LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

August 2006 Volume 14 Number 8

Decubitus Ulcer: Court Sees Good Reasons For Nurses Not To Turn Burn-Injury Patient.

The patient came to the hospital after a motor vehicle accident in which he sustained a severe inhalation injury and burns over 18% of his body.

He was transferred from the hospital for treatment at the burn center at a regional medical center where he remained for two months, then was transferred to a rehab facility.

At the burn center he developed a decubitus ulcer on his coccyx which resulted in a lawsuit against the burn center.

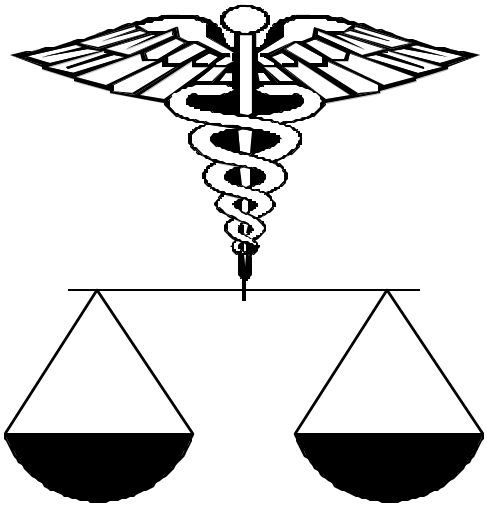
In the lawsuit the patient alleged the burn center's nurses were negligent for failing to follow the center's protocols and nationally-accepted patient-care standards for frequent patient turning to prevent skin breakdown.

The Court of Appeals of Mississippi found no negligence and dismissed the case.

Frequent Turning = Standard of Care

The court conceded the hospital's internal standards as well as nationally-recognized guidelines do require in general terms that patients at risk for skin breakdown be turned every two hours by nursing caregivers.

However, the court found substantial evidence justifying departures from the general standards in this case.



The burn center's nurses were not negligent in caring for this patient.

For a patient with severe inhalation and burn injuries the first priority is the patient's survival.

Keeping to the facility's standing protocols for frequent turning to maintain skin integrity would have compromised his ability to breathe.

COURT OF APPEALS OF MISSISSIPPI
June 27, 2006

First Priority Was Patient's Survival

The hospital's expert witness on nursing standards testified the following were the patient-care priorities established upon this patient's admission:

Maintain effective airway clearance;

Manage pain;

Avoid fluid-volume deficit;

Reduce potential for infection.

These priorities, the court agreed, gave the burn center's nursing staff the discretion to suspend patient turning in the interest of the patient's very survival.

That is, the hospital's nursing expert pointed out that when he was positioned on his side his nurses saw his O_2 sat drop dangerously low and then return to normal when he was put back to lying on his back, the difference apparently caused by airway obstruction in the side-lying position.

Beyond that, when the nurses did note the start of his ulcer the patient was placed in a special floatation bed where he could remain supine and the nurses became especially vigilant for further signs of skin breakdown elsewhere on his body.

Looking at the totality of the circumstances the court ruled the burn center's nurses were not negligent for deviating from regular patient-care protocols for turning this particular patient. **Vede v. Delta Regional Medical Center, __ So. 2d __, 2006 WL 1737631 (Miss. App., June 27, 2006).**

Inside this month's issue ...

August 2006

New Subscriptions
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MS: Physician Had Cleared Nurse To Work, Court Sees Disability Discrimination.

A nurse with seven years experience working in public health was promoted to supervisor when she finished her masters degree, then to assistant director of the county program two years later, then to director of patient care services a year after that. Within the county public health program she was second in command overall.

Three years later she began to experience symptoms which led her neurologist to diagnose multiple sclerosis. After two years battling her condition she resigned.

Two years later, with her condition in remission, her neurologist cleared her to work in an administrative capacity.

She applied for the then-vacant position of director but was turned down based on her former director's statements she felt she, "Was not up to the job." A nurse without a master's degree and with minimal administrative experience was hired.

A year later she was hired as director of public health in another county.

Court Sees Disability Discrimination

The US District Court for the Northern District of New York pointed out that a person who is presently fully qualified for a position, even with no reasonable accommodation required, can be a victim of disability discrimination.

History of Disability

Erroneous Belief as to Disability

A person with a history of a disability or a person who is erroneously believed to be disabled, regardless of the origin of the erroneous belief, who is treated in a discriminatory manner based on his or her history or based on an erroneous belief, is, by definition, a disabled person under the definition of disability contained in the Americans With Disabilities Act.

Hiring a less qualified person, or, as in this case, an unqualified person, in the disabled person's stead is strong evidence of illegal discriminatory intent, the court pointed out. **Cusworth v. County of Herkimer, 2006 WL 1800130 (N.D.N.Y., June 28, 2006).**

The Americans With Disabilities Act outlaws discrimination against a qualified individual with a disability.

A qualified individual with a disability is an individual with a disability who can, with or without reasonable accommodation, perform the essential functions of the employment position he or she holds or desires.

A disability is:

Having a physical or mental impairment which substantially limits a major life activity; or

Having a record of such an impairment; or

Being regarded by the employer as having such an impairment.

The nurse in this case had been cleared by her neurologist to return to work in an administrative position. Her MS was in remission. She did not have an impairment at that time.

For purposes of disability discrimination, the employer's knowledge of her history and the employer's belief, albeit false, that she was disabled, fit the legal definition of a disability.

UNITED STATES DISTRICT COURT
NEW YORK
June 28, 2006

Discrimination: Victim Must Identify Non-Minorities Treated Better.

An African-American certified nursing assistant was fired for violating the hospital's call-in policies for employees who intend to be absent from their scheduled work shifts.

She sued for race discrimination. She testified in a deposition that two Caucasian CNA's, whom she named, had attendance problems but were not fired.

To sue for racial discrimination the victim must prove that he or she:

Is a member of a minority group;

Was qualified for the position; and

Was treated adversely.

The victim must also show that a one or more comparable non-minorities were treated more favorably.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
June 29, 2006

The US Circuit Court of Appeals for the Eleventh Circuit, however, pointed out that she had only a very vague knowledge of the two Caucasian employees' employment histories and was not able to give any details how their histories of call-ins and absences compared to hers in all important respects.

A victim who sues for employment discrimination has the legal burden of proof to show a strong similarity between herself or himself and non-minorities or the court will find no evidence of differential treatment and dismiss the lawsuit. **Dickinson v. Springhill Hospitals, Inc., 2006 WL 1785295 (11th Cir., June 29, 2006).**

Disability Discrimination: Nurse Sues Over Side Effects Of Employer-Required Treatment For Methicillin-Resistant Staph Infection.

An obstetrical nurse was diagnosed with methicillin-resistant Staph aureus (MRSA), received treatment and was cleared to return to work with no restrictions.

Soon after she came back an infant delivered at the hospital was diagnosed with MRSA. Because she had earlier been diagnosed and treated for MRSA the nurse was removed from her duties unless and until she agreed to be tested. She tested positive. She demanded a retest which was negative. She was re-tested at least six more times and was negative.

Her supervisors told her she could not return to work unless and until she completed a course of treatment for MRSA. She was advised that with her pre-existing diabetes and irritable bowel syndrome the treatment would likely cause severe side effects.

The treatment for MRSA did lead to a heart arrhythmia, bloody diarrhea and C. difficile infection. Nevertheless, the nurse completed the treatments and was medically cleared to return to work in any and all nursing positions.

Before being allowed to file a lawsuit a victim of employment discrimination must file a complaint with the Equal Employment Opportunity Commission (EEOC) and receive a right-to-sue letter from the EEOC after the EEOC has completed its investigation.

After receiving a right-to-sue letter from the EEOC there is a ninety-day deadline for suing the employer.

As a general rule a victim of discrimination cannot sue the employer over something that was not brought up in the victim's original complaint to the EEOC. In this case the nurse did not expressly use the phrase "reasonable accommodation" in her EEOC complaint, but it is clear from what she said that was what she was getting at.

UNITED STATES DISTRICT COURT
ILLINOIS
June 27, 2006

The hospital refused to reinstate the nurse in any capacity, pointing to her history of MRSA infection. The nurse sued for disability discrimination.

The US District Court for the Northern District of Illinois resolved in the nurse's favor certain legal technicalities that the hospital raised concerning the wording of the allegations in the nurse's Equal Employment Opportunity Commission complaint versus the wording of the allegations in her civil lawsuit.

Side Effects of Treatment Should Be Handled as a Disability

The upshot of the court's ruling is to extend the definition of disability to cover the side effects of medical treatment a healthcare employer imposes upon a healthcare employee as a condition of continued employment.

According to the court, not only the nurse's MRSA infection and history of MRSA infection, but also the side effects of treatment for MRSA and her history of having experienced side effects are disabilities for which the nurse should have been considered for reasonable accommodation.

At this point in the litigation the court has only validated the underlying premises of the nurse's lawsuit for being denied reinstatement. The court has not yet ruled what sort of reasonable accommodation would have been appropriate while the nurse was undergoing treatment for MRSA. **Mudgett v. Centegra Health Systems, Inc., 2006 WL 1806390 (N.D. Ill, June 27, 2006).**

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Suture Removal: Nurse Faulted, Cidex Dripped Into Patient's Eye.

A nurse was removing a patient's sutures after eyelid surgery.

When she had difficulty with one of the sutures she reached for a different set of tweezers. Shortly afterward the patient experienced a strong burning sensation caused by Cidex disinfectant that dripped into the eye.

The patient's lawsuit alleged the nurse was negligent for carelessly failing to wipe the disinfectant off the tweezers before using them

The Court of Appeal of Louisiana approved an award of $45,000 for the patient from the nurse's employer. There was complicated medical testimony as to the effects of the chemical burn versus other unrelated problems the patient later had with the same eye. **Dugas v. Massiha, __ So. 2d __, 2006 WL 1750088 (La. App., June 28, 2006).**

Patient Falls: Two-Person Lift Not Performed.

The New York Supreme Court, Appellate Division, upheld a negligence lawsuit against the nursing home where a patient fell and broke her femur. The patient had been classified as a high fall risk due to mobility and balance problems, a history of stroke and Parkinson's.

The treatment booklet maintained for the benefit of the nurse's aides specifically stated that this patient was only to be moved by two persons and/or a lifter, but one aide alone unsuccessfully tried to transfer her from her bed to a wheelchair. **Giandana v. Providence Rest Home, 815 N. Y.S. 2d 526 (N.Y. App., May 30, 2006).**

Shaken Baby: Court Discusses Nurse's Legal Duty Of Care.

The child was eventually diagnosed at a children's hospital with shaken baby syndrome, reported to child protective services, removed from the parents' home and adopted by others.

The adoptive parents filed suit for failure to detect and report signs of child abuse against the medical facility where the child had been taken for early post-natal care, well-baby checkups and emergency trauma.

The nurse practitioner accepted the parents' story that the small superficial bruise occurred at daycare and counseled them to find another daycare or to consider discussing guidelines with the daycare provider.

UNITED STATES DISTRICT COURT
NEBRASKA
June 23, 2006

The US District Court for the District of Nebraska was sharply critical of the medical evaluations the child had received but the court could not find fault with a nurse practitioner who saw the child for a well-baby visit at age two months.

The court said seeing only a small superficial bruise on the child's head for which the parents had a plausible explanation would not necessarily raise a red flag.

The court said a nurse practitioner at a routine well-baby checkup who is not familiar with the child must review all medical records which are readily available. However, under the circumstances a nurse practitioner would not be expected to research whether a full history of emergency room visits existed and obtain and review all such records. **Chapa v. US, 2006 WL 1763663 (D. Neb., June 23, 2006).**

Worker's Comp: Mental Stress From Traumatic Event Covered.

A female nurse was administering dialysis treatment to a male patient who reached inside the scrub top she was wearing and grabbed her breast.

Just before doing that the patient, a Caucasian, had made racial remarks to the nurse, an African-American.

The nurse broke down emotionally that day after leaving work. She was already scheduled to go on vacation a few days later. When she got back she began seeing to a psychiatrist who diagnosed her with depression and post-traumatic stress disorder from the incident.

She resigned and filed for worker's comp for total permanent disability.

Mental stress caused over a period of time by hours, duties, responsibilities and other work-related factors is not covered by worker's compensation.

Mental stress from a specific traumatic incident, such as an assault on the job, even if no physical injury occurs, is covered by worker's compensation.

MISSOURI COURT OF APPEALS
June 27, 2006

The Missouri Court of Appeals overruled the worker's compensation judge who had denied her claim based on the general principle that worker's comp does not cover work-related stress.

According to the court, when mental stress can be related to a specific traumatic event on the job, and the claim is backed by competent medical evidence, worker's compensation does apply. **Jones v. Washington University, __ S.W. 3d __, 2006 WL 1735324 (Mo. App., June 27, 2006).**

Worker's Comp: Court Finds Exception To "Coming And Going" Rule.

After finishing her shift and on her way home a nurse who worked at the hospital though a nurse-staffing agency was struck by a car in a crosswalk and badly injured while walking to her car in the employee parking lot.

Her worker's compensation claim was initially denied based on the "coming and going" rule, that is, the accepted principle that worker's compensation applies only to injuries on the job and not to injuries sustained while commuting to and from work.

An employee's commute does not start, for purposes of worker's compensation, until the employee has left parking facilities provided by the employer.

COURT OF APPEALS OF OHIO
June 30, 2006

The Court of Appeals of Ohio found an exception to the "coming and going" rule. If an employee parks in an employer-provided parking facility the employee's commute does not begin until the employee leaves the employer's parking facility.

The nurse could have parked above the lower levels in the visitors' parking garage which was attached to the hospital, but she would have had to pay. Instead, she chose to park in the lot which was free for hospital employees and for agency personnel, but she had to cross the street.

The court ruled which place she chose to park was irrelevant to the legal issues in this case. She was still on the job for purposes of worker's comp going to her car parked in an area provided by the hospital. **Janicki v. Kforce.com, 2006 WL 1793244 (Ohio App., June 30, 2006).**

Adverse Patient-Care Incident: Nurse's Own Notes Ordered To Be Given To Patient's Attorneys.

For the attorney-client privilege to apply to an oral or written statement:

The statement must be made to an attorney, who is acting in the attorney's legal capacity, for the purpose of obtaining legal advice or legal representation; and

The statement must originate in confidence that it will not be disclosed; and

The statement must have been kept confidential by the attorney.

The attorney work-product privilege is different from the attorney-client privilege.

The attorney work-product privilege is designed to protect documents and other communications which could reveal the attorney's ideas about legal strategies to prepare and present the client's case in the best way as the client's legal advocate in the adversarial legal arena.

The nurse's written notes were prepared by the nurse well before any attorney-client relationship even existed and reflect only her own ideas about legal defense strategy.

APPELLATE COURT OF ILLINOIS
June 30, 2006

This was the timing of events in a recent case decided by the Appellate Court of Illinois:

April 12, 2003 patient admitted to the hospital with severe injuries from a skydiving accident.

April 14 – 15, 2003 nurse worked 12 hour shift. Patient experienced change in condition, no longer able to move extremities, which, if permanent, nurse believed would amount to a bad outcome that could result in a lawsuit.

April 15, 2003 nurse wrote down 2 1/2 pages of notes, recollections of what she observed, what she heard the doctors saying, so that she would better be able to defend herself in a lawsuit if one occurred.

October 14, 2003 patient filed suit.

January 16, 2004 patient's attorneys demanded copies from hospital of all witness statements.

February 9, 2005 nurse gave her notes to the hospital's attorney.

February 15, 2005 hospital's attorney told the court of the existence of the nurse's notes in his possession.

May 13, 2005 hospital ordered to turn over nurse's notes to patient's attorney.

Nurse's Notes Not Protected By Attorney-Client Privilege Attorney Work-Product Privilege

The nurses notes were not prepared at the direction of her attorney or because a lawsuit had been filed or because her attorney advised her that a lawsuit would be filed. The nurse's belief that a lawsuit could result from the incident, in the court's judgement, was not enough to keep the nurse's personal notes confidential.

The attorney-client relationship between the nurse and the hospital's attorney did not exist until after the notes had been written. The nurse's notes were not addressed to the attorney and were not created for the purpose of obtaining legal advice or legal representation from the attorney. **Cangelosi v. Capasso, __ N.E. 2d __, 2006 WL 1875368 (Ill. App., June 30, 2006).**

Understaffing, Fall, No Neuro Assessment, Epidural Hemorrhage, Death: Nurses Faulted.

The Missouri Court of Appeals upheld the jury's verdict in a wrongful death lawsuit against a nursing home for the death of a ninety-one year-old Alzheimer's patient from a head injury from a fall.

The patient had difficulty walking and used a merriwalker. The patient had fallen numerous times, particularly in the dining hall. Because of her fall history the staff had been instructed not to leave this patient unattended in the dining hall.

Nevertheless she was left unattended in the dining hall at 6:30 p.m. and fell and hit her head.

Standards for Prompt Neurological Assessment After a Fall

The facility's policy called for neuro assessments right after a fall involving apparent head injury and every four hours until the medical situation was stabilized.

The facility's medical director, however, testified the accepted standard of care calls for follow-up neuro assessments every two hours after a head injury.

The rationale is that an intracranial hemorrhage can be treated and the patient's chance of survival increased if neuro deficits, signs of possible hemorrhage, are promptly found and acted upon.

No Nursing Neuro Assessment Charted

The nurse who was on duty testified she did one neuro assessment following the fall, at midnight that night.

The chart, however, contained no documentation of a single assessment by the nursing staff.

The patient was found unresponsive at 5:15 a.m. She had vomited on herself. She was taken to the emergency room where she died of an epidural hemorrhage.

Understaffing
Punitive Damages

The largest part of the jury's verdict for the family against the nursing home was $240,000 (out of a total award of $400,000) given as aggravating circumstances or punitive damages because of understaffing at the facility which the jury saw as a factor behind the patient's death.

The actual damages in a civil wrongful death lawsuit for the death of a ninety-one year-old will be relatively small.

She had already lived beyond her life expectancy.

She was not a wage earner contributing to the family and may actually have been a financial burden.

On the other hand, punitive damages in a civil lawsuit are not meant to compensate the family for their loss but are intended to punish the civil defendant for reprehensible conduct.

This patient was elderly, mentally ill, incapable of caring for herself and thus was completely dependent upon the facility's care.

She was left unattended with a dangerous neurological health risk which was not discovered until she had vomited on herself and suffered irreversible hemorrhaging which resulted in her death.

The court record contains adequate proof that the facility knew it had an understaffing problem and that that problem directly led to this patient's unfortunate death.

That conduct was reprehensible.

MISSOURI COURT OF APPEALS
July 11, 2006

According to the court, this patient's death was not simply the result of a mistake or error in judgment. The facility's management knew the facility was dangerously understaffed and that one or more patients, as a result, could or would be deprived of critically needed care.

The understaffing was particularly acute there in the Alzheimer's unit where the patients required a lot of direct care and close supervision.

The staff nurse who was on duty testified she did not just mistakenly ignore the patient after she fell. She had asked the director of nursing for more help that day, that is, at least one more aide, but her request was turned down without explanation.

Prior Problems with Understaffing

The court pointed out that complaints by other nurses of short-staffing on prior occasions are not relevant, only the staffing situation on the day in question.

Notice of Deficiency

The court also pointed out that a notice of deficiency issued by state survey inspectors going to the staffing situation is also considered legally irrelevant.

Inspectors look for patterns of substandard practices which have the potential to cause jeopardy to the health and safety of residents. Such a pattern is grounds for corrective action by the state survey agency, but does not necessarily prove cause and effect between a particular violation and harm to a particular patient.

The nurse's testimony she did not get around to this patient that evening because she was very busy and short staffed, having asked for more help that day was, on the other hand, rock solid evidence against the nursing home in the court's judgment.

Loss of Chance of Survival

Although not recognized in all US jurisdictions the loss of chance of survival rule did allow a verdict to be awarded even though the patient's survival may not have been 100% guaranteed even with fully competent care. **Miller v. Levering Regional Healthcare Center, __ S.W. 3d __, 2006 WL 1889883 (Mo. App., July 11, 2006).**

O.R.: Nurse's Documentation Wins Lawsuit.

The patient was diagnosed with blood clots in his left arm and shoulder after sinus surgery.

The patient sued his surgeon, the anesthesiologist and the medical center where the surgery was performed.

His lawsuit alleged that during surgery the blood pressure cuff was erroneously placed on his left arm where he had a peripherally inserted central catheter.

The patient's attorneys tried to bring in a medical expert to testify that a surgeon or anesthesiologist placing the blood pressure cuff on the same arm as a central catheter would be a gross departure from the legal standard of care.

Nurse's Documentation Wins Case

The New York Supreme Court, Appellate Division, however, concluded the blood pressure cuff was on the right arm, based on the circulating nurse's notes. The nurse apparently was the only one in the room who had jotted down which arm was used for the blood pressure cuff. The patient's case was dismissed. **Anderson v. Beth Israel Medical Center, __ N.Y.S. 2d __, 2006 WL 1913413 (N.Y. App., July 13, 2006).**

Patient Falls: No Expert Needed.

An occupational therapist took the patient into the shower sitting on a shower chair and then told her to stand. Twice the patient said she was slipping and needed help. The therapist left her standing and went to get her bathrobe.

The patient's fall risk was documented in her chart as well as her need for maximum assistance with ADL's. A sign was posted on the door of her room warning staff of her fall risk.

The Court of Appeals of Georgia did not need to see an expert's opinion to allow her to sue for her injuries. **Brown v. Tift County Hosp. Authority, __ S.E. 2d __, 2006 WL 1914585 (Ga. App., July 13, 2006).**

Patient's Fall: Nursing Documentation Inadequate, Verdict For The Patient.

US courts are divided on the issue whether simple routine care like assisting a post-surgery patient to walk to the bathroom involves an exercise of professional judgment by a caregiver.

In general, if a patient files a lawsuit for injuries resulting from negligent exercise of professional judgment, the patient has to come forward with expert testimony or face dismissal.

If the injuries in the lawsuit did not arise from errors or omissions in professional judgment, the jury hears the facts and makes a decision based simply on their own common sense and everyday life experiences.

The issue in this case was not the professional standard of care for ambulating a patient; there was no question whether a gait belt should have been used.

The issue was whether the gait belt was used; the jury decided it was not.

It would beg the question to allow the facility's nursing expert to testify that using a gait belt fully meets with the standard of care.

COURT OF APPEALS OF IOWA
July 12, 2006

The patient was transferred to the facility for skilled rehab following hip-replacement surgery.

One afternoon weeks after her admission she rang her call bell for assistance to go to the bathroom and a CNA responded. On the way to the bathroom the patient fell and was injured.

CNA's Version

The CNA testified he walked into the room, opened the bathroom door and helped the patient sit up in bed. He placed a gait belt around her waist, helped her stand up and gave her her walker. When she stood up he asked her if she was dizzy and she said, "No." As they walked to the bathroom the patient lost her balance, so he helped her slowly and gently to the floor. After the incident the patient said she was all right.

Patient's Version

The patient testified the CNA came in and brought her her walker. The CNA had his arm around her waist as they started walking to the bathroom. As the CNA reached out to yank open the privacy curtain she fell hard and her walker landed on top of her.

One Nurse's Version

A nurse testified she could not remember if the patient had had a gait belt on when she came to the room after the fall. She said the patient said the CNA was not holding on to her and let her fall.

Another Nurse's Version

A second nurse actually documented the incident with a late entry in the patient's chart. The chart entry made no mention of a gait belt and the nurse could not remember later in court whether a gait belt was involved.

The Court of Appeals of Iowa ruled the jury had heard all the relevant testimony and had the right to decide what and whom to believe. The jury's verdict against the facility for an unspecified sum was upheld. **Davis v. Montgomery County Memorial Hosp., 2006 WL 1896217 (Iowa App., July 12, 2006).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Correctional Nursing: Court Rules Nurse Was Deliberately Indifferent To Inmate's Serious Medical Needs.

Nurses who work in correctional settings have become frequent targets of inmates' civil rights lawsuits.

Jail and prison inmates, like everyone else, are permitted to sue for malpractice committed by healthcare professionals.

Far more numerous than malpractice lawsuits, however, are inmates' lawsuits alleging violation of the Eighth Amendment Constitutional right to be free from cruel and unusual punishment in the form of serious indifference by correctional healthcare professionals to an inmate's serious medical needs. The vast majority of these cases are thrown out by the courts as frivolous or at best unfounded.

Medication Error
No Follow Up Treatment

In contrast, the US Court of Appeals for the Eighth Circuit recently found serious indifference to an inmate's serious health needs arising from a medication-error incident.

The nurse insisted the patient/inmate take pills that the inmate insisted were not his. In fact the pills were anti-psychotics meant for another patient/inmate.

The court said that a straightforward medication error is not deliberate indifference and not a violation of any Constitutional rights.

However, after the nurse realized her mistake she just left the inmate in his cell for three hours and did nothing. That significant delay allowed the medication to take effect, causing the patient to collapse unconscious in his cell, hit the back of his head and injure himself.

Instead, the court believed the nurse's legal duty was to summon medical help immediately so that the patient could be taken to the infirmary and treated as a drug-overdose case, that is, his stomach could and should have been pumped before the medication fully could take effect. **Spann v. Roper, __ F. 3d __, 2006 WL 1912983 (8th Cir., July 13, 2006).**

Hearing-Impaired Patient: Court Discusses Adequacy Of Interpretive Services Offered.

The deaf patient checked himself out of the hospital the day after he was admitted through the emergency department for severe abdominal pain, checked into anther hospital which had certified in-house sign-language interpreters and had his surgery there.

In his lawsuit he was unable to show any actual harm done to him by the first hospital. He claimed he felt ignored, frustrated and unsafe; the staff claimed he was rude, abusive, belligerent, challenging and uncooperative.

The US District Court for the Western District of Washington made the following points:

Exchanging handwritten notes with a deaf patient is an ineffective means of communication in a medical emergency.

Federal regulations for the Americans With Disabilities Act require hospitals to take steps to ensure that communication with members of the public with disabilities are as effective as communication with others who do not have disabilities.

In critical situations exchanging notes does not allow a disabled person to communicate effectively.

UNITED STATES DISTRICT COURT
WASHINGTON
May 25, 2006

When a number of caregivers are attending the patient at the same time, e. g., a doctor and three nurses, using notes rather than an interpreter is an ineffective means of communication.

Informed consent to a life-saving medical intervention such as an open abdominal procedure for an abscess cannot be obtained effectively through exchanging notes with the patient.

The healthcare facility has the legal burden of proof to show that a qualified interpreter was offered to the patient, that is, providing only a nurse who can sign the alphabet as opposed to a certified ASL interpreter may put the facility on thin ice later in court if the patient sues for disability discrimination. **Abernathy v. Valley Medical Center, 2006 WL 1515600 (W.D. Wash., May 25, 2006).**