LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

April 2007 Volume 15 Number 4

Patient's Falls: Court Allows Internal Incident Reports To Come Out In Patient's Lawsuit.

The deceased patient's probate administrator sued the nursing home on behalf of the family.

The lawsuit alleged the patient was neglected, was permitted to fall and that a broken hip from a fall ultimately caused her death.

The Court of Appeals of North Carolina has not yet focused on the underlying questions whether the facility was guilty of negligence and, if so, whether that caused the patient's death.

The Court's attention is focused on the facility's internal occurrence reports filled out by staff nurses after three separate falls, that is, whether the family's legal counsel can have access those documents for use against the facility in answering the underlying questions of negligence and causation.

Peer-Review/Quality Assurance Privilege

By law, to promote candor and objectivity in the internal workings of medical review committees, documents that record the proceedings, deliberations or conclusions of such committees, and documents considered by them, are exempt from coming to light in patient's lawsuits.

This principle started with physicians' peer-review committees in hospitals.

The so-called peer review privilege only applies to documents actually used in the internal quality improvement process.

The facility was not able to provide the court with any evidence that the disputed incident reports were produced for or considered by the clinical quality improvement team.

COURT OF APPEALS
OF NORTH CAROLINA
February 20, 2007

Although still commonly referred to as the peer-review privilege, this principle of confidentiality is now widely applied to internal quality review committees monitoring various healthcare professionals in hospitals and nursing homes.

In some states confidentiality is mandated expressly by statutes and regulations, in others by judicial precedents.

Patients Entitled to Needed Information

Another fundamental principle, often at odds with the peer-review privilege, holds that the courts must protect patients' ability to obtain information needed to be able to hold their caregivers legally responsible for their errors and omissions.

"Incident Reports" Were Not Used For Internal Quality Review

The occurrence reports, labeled as "incident reports," apparently were just filled out by the nurse on duty and filed away. Simply labeling a piece of paper an "incident report," in and of itself, provides no legal protection, the court pointed out.

The facility had no proof the internal quality review committee ever actually considered the reports in an ongoing effort to improve the quality of care, the court said. Thus they were not privileged and had to be turned over to the family's attorneys for use in the lawsuit. **Hayes v. Premier Living, Inc., __ S.E. 2d __, 2007 WL 505960 (N.C. App., February 20, 2007).**

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April 2007

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See Page 3

Prescription Rx: Employee Can Be Terminated For Drug Reaction On The Job.

A hospital RN became certified as an EMT and continued his employment under that job classification, working a total of more than twenty-two years at the hospital prior to his termination.

He had been diagnosed with Type II diabetes, hypertension, sleep apnea, insomnia and chronic pain from a back injury. He had a prescription for Ambien for sleep and an opiate for his back pain.

On-the-Job Medication Reaction

Just back at the hospital from an EMT call he was observed leaning against the wall and acting strange and, when questioned, seemed confused and somewhat unresponsive, almost asleep.

In the ER repeat glucose levels were normal. His stupor quickly resolved, however, after two doses of Narcan.

Pursuant to the hospital's established policy, management having reasonable suspicion of on-the-job drug use, he was required to submit and tested positive for an opiate. He was terminated for violating the hospital's existing policy prohibiting a positive drug screen while on duty and for failing to report that he was on prescription medication that could affect his ability to perform his job safely and effectively.

No Disability Discrimination

The US District Court for the Middle District of Georgia dismissed his disability discrimination lawsuit.

The court ruled he did not have a disability, as disability is contemplated for purposes of the Americans With Disabilities Act. Despite his diabetes, hypertension and chronic back pain he was generally able to do his job, that is, he had been doing his job satisfactorily for many years.

The court said that sleep apnea, insomnia and sleep deprivation could be considered disabilities, but there was no way to stretch the facts of this case to claim the case involved a failure to provide reasonable accommodation. **Robinson v. St. Mary's Health Care, 2007 WL 710155 (M.D. Ga., March 6, 2007).**

A disability is a physical or mental impairment that substantially limits a major life activity.

This employee, however, admitted he was able to do his job and did do his job satisfactorily for more than twenty-two years, despite his medical limitations.

The Americans With Disabilities Act considers working to be a major life activity, but to be disabled an individual must be unable to perform a wide range of jobs, not just one particular job.

Even if the worker has a legally-recognized disability, an employer can discipline or terminate the employee for a legitimate, non-discriminatory reason.

A healthcare facility has a legitimate right to outlaw employee misconduct which does or which could threaten patients' safety.

Sleep apnea actually is listed as a disability under Federal EEOC regulations, but it would be a stretch to see how this case involves inexcusable failure to provide reasonable accommodation to that condition.

UNITED STATES DISTRICT COURT
GEORGIA
March 6, 2007

Skin Burned In OR: Negligence Not Presumed.

The patient suffered burns to her left underarm and breast skin during orthopedic surgery on her right shoulder. She sued the surgeon as well as the hospital where the surgery was performed.

According to the New York Supreme Court, Appellate Division, the trial became a battle of the experts.

The surgeon's medical expert testified the patient's injury had to have come from an IV bag that was used in positioning the patient having been heated beforehand to a dangerously high temperature by the hospital's perioperative nursing personnel.

The hospital's medical expert testified the patient's injury had to have come from lying on padding saturated with Betadine, which can be a caustic substance.

The principle of res ipsa loquitur (it speaks for itself) is often applied in OR lawsuits when an unconscious patient has no way of knowing which of those in control did what.

The principle allows, but does not require, a jury to infer negligence simply on the basis of a bad result.

NEW YORK SUPREME COURT
APPELLATE DIVISION
March 16, 2007

The jury was unable to find the surgeon or the hospital negligent.

The judge, nevertheless, threw out the verdict, ruling that either the surgeon or the hospital had to be negligent, or both, as there was no rational basis for the jury to find neither one of them negligent.

The Appellate Division, however, said the judge misunderstood the law. It reversed the judge's decision and reinstated the no-liability verdict for both defendants. **Boling v. Stegemann, __ N.Y.S.2d __, 2007 WL 778621 (N.Y. App., March 16, 2007).**

Vascular Catheterization: Guide Wire Left Inside Disabled Patient, OR Physicians, Nurse Liable.

A thirty year-old man suffering from obesity, asthma and mental retardation was admitted to the hospital for shortness of breath, swelling in his legs and recent fifty-pound weight gain.

It is not clear from the court record in the Superior Court of New Jersey, Appellate Division, why the patient was intubated to begin with. However, during a planned extubation the patient coded. He could not be re-intubated promptly and an emergency tracheostomy was started.

As the ENT and anesthesiologist were working on the trache, several resident physicians and at least one nurse made a number of tries through both the right and left femoral veins in the groin to insert a triple-lumen catheter.

Guide Wire Left in the Body

During the process, a fifty-two cc guide wire was left inside the patient's body lodged in his vascular system.

Systemic Infection
Heart Valve Surgery
Death

The guide wire remained inside the patient for fifty-two days. During that time he developed systemic bacterial infection that spread to a heart valve. He had open-heart surgery to remove and replace the infected heart valve, then died shortly after the procedure.

To sue for malpractice, as a general rule, the patient must prove the applicable standard of care, a deviation from the standard of care and that the deviation caused the patient injury.

However, the legal rule putting the burden of proof on the patient is reversed when an unconscious, helpless patient is the victim of an error not ordinarily expected and outside the scope of the surgery, like an object being left inside the patient's body.

In this scenario, the medical and nursing professionals having control and custody of the patient are legally liable for harm suffered by the patient, unless they can prove their own non-culpability.

A caregiver has, at best, a very difficult burden of proof proving that he or she is not liable for leaving an object inside the patient.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
March 12, 2007

Foreign-Body Case
Caregivers Must Prove Non-Culpability

The court rejected the caregivers' arguments for dismissal and allowed the patient's family's suit to go forward.

The court ruled that this patient's medical and nursing caregivers should be held accountable unless they can answer certain questions with facts that will disprove their own negligence. That is the polar opposite of the usual legal burden of proof in professional malpractice.

First, how was the guide wire not accounted for right away by the medical and nursing personnel in the OR?

Second, why was a suspicious line showing up on early x-ray films not investigated and not linked to the most likely explanation, that a vascular lumen guide wire was still inside the patient?

Third, how did the patient's post-operative infection continue so long without investigation as to its cause and without action being taken sooner than it was?

This was not a case where the guide wire was intentionally left inside the patient as an exercise of medical judgement. Nor was the wire left inside a regular possible complication of the procedure.

The court believed the OR physicians and nurses must have actually known they had lost the guide wire and it was still inside the patient. They had the duty to report what happened right away and an ongoing duty to come forward rather than let the patient's condition deteriorate over time. **Gronostajski v. Sabin, 2007 WL 715666 (N.J. App., March 12, 2007).**

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Constitutional Rights: Inmate Can Sue Private Hospital Nurse.

A prison inmate awoke in his cell in a pool of blood and demanded medical attention. The prison infirmary had him taken to a private hospital's ER.

In the ER a nurse put him on O_2 and started an IV. Despite how weak he was the nurse made him stand up and transfer from one bed to another. Then the nurse left him alone for a while. When she returned she discontinued the O_2 and IV, told him there was nothing wrong with him and allowed him to be discharged without ever reporting to a physician or having him seen by a physician.

He went back to the prison, then to another hospital where he was diagnosed with a serious case of bleeding ulcers.

The Eighth Amendment to the US Bill of Rights prohibits its cruel and unusual punishment.

An inmate can sue prison medical personnel who are deliberately indifferent to the inmate's serious medical needs.

A nurse working for a private hospital which has a contract with the prison system comes under the Eighth Amendment.

UNITED STATES DISTRICT COURT
TEXAS
March 1, 2007

The US District Court for the Southern District of Texas ruled the patient had the right to sue the hospital and the nurse for violating his Constitutional rights, even though these prisoners' lawsuits are usually limited only to caregivers inside the prison itself. **Carter v. Benavides, 2007 WL 676686 (S.D. Tex., March 1, 2007).**

FMLA: Job Cut Back During Leave, Reinstatement Not Required.

A patient care technician working in a dialysis center had to take medical leave for back surgery.

The patient census was declining and her hours had already been reduced to 24 per week. The decline continued while she was out on leave. When she was ready to come back to work it was necessary for hers and others' hours to be reduced further, or for one aide to be laid off. She was picked for layoff because of concerns over her job performance which had come to light during her leave.

She filed suit for retaliation for using medical leave guaranteed to her by the US Family and Medical Leave Act (FMLA).

An employee returning from leave guaranteed by the Family and Medical Leave Act has the right to be restored to the same or an equivalent position.

Unexcused failure to restore the employee is retaliation for which the employee can sue.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
March 9, 2007

The US Court of Appeals for the Tenth Circuit resolved the case in favor of the dialysis center by pointing out that a declining patient census or change in case-mix can be legitimate reasons for denying an employee reinstatement.

That is, if the employee's hours would have been reduced or the job eliminated even if the employee had not taken FMLA leave, there is no retaliation. **Campbell v. Gambro Healthcare, Inc., __ F. 3d __, 2007 WL 706934 (10th Cir., March 9, 2007).**

Restraints: Drugs Not To Be Used For Discipline Or Convenience.

A rehabilitation facility filed suit against a former patient who did not pay her bill.

The resident's attorney filed a countersuit alleging, among other things, that the patient was illegally subjected to a chemical restraint to keep her in the facility for three weeks in a stuporous state, basically to run up her bill.

This allegation stemmed from the fact an appointment was scheduled with her neurologist, then cancelled, then rescheduled three weeks later. The neurologist determined her confusion was caused by one of her meds, discontinued the med, and her confusion promptly resolved.

Federal law outlaws physical or mental abuse, corporal punishment or involuntary seclusion.

That means physical or chemical restraints cannot be imposed for purposes of discipline or staff convenience when not required to treat the patient's medical condition.

SUPERIOR COURT OF CONNECTICUT
February 14, 2007

The Superior Court of Connecticut ruled in favor of the rehab facility. One, managing her medications was her personal physician's responsibility. Two, there was no evidence of any wrongful intent by the facility's nursing staff.

If the patient's allegations could have been proven, however, she certainly would have had the right to sue her caregivers, the court said. **Eden Park Management, Inc. v. Schrull, 2007 WL 706583 (Conn. Super., February 14, 2007).**

Nurse Falls: Negligence Not The Issue For Worker's Comp.

A private-duty nurse tripped and fell off the wheelchair ramp at the patient's doctor's office and broke her wrist.

The nurse had parked the van in a handicapped spot next to the ramp, assisted the patient into his wheelchair, wheeled him up the ramp into the doctor's office and then was on her way back to the van to get the paperwork and some personal items the patient would need for his doctor's appointment, when she fell.

Her employer, a nursing agency, disputed her worker's compensation claim.

In worker's compensation the only relevant question is whether the worker's injury arose out of and in connection with the worker's employment.

Negligence and contributory negligence are not to be considered.

COURT OF APPEALS OF VIRGINIA
February 20, 2007

The Court of Appeals of Virginia ruled the nurse eligible for worker's comp.

For a patron to sue the doctor's office for negligence in a slip-and-fall scenario, it would be necessary to prove negligence in the design, construction or maintenance of the wheelchair ramp.

It would be a legal defense in a patron's suit that the drop-off from the side of the ramp was clearly visible to any patron with normal powers of observation.

However, the court pointed out that none of that is relevant in worker's compensation cases as long as the injury arises out of and in the course of the worker's employment. **Nurses 4 You, Inc. v. Ferris, __ S.E. 2d __, 2007 WL 505799 (Va. App., February 20, 2007).**

Power Of Attorney: No Guardian Needed.

The elderly patient had signed a power of attorney giving her daughter authority to manage her affairs if she became incapacitated.

The patient suffered a stroke which left her bedridden and uncommunicative. She spent several months in the hospital, then went to a rehab center and then to a nursing home.

Due to the fact the patient was completely incapacitated, the hospital's legal staff went to court and petitioned for appointment of an independent guardian to take over the patient's financial affairs in place of her daughter.

The New York Supreme Court, Appellate Division, ruled that the hospital acted improperly. As long as the family member designated by the patient in her healthcare directive is managing the patient's affairs competently and not using his or her position to profit at the patient's expense, intervention into his or her actions in not appropriate. **In re Nellie G., __ N.Y.S.2d __, 2007 WL 678256 (N.Y. App., March 6, 2007).**

Human Tissue Donation: FDA Issues Revised Guidelines.

On February 28, 2007 the US Food and Drug Administration announced the availability of "Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues and Cellular and Tissue Based Products.

The 74-page document is available from the FDA at http://www.fda.gov/cber/gdlns/tissdonor.pdf.

FEDERAL REGISTER February 28, 2007
Pages 9007 – 9008

Rehab Nursing: Doctor's Orders Re Helmet Must Be Followed.

A resident in a residential treatment center for persons with developmental disabilities was prescribed a helmet to be worn at all times because he could not otherwise be stopped from injuring himself by hitting himself on the head.

The nursing supervisor explicitly instructed the aide that there was a doctor's order for the helmet.

The aide stated she disagreed with the doctor's order, claiming it interfered with the patient's right to consent to treatment and she could keep him from hurting himself without it.

The patient, not wearing his helmet, was observed bleeding from a self-inflicted head wound.

COURT OF APPEALS OF WASHINGTON
March 6, 2007

The Court of Appeals of Washington upheld the judgment of the facility's nursing supervisor that the physician's order gave no room for discretion by aides whether or not or when the patient would wear his helmet.

The court dismissed the aide's wrongful discharge lawsuit, however, on the technicality that she voluntarily resigned to avoid ongoing disciplinary issues over non-compliance with the physician's orders, and thus was not actually discharged. An employee is considered "constructively discharged" if improperly forced to resign, but that did not happen here, the court said. **Black v. Dept. of Social and Health Svcs., 2007 WL 663760 (Wash. App., March 6, 2007).**

Nursing Error: 72% Acetic Acid Solution For HPV Test.

A patient sued the physician whose employee, the office nurse, applied a 72% acetic acid solution instead of the normal 3 – 5% solution to saturate the patient's genital area to test whether he, like his wife, was positive for human papilloma virus. The nurse's error was claimed to have caused him painful chemical burns and long-term physical and psychological complications.

The only issue for the US District Court for the Northern District of Georgia was whether the patient's attorneys had complied with the court rules for properly designating the patient's referring treating physician as an expert witness. **Morrison v. Mann, 2007 WL 656578 (N.D. Ga., February 27, 2007).**

Ventriculostomy Catheter: Nurse Infused Mixture Meant For IV.

An ICU patient died after her nurse erroneously infused a mixture of dopamine, amiodarone, magnesium sulfate, potassium phosphate and potassium chloride into the catheter inserted to drain fluid from the patient's brain hemorrhage, rather than into her IV line.

The error was discovered by another nurse after 296 cc had infused.

The only issue for the Supreme Court of Idaho was whether to accept a medical expert's opinion on cause of death.

The court agreed with the expert that intracranial fluid overload was an acceptable theory for cause of death and toxicity from the mix of chemicals did not necessarily have to be proven. **Weeks v. Eastern Idaho Health Services, __ P. 3d __ 2007 WL 600830 (Idaho, February 28, 2007).**

Patient Admits Drug Use: No Reasonable Expectation Of Privacy.

The defendant was involved in a motor vehicle accident while being chased by police. He was placed under arrest and taken to a hospital emergency room.

In the emergency room, with police officers standing by, he admitted to the nurse he had done some heroin an hour earlier. Charges of illicit drug possession were added to his case.

The New York Supreme Court, Appellate Division, ruled the nurse was providing medical treatment to a patient, not interrogating a suspect on behalf of the police. The patient could have requested some privacy, but did not, and he was fully aware the officers would overhear what he said to the nurse. His conviction on the drug charges was upheld. **People v. Cooper, __ N.Y.S.2d __, 2007 WL 765946 (N.Y. App., March 13, 2007).**

Bed Rails: Professional Judgment Is Required.

The Court of Appeals of Michigan has reaffirmed the principle that bed rails are now being seen by the courts as a form of physical restraint which requires an exercise of professional judgment.

A patient or patient's family is not automatically entitled to a finding of negligence when the bed rails are left down and the patient falls out of bed. They must prove that the patient's individualized assessment called for the bed rails to have been raised, or the case will not go forward against the patient's caregivers. **Umbarber v. Hayes Green Beach Mem. Hosp., 2007 WL 624996 (Mich. App., March 1, 2007).**

Abuse Registry: Length Of Prior Service Is Irrelevant.

A certified nursing assistant slapped an Alzheimer's patient after the patient slapped her. The incident was witnessed by the patient's daughter.

Although the aide had an otherwise unblemished record of more than twenty years service at the facility, she was asked to resign and did resign.

She was also reported to the state department of health, her certificate was revoked and her name was placed in the state's Federally-mandated registry of persons who had abused a vulnerable individual while working as a caregiver.

The New Jersey Superior Court, Appellate Division, ruled that even one isolated episode of abuse is sufficient to require a caregiver to be reported by his or her employer and listed by the department in the abuse registry. Prior length of otherwise satisfactory service is not relevant. **King v. Dept. of Health and Senior Services, __ A. 2d __, 2007 WL 763273 (N.J. App., March 15, 2007).**

False Imprisonment: Nursing Home Patient Can Sue.

The Court of Appeals of Michigan ruled that a nursing home cannot rely solely on the statements of other persons about a resident's mental competency in deciding to hold a resident against his expressed wishes, or the resident can file a civil lawsuit for false imprisonment.

Nursing home staff have a legal duty to make and act upon their own independent evaluation of the resident's mental status, the court said. **Williams v. Fairlane Memorial Convalescent Home, 2007 WL 750387 (Mich. App., March 13, 2007).**

Medicare/ Medicaid: Court Lets False Claims Act Case Go Forward.

The US False Claims Act (FCA) makes it a Federal criminal offense to submit a false or fraudulent claim for payment by any US government agency.

The FCA is routinely used to file criminal charges against medical facilities for billing Medicare or Medicaid for services which have not actually been performed. The US Attorney General can also file a civil lawsuit to recoup monies paid under false or fraudulent premises.

Private Individuals Can Sue on Behalf of US Government to Recoup False or Fraudulent Payments

The FCA also allows private individuals to sue on behalf of the US Government. These individuals typically are employees or former employees of healthcare facilities with intimate inside knowledge of the facilities' wrongful billing practices.

15% - 25% Goes to Private Parties

If money is obtained by settlement or judgment the court must award the private individual or individuals who started the process 15% to 25% of the total recovery.

The FCA contains complicated language requiring the US Attorney General to be notified and given the opportunity for the government's legal staff to join in the lawsuit.

The newest wrinkle is nursing home employees blowing the whistle on grossly substandard care at their facilities. The theory is that a facility seeking reimbursement for quality care but providing substandard care is making a false or fraudulent claim against the system.

The US District Court for the Central District of Illinois accepted the premise of such a case filed by former nursing-home staff nurses, if they could come to court with detailed evidence to back their allegations of substandard care. **US v. Momence Meadows Nursing Center, Inc., 2007 WL 685693 (C.D. Ill., March 2, 2007).**

Sexual Assault: Nursing Notes Help To Convict Perpetrator.

The Court of Appeals of Georgia recently upheld a criminal conviction for sexual assault, aggravated assault and kidnapping, based in part on the testimony of the nurses who first cared for the victim when police brought her to the hospital.

The case points out the importance of careful documentation of all aspects of an encounter with a patient who has just recently been the victim of a crime.

A nurse who examines a victim of sexual assault can testify what the victim told the nurse about how the assault occurred.

The law recognizes an exception to the rule against hearsay for a patient's statements to a healthcare provider for purposes of medical treatment.

Medical records, if authenticated by the facility's designated medical records custodian, can also be used as evidence in court.

A victim's statements recorded by a nurse in the victim's medical records can be used by the court as evidence.

COURT OF APPEALS OF GEORGIA
March 7, 2007

The courts tend to accept nurses as medical experts in the area of sexual assault. In this case the nurses testified that their physical exam, which did not reveal injury to the genital area, would not necessarily be inconsistent with a recent sexual assault. **Opio v. State, __ S.E. 2d __, 2007 WL 677791 (Ga. App., March 7, 2007).**

Civil Rights: Different Discipline For Same Offense Is Discrimination.

An Hispanic nurse was fired from her job in a hospital emergency room after she neglected to report to the charge nurse or the physician, left the patient unattended and did nothing for the patient for seventeen minutes. The patient had a swollen tongue and was eventually diagnosed with angioedema, a potentially life-threatening airway obstruction.

She sued for discrimination, pointing out that two Caucasian nurses were disciplined less harshly for their errors.

It is discrimination to discipline a minority employee more severely than a non-minority for an error of comparable seriousness.

In a healthcare setting, an error or omission which is life-threatening to a patient is more serious than a non-life-threatening event.

UNITED STATES DISTRICT COURT
MISSISSIPPI
February 16, 2007

The US District Court for the Southern District of Mississippi dismissed her case. One of the other nurses was suspended, but not fired, for treating a patient in the ER without first singing in the patient, but that in no way compromised the patient's safety.

Another nurse allegedly gave TPN to the wrong patient. That could be life-threatening, but, the court said, there was no proof the hospital knew of the error, so even if it did occur it would not tend to prove a pattern of discriminatory motivation. **Pauling v. Ocean Springs Hosp., 2007 WL 541701 (S.D. Miss., February 16, 2007).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Patient Suicide: Hospital Liable.

The patient had a lengthy history of outpatient psychiatric care for depression.

His wife brought him to the hospital's emergency room fearing he was about to harm himself. The triage nurse got him to verbalize that he was thinking of hanging himself, but a mental health counselor on duty in the ER overruled the nurse's decision to admit him.

His psychiatrist the next day mistakenly decided not to get him into a hospital because the hospital neglected to fax the nurse's notes along with the other records of the ER visit.

Suicide Thoughts vs. Suicide Plan

According to the District Court of Appeal of Florida, when a patient goes beyond verbalizing thoughts of suicide to verbalizing an actual plan for suicide, caregivers have an immediate legal responsibility to seek admission of the patient for inpatient psychiatric care.

This patient should have been admitted, not sent home from the ER, and that would have kept him from hanging himself, the court said. **Reid v. Altieri, __ So. 2d __, 2007 WL 750596 (Fla. App., March 14, 2007).**

Suicide: Hospital Not Liable.

The patient was brought to the hospital after police were called to a convenience store where he was walking around in a confused state. The patient admitted to the police and to hospital ER personnel that he was thinking of harming himself. The patient was placed in soft wrist restraints pending admission to the hospital's psychiatric unit.

No Direct Observation

Although he was in restraints to prevent self-harm, the patient was not provided direct, one-on-one observation. He slipped out of his restraints, eloped, went back to the convenience store and got his car, drove 335 miles, stopped on the Interstate, got out and walked in front of an SUV on the other side and killed himself.

The Court of Appeals of Georgia conceded it was below the standard of care not to provide direct, continuous observation for a patient on suicide watch, but dismissed the case for lack of an expert opinion that that was the actual cause of death. **Miranda v. Fulton Dekalb Hosp., __ S.E. 2d __, 2007 WL 755200 (Ga. App., March 14, 2007).**

Murder/Suicide: Facility Should Have Sought Psych Hold On Release From Intermediate Care.

The patient was transferred from inpatient psychiatry to an intermediate-care residence on the hospital campus after some success had been achieved controlling his intermittent explosive disorder with medication.

However, he was discharged out into the community in response to an incident in which he threatened another resident with a kitchen knife during an argument while they were working in the kitchen.

The patient's counselor, a registered nurse, knew he had a history of domestic violence and was under a restraining order when he entered the hospital for treatment, and knew of a prior suicide attempt in which he tried to hang himself while he was in jail for violating the restraining order.

The patient was discharged from the residential treatment center on the hospital campus after he threatened another patient with a knife.

The signs pointed to a dire need to have him involuntarily committed, not released into the community.

The hospital is answerable for the murder of his wife and children and two neighbors, and his own suicide.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
March 14, 2007

After the kitchen incident, before his discharge, the patient's counselor clearly heard him verbalizing thoughts of suicide. He was also giving away or tearing up his personal possessions, including a favorite baseball cap he was never seen not wearing.

The US Court of Appeals for the Third Circuit found it grossly negligent for the hospital to ignore the counselor's warnings and discharge him into the community. Starting the process for involuntary psychiatric commitment was called for, the court ruled.

There was no duty to warn his family, the court said, just because of his explosive disorder. He never verbalized any express threats toward his family. **DeJesus v. US Dept. of Veterans Affairs, __ F. 3d __, 2007 WL 754726 (3rd Cir., March 14, 2007).**