LEGAL EAGLE EYE NEWSLETTER

February 2003 *For the Nursing Profession* Volume 11 Number 2

EMTALA: Nurse And Physician Properly Screened, Stabilized Patient, Court Rules.

The US District Court for the District of Wyoming acknowledged there may be grounds for a medical malpractice lawsuit against the hospital for a hospital employee physician sending a pediatric patient home from the emergency department with a significantly elevated respiratory rate.

No EMTALA Violation

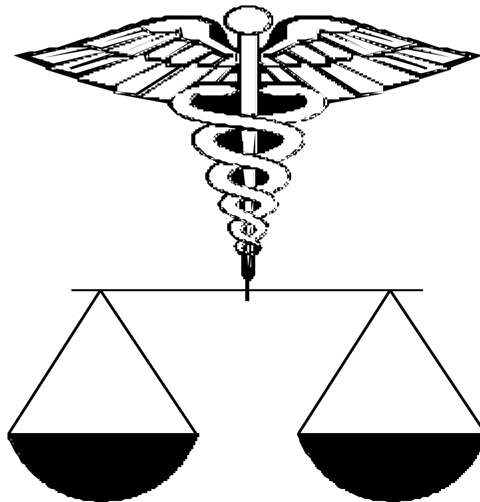
However, according to the court, there was no violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) by the emergency room nurse, or the physician, for that matter, for how the nurse and physician screened the patient when her parents presented her in the emergency department.

The EMTALA segment of the parents' wrongful death lawsuit against the hospital was dismissed.

Nurse Did Not Violate EMTALA
Nursing Assessment Was Adequate

After three days of cold-like or flu-like symptoms the three year-old girl's father took her to the hospital. The girl was first seen at the hospital by a registered nurse on duty in the emergency room.

The nurse conducted an initial assessment and delegated the task of taking and recording full vital signs to a certified nursing assistant.



The E.R. nurse and the physician she summoned followed the hospital's policies for screening an E.R. patient to determine if an emergency medical condition existed, and sent the patient home in apparently stable condition.

There was no violation of the US Emergency Medical Treatment and Active Labor Act.

UNITED STATED DISTRICT COURT
DISTRICT OF WYOMING
December 18, 2002

In her initial assessment the nurse timed the child's respirations at fifty-six per minute, well above twenty per minute that is considered average for a healthy child her age. The heart rate was 146. The nurse also noted she had a fever, coughing, nasal flaring and a decreased O_2 saturation level.

The nurse phoned the on-call physician and convinced him to come to the hospital to examine the patient.

While he was en route the nurse carried out his phone order for an albuterol nebulizer treatment. The nurse found this increased the O_2 saturation level from 87% to 94%. In hindsight, the court saw this as reason to question how thoroughly the physician actually ruled out plausible differential diagnoses of the child's underlying situation in the emergency room before sending her home with an antibiotic, Tylenol and more albuterol.

Physician Did Not Violate EMTALA

The next morning when he awoke the father found that his daughter had died in her sleep.

However, the physician did an extensive physical examination of the child before discharging her home with her father with instructions to bring her back if her condition deteriorated.

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Alzheimer's: Court Rules That Verbal Threat Is Abuse.

While two aides were transferring an elderly nursing home resident with Alzheimer's from her wheelchair to a shower chair for her bath, she kicked one of them.

The aide threatened to beat her and/or pinch her if she did it again.

There is no proof that the aide's threats resulted in physical harm or pain to the resident.

Nevertheless, a threat of violence to an elderly Alzheimer's patient is an act a hearing examiner could determine causes mental anguish to a resident.

The law must protect the health and safety of every nursing home resident.

Whether the resident is cognizant or not, the law presumes that instances of abuse of any sort cause physical harm, pain or mental anguish.

COURT OF APPEALS
OF NORTH CAROLINA
December 31, 2002

The Court of Appeals of North Carolina ruled that it makes no difference whether it can be proved that a vulnerable nursing home resident actually perceived, understood or was affected by threatening or abusive language from a caregiver. **Allen v. Department of Health and Human Services, __ S.E. 2d __, 2002 WL 31889915 (N.C. App., December 31, 2002).**

Nursing Home Resident's Bill Of Rights: Is A Medical Review Panel Necessary?

Many states require medical negligence claims to go to a medical review panel before they can be filed in court.

In this case the allegations were the resident was physically abused, or in the alternative, that she was simply allowed to fall out of her wheelchair.

The Supreme Court of Louisiana sent the case back to the local parish court to find out what happened.

Does a resident's lawsuit under the Nursing Home Resident's Bill of Rights have to go to a medical review panel before it can be filed in civil court?

What is the suit all about? Is it a violation of the right to be free from abuse, or was there substandard health care?

SUPREME COURT OF LOUISIANA
January 14, 2003

Physical abuse is a violation of the Nursing Home Resident's Bill of Rights but does not come under the medical malpractice statute and a medical review panel is not required to hear the claim before the case can be filed in court.

On the other hand, improper assessment and care are violations of the Nursing Home Resident's Bill of Rights and also come under the medical malpractice statute and a medical review panel is required. **Richard v. Louisiana Extended Care Centers, Inc., __ So. 2d __, 2003 WL 115582 (La., January 14, 2003).**

Aide Slaps Resident: Court Says It Was Not Intentional, Not Abuse.

The resident was known to be difficult to work with. She was highly combative toward her caregivers.

Aides assigned to care for her often had difficulty getting other aides to help them when help was needed, the Court of Appeals of North Carolina pointed out in a recent ruling that has not been released for publication.

A third aide reluctantly agreed to help two others who were trying to change the resident's diaper. The resident spit at her and she slapped the resident.

Abuse is the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

The emphasis in this case is on the word willful.

The aide reflexively slapped the resident when the resident spit on her.

The aide's act was not willful and was not abusive as abuse is defined by law.

COURT OF APPEALS
OF NORTH CAROLINA
UNPUBLISHED OPINION
December 31, 2002

The court looked carefully at all the evidence and ruled that this was a reflexive reaction rather than an intentional act.

Only an intentional act can be legally deemed abusive, the court said, so the aide did not commit resident abuse as defined by law. **Wiley v. Department of Health and Human Services, 2002 WL 31895023 (N.C. App., December 31, 2002).**

Confidentiality: Nurse Gets In Trouble Over Offhand Remark About Neighbor.

The nurse's neighbor kept a large number of dogs on her property which she was raising as sled dogs.

An upcoming sled-dog race was drawing media attention. A TV reporter who was a friend of the dog owner interviewed the neighbors to see if living near the dogs was a problem. The nurse said it was a problem. She went on to say the owner was a drunk who belonged in a detox unit.

As it turned out, unknown to the nurse, the owner had been treated for drug and alcohol problems at the same hospital where the nurse worked.

The hospital board of directors fired the nurse for breach of patient confidentiality. The Supreme Court of Wyoming ruled that the board of directors failed to give the nurse sufficient notice that her job was in jeopardy before she was called in to explain her actions. Whether her firing was justified has not yet been decided. **Board of Trustees v. Martin, __ P. 3d __, 2003 WL 40790 (Wyo., January 6, 2003).**

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Short-Term Psychiatric Hold: Hospital And Medical Professionals Granted Immunity.

The patient made statements to the admitting psych nurse that could reasonably be interpreted to mean she had the present intention to harm herself and the means at home to do it, if she were not immediately detained in the hospital's psychiatric unit.

There was legal probable cause to hold her, based on what she told the nurse.

The patient's attorneys elected not to name the nurse as a defendant in the patient's civil suit for false imprisonment, assault, battery, libel, slander, civil conspiracy, invasion of privacy and intentional infliction of emotional distress.

The nurse's employer the hospital, the physicians and the social worker who were named as defendants are entitled to immunity from a civil lawsuit.

COURT OF APPEAL OF CALIFORNIA
January 7, 2003

The patient's life was in crisis. She was diagnosed with Ehler-Danlos Syndrome (EDS), a progressive debilitating disease. She was also having trouble at work and trouble with her relationship and was facing eviction from her housing situation.

During an office visit she told the physician who was treating her EDS that she was feeling depressed and suicidal. The physician phoned a psychiatrist who suggested he call the hospital's psych unit. The hospital's psych unit sent out a clinical social worker. The social worker brought the patient to the hospital.

Nurse's Admitting Assessment Probable Cause For 72-Hour Hold

The patient admitted to the admitting psychiatric nurse at the hospital that she had told her physician she was thinking of harming herself and that she had enough pain medications at her residence to carry out the task.

The patient also said she regretted having told her physician that.

Based on the nurse's assessment data the staff psychiatrists obtained permission from a designated mental health professional for a 72-hour hold. She actually stayed only seventeen hours.

When there is probable cause to hold a patient, the Court of Appeal of California ruled, any and all healthcare professionals whose assessments led up to the psych hold have legal immunity from a civil lawsuit brought by the patient. **Cruze v. National Psychiatric Services, Inc., __ Cal. Rptr. 2d __, 2003 WL 42547 (Cal. App., January 7, 2003).**

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Family And Medical Leave Act: Nurse On Leave, Position Eliminated. Can She Sue?

A registered nurse had an extensive background in critical care. She was a critical care nurse in neurological surgical intensive care for several years, then went to work in the critical care trauma unit. Thirteen years later she became a part-time relief shift director.

After a change in the hospital's corporate ownership the new management offered her the position of hospital bed chief. That meant her job was to keep current on the status of available beds hospital-wide, ensure timely transfers of patients from unit to unit and coordinate new admissions to various units with the admissions office.

According to the nurse, she was assured by the senior director of nursing that hospital management and the staff physicians were very pleased with the arrangement and that her job was there to stay.

FMLA Leave Taken

The nurse had to take about nine weeks leave for a serious health condition. There was no dispute she was entitled to leave, properly requested leave, was permitted to take leave, properly informed her employer of her intention to return from leave and returned able to resume full-time work at her former position.

The issue was what happened when she returned. When she got back she was paged by the senior nursing director to her office, told her position had been eliminated and told to go home and return the next day to meet with human resources.

The next day the human resources director offered her the chance to apply for unit director of oncology, relief shift director in one of several units, staff nurse or per-diem staff nurse.

The nurse refused to apply for any of these positions and was terminated. Later a new position of nursing resources director was created, basically the same as her old job, but the position was given to another nurse.

The nurse sued for violation of the US Family and Medical Leave Act (FMLA) in Federal District Court.

The US Family and Medical Leave Act (FMLA) says an employee is entitled to reinstatement to the same position or an equivalent position when the employee returns from leave.

This is not an absolute entitlement. An employer can deny reinstatement if the employee would have lost his or her job during the leave period even if he or she had been working.

The rationale is that the FMLA was not meant to give an employee returning from leave the right to "bump" another employee, which would be the logical implication if the employer had an absolute obligation to give the employee a job when he or she returned from leave.

It boils down to a question of burden of proof. It is only fair to put the burden of proof on the employer.

If an employee was eligible for FMLA leave, gave proper notice of intent to take leave, returned from leave on time, etc., but the employee's position no longer exists, the employer must be able to convince a court that would have happened anyway.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
December 18, 2002

Summary Judgments Denied

The US District Court for the District of New Jersey ruled the issues were not clear-cut enough for either side to be given a summary judgement in their favor.

The court handed down a preliminary ruling defining the issues for a full-blown civil jury trial.

Burden of Proof Placed on the Employer

The right to reinstatement after returning from family or medical leave is not absolute.

If an employee's job legitimately would have been eliminated even if the employee was on the job working during the time the employee was out on leave, the FMLA does not require reinstatement.

That is, the FMLA does not require an employer to bump someone else from his or her job to accommodate an employee returning from leave whose job was legitimately eliminated.

In fairness, however, it is up to the *employer* to prove that the position would have been eliminated. The hospital would have to get the jury to believe that various managers wanted to shift the duties of another position to the bed chief and eliminate the other position but eventually reached a consensus to eliminate the bed chief position instead.

Since the employer, not the employee, has access to internal memoranda and minutes of management meetings, the employer has this burden of proof.

Having the burden of proof is a heavy responsibility. Cases often turn on the burden of proof. If the side who has the burden of proof fails to convince the judge or jury, that side simply loses the case.

The nurse only had to prove she was not offered an equivalent position. The oncology unit-director position was not equivalent, she felt, and she was not actually offered the position, only the chance to apply for it. The rest was up to the hospital as her employer to prove. **Parker v. Hahnemann University Hospital, __ F. Supp. 2d __, 2002 WL 31830647 (D. N.J., December 18, 2002).**

Fire Safety: CMS Adopts 2000 Version Of Life Safety Code.

On January 10, 2003 the Centers for Medicare and Medicaid Services (CMS) published a notice in the Federal Register making adherence to the 2000 version of the Life Safety Code a mandatory condition of participation for hospitals, long-term care facilities, intermediate care facilities for the mentally retarded, ambulatory surgery centers, hospices that provide inpatient services, religious non-medical health care institutions, critical access hospitals and programs of All-Inclusive Care for the Elderly.

CMS noted that the Joint Commission at this time still goes by the 1997 version of the Life Safety Code. However, CMS has indicated that CMS will go with the newer version of the Code nevertheless.

The new regulations take effect March 11, 2003. Compliance with various portions of the Code for various types of facilities will become necessary between September 11, 2003 and March 13, 2006.

We have placed CMS's January 10, 2003 Federal Register announcement on our website at http://www.nursinglaw.com/firesafety.pdf

FEDERAL REGISTER, January 10, 2003
Pages 1374 – 1388

Needlestick: HIV Is Nurse's Industrial Injury.

The New York Supreme Court, Appellate Division, has ruled that a dialysis nurse's needlestick is an industrial injury compensable under worker's compensation. Thus the nurse has no right to sue a co-worker, a physician who failed to take medical steps to prevent seroconversion. **Carman v. Abter, __ N.Y.S. 2d __, 2002 N.Y. Slip Op. 09557, 2002 WL 31839193 (N.Y. App., December 19, 2002).**

Arbitration: Court Validates An Alternative To Lawsuits For Resolution Of Nurses' Employment Disputes.

The US Federal Arbitration Act says there shall be specific enforcement of arbitration contracts.

That means either side can be court-ordered to participate in arbitration and to desist from pursuing a lawsuit in court to resolve a dispute that is covered by an arbitration contract.

At most the court will enter a judgment adopting the arbitrator's decision, even if one side refused to participate under the arbitrator's rules. A court will not rehear the evidence and make its own decision.

General principles of contract law apply to the formation of arbitration contracts.

A contract is unenforceable only if it is unconscionable. An unconscionable contract is one where there was no meaningful choice for one side, unequal bargaining power or oppressive one-sidedness.

The nurse understood the contract, had a meaningful choice and the bargaining was not one-sided.

SUPREME COURT OF ALABAMA
December 20, 2002

A registered nurse at a hospital was considered a supervisory employee and was not covered by a union collective bargaining agreement.

Several months before an incident where a patient died under questionable circumstances, over which the nurse was later terminated, the hospital inaugurated a dispute-resolution program for her and other supervisory employees.

All such employees had to attend a two-day in-service and then had to sign an arbitration agreement agreeing to arbitration as alternative to going to court to resolve employment disputes. The hospital also announced that all supervisory employees who elected to continue working at the hospital beyond a certain date would be bound by the arbitration agreement whether they signed it or not.

After the nurse was terminated over the patient's death she nevertheless sued the hospital in court for wrongful termination, breach of contract, defamation, invasion of privacy and intentional infliction of emotional distress.

The Supreme Court of Alabama did not go into the clinical circumstances of the patient's death or discuss whether the incident justified the nurse's termination.

Arbitration Upheld As Alternative Method of Dispute Resolution

The court ruled the hospital had the right to compel arbitration, that is, the nurse had no business filing the case in court. The US Federal Arbitration Act says that in any industry that affects interstate commerce arbitration agreements must be enforced, and healthcare is such an industry. The court found no unfairness in a hospital requiring supervisory employees to agree to arbitration of employment disputes as a condition of accepting or retaining employment. **Potts v. Baptist Health System, Inc., __ So. 2d __, 2002 WL 31845929 (Ala., December 20, 2002).**

Sexual Assault: Nursing Home Liable, They Knew Resident's History Of Sexual Acting Out, Failed To Take Action To Protect Others.

A resident was acting out sexually at a nursing home. The nature and extent of his alarming behavior was fully documented in his chart.

Prior Nursing Home Placement Inappropriate Behavior Charted

He attempted to sexually assault a male resident of the nursing home in a restroom. The victim was elderly, blind, disoriented and suffered from advanced Alzheimer's disease.

A resident's daughter reported he had tried to follow her into a linen closet.

The nursing staff believed the resident was a serious threat to other residents and basically did not belong in a nursing home.

When he left that facility the director of nursing expressly wrote in her discharge note, "This resident is at risk for harming others."

Two Nursing Homes Same Corporate Owner Same Medical Director

The nursing staff had kept his personal physician aware of his acting out. His personal physician was the medical director of the nursing home and the medical director of the second nursing home where he would be placed, where he would assault a resident. That assault led to the family filing a lawsuit against the corporate parent of the nursing homes, the resident's personal physician and the resident's psychiatrist.

Involuntary Psychiatric Hospitalization

In between the two nursing-home placements the resident was involuntarily committed to the state psychiatric hospital for major depression.

The hospital's staff psychiatrist made notes of the resident's sexual acting out in many of the same ways he had been acting out at the first nursing home. The psychiatrist concluded he was very dangerous to female fellow patients.

When he was ready to leave the state hospital the first nursing home sent its assistant director of nursing to the hospital to review his chart to determine if he was appropriate for re-admission.

Based on alarming episodes of sexual acting out the administrator and director of nursing made the decision to refuse him readmission to the nursing home.

Admission Granted To Second Nursing Home

According to the Court of Appeals of Texas, it was the machinations of the resident's physician, medical director at the first and second nursing homes, that got him into the second nursing home.

The nursing director was told not to go to the state hospital or the first nursing home to review his records. Review of his records would have and should have been standard procedure before accepting a resident with a psychiatric history.

The staff nurses and aides immediately began to see there were problems with having him in the facility. However, they did not take steps to prevent him from assaulting a helpless female resident in her room ten days later.

Verdict Disputed / Upheld

The jury awarded $50 million in punitive damages. The Court of Appeals ruled this was a case of negligence, not intentional misconduct, and threw out the punitive damages.

The Court of Appeals also upheld the local judge's decision to reduce the verdict for compensatory damages from $2.5 million each for the resident and her daughter to $500,000 each against the parent corporation and the physicians.

Harm Was Legally Foreseeable

When it is foreseeable that a patient can and will harm others, it is imperative for a healthcare facility to take steps to prevent that harm. In this case, the court believed, the medical director should have known he did not belong there and should never have let him in. **Healthcare Centers of Texas, Inc. v. Rigby, __ S.W. 3d __, 2002 WL 31769624 (Tex. App., December 12, 2002).**

It was the nursing home's policy for the director of nursing to go to the other facilities and examine the patient's charts before admitting the patient to the nursing home, but at the medical director's directions that was not done.

Had the resident's background been properly investigated, harm to a vulnerable resident could have been avoided.

Based on his history at another nursing home owned by the same corporation and at the state psychiatric hospital, it was foreseeable that the resident in question could harm one of the nursing home's elderly female residents.

He had displayed overt sexually deviant behavior that was fully documented in his charts at his prior placements.

Once the resident came to the nursing home the nurses and the aides immediately knew there was plenty wrong with his behavior. He should have been watched more closely and kept away from vulnerable female residents.

COURT OF APPEALS OF TEXAS
December 12, 2002

EMTALA: Nurse And Physician Properly Screened, Stabilized Patient, Court Rules.

(Continued from page 1)

EMTALA Cases Are Different From Medical Malpractice

The Emergency Medical Treatment and Active Labor Act allows civil suits in Federal or state court against hospitals and physicians.

Hospital emergency-room nurses are often to some extent involved in the scenarios that lead to patients filing EMTALA cases, but nurses themselves cannot be personally sued under EMTALA.

Nurses, of course, can be personally sued for common-law malpractice along with their employers and physician co-workers and EMTALA does nothing to change that.

Congress imposed on hospitals and physicians the specter of lawsuits for violations of EMTALA's medical screening and stabilization requirements to do away with the problem of hospitals "dumping" indigent and/or uninsured patients.

The Medical Screening Requirement

When an individual comes to the emergency department of a hospital that has an emergency department, and the individual or someone on the individual's behalf requests examination or treatment for a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether or not an emergency medical condition exists.

Court cases have turned on the meaning of almost every word in the EMTALA. Persons have phoned but not actually come to the E.R., have come to the hospital's information desk but not the E.R., have come to the E.R. but sat down and not said anything, have had conditions that could not be adequately evaluated by the non-specialist medical staff and diagnostic equipment on hand, where no legal liability was imposed.

In deciding EMTALA cases the courts give a high level of deference to hospitals to assess their own capabilities and to establish their own screening procedures.

The Emergency Medical Treatment and Active Labor Act (EMTALA) was originally intended to cure the evil of hospitals "dumping" patients on other hospitals who had no insurance or could not pay for services.

However, the Federal courts have ruled that the rights guaranteed by the EMTALA apply to all individuals whether or not they are insured. The Tenth Circuit Court of Appeals ruled expressly in 1996 that the EMTALA applies to those who have health insurance.

The patient's ability or inability to pay or the hospital's true or false assumptions or perception of the patient's ability to pay are now irrelevant issues.

A hospital's obligation under EMTALA is to treat every emergency room patient perceived to have the same condition the same as every other emergency room patient perceived to have the same condition.

Malpractice and EMTALA violations are different. Faulty screening is malpractice; differential screening violates the EMTALA.

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING
December 18, 2002

The court in this case acknowledged that the nurse's charting of the assessment data in the emergency room was less than complete. For example, the nurse noted there was a fever, but the temperature was not noted, and follow-up vital signs were taken but not charted.

These departures from the hospital's emergency screening protocols gave the child's parents room to argue for an EMTALA violation by the nurse. However, the court ruled these omissions by the nurse were not significant enough to impose liability on the hospital.

The courts do pay attention to the language of the EMTALA stating that the purpose of the required screening examination is to determine whether an emergency medical condition exists, which is not necessarily the same as reaching a medically correct diagnosis.

In this case the court seems to have thought the child should have been admitted for further testing, but that did not necessarily mean the child had an emergency medical condition at the moment she was discharged. That was a medical malpractice issue, not an EMTALA issue, the court ruled.

The Stabilization Requirement

The court agreed the child had an emergency medical condition when she was brought to the emergency department.

The court also agreed the child was still quite ill when she was discharged home with her father. However, that did not necessarily mean the hospital or the physician violated the EMTALA.

Although there may well have been malpractice by the physician in sending the child home, the court believed the emergency condition with which the child came in was stabilized at the moment she was sent home. The physician did not try to hide the child's condition and charted possible diagnoses to be ruled out from the child's response to the antibiotics. **Kilroy v. Star Valley Medical Center, __ F. Supp. 2d __ , 2002 WL 31845956 (D. Wyo., December 18, 2002).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Smallpox Vaccine: FDA Recommends Deferral Of Blood Donation By Recent Recipients.

On January 3, 2003 the US Food and Drug Administration (FDA) published a notice in the Federal Register recommending that recent recipients of smallpox vaccine defer blood donation and that blood already obtained from such donors be sought out and quarantined.

The FDA believes there may be significant risk of smallpox vaccina virus transmission from donors to blood-products recipients. However, the FDA's current risk-benefit assessment may change, the FDA said, if an outbreak of smallpox should require emergency mass vaccinations.

The full text of the FDA's current recommendation can be found at http://www.fda.gov/cber/guidelines.htm.

FEDERAL REGISTER, January 3, 2003
Pages 377 – 378

Labor Law: Court Says School Nurses Entitled To Bargaining Unit.

As employees of state or local government, school nurses' collective bargaining rights are governed by state law rather that the US National Labor Relations Act.

The New York Supreme Court, Appellate Division, ruled recently that New York's public-employee labor law entitles school nurses to their own bargaining unit separate from other non-instructional school-district employees like bus drivers, custodians, lunch-room cooks, etc.

The court noted that the school district Registered Nurses Association was comprised of licensed health care professionals who have direct and regular contact with students which includes the administration of medications, and this sets them apart them from non-professional non-instructional employees. **<u>Civil Service Employees v. Public Employment Relations Board</u>, __ N.Y.S. 2d __, 2002 N.Y. Slip Op. 09632, 2002 WL 31873458 (N.Y. App., December 26, 2002).**

Sexual Relations With Patient: Court Upholds Revocation Of Psychiatric Nurse's License.

After she was re-admitted to the psychiatric hospital the patient opened up to the director of nursing about her relationship with a male staff nurse.

The director promptly terminated the nurse and reported him to the State Board. A hearing examiner recommended to the Board his license be conditionally revoked pending completion of five years probation.

The Board, however, flat-out revoked his license, and the Court of Appeal of California, in an opinion that has not officially been released for publication, ruled the alarming evidence supported the Board's actions.

Ex-Patient Is Still A Patient

The court rejected the nurse's argument she was technically not a patient, in between admissions to the psychiatric hospital, when he actually had sexual relations with her.

The court noted he had improperly personalized the nurse-patient relationship, giving her special attention, gifts and preferential access to anti-anxiety medications while caring for her.

The court also pointed to her diagnoses of bipolar and borderline personality disorders and her history of relationship problems, which the nurse knew would make her vulnerable.

Sexual relations with patients, especially vulnerable psych patients who can suffer serious adverse emotional consequences, is grossly unprofessional, the court ruled. **<u>Tapp v. Board of Registered Nursing</u>, 2002 WL 31820206 (Cal. App., December 17, 2002).**

A commonsense interpretation of the word "patient" is that she was the nurse's patient when they had sexual relations, even though she was not actually in the hospital at the time.

He improperly personalized the relationship while she was in the hospital, provided her anti-anxiety meds and had sex with her right after her discharge.

COURT OF APPEAL OF CALIFORNIA
OPINION NOT OFFICIALLY PUBLISHED
December 17, 2002