LEGAL EAGLE EYE NEWSLETTER

December 2004 *For the Nursing Profession* Volume 12 Number 12

Family And Medical Leave Act: Nurse Can Get Same Work Shift On Return From Leave.

A staff nurse was fired from her job because she refused to accept a swing or graveyard shift when she returned to work from an authorized family leave instead of the day shift she had been working before.

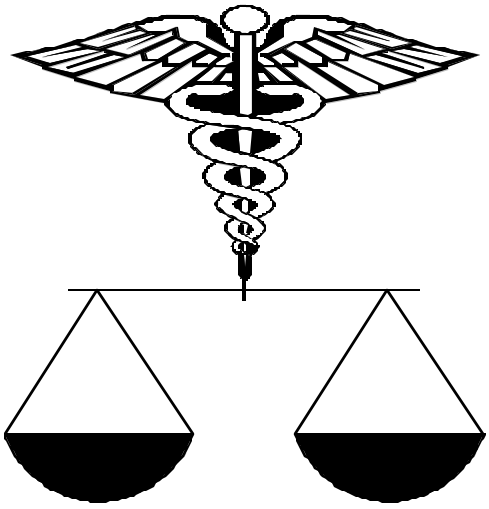
Sexual Harassment
Single Mother

The nurse alleged in her lawsuit that trying to reassign her to a shift that would be incompatible with her child-care responsibilities as a single mother was part of a broader pattern of discrimination and harassment directed at her by her supervisors because she was a single mother.

The US District Court for the Eastern District of Pennsylvania did not go into the evidence to decide if the nurse was in fact a victim of discrimination or harassment.

The court stated in general terms that treating an employee differently because she is a single mother does come within the legal definition of sexual harassment under Title VII of the US Civil Rights Act.

However, that being said, a significant stumbling block for an employee can be that a violation of the US Civil Rights Act must be reported to the US Equal Employment Opportunity Commission within 180 days of when it occurs or the employee's right to sue is barred. The nurse's civil rights claim was denied for this reason.



When an employee returns to work from FMLA leave the employee is entitled to the same position the employee held when the leave commenced or an equivalent position with equivalent terms and conditions of employment.

The nurse is a single mother with child-care responsibilities.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
November 8, 2004

Family and Medical Leave Act
Inequivalent Position

The nurse's lawsuit did have a solid leg to stand on. The US Family and Medical Leave Act (FMLA) requires that an employee be restored to the same or an equivalent position on returning from leave, unless that will pose an extreme hardship to the employer. Apparently there were plenty of day-shift openings at the hospital, yet she was told she had no choice but to accept swing or graveyard shift or resign from her position.

The court interpreted the language in the FMLA about the right to be restored to the same or an equivalent position to mean that for this nurse a shift other than the day shift she had been working was not equivalent.

Assuming the employee is covered by the FMLA (the employer has 50+ employees, the employee has been there more than one year), the employee is entitled to up to twelve weeks of unpaid leave in a twelve-month period for the employee's or a family member's serious health condition. **Lentz v. Gnadden Huetten Memorial Hosp., 2004 WL 2514898 (E.D. Pa., November 8, 2004).**

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Arbitration: Court Says Nursing Home Admission Agreement Not Enforceable, Jury Trial Ordered.

An elderly man was brought by his wife to a nursing home in a semi-conscious state, admitted to the nursing home, then taken right away to the hospital. Back at the nursing home three days later, he fell as he was being moved unrestrained in a wheelchair, was injured, was taken back to the hospital and died.

His widow sued the nursing home for negligence. The nursing home countered the lawsuit by insisting that the judge stop further proceedings in court and send the case to an outside arbitrator for binding arbitration according to the arbitration clause in the papers the wife signed the day when she first brought her husband to the nursing home.

Arbitration Clause Ruled Unconscionable

The Court of Appeals of Ohio ruled that under the circumstances of this case the arbitration clause was unconscionable, that is, fundamentally unfair and therefore legally unenforceable. The case would stay in court on track for trial by jury.

The court acknowledged that family members are often under a great deal of stress at the time they admit a loved one to a nursing home.

The court was not impressed that the admission papers with the arbitration clause were offered on a take-it-or-leave it basis. She had to sign or her family member would not be admitted.

An arbitration clause in an admission agreement must be explained to the resident and/or the guardian or family. They must be made aware that disputes will be resolved by an arbitrator and not in court. They must be offered a choice to decline the arbitration clause and still be allowed to gain admission for their family member.

The court also found fault with the legal wording of the arbitration clause, finding that it is not customary in arbitration for the winning side to be forced to pay the other side's attorney fees. **Small v. HCF of Perrysburg, Inc., 2004 WL 2426244 (Ohio App., October 29, 2004).**

The nursing home has asked the court to stop further court proceedings pending binding arbitration before an outside arbitrator.

Public policy encourages private arbitration as a method of dispute resolution when the dispute falls within a valid contractual agreement to arbitrate.

However, an arbitration agreement or arbitration clause in a contractual agreement may be legally unenforceable if the court finds it unconscionable.

An agreement is unconscionable and not enforceable if there is grossly unequal bargaining power and one side had no meaningful choice but to accept the agreement containing contractual terms that are unreasonably favorable to other side.

A resident cannot be given the all-or-nothing choice of accepting an arbitration clause or being denied admission.

The arbitration clause must be explained to the resident, including the fact that to be admitted the resident does not have to sign away the right to sue.

COURT OF APPEALS OF OHIO
October 29, 2004

Arbitration: Resident Was Legally Blind, Admission Contract Still Enforceable.

The personal representative of the probate estate of a deceased nursing home resident filed a lawsuit against the nursing home.

The nursing home countered the lawsuit by insisting that the judge dismiss the case in favor of arbitration by an outside arbitrator as an alternative to trial by jury in a civil court of law.

The judge agreed and ordered arbitration, based on the nursing home's admission contract which the resident had signed agreeing to binding arbitration of any and all disputes between herself or her estate and the nursing home.

A legal contract is not invalid just because a party who signed the contract did not read the contract, even if the party was blind.

There is no evidence anyone prevented her from having the contract read to her or coerced or fraudulently induced her to sign.

DISTRICT COURT OF APPEAL
OF FLORIDA
October 20, 2004

The District Court of Appeal of Florida affirmed the judge's decision in favor of arbitration. The court rejected the argument that the resident being legally blind at the time she signed the agreement, in and of itself, had any bearing on the legal validity of the admission contract or the arbitration clause contained in the admission contract. **Estate of Etting v. Regents Park at Ventura, Inc., __ So. 2d __, 2004 WL 2347560 (Fla. App., October 20, 2004).**

Substandard Nursing Practice: Court Upholds Board's Disciplinary Probation For Nurse.

The Court of Appeals of Michigan, in a recent unpublished decision, determined there was substantial evidence to support the state Board of Nursing Disciplinary Subcommittee for placing a nurse on disciplinary probation.

Code Incident

An eighty-eight year-old chronic pneumonia/URI patient who was on a ventilator became unresponsive. The nurse apparently did not know what to do. She asked another nurse to help. She had not taken recent vital signs nor did she promptly take vital signs when she first noticed the patient was unresponsive. She could not quickly state the patient's code status when the second nurse was trying to decide what to do, i.e., whether to call a code or allow the patient to expire. She decided the patient was full code. A code was called. She did not know where the ambu bag was, which is the nurse's responsibility. She just froze when the second nurse told her to start and IV. The IV team who happened to be in the hallway came in and got it started. She had not been filling out the patient's ventilator checklist form. She only filled it out for the time frame in question after he died.

A nurse has the right to file an appeal in court to review a decision of the Board of Nursing.

However, in any sort of administrative appeal the reviewing court is required to give considerable deference to the administrative expertise of the agency which made the decision.

The court does not substitute its own judgment for that of the administrative agency because the agency is presumed to have superior expertise.

The court will generally uphold the administrative agency's decision if the decision was supported by competent evidence, even if the judges on the court think they might have reached a different result.

Competent evidence is evidence a reasonable mind would accept as adequate to support the decision.

COURT OF APPEALS OF MICHIGAN
UNPUBLISHED OPINION
November 4, 2004

Blood Pressure Med Not Given

The nurse had phoned the physician because another patient's blood pressure was elevated. When the physician phoned back and asked for the specific BP and what meds the patient was on, the nurse did not know. She phoned the physician back several hours later and confessed she had just forgotten to give the patient his blood pressure med that evening.

Agitated Patient

The nurse phoned the same physician for advice how to calm an agitated patient. Again when asked what medications were ordered and given, the nurse did not know. When the physician came to see the patient all the lights were on in the patient's room and the television volume was really loud. Soon after the physician turned off the lights and television the patient calmed down.

Stool Sample / Occult Blood

The nurse phoned the same physician and told him he needed to order an occult blood test for a stool sample that was obviously bloody. The physician said it was unnecessary. The nurse went ahead anyway and tried to order the test without a physician's authorization.

Legal Standard for Review

When looking at the hearing examiner's findings and the full Board's decision to adopt the hearing examiner's findings the court is only interested whether there was competent evidence.

The court does not substitute its own judgment for that of an administrative agency that has specialized expertise. **Cichoski v. Department, 2004 WL 2480479 (Mich. App., November 4, 2004).**

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Advanced Practice / Script Authority: Court Finds No Unprofessional Conduct.

A nurse practitioner who had been licensed as an advanced practice nurse in three other states obtained employment with a clinic in Arkansas and began writing prescriptions for the clinic's patients.

Some time later she was notified by the Arkansas State Board of Nursing that her collaborative practice agreement with her Arkansas employer did not meet the specifications for such a document required to practice in Arkansas as an advanced practitioner.

She admitted she had been writing prescriptions for various medications at the clinic. She mistakenly believed prescriptive authority came along with advanced practice standing as it did in the other states where she had been licensed. In fact, prescriptive authority was contingent on receipt and approval by the Arkansas state board of the collaborative practice agreement with her employer.

The Arkansas State Board found her guilty of unprofessional conduct, fined her $1000 and suspended her license. She asked for review in court.

The Court of Appeals of Arkansas sided with the nurse and overruled the State Board.

Unprofessional Conduct Defined

The nurse had always practiced with her Arkansas employer under direct supervision by three physicians at the clinic as she believed her licensed required, and that was verified by the physicians with whom and for whom she worked.

There was no proof she ever abused her prescriptive authority by writing unnecessary or contraindicated prescriptions or by attempting to divert controlled substances.

In the context of professionals abusing prescriptive authority the courts have always looked for intentional improper conduct above and beyond technical deficiencies in the writer's licensing papers. **Board of Nursing v. Morrison, __ S.W. 3d __, 2004 WL 2453932 (Ark. App., November 3, 2004).**

The Board's regulations define unprofessional conduct as conduct which, in the Board's opinion is likely to deceive, defraud, or injure patients or the public.

Unprofessional conduct means any act, practice or omission that fails to conform to the accepted standards of the nursing profession and which results from conscious disregard for the health and welfare of the public and the patient under the nurse's care.

The nurse's prescriptive authority technically was not valid from May to November 2002, while she was writing prescriptions.

First, the nurse had no intent to break the law. She was not aware her prescriptive authority was technically invalid and she promptly stopped writing prescriptions when she found out.

Second, these regulations are meant to counteract abuse of prescriptive authority through incompetence or a desire to profit from overmedication or diversion of narcotics. Nothing like that happened here.

COURT OF APPEALS OF ARKANSAS
November 3, 2004

Dura Hooks: Confusion Over Sharps Count Leads To Lawsuit.

The Court of Appeals of Kentucky recently reversed a lower court's ruling that summarily dismissed a patient's medical malpractice lawsuit against the surgeon who performed his brain surgery.

The Court of Appeals said a jury should decide if the surgeon was negligent for relying on the scrub tech's and circulating nurse's statements that all sharps had been counted and accounted for, when one of the dura hooks was still inside the patient. The Court believed, as it was the surgeon's responsibility to remove the dura hooks, it was his job to account for them.

This was another case of apparent miscommunication between the surgeon and other operating room personnel over the definition of "sharps" that were to be counted by the nurses. **Branham v. Nazar, __ S.W. 3d __, 2004 WL 2367143 (Ky. App., October 22, 2004).**

Assault On Healthcare Worker: Crime Defined.

A patient was convicted of third degree assault for biting the hand of a nursing assistant caring for him in the hospital's intensive care unit while he was in four-point restraints.

The Court of Appeals of Washington, in an unpublished opinion, threw out his conviction because the prosecution did not bother to offer proof the aide was a "health care provider" as defined by statute and that the hospital was licensed as required by law. **State v. Gray, 2004 WL 2445752 (Wash. App., November 2, 2004).**

Needlestick: Court Permits Lawsuit Against Nurse's Employer.

A paramedic responded to a 911 call at a medical facility to treat a resident who was having a seizure.

When he got there the paramedic was told by the nurse that the patient had the HIV virus. During the ensuing struggle the nurse accidentally punctured the paramedic's hand with a needle that was contaminated with the HIV+ patient's blood.

Over the next sixteen months the paramedic was tested six times for HIV. One test was initially positive, but then ruled negative after re-testing.

The paramedic did not become HIV positive. However, he and his spouse sued the nurse's employer for mental anguish and emotional distress over fear of AIDS.

Since the patient actually was HIV positive, the victim of a negligent needlestick injury has a reasonable fear of contracting AIDS and can sue for mental anguish and emotional distress.

NEW YORK SUPREME COURT
APPELLATE DIVISION
November 1, 2004

The New York Supreme Court, Appellate Division, noted the courts require in these cases that the patient actually be proven HIV positive. Otherwise fear of getting HIV is not considered realistic and is not enough to support a lawsuit for damages above and beyond the physical wound from the needlestick itself.

In this case the court ruled the paramedic's and his spouse's fear of HIV was realistic for six months and he could sue for that, but not sixteen months as he claimed in his lawsuit. **Damanti v. Jamaica Community Adolescent Program, 2004 WL 2452803 (N.Y. App., November 1, 2004).**

Nurse With Diabetes, Multiple Medical Problems: Employer Violated His ADA Rights.

It was obvious that the nurse had numerous medical problems which made it very difficult for him to continue covering floor shifts as a direct patient-care nurse in the nursing home.

He had rights under the Americans With Disabilities Act (ADA) which his employer ignored.

No one ever met with the nurse to discuss his limitations and how those limitations could be accommodated. He was just told he had to work the floor and that was his only option.

Once a disabled employee requests accommodation, the appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the employee.

The ADA requires the employer to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless the employer can demonstrate that the accommodation would mean an undue hardship for the employer.

UNITED STATES DISTRICT COURT
TEXAS
October 19, 2004

A nurse was hired as a charge nurse, then promoted to an office administrative position overseeing Medicare claims processing. His promotion came with the provision that he would still have to work as a direct-care nurse covering floor shifts as needed.

Then he began to suffer a series of serious medical problems. He had heart bypass surgery and began dialysis for end-stage renal disease. A diabetic foot ulcer confined him to a wheelchair. Yet he was called upon to work the floor from his wheelchair whether he wanted to or not.

After being terminated he sued for disability discrimination under the Americans With Disabilities Act.

The US District Court for the Northern District of Texas believed his rights as a disabled person were violated.

Reasonable Accommodation: Employer Refused the Required Interactive Process

He had asked to be relieved of floor duty because of his ulcerated toe. Legally that opened the door to the requirement that his employer communicate with him in an interactive process to determine what his needs were and how his needs could possibly be met to both sides' satisfaction.

His needs were so blatant that he did not have to provide a doctor's note stating that he could not work the floor. Another person might have had to supply medical documentation and a capacity analysis if the disability and the needs were less obvious, but not this individual.

If the employer has failed to engage in what the ADA calls the interactive process, the legal analysis can stop there. The ADA has been violated. Disability discrimination has occurred.

It was not necessary to go on to weigh whether it would or would not have been a reasonable accommodation to take him off the floor and allow him to work only in the office in his administrative capacity. **Vore v. Colonial Manor Nursing Center, 2004 WL 2348229 (N.D. Tex., October 19, 2004).**

No Assistance To Bathroom: Court Looks For Malpractice.

The patient was in the hospital recovering from an angioplasty.

He began removing the monitor leads attached to his body because he wanted to get up and take a shower.

An aide came into the room and asked him what he was doing. He said he wanted to take a shower. The aide said she would come back shortly with some help. The patient sat and waited for the aide to return, but when the aide did not return he got up and went to the shower.

When he finished and tried to exit the shower he slipped and fell and broke his hip. He sued the hospital.

Assessing a patient's need for assistance and assisting a patient involves an exercise of professional judgment by a nurses aide.

COURT OF APPEAL OF LOUISIANA
November 10, 2004

The Court of Appeal of Louisiana did not rule one way or the other whether the aide or the hospital were negligent under these circumstances.

The court ruled that assessing a patient's need for assistance and providing competent assistance to ambulate for activities of daily living requires the use of professional judgment.

The patient's case would be treated like a medical malpractice lawsuit which must go before a medical-review panel before a suit can be filed under state law.

Expert testimony will be required to establish the legal standard of care for a nurses aide in this situation and to establish how the aide breached the standard of care and harmed the patient.

This basically makes the case much more difficult for the patient to prove. **Taylor v. Christus Health Southwestern Louisiana, 2004 WL 2536870 (La. App., November 10, 2004).**

Workers Comp: No Retaliation, Case Dismissed.

A hospital employee injured her back while ambulating a patient, attempting to prevent the patient from falling.

She notified her supervisor of the incident and went home. However, she did not call in absent the next few days. The hospital fired her for violation of the hospital's three-day no-call rule. She filed suit. The US District Court for the District of Oregon dismissed her case.

To prevail on a claim of discrimination or retaliation for filing a workers compensation claim, an employee must show:

1. The employee invoked the workers compensation system;

2. The employee was discriminated against; and

3. The employee was discriminated against because he or she invoked the workers compensation system.

The employee has to prove the connection by showing the employer had a discriminatory motive.

UNITED STATES DISTRICT COURT
OREGON
November 4, 2004

The hospital acknowledged it is illegal to discriminate or retaliate against an employee who files a workers compensation claim. However, the hospital had always treated every employee the same who failed to call in absent for three days, whether the reason was an on-the-job injury or some other factor and always applied its abandonment-of-employment rule uniformly. **Gallagher-Burnett v. Merle West Medical Center, 2004 WL 2486259 (D. Or., November 4, 2004).**

Latex Allergy: Nurse Exposed Before, Had Baseline Condition.

The nurse had had numerous job-related exposures to latex products which at one point had qualified her for a $60,000 lump-sum workers compensation partial permanent disability award.

She continued to work in health care settings where latex exposure was unavoidable from gloves as well as from other environmental factors, such as the carpeting, to which the nurse had become sensitized.

After a latex-allergy flare-up which kept her off work for three days the nurse filed for workers compensation.

The nurse suffered a work-related latex exposure while working at the nursing home.

However, no evidence was presented in this case that her chronic underlying latex allergy was related to her employment with her current employer.

This exacerbation lasted only a few days.

SUPREME JUDICIAL COURT
OF MAINE
November 3, 2004

The Supreme Judicial Court of Maine sided with her current employer. That is, her brief flare-up was this employer's responsibility, but not her whole history of latex exposure and latex sensitization.

The nurse's condition returned to her baseline, non-symptomatic sensitivity to latex in three days. Three days workers compensation time loss pay was all this employer was required to pay. **Sanders v. Seaside Nursing Home, 2004 WL 2452554 (Me., November 3, 2004).**

Emergency Room: Court Reviews Hospital's Security Procedures.

A patient was waiting to be seen in the emergency room. A teenage boy arrived in the emergency room with his mother. After they all had sat in the waiting area for a period of time the boy went up and began hitting the patient on the arm and shoulder, without provocation and for no apparent reason. The patient's son-in-law was with her. He went to her aid and ended the attack.

As a general rule a business owner has the legal obligation to take reasonably steps to protect patrons from foreseeable criminal acts by third parties.

A hospital emergency room sometimes serves intoxicated and violent individuals. Domestic violence and other disputes can spill over into the emergency room.

The hospital has security officers on duty.

COURT OF APPEALS OF INDIANA
November 9, 2004

The Court of Appeals of Indiana dismissed the lawsuit which the injured patient filed against the hospital.

A hospital's potential liability in such a situation is based on foreseeability. Hospitals do have the obligation to provide adequate security to protect patients and other patrons from persons who pose an appreciable threat, such as other patients or patrons who are violent, intoxicated or involved in ongoing disputes with others.

When something completely unforeseen and unforeseeable happens, however, the hospital is not responsible. **Lane v. St. Joseph's Regional Medical Center, __ N.E. 2d __, 2004 WL 2521402 (Ind. App., November 9, 2004).**

Informed Consent: Court OK's Use Of Medications In Life-Threatening Emergency.

Normally the parents give informed consent in very general terms to any and all treatments and procedures performed under the direction of the treating physicians.

It would be very unusual for parents to insist that each and every medication to be given be discussed with them specifically.

If that does happen, it is the caregiver's responsibility, in this case the nurse's responsibility, to see that the parents' wishes are noted in the chart.

The point, however, is not that the medications will be withheld from the child, but that the physician will need to communicate with the parents. The physician will have to allay their concerns and get their approval or start the paperwork for refusal of consent and a court-ordered guardianship to protect the child's best interests.

In a life-threatening emergency the parents' non-consent goes out the window, even if it turns out the medications given may have caused complications.

COURT OF APPEAL OF CALIFORNIA
November 12, 2004

The six-month old child suffered from a seizure disorder which was being controlled with twice-daily doses of phenobarbital at home.

The child developed a rash and a swollen abdomen and stopped eating. His mother stopped giving the phenobarbital. Three days later he was back in the hospital. Based on what the mother stated, the admitting physician discontinued the phenobarbital and ordered Ativan prn for seizures lasting longer than two minutes.

Mother Told Caregivers Not To Give Medications Without Her Specific Consent

At the hospital the child experienced uncontrollable seizures. His caregivers had to make difficult decisions regarding his care. He went into cardiac arrest which caused severe brain damage leading to a permanent vegetative state.

In the parents' lawsuit their pharmacology expert testified it was the combination of the Ativan along with Versed, ketamine and phenobarbital which caused respiratory failure leading to the arrest.

The parents testified they had said not to give any phenobarbital and had said they wanted all the child's medications discussed with them beforehand. In their lawsuit they claimed lack of informed consent for the child's treatment with his medications. The jury threw out the claim of lack of parental consent. The Court of Appeal of California agreed.

Life-Threatening Emergency

There was a discrepancy in the testimony between the child's mother and the nurse over what exactly the mother said.

The court sidestepped that issue. The court found that a true life-threatening emergency did exist when the child seized in the hospital. At that point it would not have been fruitful or prudent for the child's doctors or nurses to give or to withhold medications based upon the mother's wishes, the court decided. **Piedra v. Dugan, __ Cal. Rptr. 3d __, 2004 WL 2569355 (Cal. App., November 12, 2004).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Nurse Forced To Work Overtime After Back Injury: Lawsuit Thrown Out.

As a general rule employees cannot sue their employers for on-the-job injuries.

The law gives an exception to this general rule to an employee who is forced to perform a dangerous job task that results in injury or aggravation of an injury. The laws says for this narrow exception to the general rule to apply the employer must know something within its operations is dangerous, the employer must know that subjecting the employee to it is substantially certain to produce injury and with that knowledge the employer required the employee to continue to perform a dangerous task.

Mandatory Overtime Policy Upheld

The Court of Appeals of Ohio noted at the outset it is inherent to the nature of direct patient-care work that mandatory overtime may be necessary when too few staff are coming on duty to relieve staff already on duty.

The employer's policy handbook, and the nurses' collective bargaining agreement in this particular case, stipulated that refusal of mandatory overtime in this situation was insubordination justifying termination.

The nurse in question had injured her back during her first shift, had filled out an incident report and had requested but been denied permission to leave early.

When the shift ended the charge nurse told her she had to stay on duty until the end of the next shift. The nurse assumed the supervisor had read her incident report; the supervisor apparently had not and mandated her to work anyway. The nurse continued to complain during the second shift and was allowed to leave early when a new charge nurse came on duty.

The court ruled the charge nurse was not fully aware of the extent of the nurse's injury and thus was not intentionally subjecting her to aggravation of that injury by forcing her to continue to work. The court also pointed out that the medical testimony was inconclusive at trial that a person with a minor lower back strain generally would suffer additional injury, or that this nurse did suffer additional injury by continuing to work rather than resting after it first occurred. **Eblin v. Corrections Medical Center, 2004 WL 2341712 (Ohio App., October 19, 2004).**

Agency Supplied Uncertified Aides To Nursing Homes: Criminal Conviction Upheld By Court.

State investigators found out that a nursing personnel agency was sending uncertified individuals to nursing homes to work as certified nursing assistants.

Because of technical legal errors during the trial, the California Court of Appeal was able only to uphold a conviction against the operator of the agency for conspiracy to obtain funds through false representations. That reduced her sentence from four years to nine months in prison plus 540 hours community service.

There was no intent to commit elder abuse so the jury could not consider charges of conspiracy to commit elder abuse. No actual harm to a patient was proven. Invoices were just submitted for certified aides' work hours.

The owner of the nursing personnel agency was charged with conspiracy to commit elder abuse.

The judge misstated the legal definition of conspiracy in the jury instructions, so the conspiracy conviction must be thrown out.

The conviction will still be upheld for conspiracy to commit false representations by submitting invoices to obtain payment.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
October 19, 2004

Most of the people sent to work were never certified; one lost his certification in another state for an assault conviction.

There was no credible proof the agency operator was not fully aware of the illegal conduct she was committing.

The nursing home clients relied fully upon the agency to ascertain that its personnel were certified and experienced in the specific patient-care tasks they would be performing.

The court stressed the importance of the training that certified aides receive in recognition of signs of patient distress, infection control, safety and emergency procedures, technique for taking vital signs and medical terminology. **People v. Ezebunwa, 2004 WL 2361821 (Cal. App., October 19, 2004).**