LEGAL EAGLE EYE NEWSLETTER

December 2012 *For the Nursing Profession* Volume 20 Number 12

Pressure Sores: Court Upholds Judgment Awarded To Post-Surgery Hospital Patient.

After bilateral knee-replacement surgery the physician ordered the patient's legs placed in continuous passive motion machines.

After two days on a post-surgery unit the patient started to have medical complications which sent him to the ICU.

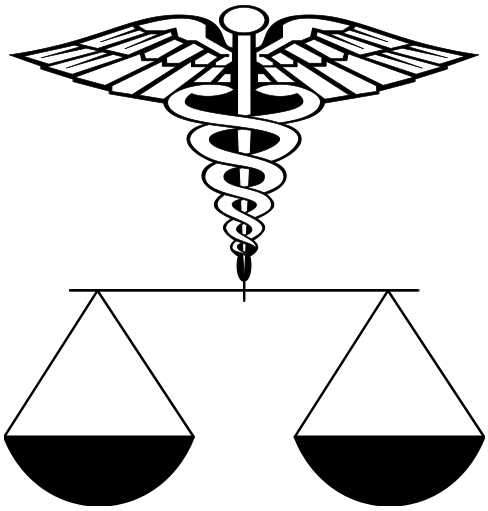
When he got to the ICU multiple pressure ulcers were discovered on his sacrum and on the back of his head. After more than a week in the hospital, however, the pressure ulcers healed.

The Court of Appeal of Louisiana approved an award of $35,000 as damages for the patient from the hospital for nursing negligence.

Departures From Nursing Standard of Care

The Court accepted that the nurses on the post-surgery unit were justified not to follow the hospital's standing protocols for patients at risk for breakdown of skin integrity which called for repositioning at least every two hours, due to the fact the patient's surgeon had ordered continuous passive motion.

However, the Court could find no excuse that a pressure-relieving mattress also ordered by the surgeon due to his high risk for skin breakdown was not obtained for more than forty-eight hours, even with signs of skin breakdown that should have been noticed.



Even if the nurses could not disregard the physician's orders to leave the patient in the continuous passive motion machines, they should have assessed his risk for skin breakdown.

During the first two days there was no nursing care plan for skin assessment even though his declining medical status put him at high risk.

COURT OF APPEAL OF LOUISIANA
November 2, 2012

Lack of Nursing Documentation Skin Integrity Assessments

The patient's nursing expert pointed out that the hospital had a Pressure Ulcer Prevention Program section in its Patient Care Manual which provided comprehensive procedures for skin assessment and treatment.

All patients were to be evaluated for ongoing risk factors by an RN on admission and every forty-eight hours afterward. Patients were also to be re-evaluated after any transfer or change in health status.

Individuals at risk were to have a systematic skin inspection at least once daily paying particular attention to the bony prominences. The results of the skin inspection were to be documented.

The chart did contain an initial Braden Scale assessment which was apparently erroneous because it indicated he was not at risk. There was no further charting regarding his skin while he was on the post-surgical floor, not until he was moved to the ICU.

In the ICU the charting pertaining to the patient's skin was irregular. There was no nursing care plan for regular skin assessments or documentation that regular skin assessments were carried out by the nurses. **Guardia v. Lakeview Reg. Med. Ctr., 2012 WL 5381494 (La. App., November 2, 2012).**

www.nursinglaw.com/dec12dep7.pdf

December 2012

New Subscriptions See Page 3

NG Tube, BP Medication: Court Finds No Nursing Negligence.

The sixty-eight year-old patient had been a paraplegic for twenty years and was confined to a wheelchair. She was prone to frequent bowel obstructions.

One morning at home she started vomiting and threw up her medications. She had shortness of breath, fever and sweating and was constipated. She had not had a bowel movement for four days and her abdomen was distended. Her daughter had her taken to the hospital by ambulance. A fecal impaction was removed and she was given a laxative and sent home.

Her daughter had her taken back to the same hospital E.R. at 8:30 p.m. A different E.R. physician admitted her on the advice of her long-term personal physician with whom the E.R. physician consulted by phone.

Within five minutes of her arrival on a med/surg floor a nurse called the patient's personal physician because her BP was 190/122. The physician ordered an NG tube for nausea and clonidine 0.2 mg orally every four hours if the diastolic pressure was greater than 100.

The nurses strictly followed the physician's orders while caring for the patient. They put the NG tube on continuous suction and removed 700 cc's of fluid. They also checked the BP frequently and gave the clonidine just as it was ordered.

The next p.m. a graduate nurse notified the charge nurse when the BP spiked at 210/134. The patient was sent to the ICU but already had brain damage from a hemorrhagic stroke. Life support was removed the next day and the patient died.

No Nursing Negligence

The Court of Appeal of Louisiana upheld the jury's verdict of no negligence.

The jury did not accept the family's nursing expert's opinion that the nurses should have concluded and reported that the BP medication was not working.

In fact, the diastolic was falling, although never below 100, before the critical spike in the BP. Nor was it the nurses' responsibility to question the physician's order for oral medication while the patient was on an NG tube or to decide on their own to give the meds through the NG tube.

Crockham v. Thompson, __ So. 3d __, 2012 WL 5500307 (La. App., November 14, 2012).

A nurse from the hospital testified that she was familiar with this patient who was often in the hospital with the same symptoms from bowel obstructions.

This patient usually got relief from her symptoms of nausea by having her stomach contents suctioned through an NG tube.

This time the nurses were able to suction out about 700 cc's through the tube.

Giving medication through the NG tube, the nurse went on to say, would have meant shutting off the suction for about an hour, crushing the pill, mixing it with water in a syringe and pushing the mixture through the tube.

The nurses were not expected to determine and report that the oral clonidine was not working, because it takes time to build up and the BP's the nurses were getting every four hours per the physician's orders were showing some slight drop in the diastolic pressure.

The patient was actually feeling much better the a.m. before her stroke until a nurse noticed she was unresponsive and seizing.

Nor was there anything wrong with having a graduate nurse care for this patient.

COURT OF APPEAL OF LOUISIANA
November 14, 2012

Family And Medical Leave: Nurse's Rights Were Not Violated.

A nurse phoned the hospital and told her supervisor she would be unable to come in to work for an indefinite period of time because her daughter was being hospitalized for behavioral issues.

A few weeks after the daughter was discharged from her hospitalization the nurse phoned and said she would be back in two weeks. She returned and worked two days, then phoned in to say that she had to stay home to care for her daughter.

More than two months later, not having seen or heard from the nurse, the hospital mailed her a letter advising her that she had been terminated.

Federal regulations give the employer the right to expect an employee to follow the employer's procedures for requesting leave guaranteed to employees by the US Family and Medical Leave Act.

The employer can require the employee to request leave in writing and to state the anticipated duration of leave, if known, assuming there are no unusual circumstances making that impracticable.

UNITED STATES DISTRICT COURT
INDIANA
November 19, 2012

The US District Court for the Southern District of Indiana ruled there was no violation of the nurse's rights under the US Family and Medical Leave Act.

An employee's rights under the Act are contingent upon the employee complying with the employer's procedures for submitting leave requests, as much as such compliance is practicable, and that did not occur in this case.

Stone v. St. Vincent Hosp., 2012 WL 5844748 (S.D. Ind., November 19, 2012).

Labor & Delivery, Stillbirth: Mother Can Sue For Negligent Infliction Of Emotional Distress.

The physician was about to give the pregnant mother an epidural, but it was called off because the fetal heart rate had dropped suddenly.

When the fetal heart rate did not stabilize the physician ordered an emergency c-section.

Time went by while spinal anesthesia was tried but that could not be accomplished so she was put to sleep with general anesthesia and remained unconscious during the procedure.

The stillborn fetus was delivered by c-section. The resuscitation team tried but failed to get a heartbeat started.

The autopsy revealed necrotizing chorioamnionitis, a severe infection of the placenta and extensive bacterial colonization of the fetus's lungs and colon.

The physicians and a labor and delivery nurse spoke with the parents after the mother awoke from general anesthesia. They explained what had happened and expressed their deepest sympathy for the couple's loss.

The mother was allowed to hold the baby and a professional photographer was brought in to take pictures.

The services of a grief counselor were also offered by the hospital for the couple's benefit.

Negligent infliction of emotional distress can be the basis for a civil lawsuit.

There must be a serious injury to a third person;

The shock to the victim must result in actual physical harm to the victim;

The third party who was injured must be a member of the victim's immediate family, that is, a parent, child, husband or wife; and

The victim must either be present at the time of the injury to the third person or suffer shock fairly contemporaneous to the incident.

The mother did suffer physical symptoms directly related to the emotional shock she experienced as a result of the labor and delivery nurses' panic in the delivery room.

The father was affected but cannot sue because he had no actual symptoms.

UNITED STATES DISTRICT COURT
MICHIGAN
November 15, 2012

The mother and father sued the hospital nevertheless.

The US District Court for the Western District of Michigan ruled that the mother did have the right to sue for negligent infliction of emotional distress but the father did not. At this stage in the litigation the Court left aside questions of medical malpractice which were not decided one way or the other by the present ruling.

The mother's case pointed directly to the time period after the destabilization of the fetal heart rate, before she was put under anesthesia for the c-section.

Nurses Panicked
Mother Suffered Emotional Distress

According to the Court, the nurses "swarmed her," shouting "breathe for your life," "breathe for your life to save the baby's life."

At one point the fetal heart-rate monitor became detached and the nurses struggled but were not able to re-attach it.

The mother heard the nurses saying that "the baby isn't going to make it," "it's been too long and the baby's lodged in the birth canal."

Afterward the mother had to be taken to the hospital's psychiatric ward for anxiety, hyperventilation, agitation and panic and expressions of homicidal ideation toward hospital staff. Her physician recommended transfer to a psychiatric hospital.

The Court ruled these facts fulfilled the legal requirement to sue for emotional distress that there be objective physical signs of trauma after the tragic event. **Fisher v. Lindauer, __ F. Supp. 2d __, 2012 WL 5817322 (W.D. Mich., November 15, 2012).**

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

Indexed in
Cumulative Index to Nursing & Allied Health Literature™

Published monthly, twelve times per year.
Mailed First Class Mail at Seattle, WA.

E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
PO Box 4592
Seattle, WA 98194–0592
Phone (206) 440-5860
Fax (206) 440-5862
kensnyder@nursinglaw.com
www.nursinglaw.com

No Sign-Language Interpreter: Court Finds Grounds For Hearing-Impaired Patient's Suit.

A sixty-seven year-old hearing impaired woman came to the E.R. with her seventy-eight year-old husband because the woman was having chest pains.

Her personal physician, through a video-relay service, had told her to go to the E.R. immediately.

She was admitted to the hospital and had laparoscopic gallbladder surgery which fully resolved her medical issues.

However, events during her E.R. visit and inpatient stay raised questions about violation of hers and her husband's legal rights as disabled persons to effective communication with her caregivers over which they filed a lawsuit against the hospital.

The US Court of Appeals for the Eleventh Circuit (Florida) found evidence that their rights were violated.

Patient / Family Member Assessment

The first step for the Court in analyzing what was required to meet the patient's and her family member's communication needs was to look at basic data about them.

The patient has been deaf in her right ear since childhood and has severe hearing loss in her left ear. Her primary means of communication is American Sign Language (ASL), in which she is fluent. Her vision is essentially normal but she reads only at a fourth-grade level.

Her husband is completely deaf. He communicates through a combination of ASL and signed English. His vision is impaired by age-related macular degeneration and he reads only at a sixth-grade level.

Communication Breakdown in the E.R.

When they arrived in the E.R. the husband passed a note to the front desk clerk asking for a sign language interpreter. The two of them also repeated this request verbally. The clerk said a nurse would take care of it, but they did not understand that.

They were pointed to the waiting area but then soon were taken in to be seen by the physician. The physician asked if they could "read my lips." They seemed to understand the question but replied, "No."

The patient was given an EKG, which was explained simply by the tech pointing to his heart, and blood was drawn for the lab. The physicians conferred but the patient and her husband could not hear them.

The US Rehabilitation Act of 1973 states that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

A hospital that receives Federal funds via Medicare or Medicaid is required by Federal regulations to establish a procedure for effective communication with persons with impaired hearing and must provide appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills where necessary to afford such persons equal opportunity to benefit from the healthcare services provided by the hospital.

Auxiliary aids may include Braille or audio-taped materials for persons with impaired vision and interpreters for those with impaired hearing.

The goal is to afford handicapped persons equal opportunity with the non-handicapped to obtain the same results and gain the same benefits appropriate to meet the person's needs.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
November 13, 2012

Later that evening the patient texted her daughter and the daughter phoned the hospital and spoke with a nurse who said they were working on getting an ASL interpreter and had a "video box" which was just as good as an interpreter.

After surgery was scheduled for the next day the patient was very worried why they were going to operate on her gallbladder when her problem was chest pains. A physician penned a note saying simply that she was going to be fine and not to worry.

A nurse handed her a surgical consent form and had her sign without any further explanation. However, according to the Court's ruling, that did not give grounds to sue for lack of informed consent.

The Court ruled in summary that mouthing words, writing cryptic notes and pantomiming gestures, rather than providing an in-person or video interpreter, were not effective auxiliary communication aids for them as required by Federal law.

Hospital's Policies, Procedures Faulted

The hospital's Communication Barriers Policy provided for interpretation through *My Accessible Real-Time Trusted Interpreter,* a piece of equipment kept in a storage room in the emergency department.

The Court pointed out that the hospital's policy gave hospital personnel no useful recommendations or definitive guidance when the device was to be used.

In practice it was left entirely to the patient's care provider, usually a nurse, to assess the patient and to use his or her own judgment to determine what was sufficient to meet the patient's communication needs.

The only in-service training anyone could recall was a ten-minute presentation on how to set up the equipment. That in-service was mandated by a consent decree which settled a prior lawsuit by a hearing impaired patient and was supposed to include information about a list of available interpreters and advice to patients that such services were available from the hospital

Nurses who testified in this case said they were told that speaking louder, lip-reading and written messages were acceptable alternatives to providing an ASL interpreter as the last option. **Liese v. Indian River Co. Hosp., __ F. 3d __, 2012 WL 5477523 (11th Cir., November 13, 2012).**

Age Bias: Court Turns Down Nurse's Lawsuit.

A nurse with fifteen years nursing experience gave a diabetic patient the same insulin dose twice during her twelve-hour shift.

The patient was only supposed to receive one such dose every twenty-four hours.

The nurse quickly recognized she had made a mistake and called the nursing home's director of nursing. The nursing director called the medical director and orders were given to start treatment to counteract the nurse's medication error.

Even though the patient suffered no significant harm the medical director expressed major concerns about the gravity of the nurse's error and its implications for her ability to function as a nurse. The director of nursing agreed and started the paperwork to have the nurse terminated.

One way to prove discrimination is to show that a younger individual was treated more favorably without any justification for such differential treatment.

COURT OF APPEALS OF OHIO
November 2, 2012

The Court of Appeals of Ohio ruled the nurse did not have grounds for an age-discrimination lawsuit.

The nurse's lawsuit pointed to the fact that a graduate nurse newly hired at the facility who was much younger than she had done basically the same thing but was only reprimanded and not fired.

That is, the new graduate nurse had erroneously duplicated doses of medication to a patient during one work shift, also under circumstances that posed a significant threat to the patient's safety.

However, according to the Court, the nursing home did not discriminate by holding a more experienced, albeit much older nurse to a higher standard than an inexperienced graduate nurse and by imposing much more drastic discipline on the older nurse for basically the same mistake. **Borad v. April Enterprises, 2012 WL 5383023 (Ohio App., November 2, 2012).**

Racial Bias: Court Turns Down Nurse's Lawsuit.

The nurse who was in charge on the hospital's surgical orthopedic unit was concerned about a patient on the unit who was still in a lot of pain.

The patient in question was actually a day-surgery patient recovering on the unit after an appendectomy and was supposed to be discharged late that evening.

The patient's physician gave a phone order to the patient's nurse, a newly hired graduate, for six Percocets for the patient to take home pending being able to have a prescription filled at an outpatient pharmacy the next day, but neither the graduate nurse nor the charge nurse could get the pills from the hospital pharmacy.

However, the charge nurse had special access to the system that dispensed narcotics on the unit. She overrode the fact that no order was on file for inpatient use and withdrew the Percocets the physician wanted the patient to take home.

The graduate nurse had to enter her code as a witness for the override to occur.

The hospital did not allow nurses to dispense take-home meds. The Hispanic charge nurse was fired. The non-minority graduate nurse was only reprimanded.

One way to prove discrimination is to show that a non-minority individual was treated more favorably without any justification for such differential treatment.

UNITED STATES DISTRICT COURT
NEVADA
November 8, 2012

The US District Court for the District of Nevada ruled that the two nurses, who were treated very differently for the very same violation of hospital policy, were not in a similar situation for purposes of comparison in a discrimination lawsuit.

The minority charge nurse was in a supervisory position and used her authority to order the non-minority graduate nurse to take part. The minority nurse had no right to sue for discrimination. **Mandoki v. Carson-Tahoe Reg. Med. Ctr., 2012 WL 5465829 (D. Nev., November 8, 2012).**

Panic Attack: Nurse's Rights Were Violated.

A nurse who worked in the facility's rehab unit was told by a nursing supervisor that she had to float to the long-term care unit, where she had never oriented or worked and for which she did not believe she was adequately trained.

She had been having anxiety at work, and now this was too much. She went to the HR director's office. She was crying and shaking, apparently having a panic attack. Rather than call an ambulance the HR director sent her home for the day.

First thing the next morning she got a note from her physician that she needed a week off due to anxiety and came in and delivered the note to human resources.

Her nursing supervisor, however, decided that her leaving the previous day and not reporting for work that day amounted to abandonment of her nursing responsibilities and terminated her from her job and reported her to the state board of nursing.

An employer cannot defeat an employee's right to medical leave guaranteed by the US Family and Medical Leave Act by considering the employee to have quit, if the employee is not present being on leave to which he or she is entitled.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
November 13, 2012

The US Court of Appeals for the Eighth Circuit (Minnesota) ruled the nurse did give proper notice by bringing in a note from her physician as soon as practicable which said how long she needed to be out and provided the medical justification.

She had rights under the US Family and Medical Leave Act which her employer was not honoring.

It was not a valid argument that she was no longer eligible for leave because she had quit her job by going out on medical leave to which she was entitled. **Clinkscale v. St. Therese, __ F. 3d __, 2012 WL 5476190 (8th Cir., November 13, 2012).**

Patient Falls, Bleeds To Death: Court Finds Nursing Negligence.

The seventy-one year-old patient was admitted to the hospital for treatment of thrombotic thrombocytopenic purpura.

His physicians implanted a Quinton catheter in his right internal jugular vein.

The patient's nurses assessed him as a high risk for falling due to his age, his poor physical condition and his medications.

The hospital's nursing protocols called for a bed alarm for any high-fall-risk patient. This patient had a bed alarm but it was not turned on on the night in question.

The patient was given a sedative at bedtime to help him sleep. Then at 1:20 a.m. he was given a laxative because he had been having constipation.

The US Court of Appeals for the Fifth Circuit (Texas) wondered why a nurse would wake a patient during the middle of the night to give him a laxative which can act quickly and cause cramping. Apparently the laxative was supposed to have been given earlier but was not given due to an oversight by the patient's nurses.

The nursing progress note when the laxative was given stated that the patient was to be closely watched.

However, no one checked on the patient until 4:40 a.m. when he was found on the floor in the bathroom in a pool of blood with his pajama bottoms down.

The Quinton catheter had been removed and was on the table at the foot of the patient's hospital bed.

The patient was pronounced dead at 4:45 a.m., having bled out through the opening in his jugular from which he had removed the catheter.

Nursing Negligence
No Bed Alarm / Patient Not Monitored

The Court found nursing negligence in the simple fact that the bed alarm was not activated. This patient was one who the nurses should have anticipated might try to get up out of bed on his own and have considerable trouble if he did so.

If a nurse had come to the room when the alarm sounded when the patient first got up, pressure on the neck could have stopped the bleeding and the patient could have survived. The nurses also should have been checking on the patient frequently. **Smith v. Christus, 2012 WL 5489397 (5th Cir., November 13, 2012).**

In light of the patient's condition, a bed alarm and frequent monitoring by the nurses were absolute necessities.

The patient had a Quinton catheter in his neck for medical treatment of his TTP. It was on the table in his room after the patient was found during the night in a pool of blood on the bathroom floor with his pajama bottoms down.

If the bed alarm had been turned on a nurse could have responded in time to have prevented him from bleeding to death.

The patient was elderly and debilitated and had a high risk for falling.

He had a low platelet count which made him a high risk for bleeding.

Due to his age and the sedative medication he had been given he was the type of patient who could wake up and become confused during the night.

He had also been given a laxative in addition to the sleep aid .

That meant the nurses should have expected he might have to get out of bed during the night, and have to get up in a hurry, which would tend to increase his chances of falling.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
November 13, 2012

Wrongful Life: Court Allows Suit To Go Forward.

The husband and wife both come from Ashkenazi Jewish heritage, people who are at special risk for certain genetic disorders in their children.

Because of the special risk, the wife was given blood tests which determined that she is a carrier of the genetic factor that causes familial dysautonomia, one of the many genetic risks facing children of persons from her particular ethnic group.

The wife was nevertheless twice informed that her blood tests were normal on later prenatal visits to the clinic.

A few months after birth the child was diagnosed with familial dysautonomia. After learning about the positive prenatal test result the couple filed a lawsuit against the clinic, several physicians, a nurse practitioner and the hospital system that is the clinic's corporate parent.

The parents have the right to sue for wrongful life, that is, for being denied the opportunity to make their own informed decision whether to terminate the pregnancy of a child sure to be born with substantial genetic abnormalities.

SUPERIOR COURT OF PENNSYLVANIA
November 14, 2012

The Superior Court of Pennsylvania ruled the parents had the right to go forward with their lawsuit claiming that they would have had an abortion rather than bring a child into the world destined to endure a lifetime of extreme and debilitating suffering and ultimately suffer a premature death.

The Court acknowledged that wrongful birth or wrongful life lawsuits, which are currently allowed in many states, are a controversial subject. The Court went on to rule that a statute passed by the Pennsylvania legislature to disallow such lawsuits is unconstitutional for technical legal reasons. **Sernovitz v. Dershaw, __ A. 3d __, 2012 WL 5503973 (Pa. Super., November 14, 2012).**

Flu Vaccine: Court Throws Out Lawsuit Against School Nurse.

A fifth-grader was given the H1-N1 vaccine by the school nurse despite the fact he presented to the nurse a signed permission slip from his mother indicating that his mother did not consent to him receiving the vaccine.

Most of the children were given the vaccine by nasal mist. Because this child had asthma the nurse elected to give the vaccine by injection. Being asthmatic, the child faced grave risks to his health if he got the flu, but at the same time, due to his asthma, nasal-mist administration of the vaccine was not suitable for him.

It was not clear from the court record whether the school nurse interpreted the mother's withholding of consent as pertaining only to the nasal mist which most of the children were getting which was not appropriate for her asthmatic child, or if the mother did not want her child to be vaccinated in any manner whatsoever, but the nurse went ahead anyway.

Even if the school nurse went ahead over the mother's refusal to consent to this necessary and minimally-invasive procedure, the facts do not plausibly amount to a violation of the mother's or the child's Constitutional rights.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
November 2, 2012

The US Court of Appeals for the Eighth Circuit (Missouri) threw out the mother's lawsuit which alleged violation of hers and her son's Constitutional rights.

The Court noted that a lawsuit for violation of a citizen's Constitutional rights requires unconscionable behavior by a governmental official and this nurse's exercise of her own judgment did not fit that bill. **B.A.B. Jr. v. Bd. of Educ. of St. Louis, __ F. 3d __, 2012 WL 5373367 (8th Cir., November 2, 2012).**

Fall, Fatal Head Injury: Court Finds Nursing Negligence.

The family's nursing expert stated that this patient represented a very high fall risk, particularly after the administration of Ativan, which has potential side effects of dizziness, drowsiness, disorientation and unsteadiness.

After the patient was found to have sustained a second fall, in the hospital, in addition to the one he sustained at home, there was no documentation to be found in the chart to support the care that had been given to the patient on the med/surg floor.

Failure to accurately and intelligently assess and document a patient's health status, including signs, symptoms and responses to nursing care, is a breach of the standard of care.

The nursing documentation does not contain a fall assessment of this patient after he arrived on the med/surg floor. An assessment at that time would have included the administration of Ativan, which would not have been part of the initial fall assessment in the E.R.

The failure to conduct a second fall assessment on the med/surg floor taking into account the effects of his medication is a breach of the standard of care.

COURT OF APPEALS OF TEXAS
November 14, 2012

The ninety year-old patient was brought to the emergency room after experiencing a temporary loss of consciousness after a fall at home.

A head CT scan in the E.R. showed no evidence of intracranial head trauma.

The patient was given IV morphine and IV Ativan, admitted to the hospital and transferred to a med/surg floor.

About an hour after arrival on the med/surg floor the patient fell again. Because he was not being closely monitored by the nurses the fall could only be estimated to have occurred sometime between 3:30 a.m. and 4:30 a.m.

A second head CT showed a right frontal subarachnoid hemorrhage and frontal scalp hematoma. He was sent by ambulance to a trauma center and placed on life support but soon died.

Nursing Negligence
No Nursing Assessment After Morphine / Ativan

The Court of Appeals of Texas ruled the family's expert witnesses, a physician board-certified in geriatric medicine and an RN with a background in hospital care of elderly patients, correctly formulated the applicable standard of care.

The physician laid the groundwork by pointing out that morphine and Ativan can lead to falls in frail elderly patients through lowering of the blood pressure and clouding of their mental faculties.

The standard of care requires close monitoring by hospital staff after giving such medications to frail elderly patients. There was no medical or nursing documentation of the need for close monitoring by a nurse or assignment of a sitter. In fact, the patient was simply left alone in his room.

The family's nursing expert's opinion was that a second nursing assessment was required after the patient arrived from the E.R. on the med/surg floor.

The second assessment would have taken into account that the he had just been given two IV medications which could increase his already considerable fall risk. The second assessment would have led to fall precautions such as close monitoring or assignment of a sitter. **Peterson Reg. Med. Ctr. v. O'Connell, __ S.W. 3d __, 2012 WL 5503895 (Tex. App., November 14, 2012).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Fall: No Evidence For Case Against Nurses.

The day after gastric bypass surgery two nurses transferred the patient from his bed to the reclining chair in his hospital room.

After placing the patient in the chair, one of the nurses attempted to recline the chair from the fully upright position backward to a more relaxed position that would be more comfortable for the patient. Instead of reclining back to the first position the chair abruptly dropped all the way back to the fully flat supine position.

The patient sued claiming his back was injured. The Court of Appeal of Louisiana ruled the patient did not have evidence for his case.

The patient did not come forward with any evidence that the standard of care for nurses caring for a post-surgery patient requires the nurses to check the mechanical functioning of a chair before attempting to place the patient in the chair. That is, although a medical facility has certain legal duties toward its patients, this particular task is not necessarily a nursing function. **Blood v. Southwest Med. Ctr., __ So. 3d __, 2012 WL 5417296 (La. App., November 7, 2012).**

Fall: No Evidence For Case Against Nurses.

The patient was in the hospital receiving care for alcohol abuse.

He slept most of his second day in the hospital. The next day shortly after he awoke he fell out of bed and injured his hip.

The patient sued claiming that his nurses' negligence caused his fall. Specifically he alleged the nurses did not latch the side rail, failed to inspect the side rail to ascertain that it was properly latched and placed the call button in an awkward position for him to be able to reach.

The US District Court for the Northern District of Texas ruled the patient did not have evidence for his case.

Having just awoken right before he fell, the patient had no direct proof that any of the factual assertions raised in his lawsuit were in fact true.

The basic fact that he fell out of bed, in and of itself, did not prove that his nurses departed from the standard of care in the care given to him or that such a departure caused him to fall. **Quile v. Hill-Rom Co., 2012 WL 5439904 (N.D. Tex., November 7, 2012).**

Medical Confidentiality: HIPAA Prevents Patient's Caregivers From Speaking With Attorneys.

The family sued the nursing home where the patient had lived, alleging that nursing negligence resulted in an infected decubitus ulcer from which the patient died.

The nursing home's lawyers wanted to interview medical and nursing personnel from two acute care hospitals where the patient had been transferred for wound-care management and treatment.

To speak with a patient's caregivers the nursing home's lawyers realized they needed either a signed authorization from the executor of the deceased patient's probate estate, or a qualified protective order from the court which would allow them to interview the patient's caregivers and at the same time set the permissible parameters for such communication.

No healthcare provider may disclose protected healthcare information unless there is written authorization from the patient or the patient's legal representative, a proper court order or a properly drawn up subpoena.

Healthcare information refers to information, oral or recorded, in any form or medium that relates to a past, present or future healthcare condition.

COURT OF APPEALS OF GEORGIA
November 16, 2012

The Court of Appeals of Georgia acknowledged that the US Health Insurance Portability and Accountability Act (HIPAA) strictly forbids caregivers from disclosing confidential information, including medical charts and records, or even from speaking directly with anyone about the patient unless there is strict compliance with Act's legal requirements.

In this case the Court ruled that the proposed qualified protective order drawn up by the nursing home's lawyers was too vague. It did not protect the patient's privacy by preventing the lawyers from delving into subject areas that might give them ammunition for their case but were not strictly related to the management and treatment of her infected decubitus. **Tender Loving Care v. Ehrlich, __ S.E. 2d __, 2012 WL 5857431 (Ga. App., November 16, 2012).**