# LEGAL EAGLE EYE NEWSLETTER

*For the Nursing Profession*

February 2006 Volume 14 Number 2

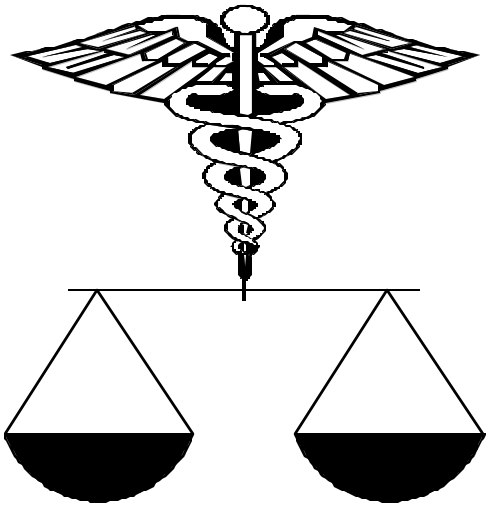

# Home Health: Nurse Has Firefighters Break Into Patient's Home, Trespass Suit Nixed.

After she was discharged from the hospital in frail health with a recently fractured hip and other medical issues, the patient signed a contract to receive in-home care from a visiting nurse association.

The contract gave express permission to the association, *"... for authorized personnel of the [Association] to perform all necessary procedures and treatments as prescribed by [her] physician for the delivery of home health care."*

The visiting nurse who was assigned to care for the patient needed to see her over the weekend. On Friday her physician changed her medication. Also, it was believed the son who normally lived with her would be out of town, leaving her alone in the house. The nurse phoned and got no answer. The next day she phoned again and got no answer, so she went over to the house and knocked on the front and back doors. She got no response except that she might have heard someone moaning inside the house.

She called her supervisor, then called the local police. The police had the fire department come and take off the back door. The nurse, fire and police entered the house and found the lady to be OK.



***The consent form the patient signed allowed the nurse to take all reasonable and necessary steps to secure her health and safety.***

***The court wonders about the legal repercussions if the nurse had ignored the signs of danger and the patient was indeed lying injured inside her home.***

UNITED STATES DISTRICT COURT
CONNECTICUT
December 16, 2005

**Consent is a Legal Defense To Civil Trespass**

The US District Court for the District of Connecticut was sharply critical of the civil trespass lawsuit the patient's son filed against the visiting nurse and the local town government. The court dismissed the case.

First, only the legal owner or a tenant with a legal lease can sue for civil trespass. Strictly speaking it was the mother's home and not the son's.

Second, the law defines civil trespass as entry upon the property of another without authorization or consent. Authorization or consent, by law, is a complete defense to civil trespass.

The admission paperwork the patient had signed gave the visiting nurse authorization and consent to take all reasonable and necessary steps to protect the patient's health and safety.

The court was mindful of the dire consequences to the patient and the legal liability that could have resulted if the nurse had not taken the initiative.

Under the circumstances, the police and fire personnel also acted properly in what appeared to be an emergency, based upon what the patient's nurse had told them. **Rovaldi v. Courtemanche, 2005 WL 3455131 (D. Conn., December 16, 2005).**

## Inside this month's issue ...

**February 2006**


Legal Issues For Nurses on VHS/DVD
See Page 3

# Child Abuse: E.R. Triage Nurse Cleared Of Allegations She Failed To Spot The Signs.

The mother brought her seven week-old infant to the E.R. and reported a "cracking" noise in his chest and back while feeding him.

The E.R. nurse's assessment showed scratches and dried secretions on his nose and a temp of 100.3º. He was active and alert with good color. The E.R. physician got a radiologic babygram, which was read the next day as unremarkable. On discharge the nurse found the infant active and playful.

Three days later the infant was brought back in critical condition and died from shaken impact syndrome, that is, abuse suffered at the hands of his father.

***A healthcare provider can be held responsible in a civil lawsuit for further injury caused by the provider's failure to assess and report signs of child abuse as required by law.***

APPEALS COURT OF MASSACHUSETTS
December 27, 2005

The Appeals Court of Massachusetts ordered dismissal of the civil lawsuit the mother had filed against the E.R. physician, the radiologist and the E.R. nurse.

Healthcare providers have a solemn duty to report signs of child abuse at once to the proper legal authorities. They can be held liable for payment of damages in civil court if they fail in that duty.

However, there was no basis to fault them in this case, the court ruled. **Souza v. Tower, 2005 WL 3536200 (Mass. App., December 27, 2005).**

# Home Health: CMS To Require Electronic Submission Of OASIS.

PART 484--HOME HEALTH SERVICES

Section 484.20 Condition of participation: Reporting OASIS information.

* * * * *

(a) Standard: Encoding and transmitting OASIS data. An HHA [home health agency] must encode and electronically transmit each completed OASIS assessment to the State agency or the CMS OASIS contractor, regarding each beneficiary with respect to which such information is required to be transmitted (as determined by the Secretary), within 30 days of completing the assessment of the beneficiary.

* * * * *

(c) Standard: Transmittal of OASIS data. An HHA must--

(1) For all completed assessments, transmit OASIS data in a format that meets the requirements of paragraph (d) of this section.

(2) Successfully transmit test data to the State agency or CMS OASIS contractor.

(3) Transmit data using electronics communications software that provides a direct telephone connection from the HHA to the State agency or CMS OASIS contractor.

(4) Transmit data that includes the CMS-assigned branch identification number, as applicable.

On December 23, 2005 the US Centers for Medicare and Medicaid Services (CMS) announced that effective June 21, 2006, home health agencies must, as a condition of Medicare participation, follow CMS's procedures for electronic collection, encoding and transmission of Outcome and Assessment Information Set (OASIS) patient data.

HCFA adopted OASIS in January, 1999, and in June, 1999, began working on a proposal for electronic transmission.

The electronic collection, encoding and transmission requirement finally does become mandatory on June 21, 2006.

Further information is available on the CMS website at http://www.cms.hhs.gov/oasis That web page contains information for downloading or obtaining a CD with the necessary software. The same information is contained in CMS's 12/23/05 announcement published in the Federal Register, which we have placed on our website at http://www.nursinglaw.com/oasis3.pdf

The complex history of this development can be reviewed by looking at http://www.nursinglaw.com/oasis.htm and http://www.nursinglaw.com/oasis2.htm

FEDERAL REGISTER December 23, 2005
Pages 76199 – 76208

# Recreational Activity: Did This Elderly Person Assume The Risk?

The recreation coordinator set up a makeshift bowling alley in the adult daycare center with plastic bowling pins and a five-pound rubber ball.

An eighty-five year-old Russian immigrant had never bowled before. She fell, twisted her ankle, and then sued.

The New York Supreme Court, Appellate Division, found fault with the very generic safety warning given to participants to "wear comfortable shoes."

This participant would not have known not to wear 1 1/4 inch heels and would not have known that it is customary to wear bowling shoes when bowling.

By law, a participant in a recreational activity assumes the risk of injury, and the premises owner or promoter is not legally liable, if and only if the participant, unlike this lady, was able to appreciate the danger involved. **Kremerov v. Forest View Nursing Home, Inc., __ N.Y.S.2d __, 2005 WL 3485838 (N.Y. App., December 19, 2005).**

# Post-Surgical Care: Nurses Did Not Give Anticoagulant, Court Blames Nurses For Embolus.

The patient was admitted for skilled nursing care following surgical removal of a lipoma from her thigh.

Twenty days later, while still under the facility's care, she died from a pulmonary embolus.

Two different lawsuits were filed by two different family members. The Court of Appeals of Texas waded through the novel legal technicalities posed by that situation and agreed in the one case still pending to accept the medical expert reports that had been filed in the other.

The medical experts linked the patient's death directly to the fact the facility's nurses had failed to implement anticoagulant drug therapy as outlined by the treating physician in his admission orders.

Not only was that a breach of the legal standard of care for nurses caring for a post-surgical patient, the court believed, but there was a direct link to the patient's death from a pulmonary embolus, the outcome that was sought to be avoided by the anticoagulants. **Manor Care Health Services, Inc. v. Ragan, __ S.W. 3d __, 2006 57355 (Tex. App., January 12, 2006).**

***To testify as an expert in a healthcare malpractice lawsuit, a witness must be practicing health care in a field that involves the same type of care or treatment and must have knowledge of the accepted standards of care.***

***A physician is not disqualified from testifying against nurses, just because the physician is not a nurse, if the physician is familiar with nursing standards.***

COURT OF APPEALS OF TEXAS
January 12, 2006

# CMS: Quarterly Medicare/Medicaid Listings Available.

On December 23, 2005 The US Centers for Medicare and Medicaid Services (CMS) published in the Federal Register a compilation of CMS manual instructions, substantive and interpretive regulations and other notices for July, August and September, 2005, for the Medicare and Medicaid programs.

CMS and its predecessor HCFA have been doing this quarterly for many years.

In addition to outlining all the regulatory changes which have recently occurred, CMS provides instructions how to obtain the basic manuals used by participating facilities and by administering state agencies.

Obviously this is a huge amount of information. We have placed CMS's 12/23/05 Federal Register announcement on our website at http://www.nursinglaw.com/cmsprograms.pdf

FEDERAL REGISTER December 23, 2005
Pages 76290 – 76313

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


Indexed in
Cumulative Index to Nursing & Allied Health Literature™

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

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

# Labor Law: Court Says Mandatory Flu Vaccinations Are Not Allowed By Union Contract With Nurses.

The hospital's attempts to encourage its nurses to get flu vaccinations resulted in only 55% compliance, so hospital management decided to require flu vaccinations for all of its nurses as a fitness-for-duty requirement for their jobs.

The hospital held back during the flu vaccination shortage of 2004 and put its new policy into effect for the 2005 flu season. The nurses' union objected and the dispute was referred to binding arbitration. The arbitrator ruled for the union. The US District Court for the Western District of Washington turned down the hospital's appeal and upheld the arbitrator.

**Management Rights Clause**

The court pointed out that the collective bargaining agreement between the hospital and the nurses' union contained very typical generic language known as a management-rights clause.

The court, however, sided with the arbitrator's, and not with the hospital's interpretation of the management-rights clause. It allows management unilateral authority over the hospital's business affairs and patient-care standards but does not apply to personnel policies. Personnel policies have to be ironed out in negotiations between labor and management. Personnel policies cannot be dictated unilaterally by management, the court said.

**Zipper Clause**

The agreement contained still more generic legal language known as a zipper clause, which says that matters not discussed in negotiations are not covered by the agreement. The arbitrator and the court agreed the accepted principle for interpreting a zipper clause is not to give management unilateral discretion but to require negotiation of novel personnel issues which come up while a contract is in effect. **Virginia Mason Hosp. v. Washington State Nurses Assn., 2006 WL 27203 (W.D. Wash., January 5, 2006).**

***The nurses' union did not agree with the hospital's interpretation that the collective bargaining agreement with the nurses permitted the hospital to require flu vaccinations for nursing personnel.***

***The dispute went to an arbitrator, following the widespread practice that labor/management disputes must go to arbitration.***

***The agreement does not deal explicitly with the issue. The arbitrator ruled that the generic management rights and zipper clauses in the collective bargaining agreement pertained only to business operations and patient-care standards and did not grant the hospital unilateral authority to impose personnel standards that should be ironed out through collective bargaining.***

***There is no public policy in this country articulated in our public laws and government regulations that nursing personnel have to have flu vaccinations to work in a hospital.***

UNITED STATES DISTRICT COURT
WASHINGTON
January 5, 2006

# Stroke: Nursing Standard Of Care Articulated By Court.

The patient suffered a stroke and was taken to the hospital.

The emergency department triage nurse examined the patient and made note of his chief complaint as, "altered mental status." Another nurse in the emergency department documented that he, "could not verbalize comprehensible words ... [and] had right-hand weakness – flaccid."

According to the US District Court for the Southern District of Texas, neither nurse made the physician aware of his signs and symptoms or contacted the Stroke Team, a specialized team of physicians that were available.

The patient's stroke was not diagnosed until the next morning, and the patient has permanent neurological damage from the stroke.

**Expert Opinions**
**Nursing Standard of Care**

In its recent ruling the court covered only a preliminary question. The court ruled the patient's attorneys did in fact file reports from their medical experts which correctly stated the legal standard of care for the nurses involved in this case:

A nurse should be able to recognize presenting signs and symptoms of an acute stroke. The nurse's systematic ongoing neurological assessment should monitor changes, i.e., level of consciousness, pupil size and reactivity, ability to speak, extremity mobility and sensation.

Vital signs should be taken on admission and q 15 minutes.

Emergency room personnel, physicians or nurses, should recognize that an aphasic patient with right-handed weakness shows signs of stroke, recognize that a history of hypertension leaves a patient more vulnerable to stroke, perform an NIH Stroke Scale exam and notify the Stroke Team so that more qualified medical personnel can evaluate treatment options. **Young v. Memorial Hermann Hosp., 2006 WL 39102 (S.D. Tex., January 4, 2006).**

# Alzheimer's: Nurses Not Liable For Progression Of Condition.

The family hired a specialized geriatric home-health agency to care for the eighty-seven year-old Alzheimer's patient in her home.

Over the course of four years the patient's condition deteriorated significantly and she died. The family filed a lawsuit against the geriatric services provider for nursing negligence, claiming that mismanagement and neglect of her case resulted in her demise.

***Alzheimer's disease is a progressive form of dementia. As the disease destroys the patient's brain cells the patient gradually loses control over memory, judgment and basic bodily functions.***

***Progressive physical wasting and mental lethargy are usual components of the disease process.***

COURT OF APPEALS OF TEXAS
December 14, 2005

The Court of Appeals of Texas agreed with the jury which heard the case in the county circuit court. The jury's verdict found no nursing negligence and no cause-and-effect link between the nursing care and the patient's overall decline and eventual death from Alzheimer's.

The court, in finding that this patient got the best of care, commented that the average Alzheimer's patient is on 18 different medications. This patient, on only 5, was certainly not being over-medicated. **Mann v. Geriatric Services, Inc., 2005 WL 3445987 (Tex. App., December 14, 2005).**

# Nurse Cannot Stand, Walk Long Periods: Court Discusses Reasonable Accommodation.

***Failure to offer reasonable accommodation is disability discrimination for which an employee can sue.***

***The court looks at the US Equal Employment Opportunity Commission (EEOC) Guidelines in evaluating a nurse's employer's efforts toward reasonable accommodation.***

***The EEOC Guidelines are available on the Internet at http://www.eeoc.gov/policy/docs/accommodation.html***

***The relevant points for this case are:***

***1. An employer is not required to create a new position for an employee who becomes disabled.***

***2. An employer is not required to give a position to a disabled employee for which the employee is not qualified.***

***3. An employer is not required to train a disabled employee for a position for which the employee is not qualified.***

***4. An employer is required to give a disabled employee preference over outside applicants for a position for which the employee is qualified.***

UNITED STATES DISTRICT COURT
OREGON
December 5, 2005

A hospital staff nurse suffered from a progressively worsening problem with the plantar fascia in his feet. Unsuccessful corrective surgery eventually left him medically restricted from standing or walking more than fifteen minutes at a time.

As his condition was deteriorating, but before he was significantly disabled, he started to explore his options for getting off his feet. His hiring manager offered to create a "telephone triage" position for him, but he turned it down because it would pay less than staff nursing.

When he could no longer work as a staff nurse he asked about one of the new "telephone advice" positions which the hospital had created in the interim, but they turned him down because the new job description formulated by human resources required prior telephone interactive experience with patients.

The US District Court for the District of Oregon is still sorting through the issues and has not made a judgment whether disability discrimination occurred.

**Employers Must Engage In Interactive Communication Process With Employees Who Become Disabled**

The court's discussion focused on the legal concept referred to as the interactive process. It means that employers have the legal obligation to reach out and to communicate as openly and fully as possible with employees who have come forward and asked for help to accommodate their disability-related needs.

This nurse was just told to go online, look at the hospital's job postings and apply for something he thought was suitable.

The court, however, said the hospital had an obligation to reach out and work with him to iron out what was really going with "telephone triage" *versus* "telephone advice" to see if there was a job he could do. **Thornton v. Providence Health System-Oregon, 2005 WL 3303944 (D. Or., December 5, 2005).**

# Pre-Completion Of Patient Charting: Nurse Can Be Fired For Misconduct.

At the beginning of his ten-hour shift an LPN pre-completed a patient's chart stating he had given morphine at 4:00 a.m. and 6:00 a.m.

However, the patient died at 3:15 a.m. before either dose of morphine could have been given.

The nurse was fired for violation of the facility's policies and applicable state regulations.

***Misconduct justifying termination is willful, intentional disregard of the employer's interests, deliberate violation of the employer's reasonable rules or disregard of a standard of behavior which the employer has the right to expect of employees.***

SUPREME COURT OF IDAHO
December 28, 2005

The Supreme Court of Idaho upheld his firing.

The court pointed to the nursing home's policies and procedures manual which required nurses to initial each medication in the correct box on the Medication Administration Record as each medication was poured.

That is, the facility's manual said explicitly that entries were to be made on the MAR as medications were actually being placed in the patients' medication cups. There was no room for deviation from the policy manual, the court said, based on a nurse's own judgment how to save time on a busy work shift. **Kivalu v. Life Care Centers of America, __ P. 3d __, 2005 WL 3535063 (Idaho, December 28, 2005).**

# Incontinent Patients Not Changed: Aide Can Be Fired For Misconduct.

One of the aide's regular duties at the hospital was changing the clothing and bedding of incontinent patients who had wet themselves.

The aide was instructed by her supervisor to change the clothing and bedding of four such incontinent patients who had called for assistance, before going on her break.

The aide changed one of the four patients and went on her break without changing the other three.

The aide was fired for insubordination.

The New York Supreme Court, Appellate Division, upheld her termination. That is, the court affirmed the decision of a hearing referee in the state Department of Labor that the aide was not entitled to unemployment benefits, as she had been terminated for just cause.

***Acts of insubordination consisting of failure to complete work assignments as directed can be considered conduct justifying termination.***

NEW YORK SUPREME COURT
APPELLATE DIVISION
December 29, 2005

According to the court, despite previous warnings concerning her insubordinate behavior the aide disregarded her supervisor's direct orders to change her patients before going on her break. A court is especially likely to see misconduct justifying termination when a caregiver compromises patients' safety and welfare. **Claim of Volmar, __ N.Y.S.2d __, 2005 WL 3543752 (N.Y. App., December 29, 2005).**

# Licensing: Court Limits Nurses' Rights While Under Investigation.

A registered nurse's former employer had filed a complaint against her with her state board of nursing.

The nurse then experienced problems applying for employment. When prospective employers doing routine background checks contacted the state board to verify her license, they were told her license was "red flagged" as she was under investigation for pending allegations of professional misconduct.

The nurse sued the state board of nursing under the Federal civil rights laws for violation of her Constitutional rights.

***The state board is not responsible for any adverse inferences which others may draw from the mere fact that a complaint has been filed. Nothing false or defamatory has been publicized by the board.***

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
December 1, 2005

The US Circuit Court of Appeals for the Eighth Circuit ruled the nurse's rights were not violated by the practice of the state board of telling prospective employers that a nurse is under investigation, even while taking more than one year in some cases to obtain the evidence, hear the case and make a ruling.

According to the court, it is not wrong for the board to disclose the existence of a pending investigation so long as no false or unproven allegations against the nurse are communicated to a prospective employer. **Neal v. Fields, __ F. 3d __, 2005 WL 3208664 (8th Cir., December 1, 2005).**

# Arbitration: Nursing Home's Arbitration Clause Upheld, Enforced.

An elderly early-Alzheimer's patient was accompanied by her daughter when admitted to a nursing home for respite care. Suffering from hand contractures, she had her daughter sign the admission paperwork for her, which included an arbitration agreement.

She later sued the nursing home for injuries not specified in the court record.

***The patient was in a sound bargaining position. She was entering the facility voluntarily. It was not an emergency and no pressure was placed on her.***

COURT OF APPEALS OF OHIO
December 21, 2005

The Court of Appeals of Ohio upheld the arbitration agreement over the patient's attorney's objections.

The patient was subject to bouts of confusion, but she was lucid at the moment in time when she allowed her daughter to sign the paperwork in her presence.

It was not an emergency admission. There was no pressure on the patient or her daughter to sign the papers. They had the option to refuse to sign the arbitration agreement and go to another facility if the nursing home refused to negotiate over the issue of arbitration.

The arbitration agreement itself nominated a specific alternative dispute resolution service to act as arbitrator whose procedural ground rules would apply, but the agreement did not attempt to limit the amount of damages the patient or family could recover through an arbitrator's ruling. **Broughsville v. OHECC, LLC, 2005 WL 3483777 (Ohio App., December 21, 2005).**

# Arbitration: Nursing Home's Arbitration Clause Thrown Out, Ruled Unenforceable.

***An arbitration agreement in nursing-home admission papers is subject to the same legal rules of interpretation as any other contract.***

***When any contract is found to be unconscionable, the court can decline to enforce it.***

***To determine whether an arbitration agreement is unconscionable, the court looks at the agreement's procedural and substantive aspects.***

***That is, the court looks at the circumstances surrounding the signing of the contract to see if the circumstances were fair, equitable and reasonable, or if one side unduly took advantage of the other.***

***Did the patient and/or the family have a reasonable opportunity to understand the terms of the agreement and did they have a realistic choice whether or not to accept it?***

***The court also looks at the agreement itself.***

***Does the agreement attempt to limit the patient's or family's basic legal rights that are guaranteed by law?***

DISTRICT COURT OF APPEAL
OF FLORIDA
December 21, 2005

While residing in a nursing home the patient contracted a urinary tract infection which caused his death.

The patient's daughter, as personal representative of his probate estate, filed a lawsuit against the nursing home for negligence. The nursing home countered the lawsuit by demanding that the court stop all legal proceedings in court and refer the case to binding arbitration by an out-of-court arbitrator in accordance with the arbitration agreement contained in the patient's admission paperwork.

The District Court of Appeal of Florida looked at the circumstances surrounding the signing of the paperwork, looked at the arbitration agreement itself, threw out the arbitration agreement, and put the lawsuit back on track for a civil jury trial in the local county circuit court.

**Circumstances of Signing Court Sees Unfairness**

According to the court, the patient's daughter was hurried into signing numerous documents which were not explained to her, while her father was en route to the facility, which she was told were necessary before her father could be admitted.

**Agreement Tried To Limit Basic Legal Rights**

The court observed that the nursing home residents' rights laws amount to a legislative statement of public policy against abuse and neglect of vulnerable adults residing in nursing homes. The right of such persons to bring legal claims against nursing homes is intended to help protect this vulnerable population.

It is not appropriate, the court ruled, for a nursing home to attempt to limit the full range of legal remedies the law gives to its residents. The nursing home was wrong to have a resident's representative sign a contract limiting damages for negligence to $250,000. No such limitation exists in the state nursing home residents' rights statute. **Prieto v. Healthcare and Retirement Corp. of America, __ So. 2d __, 2005 WL 3479850 (Fla. App., December 21, 2005).**

LEGAL EAGLE EYE NEWSLETTER
*For the Nursing Profession*

# MRI: Ferrous $O_2$ Tank Drawn In By Magnet, Kills Pediatric Patient.

The case involved an incident that occurred at a magnetic resonance imaging facility.

A six year-old boy was sedated by an anesthesiologist and placed in the MRI machine.

Upon realizing that the boy was not receiving oxygen, the anesthesiologist called to the MRI technicians to attend to the oxygen supply. Hearing the call for oxygen, a nurse passing in the hallway outside the MRI scanner room attempted to hand the anesthesiologist an oxygen tank made of ferrous material, which was drawn into the MRI machine by the strong magnetic field. The oxygen tank struck the boy's head and killed him.

The recent opinion of the New York Supreme Court, Appellate Division, only ruled out the parents' claims for punitive damages. **Colombini v. Westchester County Healthcare Corp., __ N.Y. S.2d __, 2005 WL 3543186 (N.Y. App., December 27, 2005).**

# Unknown Patient's Remains: Court Says Hospital Is Not Liable For Family's Emotional Distress.

The thirty-two year-old patient was brought in by ambulance after an apparent asthma attack. The patient's mother, also living at the motel, did not go along to the hospital but stayed behind to care for the patient's child.

The patient died at the hospital. After it took more than a month to learn from the hospital what happened to her daughter, the mother sued for mental anguish and emotional distress.

The Superior Court of New Jersey ruled the hospital was not to blame. The hospital had turned the unidentified patient's remains over to the coroner within twenty-four hours as required by law and at that point the case was solely the coroner's jurisdiction and responsibility. **Taylor v. Jersey City Medical Center, 2005 WL 3501877 (N.J. Super., December 22, 2005).**

# Nurse Tells Patient He Might Have Lung Cancer: Court Discusses Liability For Patient's Suicide.

The US District Court for the Western District of Missouri has not yet ruled definitively whether the Federal government will be liable because a VA Hospital nurse told a patient he might have lung cancer, apparently triggering his suicide.

The court has agreed to take into consideration the family's psychiatric expert's report and the court has ruled out the summary judgment of dismissal demanded by the US Attorney.

According to the court record, a nurse told the patient over the phone that they wanted him to come in for x-rays because they thought he had lung cancer.

The patient, under considerable emotional duress, said he might as well take a bottle of sleeping pills and get it over with and said that the VA was just using him as a guinea pig.

***The court will take into consideration an expert medical report stating that a paranoid schizophrenic should not be flatly told over the phone that he has lung cancer.***

***A schizophrenic patient can rapidly decompensate under stress, become completely irrational and carry out acts that are the result of highly disturbed thought processes.***

UNITED STATES DISTRICT COURT
MISSOURI
December 20, 2005

The patient then shot himself. The family sued for wrongful death.

The family's lawyer's medical expert, a psychiatrist, gave his opinion that the patient was schizophrenic and that schizophrenics when under stress are prone to profound decompensation in their thinking and impulse control.

The psychiatrist went on to say that being told he had lung cancer most likely drove this patient into a state of insanity that deprived him of the capacity to control his own behavior.

Under an insane delusion, induced by the nurse's actions, the man took his own life, according to the expert's report. **Lentz v. US, 2005 WL 3478145 (W.D. Mo., December 20, 2005).**