LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
December 2007 Volume 15 Number 12

Breast Cancer: Nurse Manager Not Disabled, Cannot Sue For Disability Discrimination.

A department nursing director was diagnosed with breast cancer. She needed several excisional biopsies and took an extended medical leave for radiation treatments and then chemotherapy.

When she returned to work after her last medical leave she was told she could not continue as department director but would have to transfer to the staff nursing pool. At first she said she intended to resign. Then instead of resigning she asked and was allowed to transfer to a lower paying position as a unit nursing manager.

She sued her employer for disability discrimination. The US Circuit Court of Appeals for the Eleventh Circuit ruled in her employer's favor.

No Disability

The court ruled that the nurse did not have a disability. The fundamental issue in any disability discrimination lawsuit is whether or not the employee in question has a disability, as disability is contemplated under the anti-discrimination laws.

The court looks at the extent to which the employee is limited in major areas of life function. In this case, the nurse was, in fact, severely limited during the time she was recuperating from surgery and then undergoing radiation and chemotherapy.

A short-term impairment, even if quite severe, with no expected long-term side effects, is not a disability.

Even a condition as devastating and debilitating as breast cancer, involving multiple biopsies and surgeries, radiation therapy and chemotherapy, is not a basis for a disability discrimination lawsuit.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
November 15, 2007

However, according to the court, the most severe periods of limitation she suffered during her cancer treatment were short-term, temporary and contemporaneous with her treatment.

A Temporary Condition Is Not A Disability

The courts have already firmly established that a limitation of functioning, even if quite severe, that is short-term and temporary is not considered a disability, such as a period of recuperation from surgery.

Long-Term Restrictions Did Not Affect Ability To Work

She had a long-term fifteen-pound lifting limitation in the arm where lymph nodes were taken from the axilla, but that would not disable her from a management-level nursing job. If the employee does not have a disability, the court does not have to consider the issue of reasonable accommodation. **Garrett v. Univ. of Alabama, __ F. 3d __, 2007 WL 3378398 (11th Cir., November 15, 2007).**

Editor's Note: *Cancer Chemotherapy: Fired Nurse Can Sue For Disability Discrimination, Court Says.,* Legal Eagle Eye Newsletter for the Nursing Profession (15) 7, Jul. '07 p. 1 said that an employee falsely perceived by supervisors to have a disability, and dealt with on the basis of that false perception, is protected by the anti-discrimination laws even if the employee does not, in fact, have a disability.

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IM Phenergan: Nurse Followed Standard Of Care, Jury Says.

The patient had nausea and vomiting after gallbladder surgery. A nurse gave her Phenergan 25 mg IM. The injection site became inflamed, then necrotic, requiring debridement and skin grafting which left a visible scar.

The jury ruled the nurse was not negligent. Thee Supreme Court of Mississippi upheld the jury's verdict.

The nurse testified in her pre-trial deposition she used a one-inch needle. Later, in the trial, she changed her testimony. She said she misspoke before and actually used a one and one-half inch needle, that being the only needle that would have been available on the unit.

Use of the longer needle, the nursing experts testified, is within the standard of care. It is long enough in most cases to ensure that the medication will reach the underlying muscle tissue and not disperse into the overlying soft tissue.

A bad outcome does not prove negligence, the court pointed out. **Johnson v. St. Dominics Memorial Hosp., __ So. 2d __, 2007 WL 3104953 (Miss., October 25, 2007).**

IM Injection: Patient Was Standing.

The Supreme Court of Nevada accepted expert testimony from a physician that it is beneath the legal standard of care for an emergency room nurse to give a patient an injection of analgesic for back pain while the patient is in the standing position. The patient should have been lying supine.

In this case the patient protested he did not like needles and was afraid he might pass out, but the nurse went ahead anyway. **Staccato v. Valley Hosp., __ P. 3d __, 2007 WL 3287444 (Nev., November 8, 2007).**

Post-Surgical Care: Nurses Monitored The Patient, Not Responsible For Paralysis.

The patient's medical history was complicated.

He was diagnosed with a 6 cm aortic aneurysm in his chest but decided not to have surgery until he had turned 65 and was eligible for Medicare. The aneurysm burst in the mean time and the surgeons repaired it as best they could on an emergency basis.

Months later he was advised the repair had to be redone and he agreed to come back in to the hospital. At that time he was advised of the risks of the surgery which his doctors told him included a 10-25% chance of paraplegia.

At 10:40 p.m. in the ICU eight days after his surgery irreversible paralysis did set in.

After his death a lawsuit was filed by his widow against the hospital for medical and nursing negligence. The Court of Appeals of Kentucky reviewed the evidence carefully before reaching the decision to uphold the jury's verdict in favor of the patient's caregivers.

Nursing Assessments in the ICU

At 4:00 p.m. the ICU nurse did a neuro assessment. He had full movement of his arms and legs. Another nursing neuro assessment was due at 8:00 p.m.

At the 8:00 p.m. neuro assessment the patient could not move his legs and reflexes were absent.

The nurse called in her supervisor right away. The supervisor called the surgeon's on-call partner. He called the resident on duty, who examined the patient and called the surgeon back, who called another surgeon to come in and do a lumbar drain, albeit too late to relieve fluid pressure on the spine. **Dawson v. Jewish Hosp., __ S.W. 3d __, 2007 WL 2812397 (Ky. App., September 28, 2007).**

Arbitration: Family Member Had Authority, Cannot Renege On Agreement To Arbitrate.

After the elderly patient passed away in the nursing home the patient's adult daughter, as administrator of her mother's probate estate, sued the nursing home for negligence.

The nursing home began its legal defense by arguing that any claim for negligence had to go to binding arbitration and could not be filed in court, before contesting the specific allegations in the lawsuit

The daughter replied that the arbitration agreement was invalid as she had had no authority to sign it for her mother.

The medical records indicate the patient, on admission, could not recall her date of birth or the current season or repeat three simple words and did not know she was in a nursing home. She was diagnosed with confusion, depression and dementia and exhibited confused, disoriented and hostile behaviors.

UNITED STATES DISTRICT COURT
MISSISSIPPI
October 22, 2007

The US District Court for the Northern District of Mississippi ruled the patient was legally incapacitated. Her daughter was an appropriate healthcare surrogate and could sign all the papers for her nursing-home care. The daughter's legal claim came under the arbitration agreement she herself had signed. **Gulledge v. Trinity Mission Health & Rehab, 2007 WL 3102141 (N.D. Miss., October 22, 2007).**

Alzheimer's: Patient's Death Tied To Caregivers' Negligence.

The Court of Appeals of Texas accepted the family's medical expert's report as the foundation for the family's wrongful-death lawsuit against the treating physician and the nursing facility where the deceased resided just before her death.

Before being transferred to the nursing facility the elderly patient had been hospitalized for treatment of a hip fracture.

Risperdal Prescribed for Alzheimer's Dementia

In the nursing facility the patient's treating physician prescribed the anti-psychotic Risperdal for her dementia.

Risperdal is a psychotropic medication with known, published side effects which the court described in non-medical jargon as restlessness or a need to keep moving.

The patient's family was asked and refused to sign off on consent forms allowing the physician to prescribe Risperdal for the patient's Alzheimer's, but treatment with Risperdal went ahead anyway.

Agitated Patient Pulled Out Gastrostomy Tube

The patient had a gastrostomy feeding tube. She began to experience bouts of agitation and began pulling at the gastrostomy tube.

While nothing was being done to address her agitation she pulled the tube out altogether.

Gastrostomy Tube Improperly Re-inserted

The nurses re-inserted the patient's gastrostomy tube incorrectly, without medical supervision or medical follow-up. That allowed infusion of nutrient supplements into the peritoneum. That, in turn, resulted in an abscess which required numerous surgeries in the hospital.

Eventually the patient passed away. Mesenteric artery thrombosis was listed on the death certificate as the cause of death.

Patient's Death Tied to Series of Errors and Omissions

Negligence, by law, does not have to be tied to just one specific event leading directly to just one specific outcome.

The court was willing to accept a complex series of errors and omissions as the legal cause of this patient's tragic death.

An anti-psychotic with the potential to increase restlessness and agitation may not have been appropriate for management of Alzheimer's dementia.

The family's express wish to decline to consent to use of an anti-psychotic medication should not have been ignored.

A demented patient's agitation has to be addressed, especially when the patient has a gastrostomy tube.

Re-insertion of a gastrostomy tube into the stomach has to be verified by nursing or medical personnel who have the competence to make such an assessment before infusion of nutrition is resumed. **Patel v. Williams, __ S.W. 3d __, 2007 WL 3286800 (Tex. App., November 6, 2007).**

Aspiration Pneumonia: Hospital Did Not Check Dietary Orders.

An elderly nursing-home resident was found non-responsive and not breathing in her room at the hospital where she had gone from the nursing home for minor elective shoulder surgery.

She was taken to the hospital ICU, was intubated and a large volume of stomach contents was suctioned from her lungs before she died.

Hospital Did Not Check Dietary Orders at the Nursing Home

The Court of Appeals of Texas linked her death to failure by the hospital medical and nursing staff to check with the nursing staff at the nursing home to see if she had any special dietary orders.

In this case the patient had been on a mechanical diet in the nursing home. Due to poor dental health and trouble chewing and swallowing, for which she was competently assessed in the nursing home, all of her solid food had to be pureed.

No Dietary Consult in the Hospital

Alternatively, the medical and nursing staff at the hospital could have thought to get an assessment of the patient's dietary needs at some time before she was advanced beyond the liquids she was given in post-anesthesia recovery, rather than just assuming a regular hospital diet was appropriate for her, the court pointed out. **Palafox v. Silvey, __ S.W. 3d __, 2007 WL 3225512 (Tex. App., November 1, 2007).**

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Aspiration: Nurses Not At Fault, Followed Physician's Orders.

The patient's physician wrote orders for the patient to be started on clear liquids immediately following her hip surgery, and, when she no longer experienced nausea, for the nursing staff to advance her to a diet of pureed foods.

The nurses kept the patient on a clear liquid diet for two days, then started her on pureed foods. She required assistance to eat and was given assistance by a certified nurses aide.

The morning after the day she began getting and tolerating pureed foods she went into cardiopulmonary arrest from aspirating the scrambled eggs she was being fed by her aide.

The code team revived her, but she had sustained brain damage and died one week later.

The Court of Appeals of Georgia ruled the nurses and the aide were not at fault.

Scrambled Eggs Are Considered "Pureed Food"

The court pointed out that, at least in the State of Georgia, there are published standards for hospital dieticians which expressly include scrambled eggs within the definition of "pureed" foods.

Nurses Followed Physician's Orders

The court also pointed out the nurses strictly adhered to the physician's orders. When the patient no longer experienced nausea with clear liquids the nurses advanced her died as tolerated. She was tolerating pureed foods the day before, so pureed food was continued the next day in the form of scrambled eggs.

There was no requirement, the court said, for the nurses to second-guess the physician's routine orders and obtain a swallowing test before advancing the patient's diet. That was not within the nursing legal standard of care. **Morton v. Wellstar Health System, __ S.E. 2d __, 2007 WL 3025845 (Ga. App., October 18, 2007).**

Old Fracture: Nursing Home Had To Have Been Negligent, Court Rules.

The patient was taken to the hospital after she complained of leg pain and the nurses began to notice swelling.

At the hospital an orthopedic surgeon found a hip fracture he believed had to be at least two to four weeks old. He also said the fracture most likely had to have been caused by a fall of some sort.

The family sued the nursing home claiming that an aide must have dropped their seventy-nine year-old mother during a dependent transfer.

Nursing Documentation Was Not Conclusive

The nursing home convinced the local district court judge to dismiss the family's lawsuit on the basis that there was nothing in the nursing documentation about the patient being mishandled or falling.

The Court of Appeal of Louisiana, however, overruled the district court's decision. In fact, there were two possible bases for the family's lawsuit.

One, the patient was negligently mishandled in a dependent transfer.

Failure to Assess Patient Failure to Provide Treatment

Or, two, regardless of how the patient was injured, the visible deformity of the lower extremity the orthopedist found at the hospital should have been noticed by the nursing staff during routine patient assessment and should not have been neglected several weeks while the patient received no medical attention.

The family claimed after the fact the patient had told them she was dropped by an aide moving her to her wheelchair, then threatened with retaliation if she reported him. Sorting out if that was really true, in light of the orthopedist's medical testimony, was really a non-issue as to whether the family's lawsuit could go forward. **Schilling v. Grace Health and Rehab, 2007 WL 3227613 (La. App., November 2, 2007).**

Race Bias: Court Sees Hostile Work Environment.

The US District Court for the Western District of Missouri accepted some of the allegations and overruled others in an African-American aide's race discrimination lawsuit.

Racially offensive comments toward the plaintiff or toward other minorities, if not isolated incidents, can create a hostile work environment and can give the plaintiff grounds to sue for discrimination under Title VII of the US Civil Rights Act.

UNITED STATES DISTRICT COURT
MISSOURI
November 5, 2007

Differential Work Assignments

The aide alleged the nursing home had an "easy" wing for its ambulatory low-maintenance patients and a "difficult" wing for its dependent, heavy-care patients. The easy wing, she claimed, was staffed by Caucasian employees and the difficult wing by African-Americans. On top of that, the difficult wing was often left understaffed when staff were pulled away to help out on the easy wing.

If that was true, the court said, it would be a differential employment practice based on race, that is, discrimination. However, there was no solid evidence to support the aide's case on this point, the court ruled.

Racially Hostile Work Environment

The aide also claimed that racial jokes and offensive racial epithets were widely used by her supervisors and co-workers.

The court agreed that offensive verbal remarks can create a racially hostile work environment. A hostile work environment is one of the forms that discrimination can take. **Perrotta v. White Oak Manor, 2007 WL 3312164 (W.D. Mo., November 5, 2007).**

Race Bias: Court Reiterates Definition Of Discrimination.

The US District Court for the Eastern District of Arkansas recently dismissed an African-American aide's race-discrimination lawsuit.

Discrimination means that a minority employee has been treated differently than a non-minority.

The minority employee must be able to show the court that a non-minority was accused of the same offense but disciplined less harshly.

UNITED STATES DISTRICT COURT
ARKANSAS
November 5, 2007

The aide was not able to show the court that she was meeting her employer's legitimate expectations. Her disciplinary write-ups and refusal to respond positively to corrective action were legitimate, non-discriminatory reasons for her termination, the court ruled.

Her history of disciplinary write-ups was basically the same, the court pointed out, during the time she was working on a unit with an African-American supervisor as when working on a unit with a Caucasian supervisor.

The aide was not able to point to any specific non-minority employee who, having been accused of the same disciplinary offenses, received more favorable treatment that she did.

It is fundamental to a valid discrimination lawsuit to be able to identify a non-minority employee or employees who received different treatment that the minority in the same situation, the court pointed out. **Johnson v. Bryson, 2007 WL 3290455 (E.D. Ark., November 5, 2007).**

Religious Discrimination: Employee Was Offered Reasonable Accommodation.

Title VII of the US Civil Rights Act requires employers to offer reasonable accommodation to employees' religious beliefs, observances and practices.

However, the law does not define the meaning of the phrase "reasonable accommodation" and it must be decided case-by-case.

Employers are not absolutely required to accommodate at all cost.

Some employers' businesses require at least some employees to work Fridays, Saturdays and Sundays.

Some employees' religions forbid working on those days and/or require the employee to attend religious services.

Other employees would prefer to enjoy their days off on the weekend.

The law does not subordinate one person's desire for weekends off for whatever reason to another person's desire to adhere to his or her religious beliefs.

The employer must offer a solution that is a reasonable solution. It may or may not necessarily be what the employee wants.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
November 7, 2007

The US Circuit Court of Appeals for the Eleventh Circuit ruled recently that a healthcare facility did offer reasonable accommodation and thus did not commit religious discrimination.

The facility refused to allow a unit secretary always to have Fridays and Saturdays off from her 3:00 p.m. to 11:00 p.m. work shift as she requested on the grounds that her beliefs as a Seventh-Day Adventist prohibited her from working on those days and times.

Reasonable Accommodation Was Offered

The facility offered the unit secretary the opportunity to re-train for a flex-CNA position and to be entered into the system for flex-CNA assignments.

Although retraining is not necessarily the employer's obligation in this sort of situation, her CNA refresher course would have been at employer expense.

Again, although not necessarily required, as a sign of good faith the facility continued to pay her health insurance for two months, during the interval between the meeting at which she was told she could not continue as a unit secretary with a no-Fridays and no-Saturdays accommodation, until she was finally terminated for failing to respond to phone calls to her and to her pastor and letters to her offering her the flex-CNA accommodation.

According to the court, the employer's obligation is to offer a reasonable accommodation. The employer is required to communicate with the employee to find out what the employee wants. Beyond that, however, the employer's obligation is only to offer a solution that is reasonable to both sides, which may or may not be what the employee has asked for.

One employee's desire simply to have weekends off if possible is not less important than another employee's religious beliefs and practices, the court pointed out. **Morrissette-Brown v. Mobile Infirmary Medical Center, __ F. 3d __, 2007 WL 3274898 (11th Cir., November 7, 2007).**

Patient Falls: Private-Duty Sitter Does Not Lessen Nursing Home's Duty.

The patient was admitted to a nursing home from the hospital following elbow surgery. He had had a stroke and had been diagnosed with Alzheimer's, Parkinson's and diabetes.

He fell out of bed only an hour after settling in at the nursing home. When the family phoned a few hours later to check on him and were informed he had fallen out of bed, the family got a private-duty sitter from an agency at their own expense to go to the nursing home and watch him.

The sitter arrived at 8:30 p.m. that same evening. He stayed with the patient until 10:30 p.m. when he decided to take a meal break. The sitter later said he did tell one of the nursing home's aides he was taking a break before he left the patient's bedside.

Private-Duty Sitter
Left the Patient's Beside
Patient Fell Out of Bed

At 10:55 p.m. the patient was found on the floor with a broken hip.

The jury in the Circuit Court, St. Lucie County, Florida returned a verdict of $654,541.52 against the nursing home and found the sitter and his agency not at fault.

The rationale for the jury's verdict was that a nursing home has the basic responsibility for the patient's care and cannot delegate that responsibility away.

It was legally irrelevant whether the sitter did or did not inform a nursing home employee he was going on break, as was disputed in the lawsuit, because the nursing home retained full responsibility for the patient whether the sitter was present at his job, away from the bedside with good cause or absent without good cause.

The nursing home apparently did not have liability insurance to pay the verdict, while the sitter and his employer were fully covered, but that was likewise irrelevant.

Jilton v. Family Private Care, 2007 WL 2684978 (Cir. Ct. St. Lucie Co. Florida, June 14, 2007).

Insurance: Nurse's Own Policy Will Pay First $100,000, Court Says

The parents filed a lawsuit against the hospital where their baby was born with cerebral palsy allegedly caused by the negligence of the physician and two labor and delivery nurses who were present for the mother's labor.

One of the two nurses relieved the other at 3:00 p.m. at the end of her shift. The evidence the jury would have heard, if the case had gone to trial, was that significant abnormalities were there to be seen on the fetal monitor read-outs at 2:50 p.m. and again at 5:56 p.m. That is, it appeared each nurse was separately exposed to liability in the parents' lawsuit.

The nurse was covered by the hospital's liability insurance which had a $100,000 self-insured retention.

The nurse's own errors and omissions policy is required to cover her for the first $100,000 of the $900,000 settlement.

UNITED STATES DISTRICT COURT
NEW JERSEY
September 24, 2007

The insurance companies for the hospital and for one of the nurses agreed to pay the parents a settlement of $900,000, then went back to court to argue how exactly that sum would be paid out.

The US District Court for the District of New Jersey ruled the hospital's insurance had a valid $100,000 self-insured retention, and the nurse's own insurance policy was intended to pay and would contribute that amount on her behalf. **General Hosp. of Passaic v. American Casualty Company, 2007 WL 2814655 (D.N.J., September 24, 2007).**

Sponge Count: Nurses Liable Along With The Physician.

At the conclusion of the patient's cesarean section the nurses informed the obstetrician that the sponge count was correct. The physician relied on what the nurses told her and closed the incision.

A surgical sponge was left inside the patient's body.

The patient returned to the E.R. several times for abdominal pain before a CT scan revealed the presence of the sponge, which had to be removed surgically.

Although the physician performing a surgical procedure is responsible to the patient as "captain of the ship" for any surgical paraphernalia left inside the patient's body, nurses and scrub techs can also be liable for their own errors and omissions in negligently counting and accounting for sponges, needles, instruments, etc.

The Superior Court, Lake County, Indiana ruled the obstetrician was entitled to a set-off against the $375,000 jury verdict for $159,000 paid as a pre-trial settlement on behalf of the hospital and the nurses. **Ruiz v. Adlaka, 2007 WL 2640633 (Sup. Ct. Lake Co. Indiana, June 8, 2007).**

Understaffing: Court Lets In The Evidence.

The courts consider the issue of facility-wide understaffing irrelevant in a patient's negligence lawsuit.

However, the Supreme Court of Mississippi ruled understaffing was relevant and should be brought to the jury's attention because CNA's testified they did not have time to turn and change the specific patient whose family was suing over skin-integrity issues. **Mariner Health Care v. Edwards, __ So. 2d __, 2007 WL 2670308 (Miss., September 13, 2007).**

Medication Error: Expert Testimony Is Required.

The Court of Appeals of Georgia ruled recently that a patient cannot sue for getting the wrong medication from a hospital nurse without expert testimony to substantiate the lawsuit.

The patient alleged she, "Attempted to inform the nurse at the facility that it was the incorrect medication but to no avail and suffered additional complications and stayed in the hospital longer because of the error." **Grady General Hosp. v. King, __ S.E. 2d __, 2007 WL 3121243 (Ga. App., October 26, 2007).**

Sexual Harassment: Retaliation Not Allowed.

The US District Court for the Eastern District of Michigan ruled that a hospital LPN had grounds to sue her former employer, if she could prove that retaliation was the motive for her firing.

She complained to her supervisor and the local police over an incident with a male-nurse co-worker that could have been interpreted as harassment or as horseplay, but it resulted in him being fired, arrested and convicted for misdemeanor assault.

The LPN was then fired by the human resources director at the insistence of her nurse manager, her nurse manager being a close a friend of the male nurse.

The important point made by the court's ruling is that retaliation over a complaint of sexual harassment is strictly forbidden, even if the retaliation does not come directly from the perpetrator, but instead is instigated by a third party. **Benson v. Carson City Hosp., 2007 WL 2951862 (E.D. Mich., October 9, 2007).**

Fall: Patient Not Restrained, Court Does Not Fault Nurses.

When the patient, a seventy-six year-old man, was admitted to the hospital a nurse conducted a nursing assessment.

According to the hospital policy, an appropriate admission nursing assessment includes assessing the patient's medications, orthopedic diseases, neurological status and other medical conditions.

The nurse determined the patient was a high fall risk, 8 on a scale of 1 to 10. The nurse decided to initiate the hospital's fall prevention plan and that meant putting up the bed rails and placing restraints on the patient without physician's orders.

Hospital policy, however, did require a nurse who initiated restraints on a patient for fall prevention to notify a physician or physician's assistant within one hour.

No Orders

Nurses Removed Restraints

The next day another nurse, seeing that no orders for restraints had been received, removed the restraints.

Soon the patient was getting up out of bed on his own. His nursing neuro assessment was not normal, that is, he was showing signs of dementia and confusion. His O_2 was low and his heartbeat was irregular.

The physician was notified by phone but declined to order restraints.

Later that evening the patient was found on the floor with a closed-head injury. He was transferred to a university hospital where he died a few weeks later.

The Court of Appeals of North Carolina ruled the family needed to find a medical expert and sue the physician for medical malpractice over the decision not to restrain the patient for his own safety.

A nurse can and must initiate restraints on an emergency basis if the nurse's assessment so indicates, but a nurse cannot continue restraints without a physician's order. **Sturgill v. Ashe Memorial Hosp., __ S.E. 2d __, 2007 WL 3254411 (N.C. App., November 6, 2007).**

Hypoglycemia: Patient Left To Die In The Emergency Department.

The emergency department triage nurse and the physician both concluded the patient was having an episode of diabetic hypoglycemia. Both could detect an odor of alcohol on her breath.

She had been drinking that day and had taken her insulin but had not had anything to eat before being found unconscious in her apartment. Paramedics had given glucagon on the way to the hospital.

Lab tests confirmed a blood alcohol concentration of .24. After getting some dextrose the patient became cogent and responsive. She confirmed she had trouble managing her diabetes when she drank.

The physician told her never to drink again and discharged her. The nurse phoned a family member who said she could not leave work to come for her.

One of the hospital's medical experts testified that alcohol withdrawal seizures are not uncommonly seen in the emergency department.

That does not prove this patient died of a seizure rather than a hypoglycemic episode.

SUPREME COURT OF VIRGINIA
November 2, 2007

Eight hours later she was found dead in the emergency department waiting area. Her post-mortem blood glucose was 17.

The Supreme Court of Virginia threw out the jury's verdict for the hospital as erroneously influenced by medical testimony, unfounded in the court's opinion, that it was an alcohol withdrawal seizure that killed her. **Dagner v. Anderson, 651 S. E. 2d 640 (November 2, 2007).**

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For the Nursing Profession

Post-Colonoscopy Care: Court Upholds Jury's Verdict Of No Nursing Negligence.

The patient was given Versed and Demerol for a twenty-five minute procedure involving both a colonoscopy and esophogastroduodenoscopy at an outpatient facility.

The patient's nurse was with him during the procedure. About a half hour afterward the nurse began engaging in verbal conversation with the patient and gave him water and toast, as she described it, to get him more awake.

After he finished the water and toast, meant to help him wake up, the nurse had him sit on the edge of the bed long enough to make sure he was stable, then assisted him to the bathroom.

The nurse helped him sit down on the toilet. She put his clothes on a chair next to the toilet. She told him she would be right outside the door if he needed help, and to call her when he was ready to stand up and get dressed.

She left the room and stood by outside with the door cracked open.

After a few minutes she heard a noise and went back into the bathroom. The patient was standing by the sink holding his eye.

He had stood up without calling the nurse for help and had fallen against the sink. Eventually the injury to the eye from his fall cost him the sight of the eye.

In the patient's lawsuit the jury ruled the nurse was not negligent. The Court of Appeals of Iowa upheld the jury's verdict.

Versed

Post-Procedure Assessment

The court accepted testimony from two nursing experts and from the treating physician that when a patient has recovered from Versed to the point the patient can engage in conversation the patient is generally expected to be able to understand and follow verbal instructions.

It was appropriate, therefore, according to the experts, for the nurse give the patient some privacy on the toilet and to expect the patient to ask for help before standing up, as the nurse had instructed him, notwithstanding the fact he had been given Versed an hour earlier. **Hupke v. Family Health Care, 2007 WL 3085793 (Iowa App., October 24, 2007).**

Breach Of Confidentiality, Co-Workers' Emails, Charts: Charge Nurse Terminated For Just Cause.

A hospital charge nurse was issued a final warning by her immediate supervisor that she cease and desist from certain unacceptable conduct.

Emails are Confidential

Hospital policy was that employee emails and email accounts are confidential and were not to be accessed by co-workers without permission from the author and the recipient.

The charge nurse was warned to stop using her subordinates' computers without their permission, stop accessing her subordinates' email accounts, stop printing out their emails and stop gossiping about what she found in others' emails.

Apparently she continued printing emails and spreading gossip that certain persons were having an affair.

Violation of institutional policies protecting the confidentiality of others' computer terminals and email accounts is valid grounds for termination.

Another employee's medical records have the same level of confidentiality as any other patient's.

Breach of medical confidentiality is a very serious offense justifying termination.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
October 22, 2007

Medical Records Are Confidential

Through her office computer the charge nurse accessed her own and certain subordinates' medical records generated as patients in the facility.

A co-worker's, subordinate's or supervisor's personal medical records have the same level of confidentiality as any other patient's. Consent must be obtained for use of the chart in the course of medical care or authorization must come from the hospital's legal department. Unauthorized access can expose the facility to legal liability.

The US Court of Appeals for the Fifth Circuit ruled there were grounds to terminate the charge nurse for just cause. **Woodson v. Scott and White Memorial Hosp., 2007 WL 3076937 (5th Cir., October 22, 2007).**