LEGAL EAGLE EYE NEWSLETTER

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EMTALA: BP Still High At Discharge, Court Says Hospital Failed To Stabilize The Patient.

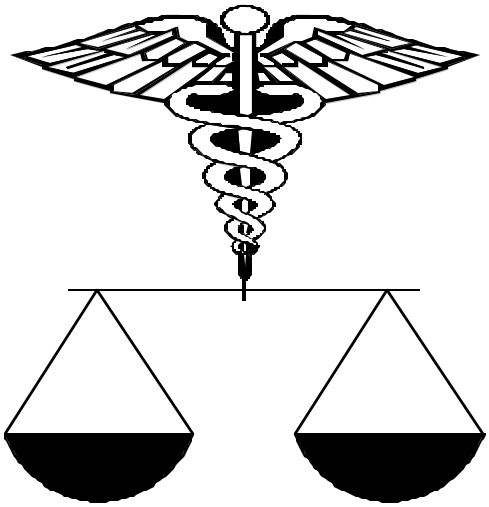
The patient was brought to the hospital's emergency department by ambulance from her home after experiencing episodes of syncope. According to the court record she had also been falling and had poorly controlled high blood pressure.

In the emergency department her blood pressure was taken frequently by two physicians and a nurse in addition to her being placed on an automatic blood-pressure cuff monitoring device.

After three hours of close observation her blood pressure had dropped from 200/110 to 133/91 and a physician ordered her discharged. The physician instructed her to stop taking her atenolol and to follow up in her primary-care physician's office. He also cautioned her to get in the habit of sitting on the side of the bed for five minutes before trying to stand up.

It took more than two hours after the physician discharged her for an ambulance to come to take her home. During that time she twice fell off the bed where she was sitting. The nurse took her blood pressure both times, got readings of 180/110 and 170/100, but did not notify the physician.

The patient left and then came back to the hospital two days later. She had had a stroke.



The US Emergency Medical Treatment and Active Labor Act (EMTALA) requires a hospital to stabilize a patient's condition before discharge from the E.R.

When she fainted, after being discharged but before actually leaving, her BP was back up to 180/110. Her medical condition was not stabilized.

UNITED STATES DISTRICT COURT
NEW JERSEY
June 29, 2005

The patient had to undergo comprehensive rehab for the sequelae of her stroke and now has significant residual functional limitations.

She sued the hospital for violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) and in the same lawsuit sued the two physicians and the nurse for common-law medical malpractice.

Preliminary Ruling
EMTALA Does Apply

The hospital asked the US District Court for the District of New Jersey for a preliminary ruling whether this case comes under the EMTALA. The court ruled that it does.

The court has not yet ruled on the malpractice allegations filed against the nurse, the physicians and the hospital as the nurse's employer.

EMTALA Liability Defined

The EMTALA is a US Federal statute which can hold hospitals and physicians liable for the handling of emergency cases whether or not there is also common-law liability for professional malpractice.

In a nutshell, a patient who seeks treatment in a hospital emergency department with an emergency medical condition or in active labor must get an

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Vomiting, Aspiration, Arrest: Court Clears Nurses Of Negligence In Patient's Death.

The patient was taken to the hospital following a serious motor vehicle accident. He had emergency surgery.

Five days after surgery he was transferred from the ICU to a post-surgery recovery unit and cleared by the physician to start a clear liquid diet. When he started to complain of nausea his nurses began giving prn IM injections of Phenergan at approximately four-hour intervals.

Nineteen hours after the last Phenergan shot he aspirated vomit. Two hours later he died of cardiopulmonary arrest.

The jury absolved the hospital's nurses from allegations of negligence. The Supreme Court of Mississippi upheld the jury's verdict in favor of the hospital.

Oxygen Mask

One of the patient's family's attorneys' theories of liability was that the patient was allowed to continue on a bi-level positive airway pressure mask despite the hazard of vomiting relative to his complaints of nausea as liquids were being started post-surgery.

However, the court accepted testimony that the nurses did appreciate the hazard and did switch him to an ordinary oxygen mask, then to nasal prongs, as they were treating him with the Phenergan for his ongoing complaints of nausea.

Phenergan

Another theory was that the nurses neglected for nineteen hours to continue giving the Phenergan.

However, the court accepted testimony that his nausea seemed to be under control and that is why the nurses properly discontinued the q 4 hour injections they had been giving

Report to Physician

Although it took the physician about forty-five minutes to respond and get the patient back to the ICU when the nurses paged him after the patient vomited, the court could find no indication of negligence on the part of the nurses. **Burr v. Mississippi Baptist Medical Center, __ So. 2d __, 2005 WL 1498868 (June 16, 2005).**

There has to be some passing reference to the fact the patient was injured in an automobile accident.

Beyond that it would be improper for the attorneys for either side even to suggest that the patient or his next of kin or his heirs might be getting a monetary settlement for the car accident as mitigation of the hospital's liability.

It would also be completely improper for anyone to suggest the automobile accident is partly to blame for what happened in the hospital. If a patient receives substandard medical care, the circumstances which necessitated such care in the first place, even an intentionally self-inflicted injury, are completely irrelevant.

The existence of Medicare is another such issue. The hospital's lawyers did not try to do it, but it would have been improper to argue that medical bills for treatment caused by medical negligence are not part of the damages in a malpractice suit because Medicare has paid or will pay.

SUPREME COURT OF MISSISSIPPI
June 16, 2005

Ob/Gyn: Nurse Translated For Physician, Court Sees Negligence.

According to the District Court of Appeal of Florida, the ob/gyn physician knew his patient had previously delivered a large baby vaginally. The physician also knew this baby, her second, was also large in reference to the mother's small stature.

The physician relied upon a Spanish-speaking nurse to translate for him in obtaining a history from the mother.

The physician had the nurse ask the patient if she had had problems with her previous delivery or with the baby. The mother replied in Spanish that she had no problem with her first delivery but said nothing about the first baby. In fact, there had been a birth injury to her first baby, which resolved without permanent injury.

The nurse/translator did not press for a complete answer including a history about the first baby. The ob/gyn physician went ahead with a vaginal delivery and there were complications.

It is below the medical standard of care for an ob/gyn physician not to obtain a complete history from the patient as to her previous pregnancies, deliveries and the status of the babies.

DISTRICT COURT OF APPEAL
OF FLORIDA
June 29, 2005

The court faulted the physician for going ahead without a full medical history that would have, in the opinion of the patient's medical experts, disposed him toward a cesarean as the safer option for the large baby. The nurse herself was not actually sued in this case. **Torres v. Sullivan, __ So. 2d __, 2005 WL 1521251 (Fla. App., June 29, 2005).**

Sign-Language Interpreters: Court Reviews Hospital Patients' Legal Rights Under Americans With Disabilities Act, Rehabilitation Act.

Four profoundly deaf patients sued the same hospital over the issue of sign-language interpreter services.

The US District Court for the Middle District of Florida carefully defined hospital patients' rights on this issue.

Court Order
Re Hospital's Future Practices

One legal avenue pursued by the patients was to ask the court for an injunction requiring the hospital to change its practices in the future regarding accommodation of deaf patients' interpretive communications needs.

The court pointed out the law makes that a tough row to hoe. As the law phrases it, to obtain a court injunction against a hospital's practices the patient must prove a "real and immediate threat of future injury" due to the hospital's practices, as opposed to a "merely conjectural or hypothetical" threat of future injury.

Since none of the patients could prove with certainty they would come to this emergency room again and suffer harm from inability to communicate, the court refused their request for an injunction.

The hospital refused to allow the deaf patient a sign-language interpreter. She could not understand what was going on during her pelvic exam in the E.R.

The patient's lawsuit alleges she was unable to communicate with hospital employees, did not understand the treatment to which she was asked to consent, did not understand what treatment was being provided or what procedures were being performed, could not ask questions or voice concerns and her care was made more difficult and painful by her inability to communicate with her caregivers.

The patient has the right to sue the hospital for damages under the Americans With Disabilities Act and the Rehabilitation Act.

UNITED STATES DISTRICT COURT
FLORIDA
June 23, 2005

Compensation For Injury
Mental Anguish / Emotional Distress

Communication-impaired hospital patients can sue after the fact for compensation if they are able to show that a healthcare facility's refusal to provide communication services complicated the delivery of care and resulted in physical injury, pain and suffering and/or mental anguish and emotional distress.

In this case the hospital's E.R. front desk personnel, apparently in a derogatory manner, refused the deaf patient's hearing-able husband's verbal request to phone and summon a certain interpreter whom the patient had worked with previously in healthcare settings, before the patient went in to see a physician and nurse about her problem with vaginal bleeding.

As a result, the patient's pelvic exam was complicated by her inability to communicate to her caregivers and, particularly, by her inability to understand what the doctor and nurse were saying to one another as the exam went forward.

Writing notes back and forth between patient and caregivers, in the court's judgment, is not a sufficient basis for effective communication in this context.

Another patient had arrived with a sprained big toe, requested an interpreter, was denied an interpreter and was not able to understand what was going on with the treatment she was being given as it went forward. She also has the right to sue for compensation, the court ruled. **Connors v. West Orange Healthcare Dist., 2005 WL 1500899 (M.D.Fla., June 23, 2005).**

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Premature Infant: Court Says Hospital Violated EMTALA Screening Requirement.

The mother was admitted to the hospital's birthing center at twenty-three weeks because she had been losing amniotic fluid. Ten hours later she gave birth to a son who weighed only 700 grams. The hospital's staff made no effort to prolong the baby's life and he expired two and one half hours after birth.

EMTALA Imposes Duty to Screen For Emergency Medical Condition

Aside from assigning a nominal Apgar score of 1, the hospital's personnel made no effort to evaluate or treat the newborn.

The Supreme Court of Wisconsin faulted the hospital for failing to provide an appropriate medical screening examination as defined by the US Emergency Medical Treatment and Active Labor Act.

Although the parents' allegations of medical negligence and lack of informed consent were dismissed as unproven, the parents, in the Court's judgment, still had the right to sue the hospital for violation of the EMTALA.

Birth in Birthing Center Baby Comes To The Emergency Department

Under the court's interpretation of the EMTALA, when a baby is born in a hospital's birthing center, that event activates the EMTALA. The baby is entitled to an appropriate medical screening examination, as defined by the EMTALA, and necessary stabilizing medical treatment within the hospital's existing capabilities.

The mother does not necessarily have to come to the emergency department in active labor, nor does the baby have to be brought in from home or taken from the birthing center to the emergency room, for the EMTALA to apply.

The rationale of the courts in looking at these cases after the fact is to apply the EMTALA as broadly as reasonably possible to vindicate patients' rights, the court pointed out. **Preston v. Meriter Hosp., Inc., __ N.W. 2d __, 2005 WL 1630852 (Wis., July 13, 2005).**

The US Emergency Medical Treatment and Active Labor Act (EMTALA) has been updated since 1986 by regulations issued by the US Secretary of Health and Human Services.

An individual "comes to the emergency department" when the individual is anywhere on hospital property and a request is made by the individual or on the individual's behalf for examination or treatment.

It is no longer a correct interpretation of the EMTALA that no duty arises on the part of the hospital's staff unless the individual presents at the locale designated by the hospital as the emergency department, assuming the hospital in fact has an emergency department and participates in Medicare.

This mother was unemployed and uninsured and on state medical assistance. That is also now irrelevant to whether the EMTALA applies. The law applies to all patients who present with possibly emergent medical conditions, even if they are employed, insured and able to pay.

SUPREME COURT OF WISCONSIN
July 13, 2005

Home Health: Nurse Gets Worker's Comp For Auto Accident.

A home health nurse was en route from her home to the home of a client of the home-health agency for whom she worked when she decided it would be convenient to stop by the agency's office to drop off her time slips.

On the way to the office she was injured in an automobile accident.

The general rule is that an employee commuting to work at the employer's premises is not covered by worker's compensation if he or she is injured in an auto accident.

The Court of Appeals of North Carolina, however, ruled in the nurse's favor by applying the "traveling salesman" exception to the general rule. An employee who has no fixed hours and no fixed place of employment is considered in the course and scope of employment, and eligible for worker's comp, while traveling to carry out business for the employer. **Munoz v. Caldwell Memorial Hosp., __ S.E. 2d __, 2005 WL 1545134 (N.C. App., July 5, 2005).**

Home Health: Nurse Gets Worker's Comp, Hit By Car.

The Supreme Court of Connecticut has upheld payment of worker's compensation benefits to a home health nurse who was hit by a car crossing the street.

She was on foot walking from her own apartment to the apartment of a client of her agency, her first client of the day, who happened to live right across the street. **Labadie v. Norwalk Rehab Services, __ A. 2d __, 2005 WL 1514140 (Conn., July 5, 2005).**

EMTALA: Blood Pressure Elevated, Court Says Hospital Failed To Stabilize Patient (Continued.)

(Continued from page one)

appropriate medical screening examination, as defined by the EMTALA, and cannot be discharged or transferred to another facility before the emergency medical condition has been stabilized.

(The EMTALA does contain language, not relevant to this case, to permit an emergency patient to be transferred to another facility, like a regional trauma center or university teaching hospital, in less than stable condition, if it can be documented medically that the other facility is better able and will better take care of the patient's particular medical needs.)

Patient Had Not Been Stabilized

The hospital conceded that this patient had an emergency medical condition when she arrived at the hospital. That was not an issue in the patient's lawsuit.

The patient admitted that the hospital did provide her with an appropriate medical screening examination for her emergency medical condition as required by the EMTALA. That also was not an issue in the patient's lawsuit.

The issue was whether the patient's emergency medical condition had been stabilized, as required by the EMTALA, before she was allowed to leave the hospital.

The hospital conceded that one of the emergency physicians would admit in his testimony that a patient who had presented with a history of hypertension and a recent history of syncope whose blood pressure was 180/110 would not be considered to be in stable condition.

The court ruled that should be the end-point of the legal analysis in an EMTALA case. The hospital's remaining arguments were dismissed by the court as legally invalid.

Uninsured / Indigent Patient Not Relevant to EMTALA Case

The hospital's lawyers pointed to the legislative history of the EMTALA. It was originally enacted in 1986 by the US Congress as a response to public outcry over private for-profit hospitals "dumping" uninsured and/or indigent emergency-room patients by discharging them without treatment or sending them to other facilities such as publicly funded receiving hospitals.

Although the intent of Congress was not expressly stated in the EMTALA, Federal courts in some parts of the US required the patient to show that he or she was an indigent or uninsured individual, or perceived as such by hospital staff, to be able to sue under the EMTALA. Federal courts in other parts of the US took the tack that the EMTALA applies to all patients, insured or uninsured, medically indigent or able to pay, eligible for Medicare or Medicaid or not, as long as the hospital itself participates in Medicare.

In this case the Federal Court in New Jersey pointed to a case from the Fourth US Circuit Court of Appeal upholding the requirement the patient be uninsured or indigent or so-perceived to sue under the EMTALA, which was overruled by the US Supreme Court in 1999, setting a national standard that all patients have the same rights under the EMTALA regardless of their financial status or the perception of that status by hospital staff.

No patient who comes to a hospital with an emergency medical condition can be discharged, that is, allowed to leave the hospital (unless against medical advice) if the patient's presenting emergency medical condition has not been stabilized.

Patient Left Two Hours After Discharge

The court in this case expected the nurses to stay on top of the patient's condition while the patient is still on the premises waiting to leave, even after technically being medically discharged.

Recurrence of the signs and symptoms which brought the patient in in the first place would clearly indicate the patient is probably not stabilized and that the physicians' decision to discharge the patient was not correct, at least in hindsight. The nurse has an obligation to take action in this situation. **Love v. Rancocas Hosp., 2005 WL 1541052 (D.N.J., June 29, 2005).**

In relevant part, EMTALA provides:

(a) Medical screening requirement ...

(b) Necessary stabilizing treatment for emergency medical conditions and labor
(1) In general

If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either--

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

(c) Restricting transfers until individual stabilized
(1) If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B) of this section), the hospital may not transfer the individual....

UNITED STATES DISTRICT COURT
NEW JERSEY
June 29, 2005

Patient Falls While Dressing: Court Finds No Violation Of The Legal Standard Of Care.

A certified nurse's aide in training was with an elderly nursing home resident while she was dressing. She was standing at the sink in her room putting on her pants. The aide had her lift each leg, one at a time. While lifting her leg she fell backward, struck her head on the floor and had a scalp laceration.

By the time the case went to court she had died. The US District Court for the Middle District of Alabama stated it was undisputed she died of natural causes and not from the injuries from the fall.

No Violation of Legal Standard of Care

The court dismissed the case because the family's lawyers were unable to prove any violation of the legal standard of care in the assessments or personal care provided to the resident.

The physician assessed the patient as needing *supervision* while dressing. The physician specifically ruled out the need for *assistance* in dressing, grooming, toileting, etc., and ruled her able to transfer independently. The court found no basis to fault the physician's judgment that the patient was suitable for standard supervision with ADL's rather than specialty assistance care for dementia or infirmity.

Based on the physician's assessment, there was no basis to fault the aide-in-training or to fault the nursing home's administration for assigning a person with her level of training and experience to this particular resident. The court did say that the aide was not competent to assess this patient, only to follow directions set down by others, but that was not an issue.

The court looked at textbooks and materials from JCAHO for a specific statement just how a patient, even a high-fall-risk patient, is to be supervised while the patient puts on her pants. Hindsight is not the legal standard. There is no specific accepted standard protocol, the court said, for how a resident is to be supervised while dressing. **Duke v. Atria, Inc., 2005 WL 1513158 (M.D.Ala., June 27, 2005).**

There is undisputed evidence that the patient's own primary-care physician approved the resident's admission to the standard assisted-living unit. He did not indicate she needed anything more than supervision. He ruled out the closer level of assistance reflected by the "needs assistance of one person" alternative admission order.

The family's nursing expert stated after the fact that the resident was a high fall risk. It is dubious there is support for that conclusion in the medical records prior to her fall.

According to the family's nursing expert it is a gross deviation from the protocol for assistance with dressing to ask an elderly woman, who is a high fall risk and who has balance problems, to stand and step into her pants one leg at a time.

However, the family's nursing expert has cited no reference to any accepted text or materials from the Joint Commission to back up the existence of such a protocol for assistance.

UNITED STATES DISTRICT COURT
ALABAMA
June 27, 2005

Family Member Falls: Court Says Nurse Not Negligent.

According to the Court of Appeals of Michigan, a family member fell while she was carrying her four year-old granddaughter to the bathroom in the child's hospital room.

The child/patient was connected to wires and tubes which hung from a rolling pole which a nurse pushed along as they went toward the bathroom. The grandmother allegedly tripped over the tubes and wires as she turned around and went to answer the phone.

The court dismissed the grandmother's lawsuit based on two standard defenses which premises owners typically raise in slip-and-fall cases.

First, the danger was open and obvious. Even if she really did not see the tubes, wires and poles, that would be irrelevant. Second, the hospital did not create an unreasonably dangerous condition by keeping the patient attached to her IV's, monitors, etc., while on the way to the bathroom. **Alkhas v. St. Joseph's Mercy Hosp., 2005 WL 1459130 (Mich. App., June 21, 2005).**

No Ensure: Jail Inmate's Case Dismissed.

A jail inmate sued because the nurse failed at times to provide the Ensure that was prescribed by the physician for his weight loss.

The New York Supreme Court, Appellate Division, ruled that expert medical testimony is required to prove any actual harm to a patient from a nutritional supplement being unavailable on certain days due to supply shortages, or the case must be dismissed. **Tatta v. State, __ N.Y.S.2d __, 2005 WL 1414456 (N.Y.App., June 16, 2005).**

Involuntary Transfer: Court Upholds Citation Issued To Nursing Home.

A seventy-six year-old nursing home resident who suffered from Parkinson's disease and vascular dementia was abruptly transferred from the nursing home to the emergency room of a local hospital after he allegedly tried to wrap his call-button cord around a caregiver's neck.

A phone call was placed and a form letter was mailed to the resident's son the same day.

The hospital had trouble evaluating his mental state, due to his limited English, and tried to send him right back to the nursing home. The nursing home refused to take him back. Then the hospital moved him to its behavioral health unit for a 72-hour mental health hold, found no danger to self or others and again tried to send him back to the nursing home.

The family filed an appeal of his transfer with the state health department, then withdrew the appeal on the grounds the resident did not want to go back.

Nevertheless, the California Court of Appeal upheld a citation issued to the facility for wrongfully transferring this resident.

Notice of Transfer Required

The court ruled that the prior notice requirements in the Federal statute are strictly mandatory as is the Federal requirement to follow state regulations for holding a bed open for the resident pending a successful outcome of the treatment for which the resident was transferred.

There were fifty-five documented prior episodes of aggressive acting out. There may have been justification for properly transferring him to a more secure setting, but there was no justification for abruptly sending him off to the emergency room and then flatly refusing to take him back. Even a true emergency requires as much prior notice to the resident and/or the family as is practicable under the circumstances. **Kindred Nursing Centers West, LLC v. Calif. Health & Human Services Agency, 2005 WL 1460714 (Cal. App., June 22, 2005).**

Federal regulations for involuntary transfers of nursing home residents require prior notice to be given.

Even in an emergency, prior notice must be given as many days as practicable before the proposed transfer or discharge.

There were at least 55 instances of aggressive behavior before the incident which resulted in his abrupt "emergency transfer" to a local hospital's emergency room. Prior notice would have been practicable.

Federal regulations do not allow notice to be given contemporaneously with the decision to transfer or discharge the resident.

For transfers, Federal regulations also require the resident and/or the family to be notified of the facility's bed-hold policy. Regulations on bed-hold policies vary from state to state. The rationale is that therapeutic leave in the facility to which the resident is transferred, e.g. a psychiatric hospital, might possibly resolve the issues for which the resident needed to be transferred.

CALIFORNIA COURT OF APPEAL
OPINION NOT OFFICIALLY PUBLISHED
June 22, 2005

Pregnancy Discrimination: Employer Must Explain Why Aide Not Hired After Training.

An individual was accepted into the long-term nursing facility's nursing assistants' certification program. The program was meant to train and then to offer employment to persons who completed the classes successfully and met the facility's requirements for employment.

She attended classes, completed the program, received her certificate, was pregnant and was not offered employment.

Both sides argued about when it was the facility's staff-development coordinator who taught the classes became aware she was pregnant, that is, whether she was accepted into the program with knowledge she was pregnant, informed her instructor during the classes, or waited until after she got her certificate, by which time she was visibly showing her pregnancy.

The US District Court for the Southern District of Ohio, however, found all that irrelevant to a resolution of the case.

She met all the facility's stated requirements, was known to be pregnant and was not hired.

That being so, the facility has to prove there was no intent to discriminate.

UNITED STATES DISTRICT COURT
OHIO
July 11, 2005

Under these circumstances the facility must disprove discriminatory intent or be held liable. An allegation the aide was not hired because she had been disruptive in class was a dubious explanation at best, the court said. **Davis v. East Galbraith Health Care Center, 2005 WL 1620406 (S.D. Ohio, July 11, 2005).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Neglect: Autism Patient Allowed To Eat Plastic Straws.

The Court of Appeals of Minnesota upheld the decision of the state Department of Human Services that a lay caregiver was guilty of neglect of a vulnerable adult for allowing his twenty-six year-old autistic son to have plastic drinking straws in direct defiance of strong medical evidence he was chewing them up and swallowing them and having serious intestinal complications as a result.

Neglect can be defined as a caregiver's failure to provide reasonable and necessary care for the adult's health and safety, taking into account the adult's dysfunction, unless the caregiver's act or omission is accidental.

The court ruled it was not a therapeutic "calming mechanism" to allow the patient to chew on plastic straws, in light of his long history of medical problems from doing so. The court also found irrelevant the father's argument he did not intentionally cause the young man to swallow the straws. **Appeal of Wajda, 2005 WL 1432286 (Minn. App., June 21, 2005).**

Abuse: Aide's Firing Upheld, Did Not Follow Union Rules, Cannot Sue.

A geriatric nurse's assistant was fired over an incident of alleged patient abuse.

The US District Court for the District of Maryland pointed out she was covered by a union collective bargaining agreement setting forth her rights and responsibilities for grievances with her employer.

If she wanted to protest, she was entitled and required to grieve her firing by requesting a meeting with the human resources director. If that was not fruitful she was entitled and required to request a meeting with the vice president of human resources. When she did not show up for the second meeting she got a letter stating it was assumed she had dropped her grievance and considered her firing justified. The court agreed she had abandoned the union grievance process and thus had no right to sue for wrongful termination. **Jeffress v. Xavier Healthcare, 2005 WL 1422304 (D.Md., April 26, 2005).**

Psychiatric Care: Dangerous Patient Gets Into Kitchen, Takes Knife, Stabs Patient, Facility Sued.

The victim and the perpetrator were both patients in a state-run residential treatment program for dual diagnosis of chemical dependency and mental illness. They did not know each other beforehand.

Before the incident in question the perpetrator's counselor recommended he be transferred to a psychiatric facility based on his non-compliance with the residential program for dual diagnosis. At the psychiatric facility he was assessed as a danger to himself and others and held involuntarily for six days, after which time it was deemed safe to discharge him back to the residential dual-diagnosis program.

Less than twenty four hours later he got into the kitchen, got a butcher knife and stabbed the other patient.

A healthcare facility's legal obligations include providing adequate and sufficient equipment, personnel and facilities to maintain patients' personal safety.

Allowing a mental patient who is known to be dangerous to have access to the kitchen where a knife can be obtained and used to harm another patient violates the facility's legal obligations to its patients.

CALIFORNIA COURT OF APPEAL
OPINION NOT OFFICIALLY PUBLISHED
June 20, 2005

The California Court of Appeal, in an unpublished opinion, upheld a jury's award of $305,493.49 for the victim against the county government which operated the dual-diagnosis program.

The key to the verdict in favor of the patient was language in a state statute requiring healthcare facilities to provide sufficient equipment and personnel to maintain patients' personal safety.

The staff knew they had patients with serious mental illnesses. More to the point, they knew this particular patient had just been released from an involuntary mental-health hold. The kitchen should have been locked or more closely supervised. This should not have happened, the court believed. **Mars v. County of Los Angeles, 2005 WL 1426802 (Cal. App., June 20, 2005).**