Babies Switched In Nursery: Court Allows One Of The Mothers To Sue For Damages.

One of the mothers was given an infant to nurse and nursed her for a time until she realized she did not look like her own baby. The mother checked the ID bracelet on the baby's ankle, realized it was not her own baby and jumped right up out of bed, injuring her sutured incision.

The neonatal nursing staff admitted there was a mistake. They went to the bassinet with her last name and found the ID bracelet on the infant inside had the other mother's last name. They put her name on a new ID bracelet for the baby and tried to assure her that the mix-up had been solved.

She was still understandably quite concerned. DNA testing was ordered on hers and this baby's blood samples to establish that she had the right infant.

The same infant was sent home with her when she was discharged. Her anxiousness continued for ten days until the DNA results came back and proved she now really had the right baby.

The Court of Appeals of Tennessee ruled this mother did have the right to sue for her own mental anguish and emotional distress, from the time she discovered the mix-up until the DNA results came back.

It did not matter that her attorney was the one who finally sent her to a psychiatrist, basically so there would be expert testimony as to her anxiety reaction to prove damages in her lawsuit. **Filson v. Seton Corp., 2009 WL 196048 (Tenn. App., January 27, 2009).**

Each of the two mothers has filed suit because one of them was allowed to nurse the other's baby, due to a mix-up committed by the neonatal nursing staff.

COURT OF APPEALS OF TENNESSEE
January 27, 2009

One of the mothers was resting comfortably in her hospital room when she was informed that her infant had been taken from the nursery and given to another new mother to nurse.

As a precaution, the other mother's breast milk was suctioned from the baby's stomach, along with glucose water that had earlier been given to the infant, pending blood tests on the other mother to rule out any infection that could be passed by her breast milk. The tests proved negative.

The Court of Appeals of Tennessee ruled the infant suffered no harm by being nursed by another person and having her stomach contents removed.

There was no medical battery committed because the procedure was done pursuant to a physician's order and fell within the general consent to treatment papers the parents had signed on the infant's behalf. **Hobbs v. Seton Corp., 2009 WL 196040 (Tenn. App., January 27, 2009).**

Epidural: High-Spinal Block During Catheter Replacement.

The patient's epidural catheter was being replaced for post-op pain management. She arrested for at least ten minutes before cardiac and respiratory function could be restored with epinephrine.

In the ensuing arbitration the patient's attorneys argued successfully that she should have been taken back to the O.R. for the procedure, since high-spinal block is a recognized risk and the resources to detect and counteract it promptly are more readily available in the O.R. than on a hospital med/surg floor.

The arbitrator awarded $2,060,569. **Skaggs v. Kaiser Foundation, 2008 WL 5638300 (Med. Mal. Arbitration, Contra Costa Co., California, December 12, 2008).**

Wrongful Termination: Nurse Refused To Alter Chart, Has Grounds For A Lawsuit.

The nurse called the attending physician for permission to give more of a prn anxiety medication early, believing the psychiatric patient was having anxiety and showing extrapyramidal signs (EPS).

The physician told her to give Haldol, which would only tend to increase EPS if that was what was happening. She did give the Haldol and the EPS seemed to increase, so she got another nurse to call and advocate again for the anti-anxiety med. The physician ordered Cogentin. Another physician came in and ordered Benadryl and that finally calmed the patient down.

Two days later the nurse manager and the director of behavioral health ordered the nurse to remove her progress note, rewrite portions they had bracketed for emphasis as not to point fault at the attending physician and insert the new progress note in the chart. She refused and was fired.

Removing or altering progress notes in a patient's chart after the fact is conduct for which a nurse's license can be taken.

A nurse cannot be disciplined or terminated for refusing to do something which is illegal and which could result in loss of the nurse's license.

MISSOURI COURT OF APPEALS
February 13, 2008

The Missouri Court of Appeals ruled the nurse had grounds to sue her former employer for damages for wrongful termination. **Hughes v. Freeman Health System, __ S.W. 3d __, 2009 WL 351095 (Mo. App., February 13, 2009).**