LEGAL EAGLE EYE NEWSLETTER

February 2007 *For the Nursing Profession* Volume 15 Number 2

Terrorist Threat: Nurse Broke Psych Patient's Confidentiality By Phoning Secret Service.

In her report the day nurse warned the p.m. nurse to watch carefully a certain psych patient of Middle-Eastern descent who had been verbalizing threats about the US President and government facilities and property.

The patient was being held involuntarily on a locked psychiatric unit, but he had phone privileges.

That evening he got on the phone and began speaking in an agitated tone in English and in Arabic about himself and his friends killing the President and blowing up petroleum facilities on the Texas Gulf coast.

The nurse phoned a nursing supervisor and the assistant hospital administrator at their homes, then phoned the US Secret Service. She told an agent what the patient was saying and then apparently went on to elaborate on his psychiatric issues and the fact he was being held for involuntary treatment.

The next day the hospital administrator found out what happened. After conferring with the hospital's attorney he terminated the nurse for violation of patient confidentiality. She sued.

The US Court of Appeals for the Fifth Circuit ruled the nurse had inexcusably violated the patient's rights and the hospital's policy, notwithstanding her own right to freedom of speech.

The nurse had the right to speak up on a sensitive subject of public concern.

The hospital had the right to protect the patient's right to medical confidentiality.

Under the circumstances, the hospital's and patient's rights are paramount.

The nurse should have gone through proper channels.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
December 18, 2006

Hospital's Patient-Confidentiality Policy

The hospital's policy was put there to protect the patient's right to confidentiality. The policy allowed confidential information to be released to outside parties by a hospital employee (other than the hospital administrator) only with the patient's express written consent.

The hospital administrator, and only the hospital administrator, could authorize release of confidential information without the patient's express consent, if, after consultation with legal counsel, it was deemed to be required by law.

Nurse Must Not Go Outside Chain of Command

The nurse conferred with a nursing supervisor and with the assistant administrator, but that did not amount to compliance with hospital policy, the court said.

A proper balance can be achieved between patients' rights, hospitals' liability concerns and the right of the public to speak out on subjects of public concern only if hospital employees follow established hospital confidentiality policies in these sensitive situations, the court ruled.

The nurse should have contacted the administrator, per hospital policy, and left it to the administrator to decide what to do. **Davis v. Allen Parish Service District, 2006 WL 3780540 (5th Cir., December 18, 2006).**

Inside this month's issue ...

February 2007

New Subscriptions
See Page 3

Same-Sex Sexual Harassment: Court Sees Basis For Suit.

An LPN was terminated after she failed to report or call in to her job at an assisted living community. She filed a multi-count civil lawsuit for sexual harassment, disability discrimination and retaliation.

The allegations of sexual harassment centered on offensive language and physical contact from a lesbian co-worker.

Same-sex sexual harassment is grounds for a lawsuit if it is severe enough to create a sexually hostile work environment.

Offensive sexual language is generally not enough to create a hostile work environment, but unwelcome sexual physical contact generally crosses the line.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
January 2, 2007

The US Court of Appeals for the Seventh Circuit could only find evidence to support the sexual-harassment claim and not the other allegations of the lawsuit.

The LPN at least three times complained to her supervisors by naming her co-worker and describing what was happening, yet nothing was done.

The co-worker's sexual innuendo and propositioning were probably not severe enough to create a hostile environment, the court said, but unwelcome sexual physical contact, as a general rule, crosses the line and is grounds for a valid sexual harassment lawsuit. **Kampmier v. Emeritus Corp., __ F. 3d __, 2007 WL 6072 (7th Cir., January 2, 2007).**

Worker's Comp: Violation Of Safety Rule Can Bar Right To Compensation.

A nursing assistant working in a nursing home injured her lower back while attempting to lift a patient from a chair to bed alone without assistance.

The nursing home had a buddy-system lifting rule which required two employees to work together when turning, pulling, positioning or lifting a resident.

Safety Rules Protect Staff and Residents

The aide applied for worker's compensation benefits for her back injury. Her claim was turned down by the nursing home on the basis that her injury was due to intentional violation on her part of an established work-safety rule.

The employer has to prove the employee knowingly violated a work-safety rule without any justification.

Otherwise the employee can still collect.

COURT OF CIVIL APPEALS OF ALABAMA
January 12, 2007

The Court of Civil Appeals of Alabama ruled the aide was nonetheless eligible for worker's compensation.

The court agreed with the nursing home, in general, the law says an employee is not entitled to worker's comp for an on-the-job injury resulting from intentional violation of a work-safety rule.

However, the employer has the burden of proof to establish that the employee acted knowingly, willfully and without justification, which is almost impossible to prove. If the employee was injured just due to carelessness, the employee can still get worker's compensation. **Coosa Valley Health Care v. Johnson, __ So. 2d __, 2007 WL 80506 (Ala. Civ. App., January 12, 2007).**

Chest Pains: Nurse Should Have Notified Physician.

The patient came to the hospital with a laceration to his forehead. After the cut was treated he was admitted to the hospital for observation overnight.

During the night he complained to his nurse he was having chest pains.

The nurse gave him five separate doses of nitroglycerin through the night without obtaining a physician's order and without even consulting with a physician.

The next morning his own physician came in, learned he had been having chest pains, decided he had had a myocardial infarction and had him transferred to the ICU at another hospital, where he passed away later that day.

Angina suggests a myocardial infarction.

Myocardial infarction requires prompt medical intervention starting with an EKG, cardiac enzymes and a cardiology consult.

DISTRICT COURT OF APPEAL
OF FLORIDA
January 10, 2007

The District Court of Appeal of Florida ruled there were grounds for a negligence lawsuit against the hospital for the nurse's errors and omissions.

The sticking point was that the patient's estate's medical expert's report only referred to the hospital's nursing and medical staffs in general terms without saying exactly who did or did not do what.

The court ruled that was not a fatal flaw for the lawsuit. The general idea did come through that there was a failure to obtain immediate medical follow-through for possible symptoms of a myocardial infarction in progress. **Michael v. Medical Staffing Network, Inc., __ So. 2d __, 2007 WL 57604 (Fla. App., January 10, 2007).**

Psych Triage: Nurse Ruled Not At Fault.

During a violent argument the patient's boyfriend tried to shoot her, but the gun misfired. Then she tried to stab herself, but the boyfriend took the knife away, called 911 and reported she had tried to commit suicide.

The police came and took her to an acute-care hospital. The triage nurse attempted to assess the urgency of her condition. She took vital signs and noted her allergies and medications. The patient persistently denied any suicidal intention or recent suicidal behavior.

The nurse phoned a physician who said to call in the licensed mental-health counselor on the hospital staff. The counselor arrived at 2:00 a.m., assessed her risk of self-harm as low and, after consulting with the physician, decided not to start the involuntary commitment process.

Two days after being released she shot herself. The US Circuit Court of Appeals for the Eleventh Circuit agreed with the hospital's psych nursing expert the nurse complied fully with the nursing standard of care for this situation. **Kinchen v. Gateway Community Service Board, 2006 WL 3803014 (11th Cir., December 28, 2006).**

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Sign-Language Interpreters: Court Wrestles With Patient's Disability-Discrimination Suit.

Federal regulations say that in determining what is necessary the facility should give primary consideration to the requests of the disabled individual.

The courts have not made it crystal clear whether a certified sign-language interpreter is always necessary, as opposed to a staff member who has some familiarity with signing.

The Americans With Disabilities Act requires medical facilities to accommodate a hearing-impaired patient's disability.

A hearing-impaired patient is entitled to be able to communicate with caregivers as effectively as a non-disabled person can.

The facility must provide necessary auxiliary aids and services to promote communication with hearing-impaired patients.

UNITED STATES DISTRICT COURT
WASHINGTON
December 18, 2006

The patient came to the emergency room with abdominal pain that would eventually be linked to post-surgical complications from an appendectomy done at another hospital a few weeks earlier.

It took a couple of hours to get a certified sign-language interpreter to come to the emergency room, but once the interpreter arrived the patient was assessed, examined and admitted with no problem.

The next day, however, the medical and nursing staff tried to go ahead with the pre-surgery consult using handwritten notes and a makeshift set-up with TTY-equipped phones, then located a staff member with some ability at signing.

All the while the patient insisted, through a hearing friend, that they get a certified interpreter. The hospital finally called an agency for a certified interpreter.

The patient nevertheless checked himself out AMA while the certified interpreter was still en route. He went back to the hospital where he had had his appendectomy, where the first hospital was able to re-direct the interpreter they had called, admitted himself and had surgery the next day with no further medical complications.

The US District Court for the Western District of Washington ruled the patient could collect damages for pain and suffering for the time frame while the surgery consult went ahead with hospital personnel refusing to provide the accommodation the patient demanded, but only until he checked himself out AMA. **Abernathy v. Valley Medical Center, 2006 WL 3754792 (W.D. Wash., December 18, 2006).**

Ingestion Of Controlled Substance: Nurse Ruled Not Liable For Death Of Detainee.

The suspect swallowed an ounce of cocaine unbeknownst to the deputies arresting him on another charge.

A short time after being booked into the county jail he began to appear very ill. The nurse on duty who had done his routine jail admission assessment tried to get him to tell her what was wrong. The suspect denied he had any immediate medical needs and denied he had taken any narcotics or any other medication whatsoever.

When his condition changed for the worse he was taken to the jail medical clinic, then to a hospital where he died from the cocaine ingestion.

His sister, as personal representative of her brother's probate estate, filed a civil lawsuit against the jail nurse and her employer, the company under contract to provide jail inmate medical services.

The Court of Appeals of Michigan ruled the lawsuit should be dismissed.

Self-Inflicted Harm
Caregiver's Legal Duty

The basic rule is that no one is allowed to sue another person for damages for the consequences of his or her own wrongful conduct, but health care is one place where the basic rule does not apply.

It is legally irrelevant in weighing civil liability for substandard health care whether the patient's medical condition stemmed from inadequate self-care or was actually self inflicted.

However, this patient actively concealed the true nature and cause of his predicament from his caregiver to the extent his caregiver was unable, despite her best reasonable efforts, to intervene in time to save him from the end-effect of his own wrongful conduct. **Graham v. Secure Care, Inc., 2007 WL 122127 (Mich. App., January 18, 2007).**

Confidentiality: Gossip Leads To Lawsuit For Invasion Of Privacy.

A hospital phlebotomist attended a required in-service program to acquaint her with the medical-confidentiality requirements of the US Health Insurance Portability and Accountability Act of 1996 (HIPPA) and hospital policy.

In the course of her job she got a fax order for blood work which mentioned that the patient had just become pregnant.

Off duty at a local tavern the phlebotomist happened to mention to the patient's twin sister that the patient was pregnant.

When the patient herself found out, she sued the hospital and the phlebotomist for violation of the HIPPA and common-law invasion of privacy.

An employer is not liable in a civil lawsuit for an employee's conduct if the conduct falls outside the course and scope of the employee's duties for the employer.

SUPREME COURT OF ILLINOIS
January 19, 2007

The Supreme Court of Illinois ruled that the phlebotomist alone was liable to the patient for common-law invasion of privacy. Her conduct had nothing to do with carrying out her duties as a hospital employee.

In this case the court said the hospital fulfilled its legal responsibilities by requiring her to attend an in-service to educate employees about the requirements of HIPPA and other legal aspects of patient confidentiality. She admitted, based on what she was taught, that what she did was wrong. **Bagent v. Blessing Care Corp., __ N.E. 2d __, 2007 WL 121319 (Ill., January 19, 2007).**

Nursing Documentation: Suit Against Physician Dismissed.

A patient with a long history of voluntary and involuntary psychiatric admissions for repeated self-harm behaviors filed a complex civil lawsuit against her psychiatrist for malicious prosecution, abuse of legal process, invasion of privacy and medical malpractice.

The Supreme Court of Alaska upheld the lower court's judgment that the case should be dismissed as unfounded.

The court's opinion contains repeated references to the nurses' progress notes documenting the patient's angry, agitated acting out and verbalizations of threats while under their care on the mental health unit. **Greywolf v. Carroll, __ P. 3d __, 2007 WL 30097 (Alaska, 2007).**

Nursing Documentation: Physician Did Not Read Nursing Notes.

The patient's nurses' progress notes documented significant abdominal pain after a laparoscopic hysterectomy right up to a few hours before the physician discharged her from the hospital.

The patient's ureter, it turned out, had been damaged and, to avoid additional complications, should have been repaired surgically right away.

The Missouri Court of Appeals ruled it is below the legal standard of care for a physician not to read the nurses' notes before discharging a patient. **Ploch v. Hamai, __ S.W. 3d __, 2006 WL 3716634 (Mo. App., December 19, 2006).**

FMLA: Not Enough On-Site Employees.

An LPN worked for a large corporation which held the contract to provide on-site healthcare services at the local county jail.

The LPN was terminated for taking an extended medical leave. She sued for wrongful termination in violation of the US Family and Medical Leave Act (FMLA), claiming she had a vested right to take medical leave without suffering legal repercussions.

The US Family and Medical Leave Act (FMLA) applies to employees of employers who have 50 or more employees.

Further, to be eligible for FMLA leave the employee must have been on the job for at least 12 months and have completed at least 1,250 hours of service during that 12-month period.

The employee must give the employer 3 days notice.

UNITED STATES DISTRICT COURT
OHIO
January 8, 2007

The US District Court for the Northern District of Ohio decided to focus first on whether the LPN was actually covered by the FMLA.

Among other things, to be bound by the FMLA the employer must have at least 50 employees on-site or working within a 75 mile radius of the location where the employee in question works.

The company had only 33 persons working at the jail and within the surrounding area. The FMLA simply did not apply and no other eligibility issues were relevant to the case. **La Monica v. NaphCare, Inc., 2007 WL 81851 (N.D. Ohio, January 8, 2007).**

Fibromyalgia: Nurse Did Not Inform Supervisors Why Absent, Lost FMLA Rights.

The US Family and Medical Leave Act (FMLA), among other things, entitles an eligible employee to take up to 12 weeks unpaid leave during any 12 month period for a serious health condition that makes the employee unable to perform the functions of the employee's position.

The employee must expressly to communicate to the employer, as soon as practicable:

That the employee has a serious health condition;

What the condition is;

That the employee is as a result unable to work;

That the employee wants to use unpaid FMLA leave as opposed to paid sick leave;

That the employee is and will be under a physician's continuing care; and

When the employee expects to be able to return.

The employee must stay in touch and update his or her status and, if requested, obtain and submit ongoing medical documentation.

Otherwise the employee gives up the protection of the FMLA.

UNITED STATES DISTRICT COURT
ILLINOIS
January 5, 2007

After she had called in sick every day for a month a nurse was asked for doctor's notes.

Although her neck and lower back pain were diagnosed as fibromyalgia after about three weeks, her doctor's notes simply kept referring to generalized muscular neck and lower back pain and kept saying she needed another week off.

Three months after she first started calling in sick, when they finally got clarification of her diagnosis, human resources retroactively granted her the maximum limit of Family and Medical Leave Act (FMLA) leave eligibility, back-dated to the day she first started calling in sick.

When she tried to come back to work after yet another three months off without approved leave she was terminated for unauthorized absences.

The nurse sued the hospital for violating the FMLA, but the US District Court for the Northern District of Illinois dismissed the lawsuit as unfounded.

FMLA Requires Employee to Provide Notice To His/Her Employer

The court ruled that just calling in "sick" does not fulfill the employee's legal obligations that are prerequisite to legal protection under the FMLA.

The employee must expressly communicate that he or she has a serious health condition, expressly say what the condition is and expressly say that he or she needs to take FMLA leave for a specified period of time, as best the employee can foresee what that time will be.

If requested, the employee must furnish medical documentation that the serious health condition exists, that the employee is consequently unable to work and that he or she is under a physician's continuing care for the condition.

The court also ruled that her fibromyalgia was not a disability because there were jobs outside nursing she could do. **De la Rama v. Illinois Dept. of Human Services, 2007 WL 54060 (N.D. Ill., January 5, 2007).**

Home Health: Court Blames Nurses, In Part, For Patient's Downhill Course.

The elderly patient was taking the anti-inflammatory Relafen which can cause internal gastrointestinal bleeding.

Her home-care nurses were having a lot of trouble with pressure ulcers, so her physician got lab work done. The labs showed very low hematocrit and albumin levels and a high platelet count.

Her physician did not look for the underlying cause even though her anemia and low albumin were likely factors in loss of skin integrity and slow healing. Her home health nurses backed off aggressively trying to improve her skin integrity and began to focus on end-of-life issues.

The nurses' failure to follow through on the physician's order for urinary catheterization was a significant factor in the continued ulceration of her sacral area due to the continued presence of urine.

UNITED STATES DISTRICT COURT
WASHINGTON
December 27, 2006

The US District Court for the Eastern District of Washington found the patient's physicians and nurses negligent.

The court directly faulted the nurses for ignoring the physician's order for urinary chatheterization. The nurses apparently took the patient's son at his word that a catheter was not necessary because he was going to see that his mother stayed dry. **Wells v. Columbia Valley Community Health, 2006 WL 3813705 (E.D. Wash., December 27, 2006).**

Home Health: Auto Accident Is Covered By Workers Comp.

A home health aide was badly injured in an auto accident while travelling from her own home to the home of her first client of the day.

Her arrangement with her employer was she was paid for travel time between patient's homes but was not paid for her travel time going to her first appointment or coming home after her last appointment. Nor was she paid mileage to her first or from her last daily appointments, only $.31 per mile for travel between appointments.

Her employer denied her claim for worker's compensation benefits.

The "going and coming" rule says that employees as a general rule are not in the course of their employment, and are not eligible for worker's comp, if they are injured while commuting to and from work.

However, the "traveling salesman" exception to the general rule says that employees traveling for their employer's business are covered by worker's comp.

COURT OF APPEALS
OF NORTH CAROLINA
January 2, 2007

The Court of Appeals of North Carolina disagreed with the employer and ordered worker's compensation to be paid.

The court ruled the aide was providing a service to her employer by driving to the client's home, notwithstanding the fact she was "off the clock" and her mileage was not being reimbursed. **Hollin v. Johnston County Council on Aging, __ S.E. 2d __, 2007 WL 3515 (N.C. App., January 2, 2007).**

Pre-Surgical Consent: Nurse Acted Properly, Court Says.

The patient was scheduled for a diagnostic arteriogram after Doppler studies indicated diminished blood flow in his lower leg.

During the diagnostic procedure the physicians opted to go right ahead with interventional angioplasty and stent placement because of the degree of arterial occlusion they detected. The interventional procedures resulted in an arterial rupture.

The patient sued for lack of informed consent, claiming he should have been awakened from sedation and consulted before the interventional aspects of the case went ahead.

The pre-surgical consent form the nurse had the patient sign for his arteriogram included a handwritten notation that angioplasty and stent placement would also be possible during the procedure.

He testified the nurse explained the form to him and asked if he had questions.

He also spoke with the physician before the procedure.

COURT OF APPEALS OF MICHIGAN
December 19, 2006

The Court of Appeals of Michigan approved a jury verdict finding no negligence by the physicians and nurse.

The pre-surgical consent form contained a clear indication that the patient was advised and agreed there was a possibility the physicians, in their best judgment, would elect to go ahead with more than just a diagnostic study. **Beeman v. Covenant Health Care, 2006 WL 3733259 (Mich. App., December 19, 2006).**

FMLA: Employee Entitled To Same Or Equivalent Position Upon Return.

A registered nurse was working as a shift coordinator when she elected to take Family and Medical Leave Act (FMLA) leave for a wrist injury.

When she returned she had a two-pound lifting restriction from her physician. She was not reinstated as shift coordinator but was told to see what else was available within the hospital system and to apply for something else.

She sued for violation of the FMLA.

After FMLA leave an employee must be restored to the same or an equivalent position, if the employee is physically able to meet its demands, even if the former position has gone to someone else or been restructured in the mean time.

UNITED STATES DISTRICT COURT
TEXAS
January 4, 2007

The US District Court for the Southern District of Texas saw grounds for her lawsuit.

A residual two-pound lifting restriction would be incompatible with being restored to a staff nursing position, and a hospital would have no obligation to restore a staff nurse to staff nursing who returned with a major lifting restriction.

However, the shift-coordinator position she had had was basically administrative and, according hers and others' testimony, it never required any lifting whatsoever. She was entitled to her same job or another administrative job with the same hours, pay, benefits, authority, responsibility, etc. **Greenlee v. Christus Spohn Health Systems, 2007 WL 38284 (S.D. Tex., January 4, 2007).**

Arbitration: Family Member Cannot Sign For Patient.

In an effort to control litigation costs and to prevent runaway jury verdicts, many healthcare facilities are including arbitration agreements in their admissions paperwork.

If the patient later decides to pursue a legal claim against the facility or its staff, the facility or staff can insist on removing the case from the civil court system and submit it to binding arbitration, usually before a panel of healthcare attorneys or a retired judge.

That is possible if, and only if, the patient has actually agreed to arbitration.

Arbitration is appropriate only if the patient has agreed to arbitration.

A family member must have express authorization from the patient, a patient who is competent to give such authorization, to sign an arbitration agreement.

UNITED STATES DISTRICT COURT
MISSISSIPPI
December 29, 2006

The US District Court for the Southern District of Mississippi has ruled, like some courts in other states, that a relative who has legal authority to make other surrogate healthcare decisions for the patient nonetheless cannot legally consent to arbitration on the patient's behalf without express authorization from the patient.

The court ruled this is true even if the same relative becomes the probate administrator *post mortem* and sues on behalf of the probate estate and wishes to disavow the arbitration agreement he or she has signed on the basis of having had no such authority to sign it in the first place. **Buie v. Mariner Health Care, Inc., 2006 WL 3858330 (S.D. Miss., December 29, 2006).**

Asthma: Court Sees School Nurse's Negligence As Cause Of Student's Death.

A fourteen year-old asthmatic high-school student's file contained a parental authorization for medication administration and a daily treatment plan.

Basic responsibility for implementing the plan to meet his special needs fell on the school nurse.

The student, among other things, was to have his asthma inhaler with him at all times, without exception.

The phys ed teacher was apparently not informed of his asthmatic condition or his need to have his inhaler with him always, even while he was dressed in his gym clothes for phys ed class. After doing his stretching, jumping-jacks and sit-ups in the air-conditioned gym he had an asthma attack while running outside.

He did not have his inhaler with him and could not be brought back into the building in time to get help before he died.

It is not clear that Federal laws for the mainstreaming of disabled students apply to a civil lawsuit like this.

There are also procedural complexities with a negligence claim against a State employee in Texas.

UNITED STATES DISTRICT COURT
TEXAS
January 3, 2007

The US District Court for the Western District of Texas could not find grounds for the parents to sue for disability discrimination.

The court blamed the school nurse for negligence. **Garcia v. Northside Independent School Dist., 2007 WL 26803 (W.D. Tex., January 3, 2007).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Sexual Harassment: Attendance Policy Questioned.

The US District Court for the District of Kansas has handed down rulings in two separate sexual harassment cases involving two separate employees of the same facility who claim to have been harassed by the same perpetrator during exactly the same time frame.

Both rulings support the validity of the claims being raised against the facility.

In one of the cases the court was not able to find valid grounds for the facility to fire the alleged victim of sexual harassment for violation of the facility's attendance policies.

The victim has the right to stay out, notwithstanding the facility's attendance policy, until she is assured that management can and will stop the alleged harassment, even while an investigation is still underway to determine if her complaints can be substantiated, assuming she has expressly informed management what is going on. **Aden v. Life Care Centers of America, Inc., 2007 WL 29450 (D. Kan., January 3, 2007).**

Sexual Harassment: If Employer Knows, Must Take Action.

The US District Court for the District of Kansas reviewed the basics of co-worker sexual harassment law.

Sexual harassment by a co-worker, if sufficiently severe, can create a hostile work environment for a female employee and is considered a form of gender discrimination.

However, the employer is not required to take action against a co-worker unless the victim's supervisors actually know or realistically should know that harassment is occurring.

Most often that means the victim must expressly report harassment to her supervisor or to higher management, or her rights are forfeit.

In this case the court believed the supervisors must have known about it before it was reported. In most cases, however, the victim is on shaky ground if she has to ask the court to assume that management must have known. **Nichols-Villalpando v. Life Care Centers of America, Inc., 2007 WL 28262 (D. Kan., January 3, 2007).**

Drug-Free Policy: Nursing Home Is Allowed To Fire Employee For Furnishing Drugs To Resident.

A nursing home maintenance man denied he himself had supplied drugs to a resident.

He claimed, therefore, his termination was not justified for dealing drugs on the job in violation of the facility's drug-free policy. Not having been fired for just cause, he claimed he was entitled to unemployment benefits.

The Court of Appeal of Louisiana pointed out, however, he freely admitted he told a resident his sister-in-law, also a nursing home employee, might be able to get him some marijuana.

By law his conduct was criminal facilitation and basically the same as if he had consummated the illegal transaction himself. He committed a crime and could be terminated for just cause, the court ruled.

Acting as go-between between a resident and a relative dealing drugs is the same as dealing drugs.

Facilitation of the sale of marijuana is a crime and amounts to employee misconduct justifying termination for cause.

The nursing home's drug-free policy also required every employee to report any known drug activity in the facility.

COURT OF APPEAL OF LOUISIANA
January 10, 2007

The facility had more than one sufficient legal basis to fire this employee without risk of a wrongful termination lawsuit or liability for unemployment compensation. The court upheld the facility's right to enforce its aggressive internal drug-free policy.

The man signed and received a copy of the facility's drug-free policy statement when he was hired and knew that adherence to the policy was a condition of continued employment.

The facility's policy required every employee not only to refrain from all drug activity but also to report any drug activity known to be going on within the facility. Proving what he did was not an issue because he admitted it. **Jackson v. Board of Review, __ So. 2d __, 2007 WL 57764 (La. App., January 10, 2007).**