LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

February 2005 Volume 13 Number 2

Patient Leaves Against Medical Advice: Court Dismisses Allegations Against Nurses.

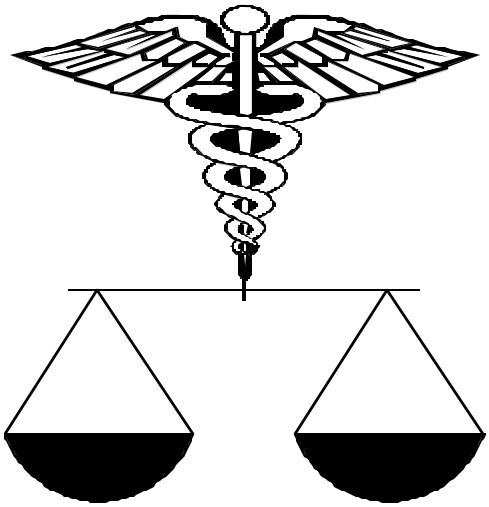
The patient was admitted to the first hospital with complaints of inability to walk or stand, inability to talk/slurred speech, decreased mental state, chest heaviness, dizziness, aches in her joints, numbness and tingling in her hands, low grade fever, tachycardia, agitation and irritability.

After four days of tests and observation her physician decided to move her to the hospital's mental health unit for a psychiatric evaluation. The patient and her sister disagreed with this. The patient left and two hours later was at a second hospital's emergency room.

The second hospital got the records from the first hospital and ran tests. The tests showed she had low lymphocyte, red blood cell, hemoglobin and hematocrit levels and elevated sedimentation rate, creatine kinase and alkaline phosphate.

After almost a day in the second hospital's emergency department the physician informed her of his intent to admit her to the hospital's mental health unit.

The patient and her sister became upset with this decision and went home. Two days later the patient died. The medical examiner's autopsy established meningoencephalitis as the cause of death.



The hospital's emergency room nurses did not attempt to intervene when the patient decided to leave the hospital against medical advice.

The nurses had no legal duty to try to stop the patient.

In fact, the hospital could have faced civil liability for medical battery, i.e., unauthorized treatment, if the nurses had forcibly intervened.

COURT OF APPEALS OF OHIO
December 9, 2004

Second Hospital Dismissed Nurses Not At Fault

The patient's family filed a complex medical malpractice suit against both hospitals, six physicians and one nurse. The issue recently heard by the Court of Appeals of Ohio was the dismissal of the second hospital from the lawsuit based on a finding of no legal liability by its E.R. nurses for failing to intervene to stop the patient from leaving against medical advice.

The court ruled that nurses have no legal duty to attempt to stop an individual who refuses the treatment being offered and leaves. A nurse would commit a civil medical battery, opening up the possibility of a civil lawsuit, by trying to force an individual to remain and accept treatment.

It is not a nurse's legal responsibility to decide the medical issue whether an individual has the mental capacity lawfully to refuse treatment. The court did believe this patient was competent and was within her rights to refuse treatment. She consented to the treatment that was given to her and could refuse treatment and leave any time she wished. In any event those are not issues for which nurses are responsible. **Griffith v. University Hosp., 2004 WL 2847850 (Ohio App., December 9, 2004).**

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Elder Abuse, Neglect, Nursing Negligence, Pain Management, End-Of-Life Issues: Court Rules On Complex, Multifaceted Lawsuit.

The eighty-two year-old patient was a resident of a nursing facility.

While at the nursing facility she signed documents from time to time stating that she did not want to be resuscitated or given CPR or placed on life support in the event of a medical emergency. The documents were witnessed by her personal physician who attested she was fully competent to express her own wishes with regard to healthcare decisions.

At the nursing home she developed a severe Stage IV decubitus ulcer on her shoulder which exposed the underlying bones. Her treatment was basically routine doses of strong pain medications which supplemented what she had already been taking for pain from her advanced rheumatoid arthritis.

She began having abdominal pain and vomiting. So that she could be taken to the hospital the nursing home gave her daughter a copy of papers from her chart, including the medical directives for no CPR. At the hospital she suffered respiratory failure and a code was called. She survived for ten days in the ICU before she died. After she died her son sued all her caregivers on behalf of the probate estate.

The California Court of Appeal, in an opinion not officially released for publication, dismissed the lawsuit on technical grounds. However, the Court did express a certain amount of dissatisfaction with the care the patient received.

Pain Management

The hospital's ICU Critical Care Flow Sheet required the nursing staff, among other things, to assess the patient's pain at least once during each 12-hour shift.

The court was very concerned that for seventeen of the last nineteen shifts of her life the nursing staff merely noted that her pain was difficult to assess or unable to be assessed verbally. That was the only indication any attempt was to comply with the pain management plan required by the ICU nursing flow chart.

The patient's family's lawyers have chosen to rely upon the state's Elder Abuse Law as the basis for this lawsuit.

They have voluntarily dismissed all the allegations of negligence they previously filed against the patient's nursing and medical caregivers.

Presumably they made that decision because the Elder Abuse law, if it applies, allows the jury to award punitive damages.

There are questions about the care this patient received in the nursing home and about what happened in the hospital during her last days and hours.

However, the Elder Abuse law was not violated, so technically the whole case must be thrown out.

Elder abuse goes beyond ordinary negligence.

There must be intentional, egregious, reckless, oppressive or malicious misconduct by a lay or professional caregiver before the Elder Abuse law comes into play and before a jury can consider awarding punitive damages in a civil lawsuit.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
December 22, 2004

Pain Assessment
Non-Verbal Cues

This patient, like many in the ICU, was intubated and obviously could not reply if the nurses had asked her verbally to rate her pain on a pain scale. Her nurses were expected to try to assess her pain through non-verbal cues, obtain orders if needed, give pain medication, assess non-verbal cues as to whether the medication was working and proceed accordingly, the court believed.

Nursing Home Skin Care

The court was unable to find fault with the skin care the patient received, even though she did develop a severe, progressive decubitus ulcer. A bad outcome does not necessarily imply negligence.

The court pointed to legal case precedents where nursing homes have been liable for sub-standard skin care. Liability cases are usually only those that are borderline outrageous, patients left for extended periods lying in soiled bed linens or left unmoved and unturned in their beds and not provided with adequate nutrition and hydration.

End-Of-Life Wishes Disregarded

The hospital apparently did put the copies of the patient's end-of-life directives into her chart which the daughter brought from the nursing home. The hospital apparently did not conduct its own interview with the patient as to her end-of-life wishes as required by Federal law.

The physician who responded to the patient's respiratory arrest in the hospital went ahead with resuscitation without trying to clarify the patient's wishes.

The court did not expressly fault the hospital's nurses for this aspect of her care. The nurses were not faulted for calling the physician to the bedside. It would be negligent for a physician to ignore a patient's end-of-life wishes, but certainly not abusive, in the court's judgment. **Furlong v. Catholic Healthcare West, 2004 WL 2958274 (Cal. App., December 22, 2004).**

Testamentary Capacity To Execute A Will: Judge, Jury And Experts Look To Nursing Notes.

A ninety year-old gentleman passed away in a nursing home survived by a brother and several nieces and nephews.

Sixteen months earlier, while in the nursing home, he had signed a will leaving his entire estate to one of his nephews and the nephew's wife. The nephew and a long-time neighbor of the deceased before he went to the nursing home had made the arrangements for a lawyer to draft the will and for the man to sign it with two of the lawyer's employees as the witnesses.

After he had died and the will came to light the man's brother filed a lawsuit to have the will declared void on the grounds the man did not have legal testamentary mental capacity to execute a valid will. If the will was void there was no will, and with no will the brother would inherit everything.

The man's treating physician and a psychiatrist who evaluated patients for the nursing home testified the man had problems, but was mentally competent.

The brother's lawyers hired a physician to testify based on the medical and nursing records. His testimony highlighted episodes of behavior suggesting dementia and concluded he was not mentally competent.

A person has the testamentary capacity to execute a will if, at the time of the execution of the will, the person has sufficient mind and memory to understand he or she is making a will, has an understanding of the property he or she owns and wishes to leave in the will, knows and recalls the persons who are the natural objects of his or her bounty and has a plan for the manner in which the estate is to be divided.

The key legal factor is not the person's mental status in totality, but the mental capacity the person did or did not possess at the very time the will was signed.

SUPREME COURT OF RHODE ISLAND
December 16, 2004

Nursing Notes Re
Mental Status Checks, Behavior, Mood, Agitation, Outbursts, Wandering

In this case the nurses who had cared for the deceased were not personally brought into the courtroom. Nevertheless, the case points up the importance of careful and accurate nursing documentation of nursing home patients' behavior that indicates mental status.

As a general rule the law permits a medical expert, whether or not the expert has ever treated or even personally met the individual in question, to rely on observations made and charted by other caregivers in formulating an expert medical opinion about the individual.

The court faulted the physician hired by the brother's lawyer for pulling out episodes of confusion, agitation and acting out from the nursing notes which strongly suggested dementia, which would rule out the capacity to execute a valid will, without relating those episodes temporally to the exact date when the man signed his will.

The court felt compelled to take the unusual step of overruling the jury's verdict that invalidated the will and ordered a new trial to decide the case. **Pollard v. Hastings, 862 A. 2d 770 (R.I., December 16, 2004).**

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E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
12026 15th Avenue N.E., Suite 206
Seattle, WA 98125-5049
Phone (206) 440-5860
Fax (206) 440-5862
info@nursinglaw.com
http://www.nursinglaw.com

Physician's Standing Orders: Court Faults Nurses, Pre-Operative Antibiotic Not Given.

The patient was admitted to the hospital for two procedures during one operation, a total vaginal hysterectomy to be performed by her ob/gyn and his partner, followed by a retropubic suspension to be performed by a urologist.

The patient's ob/gyn's partner supplied hand-written pre-operative orders for the patient which the hospital's nurses placed in her chart. The handwritten orders did not mention a pre-op antibiotic.

Medical Group's Standing Pre-Op Orders Not Included In Chart

The nurses did not place any supplementary or standing orders in the chart. As a result, the patient did not receive a pre-operative antibiotic. She was discharged home after her procedures but had to be re-hospitalized for extensive treatment for post-operative infection.

The two ob/gyn physicians were sued but then were dismissed out of the lawsuit by the patient's attorneys so that the civil case could go to before the jury with the hospital, as the nurses' employer, the sole remaining defendant.

The jury related the patient's post-operative complications to the hospital's nurses' errors and omissions: the nurses neglected the physicians' group's standing pre-op orders. The Supreme Court of Alabama upheld the jury's verdict.

The ob/gyn's medical group had a contract with the hospital to provide gynecological care and treatment for patients at the hospital on a regular, ongoing basis.

The court believed the nurses should have known that the admitting orders were to be considered in context with the medical group's standing orders. The nurses should have placed a copy of the standing orders in the chart and carried them out.

At a minimum the nurses should have questioned why no antibiotic was mentioned in the handwritten orders as it was the medical group's policy always to have a pre-op antibiotic given. **Lloyd Nolan Hosp. v. Durham, __ So. 2d __, 2005 WL 32404 (Ala., January 7, 2005).**

The nursing staff did follow all of the physician's specific admission orders for this particular patient. Those orders did not prescribe a pre-operative antibiotic. There is no dispute about any of that.

However, the physician's medical group had previously supplied the hospital with standing orders which were to be followed whenever the hospital admitted any of the group's patients.

The medical group's standing orders supplemented the admitting physician's specific orders for the particular patient. The standing orders did require the hospital's nurses to administer a pre-operative antibiotic.

At a minimum the nurses should have questioned the admitting physician for clarification why his specific orders did not contain an order for the usual pre-operative antibiotic.

The jury was correct. Failure of the nurses to take the physicians' medical group's standing orders into consideration is below the legal standard of care for nursing practice.

SUPREME COURT OF ALABAMA
January 7, 2005

Pap Smear Report Not In Chart: Suit Faults Nurse For Patient's Death.

The patient had her regular pap smear at an outpatient ob/gyn clinic. It showed a high grade squamous intraepithelial lesion with moderate to severe dysplasia. A nurse wrote in the chart that there was a letter concerning the pap smear but did not place a copy of the letter in the chart.

The patient continued to visit the clinic with ongoing gynecological problems. Thirteen months after the pap smear a new pap smear revealed severe dysplasia CIN3 with HPV associated cellular changes, suggesting the need for colonoscopy and biopsy.

The same nurse again noted there was a letter regarding the pap smear but did not put a copy of the letter in the chart.

Eight months later the patient was diagnosed with cervical cancer and died less than a year after that.

This case will be certified to the Supreme Court of Georgia for a ruling on the statute of limitations issue.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
December 30, 2004

The patient's probate administrator sued the clinic for the nurse's negligence. The court has not yet passed judgment on the allegations of nursing negligence.

During the time frame in question, while the patient was receiving ongoing treatment, the clinic was acquired as a Federal healthcare facility. A Federal facility can only be sued in Federal court. However, the US Circuit Court of Appeals, as a Federal court, must obtain a ruling from the highest state court, rather than making its own decision how to interpret the state's statute of limitations in light of the complex facts in this case. **Simmons v. Sonyika, __ F. 3d __, 2004 WL 3015741 (11th Cir., December 30, 2004).**

Fair Labor Standards: Court Says Nurse Practitioners Do Get Overtime.

The US District Court for the Eastern District of Texas has ruled that nurse practitioners who are paid on an hourly rather than salaried basis are entitled to overtime pay for hours worked in excess of forty hours per week, under the US Fair Labor Standards Act.

However, the District Court will not enter enforcement of its ruling until there has been an opportunity for an appeal to the US Circuit Court of Appeals. The District Court recognizes its opinion could be overruled and that an authoritative ruling from the Circuit Court, one way or the other, will promote the long-range goal of a final resolution of this question.

The Fair Labor Standards Act contains an exception, dating back to the 1940's, for physicians engaged in the practice of medicine. Even if paid on an hourly rather than salaried basis, physicians do not qualify for overtime.

It is hard to see how, in the 1940's, Congress could have meant for that to apply to nurse practitioners.

UNITED STATES DISTRICT COURT
TEXAS
January 13, 2005

The court sees hourly nurse practitioners more akin to nurses than to physicians. Hourly-paid nurses get overtime. The court acknowledged at the same time that nurse practitioners perform many functions traditionally done by physicians. **Belt v. Emcare Inc., __ F. Supp. 2d __, 2005 WL 66903 (E.D. Tex., January 13, 2005).**

Door Alarms Not Working: Court Approves License Revocation.

The Supreme Court of Alabama overturned the decision of a lower court to overrule the state Department of Public Safety's revocation of an assisted-living facility's license to operate.

The Department was correct in its determination that inoperative door alarms present an unacceptable safety hazard to the elderly Alzheimer's patients who resided in the facility.

Situations where cognitively impaired residents leave a facility without knowledge of the facility's personnel are termed elopements.

Prevention of elopement comes within the scope of regulations which require assisted-living facilities to provide residents with necessary assistance with activities of daily living and assistance with personal safety.

SUPREME COURT OF ALABAMA
January 14, 2005

Elopement is very dangerous, possibly deadly, because these residents no longer have the mental capacity to recognize dangers from exposure to weather, moving vehicular traffic and open bodies of water, the court pointed out.

Staff at a facility are expected to know as soon as any resident attempts to exit the facility so that they can intervene and redirect the resident and prevent the resident from wandering away. **Dept. of Public Health v. Wynnwood Personal Care Home, 2005 WL 78763 (Ala., January 14, 2005).**

Defamation: Employee Can Sue Over Theft Allegations.

A nursing home administrator fired the admissions coordinator for alleged theft of property from the facility.

She sued for defamation because statements concerning her termination for theft were placed in her personnel file to be read by corporate management.

The nursing home administrator apparently ignored a letter faxed to the facility, to the attention of the admissions coordinator, from the deceased resident's niece, stating that it had been the resident's intent for her to take any of the resident's furniture or give it to other staff.

The administrator instead believed only what the resident's son said about the resident's intent to donate her furniture and clothing to the facility for the benefit of the other residents.

Theft is a serious allegation. An employee wrongfully accused of theft can sue for defamation, even if the allegations of theft have only gone so far as the employee's personnel file.

The employer can defend itself even if the defamatory statement was untrue, if the employer can convince the court there was a thorough investigation and there were good-faith grounds to believe it was true.

APPELLATE COURT OF CONNECTICUT
January 18, 2005

The case points out the necessity for thorough investigation of the grounds for termination and thorough documentation of the investigation. **Gambardella v. Apple Health Care, Inc., __ A. 2d __, 2005 WL 67125 (Conn. App., January 18, 2005).**

Workers Comp: Assault At Work Not Covered, Was Domestic Violence.

A nurse was fatally shot by her husband in the building lobby of the clinic where she was working.

The administrator of her probate estate filed a workers compensation death- benefit claim on behalf of the dependent minor children who survived her.

An assault at work is covered by workers compensation if the origin of the assault is work-related and the injured claimant was not the instigator.

On the other hand, an assault at work is not covered if the assault was imported into the workplace from the employee's domestic or private life and was not exacerbated by the employment.

COURT OF APPEALS OF OHIO
December 16, 2004

The Court of Appeals of Ohio acknowledged that workers compensation does pay death benefits to the children of an employee killed on the job.

The court also acknowledged that workers comp will cover an injury or fatality from an on-the-job assault, if the assault arises out of and in the course of employment.

However, the controlling factor is not the place of the assault or whether the employee was actually on the job. The controlling factor is whether the assault arose out of the employment rather than being imported into the workplace from the outside, as in this case. **Foster v. Cleveland Clinic Foundation, 2004 WL 2914985 (Ohio App., December 16, 2004).**

Workers Comp: Notice Must Be Given To Employer At Time Of Injury.

A nurse went to the emergency room of the hospital where she worked and complained that she had exacerbated a previous abdominal injury while walking down a flight of stairs. The emergency room physician referred her to a surgeon.

Twenty months later she filed for workers comp and had abdominal surgery two weeks later.

An employee must promptly notify the employer when he or she sustains an injury on the job and will be filing a workers compensation claim.

Delay in reporting a claim can prejudice the employer's ability to investigate.

When delay in reporting prejudices the employer's ability to investigate the employee's claim, the claim can be invalidated on that basis alone.

NEW YORK SUPREME COURT
APPELLATE DIVISION
December 16, 2004

The New York Supreme Court, Appellate Division, ruled the emergency room record was not sufficient notice to the hospital of an on-the-job injury.

In general, the 30-day notice requirement of the workers comp law is not enforced against the injured employee's claim unless delay in reporting has caused actual prejudice to the employer's ability to investigate the claim, but that was true here and the claim was disallowed. **Claim of Miller, __ N.Y.S.2d __, 2004 WL 2902412 (N.Y. App., December 16, 2004).**

Patient Abuse: Court Looks At How The Evidence Will Be Weighed.

A certified nursing assistant was reported to the State for abusing an Alzheimer's patient by slapping and kicking her and throwing a cup at her.

The aide appealed on a technical legal point, that the State health law judge had not sustained the allegations against her beyond a reasonable doubt or by clear and convincing evidence.

The legal system has different formulas to express the burden of proof in different types of cases.

Beyond a reasonable doubt is the strictest. It applies only in criminal cases.

Clear and convincing evidence applies in civil cases where a criminal prosecution could follow from the allegations in the civil case.

Preponderance of the evidence is used in garden-variety civil cases. It just means that the facts necessary for the decision more likely than not are true.

COURT OF APPEALS OF WASHINGTON
January 3, 2005

The Court of Appeals of Washington ruled that a professional license suspension or revocation decision must be supported by allegations proven by clear and convincing evidence.

However, the decision to take away an aide's certification need only be supported by allegations proven by a preponderance of the evidence. **Ongom v. Dept. of Health, __ P. 3d __, 2005 WL 11689 (Wash. App., January 3, 2005).**

Informed Consent: Court Allows Nurses To Get Patient To Sign, After Physician Has Explained Procedure.

A pediatric patient suffered avascular necrosis in the femoral head after an intramedullary nailing procedure to repair a sports-injury fracture.

One of the allegations in the parents' medical malpractice lawsuit was lack of informed consent. That is, they claimed that if they had fully understood the possibility of this serous complication they would not have consented to go ahead with the procedure, and the complications, therefore, would not have happened.

The jury found that the boy's mother gave her informed consent for the IM nailing procedure.

The jury's ruling is supported by the evidence.

COURT OF APPEALS OF KANSAS
UNPUBLISHED DISPOSITION
January 7, 2005

The Court of Appeals of Kansas, in an unpublished opinion, upheld the jury's finding of no fault by the treating orthopedic surgeon as to the procedure itself and on the informed-consent issue.

The physician's standard practice is to discuss the procedure with the patient and/or the patient's parent or guardian and to make sure he has answered all their questions. Then the nurses fill out the surgical consent form and have the patient or parent or guardian sign.

The nurses double-check for a signature on the consent form in the pre-op waiting area and again as the patient actually enters the operating room. **Green v. Teter, 2005 WL 43425 (Kan. App., January 7, 2005).**

Informed Consent: Court Accepts Nurse's Testimony That Patient Consented.

A written consent to surgery signed by the patient is the accepted practice, but it is not absolutely required.

When there is written consent to a medical or surgical procedure signed by the patient, the signed consent form creates a legal presumption that the patient actually consented to the surgery.

The patient has the difficult burden of proof to convince the jury that the patient, although he or she signed the form, did not actually understand the procedure or actually consent.

When there is no written consent signed by the patient, the medical caregivers have the burden of proof to convince the judge or jury that the patient was fully informed of the nature and purpose of the procedure, allowed to ask questions, had questions answered and fully understood the benefits and risks of the procedure.

The nurse testified the doctor did explain the procedure in detail and the patient did not indicate she did not consent.

COURT OF APPEAL OF LOUISIANA
January 11, 2005

The Court of Appeal of Louisiana upheld the jury's finding of no liability by the hospital where the patient had her surgery or by the physician who performed the surgery.

Patient Did Give Informed Consent

One of the legal complications in the case was that the patient did not sign the surgical consent form prior to the procedure. One of the allegations in the patient's lawsuit was that she did not understand the possible complications and did not agree to go forward with procedure with fully informed acceptance of the fact certain complications were possible.

The practice at the hospital was for the physician to explain the procedure, risks, benefits and possible complications, allow the patient to ask questions and then leave the form for the patient to sign in the nurse's presence.

The form was not signed and the nurse could not explain why.

However, the judge permitted the nurse to testify she did hear the physician give a full explanation and allow the patient to ask questions and the patient did not communicate any disagreement with going forward.

Signed Consent Form Puts Burden of Proof on the Patient Lack of Informed Consent

A signed consent for, although by far the preferred course, is not absolutely required.

To limit patients' lawsuits claiming lack of informed consent most states have enacted statutes stating that a signed consent form, if it itemizes all the required disclaimers and is signed by the patient, creates a legal presumption that the patient did in fact give informed consent.

A signed consent form makes it a difficult uphill battle for the patient to prove the patient did not consent, rather than the caregivers having to prove the patient did consent, as in this case. **Siliezar v. East Jefferson General Hosp., __ So. 2d __, 2005 WL 57300 (La. App., January 11, 2005).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Scope Of Practice: Court Says Psychiatric Nurse Practitioner Can Testify As Expert For Involuntary Administration Of Medications.

The New York Supreme Court, Oneida County, has ruled that a psychiatric nurse practitioner's testimony can be recognized on the same footing as a medical doctor's testimony with reference to a court's decision to administer a psychiatric medication (lithium) involuntarily to a mental-health patient.

Involuntary Use of Psych Meds Requires Court Order

In general, psychiatric medications can be administered to a patient involuntarily only by court order. Even if the patient is being held involuntarily under court order, any decision to administer any medication must be specifically considered and ruled upon by the court.

The court is required to base its decision on competent expert medical testimony as to the patient's diagnosis and how the proposed use of a specific psych medication is narrowly tailored to meet the patient's needs and is in the patient's best interests. The court must also have expert testimony about possible side effects.

The psychiatric nurse practitioner in this case has a state license and a collaborative practice arrangement with a physician at the state hospital. She also has practiced in a private hospital and in a private psychiatric practice and has her own private psychiatric therapy practice.

She has a masters in nursing and a doctorate in holistic medicine.

The most important point for the court was that psychiatric nurse practitioners have authority to prescribe medications. By law they are considered competent to make the underlying diagnoses indicating specific medications.

This nurse practitioner, the court pointed out, was in daily contact with her patients and would be able closely to observe the therapeutic effects and/or side effects of medications she was authorized to give. The court believed it would be highly appropriate to make use of her expertise in rendering treatment decisions. **Matter of Mohawk Valley Psychiatric Center, 2004 WL 3048644 (N.Y. Super., December 28, 2004).**

Nursing Home Admissions: Court Says Adult Son Is A Proper Party To Sign On Resident's Behalf.

The Court of Appeals of Texas ruled recently that an adult son of an elderly Alzheimer's patient had full legal authority to sign the nursing-home admission documents on the patient's behalf.

That meant that the agreement to go to arbitration rather than file a civil lawsuit would trump the lawsuit the family had filed on the patient's behalf against the nursing home alleging substandard care, neglect and abuse.

Who Can Legally Sign For An Incapacitated Patient?

The important lesson from the case is that personnel who handle nursing home admissions should make themselves aware of their own state laws governing who can legally sign admission documents on a resident's behalf.

State law expressly states that an adult child who has the consent of the other adult children can sign nursing home admission documents on behalf of an adult nursing home patient who is comatose, incapacitated or otherwise incapable of communication.

This rule applies to a contractual agreement to submit disputes to arbitration rather than suing in court.

COURT OF APPEALS OF TEXAS
MEMORANDUM OPINION
December 22, 2004

Sometimes the resident is not fully competent to sign legal contracts, but there has been no legal guardian appointed by a court.

The patient's spouse, if the spouse is not incapacitated, would have precedence over any of the adult children.

As in this case, state law will usually allow an adult child to sign binding legal contracts on behalf of the incapacitated resident if it appears at the time he or she is signing that the adult child is acting with the consent of all the other adult children.

Next in line would be another relative, friend or other person who was given authority by the patient to act before the patient became incapacitated. **In re Ledet, 2004 WL 2945699 (Tex. App., December 22, 2004).**