LEGAL EAGLE EYE NEWSLETTER

August 2012 *For the Nursing Profession* Volume 20 Number 8

Emergency Room: Court Faults The Initial Nursing Triage In Cardiac Patient's Death.

The patient came to the E.R. after chest pain began suddenly at home. She was seen by an E.R. nurse within minutes of her arrival at the hospital.

She was sixty-one years old, had a history of smoking and hypertension and her BP was 228/104.

She complained to the E.R. triage nurse of pain 10/10 in her chest radiating down her arm, back and neck.

The E.R. nurse assigned the patient the triage category urgent rather than the more serious category emergent.

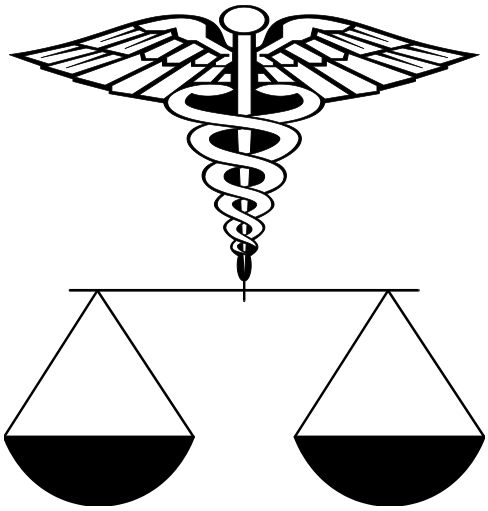
The E.R. physician ordered blood drawn for a cardiac enzyme panel, a cardiac monitor, a chest x-ray and sublingual nitroglycerine.

The patient's chest pain had completely subsided after she had been at the hospital for four hours.

The cardiac enzymes came back from the lab within normal limits, the chest x-ray was normal, the EKG did not show any acute ischemic changes but the BP was still 154/88.

The E.R. physician phoned the patient's primary care physician who recommended they admit her to the hospital.

The admitting differential medical diagnoses were angina, myocardial infarction, pleurisy, costochondritis, esophageal reflux and chest wall pain.



The emergency room nurse who first assessed the patient failed to triage the patient as emergent based on signs and symptoms of a possibly life-threatening cardiac event.

The nurse's faulty triage contributed to delay in diagnosis and treatment and, along with the negligence of the physicians, was a contributing factor in the patient's death.

COURT OF APPEALS OF GEORGIA
July 3, 2012

Late in the evening of the second day in the hospital a resident physician believed she was having an MI and had her transferred to another hospital for cardiac catheterization.

The images observed during the catheterization procedure revealed an aortic aneurysm and dissection which was by then inoperable.

The Court of Appeals of Georgia accepted testimony from the family's nursing expert that the hospital was guilty of negligence, along with the treating physicians, based on the E.R. nurse's initial assessment of the patient and triage of her status as urgent rather than emergent, given the presenting history, signs and symptoms pointing to an acute life-threatening cardiac event.

If the patient had been properly triaged as emergent by the nurse in the E.R. the Court believed the critical medical interventions could and would have occurred sooner, in time to have saved the patient's life.

Legal cases from incidents in the E.R. point out that while the physicians bear ultimate responsibility for the correct medical diagnoses, the E.R. nurse's initial triage sets the overall tone for the level of attention which will be given to the patient's emergency room care. **Knight v. Roberts, __ S.E. 2d __, 2012 WL 2579256 (Ga. App., July 3, 2012).**

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August 2012

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Choking Death: Court Allows In Legally Damaging Statements Of Facility Employees.

The elderly patient had lifetime difficulties with swallowing since polio as a youth left her throat partially paralyzed.

When she developed Alzheimer's and entered long-term care she was put on a soft diet and her care plan called for close supervision while she was eating.

While not actually being watched in the dining room she became unresponsive. A CNA noticed the problem and called a nurse who swept the mouth, found nothing, started CPR and called an ambulance to take her to the hospital where coleslaw was suctioned from her throat before she died.

CNA's Hearsay Statement Admissible As Evidence Against The Nursing Facility

The trial boiled down to a battle of the experts' conflicting interpretations of the complex medical evidence.

The family's expert testified the patient choked on her food, started having a cardiac arrhythmia as a result and died from cardiac arrest from the arrhythmia.

The jury, however, believed the nursing facility's expert who testified that the patient's age, medical condition and her Alzheimer's medications predisposed her to a heart arrhythmia which led to a fatal cardiac event while she happened to be eating and had food in her mouth, which would have happened anyway even if someone was watching her.

The District Court of Appeal of Florida overturned the jury's verdict and ordered a new trial because the trial judge erroneously refused to let the jury hear a hearsay statement from a kitchen helper that a CNA had said that a patient had choked in the dining room.

The kitchen worker and the CNA were both nursing home employees and, as such, the family had the right to bring their damaging statements to the jury's attention even though the testimony was hearsay and clearly was not based on any medical evidence the CNA was competent to judge.

The Court justified its ruling to allow the jury in the new trial to hear what the CNA had to say by pointing to a line of cases that generously allow caregivers' admissions of liability in healthcare cases.

The trial boiled down to a battle of the experts.

The patient's family's medical expert claimed the elderly patient choked on her food, suffered cardiac arrest as a result and died.

The nursing facility's medical expert claimed the patient suffered an arrhythmia which led to cardiac arrest which happened to occur while she was eating.

DISTRICT COURT OF APPEAL
OF FLORIDA
June 27, 2012

In these cases the remarks voiced by healthcare facility employees were allowed to come to the jury's attention even though they were not experts and their remarks begged very complicated technical questions bearing on the complex legal liability issues presented in the cases.

In one case the jury was allowed to hear testimony from one nurse that another nurse said that a patient fell because someone had spilled milk on the floor and it was mopped up after the fall.

In another case someone was allowed to testify a hospital employee had admitted there was too much wax on the floor after a visitor slipped and fell.

In still another case one nurse was allowed to testify that another nurse told her that she had found the patient on the floor wearing her Posey vest while the bed rail was still up, leading to the conclusion that the vest had not been secured to the bed as it should have been to prevent the patient from getting up.

The cases point out the potentially damaging legal consequences of caregivers freely voicing their own personal opinions after an incident occurs in the workplace involving potential legal liability. **Benjamin v. Tandem Healthcare, __ So. 3d __, 2012 2400880 (Fla. App., June 27, 2012).**

Hearing Impaired Nurse: Reasonable Accommodation Is Required.

It came to her supervisors' attention that a registered nurse working in the Alzheimer's unit of a long-term care facility was seriously hearing impaired.

It was not clear whether she had the problem when she was hired more than five years earlier or if it had developed over time while she was working there.

After she did not respond to an alarm a supervisor "tested" her hearing by standing behind her and talking. After she failed the test she was fired for inability fulfill her nursing position's essential functions.

It would not be an unreasonable accommodation to provide an amplified stethoscope, tell the CNA to carry the walkie-talkie and tell the CNA's to alert the nurse to any alarms or pages and to advise staff and families to speak to the nurse face-to-face so that she can lip read what they are saying.

MISSOURI COURT OF APPEALS
July 17, 2012

The Missouri Court of Appeals ruled that the nurse was entitled to reinstatement to her position with back pay for the time she missed. The facility was guilty of violating the Americans With Disabilities Act as well as the state disability discrimination regulations that applied to the nurse's civil service position.

The nurse was not able to fulfill the essential functions of her position without reasonable accommodation, but that is not the relevant question. There were a number of not-unreasonable measures the facility could have taken but which were never put on the table to allow the nurse to continue to work with due regard for patients' safety and wellbeing, the Court said. **Missouri Vets Home v. Brown, __ S.W. 3d __, 2012 WL 2891103 (Mo. App., July 17, 2012).**

Choking Death: Court Reviews Psych Patient's Caregivers' Actions, Dismisses Family's Lawsuit.

The adult patient was involuntarily admitted to a state psychiatric hospital with a diagnosis of schizoaffective disorder, bipolar type.

A staff physician at the psychiatric hospital designated her as a high risk for choking on her food and ordered a pureed diet and arms-length supervision whenever she ate anything.

One day when the snack cart was going around the building where she was housed someone gave the patient a candy bar from the cart. She choked on the candy bar, suffered anoxic brain injury and passed away one week after the incident.

The US District Court for the District of New Jersey was highly critical of the fact the patient was allowed to have a candy bar in the first place, the processes that led to the choice of the non-licensed staff member who was supposed to have been watching her and the nurses' response as the incident transpired.

However, for technical legal reasons the Court dismissed the family's lawsuit against the State of New Jersey and the individual care giving employees involved. The lawsuit alleged violation of the patient's Constitutional rights through deliberate indifference to her medical needs, which is very difficult to prove.

The patient was an involuntarily detained psychiatric patient in a state facility. An involuntary patient is basically a prisoner whose Constitutional rights are violated only if there is deliberate indifference so blatant that it shocks the court's conscience.

UNITED STATES DISTRICT COURT
NEW JERSEY
June 22, 2012

Medication Nurse

The surveillance camera caught the incident on tape. The patient took several sips from a beverage in her hand and then sat down on the floor and began eating something. Then she struggled to her feet, fell back to the floor and slumped over.

Alerted by another patient that there was a patient on the floor turning blue, the medication nurse on duty came into the picture but just as quickly left the patient on the floor and was out of the picture.

The medication nurse went to the nurses station to call a code to alert other personnel and then went for the crash cart, kept about 50 or 60 feet away.

The established procedure for an unconscious patient required the nurse first-responder to stay with the patient and start CPR. The medication nurse was written up for failing to follow the procedure.

The Court, however, ruled that the medication nurse was not guilty of abandoning her patient in a critical time of need as alleged in the family's lawsuit.

She apparently believed that she as the medication nurse had the responsibility in an emergency to alert other nurses, get the crash cart and make herself available to assist the charge nurse. In any case, the Court said, she did not have "the luxury of proceeding in a deliberate fashion" under the circumstances.

Charge Nurse

The incident occurred while the staff nurse assigned to the patient was on break.

The charge nurse assigned in the interim a non-licensed individual to monitor the patient but apparently failed to communicate with him about the fact that strictly controlling her food intake and closely watching her one-on-one when she ate applied not only in the dining room during meal times but also any time any food became available to her.

The Court believed this failure to communicate was negligence on the part of the charge nurse, but it was not serious enough to amount to deliberate indifference and, therefore, was not a violation of the patient's Constitutional rights.

It was also alleged that the staff member in question was unreliable and the charge nurse should not have delegated to him the task of monitoring a patient with special needs for whom a lapse in monitoring could have very dire consequences. **Marcucci v. Ancora Psychiatric Hosp., 2012 WL 2374653 (D. N.J., June 22, 2012).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924

Published monthly, twelve times per year.

Print edition mailed First Class Mail at Seattle, WA.

Electronic edition distributed by email file attachment to our subscribers.

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Repeated Tardiness: Court Validates Nurse's Disability Discrimination Lawsuit.

An LPN worked in a nursing home on the 11:00 p.m. to 7:00 a.m. shift which she requested based upon seniority.

The nurse was being treated for iron-deficiency anemia. That condition affected her ability to stand for long periods, occasionally limited her ability to concentrate, caused shortness of breath after walking fast and caused her to sleep up to twelve hours per day and have difficulty waking up and getting out of bed.

As her fatigue worsened she began arriving late for work. The facility had a policy that seven minutes late would be tolerated, but dropped that policy in favor of expecting strict on-time punctuality. After she was warned of the new policy the nurse's continued tardiness resulted in her termination. There was no problem with her job performance other than her repeated tardiness reporting for work.

The US District Court for the Eastern District of Pennsylvania found grounds for the nurse's disability discrimination suit.

No Interactive Communication Process Employer Violated the ADA

The nurse discussed her problem with her supervisor before she was fired, that is, she did expressly inform the facility that her medical condition was behind her repeated lateness reporting for work.

The Court interpreted that as a request for reasonable accommodation for a disability. Such a request, under the Americans With Disabilities Act (ADA), requires the employer to engage in an interactive communication process with the employee to explore what might be possible by way of a reasonable accommodation that will meet both the employee's and the employer's needs. The required interactive communication process never took place.

The Court said that earlier cases involving nurses were not applicable. Amendments to the ADA have expanded the definition of disability and punctuality cases involving nursing coverage in critical care environments are not applicable to the question whether a nursing home can tolerate a nurse arriving late for work. **Thomas v. Bala Nursing, 2012 WL 2581057 (E.D. Pa., July 3, 2012).**

The definition of disability was expanded to make the US anti-discrimination laws more employee-friendly when the Americans With Disabilities Act (ADA) was amended by the US Congress in 2008.

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

Before 2008 the US courts interpreted the words "substantially" and "major" in the ADA very strictly to create a difficult standard for an employee to overcome to qualify as disabled, but that approach was expressly rejected by Congress. Many earlier court decisions are now obsolete.

The nurse in this case suffers from iron-deficiency anemia which, among other things, leads to fatigue and can cause some individuals to sleep up to twelve hours per day and have difficulty waking up and getting out of bed.

The nurse is substantially limited in a major life activity under the newly expanded definition of disability and she has rights under the Americans With Disabilities Act.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
July 3, 2012

Leaving Early: Court Says MS Is No Excuse.

A registered nurse suffered from multiple sclerosis (MS) which, among other things, caused the nurse to be unusually susceptible to stress and depression.

When she learned she would be seeing a certain pediatric patient that day, the stress she was already experiencing from non-work-related issues became unbearable and she left the hospital and went home during the middle of her shift without obtaining permission to leave.

The nurse was fired for violating hospital policy which required any nursing employee who became ill on duty to notify the charge nurse, staffing office or house nursing supervisor and get permission. She told them she had to go home because she "hated being there now," but she was never expressly given permission to leave.

The nurse's neurologist supplied her with a letter stating that MS can cause inability to handle stress appropriately and occasional oppositional or inappropriate behavior.

The nurse's condition may have caused stress that pushed her to the point she had to leave the hospital, but it did not excuse her from following hospital policy requiring her to obtain permission first.

COURT OF APPEALS OF MINNESOTA
July 9, 2012

The Court of Appeals of Minnesota ruled that the nurse was guilty of misconduct justifying termination. She committed a serious violation of the standards of behavior her employer reasonably had the right to expect of her as an employee.

The Court accepted the nurse's medical evidence that her condition did in fact force her to have to leave, but that did not excuse her from the requirement to obtain permission first. **Plecko v. St. John's, 2102 WL 2685093 (Minn. App., July 9, 2012).**

Treatment Plans: Failure To Follow Is Grounds For Termination.

The nursing assistant was told at the time of hiring that she would be required to follow the residents' care plans which ensure resident safety and direct the performance of individualized services.

Nevertheless, there were several incidents which resulted in her termination where she did not follow the care plans.

The aide transferred a resident by herself whose care plan required two staff members for transfers. This resulted in a written reprimand which warned her that termination could follow if she did not start following the care plans precisely.

She was suspended three days without pay two months later for a faulty sling transfer to the toilet in which the resident ended up having to be lowered to the floor.

She was finally terminated after she raised a high-fall-risk patient's bed above the maximum allowed by the care plan of eight inches off the floor to change the linens, then left it at the incorrect height.

Continual failure to follow the residents' care plans reflected a negligent or indifferent approach to her job which went against her employer's reasonable expectations.

COURT OF APPEALS OF MINNESOTA
July 2, 2012

The Court of Appeals of Minnesota upheld the facility's right to terminate her for employment misconduct.

The Court ruled the facility had the right to expect strict compliance with the residents' care plans that directly related to resident health and safety. That legitimate expectation left no room for exercise of judgment by the nursing assistant.

Her argument about good-faith errors in judgment was irrelevant because the patient safety standards set up in the care plans left no room for her to exercise her own judgment, the Court said. **Roloff v. Arrowhead Senior Living, 2012 WL 2505750 (Minn. App., July 2, 2012).**

Narcotics Diversion: Nurse's Discrimination Suit Dismissed.

When confronted about her possible drug abuse the nurse denied she had a drug problem and stated that she had a valid current prescription from her physician for Darvocet.

She was informed she had to undergo a drug screening at an outside lab, but at the same time was told that corroborating the existence of her Darvocet prescription would shield her from consequences for a positive test result.

The drug screen came up positive for propoxyphene, the narcotic component of Darvocet, one of the same drugs for which the nurse had a number of documentation discrepancies.

The nurse never provided a physician's prescription for Darvocet. She was fired.

The nurse hired in her place was also African-American and was sixty-years old, three years her senior.

Two younger Caucasian nurses were not fired over their drug diversion and abuse. However, they each admitted they had a problem with addiction and successfully completed the State Board's treatment and monitored probation program for impaired nurses.

UNITED STATES DISTRICT COURT
ALABAMA
June 27, 2012

The hospital's dispensing system showed an unusually large number of medications going out under one particular nurse's identification code.

A print-out specifically listing the nurse's narcotics for the month was compared to the patients' medical charts.

The cross-comparison revealed discrepancies where propoxyphene compounds (Darvon and Darvocet) were obtained from the system by this particular nurse but were not administered to any patient or the amount actually given to the patient was not recorded in the chart.

When confronted, the nurse had nothing to say to dispute the accuracy of system's print-out of the narcotics she had obtained, nor could she explain the discrepancies in her documentation.

When accused, the nurse denied having a drug problem. She was told she had to take a drug test. When it came back positive for propoxyphene she said she had a physician's prescription but she never handed over a copy to corroborate it.

Nurse's Discrimination Suit Dismissed

The nurse, fifty-seven years old and a minority at the time of her termination, sued her formed employer for age and race discrimination. The US District Court for the Middle District of Alabama dismissed the case.

Solid proof of medication errors with narcotics along with laboratory evidence to support accusations of diversion are legitimate, non-discriminatory reasons to terminate a nurse's employment, the Court said.

The nurse who was hired to replace her was also a minority and was three years older. That also tended to negate any discriminatory intent by the hospital.

Two other nurses, both non-minorities and much younger, were not fired for their drug problems.

However, according to the Court, they were not valid bases for comparison in making out a discrimination lawsuit because they both admitted their problems with addiction and successfully completed an approved rehabilitation program, unlike the nurse in question who continued to deny her problem even in the face of substantial evidence. **Banks v. Jackson Hosp., 2012 WL 2462311 (M.D. Ala., June 27, 2012).**

Post-Surgical Nursing Care: Court Faults Care Planning, Patient Input/Output Monitoring.

The patient came to the hospital after three days of abdominal pain, nausea and vomiting.

A small bowel obstruction was diagnosed, surgery was performed and the patient was discharged home after four days.

She came back ten days later, anemic, dehydrated and with abdominal abscesses. She was readmitted and surgery was performed the next day.

Eight days later she was transferred to rehab with a biologic dressing, a vacuum dressing and a PICC line for antibiotics and parenteral nutrition.

During her ten-day stay in rehab her condition grew worse. She developed sustained tachycardia and hypotension and the wound drainage became hemorrhagic.

She was sent back to the hospital. There was yet another exploratory surgery and she was intubated, then transferred to another facility where she died from septic shock and multiple organ failure.

Lawsuit Against Rehab Facility

The Court of Appeals of Texas was called upon to rule upon the allegations of negligence leveled by the family against the rehab facility. The first hospital and the physicians' medical group were also defendants but their liability was not addressed in the Court's opinion.

The Court accepted the testimony of the family's nursing expert as grounds for a lawsuit against the rehab facility.

No Input/Output

Among other alleged errors and omissions, the family's nursing expert focused on strict fluid input and output.

The nursing care plan in rehab did not call for fluid monitoring, and the nursing care flow sheets were blank as to these critical data points being monitored, interpreted and reported to the physician as abnormal and requiring medical follow up.

The attending physician cannot make decisions about changing medications and/or sending the patient back to acute care or intensive care without competent nursing assessment and communication of worrisome data to the physician. **Christus Continuing Care v. Lam Pham, 2012 WL 2428339 (Tex. App., June 28, 2012).**

The standard of care for the rehab facility's nurses required them to design and implement an appropriate nursing care plan.

The nursing care plan should have called for the nurses to obtain and properly interpret strict input and output data and to notify the physician of imbalances.

The rehab nurses should have noticed and reported worsening vital signs, then withheld her hypertension medication and notified the physician when her blood pressure fell below a therapeutic level.

The nurses should have watched for and reported significantly abnormal lab values to the physician.

One of the family's medical experts had to concede that the rehab facility was not a tertiary care center and did not have twenty-four hour intensive care or equipment for advanced imaging studies.

However, if the nurses were monitoring the patient competently, the interventional window for transferring the patient to tertiary care would have been shortened and her life would have been saved.

COURT OF APPEALS OF TEXAS
June 28, 2012

Labor & Delivery: Court Faults Nursing Documentation.

The baby was born in 2000 but it was not until a visit to a pediatric neurologist in 2006 that the child's right-arm and shoulder condition was diagnosed as Erb's palsy possibly related to a birth injury.

Investigation by the lawyers revealed that the hospital chart showed that the baby was kept in the hospital seven days after birth for high bilirubin and physical therapy for a right shoulder bone separation. The baby continued to receive physical therapy for the shoulder after discharge.

Lack of proper nursing assessment and documentation can delay treatment necessary for the patient.

Poor record-keeping tends to show an overall lack of diligence and is a relevant fact in medical negligence litigation.

UNITED STATES DISTRICT COURT
PUERTO RICO
June 29, 2012

The US District Court for the District of Puerto Rico endorsed the allegations of negligence in the family's lawsuit against the hospital.

Assuming a shoulder injury was sustained at birth as was the diagnostic impression at age six, that meant there had to have been a vacuum or forceps delivery which should have been noted by the nurse in the medical chart but was not.

There also should have been a nursing assessment of the newborn which should have disclosed the shoulder injury and that fact also should have been noted.

Specifically, according to the Court, a labor and delivery nurse is required to check the baby's arms to see if the baby raises and lowers them, and, if not, inform the physician and make a note of the fact in the chart. **Rosa-Rivera v. Dorado Health, 2012 WL 2564332 (D. Puerto Rico, June 29, 2012).**

Gratuitous Act: Court Says Hospital Can Be Liable.

An E.R. nurse whose elderly patient was being admitted to the hospital called in the hospital's patient-care representative to assist her patient with his dogs that were still at his home.

Due to faulty communication with the patient, county animal control was notified of the situation rather than the Humane Society. Animal control officers went to the home, took the dogs to the pound and the dogs were eventually euthanized.

One who undertakes to do an act or to perform a service for another has the duty to exercise care, and is liable for harm resulting from the failure to do so, even though the undertaking was purely voluntary or completely gratuitous and there was no obligation to do such an act or to perform such service or any payment exchanged for the promise.

When one undertakes an act he or she has no duty to perform and someone relies upon that undertaking, the act must be performed with reasonable care.

COURT OF APPEALS OF GEORGIA
July 11, 2012

The Court of Appeals of Georgia saw grounds for a lawsuit against the hospital.

A hospital is under no legal obligation whatsoever to see to a patient's dogs.

However, when the patient care representative gratuitously took on that responsibility, the hospital placed a legal duty upon itself to carry out that responsibility competently and in accordance with the patient's wishes. **Greenway v. Northside Hosp., __ S.E. 2d __, 2012 WL 2819420 (Ga. App., July 11, 2012).**

Coumadin: Nurses Did Not Perform PT/INR Tests, Civil Monetary Penalty Upheld.

The resident's overall plan of care included a note that PT/INR monitoring no less frequently than monthly had been ordered by the resident's physician.

Even if there was no order from the physician for monthly PT/INR testing, the professional standard of care for the nurses would expect the nurses to know that that testing needs to be done with any patient on Coumadin and would expect them to inquire with the physician about such an order.

There is no unauthorized practice of medicine involved when nurses contact the physician for orders the nurses know are most likely indicated for a particular patient.

The nurses were right to fax the October PT/INR result to the physician.

However, it was below the professional standard of care for the nurses to wait for a response and not follow up when no response was received back from the physician one way or the other whether changes needed to be made in the Coumadin or other medication dosages.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
July 17, 2012

The patient in a skilled nursing facility was a seventy-eight year-old woman with hypertension and a medical history of cancer and strokes.

She was taking Coumadin to help prevent blood clots and another stroke.

State survey inspectors found when they reviewed her chart that a PT/INR test was done in late October and a fax was sent to the physician with the result, but there was no response from the physician.

In late December a nurse noticed small bruises on the patient's thigh and in mid-January a nurse found extensive bruising under her armpit. Eight days later the resident picked at a scab until it began to bleed, her vital signs began to deteriorate and she had to be taken to the E.R.

A PT/INR test in the hospital in late January revealed an abnormally high level. It was the only PT/INR test done since late October the prior year.

The facility was cited for violation of Federal regulations found at 42 C.F.R. Section 483.25. The catch-all language of that section requires nursing facilities to provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial wellbeing of each resident.

Federal regulations require nursing facility residents to receive competent professional nursing care which, in this case, meant that this resident's nurses should have performed the PT/INR at least monthly per the physician's orders incorporated in the care plan and also assessed the patient for bruising and bleeding as signs of excessively compromised clotting.

According to the Court, the nurses' failure to do frequent PT/INR testing rose to the level of immediate jeopardy as defined in Federal regulations, justifying the highest possible civil monetary penalty.

The nurses' omission was likely to cause serious injury or harm to a resident. The fact that no serious harm actually materialized to the resident in question was beside the point, the Court said. **Greenbrier Nursing v. US Dept. of Health & Human Svcs., __ F. 3d __, 2012 WL 2891270 (8th Cir., July 17, 2012).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Antineoplastic And Other Hazardous Drugs: New Guidance Document From CDC.

On June 27, 2012 the National Institute for Occupational Safety and Health of the US Centers for Disease Control and Prevention (CDC) announced the availability of an updated list of antineoplastic and other hazardous drugs which require special handling in healthcare settings to minimize the risk of occupational exposure.

According to the CDC, this new guidance document is only advisory and does not have the mandatory force and effect of law.

Since the most recent prior update in 2010 to the original 2004 guidelines, the CDC indicates it has reviewed some 70 new drugs approved by the FDA and has reviewed new special warnings issued by the FDA for 180 others.

We have the new guidelines on our website at http://www.nursinglaw.com/NIOSH2012.pdf The document is not copyrighted and readers can copy and distribute it.

FEDERAL REGISTER June 27, 2012
Page 38297

Blood Products: New Draft Guideline Re Donor Screening For Malaria.

On July 6, 2012 the US Food and Drug Administration announced the availability of a guidance document in draft form entitled "Guidance for Industry: Recommendations for Donor Questioning, Deferral, Reentry and Product Management to Reduce the Risk of Transfusion-Transmitted Malaria."

The new guidelines are only advisory and are intended to replace the guidelines published by the FDA in 1994 and 2000.

We have the new guidelines on our website at http://www.nursinglaw.com/FDA070612.pdf The document is not copyrighted and readers can copy and distribute it.

At this time the FDA is still accepting public comments on the proposed guidance document.

The document itself contains instructions for forwarding public comments to the FDA for its consideration.

FEDERAL REGISTER July 6, 2012
Pages 40068-40069

Emotional Distress: Family Member Cannot Sue Who Witnessed Problem During Procedure.

The patient asked that her sister be allowed to stay with her in the delivery room while she had her cesarean.

During the procedure the physician sliced into the baby's scalp and the sister observed a large flap of the baby's skin dangling from his skull while he bled profusely from the wound.

Afterward the sister sued the hospital and the physician for negligent infliction of emotional distress over what she saw happen to her nephew in the delivery room.

The California Court of Appeal ruled that the sister's case should be dismissed for lack of grounds to sue.

The Court noted that the mother and infant also have lawsuits against the hospital and physician which are still going ahead notwithstanding the Court's ruling on the sister's case.

The courts have to draw arbitrary lines somewhere as to who can and who cannot recover damages in court for negligent infliction of emotional distress over a physical injury to another person.

Otherwise the number of family members who might go to court seeking damages on the basis of a single incident could unreasonably enlarge the healthcare provider's exposure.

CALIFORNIA COURT OF APPEAL
July 16, 2012

While acknowledging that many persons are affected when a particular person is injured by another's negligence, the courts have to set boundaries defining who can and who cannot sue.

An emotional reaction to a loved one's illness, injury or death is part of the human condition, the Court said.

Only immediate family members who reside in the same household with one another overcome the threshold for being able to sue for negligent infliction of emotional distress when they witness an injury to a family member.

The newborn nephew in this case did not reside in the same household with his aunt. The strength of the bond between the two sisters, which was apparently very deep in this case, is also not a relevant factor. **McDaniel v. St. Francis Med. Ctr., 2012 WL 2878202 (Cal. App., July 16, 2012).**