "written settlement agreement" because the settlement memorandum signed at the mediation was not admissible.

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for over 30 years. He has written a book called "California Construction Law" which is updated annually. He represents numerous construction trade associations and contractors. He appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the "Pay-If-Paid Clause." Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. This document is of a general nature and is intended to highlight areas of the subject matter being discussed and may not contain all of the information; it should not be used as a substitute for legal advice. This document does not create an attorney-client relationship, or protect any confidential information until a written agreement is signed. You should seek the aid and advice of a competent attorney, accountant and/or other professional instead of relying on the presentation and/or documents. Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at info@agrlaw.net. On the Internet, visit our Website at www.agrlaw.net.

SAFETY ... IT PAYS



Stress: A hidden killer in your workplace

Stress can be a real danger on the job. It can lead to low productivity, bad relations between employees and customers, and poor job performance. Untreated stress and emotional upset can also up the risk of workplace injury. Here are ten ways to combat stress.

1. Have a safety valve for your emotions. If you suppress your anger and emotions all the time, you are likely to blow up at the wrong time at the wrong person. Express your anger, frustrations, and emotions to your safety valve - friends and family you trust. If you can't "vent" to a trusted person, write your issues out in an email. Don't send it - just the act of writing it will help clear your head.

2. Get plenty of rest. Do not deprive yourself of sleep. If you are overly tired, you are more likely to say and do irrational things. Know how much sleep you need each night. Most people need between six and eight hours of sleep each night.

3. Learn how to relax. Relaxing requires practice. Learn to relax your body and your mind. Put worry thoughts out of your mind. Replace them with pleasant thoughts. Only about two percent of what we worry about ever comes to pass. Heed the words of Mark Twain: "I have experienced many terrible things in my



life, a few of which have actually happened."

4. Exercise. It is one of the greatest tension relievers. Continuous exercise that is at least 15 to 20 minutes in duration, at least three times a week, is so valuable. Something as simple as a brisk thirty-minute daily walk can help you cope with life's tensions.

5. Prioritize your work and do only one thing at a time. People have a tendency to get very stressful when their minds are cluttered and they perceive they have too much to do in too short a period of time. If this happens to you, you may indirectly voice your frustrations in your tone of voice. If you prioritize, you will learn to work on only one thing at a time and keep your work in perspective. It is also very important to remember that so-called customer interruptions are not aggravations - they are part of your job!

6. Keep a sense of humor. Laughter is another great tension reliever. See the humor in life's situations. Learn to laugh at yourself a little. Do not take yourself or your situations too seriously. Spend time with friends who like to laugh and joke. It will help to keep difficult situations in perspective.

7. Develop hobbies. Have outlets that get your mind off work. They help you to be a well-rounded individual. Hobbies help you to relax and to focus on other aspects of your life.

8. Eat right. If you eat junk food and load up on caffeine throughout the day, you are likely to experience

emotional highs and lows throughout the day. The sugar high and caffeine can make you hyper. Then when the high wears off, you may feel tired. Also, different types of foods affect people in different ways. For instance, some foods make people feel sluggish or stuffy. Listen to the signals of your body. Give it fuel that keeps it energized and emotionally sharp.

9. Give yourself quiet time each day. Have a hermit spot where you can go to be completely alone, even if it is for only ten minutes a day. You need time to yourself - to melt your tensions away.

10. Create a mental focus. Create specific goals to focus on and strive for. People who know what they want in life feel more in control of their lives. Thus, they are usually less stressful.



SAFETY CORNER

Cal/OSHA Safety Publications

Please visit the following address on the web to download helpful safety posters, guides and pamphlets for a safer workplace.

<http://www.dir.ca.gov/dosh/PubOrder.asp>

Before the plan: Researching your small business

Purveyors of conventional wisdom would have you believe that the very first thing you ought to do when setting up a new business is to create a business plan.

It doesn't matter whether you are selling odds and ends on eBay from your living room or something larger and more complex,

Business plans are excellent and nec-

essary. Far too few of us self-employed and freelance people use them.

They force us to spell out our objectives. We have to assign numbers to our expectations and assign a time-line to our goals. They become our roadmap and keep us on track.

But I suggest that you can't make a business plan that is worth anything until you've done your homework.

And that means knowing what you want to do and how you want to do it. And determining that there is sufficient demand for your product to generate enough income to cover your costs and allow a profit.

In other words, before the business plan comes research.

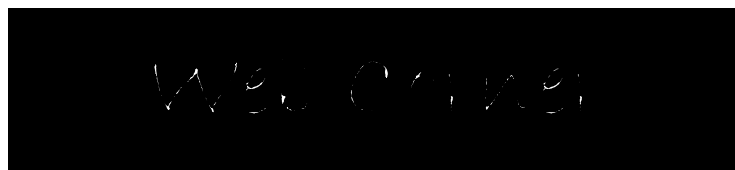
Please see **PLAN**, page 7

Find your 'niche' with a marketing blog

Blogs provide Internet users a place to discuss, share and communicate with other users from all across the world. Topics vary greatly as writers share political, personal, light-hearted, encouraging and other genres of stories with their avid readers. A number of reasons comprise the list of Internet user's motivation to blog. This provides niche marketers a great starting point in achieving search engine ranks through sharing in the online blogging experience.

Niche marketers already have a community of interest with regards to their blogging topics. Dedicated business owners could go on and on, endlessly with knowledge pertaining to their marketing, advertising and customer service capabilities.

Combining the entertainment purpose of blogs and solid knowledge on a product or service makes for some great headway in obtaining consumer leads. Also, search engines love a niche marketing blog. Search engines use crawlers to scour the Internet for repeat data pertaining to a subject or website in order to produce



search results. The more times your product, service or website address appears throughout the World Wide Web, the higher your ranking becomes.

The trick to creating a successful niche blog pertains to knowing and feeling confident about information regarding your products or services. Customers like hearing about how they can forge a better future and improve their daily lifestyle. If your product or service can do anything to help better someone's current living situation, why not get excited about it and start blogging?

Blogging provides a means of release pertaining to daily inner thoughts. It also provides a means of creating leads for prospective customers. Niche marketing blogs provide search engines with a multitude of keywords and rich content pertaining to your website. If you're interested in getting in on the blogging community and fur-



ther your business potential at the same time; then, you should get started right away.

Bloglines.com provides a place for you to begin creating your blog involving the niche market product or service. Start with a simple introduction with information pertaining to the product or services capabilities. Then, move into how it affects lives and consumer testimonials. Try to update the blog as if it were a daily journal and be sure to include a good amount of keyword-based content. Post links to sites you engage back linking with along side relative content pertaining to the services and products you offer. Never skimp on information simply because you don't think the consumer

wants to hear it. All content regarding your product or services becomes necessary when writing a niche marketing blog.

Niche marketing blogs contain heavy content regarding a business's products or services. Search engines, such as Google or Yahoo, user crawlers to inspect websites and relay statistical analysis on keywords or content most often found relating to words the user input for their search criteria. The search results provide ranking for websites found to have the most common related data. The more content a site contains about a niche marketing product or service, the higher a search engine posts the website in its rank. Thus, creating and maintaining a blog regarding a niche market becomes a well loved, association by search engines.

Jude Wright is the owner of the Recipe Script, found at RecipeScript.com. Recipe website niches are among the most popular and profitable niches on the Internet. Pick up her new free ebook, "30 Day Success Plan for Your Recipe Niche Site" at her website.

Plan

Continued from page 6

If a body of knowledge already exists, it makes sense to tap into it and save you some work. The US Bureau of Labor Statistics and other such sources, for example, publish a great deal of demographic information. Some of it is very useful. But it is also likely that as a creative sole-proprietor, meaningful statistics don't exist about your specialty. Many micro-businesses target a very specialized niche. And many owned by creative types exist to sell a product or service that don't follow well-worn prototypes. It is particularly difficult for such people to find meaningful published data.

If you fall into these categories, you'll have to generate your own information. Don't limit your research to purely business data. You are building a life as well as a business. Are the demands and conditions of your proposed business compatible with the life you want to create? For example, illustrators often work on short deadlines - meaning that sometimes they have to work far into the night to complete a project on deadline. Plus, some clients are demanding and some do not pay on a timely basis. After all of that, can you still "love it" enough? Or, maybe your business is such that sales fluctuate during the year. How will you make it through the lean months? Can you handle the uncertainty of a fluctuating income?

So, how do you find information?

First, if other people provide services similar to yours, talk to them. You will gain a lot of information quickly. Their answers to your questions will save you a lot of leg-work and open your eyes to factors you may not have considered. Try to talk to at least five or six people so you can get a range of viewpoints. You can find them through trade associations, schools, word-of-mouth. If the locals are reluctant to share information - perhaps because they see you as direct competition - look for similar people in a different locale.

Second, create the information you need. Mimic and simplify what large businesses do. Reduce their methods down to a level that is practical and affordable. For example, perhaps you want to survey potential clients and customers to get feedback. If you are creating a micro-business on a shoe-string, it may not be affordable nor practical to commission a focus group. But you may be able to speak to potential targets informally or use direct mail to send a simple survey.

Eventually you'll have to 'put your toe in the water.' Try it out in a small way -- so you won't lose much if it doesn't work - and observe the results. Then experiment and modify as needed. Once it works to your liking you can plunge right in.

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Off the job

Continued from page 2

a separate program. I spoke with a gas plant operator he told me he had jumped on his teenager's skateboard. He fell off and broke his leg in two places forcing him off work for four and one half months. A replacement worker filled his position at overtime rates. A high price to pay for a few seconds of fun. Coincidentally, my brother-in-law, an engineer broke his leg trying out his son's skateboard, too. As paramedic, I have attended several adult males with skateboard related injuries. These are not unusual events, Could an awareness program on horseplay or making people aware of the consequences of their actions prevented this? There is a real possibility it could have.

Disability management versus disability prevention
A new trend in organizations is the "return to work" program. The longer a person is off work, the more it costs, and the harder it is to get that person back to work. It only makes sense to assist an injured worker with re-entry into the workforce. And, it makes even more sense to help that person prevent those injuries in the first place. This can be achieved without infringing on personal sense of choice by encouraging a unified "buy in" by employees. After all, who wants to see a co-worker and friend injured?

Is it worth it for your organization? Before you decide if a program would be worth it for your organization, start a measurement program. Track how many days are lost due to off-the-job injuries. Calculate how much these injuries have cost your company. Include all hard and soft costs. Then add up the costs you spend to promote off-the-job safety. Now total the lost days due to on-the-job injuries. Add up all the costs of your on-the-job safety training. You might be surprised at the figures you come up with. Taking company safety one step further can have a huge financial payoff for your organization.

If you decide to implement a safety awareness program you will soon note a surprising side effect --- it's a great moral builder for your employees. So get them involved.

Martin Lesperance is a firefighter/paramedic and best selling author who offers humorous talks dealing with injury prevention. His latest program is safety-moments.com. He can be reached at (403) 225-2011, or visit his website at www.safety-speaker.com.

Research

Continued from page 7

This approach, known by the technical term "trial and error," can be applied to any facet of your business. After all, even the largest producers test market new products before rolling them out. Put some parameters around your efforts. Decide, in advance, how much time you want to allow and how much you want to budget. Then test, test, test. Use trial and error for every aspect of your business. Experiment with different ways of packaging your services, different rates and prices, different types of marketing, etc.

You'll soon find that certain approaches work better than others. Eventually your experience and data will suggest viable strategies.

And then you'll be ready to create your business plan.

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Heart: Denying symptoms is a dangerous mistake

Continued from page 3

This pain may be very severe or very mild, and it may radiate into the jaw, neck or arms (often the left arm).

The pain may start without any physical exertion. You do not have to be outside shoveling the snow in order to suffer a heart attack. I have attended more people who have had heart attacks when they were watching television or sleeping than when they were shoveling the snow.

Weakness

The person may feel very weak and tired.

Sweaty, Cool Skin

The victim's skin may be slightly moist or even very sweaty while still cool to the touch – a very unnatural sit-

uation. The person may also have very pale or an ashen gray skin, and look extremely sick. However, it is not unusual for a heart attack victim to look and feel normal.

Nausea and Vomiting

The person may have vomited or feel like vomiting.

Shortness of Breath

When a person is having a heart attack they may have difficulty breathing. In some cases with certain heart conditions, a fluid may back up into their lungs, making it extremely hard for the person to breathe. In some cases the person may even cough up frothy sputum that also may be tinged with blood. This is extremely serious.

Denial

As mentioned in the opening story, many people wait too long to seek medical aid. They deny that they are having a heart attack, even when they have all the signs and symptoms. This is a big mistake – a mistake that can kill you. If you are with a person who is having the signs and symptoms of a heart attack, don't let them talk you out of calling an ambulance. Try your best to convince the victim to seek medical aid.

Martin Lesperance is a firefighter/paramedic and best selling author who offers humorous talks dealing with injury prevention. His latest program is safetymoments.com. He can be reached at (403) 225-2011, or visit his website at www.safety-speaker.com.

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