LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

January 2008 Volume 16 Number 1

Patient-Controlled Analgesia: Jury Relates Patient's Death To Nursing Negligence.

A morphine patient-controlled analgesia (PCA) was started right after amputation of the patient's left lower leg for his pain at the surgical site and for phantom pain.

Depression of his mental status and hypotension were detected by his nurses early the next morning, promptly reported to the physician and charted in the nursing progress notes.

The physician discontinued the morphine PCA and ordered po Darvocet q 3 hours prn for pain.

Despite some success with the po Darvocet, a pain-management specialist came in three days later and put the patient back on a PCA, this time with Dilaudid at a basal rate of 0.5 mg/hr and a demand dose of .025 mg q 15 minutes.

Patient Found Dead in Bed

The Dilaudid PCA was started by an LVN at 8:00 p.m. The LVN returned to the room at 9:00 p.m. just to draw some blood for a glucose test. At 10:54 p.m. the same nurse found the patient with no pulse and no respirations.

A code was called. An EKG started during the code showed flat-line lack of electrical activity in the heart.

The family consented to cessation of the code and the patient was pronounced. They sued the hospital and the pain-management specialist.

The patient was given a potent IV opiate at a dose higher than anything to which he had been exposed before.

He became sedated from the opiate. His respiratory rate dropped. He already had trouble blowing off carbon dioxide due to emphysema. Increasing blood levels of carbon dioxide soon led to cardiac arrhythmia and death.

COURT OF APPEALS OF TEXAS
December 13, 2007

The jury faulted the LVN but not the pain-management physician who ordered the Dilaudid PCA. The Court of Appeals of Texas upheld the jury's verdict.

As the PCA was re-started the patient's nurse had a basic responsibility to watch closely the patient's respirations, oxygen saturation and blood pressure.

Patient on a Powerful Narcotic

The patient had been taken off IV morphine after his nurses detected and charted a change in mental status and hypotension, then re-started on basal and demand dosages of IV Dilaudid calculated for the benefit of the jury as equivalent to three times the morphine dosages he had before.

Patient's Medical History

The patient's medical history included COPD, congestive heart failure and coronary artery disease.

His medical history was significant and his nurse should have appreciated its significance before it played its part in the final outcome, the experts testified.

The patient's pre-existing difficulties with fundamental respiratory physiology made him more susceptible than a healthy person to respiratory depression from narcotic intoxication. Narcotic intoxication, detected in time, can usually be reversed with an opiate antagonist. **McAllen Hosp. v. Muniz, 2007 WL 4340867 (Tex. App., December 13, 2007).**

Inside this month's issue ...

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Heated IV Bag: Surgical Patient Sues For Burn.

A heated IV bag was placed under the armpit of the sixty-six year-old patient for about two hours during hip-replacement surgery.

After the procedure the patient had a very uncomfortable burn wound which required more than a year of treatment with topical steroid creams.

The patient's lawyer argued there was no plausible explanation for the injury other than negligence by the hospital's certified registered nurse anesthetist who used the IV bag to position the patient.

The jury in the Circuit Court, Dade County, Florida awarded the patient $350,000. **Rodriguez v. Palm Springs General Hosp., 2007 WL 4247300 (Cir. Ct. Dade County, Florida, November 21, 2007).**

Eye Surgery: Ice Pack, Velcro Strap Lead To Total Blindness.

The patient had just had orbital decompression surgery. The post-surgical orders included an ice pack to control post-operative swelling.

A nurse filled a surgical glove with ice and secured the ice pack in place over the operative eye with a Velcro strap.

When the surgeon later removed the strap and the ice pack and checked the patient's vision he found total blindness in the eye. The patient's medical experts related the damage to the eye to excessive pressure from the Velcro strap on the ice pack. It was not, the experts said, a complication of the surgery itself.

The Court of Appeals of Texas ruled the patient had grounds to sue the hospital for the nurse's negligence. **Baylor Univ. Med. Center v. Rosa, __ S.W. 3d __, 2007 WL 4282433 (Tex. App., December 7, 2007).**

Defamation: Employee Can Sue Over Theft Allegations.

A case we reported in February, 2005 went to trial a second time in July, 2007 and produced a substantial verdict for a nursing-home employee wrongfully accused of theft of a resident's property.

See *Defamation: Employee Can Sue Over Theft Allegations.* Legal Eagle Eye Newsletter for the Nursing Profession (13) 2, Feb. '05 p.5.

The admissions counselor was fired for "theft of facility property."

People in the town believed she was fired for stealing furniture from a dead lady.

In fact, it was just a misunderstanding of facility policy.

SUPERIOR COURT, WATERBURY COUNTY CONNECTICUT
July 12, 2007

The resident had actually told the administrator and others she wanted the admissions counselor to have her furniture after she passed.

However, accepting any sort of gift from a resident was a violation of nursing home policy. When confronted, the admissions counselor returned the two chairs the same day. Then she was fired.

Theft of property from a vulnerable person after her passing would be a heinous offense, while an honest misunderstanding of facility policy is not so serious.

Defamation, that is, false allegations which grossly distorted and magnified the seriousness of what she had done was the legal basis for the fired admissions counselor's lawsuit. The jury in the Superior Court, Waterbury County, Connecticut ordered her former employer to pay $227,481. **Gambardella v. Apple Health Care, 2007 WL 4259537 (Sup. Ct. Waterbury Co. Connecticut, July 12, 2007).**

Transport: Aspiration Pneumonia Caused By Aide's Negligence.

The patient was in the hospital recovering from removal of a brain tumor.

She had problems swallowing but had no difficulty breathing. Her lungs were clear and her chest x-ray was normal.

She was on oxygen with a humidifier connected in her oxygen line.

The humidifier apparently was laid on its side by an untrained patient transporter during the process of transferring her to a stretcher to transport her from her room for tests in another hospital department. That allowed water to flow into the patient's lungs through her oxygen line.

Non-sterile fluid in her lungs caused major problems with aspiration pneumonia which sent her back to the ICU.

The patient transporter testified he had received no training and was not aware of any particular precautions to be taken with a patient with a humidifier on her oxygen line.

SUPREME COURT OF MISSISSIPPI
December 6, 2007

The Supreme Court of Mississippi approved a judgment of $150,000 in the patient's favor.

Since the patient transporter admitted he had no professional training, the court said the patient did not need expert testimony on professional standards for patient transport to file a negligence lawsuit. **Univ. of Miss. Medical Center v. Pounders, __ So. 2d __, 2007 WL 4259977 (Miss., December 6, 2007).**

Disability Discrimination: No Duty To Accommodate Permanent Medical Restrictions.

After working in the hospital more than a year a licensed practical nurse had to have knee surgery.

When her sick leave, vacation and Family and Medical Leave Act leave were used up she was allowed to return to work in medical records under a hospital program for employees who were able to perform some type of work but had temporary medical restrictions that kept them from resuming their regular jobs.

The clerical job in medical records continued until a progress report from her physician to hospital human resources indicated that the LPN's medical restrictions would be permanent and would prevent her from ever again working as a staff LPN. Then she was placed on lay-off status.

Notices of possibly suitable job openings were emailed to her as they became available, but she did not apply.

The Court of Appeals of Ohio ruled that an employer who voluntarily supplies a temporary accommodation for a temporary medical condition has no obligation to continue such an accommodation on a permanent basis. **Feldkamp v. Viau, 2007 WL 4248283 (Ohio App., December 3, 2007).**

To have a case of disability discrimination, an employee, although disabled, must be substantially able to perform safely the essential functions of the job in question.

No accommodation was possible which would have allowed a staff LPN with severe pain associated with standing and walking to perform the essential functions of her staff LPN job.

An employer who goes beyond the employer's legal obligations by supplying a temporarily disabled employee with a light-duty assignment compatible with the employee's restrictions is not legally obligated to continue the light-duty assignment on a permanent basis.

The disabled employee can apply for a different, light-duty job, on the same basis as any other applicant.

COURT OF APPEALS OF OHIO
December 3, 2007

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924
© 2007, 2008 Legal Eagle Eye Newsletter

Indexed in
Cumulative Index to Nursing & Allied Health Literature™

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

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Patient Neglect: CMS Proposal To Allow Aides To Resume Working After One Episode Of Neglect.

On November 23, 2007 the US Centers for Medicare and Medicaid Services announced proposed new regulations to allow a nurses aide to petition for removal of his or her name from the registry of persons found guilty of abuse or neglect, if certain conditions are met.

This is only a proposal at this time and has not actually gone into effect.

Sec. 483.156 Registry of nurse aides.

(d) Nurse aide petition for removal of information for a single finding of neglect.

(1) The State must establish a procedure to permit a nurse aide to petition for removal of a finding of neglect from the nurse aide registry if the State determines that both of the following conditions exist:

(i) The employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect.

(ii) The neglect involved in the original finding was a single occurrence.

(2) The determination on a petition for removal cannot be made before the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the nurse aide registry as a result of an investigation.

FEDERAL REGISTER November 23, 2007
Pages 65692 – 65697

Circle one: $155 one year $85 six months
Check enclosed ____ Bill me ____ Credit card ____
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Chemical Dependency: Hospital Not Required To Accommodate Restrictions Re Narcotics, No Disability Discrimination.

After she was fired for diverting narcotics a nurse reported herself to the state department of health.

The department set up a supervised-access plan she and any subsequent employer had to follow for 2000 hours to ensure that she practiced safely with regard to accessing and dispensing narcotics.

For her next new job she provided the hospital's occupational health department with a medical history candid in all respects except for her background with narcotics.

Six weeks into her new job, a staff nursing position in pediatric intensive care, she informed occupational health for the first time that she was fired from her last position for theft of narcotics and had practice restrictions from the state department of health.

Employer Chose Not To Accommodate Nursing Practice Restrictions

When her supervisors learned all the details they believed supervised access to narcotics would basically mean another nurse would have to shadow her at all times.

Supervised access was not feasible. The unit's pediatric patients needed their routine narcotics on schedule and could require emergency narcotics at any time. A child would not notice or be a good historian for missed medications or other irregular conduct by a nurse. The private rooms on the unit were ideal for an impaired nurse to hide devious activities from other staff.

The US Court of Appeals for the Eighth Circuit supported the hospital's decision to terminate the nurse rather than accommodate her practice restrictions. That is, the hospital did not commit disability discrimination, the court said.

It did not sway the court's decision that two other hospitals did subsequently hire the nurse and did agree to accommodate her restrictions. **Dovenmuehler v. St. Cloud Hosp., __ F. 3d __, 2007 WL 4233160 (8th Cir., December 4, 2007).**

Chemical dependency is recognized as a disability under the Americans With Disabilities Act (ADA).

The ADA only protects an employees from discrimination who is successfully rehabilitated and no longer abuses drugs.

Illegal conduct, that is, use of illegal drugs or illegal abuse of legal drugs, is not conduct for which the ADA requires reasonable accommodation or permits a disability discrimination lawsuit.

Strictly speaking, a narcotics abuser who was never chemically dependent cannot qualify for consideration as someone who has successfully recovered from chemical dependency.

The nurse in this case drank socially, smoked tobacco and was diagnosed with cocaine dependency which was in remission.

After she reported herself for diversion of Vicodin she was diagnosed as an abuser, not as someone having a full-blown opiate narcotic dependency.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
December 4, 2007

Sexual Harassment By A Patient: Nurse Covered By Worker's Comp.

A nurse was fondled by a male patient as she got very close to him to work on his dialysis access site.

The incident was witnessed by another nurse and was immediately reported to the unit nursing supervisor.

The victim started having psychological symptoms and began seeing a therapist. Things went from bad to worse. Her psychiatrist diagnosed her with PTSD, while her employer's company doctors thought it was a less-serious adjustment disorder.

The incident with the patient qualified as an on-the-job accident for purposes of worker's compensation and the nurse's adjustment disorder qualified as an on-the-job injury for which the nurse was entitled to compensation for her medical bills and 5% total permanent disability, the Missouri Court of Appeals ruled. **Jones v. Washington University, __ S.W. 3d __, 2007 WL 4233443 (Mo. App., December 4, 2007).**

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Fall: Facility Faulted, No Toileting Schedule.

After a nursing home resident fell repeatedly trying to amubulate to the bathroom a jury in the US District Court for the Northern District of Mississippi awarded damages to her probate estate.

The nursing home's staff were aware, starting with the resident's first fall, that she was getting up and going to the toilet unaided despite her cognitive deficits and ambulation problems.

The nursing home should have implemented a toileting schedule for her.

UNITED STATES DISTRICT COURT
MISSISSIPPI
November 27, 2007

A toileting schedule is mandated when a cognitively-impaired patient falls repeatedly trying to ambulate to the bathroom, sit down and stand up again without calling for assistance, to minimize the need for the patient to try to get up on her own, the family's nursing expert testified.

There should have been padding on the floor and/or padding on the resident to minimize the potential for injury if she fell, the family's nursing expert also said.

Fall-risk assessment begins on admission and is an ongoing responsibility.

A Posey vest was not appropriate for this patient, the jury believed, contrary to the family's expert's testimony that not restraining the patient was additional evidence of negligence.

There was no physician's order for a restraint as required by law and anyway it would not have been appropriate to seek such an order. **Gray v. Grenada Health and Rehab, 2007 WL 4224337 (N.D. Miss., November 27, 2007).**

Misconduct: Caregiver Fired For Sleeping While On Duty, Medication Use No Defense.

The aide admitted she believed that drowsiness was a potential side-effect of the medication she was taking, yet she voluntarily took the medication during her shift without notifying anyone she was doing so.

The aide's actions cannot be excused as unintentional.

An employee is guilty of misconduct justifying termination for cause when the employee willfully and deliberately violates a work rule or employer policy, assuming the work rule or policy is reasonable and that the violation causes harm or was repeated by the employee despite previous warnings.

The aide was assigned to monitor 20 to 30 skilled-care patients in the facility's day room. Her assignment absolutely required her to be awake and alert.

It was intentional misconduct for the aide to fail to ensure that she could remain awake and alert.

The court finds no valid comparison in a case where a secretary took medication and fell asleep in the office, as that involved no jeopardy to vulnerable individuals.

APPELLATE COURT OF ILLINOIS
November 30, 2007

A CNA had worked in the skilled nursing facility for seventeen years.

On the day in question she was assigned to monitor approximately twenty-five residents in the day room and provide assistance to them as necessary.

Earlier that day she had taken extra-strength Tylenol for a toothache. She later testified she believed that it caused drowsiness and accounted for why she fell asleep on the job.

She fell asleep for ten to twenty minutes between 4:00 p.m. and 5:00 p.m.

A visitor woke her because a resident was screaming for help. The aide's reply was that that resident did that all the time, that is, there was nothing to worry about because she was in the habit of shouting for help when nothing was actually wrong.

That remark, however, was taken by others to mean she thought it was all right to nap on the job, as even if a resident asked her for assistance there was no real reason to provide it.

Taking Medication On The Job Does Not Justify Sleeping

The Appellate Court of Illinois ruled expressly that taking medication on the job is no defense to termination for a patient-care worker sleeping on the job.

Taking a medication that causes drowsiness or which the employee believes can cause drowsiness on the job is an intentional act of misconduct.

The employee has to take sick time or at a minimum alert others that he or she is taking the medication.

Caregivers entrusted with the safety of vulnerable individuals do not come under legal case precedents that apply to other employees, like office workers.

It is true for some employees, those who are not responsible for the safety of other persons, that inadvertently falling asleep on the job after taking medication is not a firing infraction. **Odie v. Dept. of Employment Security, __ N.E. 2d __, 2007 WL 4233453 (Ill. App., November 30, 2007).**

Harassment: Supervisor Fired, Failed To Investigate.

The Court of Appeals of Iowa ruled that a nursing home was within its legal rights to terminate a nursing supervisor who failed to investigate and took no action after an employee complained that a co-worker exposed himself to her.

Intentionally exposing oneself to a co-worker fits the legal definition of sexual harassment.

Employers have an affirmative duty under state and Federal anti-discrimination guidelines to take decisive action when an employee complains of sexual harassment. A supervisor is guilty of misconduct justifying termination who fails to live up to his or her responsibilities under those guidelines, the court ruled. **Kuhn v. Public Employment Relations Bd., 2007 WL 4191987 (Iowa App., November 29, 2007).**

Telephone Advice: Nurse Not Negligent.

The patient's wife called the doctor's office the day after her husband had had his appointment. The nurse told the wife to try a suppository or an enema, and if that did not bring on a bowel movement, and he was still in pain, to take him to the emergency room.

The wife did not take him to the hospital, she testified, because of the long time they would have to wait in the emergency room.

The seventy-two year-old patient died that night from a perforated duodenal ulcer.

The jury in the Superior Court, San Diego County, California ruled that the nurse was not negligent and awarded the widow no damages. **Feher v. Genesee Medical Group, 2007 WL 4208505 (Sup. Ct. San Diego Co., California, September 25, 2007).**

Labor Law: Employer Must Show A Majority Favor Union Decertification.

A group of nurses began a decertification campaign, that is, they circulated a petition they believed would result in the union no longer being officially recognized as the nurses' representative in the hospital, two years after the National Labor Relations Board (NLRB) had certified the union as the hospital's nurses' bargaining agent.

Hospital management took the position that the petition proved a majority of the hospital's nurses no longer wished to be represented by the union and announced that the hospital no longer recognized the union. Then the hospital announced a pay increase for all nurses without consulting with the union.

A union which has been certified as the nurses' bargaining representative is presumed to represent the nurses unless and until the employer can show a majority of the nurses no longer want the union.

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
November 30, 2007

Hospital management was guilty of unfair labor practices, according to the US Court of Appeals for the District of Columbia Circuit which agreed with the position taken by the union and the NLRB.

The group of nurses' decertification petition was ambiguous as to whether those signing it wanted the union out or merely wanted a new election to resolve the issue. Such a petition must clearly state that it stands for union decertification and must be signed by a majority. **Highlands Hosp. v. NLRB, __ F. 3d __, 2007 WL 4208324 (D.C. Cir., November 30, 2007).**

Obstetrics: Court Faults Caregivers Over Inadequate History.

A jury in the Supreme Court, New York County, New York gave a $8,000,000 verdict for an infant born with hypoxic brain damage the jury related to complications during attempted vaginal delivery and to delay going forward with a c-section.

Previous Pregnancy, Large Baby Shoulder Dystocia, Fractured Clavicle

A nurse midwife interviewed the mother when she arrived at the hospital in labor at 4:00 a.m.

The nurse midwife neglected to get a complete history from her about her one and only previous pregnancy, according to the testimony of the patient's ob/gyn expert. That baby weighed 8 lbs. 12 oz. at birth and the delivery was complicated by shoulder dystocia and a fractured clavicle.

The mother testified in court that she tried to tell the nurse midwife that this, her second baby, was estimated to weigh more than her first.

Cesarean Delayed

A cesarean was finally ordered more than twelve hours after the mother came to the hospital in labor.

Labor had progressed toward vaginal delivery to the point that one of the baby's arms had become wedged behind the mother's pubic bone and the baby's humerus had been fractured intentionally.

The patient's medical experts testified the baby should have been delivered by cesarean before labor went that far.

Fetal Monitor

The verdict was based only on the complications from failing to appreciate the size of the baby based on the mother's history. The jury apparently did not believe the mother's caregivers were not watching the monitor and/or failed to understand what the monitor was showing, as was also alleged. **Avila v. New York Health & Hospitals Corp., 2007 WL 4234838 (Sup. Ct. New York Co., New York, October 18, 2007).**

Chemotherapy: Nurse Ruled Negligent.

After hearing conflicting evidence the jury awarded the patient $217,334 from the oncologist's medical practice group, legally responsible as the employer of the nurse who administered a Taxol chemo treatment which infiltrated the patient's arm causing serious complications.

The testimony of the medical and nursing experts is conflicting.

However, there is no dispute that the patient's brother vehemently complained to the patient's nurse that his brother's arm was becoming swollen about forty-five minutes after the chemo was started.

There is also no dispute that the patient's nurse continued the Taxol for more than two hours.

COURT OF APPEALS OF MISSISSIPPI
December 11, 2007

The Court of Appeals of Mississippi upheld the jury's verdict.

The patient's nursing expert had no experience with Taxol and was not certified in chemotherapy but had seen IV infiltrations and extravasations before.

The medical center's nursing expert was a certified chemo nurse. Her opinion was it was a hypersensitivity reaction.

The court pointed to testimony from a family member that the patient's nurse ignored obvious signs he reported to the nurse that something was wrong and instead of directly checking on him at least every fifteen minutes the nurse just left him sitting in a spot where she could see him from the nurse's station. **Sacks v. Necaise, __ So. 2d __, 2007 WL 4305461 (Miss. App., December 11, 2007).**

Pediatric Care, Dehydration: Brain Damage Traced To Nursing Negligence.

The first hospital deviated from the standard of care in that the child should have been admitted to a pediatric intensive care unit.

The hospital did not have this level of care.

The emergency room physician had enough clinical information, that is, the child's tachycardia, elevated BUN and elevated creatinine to realize that the child required intensive care.

Then, once the child was admitted to the hospital's general med/surg floor there was an abrupt change in blood pressure noted by the nursing staff on the floor.

The blood pressure drop, a major change in health status, was not communicated to any physician.

That omission by the hospital's nursing staff represented a potential beginning of the child's impending clinical deterioration.

There was delay getting the child hydrated to prevent septic shock. When the child did arrive in the intensive care unit at a tertiary care facility they could not hydrate her fast enough to prevent her from coding.

COURT OF APPEAL OF LOUISIANA
November 21, 2007

The Court of Appeal of Louisiana dismissed a university-affiliated facility and its staff physicians from the patient's parents' lawsuit, ruling that the child's injuries were solely the result of negligence by the medical and nursing staff at the community general hospital where she first presented in the emergency department.

The seven year-old was brought in to the E.R. with persistent abdominal pain with diarrhea, vomiting and resulting dehydration which had not resolved with antibiotics prescribed to her as an outpatient.

She had high fever, low blood pressure, rapid heart rate and minimal urine output indicating possible renal failure. Her BUN and creatinine levels increased even with IV fluids.

Eventually she was transferred to the pediatric intensive care unit at a teaching hospital. She was already in shock. She had fluid in her lungs and thirty minutes after being intubated she coded. She is now in a persistent vegetative state.

Nursing Negligence

The court believed the child belonged in pediatric intensive care from the start and the court faulted the nursing care on the first hospital's med/surg unit, where the child never belonged in the first place.

An abrupt drop in the child's blood pressure should have been recognized by the med/surg nurses as an ominous sign that had to be communicated promptly to a physician, given the child's clinical picture on admission, the court said.

No actual harm had occurred when the child's blood pressure dropped, the court said. However, failure of the nurses to communicate with a physician was the starting point of a series of events leading eventually to a situation where the child could not be hydrated rapidly enough to reverse renal failure, shock, respiratory distress, cardiac arrest and irreversible hypoxic brain damage. **Franklin v. Tulane University Hosp., __ So. 2d __, 2007 WL 4304428 (La. App., November 21, 2007).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Organ Transplantation: Patient Rejected For Psychiatric Illnesses, Hospital Did Not Commit Disability Discrimination.

Two registered nurses who served on the hospital's organ-transplant selection committee were among the defendants recently named in a disability-discrimination lawsuit filed on behalf of an unsuccessful applicant for a kidney transplant.

ADA Does Apply To Decisions Allocating Transplant Organs

The US District Court for the District of Nebraska did validate the underlying legal premise of the patient's lawsuit.

The Americans With Disability Act says that hospitals, as places of public accommodation, cannot discriminate on the basis of a patient's disability in rendering patient care.

However, in this case the committee's decision was based on legitimate medical reasons and thus was not discriminatory, the court ruled.

Legitimate Medical Reasons

The patient had been institutionalized in a psychiatric developmental center for sixteen years before he applied for a transplant. His assessment for transplant suitability included a comprehensive psychiatric evaluation which produced a current diagnosis of delusional disorder, persecutory type, on top of a history of paranoid schizophrenia.

The committee was given a medical report saying that transplantation was contraindicated as not in the best interests of this patient or the transplant system. The transplant procedure is complex and intrusive and requires long-standing adherence to immunosuppressive agents and cooperation with a whole gamut of professionals who treat people recovering from transplants.

The court endorsed the committee's decision that it would be highly dubious to expect essential close cooperation and strict medication compliance from a patient with this patient's chronic psychiatric illnesses. **McElroy v. Nebraska Medical Center, 2007 WL 4180695 (D. Neb., November 21, 2007).**

Identity Theft: Stolen Personal Information Must Have Been Taken From Office Medical Chart.

The Court of Appeals of Ohio ruled that a patient did have grounds to sue her obstetrician because personal information was apparently stolen from her office chart by another patient in the same office.

The patient learned that an imposter had used her name and employment information to open a residential service account with the phone company.

Upon further investigation, when the patient was able to identify the imposter, she believed she had seen her in her obstetrician's office.

It was possible, even plausible that the imposter could have been put in the same examination room after the patient while the patient's chart was still carelessly lying around for anyone entering the room to see.

The pivotal evidence in this complex case is that the imposter, also a patient in the physician's office, gave out the same work phone number incorrectly noted in the patient's chart while using the patient's stolen identity.

That could have happened only if the imposter actually looked in the patient's chart.

The physician was not able to prove that her office staff was not negligent.

COURT OF APPEALS OF OHIO
November 19, 2007

The patient, however, had no solid evidence that proved when or how the imposter actually looked at her chart.

The obstetrician's lawyers pointed out that the patient never brought in an expert witness for her lawsuit to testify on professional standards for handling office charts in a busy outpatient practice to prevent identity theft by one patient from another.

The court was at a loss to render an opinion pointing to or setting professional standards in this area.

There was undeniable proof, nevertheless, that one piece of information that could only have come from the patient's office medical chart came into the possession of another patient. **Hurchanik v. Swayze, 2007 WL 4099511 (Ohio App., November 19, 2007).**