LEGAL EAGLE EYE NEWSLETTER

February 2008 — *For the Nursing Profession* — Volume 16 Number 2

Patients' Falls: Nurses Ruled Not Negligent Based On Solid Nursing Documentation.

The Superior Court of New Jersey, Appellate Division, agreed with the jury's ruling exonerating the hospital's nurse from allegations of negligence.

Patient's Testimony

The patient testified she rang her call buzzer for thirty to forty-five minutes for help to get up to the bathroom, then got up on her own, leaned on a rolling tray table, fell and broke her hip.

Nurse's Testimony
Based on Progress Note

The nurse talked with the patient and wrote a progress note right after the fall about why the patient herself believed she had fallen. The patient said she wanted to get up and see what was going on on the other side of the room and tripped on the leg of the tray table. She never mentioned her call bell not working or not being answered.

High Fall Risk Designation Expired

The first three days after her liver biopsy the patient was handled as a high-fall-risk. She fell the next day.

Her physician had written an order for *ad lib* bathroom privileges. Technically she was no longer a high fall risk while still being kept in the hospital just for observation for possible drainage from the biopsy site. **Bogner v. Rahway Hosp., 2008 WL 89944 (N.J. App., January 10, 2008).**

The fall precautions that are supposed to be observed while the patient is a high fall risk are not relevant to the time period after the patient has recovered from her post-surgical medications to the point her own safety awareness has been restored and she is able to make rational safety decisions on her own.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
January 10, 2008

The jury in the Superior Court, Los Angeles County, California returned a defense verdict for the hospital.

The sixty year-old patient was in the transitional care unit for rehab of a pelvic fracture from a fall at home. He fell again in the hospital and suffered a new right hip and right femur fracture.

Patient's Version of Events

The patient claimed his medications had made him disoriented and his nurses knew that he had been trying to get out of bed on his own. He claimed he used his call light to call for help to the bathroom, and when no one responded he got up on his own and fell. He testified he was supposed to have non-slip hospital gripper socks but instead was wearing ordinary socks at the time he fell.

Nurses' Version of Events

The nurses had documented their assessment of the patient's mental status relative to fall risk. He had enough safety awareness to know he needed to call and wait for assistance before trying to get out of bed. Restraints are not appropriate for a patient with sufficient mental status to possess adequate safety awareness.

According to the nursing testimony, the patient did not call for assistance before he fell. **Persing v. Unnamed Hospital, 2007 WL 4590654 (Sup. Ct. Los Angeles Co. California, December 12, 2007).**

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Faulty Transfer: Nursing Home Pays Settlement.

The sixty-five year-old nursing home patient was unable to stand and could not bear her own weight.

The patient was assessed as requiring two persons to transfer her. A sign was posted above her bed to alert staff that two-person transfer was mandatory.

One nurse alone tried to move her and dropped her on the floor, resulting in an ankle fracture.

The fracture required surgery. The surgery marked the beginning a slow decline in the patient's health which led to her death eight months later.

The nursing home paid the family $200,000 to settle their lawsuit filed in the Superior Court, Pierce County, Washington. **Pock v. Georgian Rehabilitation House, 2007 WL 4616733 (Sup. Ct. Pierce Co., Washington, July 18, 2007).**

DNR Order: Family Obtains Jury's Verdict.

The ninety-two year-old nursing home resident's granddaughter had provided the facility with a living will and advance directive she signed as the resident's healthcare surrogate decision-maker.

The patient suffered a seizure. Later that day paramedics were called, even though staff knew they would have to intubate her and transport her to the hospital.

The patient spent six days on a respirator, then was extubated and passed four days later.

The family got $150,00 from a jury in the Circuit Court, Palm Beach County, Florida for the resident's suffering after her life was prolonged contrary to the living will and advance directive. **Scheible v. Morse Geri Center, 2007 WL 4523047 (Cir. Ct. Palm Beach Co., Florida, March 16, 2007).**

Shower Chair: Nursing Facility Settles For Patient's Death From Fall.

The seventy-three year-old patient was reportedly admitted to the nursing facility for what was supposed to be a short course of physical therapy before returning home to continue living independently.

The shower chair was only supposed to be used to seat the patient in the shower while the patient was showering. An aide, however, was using the shower chair to transport the patient. The aide lowered the back of the shower chair to roll the patient over a raised doorway threshold and dropped the patient.

The patient struck his head on the floor when he fell.

The patient, on Coumadin, suffered a subdural hematoma and died in the hospital two days later.

SUPERIOR COURT, PIERCE COUNTY
WASHINGTON
May 23, 2007

The nursing staff did phone the patient's physician right away to report that he had fallen. However, they did not mention that he had hit his head. The physician only ordered pain medication.

Two days later the patient was rushed to the hospital when he became unconscious. At the hospital it was discovered that he had sustained a subdural hematoma. He died later that day in the hospital.

It was not clear whether the patient's closed-head injury would have been treatable if he had been taken to the hospital right away. The nursing facility paid the family $850,000 to settle their wrongful death lawsuit filed in the Superior Court, Pierce County, Washington. **Quigley v. Tacoma Home, 2007 WL 4700969 (Sup. Ct. Pierce Co., Washington, May 23, 2007).**

Sexual Assault: Facility Knew Male Nurse Had Potential For Abuse, Violence.

A twenty-nine year-old female developmentally disabled patient, a frequent admittee at the state hospital, was raped by a male nurse.

The patient's lawsuit filed in the Superior Court, Spokane County, Washington was settled by the State for $2,500,000.

Perpetrator's Prior Work Record
Potential for Harm

If the case had gone to trial the evidence would have pointed to the male nurse's prior seven-year work record, including several instances of patient abuse, violations of the facility's internal policies and the state administrative code and multiple acts of insubordination.

The nurse was considered by his supervisors to be psychologically unstable and dangerous.

The nurse manager of the adult psychiatric unit had reportedly informed her higher-ups that there were grave concerns about the nurse's ability to provide safe and effective care to patients and his high potential for violence toward others.

Patient's Medical History
Potential for Abuse

The patient in question had been admitted to the psychiatric facility approximately eighteen times. This time her diagnoses included potential for harm to self, depression and ineffective individual coping related to alleged sexual assault and substance abuse.

The rationale for bringing up the patient's own issues was that it compounded the inappropriateness of the facility allowing this particular nurse unsupervised one-to-one access to this particular patient. **Jane Doe v. State Dept. of Social and Health Services, 2007 WL 4616717 (Sup. Ct. Spokane Co., Washington, July 2, 2007).**

Patient Takes Away His Original Hospital Chart: Conviction For Robbery Upheld By Court.

A patient had emergency cardiac catheterization after an apparent heart attack.

He was told he was being scheduled for open-heart surgery first thing the next morning.

Patient Demanded His Chart For a Second Opinion

The patient demanded a copy of his chart so he could get a second opinion.

The medical records department was not open and would not be open until later the next morning after his surgery would already be underway. Medical records alone was authorized and no one else was willing to copy the patient's chart for him.

The patient grabbed his chart and left. He struck a hospital security guard with his fist during a scuffle in the parking lot.

The Court of Appeals of Texas ruled the patient was guilty of stealing hospital property. His use of force, that is, striking the security guard, elevated the seriousness of the offense from simple theft to robbery.

He was sentenced to two years supervised probation. **Beason v. State, 2008 WL 82225 (Tex. App., January 9, 2008).**

By law a medical chart is the facility's property.

The Health Insurance Portability and Accessibility Act of 1996 (HIPAA) gives patients rights of access to their medical records, that is, the right to inspect original records and to obtain copies for their own use.

However, the very way HIPAA was worded necessarily implies that the healthcare facility still has a superior right to possession.

HIPAA and other laws defining medical confidentiality give patients extensive rights to control how the information in their charts is used.

These laws, however, did not change the basic legal principle that the chart itself belongs to the facility. It is a criminal offense for a patient or anyone else to remove a patient's chart.

COURT OF APPEALS OF TEXAS
January 9, 2008

Cardiac Monitor: Alarm Turned Off To Use Bed Pan, Not Turned Back On.

The thirty-nine year-old patient came to the emergency room with a rapid heart beat. She had previously been diagnosed with a rare cardiac abnormality. The emergency room physician ordered several cardiac medications and had her admitted to the cardiac telemetry unit.

At 3:30 a.m. the patient's nurse turned off the heart monitor alarm while the patient used the bed pan.

Later that morning the patient was found unresponsive and not breathing, with the monitor still turned off.

During the code she was found to be in V-fib. She was intubated and started on a respirator, but not before massive brain damage had occurred.

The hospital paid a confidential settlement of the lawsuit filed in the Circuit Court, Pinellas County, Florida.

Allegations of negligence were twofold. The nurse turned off the monitor alarm for what was only to be a brief moment of time while the nurse would be with the patient, but the nurse neglected to turn the alarm back on when she left.

Whoever was supposed to be watching the monitor never noticed that anything was wrong until it was too late. **Craig v. Sina, 2007 WL 4643854 (Cir. Ct. Pinellas Co., Florida, April 12, 2007).**

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Labor Law: US Appeals Court Agrees Mandatory Flu Vaccinations Are Not Allowed By Nurses' Union Contract.

We first covered this story in February, 2006: *Labor Law: Court Says Mandatory Flu Vaccinations Are Not Allowed By Union Contract With Nurses*, Legal Eagle Eye Newsletter for the Nursing Profession, (14)2, Feb. '06 p.4.

The 2006 decision of the US District Court for the Western District of Washington has been affirmed by the US Court of Appeals for the Ninth Circuit.

Nurses' Fitness for Duty Is a Labor-Law Issue

Seeing the question as a labor-law issue was the courts' approach to the question of mandatory flu vaccinations for hospital nursing staff.

In labor law, the collective bargaining agreement provides the first-line answer to any question. Disputed interpretations of the collective bargaining agreement are resolved by arbitration. US labor-law policy says that the courts may, but rarely should disturb an arbitrator's decision.

The arbitrator first pointed out that mandatory flu vaccinations were not explicitly covered in the nurses' union contract. Hospital management argued nevertheless that more generic language in the agreement gave management the authority to implement mandatory flu immunizations.

The arbitrator disagreed with management. The contract's generic "management prerogative clause" applied only to hospital operational issues and did not give management the right unilaterally to impose policies like mandatory immunizations, which directly affect the terms and conditions of nurses' employment, without such policies being specifically hammered out in bilateral negotiations with the nurses' union representatives.

The Court saw no basis to overturn the arbitrator's or the lower court's decisions. **Virginia Mason Hosp. v. Washington State Nurses' Assn., __ F. 3d __, 2007 WL 4463924 (9th Cir., December 21, 2007).**

Management argued the arbitrator's decision went against public policies established by state and Federal regulations mandating infection control in hospitals.

State regulations require hospitals to adopt and implement infection control policies and procedures consistent with published guidelines from the US CDC. Federal regulations require a hospital to maintain an active program for the prevention, control and investigation of infections and communicable diseases.

State standards for nursing practice prohibit a nurse from having contact with patients while suffering from a communicable disease.

Medical literature supports the idea that hospital personnel should be vaccinated against the flu and other communicable diseases.

However, the fundamental legal policy in this case is that management cannot dictate unilaterally when the rank and file have a collective bargaining agreement.

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT
December 21, 2007

Psych Hold: Danger To Self Or Others Is Required.

A former patient obtained a settlement of $150,000 from a mental-health facility in a lawsuit filed in the Circuit Court, Laurel County, Kentucky.

The man had mental health issues. He was a PhD but was working in fast foods after being fired from a social service agency for alleged sex talk with a client. He was angry but expressly denied any intention to harm anyone at the agency.

He appeared agitated and his speech content seemed grandiose and delusional, so mental-health workers filed a petition to have him held involuntarily. He spent nine days in the facility.

The grounds for his lawsuit were that danger to self and/or others is the only legally permissible basis for an involuntary mental-health hold, even if the patient is genuinely mentally ill. **Sheliga v. Cumberland River Comprehensive Care, 2007 WL 4632231 (Cir. Ct. Laurel Co. Kentucky, October 18, 2007).**

IM Injection: Faulty Nursing Documentation.

The US District Court for the District of Puerto Rico awarded $150,000 to a patient for a sciatic nerve injury following a Kenalog injection.

The courts generally do not reason backward from a bad outcome to conclude that negligence must have occurred.

In this case, however, the judge did find negligence based on the fact there was a bad outcome and the fact the nurse's charting failed to note that the injection was given in the superior *outer* quadrant of the right buttocks. **Torres-Perez v. US, __ F. Supp. 2d __, 2008 WL 110621 (D. Puerto Rico, January 9, 2008).**

Pregnancy Discrimination: Court Strikes Down Hospital's "Fetal-Protection" Policy Re Nurses On-The-Job Radiation Exposure.

The US Equal Employment Opportunity Commission (EEOC) sued a hospital on behalf of two employees, a registered nurse and a radiology tech, whom the hospital did not permit to work around fluoroscopy equipment in the cardiac cath lab while they were pregnant.

Old Discriminatory Policy

The EEOC challenged a hospital policy in effect before April, 2005 in the cath lab which stated, "All pregnant personnel must immediately report their pregnancy status to the [unit] director... The pregnant personnel shall not partake in any fluoroscopy or portable procedures during her term."

New Non-Discriminatory Policy

The hospital changed the old policy in April, 2005. Now a woman employee has the option to declare her pregnancy officially. Women who opt officially to declare their pregnancies can still work in the cath lab but are time-limited by lower radiation exposure standards than those applied to everyone else.

Women, pregnant or not, who have not opted to declare their pregnancies officially can work in the cath lab under the same radiation-exposure limits applied to employees in general.

Was the Old Policy Discriminatory?

Adopting a new policy, in and of itself, does not prove an old policy was discriminatory. Nor does replacing a flawed old policy with a new policy cancel out liability exposure to employees who were affected adversely by the old policy.

The US District Court for the Central District of California ruled the past policy was discriminatory. At some point a civil jury will determine the amount of damages to be awarded, the judge having already ruled that discrimination did occur.

Computing a fair assessment of the losses could be difficult. The two employees, truly victims of discrimination, were re-assigned to other departments and duties within the hospital while they were pregnant but not out on maternity leave.

Hospital policy was discriminatory, "Pregnant personnel shall not partake in any fluoroscopy or portable procedures while pregnant."

That language classified pregnant people, that is, only women, in a way that would tend to deprive them of employment in the fluoroscopy lab. That language did not apply to males' reproductive capacity the same way it applied to females'.

The hospital's good intentions are irrelevant.

The US Supreme Court long ago struck down "fetal protection" as an employer's defense to charges of pregnancy discrimination.

If a woman decides to declare her pregnancy, that is, voluntarily inform her employer in writing that she is pregnant and what her estimated date of conception was, US Nuclear Regulatory Commission regulations do provide some level of protection from on-the-job radiation exposure.

Those regulations give the woman the option. Her employer cannot require her to declare her pregnancy.

UNITED STATES DISTRICT COURT
CALIFORNIA
January 3, 2008

Fetal Protection Employees' Best Interests

The hospital argued in its defense that back in the day when the old policy was adopted the hospital believed it was in the best interests of its employees.

However, that argument was expressly struck down by the US Supreme Court in a landmark 1991 decision involving a car-battery manufacturing company which barred all female employees from working in jobs with significant exposure to lead, unless they could document medically that they were reproductively sterile.

The Supreme Court said, "Paternalistic concern for a woman's existing or potential offspring historically has been one excuse for denying women equal employment opportunities.... It is not appropriate for the employer to decide whether a woman's reproductive role is more important to herself and her family than her economic role."

The Supreme Court ruled that an employer's legitimate concern for the health of as-yet unborn persons does not trump the employer's obligation not to discriminate. It is strictly the pregnant woman's sole prerogative whether or not to abstain from on-the-job toxic exposures.

US Nuclear Regulatory Commission Guidelines

The court pointed out, for what it was worth, that the hospital's new policy does comply with Federal guidelines for radiation safety as well as Title VII and EEOC regulations re pregnancy discrimination.

Employers are encouraged to inform their employees of the risks of radiation exposure during pregnancy. Employers are required to comply with regulations on accommodation of pregnant employees who have voluntarily declared their pregnancies by limiting their exposure to radiation.

The choice to declare pregnancy, however, belongs to the pregnant woman. **EEOC v. Catholic Healthcare West, __ F. Supp. 2d __, 2008 WL 141917 (C.D. Cal., January 3, 2008).**

Nasogastric Tube Misplaced: Large Verdict For Patient's Death.

The sixty-four year-old patient had a benign rectal tumor surgically removed.

During the procedure his physicians started a nasogastric tube. In hindsight, after the error was discovered three days later, the tube was lodged in a lung rather than in the stomach.

The physicians and their medical groups paid settlements to the family, exact amounts kept confidential, for the patient's wrongful death.

The case then went to trial in the District Court, Jefferson County, Texas against the hospital for the nurses' negligence.

Fluid from the tube in the lung caused pneumonia.

Pneumonia caused coughing.

Coughing dehisced the surgical wound.

Dehiscence necessitated a second surgery.

The patient died the next day.

DISTRICT COURT, JEFFERSON COUNTY
TEXAS
November 26, 2007

The jury valued the family's loss at more than two million dollars and held the hospital responsible for 60% of that sum.

The jury accepted the premise that the hospital's nurses had an ongoing responsibility, independent of the physicians, to verify the correct placement of the nasogastric tube before introducing fluids or nutrients, given the known risk and severe possible consequences if it was not right. **Thomas v. Baptist Hosp., 2007 WL 4590422 (Dist. Ct. Jefferson Co., Texas, November 26, 2007).**

Transport: Nurse Correctly Assessed Patient's Needs.

A patient-transport company faced a lawsuit in the Superior Court, San Diego County, California for mistreating an elderly dementia patient during transport from a hospital to a skilled nursing facility.

Hospital Discharge Nurse's Assessment

The hospital discharge nurse saw the patient's dementia as justification for transport on a gurney in the back of an ambulance, with at least one person besides the driver in attendance, rather than in a wheelchair unattended in the back of a wheelchair van. The patient could walk with some assistance but could not sit very long. He also had a tendency to try to stand up on his own when he should not.

Transporter Disregarded Nurse's Assessment

The ambulance crew spoke with their dispatcher. They were worried that Medicare would not pay for an ambulance for a patient who could walk. They sent for a driver-only wheelchair van. On an off-ramp the patient fell out of the chair and was badly injured. **Eichenberg v. San Diego Medical Services, 2007 WL 4480735 (Cal. App., December 21, 2007).**

Vitamin K: Nurse Ruled Not Negligent.

As do millions each year, a newborn received a routine vitamin K injection at age ten minutes. Several months later a blood clot in the leg forced his doctors to amputate.

The jury in the Circuit Court, Duval County, Florida refused to see the bad result alone as reason to assume the nurse used improper technique. **Houston v. Baptist Medical Center, 2007 WL 4522998 (Cir. Ct., Duval Co, Florida, April 19, 2007).**

Nursing Home Resident Was Not No Code: Settlement For Wrongful Death.

A lawsuit filed in the Superior Court, Pierce County, Washington resulted in a $95,000 settlement for the family of a deceased sixty-three year-old nursing home resident.

When the resident went into cardiopulmonary arrest in his room the nursing staff apparently believed he was a No Code patient and nothing was done until paramedics arrived about fifteen minutes later.

Afterward it came out that the advance directive in his chart in fact required full code resuscitation. **Blanchard v. Regency Nursing Home, 2007 WL 4616732 (Sup. Ct. Pierce Co., Washington, June 14, 2007).**

Betadine Burn: Hospital's Nurses Ruled Not Negligent.

The forty-six year-old patient had gynecological surgery. Betadine was used to sterilize her abdominal area.

Her doctor wrote a post-op order the next day to inform the nurses she could shower. The day after that the nurses helped her take a shower.

After she sustained chemical burns from the Betadine the patient sued the hospital claiming the nurses negligently ignored the doctor's orders to shower her.

The jury in the Circuit Court, Colbert County, Alabama ruled the nurses correctly interpreted the doctor's order as permitting a shower but not requiring it on the first post-op day. **Boyd v. Helen Keller Hosp., 2007 WL 4632144 (Cir. Ct. Colbert Co., Alabama, March 2, 2007).**

Abuse: Charges Against Aide Overturned.

The Court of Appeals of Minnesota threw out charges of patient abuse filed against an aide in a nursing home and ordered her name removed from the state registry of persons barred from patient-care work because of abuse.

The nursing director's sloppy initial investigation never pinned down the exact time or even the date when the alleged abuse occurred. Thus is was not possible to correlate who was on duty, in what part of the facility, who was assigned to work with whom, who was on break when, etc.

The patient, who suffered from confusion, was really not able to distinguish which of two similar-looking caregivers who usually worked with her was the one she wanted to accuse of handing her roughly in a dependent transfer.

The patient was on Trental, a blood-thinner which made her susceptible to bruising. The bruises on her wrists did not necessarily prove that anyone handled her roughly or abusively. **In re Abuse Finding, 2008 WL 125238 (Minn. App., January 15, 2008).**

Hoyer Lift: Patient Dropped.

A lawsuit in the Circuit Court, Cook County, Illinois resulted in a $350,000 jury verdict for a disabled nursing home patient dropped from a Hoyer lift.

The staff member trying to move the patient apparently was not trained how to use the device and failed to get help, or just did not know enough to get some help.

The patient was too severely disabled to communicate effectively how it happened, but the jury apparently did not need to hear from her to rule in her favor. **Shelly v. Bethshan, 2007 WL 4374509 (Cir. Ct. Cook Co., Illinois, October 18, 2007).**

Federal False Claims Act: Nurse's Suit Over Patient-Care Issues Dismissed.

A registered nurse was unsuccessful in obtaining a satisfactory resolution of patient-care issues she presented to hospital management.

She had expressed concern about alleged nurse understaffing and use of non-licensed personnel for professional nursing tasks like circulating in the operating room.

She sued her by-then former employer under the US False Claims Act.

The purpose of the False Claims Act is to provide restitution to the government for money taken by fraud.

A private individual can sue on behalf of the government for false or fraudulent claims for payment.

UNITED STATES DISTRICT COURT
TENNESSEE
December 17, 2007

The US District Court for the Western District of Tennessee dismissed her case.

Even if it was true that the hospital was violating Medicare conditions of participation, conditions of participation and conditions of payment are two different things, the court said.

Patient care which in someone's opinion does not meet professional standards is not "worthless care." That term refers only to bilking Medicare or Medicaid by billing for things that plainly were just not done.

The US False Claims Act lawsuit is not a useful vehicle for resolving patient-care issues. **US v. Baptist Memorial Healthcare, __ F. Supp. 2d __, 2007 WL 4380006 (W.D. Tenn., December 17, 2007).**

Post-Surgical Care: Nurses Faulted Over Reports To Physician.

A $600,000 settlement of a lawsuit filed in the Superior Court, Los Angeles County, California was reported with the condition that the names of the patient and hospital remain confidential.

The forty-six year-old patient had surgical repair of an old incisional hernia left from her hysterectomy.

After the procedure the patient complained to her nurses about unusually severe pain at the surgical site.

The patient also told the nurses the pain had spread down her left leg.

When the nurses got her out of bed to ambulate her, her left leg gave way.

The nurses reported the unusually severe pain at the surgical site to the surgeon. The nurse did not mention that the pain had spread down the left leg or the fact the left leg had given out during attempted ambulation.

The surgeon gave an order for the patient to stay overnight.

Radiating Pain
Not Reported to Physician

During the night the nurses continued to chart progress notes about the severe pain and the fact it was radiating down the patient's left leg.

It was not until morning, however, that the nurses informed the surgeon about the radiating pain and the fact the patient, by then, was unable to stand and walk.

The surgeon called in a neurologist who got an MRI which confirmed compression damage to the femoral nerve. To correct it the surgeon re-did the incisional repair, this time without surgical mesh.

The patient has had ongoing problems with femoral nerve damage, confirmed with nerve conduction studies, which has not resolved with time. **Confidential v. Confidential, 2007 WL 4208529 (Sup. Ct. Los Angeles, California, August 29, 2007).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Geriatric Sex: Privacy vs. Abuse.

An African-American nursing-home nurse sued his former employer for racial discrimination after he was fired.

The nursing home claimed there was a non-discriminatory reason for firing him, that is, he failed to report and thus permitted one resident to abuse another resident sexually.

Residents' Right To Privacy

The US District Court for the Middle District of North Carolina acknowledged that consenting adults who happen to live in nursing homes have the same privacy rights as everyone else to have consensual sex.

Residents' Right to Be Free From Abuse

However, a sexual relationship, even just kissing, that happens in a nursing home involving a partner who is not mentally competent is not consensual. In fact, it is sexual abuse.

Nursing home staff must report abuse to their supervisors who must investigate and deal with sexual abuse of one resident by another resident. **Brewington v. Sunbridge Regency, 2007 WL 4522619 (M.D.N.C., December 18, 2007).**

Geriatric Sex: Emergency Transfer Upheld.

The District Court of Appeal of Florida ruled recently that a nursing home did not violate Federal regulations by transferring a resident on an emergency basis without thirty days notice.

Inappropriate sexual acting out toward other residents and staff was becoming a behavior pattern. The family was contacted about transferring him to another facility that would be more able to handle him. The family balked.

The nursing home professional staff went ahead and had him transferred anyway, just twenty three days later, without giving the thirty-days notice required by Federal regulations.

The court ruled this situation fit the regulations' definition of an emergency. The nursing home could move ahead with the involuntary transfer as soon as practicable because the health and safety of other individuals in the facility was at stake. **Florida Dept. of Veterans Affairs v. Cleary, __ So. 2d __, 2008 WL 53644 (Fla. App., January 4, 2008).**

Baribed, Turning: Court Discusses The Legal Standard Of Care For Post-CABG Nursing.

The jury ruled the hospital's nurses did not depart from the accepted standard of care in their treatment of a post-cardiac bypass surgery patient whose period of immobility happened to be prolonged by two additional procedures to revise his surgical site.

Specifically, the hospital's nurses were not responsible for the fact he developed pressure sores which progressed to decubitus ulcers.

Patient's Nursing Expert

The patient's nursing expert testified that nursing standards adamantly require patients be turned every two hours, even with a special bed.

Hospital's Nursing Expert

The hospital's nursing expert testified there are significant cardiac risks involved in moving a post-cardiac surgery patient. Thus it is more appropriate to use a special bed and mattress to change pressure points continuously to minimize the risk of skin breakdown.

Nursing texts have always stressed and continue to stress the importance of turning hospital patients.

However, the literature does not support the conclusion that turning is required when a special bed is in use, that is, that turning plus special beds produce measurably better outcomes that special beds alone.

Further, a patient with significant co-morbidity factors such as diabetes is at risk for loss of skin integrity and slow healing even with the most competent of nursing care. **Wolff v. Washington Hosp. Center, __ A. 2d __, 2007 WL 4438935 (D.C., December 20, 2007).**

In court the trial came down to a battle of the experts.

One nursing expert testified a patient still has to be turned manually when a baribed is in use programmed to rotate the patient.

The other expert testified manual turning is not necessary and actually carries risks of its own with patients right after cardiac surgery.

DISTRICT OF COLUMBIA
COURT OF APPEALS
December 20, 2007