LEGAL EAGLE EYE NEWSLETTER

January 2011 — *For the Nursing Profession* — Volume 19 Number 1

IV Infiltration Alleged In Patient's Suit: Jury Sees No Negligence By Patient's Nurses.

The forty-six year-old patient was admitted to the hospital for chronic pancreatitis which in previous admissions had required IV medication for pain. The physicians ordered IV Demerol and Phenergan.

The nurses were not able to start an IV in her upper extremities and decided to start the IV in her left foot.

According to the nursing progress notes, the IV was checked over the next few hours as the Demerol and Phenergan infused.

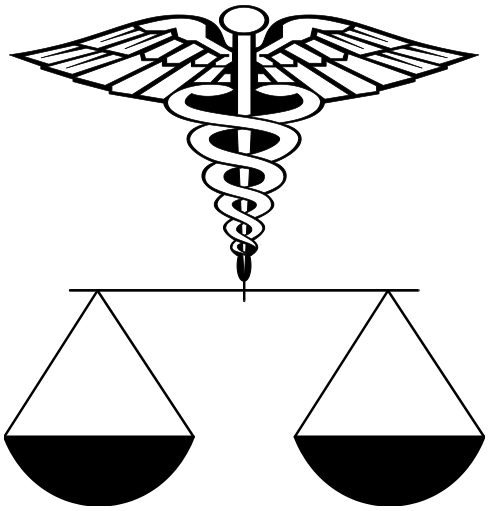
The next morning the patient started to complain of pain in her foot so the nurses removed the IV and notified the physician.

Later the patient developed gangrene in the foot and it had to be amputated.

The patient filed a lawsuit against the hospital seeking $3.5 million as damages for nursing negligence.

The lawsuit alleged the nurses inserted the IV negligently, then failed to check that the IV was infusing into the vein as medications were being administered.

As a result, the lawsuit claimed, the medication, particularly the Phenergan, infused into the surrounding tissue and caused tissue damage that led to gangrene and the eventual amputation of the patient's foot.



The jury was allowed to see the nurses' progress notes.

The nurse flushed the IV line before starting the medication and obtained blood return before the IV line was pulled.

It was also documented that there was no redness or edema remaining at the site, that is, no evidence that the medication had infiltrated the surrounding tissue.

CIRCUIT COURT
POLK COUNTY, FLORIDA
November 2, 2010

The jury in the Circuit Court, Polk County, Florida found no negligence and awarded no damages to the patient.

The hospital's expert witness, a vascular surgeon, testified the patient's nursing care was appropriate in all respects.

The nursing progress notes themselves reportedly were admitted into evidence as exhibits for the jury.

The nurse flushed the IV line before starting the medications and then checked for return of blood before removing the IV, indicating that it had properly been inserted into the vein.

Based on the nurses' careful documentation when starting the IV, administering the medications through the IV and when removing the IV, it could be said that no infiltration of the surrounding tissue occurred.

It was also documented by the nurses that no redness was visible or edema palpable at the IV site, indicating that no infiltration of the surrounding tissue had occurred.

Instead, it was more likely that the injury to the patient's foot was an unavoidable complication of the caustic nature of Phenergan administered directly into a vein, not negligence by a hospital caregiver. **Steward v. Haines City HMA, 2010 WL 4926787 (Cir. Ct. Polk Co., Florida, November 2, 2010).**

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January 2011

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Arbitration: Wife Had No Authority To Sign The Arbitration Agreement.

When she admitted her husband to the nursing home the wife signed the contract for her husband's care as his legal representative and responsible party.

The resident's wife also signed the arbitration agreement, a separate document from the admissions contract, as the patient's representative.

After the husband passed away the wife sued the nursing home alleging substandard care. The nursing home countered the suit by claiming the case belonged in arbitration and was not appropriate for trial by jury in the local county circuit court.

A resident's spouse does not have legal authority to agree to arbitration on the resident's behalf, assuming the spouse is just the spouse and has not been named in a power of attorney or appointed legal guardian by a court of law.

APPELLATE COURT OF ILLINOIS
December 7, 2010

The Appellate Court of Illinois ruled that the nursing home was not entitled to have the case heard by an arbitrator rather than being tried before a jury in court.

A spouse can validly sign a contract for the other spouse to be cared for in a nursing facility.

However, unless the resident has given authority by appointing the other spouse or another family member in a power of attorney or the spouse or family member is the court-appointed legal guardian, the other spouse or family member does not have authority to sign an arbitration agreement on the resident's behalf in most US jurisdictions, the Court pointed out. **Curto v. Illini Manors, Inc., __ N.E. 2d __, 2010 WL 5113804 (Ill. App., December 7, 2010).**

Patient Suicide: Nurse Mistook The Signs, Gave Patient Fatal Implement.

The Court of Appeals of Texas has upheld the verdict of the jury in the District Court, Hidalgo County in favor of the deceased patient's family we first reported in *Patient Suicide: Nurse Gave Patient A Razor, Did Not Check Back For Three Hours.* Legal Eagle Eye Newsletter for the Nursing Profession (16)5, May '08 p.2.

The night nurse did not think it was odd that the agitated patient who had been awake all night and had been pacing the hallways, despite getting Xanax and Ambien, wanted to shower at 5:00 a.m., after showering twice since noon the day before, and requested a razor so that he could go in the bathroom by himself to shave his chest hairs around the telemetry EKG leads.

COURT OF APPEALS OF TEXAS
September 30, 2010

The nurse testified she should have checked on the patient at least one hour later, and never did so.

Two and one-half hours later another nurse thought there could be a problem when she looked in the room and saw the patient's bed was empty and the breakfast tray was undisturbed by the bed. She went in and found the bathroom door locked from the inside. It took an hour to get maintenance to remove the bathroom door by taking off the hinges from the outside.

The patient was found dead in the bathroom. He had cut himself repeatedly with the razor and bled to death. **Rio Grande Regional Hosp. v. Villarreal, __ S.W. 3d __, 2010 WL 3810019 (Tex. App., September 30, 2010).**

Patient Suicide: Aide Awarded Worker's Comp For Post-Traumatic Stress.

While working at a group home which the hospital operated for its mentally-ill patients a certified nursing assistant discovered a client who had hanged herself in her room.

After the remains were removed the aide was told to clean up the room in which the client had committed suicide.

It all proved to be very traumatic for her. She began having flashbacks, nightmares and olfactory hallucinations. Three different doctors agreed those were symptoms of post-traumatic stress disorder (PTSD) caused by her personal involvement with the patient's suicide.

The aide has been restricted by her doctor from working in the facility where the patient died or from working anywhere else that reminds her of her experience at that facility.

The aide is able to work only with populations of patients with whom she is comfortable do not pose any real risk of suicide.

SUPREME COURT OF IOWA
December 23, 2010

The Supreme Court of Iowa ruled that PTSD from a highly traumatic on-the-job incident is a legitimate basis for a worker's compensation claim.

The Court accepted the aide's doctors' assessments. Her ability to function has improved since the incident, but she is still and will always be partially disabled. She is not able to exercise the same range of occupational choices she had before the incident which is a permanent partial disability for which she is entitled to compensation from her former employer. **Broadlawns Med. Ctr. v. Sanders, __ N.W. 2d __, 2010 WL 5185469 (Iowa, December 23, 2010).**

Psychiatric Nursing: Court Faults Nurse Practitioner's Prescription Of Prozac For Adolescent Patient.

The US District Court for the Middle District of Georgia awarded more than $3,000,000 from the US Government to the family of a patient who hanged herself at age fifteen.

The patient hanged herself at home twenty-three days after being started on Prozac by a nurse practitioner employed in a Federally-funded health clinic.

The young woman actually survived, completely dependent and in a persistent vegetative state, for more than three years after the incident before she passed away.

Prozac Prescribed Without Psychiatric Work-Up

The patient's mother brought her to the clinic two days after an E.R. visit for abdominal pain, nausea and vomiting.

The only charting done by the nurse practitioner at the time of the visit was a note "depression-Prozac." The nurse practitioner used a prescription pad pre-signed by the physician to order the medication. That was an illegal act at the time under state law in Georgia.

Several weeks later there were late entries placed in the chart that a full psychiatric evaluation had been done, but the Court was not willing to believe that.

The Court concluded the nurse practitioner never discussed the evaluation, diagnosis or plan of care with the physician.

Prozac is capable of causing chemical imbalances in the brains of certain adolescents that can lead them to take their own lives when they would not otherwise do so.

The US Food and Drug Administration has warned that pediatric patients being treated with antidepressants need to be watched closely for clinical worsening during the first few months after starting the medication or after changing the dosage up or down.

Face-to-face meetings should occur with the pediatric patient and the patient's family at least weekly during the first month, then every other week for the next four months, with phone contact in between.

Attention must be paid to specific signs of suicidality as well as unusual changes in general behavior.

UNITED STATES DISTRICT COURT
GEORGIA
November 26, 2010

The Court's Ruling

The Court faulted the nurse practitioner on a fundamental level for misdiagnosing the patient with depression and for doing so herself without a psychiatric consultation or referral. The patient was not showing any clinical signs of depression.

The nurse practitioner did not refer the patient for counseling or therapy as would be appropriate for a patient suffering from depression who was being placed on antidepressant medication.

A warning had been issued by the FDA for pediatric patients being started on antidepressants, which the nurse practitioner did not know of or chose to ignore. Pediatric patients need close follow-up with return visits at least weekly, if not more frequently, during the first month.

Family members need to be instructed by the patient's caregivers to appreciate the real danger of self-harm, to look for expressions or behavioral indications of suicidality and other uncharacteristic and ominous changes in behavior, to report those things promptly to the patient's caregivers and to get immediate help if told to do so or if it seems necessary.

Instead, the nurse practitioner told the mother to call for an appointment and bring her back in one month.

The Court expressly ruled that other events in the patient's life, an argument followed by a breakup with her boyfriend and her alleged participation in the "Goth" subculture at her high school were not sufficiently traumatic to account for her suicide. **Floyd v. US, 2010 WL 4905010 (M.D. Ga., November 26, 2010).**

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Fall Risk Assessment: Nurse Violated Standard Of Care, But That Did Not Cause The Patient's Fall.

After a delusional episode fighting with non-existent beings while at the doctor's office the patient was admitted to a state mental health facility.

His admitting medical diagnosis was vascular dementia with delusions accompanied by agitation, hallucinations, short-term memory loss and disorientation.

The nursing admission assessment, required to be finished within the first 24 hours was finished within 12 hours of admission. It included a fall-risk evaluation. Any one of ten listed factors would require the patient to be placed on fall-risk observation, the chart to be flagged for fall risk and the physician to be contacted for further instructions as to fall precautions.

Fall Risk Assessment

The factors for the nurse to look for were orthostatic hypotension, unsteady or shuffling gait, a fall during the previous three months, two or more falls during a seven-day period, impaired vision or hearing, use of a wheelchair or assistive device, impaired cognition (confused, resistive, disoriented), incontinent or needing assistance with toileting or a language barrier.

The nurse checked "No" on all of the fall-risk-assessment items but in another area of the assessment form noted that the patient was confused and had poor balance.

The patient fell in the hallway. He was taken to the hospital for observation, then returned to the mental health facility.

In support of the patient's claim against the State of Tennessee his nursing experts testified the nurse's admission assessment was substandard. The nurse failed to identify the patient's fall risk.

Then the nurses also neglected to do ongoing reassessment of his fall risk on a per-shift or at least daily basis after the patient was admitted, until after he fell.

However, a nursing expert testifying for the State pointed out that he would still have been allowed to ambulate *ad lib* on the unit even if he was on fall observation and that no amount of observation could have ensured that he would not fall. The Court of Appeals of Tennessee ruled the State was not liable. **Brown v. State, 2010 WL 5140597 (Tenn. App., December 15, 2010).**

Failing to place this patient on fall-risk observation violated the standard of care.

The fall-risk assessment should have been properly completed upon admission.

A second fall-risk assessment should have been done after the patient's medication was changed.

That is, he was put on Ativan, which can cause sedation and difficulty with balance and confusion.

The patient's periodontal disease was causing him pain. Pain can cause agitation which can affect the patient's judgment.

However, even if he had been placed on fall precautions the patient would have been allowed to ambulate in the hallway without assistance.

In this case the evidence is not conclusive that the nurse's failure to complete the initial fall-risk assessment, as the standard of care required, was a substantial factor in causing the patient's fall.

In a professional negligence case the injured patient must prove there was a violation of the standard of care in his treatment, and that the violation was the cause of his injuries.

COURT OF APPEALS OF TENNESSEE
December 15, 2010

Moving Hospital Bed: Physician Struck In Hallway Obtains Verdict.

A hospital employee and a sales rep from an orthopedic supply company were wheeling a patient in a hospital bed through a hospital corridor when they turned a corner and the bed's foot board struck a physician in the knee who was standing near a nurses station.

A nurses aide, who was a hospital employee, was walking backward pulling the foot of the bed when the bed's foot board struck the physician who was standing in the hallway.

The other person, pushing the head of the bed, was supposed to be watching where they were going and steering the bed.

The nurses aide should not have tried to transport a patient in bed without notifying and getting assistance from her supervisor.

COURT OF COMMON PLEAS
LACKAWANNA COUNTY, PENNSYLVANIA
October 8, 2010

A seemingly innocuous bruise on the physician's knee progressed to necrotizing fascitis after a few weeks.

The physician, a diabetic, had to be admitted to a university teaching hospital for a lengthy course of debridement surgeries and hyperbaric treatments, which were unsuccessful in staving off an above-the-knee amputation of the lower leg.

He has not been able to continue his private practice as a neurosurgeon. That has translated into a substantial reduction of his previous earning capacity. The jury in the Court of Common Pleas, Lackawanna County, Pennsylvania awarded damages of $3,250,000 to the physician. **Sedor v. Community Med. Ctr., 2010 WL 5166685 (Ct. Comm. Pl. Lackawanna Co., Pennsylvania, October 8, 2010).**

MI: Nurses Aide's Negligence Cost Patient A Chance Of Survival.

The sixty-five year-old Alzheimer's patient also suffered from Pick's dementia, a rare type of frontal-lobe disease. The family could not care for him at home and had to admit him to a nursing facility.

In the nursing facility he was placed on a number of medications to control the aggressive and anti-social acting-out associated with his diagnoses of dementia.

His physician ordered fifteen minute checks around the clock. The nurses aide on duty the night the patient died testified it was her understanding that only meant walking by the room and listening for any obvious signs of distress.

In fact, on the night in question no routine fifteen-minute check was done in the forty-five minutes before a nurse found the patient unresponsive and cold to the touch, having recently had a heart attack.

The medical testimony established that, even if the patient was over-medicated, his medications could not have caused his heart attack.

COURT OF APPEAL OF LOUISIANA
December 8, 2010

The jury absolved the nursing facility from allegations of negligence, but the Court of Appeal of Louisiana threw out the jury's ruling.

The jury was right that even if the patient was over-medicated, that did not cause his heart attack. However, the real issue, which the jury was not allowed to consider, was whether the patient had a chance of survival, and what fraction of 100% that chance would have been, had the nursing personnel on duty the night he died checked on him as often as was ordered by the physician and found him in time to start CPR and call paramedics. The Court of Appeal ordered a new trial. **Braud v. Woodland Village, __ So. 3d __, 2010 WL 5034412 (La. App., December 8, 2010).**

Colon Cancer: Nurse Practitioner's Care Delayed The Diagnosis, Patient Lost Chance Of Survival.

When the nurse practitioner first saw the patient his colon cancer was at worst at Stage III A or Stage III B, with a 45% to 60% chance of survival with prompt medical and surgical intervention.

When the cancer was actually diagnosed six months later the tumor in his colon was at Stage IV with metastasis into the peritoneum and lymph nodes.

At that point, even with surgery and chemotherapy starting right away, there was essentially zero chance of survival. The patient actually died two years later.

The nurse practitioner should have done rectal exams, obtained stool samples to be tested for occult blood and sent the patient for a colonoscopy.

The persistence of abdominal symptoms after a normal upper GI series called into question the nurse's diagnosis of gastritis and accentuated the need to look for problems further down the way.

The nurse practitioner's supervising physician should have looked at the chart himself and should have appreciated the need for a colonoscopy.

SUPERIOR COURT
ESSEX COUNTY, MASSACHUSETTS
May 21, 2010

The thirty-four year-old patient came to the clinic with complaints of burning and cramping abdominal pain and difficulty eating.

The nurse practitioner prescribed Zantac and scheduled him to come back in a month for a complete physical exam.

When the nurse practitioner performed the physical the patient revealed to her he drank a lot of coffee and used chewing tobacco and a family history of colon cancer. The nurse practitioner did not do a rectal exam and did not schedule a colonoscopy. She did order an upper GI series which was negative for gastritis or an ulcer and the results were transmitted to the supervising primary-care physician. His medication was changed from Zantac to Protonix.

The patient came back two months later and said he was doing better, but still had problems eating.

Four months after that the patient's stomach cramps were worse and he was having burning pain. His medication was changed to Prevacid and an esophagogastroduodenoscopy (EGD) was set for two months later. He came back in a month with even worse pain and loose stools.

Before actually going in for the EGD the patient ended up in the emergency room with severe abdominal pain. An abdominal CT and colonoscopy were done in the hospital which revealed a Stage IV mass in the colon which had metastasized to the peritoneum and lymph nodes.

The patient had several abdominal surgeries and started chemotherapy. He died slightly more than two years after his diagnosis in the hospital.

Loss of Chance of Survival

The jury in the Superior Court, Essex County, Massachusetts ruled he had a 45% chance of survival when the nurse practitioner first saw him. The jury awarded 45% of the family's loss of the husband/father's earning capacity, then added damages for his pain and suffering through his ordeal, plus his spouse's loss of consortium, plus court costs, totaling $7.5 million. **Beard v. Hatch, 2010 WL 4971734 (Sup. Ct. Essex Co., Massachusetts, May 21, 2010).**

Post-Operative Nursing: ICU Nurse Ruled Not Negligent.

The patient was in the hospital's ICU recovering after radical neck dissection and laryngectomy surgery for advanced laryngeal cancer.

At 8:00 a.m. the morning after surgery the ICU nurse noticed that the both of the patient's feet were mottled, possibly a sign of circulatory problems. The nurse promptly contacted the surgeon and reported the situation. The surgeon came in at noon, saw the patient and asked a vascular surgeon to consult on the case.

Two hours went by. The nurse called his office and was told the vascular surgeon was on his way. The nurse got the family physician to come in. He ordered arterial Doppler studies.

The vascular surgeon finally arrived at 8:00 p.m. By then the circulation had become so bad in the patient's legs that he could not be saved from having to have bilateral above-the-knee amputations.

The jury in the Circuit Court, Prince William County, Virginia ruled the ICU nurse was not negligent and the hospital was not liable to the patient for damages.

The nurse monitored her patient, communicated what was going on to the physicians and did all that was expected as advocate for her patient. **Confidential v. Confidential, 2010 WL 4971913 (Cir. Ct. Prince William Co., Virginia, July 21, 2010).**

Breast Cancer: Late Diagnosis, Nurses Implicated.

The prenatal patient reported pain in her breast to her physician in April but did not have biopsy until August, which was positive for cancer. During two check-ups in May she reported the same pain to the nurses, but they did nothing.

The patient died in October. The jury in the Circuit Court, Cook County, Illinois awarded the family $1,500,000. **Hollister v. NW Association, 2010 WL 4358538 (Cir. Ct. Cook Co., Illinois, September 22, 2010).**

Diabetic Patient: Coma, Brain Damage, Nurses Faulted.

The insulin-dependent diabetic patient was admitted to the hospital's med/surg unit from the E.R.

Two days later he was showing signs of agitation, confusion, anxiety and an altered mental state. The patient's wife reportedly tried to inform the nurses that her husband was showing these signs and convince them that it was probably because he was getting too much insulin, but the nurses did not see any cause for alarm.

The next day the patient was found unresponsive in a hypoglycemic coma. He went into respiratory failure and sustained brain damage. He was transferred to another hospital, then to hospice care where he died three months after first coming to the hospital.

His widow's lawsuit faulted the physicians at the hospital for failing to order glucose testing and monitoring of his oral intake, then when he was found unresponsive for failing to deal with his hypoglycemia before sending him to radiology.

The lawsuit also faulted the nurses for failing to develop a care plan to include closely watching the patient for signs of hypoglycemia and monitoring his oral intake. The nurses also failed to appreciate obvious sign of hypoglycemia the evening before the day he was found unresponsive.

The nurses should have appreciated the patient's risk for hypoglycemia, monitored him closely, recognized the signs when they appeared and taken appropriate action.

CIRCUIT COURT
WAYNE COUNTY, MICHIGAN
February 25, 2010

The widow's lawsuit filed in the Circuit Court, Wayne County, Michigan settled for $475,000 before trial was scheduled. **Downey v. Henry Ford Health System, 2010 WL 5166446 (Cir. Ct. Wayne Co., Michigan, February 25, 2010).**

PICC: Hospital Pays Settlement After Newborn's Death From Sepsis.

The two infants, fraternal twins, were born at twenty-seven weeks and promptly transferred to the hospital's neonatal intensive care unit.

A peripherally inserted central catheter (PICC) was started in the right axilla for one of the infants to infuse blood products, nutrition, lipids and medications.

Swelling and seeping began at the insertion site two days after the line was inserted, but nothing was reportedly done for another two days until the arm had become gangrenous and then necrotic and had to be amputated at another medical facility where the infant was transferred.

The infant died from sepsis thirty-six days after birth.

The nurses never transcribed into the chart the physician's verbal order to monitor the PICC insertion site for signs of infection.

The nurses should have known to monitor the site closely, with or without a physician's order, but there was no nursing documentation that monitoring was being done, leading to the conclusion the nurses did nothing while the arm became infected.

CIRCUIT COURT
FAIRFAX COUNTY, VIRGINIA
September 17, 2010

The parents' lawsuit filed in the Circuit Court, Fairfax County, Virginia resulted in a $1,000,000 settlement from the hospital for the loss of their newborn son due to the negligence of the hospital's nurses. **Confidential v. Confidential, 2010 WL 4971938 (Cir. Ct. Fairfax Co., Virginia, September 17, 2010).**

CT: Patient's EKG, Pulse Oximeter Discontinued For Trip To Radiology Department.

The twenty-four month-old was brought to the E.R. for treatment of seizures.

He was medicated with Valium, Ativan, Ketamine and Dilantin and then intubated about a half hour after arrival. EKG monitoring and a pulse oximeter were started when the tube was put in.

About a half hour after being intubated the patient was sent from the E.R. to the radiology department for a head CT scan. He was accompanied on the trip to radiology by a nurse and a technician from the radiology department.

EKG Leads, Pulse Oximeter Taken Off

The patient's EKG leads and pulse oximeter were disconnected until he returned to the E.R.

During the CT scan the endotracheal tube became dislodged, but since the EKG and pulse oximeter were not in use neither the nurse nor the technician noticed that fact. CPR was started when the child got back to the E.R. He was resuscitated briefly, then pronounced dead about an hour after being sent for the CT.

The nurse was negligent for disconnecting the EKG and the pulse oximeter.

The hospital should have written up and implemented a strict policy that every patient with an endotracheal tube requires uninterrupted EKG and pulse oximetry monitoring.

CIRCUIT COURT
COOK COUNTY, ILLINOIS
October 15, 2010

The jury in the Circuit Court, Cook County, Illinois awarded $3,666.221.34 from the hospital to the family. **Thomas v. Advocate Trinity Hosp., 2010 WL 4953772 (Cir. Ct. Cook Co., Illinois, October 15, 2010).**

Cardiac Cath: Hospital's Nurses Faulted For Delay In Removing Sheath.

The seventy-three year-old patient, a physician, had a cardiac catheterization procedure at the hospital.

Afterward the physician who performed the procedure told the post-operative-care nurses he wanted the sheath removed in two hours.

The sheath was not removed by the nurses until six and one-half hours after the procedure. The patient developed a groin hematoma that spread to his scrotum and caused swelling of his testicles which is expected to be permanent. One of the patient's expert witnesses, a cardiologist, testified that was a direct result of the delay in removing the sheath.

The patient's nursing expert testified that nurses are expected to follow the physician's instructions.

If there is any confusion about the orders the nurses are to contact the physician for clarification.

CIRCUIT COURT
PALM BEACH COUNTY, FLORIDA
October 27, 2010

The jury in the Circuit Court, Palm Beach County, Florida awarded the patient $650,176 as damages from the hospital. The jury expressly ruled the hospital 100% at fault for the nurses' negligence and ruled the patient's physician was not negligent.

The patient's nursing expert testified there was no room for discretion in interpreting the physicians' orders.

If the nurses did not understand the orders or had reason to question them they should have contacted the physician.

The jury discounted the hospital's argument that a groin hematoma is a complication to be expected after cardiac catheterization. **Snyder v. Boca Raton Comm. Hosp., 2010 WL 4926788 (Cir. Ct. Palm Beach Co., Florida, October 27, 2010).**

Obstructed Bowel: Hospital's Nurses Blamed For Failing To Contact The Physician.

The thirty year-old patient, fourteen weeks pregnant at the time, called an ambulance to take her to the hospital from a business function because she was having severe abdominal pain.

The E.R. physician suspected complications from her pregnancy but an ob/gyn ruled that out and consulted with a general surgeon about the possibility of a partial bowel obstruction.

The nurses on the postpartum unit, where the E.R. physician had her transferred, cared for her during the first night in the hospital. At 1:30 a.m. her blood pressure was 87/52, having been 126/72 earlier, her pain increased to 9/10 and she requested morphine.

At 5:10 a.m. she went into shock and was transferred to the ICU. An ultrasound discovered that her fetus had died.

Early that same afternoon the surgeons found that the patient's ischemic and by then necrotic intestine was twisted around her superior mesenteric artery.

The nurses should have notified the physician when the patient's blood pressure dropped significantly and she reported an increase in her pain and asked for morphine.

CIRCUIT COURT
DUPAGE COUNTY, ILLINOIS
October 26, 2010

After the patient's baby was found to have died the patient had a major portion of her small intestine removed and eventually had to have a liver transplant.

The jury in the Circuit Court, DuPage County, Illinois ruled the hospital's nurses 100% at fault and ruled that the physicians were not at fault. The patient was awarded $11,500,000 as damages from the hospital. **Miller v. Edwards Hosp., 2010 WL 5086604 (Cir. Ct. DuPage Co., Illinois, October 26, 2010).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Late-Term Abortion: Nurse/Conscientious Objector Has No Right To Sue Her Employer, Says US Court Of Appeals.

When she was hired for the hospital's operating room the nurse signed a document provided by her employer expressing her unwillingness to participate in abortions. The hospital had a written policy which allowed employees to register their conscientious objections to abortions and/or other procedures.

Nevertheless the nurse was compelled by her supervisor to assist in a late-term abortion. Then she reportedly was coerced to sign a document stating she had changed her mind and was now willing to participate in such procedures.

No Right to Sue Under Federal Law

The sued her employer in Federal Court alleging damages for emotional distress. The US Court of Appeals for the Second Circuit ruled she had no right to sue under Federal law.

A 1993 US Federal statute provides that no institution which receives Federal funding may discriminate against a healthcare worker who performs or assists in abortions or sterilization procedures, or who refuses to perform or assist in those procedures based on personal religious beliefs or moral convictions.

However, according to the Court, Congress had no intention when it passed the legislation to give a private citizen the right to sue his or her employer for discrimination in this context even if he or she has been a victim of clearly illegal employer action, unlike other contexts covered by the Civil Rights Act or Americans With Disabilities Act where Congress's intent to create a right to sue was unmistakably clear.

Federal regulations in effect when the events in this case transpired also ostensibly protect healthcare workers from discrimination. See *Morally Coercive Or Discriminatory Practices: New Regulations Take Effect January 20, 2009.* Legal Eagle Eye Newsletter for the Nursing Profession, (17)1, Jan.'09 p.1.

The Court noted that the nurse still has rights under state law in New York which are not affected by this ruling. **Cenzon-DeCarlo v. Mount Sinai Hosp., __ F. 3d __, 2010 WL 4723205 (2nd Cir., November 23, 2010).**

Emergency Room: Patient Can Sue Over Nurse's Statement Insinuating Drug-Seeking Behavior.

The patient went to the hospital E.R. and asked to be treated for a medical condition which he said was causing him a lot of pain.

He was seen by the nurse and then left alone in the waiting area.

While he was sitting in the waiting area moaning in pain another patient got up, approached the nurse and told her the patient was in a lot of pain.

The nurse reportedly told the other patient not to be concerned, since the patient in question was, "only here for drugs."

The patient in question sued the nurse and her employer for defamation, slander and intentional infliction of emotional distress.

The Superior Court of Connecticut ruled the patient's lawsuit stated a valid premise.

It is slanderous per se to accuse another person falsely of a crime in the presence of others or to make such a false accusation to a third party.

It is a criminal offense to obtain or attempt to obtain a controlled substance by fraud, deceit, misrepresentation, subterfuge, forgery, alteration of a prescription or written physician's order or by the concealment of material facts.

SUPERIOR COURT OF CONNECTICUT
October 29, 2010

The nurse's statement implied that the patient in question was attempting to procure drugs he did not need for medicinal purposes, which is a crime.

Falsely accusing another person of a crime in the presence of a third party, or making such a statement to a third party is slanderous *per se*, meaning that the victim is not necessarily required to prove that the statement caused harm to his or her reputation in the eyes of the third party, who in this case was a complete stranger.

That being said, the Court's ruling merely upholds the patient in question's right to his day in court. In trial he will have the burden of proof that it was a false statement that he was in the E.R. only to obtain drugs he did not need for a medical condition. **Hauer v. Eastern Connecticut Health Network, 2010 WL 4884688 (Conn. Super., October 29, 2010).**