LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

April 2008 Volume 16 Number 4

Heparin-Induced Thrombocytopenia: Nurses Not Properly Trained, Court Sees Negligence.

The patient was in the hospital recovering from bilateral knee replacement surgery.

His physicians ordered subcutaneous injections of Lovenox as a precaution against deep vein thrombosis. The injections were administered to the lower left quadrant of his abdomen.

Over a nine-day period the patient's nurses and physicians, the patient's lawsuit alleged, should have understood the changes occurring in the area where he was getting the injections. A nurse saw a rash and bruising and suggested getting a consult. The skin hardened at the injection site, then a large blood blister developed and progressed to a black blister measuring 3 x 8 cm.

From day seven to nine the patient's platelet count dropped 70%.

On day nine the patient became pale, confused, drowsy, short of breath and difficult to rouse. One of the internists substituted unfractionated heparin for the Lovenox. Ten hours later another internist finally took him off heparin-based anticoagulants altogether.

The patient reportedly had a stroke, pulmonary embolism and deep vein thrombosis, leaving him paralyzed on the right side, all related after-the-fact to heparin-induced thrombocytopenia, an immune reaction to heparin.

There is nothing in the legal rules of evidence even to suggest that a nurse should be categorically denied the right to express an expert opinion on the relationship between a breach of the standard of care and injury to the patient.

If the breach of the standard of care was committed by a nurse, a nurse can testify as to the consequences.

COURT OF APPEALS OF WASHINGTON
February 26, 2008

The judge dismissed the patient's case on the grounds that his primary expert witness, a PhD-level nurse educator, was not qualified to testify. The Court of Appeals of Washington reversed the dismissal and told the judge to schedule a jury trial.

Nursing Expert's Testimony Accepted

The patient's nursing expert's opinion was that the legal standard of care requires a hospital to train its nurses to recognize signs of heparin-induced thrombocytopenia and, when the signs are seen, to advocate for the patient to get necessary medical evaluation and proper treatment.

The staff nurses recognized that something was wrong and that a thorough assessment was needed of the changes occurring at the subcutaneous injection site, but they failed to follow up to get it done.

The nurses should have been trained to appreciate the significance of the marked drop in the patient's platelet count as the Lovenox injections were ongoing.

The patient's nursing expert also questioned the administration of unfractionated heparin to the patient as signs of a systemic immune reaction to a heparin-based compound had started and were getting worse. The Lovenox and heparin should have been discontinued in favor of a non-heparin anticoagulant. **Hill v. Sacred Heart Medical Center, __ P. 3d __, 2008 WL 500055 (Wash. App., February 26, 2008).**

Inside this month's issue ...

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Miscarriage: Lawsuit Raises Questions Re Hospital's Handling Of The Remains.

The mother was informed by her obstetrician at a routine prenatal visit that the fetus inside her had expired at approximately fifteen weeks gestation.

The obstetrician had her admitted to the hospital for delivery of the deceased fetus.

The Parents' Expressed Wishes

The parents expressly told the obstetrician they did not want an autopsy or any laboratory work done on the fetus. They wanted the fetus to be cremated.

The nurse went on to tell the couple the fetus would, in fact, be cremated, along with other fetuses, not at this hospital but at another hospital which had the appropriate facilities. The couple concurred with the plan and agreed that the ashes could be commingled with the others and they did not need to get them back.

Hospital Pathology Department's Actions

A month after discharge from the hospital the couple received a bill for $645 from the medical group with which the hospital pathologist was associated.

They assumed it was a mistake and ignored the bill for several months until they started getting phone calls from a collection agency. The collection agency said it was for pathology testing of the placenta. Before paying the bill, however, the patient accessed her records from the hospital.

In fact, the hospital pathology department had gone ahead with post-mortem testing on the fetus several days after the mother left the hospital.

Lawsuit Raises Questions About Pathology Work on Other Fetuses

At this point the issue is whether the parents' attorneys are entitled to subpoena any medical records regarding nineteen other non-live-born fetuses at the hospital. The Supreme Court of Alabama has ruled the lawyers can subpoena the records pertaining to disposition of those fetuses, but not the confidential records of the patients' miscarriages or stillborn deliveries. **Ex parte St. Vincent's Hosp., __ So. 2d __, 2008 WL 274754 (Ala., February 1, 2008).**

This case raises the highly charged question whether a fetus delivered dead at fifteen weeks is the remains of a deceased loved one, or merely a garden-variety pathology specimen.

The traditional common law said that the remains of a loved one are strictly the family's property.

Although a corpse has no monetary value as personal property it has a great deal of sentimental value.

Misappropriation or mishandling of a love one's remains traditionally gave the family a right to sue for the guilty party for substantial non-economic damages.

At this point in the litigation the parents' attorneys are using the pre-trial discovery process to see if a pattern exists of ignoring parents' wishes as to miscarried remains at the hospital.

The medical records of nineteen other mothers' miscarriages or stillborn labors and deliveries will remain strictly confidential.

However, the records regarding disposition of the fetal remains will come to light in this lawsuit.

SUPREME COURT OF ALABAMA
February 1, 2008

Dementia: Patient Drank Poison, Jury Gives Family $3,000,000.

The family chose the facility because it had a secure unit dedicated to the care of dementia patients.

The patient went down to the kitchen himself to get some more of the cranberry juice the residents had been served earlier that day. Carelessly left out on a kitchen counter was a bottle of caustic cleaning product with the same red color as cranberry juice. The patient drank it and badly burned his mouth, throat and upper respiratory tract.

Anxious and agitated from his injuries he was physically and chemically restrained his last seven days before he died from aspiration pneumonia.

The jury in the Supreme Court, Kings County, New York, awarded $3 million to his estate for inadequate supervision. **Reinhardt v. Sunrise, 2008 WL 611997 (Sup. Ct. Kings Co., New York, January 29, 2008).**

Fall: No Bed Alarm, Patient Gets Settlement.

An advanced dementia patient living in a nursing home got up from her bed to close her curtains, fell and fractured her humerus. The fracture meant she could no longer use a walker as she had before.

The nursing home paid her a $110,000 settlement. The legal basis for her case was a state statute requiring adequate supervision of nursing home residents. Her lawyer argued that adequate supervision meant in her case that a bed alarm was required to alert staff whenever she was up and out of bed. **Perby v. East Rockaway Progressive Care, 2008 WL 612034 (Sup. Ct. Queens Co., New York, February 22, 2008).**

Sponge Count: Nurse Reported The Problem After Closure, Court Finds No Negligence.

A perioperative nurse informed the surgeon that the final sponge count was not correct.

The incision had already been closed.

The surgeon called for an x-ray which confirmed that a sponge was still inside. The surgeon cut open the sutures, retrieved the sponge and closed the incision a second time.

The patient's lawsuit alleged her bowel was damaged by exploration for the sponge after the re-opening of her incision. That, her lawsuit claimed, would have been unnecessary but for the nurse's negligence.

The Court of Appeals of Texas ruled there was no nursing negligence in what the nurse did, notwithstanding the hospital's policy that all sponge counts were supposed to be completed before closure. **Ortegon v. Benavides, 2008 WL 577175 (Tex. App., March 5, 2008).**

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E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
PO Box 4592
Seattle, WA 98194–0592
Phone (206) 440-5860
Fax (206) 440-5862
kensnyder@nursinglaw.com
www.nursinglaw.com

Abuse: Court Says That Home Health Nurse Did Not Willfully Abuse Her Patient, Nursing Board's Charges Dismissed.

A home health nurse's care for her eighty-one year-old patient consisted primarily of managing her medications, that is, going to the home and observing and documenting that she was taking them. Among other medications the patient was on Seroquel, prescribed as treatment for her schizophrenia.

After being let into the home by a neighbor the nurse noticed the patient's oxycodone was not with her other medications. The nurse went through the house room by room, opening kitchen cabinets, rifling through dressers, etc., looking for the oxycodone bottle, basically to ascertain whether or not the patient might be taking it inappropriately.

The patient became very upset. The neighbor who was still there believed the nurse's had acted inappropriately and reported her to the State Board. The Board sent the nurse a formal letter of reprimand, put her license on probation and ordered her to complete coursework in legal/ethical issues and therapeutic communications.

The Court of Appeals of North Carolina reversed the Board's decision. The nurse's conduct had the effect of upsetting the patient, but the nurse did not act willfully, that is, with an intent to cause any physical or mental harm. **Elshoff v. Board of Nursing, __ S.E. 2d __, 2008 WL 706787 (N.C. App., March 18, 2008).**

The Board of Nursing erred finding that the nurse willfully harassed, abused or intimidated her patient either physically or verbally.

Willful conduct is done purposely and deliberately with specific intent to do something the law forbids.

The nurse's conduct was very upsetting to her patient, but the nurse had no intent to cause harm.

The nurse did not do or say anything with the intended purpose of harassing, abusing or intimidating her client, although, in fact, that seems to have been the actual effect her actions had on her client. There was a therapeutic purpose which provided legal justification for what the nurse did.

COURT OF APPEALS OF NORTH CAROLINA
March 18, 2008

Sexual Harassment: Facility Not Liable, Took Appropriate Action.

A member of a nursing home's non-licensed staff sued the nursing home for sexual harassment, three separate incidents involving three different residents.

The US District Court for the Northern District of Illinois ruled there was no basis to sue for sexual harassment. However, the court left the question open for the time being whether the aide had grounds to sue for retaliation, that is, for being terminated at or about the same time she filed her complaints of sexual harassment.

Sexual Harassment By Nursing Home Resident

The general rule is that an employer can be liable for sexual harassment of its employees by clients or customers, not just supervisors and co-workers.

That being said, however, a nursing home caring for elderly dementia and mentally ill patients is a special environment where a certain amount of acting out is expected which would be way out of bounds in other contexts. It is a judgment call in every case, the court said.

Facility Took Prompt, Effective Action

Once the employee reported each incident to her supervisors, prompt and effective action was taken. The court ruled that excused the facility from liability for sexual harassment.

Resident #1 was counseled about his inappropriate behavior. The aide was told she did not have to enter his room alone.

Resident #2 was counseled, put on a monitoring program (details not specified) and his treating physician was notified about the incident. The aide was told she did not have to care for him.

Resident #3 was counseled, monitored and eventually transferred out of the facility after the local police were notified. The aide did not have to care for him.

Retaliation Claim Left Open

Whether or not an employee's claim is ruled to be valid by an administrative agency or a court, no employer retaliation is permitted for complaining about sexual harassment. **Pickett v. Sheridan Health Care Center, 2008 WL 719224 (N.D. Ill., March 14, 2008).**

A healthcare facility, such as a nursing home, can be held liable for sexual harassment of its employees by patients or residents.

The courts are reluctant to impose liability on nursing homes in this context, given such facilities' mission to provide care to persons with dementia and other forms of mental illness and impairment. Crude, humiliating or insensitive comments are an expected part of the working environment.

Whether the one committing harassment is a supervisor, co-worker or client, an employer has a general obligation to discover and prevent sexual harassment.

For an employee to have grounds to sue for sexual harassment, the courts have said, the employee must be the victim of conduct so severe or pervasive as to alter the conditions of employment and create an abusive working environment.

Even if the verbalizations and actions rise to the level of harassment, a nursing home will not be held liable in a lawsuit if prompt and appropriate steps were taken in response to an employee's complaint.

UNITED STATES DISTRICT COURT
ILLINOIS
March 14, 2008

Home Health: Professional Staff Get Overtime Pay.

The US Fair Labor Standards Act contains some exceptions to the general rule of time and one half for overtime. One exception applies to companions and housekeepers who work in the homes of their clients. Whether they are employed directly by their clients or work for an agency, they do not get overtime.

The US District Court for the Southern District of Florida recently clarified the law. An agency LPN who goes into clients' homes to perform nursing assessments, administer oxygen to clients and suction their chests, among other professional services, is not a home companion or a housekeeper and is entitled to overtime.

The court awarded the nurse $22,312.50 in back overtime she was owed. **Bergman v. Private Care Inc., 2008 WL 517606 (S.D. Fla., January 30, 2008).**

Seventh Day Adventist: Court Finds No Discrimination.

The US District Court for the Middle District of Florida dismissed a religious discrimination case filed by a nurse who alleged her Seventh Day Adventist religion prohibited her from working Saturdays, that is, January 1, 2005, a Saturday.

The court was not convinced the nurse's beliefs were a matter of conviction as opposed to personal convenience. Her employer did offer reasonable accommodation by allowing her to swap shifts with others or use her seniority to request the day off. A healthcare employer is allowed to expect direct-care employees to work when needed, even on weekends and holidays. **Howard v. Life Care Centers, 2007 WL 4964716 (M.D. Fla., October 29, 2007).**

Union Activities: Hospital Guilty Of Interference.

A registered nurse who was a union activist was told by hospital management she could not discuss her pro-union point of view at the nurses station because doing so violated the hospital's rule against solicitations in patient-care areas.

The nurse filed an unfair labor practices charge with the National Labor Relations Board (NLRB). The NLRB took her side in the controversy and the US Circuit Court of Appeals for the Seventh Circuit upheld the NLRB.

The hospital's policy against solicitations is perfectly legal, at least on its face. The policy forbids all solicitations in patient care areas and does not discriminate against or interfere with legitimate union activities.

Actual practice was a different story. Nurses got away with promoting all sorts of commercial and charitable causes, that is, things other than union business.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
March 11, 2008

Policy or no policy, nurses routinely got away with selling Girl Scout cookies, collecting for the March of Dimes and the United Way, organizing birthday and going-away parties and selling cosmetics and hygiene products not only in break rooms but also in nurses stations, patient rooms, hallways, corridors and even in the ICU.

Singling out union organizing as the only form of solicitation that ran afoul of the hospital's no-solicitation rule was discriminatory and illegal anti-union interference, the court ruled. **St. Margaret Mercy Healthcare v. NLRB, __ F. 3d. __, 2008 WL 638059 (7th Cir., March 11, 2008).**

Association Discrimination: Nurse Fired Over Spouse's Medical Bills Has Right To Sue.

The Americans With Disabilities Act (ADA) contains rarely mentioned language prohibiting an employer from discriminating against an employee because of a disability affecting an individual with whom the employee is known to have an association or relationship.

A groundbreaking court decision in 2004 was the first application of the concept of "association discrimination" to the scenario where an employee was fired because the employee's spouse had a disability that was costing the employer's health insurance plan significantly more than the employer wanted to budget for that purpose.

The employee has to prove cause-and-effect. In the case at hand it was fairly obvious.

The hospital was in financial trouble. Managers were told to come up with creative cost-cutting strategies. The nurse's spouse's cancer treatments had already cost the hospital more than $180,000. The nurse was fired shortly after she refused to put her husband in a hospice rather than continue aggressive treatments.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
February 27, 2008

A registered nurse was fired from her job in a hospital over the strain that the spiraling costs ($180,000+) her husband's cancer treatments were putting on the hospital's self-insured health plan.

The US Court of Appeals for the Seventh Circuit ruled the fired nurse had grounds to sue her former employer under the Americans With Disabilities Act (ADA) and the Employee Retirement Income Security Act (ERISA), but no grounds to sue for age or gender discrimination.

ADA Prohibits Association Discrimination

The legal concept of association discrimination comes from rarely mentioned language in the ADA recently resurrected from obscurity by the US Court of Appeals for just the situation in this lawsuit.

The hospital's financial situation was no secret. The nurse's manager tried several times to convince the nurse to drop her husband's costly cancer chemotherapy and radiation treatments and get him into a hospice. When the nurse refused for the third or fourth time, she was abruptly fired.

The court was satisfied the nurse met her legal burden of proof as to her manager's true motivation. Cutting out the cost of treatment for a disabled person with whom the nurse had an association or relationship was the only plausible rationale for the manager's actions.

ERISA Prohibits Retaliation

Well recognized legal precedents applying ERISA outlaw employer retaliation against an employee using the employee's or a family member's benefits under an employer-provided insurance plan.

No Age or Gender Discrimination

A twenty-five year-old male nurse ran up medical expenses of about $5,000 without being fired for overusing the company health plan. The court ruled that that did not prove a case of age or gender discrimination, given the disparity in the amounts of money involved. **Dewitt v. Proctor Hosp., __ F. 3d __, 2008 WL 509194 (7th Cir., February 27, 2008).**

Fall: Brain-Injury Patient Left Alone On Commode.

The thirty-nine year-old patient had been treated with emergency surgery for a right-side brain abscess that was causing brain-stem herniation.

The surgery had involved resection, that is, removal of a major portion of the right side of her brain, leaving significant left-sided paralysis, speech impairment, blindness in both eyes and a host of other neurological problems.

The patient needed a comprehensive program of assistance with all major activities of daily living and was transferred to a nursing home.

In the nursing home she was left alone on the commode in the middle of the night. She fell and struck her head.

She was examined by the nursing home's medical director. He found nothing wrong. A few days later, however, the patient was rushed to the E.R. with a new subdural hematoma from the fall which now compounds the problems she had before.

Her lawsuit against the nursing home in the Circuit Court, Dane County, Wisconsin settled for $500,000. **Harrison v. Meriter Health Services, 2007 WL 4976341 (Cir. Ct. Dane Co., Wisconsin, July 1, 2007).**

Fall: Dementia Patient Left Alone.

A private-duty sitter hired by the family to sit through the night with a ninety year-old in a nursing home left the beside only momentarily to dispose of trash after cleaning up his diarrhea.

The bed rails reportedly were left down. The patient got up, fell, hit his head and soon died from a subdural hematoma. The jury in the Circuit Court, Palm Beach County, Florida awarded unspecified damages from the sitter's agency. **Dubin v. United Nursing Services, 2007 WL 4954007 (Cir. Ct. Palm Beach Co., Florida, December 7, 2007).**

Preeclampsia: $22,000,000 Verdict For Patient's Death.

A severe headache brought the patient to the hospital. She was thirty-four years old and nine months pregnant with her first child. She was admitted to the labor and delivery unit.

On arrival in labor and delivery she was examined by a second-year obstetrical resident and assessed by a labor and delivery nurse. The physician and nurse concurred the patient likely had preeclampsia due to her being nine months pregnant and having elevated blood pressure.

Lab tests ordered by the resident physician confirmed the presence of HELLP syndrome (Hemolytic anemia, Elevated Liver enzymes and Low Platelet count).

The patient was then examined by two obstetric physicians. It was agreed that labor should be induced.

No Labetalol Given

The family's lawsuit for wrongful death from malpractice alleged the patient's death was caused by the fact that antihypertensive labetalol was not given as mandated by hospital protocols for every pregnant patient with severe hypertension.

During induced labor the patient's blood pressure reportedly spiked to 210/111. That blood pressure reading was obtained just at the moment she became unresponsive.

The baby was delivered by emergency cesarean basically unharmed. The mother was then sent for a CT scan which revealed she had had a brain hemorrhage.

The mother was placed on a ventilator. The ventilator was discontinued four days later and she expired.

The jury in the Circuit Court, Cook County, Illinois awarded the widower and child a total of $22,000,000 from the hospital, for the resident's and nurse's negligence, and from the medical-practice groups with whom the two obstetricians were associated. **Bentivenga v. Saleh, 2008 WL 539887 (Cir. Ct. Cook Co., Illinois, January 15, 2008).**

Stroke: Nurses Did Not Report Patient's Status To Physician.

The patient passed out at home and was taken to the E.R. by ambulance.

The E.R. doctor called in a neurologist, who was not able to rule out a cerebrovascular event *versus* a seizure and had the patient admitted to a med/surg floor.

After some bedside x-rays were done a nurse tried but was unable to rouse the patient with a deep sternal rub. The nurse just made a notation in the chart and did not notify the physician.

Over the next ten hours there was no record of any communication between the nurses and the physicians as to the patient's changing neurological status even though he was having difficulty moving his limbs, complained of right-side numbness, could not lift his right arm and could not squeeze with his right hand. The physician was not notified until the patient was unable to swallow, almost twelve hours after he had arrived on the med/surg floor.

The next morning the neurologist made a diagnosis of stroke.

The jury in the District Court, Boulder County, Colorado awarded $1,000,000, 90% from the hospital and 10% from the neurologist. **Rademacher v. Katuna, 2007 WL 4925066 (Dist. Ct. Boulder Co., Colorado, May 24, 2007).**

No Consent: Patient Can Sue.

The pre-operative medical and nursing notes explained the planned surgical procedure in elaborate detail and the fact that the risks, benefits and possible complications were communicated to the patient.

The US District Court for the District of Minnesota, however, agreed with the patient there was no record of the patient ever having agreed to undergo the procedure. **Studnicka v. Pinheiro, 2008 WL 611605 (D. Minn., March 5, 2008).**

Decubitus Ulcers: Home Health Nurse's Care Ruled Negligent.

The Court of Appeal of Florida upheld the jury's $3,000,000+ verdict in favor of a paraplegic home-health client.

The client was discharged from the hospital with an almost-healed lesion near his coccyx. While under the nurse's care it progressed to a chronic problem which required surgical skin grafting.

The patient's home-health nurse had to do more. She should have spoken with the physician, not just left messages, and taken her patient to the physician's office or an emergency room.

COURT OF APPEAL OF FLORIDA
March 5, 2008

According to the court record, the nurse herself could see the condition of the wound was visibly turning for the worse and there was a worrisome smell suggesting that infection was setting in.

The patient's home health aide reported to the nurse the patient was cold and having chills. Those were signs, accompanied with the deteriorating condition of the skin lesion, indicating the possible onset of systemic septicemia.

The nurse visited the patient every few days and left messages on the doctor's answering machine as the patient's lesion continued to deteriorate.

According to the patient's nursing expert's testimony, the nurse should have made an effort to confer with the physician. She should have taken the initiative to get the patient into the doctor's office or an emergency room and not let the wound become necrotic. **Olsten Health Services v. Cody, __ So. 2d __, 2008 WL 583687 (Fla. App., March 5, 2008).**

Cervical Cancer: Physician Did Not Read Pap Smear Results, Jury Returns $30 Million Verdict.

The fifty-one year-old patient's pap smear results from her annual exam came back from the lab "within normal limits." However, there was a further notation that the specimen was incomplete in that there was "no endocervical component in a menopausal patient."

Nurse Received Results
Results Filed Away in Patient's Chart

The pap-smear report was apparently placed in the patient's chart by the physician's office nurse without being reviewed by the physician.

Second Pap Smear
Results Filed Away in Patient's Chart
Not Reviewed by Physician

The patient returned nine months later, for another routine exam, not having been informed her previous pap smear required follow-up.

The pap smear lab result from this exam again reported "within normal limits," but with a further notation that inflammation and/or infection was present.

This report, like the earlier one, was apparently placed in the chart by the office nurse without the physician seeing it.

It was not clear whether the office nurse misinterpreted the results from the lab and did not see any need for further action, or just filed them away without paying any attention to what they said.

Patient Diagnosed
With Advanced Cervical Cancer

Only four weeks later the patient returned to the physician after beginning to hemorrhage vaginally at home.

The physician did a biopsy which led to a diagnosis of Stage 3B cervical cancer.

Total Pelvic Exenteration

The patient immediately began chemo and radiation treatments which seemed for a time to result in remission of the cancer.

Unfortunately the remission was only temporary. An extensive exenteration became necessary. Her bladder, rectum, colon, anus and vagina were removed.

Assessment of Liability

In this case the experts testified that the physician always has to review the pap smear lab results. The earlier pap smear should have been repeated and a complete pelvic exam done, the experts said.

Failure to Diagnose Cancer
Assessment of Damages

In failure-to-diagnose or delayed-diagnosis litigation, the patient's experts look at the nature and staging of the cancer when it was actually discovered and extrapolate backward to determine the staging when it should been discovered.

The experts then explain to the jury the relatively less invasive measures that likely would have worked earlier compared to the more invasive and debilitating measures that were necessary later on.

The net difference in degree of difficulty becomes the basis for the jury's assessment of compensation. According to the patient's experts, "only" a radical hysterectomy should have been necessary, not extensive exenteration.

The jury in the Supreme Court, Queens County, New York awarded $30,000,000. Liability was apportioned 90% to the physician and 10% to the lab, which had already settled prior to trial for $2,500,000. **Trainer v. Bio-Reference Laboratories, Inc., 2007 WL 4911572 (Sup. Ct. Queens Co., New York, December 7, 2007).**

Fall: Verdict For The Defense.

The jury in the Circuit Court, Covington County, Alabama agreed with the hospital's nursing expert that the bed rails were up as they should have been and the patient chose to climb over them by herself without asking for help to get out of bed, not a negligence situation for the patient's nurses. **Waters v. Andalusia Regional Hosp., 2007 WL 4983148 (Cir. Ct. Covington Co., Alabama, October 29, 2007).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Hostage Crisis: Court Says Nurse Can Sue Over Substandard Law Enforcement Training.

A reserve sheriff's deputy with no training in handling prisoners was assigned to guard a recently-arrested criminal suspect recovering in the hospital ICU from an overdose of OxyContin ingested right before he was taken into custody.

The inexperienced officer did not have the patient shackled bodily to the bed and left the handcuffs off after the patient finished eating.

The prisoner grabbed the officer's gun, fired a shot into the ceiling and took a nurse hostage. Eventually a savvy hostage negotiator was able to trade him narcotics for the gun and then trained deputies quickly overpowered him.

A nurse on duty in the ICU who was not the nurse taken hostage sued for PTSD from the incident. The Court of Appeal of Louisiana ruled the sheriff's department was liable to the nurse for damages for negligence for sending a deputy with substandard training. **Thomas v. Sheridan, 2008 WL 426289 (La. App., February 8, 2008).**

Nurse Did Not Investigate Patient's Insurance: Lawsuit Thrown Out.

The Court of Appeals of Michigan threw out a convoluted lawsuit which alleged that a hospital staff nurse was responsible for a patient's death after a ruptured aortic aneurysm.

The patient checked into the hospital to have the aneurysm repaired. However, his platelet count was too low and the surgery had to wait a day or two. It was unclear if his insurance would pay for him to stay over in the hospital. The patient did not want to be billed. A nurse offered to contact his insurance, but he declined the offer and checked himself out of the hospital. Then the aneurysm burst. It was repaired but the patient died a month later from complications.

The court ruled it would violate the basic principle of medical self-determination to hold the nurse responsible for not investigation the patient's insurance coverage after the patient himself had asked her not to do so. **Johnson v. Botsford General Hosp., __ N.W. 2d __, 2008 WL 681211 (Mich. App., March 11, 2008).**

Patient Photographed Without Consent: Court Says Patient's Privacy Rights Were Violated.

A pharmacy intern used his cell phone to photograph a classmate on a hospital patient-care floor. In the photograph background was a patient being attended by a group of medical interns and other hospital staff.

The patient's nurse insisted the pharmacy intern delete the photo from his cell phone on the grounds that photographing a patient is a violation of patient confidentiality. The intern immediately deleted the photo.

The pharmacy intern was ordered by his supervisors to apologize to the patient's nurse in writing and to review his course materials on patient confidentiality and the US Health Insurance Portability and Accountability Act (HIPAA). That, he was told, would clear the incident from his record.

The pharmacy intern who took the photo was told the incident would be cleared up by a written apology to the patient's nurse and review of the course materials on patients' privacy rights.

Then he was terminated from his internship with a failing grade and has been unable to obtain his degree.

His own rights seem to have been violated.

UNITED STATES DISTRICT COURT
TEXAS
February 21, 2008

However, the intern was failed in the course and suspended from the program. He has not been able to complete his training elsewhere.

The US District Court for the Southern District of Texas said the nurse was right to insist that the photo be deleted from the intern's cell phone. It does not matter if the patient is the subject in the foreground or part of the background or if the photo was taken with no intent to infringe on the patient's rights. Photographing a hospital patient without the patient's consent is a violation of the patient's right to medical confidentiality.

The court nevertheless did see a problem with the severity of the punishment meted out to the intern for this offense. **Strango v. Hammond, 2008 WL 501322 (S.D. Tex., February 21, 2008).**