LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

February 2004 Volume 12 Number 2

Patient Fall: Nursing Notes Prove There Was No Negligence, Lawsuit Dismissed.

The patient was on the rehab unit recovering from total knee replacement surgery ten days earlier.

She fell in her room and re-injured the operative knee. She needed immediate corrective surgery which was followed by infection and other complications that required additional medical procedures and hospitalizations.

The patient sued the hospital for nursing negligence. She claimed her nurses left the bed rails down and that allowed her to roll out of bed.

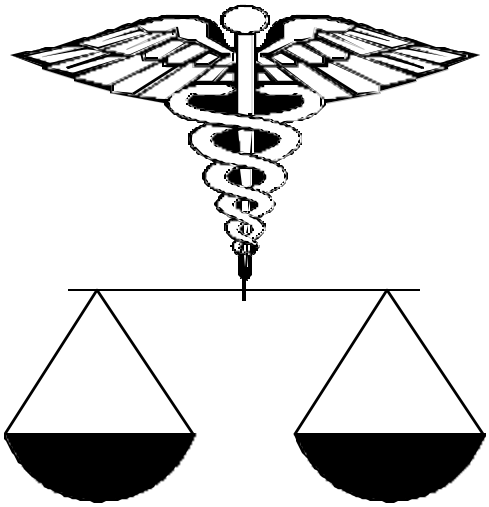
The Court of Appeal of Louisiana expressed sympathy for her painful and disabling injury but found no nursing negligence and dismissed the lawsuit.

High Risk / Fall Alert

The patient's medical expert, an emergency physician, was of the opinion the patient should have been considered a high risk for a fall due to the type of surgery she had just had, the types of medications she was taking and her prior mental history.

The court, however, discounted his qualifications to give an expert opinion in the field of rehabilitation nursing.

The court pointed to the nurses' notes for the six days right up to the fall. The nurses noted that the patient seemed to understand the safety teaching she was getting from the nurses.



The last nursing notes at ten and eleven p.m. had "up" arrows for the bed rails.

The nurse who found the patient noted she was on the floor near the bathroom door, six or seven feet from her bed.

It would be negligent for nurses to leave the rails down and allow the patient to roll over and out of bed, but that is not what happened here.

COURT OF APPEAL OF LOUISIANA
December 17, 2003

The nursing notes showed she was consistently using her call bell to summon assistance, was getting regular assistance to get out of bed and was not trying to go to the bathroom by herself.

Nursing Documentation
Bed Rails Up

The nursing charting at ten and eleven p.m., the last notes before she was found on the floor of her room, contained "up" arrows for the bed rails.

The nurse who found her noted she found her near the bathroom door, six or seven feet from her bed.

It is nursing negligence for nurses to leave the bed rails down and allow a patient to roll out of bed as this patient claimed in her lawsuit.

However, that is not what happened, the court concluded. The nursing notes pointed to only one conclusion. The patient attempted to get up and go to the bathroom by herself.

There is no nursing negligence when a patient has the capacity to know better, has been taught, understands her limitations, knows she must ask for help and that she will get help from the nurses if she asks and tries to do something herself that results in injury. **Curtis v. Columbia Doctors' Hospital of Opelousas, __ So. 2d __, 2003 WL 22961359 (La. App., December 17, 2003).**

Inside this month's issue ...

February 2004

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Bowel Tones Absent, No Nursing Follow-Up: Court Sees Misconduct Justifying Nurse's Termination.

The resident had been complaining for about a week that she just did not feel good.

No Bowel Tones
No Nursing Follow-Up

At 5:00 a.m. the night LPN listened for bowel sounds and was unable to detect any. She made a note in the chart to that effect and did nothing further until later, right before her shift ended at 7:00 a.m., when she heard the resident moaning, went in, took her vital signs and found them within normal limits.

Nursing Home's Standard Protocol Was Not Followed

Whenever a nurse is unable to obtain bowel tones, standard protocol at this nursing home is for the nurse to ask another nurse to listen for them.

If both nurses are unable to hear bowel tones, a physician must be alerted immediately and the director of nursing and the resident's family were also to be notified.

The LPN in question was unable to offer any explanation why she simply charted the abnormal finding and did basically nothing to fulfill her obligation to intervene on behalf of her patient.

Misconduct Justifying Termination

The Court of Appeals of Arkansas ruled this was misconduct justifying the LPN's termination.

She had been required to attend in-services that explained her duties for specific actions when faced with abnormal physical findings when performing routine nursing assessments. She had been taught that nursing inaction which potentially threatens a resident's safety is a category-one violation of policies, that is, a violation for which there is no progressive discipline before immediate termination. **Johnson v. Director of Employment Security, __ S.W. 3d __, 2004 WL 61017 (Ark. App., January 14, 2004).**

The resident was admitted to the hospital later that day in renal failure.

However, actual harm to a patient directly traceable to a nurse's misconduct is not necessarily the issue when the nurse's performance is seriously substandard.

Misconduct justifying termination is more than mere inefficiency, unsatisfactory conduct, inadvertence, isolated instances of ordinary negligence or good-faith errors in judgment or discretion.

There is an element of intent associated with misconduct serious enough to warrant termination without going through progressive disciplinary procedures.

There must be an intentional and deliberate violation of the employer's standards of behavior that impacts or has the possibility to impact a patient adversely.

At some point recurrence of negligence or carelessness can show evidence of an intent to disregard the employer's standards of conduct.

COURT OF APPEALS OF ARKANSAS
January 14, 2004

Patient Falls: Court Believes She Should Have Been Restrained.

The patient's nurses found her on the floor at least twice. She had been admitted for complications of intracranial bleeding and bruised the side and front of her head when she fell.

The nurses knew she was a fall risk. They tried to teach her about her own safety issues but it could not be documented she understood.

The hospital had a policy for use of restraints.

The patient's documented confusion and inability to be taught for her own safety indicated a need for further protection.

The failure to provide protection in the form of physical restraint was below the medical standard of care.

Failure to provide physical restraints caused one or more of her falls in the hospital and the injuries from the falls compounded her difficulties in her end-of-life hospital course.

COURT OF APPEALS OF TEXAS
December 12, 2003

The Court of Appeals of Texas ruled the patient's family's medical expert was able to formulate valid grounds for a medical negligence lawsuit directly from the material documented in the patient's chart, that is, that she needed to be restrained based on her condition, was not restrained and suffered injury as a result. **Estate of Birdwell v. Texarkana Memorial Hospital, Inc., __ S.W. 3d __, 2003 WL 22927420 (Tex. App., December 12, 2003).**

Fall From Bed: Nursing Notes Prove No Negligence.

The eighty-three year-old patient had terminal cancer when he went to a nursing home from the hospital.

In the nursing home he was found on the floor in his room three times. The third time he broke his femur and went back to the hospital. With a No Code order in his chart he died within three days.

The administrator of his estate sued the nursing home for negligence. The attorney obtained an physician's expert witness report saying the nursing home left the bed rails down and did not use a bed alarm, and that caused the patient to fall.

The Appeals Court of Massachusetts, in an unpublished opinion, discounted the physician's report in favor of the nursing flow charting and progress notes.

The court determined the expert's report was based on "facts" that simply did not exist. The flow charting showed the bed rails were put up consistently and the progress notes indicated the patient himself was disconnecting his bed alarm. The lawsuit was dismissed. **Pludra v. Life Care Center of American, Inc., 2004 WL 42247 (Mass. App., January 8, 2004).**

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Home Health: Court Sees Duty For Aides To Monitor, Report To Nurses On Psychosocial Issues.

The home health nursing service had a contract to provide the patient with home health care.

Aides were required to ensure the profoundly disabled patient had a safe home environment.

Although the nursing service could not itself provide psychological evaluations or psychotherapy, the home health aides had a responsibility to appreciate that the patient was getting more depressed and that his drug and alcohol problem was accelerating.

The aides had a responsibility to report not only their patient's physical needs but his psychosocial needs as well.

That being said, however, it would be pure speculation to say his death was attributable to less than adequate home health care.

COURT OF APPEALS OF UTAH
December 26, 2003

The patient had a very traumatic on-the-job industrial accident in a mine which caused serious burns and required amputation of both his arms.

After a long stay in the hospital he went home. A home health nursing service was granted a contract by the state workers compensation department for 24/7 in-home nursing care. Eventually the patient recovered to the point he needed care only from home health aides employed by the same home health nursing service.

Psychosocial Issues Should Be Reported

Over time the patient became more and more depressed. His drug and alcohol problem worsened. His home health aides continued to provide good basic personal physical care and housekeeping services, but they did not discuss his worsening psychosocial situation with the nurses who supervised them who were ultimately responsible for the patient's care.

The patient was found dead in the driver's seat of his vehicle with the engine running and the garage door closed.

The medical examiner stated that carbon monoxide poisoning was the physiologic cause of death. It was never determined if it was a suicide, an assisted suicide or a homicide.

The Court of Appeals of Utah ruled it would only be speculation to say the aides' neglecting to report his worsening psychosocial condition actually caused his death and the family had insufficient grounds for a wrongful-death lawsuit. **Thurston v. Worker's Comp. Fund, __ P. 3d __, 2003 WL 23011467 (Utah App., December 26, 2003).**

Birth Injury: L & D Nurses Met Legal Standard Of Care, Court Finds No Negligence.

The parents sued their obstetrician, the on-call neonatologist and the hospital for damages.

Their lawsuit claimed the child's cerebral palsy was caused by negligence committed by the physicians and the hospital's labor and delivery nurses causing hypoxic brain damage right before the child's birth by cesarean section.

The jury awarded a $30 million verdict against the obstetrician but found no negligence by the neonatologist or the hospital's nurses.

The parents settled their $30 million verdict against the obstetrician for the $1 million limits of his malpractice policy. They also settled for $100,000 from the neonatologist's medical group in exchange for not pursuing an appeal against him.

The parents appealed the verdict in favor of the hospital to the Appellate Court of Illinois, but the Court affirmed the verdict and exonerated the hospital's labor and delivery nurses from negligence.

Admission / Nursing Assessment

The patient came in at 2:30 a.m. at full term, two days past her estimated due date. The plan was for vaginal birth after a prior cesarean. Her vital signs were taken, an IV was started for hydration, an external fetal heart monitor was started and her obstetrician was phoned. At 3:00 a.m. the fetal heart rate was 140 and the mother was dilated 3 cm. All signs were considered normal.

Amniotic Fluid / Meconium

Her obstetrician arrived at 3:15 a.m., ruptured her amniotic sac and started a fetal scalp monitor.

The amniotic fluid contained thick meconium, according to the court record. Following hospital policy, the nurses phoned the on-call neonatologist. The court said that is accepted practice within the legal standard of care for labor and delivery nurses whenever meconium is observed prior to delivery.

When the neonatologist arrived ten minutes later the fetal hear rate was still 145 beats per minute.

In a medical negligence case against a hospital based on vicarious liability for the conduct of the hospital's nurses, it is necessary for the patient to present expert testimony:

1. To define the legal standard of care for the nurses under the specific circumstances of the case, and

2. To establish that the legal standard of care was breached, and

3. To prove to a reasonable degree of medical certainty that the breach of the legal standard of care by the nurses was the proximate cause of the patient's injury.

The rationale for requiring expert testimony is that a lay person on the jury is not skilled in the practice of medicine and is, therefore, unequipped to evaluate professional conduct without the aid of expert testimony.

Nurses who have the appropriate educational and practice qualifications are accepted as experts on the nursing standard of care.

Medical cause and effect, however, in most instances requires testimony from a specialist physician as an expert witness.

APPELLATE COURT OF ILLINOIS
December 17, 2003

Low Fetal Heart Rate
Nurses Initiated Chain of Command

Around 4:30 a.m. the fetal heart rate dropped ominously to around 60. The nurses started standard nursing interventions including increasing the IV fluid rate, repositioning the mother on her side and starting oxygen through a face mask, which temporarily returned the fetal heart rate to baseline.

Then the fetal monitor stopped tracing altogether. A nurse listened and tried to count the audible signals while also trying to calibrate the audible signal for the fetus with the signal for the mother which she in turn verified with a wrist pulse.

The nurses called the labor and delivery charge nurse into the room to assess the situation. It was her responsibility, if it was warranted based on her assessment, to get things moving toward an emergency c-section regardless of what the obstetrician was thinking or doing.

The chart showed the supervisor was called at 4:40 a.m. and came at 4:57 a.m. The c-section was called at 5:00 a.m. and started at 5:28 a.m. The nurses got another scalp monitor working at 4:53 a.m. and it confirmed the fetus was in distress.

In court the nursing experts on both sides agreed the nurses acted properly by initiating the nursing chain of command. The question was whether the staff nurses acted quickly enough, an issue for which there is no precise standard. The judge and jury believed they did and held the obstetrician solely at fault for any delay.

The only questionable issue was whether the nurses should have presumed this baby was not at risk during the interval while a fetal monitor was not actually reporting usable data.

Cesarean Set-Up

The lawsuit alleged the nurses failed in their nursing responsibility to have the room, equipment and supplies ready in time once the cesarean was called. However, the court found no proof to back that allegation. **Bryant v. LaGrange Memorial Hospital, __ N.E. 2d __, 2003 WL 22965485 (Ill. App., December 17, 2003).**

Arbitration: Court Voids Admission Contract Signed By Family.

The adult children filed suit against the nursing home after their mother's death, alleging negligence, abuse, neglect and fraud. The court has not ruled if those allegations can be substantiated.

The preliminary issue is the nursing home's petition to uphold the arbitration clause in the admissions papers instead of allowing a jury trial. The Court of Appeals of Tennessee ruled the case belonged in court before a civil jury.

The seventy-five year-old patient was admitted for rehab after a hospital stay.

There was nothing wrong with her mental faculties.

Her husband could not care for her at home.

Her husband signed the admission papers containing the arbitration clause, but he could not validly sign away her right to sue the nursing home in court.

COURT OF APPEALS OF TENNESSEE
December 30, 2003

The court editorialized, expressing its consternation with a one-sided arbitration clause buried on page nine of a complicated eleven-page admission contract.

However, the basis for the court's ruling was that the signature of a family member on a legal document that substantially affects a nursing home resident's legal rights should never be substituted for the resident's own signature when the resident is fully competent to make decisions and sign for herself. **Raiteri v. NHC Healthcare/ Knoxville, Inc., 2003 WL 23094413 (Tenn. App., December 30, 2003).**

Preeclampsia: Nurses Failed To Advocate For Patient, Punitive Damages Allowed.

The nurses did nothing to advocate or intervene while their patient's preeclampsia signs and symptoms progressed to a brain hemorrhage, coma and death.

Nurses have an absolute legal duty to advocate for their patients with their physicians and if necessary must intervene by going up the chain of command.

When nurses know something is seriously wrong with the care a patient is getting from the physician and fail to intervene to correct the situation, it can go beyond mere negligence.

Mere negligence is not what the legal system contemplates as grounds for punitive damages, money awarded in addition to the money that will fairly and adequate compensate the patient for the actual harm to the patient.

A party to a civil case has to pay punitive damages only when the party has been guilty of malice.

However, legal malice does exist when a nurse or other healthcare professional shows reckless indifference to a patient's health or safety.

SUPREME COURT OF OREGON
December 26, 2003

The patient's ob/gyn was out of the office for two weeks while a nurse practitioner took over her care. During this time she began to develop signs and symptoms of preeclampsia or pregnancy-induced hypertension.

On his return to the office the ob/gyn had her admitted to the hospital and later the same day had her transferred out of the labor and delivery unit into the post-partum unit where she would not be monitored closely for her preeclampsia.

Two days later, with her preeclampsia reaching a critical stage, her ob/gyn decided to induce labor, which would take about six to eight more hours to result in a vaginal delivery.

During labor she had a brain hemorrhage, lapsed into coma and died. The baby was delivered by cesarean while she was still in coma.

Nurses Failed to Advocate / Intervene

The Supreme Court of Oregon made a preliminary ruling that concerns only the hospital as the labor and delivery nurses' employer. In addition to the major allegations of negligence against the ob/gyn the husband can claim punitive damages from the hospital for the nurses' misconduct in failing to advocate and intervene.

There is no cure for preeclampsia but to deliver the fetus. The mother had severe high blood pressure accompanied by headaches, visual disturbances and epigastric pain, likely signs of end-organ failure, for which the physician ordered antacids and pain medication and did not order anti-seizure medication or medication to lower her blood pressure or a cesarean.

All the while the nurses did not question his orders or advocate for the patient or go over the doctor's head within the nursing chain of command to get something done. The court saw this as reckless indifference to their patient's health and safety, more serious than civil negligence. **Johannesen v. Salem Hospital, 336 Or. 311, __ P. 3d __, 2003 WL 23011802 (Or., December 26, 2003).**

Disability Discrimination: Nurse Was Offered Reasonable Accommodation, Court Says.

A staff nurse fractured her knee while off the job and had to take medical leave. Her difficult recovery was complicated by pre-existing age-related osteoarthritis in the injured knee.

Her treating physician ruled her unable to return to her job as a hospital staff nurse. That is, her injury-related medical restrictions kept her from being able to do all the walking necessary for that job. Her physician went into the necessary detail how her restrictions met the legal definition of a disability in the Americans With Disabilities Act. The US Court of Appeals for the Sixth Circuit accepted what her physician had to say.

Reasonable Accommodation Was Offered, Refused

The hospital offered the nurse an office position in patient referral/scheduling with pay and benefits comparable to staff nursing. The nurse turned that down.

The nurse applied for and was rejected for two separate vacancies in quality assurance and a nurse case manager position. The grounds were that other applicants were more qualified.

The court dismissed the nurse's case against the hospital because the nurse was offered and refused reasonable accommodation. There was no direct evidence of any intent to discriminate against her.

In its written opinion the court went through all the legal basics that apply to nurses' disability discrimination cases.

Definition of Disability

A disability is a physical or mental impairment that significantly limits a major life activity and prevents the individual from being able to do a broad class of jobs in the workforce.

An impairment that only keeps the individual from doing one particular job or one class of jobs is not a disability.

Walking is a major life activity. Being unable to walk long distances or to be on one's feet a significant part of the workday restricts the disabled individual in a major life activity and restricts the individual from doing a broad class of jobs.

Management can discuss and weigh an employee's request for reasonable accommodation without being accused of disability discrimination.

When an employee requests a different position as reasonable accommodation the employer has to verify the employee's limitations are compatible with the legitimate physical demands of the position.

It is a legitimate question whether a nurse with trouble walking can do a particular job. The decision-makers may have to ask to find out how much walking is really necessary to do the job satisfactorily.

As long as no intent to discriminate is expressed, there is no problem with such communications.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
January 9, 2004

Qualified Individual With A Disability

To be entitled to reasonable accommodation a disabled individual must be a qualified individual with a disability, that is, someone with a disability who will be able to do a particular job with reasonable accommodation.

Request for Reasonable Accommodation

The employee has the obligation to come forward and ask for reasonable accommodation. The employee must inform the employer about the disability, restrictions, limitations and what sort of accommodation the employee wants.

Employers must express a general sense of openness to requests for reasonable accommodation but may not ask any employee or applicant to disclose the existence of a disability if the person does not want to reveal that information.

Reasonable Accommodation Must Be Reasonable

Reasonable accommodation in this case meant offering the nurse in question a suitable hospital position consistent with her disabling medical restrictions.

As a general rule an employer is not required to give an employee a position for which the employee is not qualified or waive legitimate requirements, displace other employees or violate other employees' rights based on seniority or their own qualifications, just to make an accommodation available to a disabled employee.

An employer does not have to create a new position for a disabled employee or train an employee for a position for which the employee was not qualified before asking for reasonable accommodation.

A position offered as reasonable accommodation must be as comparable as the employer is able to offer relative to the employee's prior position in terms of pay, benefits and status. There is no requirement to promote a disabled employee to a better position just to fulfill reasonable accommodation.

In this case the staff nurse could not claim discrimination over not being offered the nurse case manager job, which was considered a promotion. The hospital was also vindicated in legitimately seeing two other applicants as more qualified for the quality review positions.

An employee does not have to be offered the position the employee wants, only a position that is comparable in terms of pay, benefits, responsibility

An employee does not have to accept any position offered. However, by turning down a legitimate reasonable accommodation the employee forfeits the right to sue for disability discrimination. **Hedrick v. Western Reserve Care System, __ F.3d __, 2004 WL 43163 (6th Cir., January 9, 2004).**

Employment Evaluation: Court Gives Supervisors Latitude, Dismisses Nurse's Slander Suit.

A staff nurse was fired based on a statement from her supervisor to the hospital's director of human resources that the nurse had been rude to a patient.

The nurse's employment record was satisfactory, even praiseworthy, in all other respects.

The supervisor and human resources director declined the nurse's request that the patient be contacted and brought in to verify whether or not he believed the nurse had been rude to him.

The nurse sued the hospital, her former supervisor and the director of human resources for slander. The lawsuit claimed the communication between her former supervisor and the human resources director was the sole reason for her termination.

The Court of Appeal of California, in an unpublished opinion, threw out the nurse's lawsuit.

Employment Evaluations
Statements of Opinion
Employers Given Wide Latitude

To be valid, a lawsuit for slander must be based upon a false statement of fact that tends to injure a person's reputation in respect to the person's trade, business or occupation.

Slander involves an oral statement; libel is the corresponding term for a written statement.

By definition, a statement of opinion is not a statement of fact. The law simply does not allow lawsuits for slander to be based upon statements of opinion.

It would be irrelevant, the court said, to bring in the patient for his opinion about the nurse's attitude and conduct, to reach a decision in the nurse's slander lawsuit. Even if the patient's opinion was that the nurse was not rude to him, the nurse's superiors are still entitled to have their opinions, to share their opinions and to take action based on their opinions about subordinates without risking a lawsuit for slander. **Cummings v. Gunzer, 2004 WL 51943 (Cal. App., January 13, 2004).**

A lawsuit for slander has to based upon a false statement of fact.

A lawsuit for slander cannot be based upon a statement of opinion.

In the context of employment evaluations the courts have thrown out slander lawsuits filed over supervisors' statements that a subordinate, "was not carrying his weight," "had a negative attitude in dealing with others," "lacked direction in his project activities," and "was unwilling to take responsibility for the projects he oversaw."

Statements of opinion are statements that cannot be proven one way or the other.

Whether a nurse acted rudely toward a patient cannot be proven one way or the other. It is a subjective judgment. One person may view a nurse's attitude and conduct one way while another sees it another way.

The patient's subjective perception is just one more person's opinion. It is not the controlling factor one way or the other.

Employers have wide latitude in this context.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
January 13, 2004

Emotional Distress: Nursing Home Resident Can Sue.

The Court of Appeals of Texas has ruled a nursing home resident can sue for intentional infliction of emotional distress if intentionally treated by a staff member in a manner that is extreme and outrageous and results in severe mental distress.

Brusque handling in transfers from wheelchair to bed, taking away the call button and disconnecting it from the wall, moving a food tray out of reach and moving a table with the bed pan out of reach, when directed at an elderly disabled woman, fit the legal definition of extreme and outrageous conduct.

However, the court at the same time upheld the jury's determination that the aide's malicious conduct was outside the scope of his employment duties, making the nursing home not civilly liable for his actions. **Cortez v. HCCI-San Antonio, Inc., __ S.W. 3d __, 2004 WL 28354 (Tex. App., January 7, 2004).**

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LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Misdemeanor Conviction: Nursing License Restricted.

A nurse pled guilty to a misdemeanor charge of obtaining a controlled substance (phentermine) with a forged prescription.

The Court of Appeals of Kentucky, in an unpublished opinion, upheld the State Board of Nursing in restricting her registered nurse's license for two years only to jobs where she would have close supervision with narcotics.

Guilty Plea to Avoid More Serious Charges

The court ruled a conviction on a guilty plea is the same as any other conviction as far a nurse's license is concerned, even if the nurse claims extenuating circumstances, i.e., an ongoing physician/patient relationship with the doctor whose name she forged who had been writing prescriptions for her migraines and the nurse pled guilty only to avoid more serious felony charges. **Slone-Vasquez v. Board of Nursing, 2003 WL 22976179 (Ky. App., December 19, 2003).**

Misdemeanor Conviction: Aide's Certificate Revoked.

A certified nurses aide failed to check the box indicating he had been convicted of a misdemeanor on his application to renew his state certificate. He had been caught carrying a concealed pistol and got two years probation.

The California Court of Appeal, in an unpublished opinion, said the Department had two good reasons to deny his application to renew his certificate to work as a home health aide.

Dishonesty

Crime Substantially Related to Qualifications

Patient caregivers get no leeway at all for dishonest answers on their applications for initial licensure, certification or renewal.

The possibility of bringing a firearm into a vulnerable patient's home is grounds to bar an individual from working as a home health aide, the court ruled. **Thomas v. Dept. of Health Services, 2004 WL 24066 (Cal. App., January 2, 2004).**

Medical Directive Ignored: Court Finds Violation Of Nursing Home Residents' Bill Of Rights.

The Court of Appeal of Louisiana refused to stop the family's lawsuit from going forward pending a hearing by a medical review panel.

A medical review panel was not needed to decide whether the facts fit the legal definition of medical negligence, as medical negligence can only occur while rendering medical care.

That is, the real issue was whether the nursing home staff ignored the resident's medical directives by calling the EMT's who performed CPR, intubation, manual ventilation and chest compressions and put in a nasogastric tube.

Assuming the resident's medical directives were ignored, the only issue is computing damages for pain and suffering before she died and mental and emotional distress to the family.

The Nursing Home Residents' Bill of Rights requires nursing homes to uphold residents' dignity and personal integrity.

Performing CPR and other lifesaving measures against a resident's express wishes is not medical treatment. There is no need to split hairs over the definition of medical negligence to determine whether the resident's wishes were ignored.

COURT OF APPEAL OF LOUISIANA
December 10, 2003

The Nursing Home Residents' Bill of Rights requires long-term care facilities to uphold every resident's dignity and personal integrity.

The resident signed a directive to her physicians not to prolong her life beyond any reasonable chance of recovery from incurable illness.

She signed a second medical directive clarifying she wanted comfort care including pain and fever medications, oral fluids, mouth care, positioning, oxygen and suctioning and clarifying she expressly did not want a respirator, feeding tube, dialysis or CPR.

The family did not need an expert witness on the legal standard of care, as negligence was not the issue. **Terry v. Red River Center Corp., __ So. 2d __, 2003 WL 22901004 (La. App., December 10, 2003).**