LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

July 2002 Volume 10 Number 7

Back, Neck, Shoulder Injuries: Nurse's Disability Discrimination Case Dismissed.

A staff nurse worked in a university hospital's hyperbaric and vascular surgery unit. The patients on the unit are bedridden, wheelchair-bound amputees and other severely disabled individuals. Many are morbidly obese.

Nursing tasks on the unit are very demanding physically. Patients usually have to be helped. Often they have to be lifted bodily from carts or wheelchairs, on and off examining tables and on and off bathroom commodes. The patients can faint or fall at any time.

The hospital expects nurses on this unit to be able to exert themselves physically and to be able to work alone.

Medical Restriction From Injuries No Heavy Lifting

The nurse in question injured her back, neck and shoulder in a car accident. She returned to work and injured her back, neck and shoulder again lifting a heavy patient. When she was released to return to work this time she had medical restrictions on lifting that prevented her from performing her job.

Reasonable Accommodation Was Offered

According to the Supreme Court of Iowa, the university hospital system fulfilled its legal obligation to offer the nurse reasonable accommodation. Human resources assigned an accommodation specialist to help her find another position for which she was qualified and physically able to perform with her limitations.

She also got priority status for any vacancy that was open or would become open for which she was qualified.

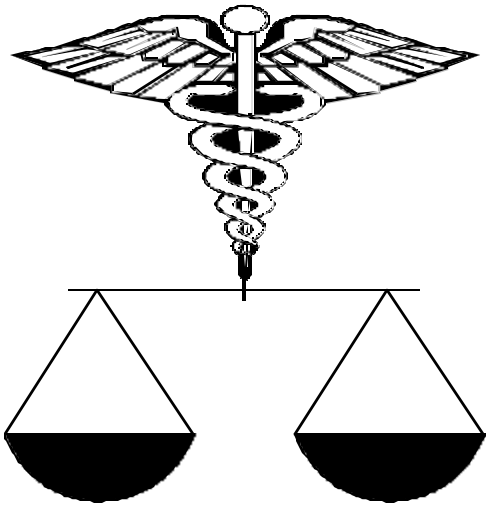
The nurse was told to check the university hospital's job line frequently. The accommodation specialist would act as her advocate in securing a suitable position, and many were available. The court faulted the nurse for failing to follow up on this herself.

Lifting Help For A Nurse Ruled Not A Reasonable Accommodation

In her lawsuit the nurse claimed disability discrimination because the hospital refused to let her return to her old job with other nurses being instructed they had to help her with any lifting tasks in excess of the lifting restrictions her physician had imposed.

The court ruled it is inherently unreasonable to expect other employees to perform the essential physical tasks of a disabled employee's job.

An employee has no right to accommodation beyond what is reasonable. The court ruled this nurse had no basis to sue for disability discrimination. **Schlitzer v. University of Iowa Hospitals & Clinics, 641 N.W. 2d 525 (Iowa, 2002).**



The Americans With Disabilities Act requires an employer to offer reasonable accommodation to any employee who becomes disabled.

However, any accommodation that places the burden of performing one employee's job responsibilities on other employees substantially impinges on the rights of other employees and is inherently unreasonable.

SUPREME COURT OF IOWA, 2002.

Inside this month's issue ...

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New Subscriptions Page 3

Medicare Part A: New Short-Form Minimum Data Set For Patient Assessment In Skilled Nursing Facilities.

The Centers for Medicare and Medicaid Services (CMS) has a new short form for the minimum data set (MDS) required for patient assessment in skilled nursing facilities. The new short form is referred to as the Medicare PPS Assessment Form, Version 2002 or MPAF.

New Short Form Is NOT Mandatory

The new MPAF may be used starting July 1, 2002. It is not mandatory to use the new short form in place of the old long form. Skilled nursing facilities can choose to continue to use the longer old minimum data set (MDS) after July 1.

The new MPAF may be used just like the old MDS for required assessments at days 5, 14, 30, 60 and 90 of skilled nursing facility stays covered by Medicare Part A and for Medicare certification.

Some Assessment Data No Longer Required for Medicare Part A

CMS indicated it kept the system of numbering assessment data subject areas on the new form consistent with the system of numbering on the old form.

To shorten the form and to shorten the assessment process itself CMS simply eliminated certain data points that are no longer required for skilled nursing facility Medicare Part A compliance.

CMS has also indicated the wording and instructions for the new short form are identical to those on the older MDS form.

The new MPAF form can be downloaded and printed from our website at http://www.nursinglaw.com/mpaf.pdf.

The full text of CMS's May 31, 2002 announcement is on our website at http://www.nursinglaw.com/mds.pdf.

Note that forms, regulatory announcements and other Federal legal source materials are not copyrighted and may be freely downloaded, photocopied, used, distributed, etc., by anyone who is interested.

FEDERAL REGISTER, May 31, 2002
Pages 38128 – 38132.

The Centers for Medicare and Medicaid Services (CMS) is offering skilled nursing facilities the option of using a modified shorter version of the minimum data set (MDS) to satisfy Medicare payment and quality requirements, starting July 1, 2002.

The new form is referred to as the Medicare PPS Assessment Form, Version 2002 (MPAF).

The purpose is to reduce the staffing burden on skilled nursing facilities and to free up time CMS believes nurses can better use providing care to patients rather than doing paperwork.

We have the new MPAF form on our website at http://www.nursinglaw.com/mpaf.pdf.

CMS has indicated that skilled nursing facilities who compile and report assessment data electronically can update their software for the new MPAF by logging on to http://www.hcfa.gov/medicare/mds20/mdssoftw.htm. This CMS website was still being updated as of this writing.

FEDERAL REGISTER, May 31, 2002
Pages 38128 – 38132.

Blood Collection Or Transfusion: New Guidance Document From The FDA.

Federal law states at present:

When a complication of blood collection or transfusion is confirmed to be fatal, the Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, shall be notified by telephone, fax, express mail or e mail as soon as possible.

A written report of the investigation conducted by a collecting facility (in the event of a donor reaction) or the *facility that performed the compatibility tests* (in the event of a transfusion reaction) shall be submitted to the Director within 7 days.

E mail fatalities2@cber.fda.gov
Phone (301) 827-6220
Fax (301) 827-6748 Attn: CBER Fatality Program Manager
Express mail

Office of Compliance and Biologics Quality / CBER
Attn: Facility Program Manager (HFM-650)
1401 Rockville Pike, Suite 200N
Rockville, MD 20852-1448

Although reporting is mandatory, the FDA has no specific requirements for the investigation that must be conducted or a mandatory format for the report that must be submitted for a blood-related fatality.

On June 4, 2002 the FDA published a recommended outline for the information facilities should gather, record and report when such an event occurs. The FDA is accepting public comments until September 3, 2002 before issuing mandatory regulations on this subject.

We placed the FDA's non-binding recommendations on our website at http://www.nursinglaw.com/bloodfatalities.pdf. The announcement is at http://www.nursinglaw.com/fda060402.pdf.

FEDERAL REGISTER, June 4, 2002
Pages 38505 – 38506.

Family Member Faints In E.R.: Court Says A Bystander Cannot Sue.

According to the court record, the emergency room doctor and nurse asked the mother to read to her three year-old from a children's book the hospital provided, to relax the child so the doctor could stitch the child's wound in the suture room adjacent to the emergency room.

The mother glanced over at what the doctor was doing. She became dizzy and nauseous. She got up from a stool she was sitting on. The nurse told her to take the stool and go to the other side of the room and sit down. The mother did not do as the nurse advised. She fainted, fell to the floor and suffered a skull fracture.

The Superior Court of Delaware ruled against the mother's malpractice lawsuit. A hospital has no legal liability to a bystander observing a medical procedure even if the bystander is helping to calm the patient. Other states' courts have ruled the same way in this not-uncommon scenario, the Delaware court pointed out. **Kananen v. Dupont Institute, 796 A. 2d 1 (Del. Super., 2000).**

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Mental Illness And Type II Diabetes: Patient Does Not Require Involuntary Treatment.

The US Supreme Court has ruled that a person with mental illness can be held involuntarily only if the person is a danger to self or others or is completely unable to provide for his or her own basic needs.

Basic needs are those things immediately necessary to sustain life.

To hold a person involuntarily there must be clear and convincing evidence that the person otherwise probably would not survive in the near future.

This patient is not managing his non-insulin-dependent diabetes optimally on his own with diet, exercise and medication. However, he has always sought medical care when he has had an acute need.

Complications are expected from his diabetes, but that is not grounds to lock him up right now.

COURT OF APPEALS OF OREGON, 2002.

The Court of Appeals of Oregon acknowledged the concerns of a staff nurse at the county psychiatric hospital, but then ruled there were no grounds to continue holding the patient for involuntary mental health treatment.

Nurse's Testimony Discounted

The nurse testified the man denied having a mental illness and denied having diabetes. The nurse believed he would not be able to control his diabetes on his own. He did not use insulin but had to watch his diet, exercise and take oral medication daily to control his blood sugar level. He would not do any of it on his own while not in a structured mental-health setting.

Psychiatrists had diagnosed the man as schizophrenic with paranoid delusions. Medical doctors had diagnosed him with hypercholesterolemia, hypertriglyceridemia and non-insulin-dependent diabetes.

The medical doctors backed off from saying the patient's diabetes posed an immediate threat to his life. Blindness, limb amputations and damage to organ systems were a strong possibility in the future, but there was nothing bad happening now.

The court pointed out that a dire and immediate threat to survival is required to hold a patient involuntarily on grounds of being unable to provide for basic needs, given the strong value we place on individual liberty and freedom of choice.

Less than optimal management of non-insulin-dependent diabetes is not grounds to hold a mental patient, the court ruled. **State v. Nguyen, 43 P. 3d 1218 (Or. App., 2002).**

Heat Stroke / Death: Court Says Nurse Was Deliberately Indifferent To Psychiatric Patient's Medical Needs.

The patient was involuntarily committed to a state psychiatric facility for treatment of auditory hallucinations, depression, erratic mood swings and paranoid delusions. He also had a heart condition, hypertension, diabetes and a history of chest pains with exertion.

Death From Heat Stroke

He was admitted to the facility June 19 and died in the facility from heat stroke on July 31. His family sued the state-run facility in Federal court, alleging deliberate indifference to his serious medical needs.

The phrase "deliberate indifference to serious medical needs" is the touchstone for alleging that the Constitutional rights of an inmate of a state facility have been violated. The US Court of Appeals for the Eight Circuit ruled the nursing care of this patient was so substandard it went beyond negligence into the realm of serious indifference, and the court upheld the lawsuit.

Substandard Psychiatric Nursing Care

For a month after he began to complain of dizziness, chest pains and syncope and was sweating profusely and drinking lots of water, the physicians wanted the nurses to watch him closely for dehydration. It was not consistent with his psychiatric treatment to reduce his anti-psychotic and anti-dyskinetic medications or his lithium.

The head nurse, however, approved the patient's own plan to continue strenuous outdoor exercise in 95ºF heat and kept him living in a room with hot steam pipes that were left uninsulated during an asbestos-abatement refit.

There was no ice available on the unit or supplies for an ice-water enema which the doctors wanted to try right before he expired, which the court also blamed on the head nurse. **Terrance v. Northville Regional Psychiatric Hospital, 286 F. 3d 834 (6th Cir., 2002).**

Nurses caring for psychiatric patients should know that excessive heat can cause serious medical complications for patients on psychotropic medications like Haldol, Cogentin and lithium.

Dehydration is always a nursing consideration with patients on these and similar medications.

Sweating, tremors and hypotension can be signs of dehydration or signs of extrapyramidal side effects of the medications.

Close, competent and vigilant nursing observation of these patients is always essential.

The risk of problems is compounded with a psychiatric patient who is diabetic and deconditioned and has a history of high blood pressure and chest pains.

Add to that an outside temperature above 95ºF with 90% humidity, meaning the heat index was 148º.

At a minimum the patient should have been restricted from outdoor exercise and kept indoors in a cool room.

UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT, 2002.

Sexual Assault: Court Refuses To Rule It Was Outside Course And Scope Of Employment.

A patient was in the hospital recovering from an angioplasty which had involved surgical insertion of a sheath in the femoral artery in his groin.

A male aide was assigned to care for him. Care involved touching and moving his genitals so that the groin area could be cleansed as needed. The aide improperly handled the patient's penis in a sexual manner. The patient sued the hospital in civil court for sexual assault.

A healthcare facility is not legally liable for a patient being sexually assaulted by a facility employee unless the assault is committed within the course and scope of the employee's employment duties.

COURT OF APPEALS OF GEORGIA, 2002.

The Court of Appeals of Georgia would not accept the argument the hospital raised, like most healthcare facilities in these cases, that a sexual assault is outside the course and scope of a caregiving employee's employment duties.

The court looked at the prior legal precedents and found a dichotomy. In some cases the perpetrator has no business touching the patient at all or touching the patient's genitals, while in other cases the perpetrator is supposed to do that but misuses the situation to obtain sexual gratification. In the latter situation, similar to this case, the courts usually do find the sexual assault was in the course and scope of employment and hold the employer liable. **Palladino v. Piedmont Hospital, Inc., 561 S.E. 2d 235 (Ga. App., 2002).**

No Assistance: Court Cannot Find The Nurse Was Negligent.

The patient had a history of chest pains and shortness of breath.

Before she could be operated on for spinal stenosis she had to have a cardiac assessment on the treadmill.

Before her cardiac assessment a nurse had to assess her fitness for the cardiac assessment itself.

There was no express hospital policy for this situation and no specific physician's orders.

That made it a question of nursing judgment.

Proving an error in nursing judgment requires expert testimony on the nursing standard of care for the specific situation, breach of the standard by the nurse in question and proof that the nurse's negligence was what harmed the patient.

SUPREME COURT OF
RHODE ISLAND, 2002.

The nurse competently assessed her and found she was fit for the cardiac stress test, which was not for three hours. The nurse suggested the patient to the hospital cafeteria for lunch. The patient did not need or request assistance. She walked to the cafeteria and ate without incident.

On the way back she fell in the corridor for no apparent reason. She sued the hospital claiming the nurse was negligent.

The Supreme Court of Rhode Island noted the patient had no expert testimony that the nurse's judgment departed from professional nursing standards. The court dismissed the case. **MacTavish v. Rhode Island Hospital, 795 A. 2d 1119 (R.I., 2002).**

Patient Refuses To Leave The Hospital: Court Orders Him Moved To An Adult Home.

Hospitals have a legal duty not to permit their facilities to be diverted to purposes for which hospitals are not intended.

The very purpose of an acute care hospital is in jeopardy when a patient who no longer requires acute-care services refuses to leave, thereby preventing truly needy patients from using the space to receive in-patient care.

It would be pointless for the hospital to sue this patient for the money his intransigence is costing.

To limit the hospital to a pointless collection lawsuit for the hospital's substantial losses would be inequitable.

To evict a patient from the hospital who does require a certain level of professional care is a drastic step, but the patient's unreasonable conduct is equally drastic.

Assuming the hospital has complied with all the statutory and administrative guidelines for properly discharging a patient, a court should grant a mandatory injunction requiring the patient to leave or allowing the patient to be removed.

NEW YORK SUPREME COURT,
KINGS COUNTY, 2002.

The patient had quadraparesis and non-insulin-dependent diabetes.

He was admitted to an acute care hospital after his home care was abandoned by the local visiting nurses association. The visiting nurses refused to provide care to him because of violent, threatening and harassing behavior toward all of the home health attendants who had treated or attempted to treat him.

Ten days into his hospital stay his medical evaluation was that he was stable and no longer needed acute hospital care. He was ordered discharged.

He appealed his discharge notice to the local board that considers such issues on behalf of Medicaid patients. The board saw to an independent medical evaluation, which supported the discharge order.

The hospital found him a placement in an adult home. The patient refused to go to the adult home.

The hospital filed suit against the patient seeking a mandatory injunction requiring him to leave the hospital voluntarily, or in the alternative granting the hospital legal authorization to have him transported to the adult home.

The New York Supreme Court, Kings County, issued the mandatory injunction.

Mandatory Injunction Ruled Appropriate

The court pointed out that a mandatory injunction is rarely issued. It is a drastic legal remedy that is used only when compelling circumstances require it.

However, when someone is continuing to engage in unlawful conduct that is likely to continue indefinitely, the one who is adversely affected by the conduct has the right to a mandatory injunction.

The court pointed out only in New Jersey and North Carolina are there legal case precedents where a hospital has been forced to go to court in this particular situation. Those precedents support what the New York court did in this case. **Wyckoff Heights Medical Center v. Rodriguez, 741 N.Y.S.2d 400 (N.Y. Super., 2002).**

Aide Sues Former Patient, Refuses To Drop Lawsuit: Court Finds Grounds For Hospital To Fire Her.

An individual had worked for the hospital for seven years in various nursing assistant and technician positions before she was assaulted by a patient in the rehabilitation unit who was recovering from head trauma.

She was injured and went on workers' compensation leave.

Slightly less than one year after being assaulted, after the patient had been discharged from the hospital, she filed a civil personal injury lawsuit against him for assault, battery and sexual battery.

When her supervisors learned of the lawsuit they wrote her a letter demanding that she dismiss the lawsuit, or be considered to have resigned from her position at the hospital. She refused to dismiss the lawsuit, lost her position and sued the hospital for wrongful termination.

Employee At-Will

According to the employee handbook she was an employee at-will. She had no employment contract or union collective bargaining agreement. By definition, a common-law employee at-will can quit or be terminated at any time for any reason.

The courts have softened the common-law rule somewhat. An employee at-will cannot be terminated in retaliation for exercising a legal right if the legal right is clearly supported by public policy.

No Public Policy Allows Hospital Employees To Sue Patients

The Court of Appeal of California conceded that access to the courts is a fundamental right. At the same time employers have the general legal right to insist that employees refrain from suing customers, clients or patients.

The court said no public policy exists that a hospital cannot insist an employee, as a condition of remaining an employee, not sue the hospital's current or former patients. **Jersey v. John Muir Medical Center, 118 Cal. Rptr. 2d 807 (Cal. App., 2002).**

Nowhere in the Constitution or our statute laws does it say that an employer cannot insist, as a condition of accepting employment, that employees not sue the employer's customers, clients or patients.

It was not clear whether the patient who attacked the nursing assistant was in full possession of his faculties when he did it.

However, it is not important whether the nursing assistant had valid grounds for a civil lawsuit against the former patient.

A hospital has the right to define its mission as incompatible with its staff suing a patient for conduct that may have been due the injuries for which the patient was being treated.

The nursing assistant was an employee at-will, as stated in the employee handbook. She did not have an employment contract and was not under a collective bargaining agreement. There is no public policy against a hospital firing an employee at-will for suing a former patient.

CALIFORNIA COURT OF APPEAL, 2002.

Quality Review: Waiting Time Measurements Not Admissible Evidence.

The case was full of complex medical issues. The jury ruled the doctors and nurses did not negligently misinterpret the fetal monitor readings or unreasonably delay the cesarean. The Court of Appeals of Kentucky agreed.

The hospital had done studies tracking patients' waiting times as they moved through the process of receiving care in various hospital departments, including labor and delivery.

After physicians reviewed the waiting-time studies they threw them away.

The waiting-time studies were discarded in the ordinary course of business, before the events in this case transpired. That is not relevant and no sinister motive can be inferred.

COURT OF APPEALS OF KENTUCKY, 2001.

The court also noted that internal quality review documents are generally not relevant or admissible in malpractice litigation, or even subject to pre-trial discovery demands from the patient's lawyer.

In this case the court ruled it proved nothing that the hospital had destroyed an internal quality assurance report regarding patients' waiting times in various hospital departments, as it was prepared, reviewed and then destroyed in the ordinary course of business. **Welsh v. Galen of Virginia, Inc., 71 S.W. 3d 105 (Ky. App., 2001).**

Home Care: Negligent Care For Urostomy Patient.

The patient went home after thirteen months in the hospital. He had had extensive surgeries for massive trauma from a construction-site accident. He had a colostomy, urostomy, amputation sites and extensive skin grafts that were still healing. Strict cleanliness was critical to his recovery.

Home health aides are expected to comprehend the critical importance of maintaining the integrity of a closed urine-containment system.

Urine cannot be allowed to leak. Urine is sterile in the body, but when exposed to air it breaks down into urea/ ammonia which causes skin tissue to break down.

COURT OF APPEAL OF LOUISIANA, 2002.

His home health aides allowed healthy skin on his trunk and his skin graft sites to rest on urine-soaked towels. They did not take care of a leak at his urostomy site or report it to his physician.

He had jerking and spasms in his lower extremities and phantom pain, both of which can be signs of infection. In addition he had headaches and was sweating profusely, other signs that should have alarmed his aides.

The problems were eventually noted and re-corrected at the hospital. He was discharged home in satisfactory condition, in the care of a different home-health agency. The Court of Appeal of Louisiana approved a $300,000 verdict. **McGrath v. Excel Home Care, Inc., 810 So. 2d 1283 (La. App., 2002).**

Religious Discrimination: Court Says Nurse Entitled To Reasonable Accommodation.

The courts look at religious discrimination basically the same as disability discrimination.

An employee must belong to something or believe in something the courts will recognize as a religion.

That was true in this case. The nurse belonged to the Roman Catholic church and believed in the church's moral stance against birth control.

The employee must experience a problem doing his or her job because of the employee's religious beliefs or practices.

The nurse in good conscience could not advise subjects to use birth control even while participating in a clinical drug trial.

The employee must request from the employer a specific accommodation to the employee's religious beliefs or practices.

The nurse in this case agreed she would do all of the other nursing tasks in screening and evaluating the research subjects; someone else had to read and explain to them the part of the medical consent form about birth control.

The US District Court for the Western District of New York ruled the nurse's religious discrimination case appeared to have sufficient validity to be allowed to go to trial before a civil jury.

Was it an undue hardship to have another nurse complete the clinical screening for drug-trial subjects by going over the clinic's recommendation they use birth control?

Was it improper for the nurse to have gone to the parking lot and given a patient a crucifix and told him to pray, after an adverse medication reaction, and was the adverse reaction due to a medication error by the nurse, and was that grounds for firing, or was she fired for anti-Catholic bias? The nurse would have her day in court. **Lotosky v. University of Rochester, 192 F. Supp. 2d 127 (W.D.N.Y., 2002).**

When an employee requests accommodation for religious beliefs or practices, the employer must allow it unless it would impose an undue hardship.

By definition, an accommodation that imposes undue hardship on the employer is not reasonable.

An employer's failure to allow an accommodation that is reasonable is religious discrimination.

The question for the jury will be whether or not having someone else go over the issue of birth control involved an undue hardship to this nurse's employer.

UNITED STATES DISTRICT COURT, NEW YORK, 2002.

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Nurse Consultant: Working At Home As Reasonable Accommodation.

As a full-time nurse consultant, the nurse performed compliance review for her employer's contract with the state's department of social and rehabilitative services.

The nurse consultant had consistently favorable performance and productivity reviews up until the time she had to take medical leave for scleroderma and esophageal dysmobility.

She was given intermittent leave for outpatient medical appointments and full-time leave for hospitalization. While on intermittent leave she worked on her case files at home.

When she returned to work after her hospitalization she was told she could no longer work at home and had to return all her case files to the office. At the time several of her assigned files were overdue for case completion.

The nurse consultant formally requested permission to work at home as reasonable accommodation under the Americans With Disabilities Act. Her request was denied and she was terminated for inability to perform her current position. She sued for disability discrimination.

Her case was carefully considered but thrown out by the US Circuit Court of Appeals for the Tenth Circuit.

Company Had An Established Work-At-Home Policy

The company had an established policy for allowing or disallowing nurse consultants, disabled or not, to work at home, based strictly on numerical case-closure rates, and the company followed its policy uniformly. This nurse, formerly very productive, was six cases behind on case closure to qualify to work at home.

In more general terms, the courts now see working at home as a possible reasonable accommodation that disabled employees can request. The courts differentiate jobs which require closely supervised teamwork, where working at home is not appropriate, from solitary unsupervised work, where a disabled employee may have a legitimate right to work at home.

It is critical for an employer to establish a work-at-home policy and adhere to it before a disability discrimination claim comes along. **Spielman v. Blue Cross & Blue Shield of Kansas, 33 Fed. Appx. 439 (10th Cir., 2002).**

Multiple Sclerosis: Management Perceived Nurse As Disabled, Court Upholds Discrimination Suit.

A nurse had multiple sclerosis. She worked as a circulating nurse in the operating room. Her direct supervisors, who knew she had MS, consistently gave her positive evaluations on her routine periodic performance reviews, one of which was seven weeks before the events in question.

Medication Error Attributed To Disability

The nurse prepared a local anesthetic containing epinephrine for a patient who was allergic to epinephrine. The error was caught in time by the nurse anesthetist and reported to the director of surgical services.

The director believed the nurse was cognitively impaired and unable to handle stress because of her MS and attributed the medication error to this falsely perceived disability. The nurse was demoted to a temporary position in the surgical supply room. Although her pay was not reduced, the supply-room job did not involve professional nursing responsibilities.

An employer cannot discriminate against an employee who has a disability or against an employee who the employer perceives has a disability who in fact is not disabled.

The hospital attributed a medication error to a cognitive impairment and lesser stress tolerance stemming from multiple sclerosis and demoted the nurse to a less demanding job.

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT, 2002.

The US Circuit Court of Appeals for the Eighth Circuit upheld a $50,000 court judgment for the nurse for mental anguish and emotional distress.

There are grounds to sue for disability discrimination when an employer makes an adverse employment decision based on a false perception an employee has a medical condition the employee does not have or based on a false perception the employee is disabled from a real condition that in fact is not causing a disability. **Brown v. Lester E. Cox Medical Centers, 286 F. 3d 1040 (8th Cir., 2002).**