LEGAL EAGLE EYE NEWSLETTER

April 2003 *For the Nursing Profession* Volume 11 Number 4

Saline Lock Left In At Discharge: Court Overturns Jury's Verdict Against Nurses.

A patient came to the hospital's emergency room complaining of a boil on his buttocks.

Before excision of the boil an experienced nurse placed a saline lock in his left forearm for administration of Versed during the procedure. It was later used for IV Demerol.

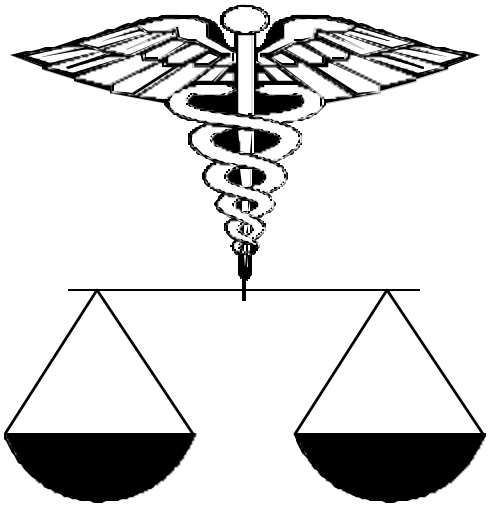
The patient was discharged less than three hours after admission, with the saline lock still in place.

According to the hospital chart the patient's mother phoned fifty minutes after discharge. The nurse who had cared for him told her to bring him right back to have them remove the saline lock.

The mother hung up. The nurse promptly told his charge nurse. The charge nurse called the family back but got no answer. She did get hold of the mother that evening. The mother said she removed the saline lock herself because her son had no ride back to the hospital to have it removed.

Negligence Admitted

The hospital admitted the patient should not have been discharged with the saline lock still in. A jury awarded $35,000 for a median nerve injury to the arm. The Court of Appeal of Louisiana overruled the jury, believing the nurse caused no injury to the patient..



The hospital admitted it was below the standard of care to discharge this day-surgery patient with the saline lock still in his arm.

However, that still left open the question whether or not that fact harmed the patient.

The testimony of the nurse who inserted the saline lock was more believable than the patient's testimony.

COURT OF APPEAL OF LOUISIANA
February 19, 2003

Nurses Corrected the Error

Although it is negligent to discharge a patient with a saline lock still in place absent any medical order to do so, the patient still had to prove that negligence caused injury. The Court of Appeal believed the nurses were completely correct telling the mother to bring him right back and did not believe he could not get back to the hospital as he admitted himself he came back and got his car early that evening.

Nerve Injury Disputed

The Court of Appeal noted both sides' medical experts agreed a nerve injury from a needle or catheter is obvious to the patient immediately, giving the nurse an indication to withdraw and reposition it. The patient's story was not believable, that he did not notice a problem until two weeks later.

Patient's Story Not Believable

The patient's nurse had done four to five thousand saline locks, usually in the forearm. It was his routine to chart "AC" in the rare cases where the lock was placed in the antecubital fossa. The Court of Appeal believed the lock plainly was not placed in the inside crease of the elbow as the patient and his mother testified. **Burns v. UHS of New Orleans, Inc., __ So. 2d __, 2003 WL 549037 (La. App., February 19, 2003).**

Inside this month's issue ...

April 2003

Nursing Home Liability: Court Throws Out Admission Contract's Arbitration Clause.

The executor of a deceased nursing home patient's probate estate filed a civil lawsuit against the nursing home for abuse and neglect and infliction of mental and physical suffering upon the deceased. No court as yet has decided the core issue whether these allegations are true.

The preliminary issue in the litigation has been whether the case should be heard in court before and judge and jury, or referred out of the court system for binding arbitration by an outside arbitrator selected by the parties to the case.

The Court of Appeals of Tennessee ruled for the family that there are grounds to throw out the arbitration clause in the nursing home's admission contact and to keep the case within the court system.

Arbitration Clauses Usually Enforced

The court acknowledged it is a rare instance when an arbitration clause is not enforced. Arbitration is widely used in business and labor disputes to reduce the substantial costs and delays inherent in full-blown court proceedings.

Basic rules of contract law, however, point to special circumstances where an arbitration agreement or arbitration clause in a larger agreement will not be enforced.

Contract of Adhesion

Contract of adhesion is the legal term for a contract that is unenforceable because there was an inequitable disparity of bargaining power between the parties at the time of signing. The family in this case had no choice but to sign the admission papers as they had to get their family member into a nursing home at once.

Arbitration Not Fully Explained

In addition, the arbitration clause was buried at the end of the admission contract. It is an important feature that should be highlighted at the beginning of a document and fully explained by the facility's representative, the court ruled, including an express warning that the right to jury trial is being signed away. **Howell v. NHC Healthcare-Fort Sanders, Inc., 2003 WL 465775 (Tenn. App., February 25, 2003).**

State law and the Federal Arbitration Act strongly favor arbitration of private civil disputes.

The courts must enforce arbitration contracts and arbitration clauses in commercial contracts by staying court proceedings and ordering arbitration, unless there are legal or equitable grounds to throw out the contract as unenforceable.

However, there are several reasons why the arbitration clause in this nursing home's admission contact is not enforceable.

The patient had to be placed in a nursing home and the admission contract was handed to the family on a take-it-or-leave-it basis. There was no room for negotiation.

The arbitration clause was buried on page ten of the eleven-page document and was not fully explained.

The patient's surviving family members can sue in court for abuse and neglect and infliction of mental and physical suffering upon the deceased and will recover damages if the judge and jury determine their allegations have substance.

COURT OF APPEALS OF TENNESSEE
February 25, 2003

Nursing Home Liability: Court Upholds Validity Of Arbitration Agreement.

The Court of Appeal of California, in an opinion that has not been officially published, noted that California has statutes that deal expressly with arbitration of disputes between health care providers and patients in general and a statute that deals expressly with arbitration of nursing home liability cases in particular.

The nursing home's arbitration agreement was on a form completely separate from the nursing home's admission contract.

The arbitration agreement contained spaces for signatures by the patient and a representative of the nursing home separate from the signatures on the admission contract itself.

The nursing home's arbitration agreement is valid.

The lower court did not abuse its discretion by ordering the lawsuit put on hold pending arbitration.

COURT OF APPEAL OF CALIFORNIA
OPINION NOT OFFICIALLY PUBLISHED
December 20, 2002

As patient-friendly as California law is on this subject, the court still ruled the nursing home's arbitration form was valid.

Arbitration was dealt with in a completely separate document apart from the detailed admission contract and it required separate signatures by the resident and his family. It was fully explained to the resident and his family. The resident was not legally incompetent when he signed it. **Flaum v. Superior Court, 2002 WL 31852905 (Cal. App., December 20, 2002).**

Involuntary Placement In Nursing Home: Court Orders Expedited Bedside Hearing.

A dementia patient had been judged mentally incapacitated and a legal guardian had been appointed because she suffered from diabetes and refused insulin treatments at home.

While she was in the hospital awaiting discharge, where she had been admitted for treatment of complications of her uncontrolled diabetes, her legal guardian filed court papers to have her discharged against her will to a nursing home where her diabetes could be managed. That is, the legal guardian sought court authority to make the decision for her that she would go to the nursing home rather than back to her apartment.

The judge referred the case to a court referee. The judge basically left everyone hanging waiting for the referee's report. The patient could not go home and would have to stay in the acute-care hospital until the referee got around to writing a report, the judge received the report, considered the report and made a decision.

The legal guardian went to the Appellate Division for a writ of mandamus, that is, an order from a higher court directing the lower-court judge to move forward with an expedited bedside hearing.

Each day that passes means continued unnecessary hospitalization and accumulation of even more medical bills.

The judge must hold an expedited hearing at the patient's hospital bedside to determine whether she will go home or to a nursing facility when she leaves.

Judges have experience in evaluating persons alleged to be incapacitated. Disparities often exist between written reports and what can be deduced from observing the person first-hand. Written reports tend to underrate capacity.

Legal proceedings that pertain to an individual's mental capacity can result in an incursion into personal liberty and interfere with an individual's independence and ability to live according to his or her own desires.

NEW YORK SUPREME COURT
APPELLATE DIVISION
February 25, 2003

Expedited Bedside Hearing Ordered

The New York Supreme Court, Appellate Division, agreed with the position taken by the patient's legal guardian.

The judge was directed to hold a bedside hearing and make a decision within six weeks, still a relatively short deadline in the context of legal proceedings.

Patient's Right To Be Present

The Appellate Division stressed the person's right to be present at a court determination that will profoundly affect how the person afterward will be able to conduct his or her life.

The Appellate Division also believed the integrity of the decision-making process is best served when judges who decide issues of mental capacity and capacity for self-care see, hear and observe the person in question, rather than relying on written reports.

According to the Appellate Division, written reports tend to understate mental capacity and play down competence in self-care. In these situations it is essential before ordering the drastic remedy of involuntary commitment that the need for it be demonstrated beyond doubt.

Financial Considerations

Without specifying who was actually footing the medical bills, the Appellate Division believed it was inappropriate to leave a person in limbo in the more expensive setting of an acute-care hospital when a nursing home would be more economical and possibly equally effective to meet the person's needs. **Levy v. Davis, __ N.Y.S.2d __, 2003 N.Y. Slip Op. 11490, 2003 WL 550025 (N.Y. App., February 25, 2003).**

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Medical Confidentiality: Court Says Photocopying Of Charts For Legal Purposes Justifies Termination For Misconduct.

The Court of Appeals of Minnesota, in an unpublished opinion, ruled that an LPN was terminated from her position as health unit coordinator at a nursing home for misconduct and was not entitled to collect unemployment benefits.

The court acknowledged it was a complex case, but on balance the facts supported the employer's decision to terminate the nurse.

Sexual Harassment Claim

The LPN was harassed by a male coworker. She complained. Corrective counseling by management improved his behavior for a time, then the harassment resumed. She sued for sexual harassment.

As a general rule an employer cannot retaliate against an employee for complaining or suing for sexual harassment, whether or not the complaint or the lawsuit is valid, the court pointed out.

Concerns Over Patient Charting

The nurse herself was receiving corrective counseling for her substandard charting. She was warned it was felt she was not responding to corrective counseling and would soon be fired for her charting if things did not improve.

Patients' Charts Copied, Faxed To Lawyer

The LPN began photocopying examples of her charting from patients' charts and faxing them to her lawyer. Two other nurses saw her do it, questioned her and heard her admit what she was doing.

She was terminated on the grounds that she had violated patient confidentiality by copying and faxing off materials from patients' charts. The court agreed with the employer that even with the motive of protecting herself in a pending legal dispute over her charting the nurse had no business divulging the contents of patients' charts and could be fired. **Pribble v. Edina Care Center, 2003 WL 945792 (Minn. App., March 11, 2003).**

Confidentiality of patient records is a very important matter in a hospital or medical institution.

Records privacy is a patient's right. A violation of confidentiality could subject a health care institution to a malpractice claim. An institution can expect employees to keep patient records confidential.

Misconduct is defined for purposes of employment law as any intentional conduct, on the job or off the job, that disregards the standards of behavior that an employer has the right to expect of the employee or that disregards the employee's duties and obligations to the employer.

A single deliberate act adverse to the employer may constitute misconduct.

An employee may commit misconduct by refusing to comply with the employer's reasonable requests and/or policies. The courts have already ruled explicitly that violation of patient records confidentiality constitutes employee misconduct.

COURT OF APPEALS OF MINNESOTA
UNPUBLISHED OPINION
March 11, 2003

Defamation: Court Throws Out Nurse's Slander Suit.

The pharmacist phoned the physician who had been the office partner of a retired physician when a nurse tried to fill a prescription ostensibly written by the retired physician.

The physician in turn phoned the local police and the personnel department at the hospital. The police reported it to the US Drug Enforcement Administration, which declined to prosecute because the retired physician had dementia and would be unable to testify. The hospital required the nurse to test for drugs, which turned up positive and led to her suspension.

Truth is a perfect defense to a civil lawsuit for slander.

The court looks literally at what the defendant said. Nuances and implications drawn by others are not important.

If what was said was literally true, the lawsuit must be dismissed.

COURT OF APPEALS OF GEORGIA
February 13, 2003

The Court of Appeals of Georgia threw out the nurse's slander lawsuit against the physician.

What he said was completely true, that she tried to fill a prescription written by a physician who had surrendered his medical license, and that was all.

The physician was not responsible for any implications drawn by the legal authorities or by the nurse's employer, that the nurse was a criminal and/or chemically impaired. It was not relevant whether those things were true. **Gunnells v. Marshburn, __ S.E. 2d __, 2003 WL 297909 (Ga. App., February 13, 2003).**

O.R.: Nurses Ruled Not Liable For Peroneal Nerve Entrapment.

Following routine practice, the hospital's perioperative nursing staff placed a strap loosely across the patient's legs as she lay on the operating table before laparoscopic gallbladder surgery.

When she awoke she had numbness and tingling in one leg. The condition did not resolve and required neurosurgical operative exploration which revealed entrapment of the peroneal nerve by fibrous bands of connective tissue just inferior to the fibular head. The neurosurgeon successfully alleviated the condition.

The patient filed suit for nursing negligence against the hospital where she had the gallbladder surgery.

The patient has no expert testimony showing the defendants failed to live up to the standard of care and that that failure caused injury.

COURT OF APPEALS OF MISSISSIPPI
March 11, 2003

The Court of Appeals of Mississippi saw her legal case defective in two important respects and affirmed the dismissal entered by the lower court.

First, there was no evidence the perioperative nursing staff applied the restraint in a negligent manner.

Second, there was no medical testimony linking the nurses' actions to the injury. A physician testified extensively about the nature and extent of the fibrous entrapment, but could not say to a reasonable degree of medical certainty that it came from her being restrained.

An injurious condition surfacing after a medical intervention does not prove there was negligence. **Powell v. Methodist Health Care-Jackson Hospitals, __ So. 2d __, 2003 WL 943842 (Miss. App., March 11, 2003).**

Back Condition: Prolonged Standing/Lifting Restriction, Court Says Nurse Cannot Sue For Disability Discrimination.

An employer cannot discharge an employee for a disability that is unrelated to the employee's ability to perform the employee's particular job or position.

To sue for disability discrimination an employee must be able to prove:

1. He or she has a disability as defined by law;

2. The disability is unrelated to his or her ability to perform the job in question;

3. He or she has been the victim of discrimination related to the disability.

That being said, however, in this case it is not relevant or material whether the nurse has a legal disability from her back condition which makes her unable to stand on her feet for prolonged periods, which prevents heavy lifting, and which prevents her from taking on-call duty in the operating room.

These are all essential functions of an operating-room nurse's position which she cannot perform with or without reasonable accommodation.

COURT OF APPEALS OF MICHIGAN
UNPUBLISHED OPINION
February 21, 2003

A nurse was employed as a surgical tech in the hospital's operating room.

Because of a back condition which precluded her from prolonged standing and any heavy lifting she was assigned to the scope room where she could sit most of the time and had to do no heavy lifting.

In addition, she was not required to take on-call duty when emergency cases or scheduling problems required the staff to work beyond their assigned shifts.

Co-worker complaints caused the hospital to require all O.R. staff to be available for extra duty on call, whether or not they had medical restrictions. All staff accepted the change except the nurse in question. She was terminated and sued for disability discrimination.

Ability To Work On-Call Essential Function of the Position

The Court of Appeals of Michigan, in an unpublished opinion, ruled that the ability to take on-call work is an essential function of a surgical nurse's job, or, looking at it from another angle, that shifting the burden to others to take more on-call duty than their shares would not be a reasonable accommodation.

The court did not rule one way or the other whether the inability to stand for prolonged periods or an inability to do heavy lifting represents a substantial limitation on a major life activity, that being the touchstone for classifying a physical or mental condition as a legal disability.

The court fast-forwarded to the issue of the essential functions of the job. Even if the nurse's back condition was a legal disability, she could not perform the essential functions of her job and no accommodation in the form of shifting extra duties to her co-workers would be considered reasonable. **Moschke v. Memorial Medical Center of West Michigan, 2003 WL 462374 (Mich. App., February 21, 2003).**

MMR Vaccine: New Vaccination Information Materials From CDC.

On March 6, 2003 the Centers for Disease Control and Prevention announced in the Federal Register that healthcare providers are now required to hand out to the patient, parent or legal guardian the most current version of the vaccine information materials dated January 15, 2003 when administering measles/mumps/rubella (MMR) vaccine.

The CDC has shortened the recommended interval between receiving the rubella-containing vaccine and becoming pregnant from three months to four weeks.

FEDERAL REGISTER, March 6, 2003
Pages 10727 – 10729

The only change is that the CDC has reduced the recommended interval between receiving rubella vaccine and becoming pregnant from three months to four weeks.

Strictly speaking, however, the older version of the required vaccine information materials for MMR is now obsolete and should not be used.

Further information is available on the CDC's website at http://www.cdc.gov/nip/publications/VIS.

The current versions of the required vaccine information statements can be downloaded and printed from the CDC's website for Anthrax, DTaP, Hepatitis, Influenza, PPV23, PCV7, Polio, Smallpox, Td and Varicella as well as MMR. The information statements are in Portable Document Format (PDF) and require a few moments' patience to download.

FEDERAL REGISTER, March 6, 2003
Pages 10727 – 10729

Workers' Comp: Court Says Fall In Parking Lot Is Compensable.

A housekeeper employed in a nursing home fell while exiting her car in the nursing home's parking lot while on her way to work.

She applied for worker's compensation. The question was whether her injury arose out of and in the course of her employment with the nursing home.

The Worker's Compensation Board failed to see a connection between her injury and her duties at the nursing home.

The Board ruled her injury did not arise out of and in the course of her employment and denied her claim.

The court will follow the positional risk rationale.

The employee in this case would not have been injured but for the fact that the conditions and obligations of her employment placed her in the nursing home's parking lot where she fell and injured her ankle.

The question is still open to what extent her medical complications were caused by this injury.

SUPREME COURT OF INDIANA
March 14, 2003

The Supreme Court of Indiana reversed the Board's decision. The court agreed she was not actually performing the duties of her job at the time, but said the duties of her job placed her in a position to be exposed to the danger of falling in the parking lot and that was enough.

However, she would still have to prove that the chain of events that led to amputation of her foot were linked to the original injury. **Milledge v. Oaks, __ N.E. 2d __, 2003 WL 1153957 (Ind., March 14, 2003).**

Medical Malpractice: Nurse Practitioner Not An Expert.

The Court of Appeals of Minnesota, in an unpublished opinion, upheld dismissal of a medical malpractice case on the grounds that the patient did not file an expert witness's affidavit.

The patient's attorney filed the affidavit of a geriatric nurse practitioner. However, the court ruled that state law requires not just any affidavit but an affidavit from an expert who is qualified to express an opinion that the defendant in the particular case was negligent, which the court ruled the nurse practitioner was not.

The courts consistently disallow expert testimony when the expert's training, education and practical experience are not narrowly tailored to the legal standard of care that is at issue in the case.

A geriatric nurse practitioner is not an expert on a surgeon's post-operative care of a patient following a tracheal resection.

COURT OF APPEALS OF MINNESOTA
UNPUBLISHED OPINION
March 11, 2003

The court alluded to a 1998 precedent in Minnesota which ruled that a psychiatrist and a psychotherapist were not qualified to testify as experts on the legal standard of care for psychiatric nurses.

The courts require a very close match between an expert's credentials and the standard of care for the defendant on trial. **Broehm v. Mayo Clinic Rochester, 2003 WL 951886 (Minn. App., March 11, 2003).**

In-Service: Court Says Nurse On Errand For Hospital While Driving Home.

After her twelve-hour shift, even though she stated she was very tired, even though other nurses were routinely excused from attendance when they were too tired, a nurse had to stay two additional hours for a required annual in-service skills-update session.

On the way home she caused a motor vehicle collision which killed two people. Apparently she fell asleep at the wheel.

The jury found the nurse 75% at fault and the hospital 25% at fault. The Court of Appeal of California, in an unpublished opinion, dismissed the hospital's appeal and let the verdict stand.

Ordinarily an employer is not responsible for a motor vehicle accident that occurs while an employee is commuting to and from work.

On the other hand, when an employee is performing a special errand for the employer, even in the employee's own vehicle, the employer can be liable.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
February 28, 2003

The rationale was that driving home after staying late for an in-service was not the nurse's usual commute. Instead, she was on a special errand for her employer, as the law phrases it, which meant she was in the course and scope of her duties as a hospital employee when the crash occurred and the hospital is responsible for her negligence. **Glander v. Marshall Hospital, 2003 WL 649127 (Cal. App., February 28, 2003).**

Operating Room: Court Questions Whether Proper Surgical Stapler Was Used.

A healthcare provider's deviation from a medical-device manufacturer's warnings and contraindications, if it can be proven, is the type of negligence for which no expert testimony is needed to establish the standard of care.

The surgeon is responsible for knowing which size device is appropriate for the specific case and for ordering it from the hospital's perioperative staff.

The hospital's perioperative staff must provide the specific size medical device the surgeon has asked for.

The hospital's perioperative staff are also responsible for knowing and understanding the manufacturer's specifications and for appreciating how they relate to the patient's case.

Staples that are too large used in surgical anastomosis can damage the bowel, while staples that are too small can fail to seal the bowel sections.

The surgical technicians have to load the staples properly, although this stapler apparently would not work at all if improperly loaded.

COURT OF APPEAL OF LOUISIANA
February 25, 2003

In a complex and difficult opinion, the Court of Appeal of Louisiana opened the door to liability being placed on a hospital's perioperative nurses and surgical technicians for improper choice of medical devices used in surgical procedures.

Specifically, the court ruled that the perioperative staff as well as the surgeon can be held responsible if the wrong size stapler and staples are used to resect the patient's bowel.

That is, too large a stapler and staples can damage the bowel, the court said, while too small a stapler and staples can fail to seal the anastomosis properly. Consequently, the manufacturer's warning package inserts specify the ranges of bowel thickness, expressed in millimeters, appropriate for each size stapler and staple set.

Choice of Instruments Surgeon's Traditional Responsibility

It has been accepted legal doctrine that the surgical staff are responsible for providing the specific make, model and size of the device chosen by the surgeon. The surgeon is responsible for making the selection and for making sure the proper make, model and size were handed over.

However, according to the court, the hospital's periorperative staff can also be held responsible in their own right for knowing, understanding and following the manufacturer's warnings, indications and contraindications for a specific make, model and size surgical device *vis a vis* the parameters of the individual case.

In this case there was confusion over which size stapler was actually used, which the perioperative record did not specify. The billing records seemed to say the wrong one was used, although it was not clear the billing coder knew the difference or would appreciate the consequences of listing a model number in the billing records that did not match the thickness of the patient's bowel. **Christiana v. Sudderth, __ So. 2d __, 2003 WL 468699 (La. App., February 25, 2003).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Medical Records: Nursing Home Quality Assurance Documents Ruled Exempt From Grand Jury Subpoenas In Medicaid Fraud Investigation.

State authorities in New York went before a county grand jury trying to obtain indictments for Medicaid fraud at three nursing homes.

The grand jury issued subpoenas for fifty-nine separate categories of documentation to aid state authorities in the investigation.

The nursing homes resisted, that is, they asked the court to quash the subpoenas for incident/accident reports, monthly skin condition and pressure sore reports, monthly weight reports, infection-control reports and lists of facility-acquired infections.

Quality Assurance Privilege Applied To Nursing Home Quality Assurance

The Court of Appeals of New York ruled the Federal– and state-law quality assurance privilege applies to quality assurance documents generated in nursing homes and they are not proper targets for grand jury subpoenas.

Federal and state laws are intended to improve the quality of care at Medicaid-supported nursing facilities. That goal requires protection of the process of thorough and candid internal review from the pressure of possible legal recriminations for what internal quality assurance officers document in their reports.

Incident Reports versus Clinical Records

The court drew the line between incident reports, which are not prepared by quality assurance officers, and clinical records, which have a clear relationship to improving the quality of care for residents.

The court ruled incident/accident reports must be turned over as there is no quality assurance privilege for them, while clinical records relating to skin condition, weights and infection control are privileged and are not subject to court subpoenas. **Subpoena Duces Tecum to Jane Doe, Esq., __ N.E. 2d __, 2003 N.Y. Slip. Op 11299, 2003 WL 441990 (N.Y. App., February 25, 2003).**

Lab Tests Not Printed, Not Placed In Chart: Court Sees Possible Basis For Malpractice Lawsuit.

The Supreme Court of Oklahoma did not rule definitively that the first hospital was to blame for the patient's death from a heart attack at the second hospital.

However, the court did overrule a lower court's decision to throw out the case without giving the patient's widow her day in court before a civil jury.

Test Results Available On Computer Not Printed, Not Placed In Chart

The patient came to the emergency room with chest pains. CPK and CPK-MB tests were promptly ordered, done and logged on the hospital's computer system for access by staff physicians.

However, no one printed out the test results and placed them in the chart. His physician did not see the tests results, indicative of a mild myocardial infarction, and released him. He came back the next day and was released again for the same reason.

The state administrative code requires hospitals to document orders, treatment, tests and services in the patient's chart.

Administrative rules and regulations are relevant to the standard of care.

The obvious purpose is to assist physicians in treating patients.

Physicians depend on the reliability and trustworthiness of the chart.

SUPREME COURT OF OKLAHOMA
February 18, 2003

The Supreme Court of Oklahoma acknowledged the test results were available to any hospital staff who wanted to access them on the computer, but the court felt it was also necessary for someone to see that they were printed out and placed in the chart, primarily for the benefit of institutions where the patient would subsequently receive care.

He went to another hospital a week later. His chart from the first hospital did not contain the ominous cardiac lab results and a cardiologist was never consulted. He died two days later. **Johnson v. Hillcrest Health Center, Inc., 2003 OK 16, __ P. 3d __, 2003 WL 355286 (Okla., February 18, 2003).**