LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

July 2003 Volume 11 Number 7

Employment References: Court Rules That Nurse Cannot Sue For Defamation.

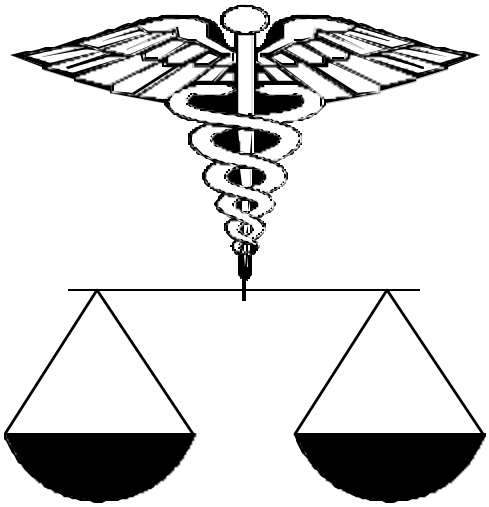
A registered nurse voluntarily resigned from the hospital's neonatal intensive care unit. Ten days later she put in an employment application at a nursing agency.

The agency required her to send her former employer a form entitled "Confidential Reference Check Report." The form asked her former supervisor to check boxes for "Above Average," "Average" or "Below Average" in eight categories: performance, adaptability, judgment, dependability, cooperation, initiative, personality and attendance.

The form also asked the former supervisor to state whether or not he or she would rehire the applicant.

The form included an authorization for the applicant to sign stating, *"I hereby authorize the addressed individual* [supervisor] *to furnish an employment reference verification/evaluation to* [agency] *and do hereby release both parties from any and all liability for damages in the furnishing and receiving of this information."*

The nurse signed the authorization and sent the form to her former supervisor, who checked "Average" for the first three categories, "Below Average" for the remaining five and indicated she would not rehire her.



By signing the agency's employment-reference authorization form the nurse expressly authorized her former employer to fill out the form.

Furthermore, the nurse expressly gave up the right to sue her former employer for checking the boxes on the form in a way that indicated a substandard evaluation of her competency as a nurse.

COURT OF APPEALS OF INDIANA
June 3, 2003

Defamation Lawsuit Dismissed

The nurse's application sat at the agency for eight months and she was not offered any work. She sued the hospital and her former supervisor for defamation. The Court of Appeals of Indiana dismissed her lawsuit.

Information about an individual's current or past employment is by law strictly confidential. However, when an individual expressly authorizes release of confidential information there is no right to turn around and sue for defamation, slander, libel, invasion of privacy, etc., if the information is not favorable and it hurts the individual's ability to obtain employment.

Former Supervisor Stayed Within the Scope of the Authorization

The court made a very important point: The authorization signed by the applicant only authorized the supervisor to check the boxes on the form, and that was all the supervisor did.

As worded the form did not authorize the supervisor to discuss the applicant or to volunteer written comments beyond what the form specifically asked for. The supervisor and the hospital would have been liable if she had done that. **Eitler v. St. Joseph's Regional Medical Center, __ N.E. 2d __, 2003 WL 21267125 (Ind. App., June 3, 2003).**

Inside this month's issue ...

July 2003

Emergency Room: Nurses Not Required To Check Discharged Patients Waiting To Leave.

A patient came to the emergency room with flu-like symptoms including nausea, dizziness, cough, difficulty breathing and fever. He was seen by the nurse and referred to the physician, who treated him for bronchitis and released him.

He was discharged at 5:50 a.m. but did not get a ride home until 7:00 a.m. Later that day his condition worsened. He was taken to another hospital where he died the next morning from meningococcemia related to N. meningitidis.

Symptoms Worsened While Waiting To Leave the Emergency Room

The E.R. triage nurse who saw him when he first came in and discharged him at 5:50 a.m. testified he was in good condition at discharge and did not have the tell-tale skin rash or petechial hemorrhages characteristic of meningococcemia.

His brother who picked him up at 7:00 a.m. testified his speech was not normal, he had difficulty walking and he had red marks and purplish discoloration on his face. The brother admitted he did not tell a nurse or doctor about this.

No Obligation To Check On Discharged Patients Waiting To Leave

The Appellate Court of Illinois agreed with the hospital's nursing expert that there is no generally accepted requirement for nurses to check on patients sitting in the waiting room waiting to leave after discharge from the emergency room.

Nurses Must Follow Hospital Policies

After this incident the hospital amended its policy manual contents pertaining to the E.R. to require its nurses to check on such patients up until the time they physically depart from the premises.

However, policy changes implemented by quality review with 20/20 hindsight after an unfortunate incident are completely irrelevant in a lawsuit over an incident that occurred before the policy changes went into effect, especially a lawsuit over the incident that prompted the changes. **Smith v. Silver Cross Hospital, __ N.E. 2d __, 2003 WL 21107135 (Ill. App., May 15, 2003).**

Nurses are required to follow the hospital's own internal policies for monitoring patients, even if those policies are more stringent that the generally prevailing professional standard of care applicable to nurses.

However, the hospital's post-incident policies adopted in 1998 are not relevant to this incident in 1996.

All policy manual contents for the policies in effect in 1996 are no longer available, having properly been destroyed in the ordinary course of business when the newer 1998 policies were put into effect.

APPELLATE COURT OF ILLINOIS
May 15, 2003

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Our newsletter is available online to paying subscribers at no additional charge beyond the subscription price.

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Emergency Room Blood Draw For Etoh: Nurse Not Expected To Do Officer's Job.

A driver was convicted of drunk driving and vehicular homicide based on a blood sample drawn by a nurse in the emergency room on the orders of the arresting deputy sheriff.

The Court of Appeals of Indiana reversed the conviction but permitted the State to retry him.

The deputy told the defendant he had no choice but to give a blood sample and he told the nurse to draw it.

The patient did not resist the nurse, so she could assume for purposes of treating him for his own injuries from the collision that he was consenting to blood being drawn.

COURT OF APPEALS OF INDIANA
June 10, 2003

The deputy sheriff did not follow the implied-consent law for drunk-driving arrests, did not make a valid search incident to an arrest taking a blood sample and did not have a search warrant. In addition, realizing there were legal problems with the sample drawn for forensic purposes, the deputy went back and got the hospital's medical lab sample for use in court.

However, the point is that legal issues of implied consent, probable cause, search warrants, etc., are strictly the responsibility of law enforcement. As long as the nurse is ordered by law enforcement to take a blood sample or has consent from the patient, the nurse does nothing wrong. **Hannoy v. State, __ N.E. 2d __, 2003 WL 21321386 (Ind. App., June 10, 2003).**

Employment Discrimination: Court Lets Facility Look At Applicant's Whole Background To Fill Psychiatric Nurse-Manager Position.

The facility posted an opening for a new psychiatric nurse manager:

Qualifications: Current Pennsylvania RN licensure required. Minimum two years. Increasingly responsible supervisory experience preferred. BSN preferred. Experience with budget process and policy development/maintenance desirable.

Then the opening was re-posted:

Qualifications: Current Pennsylvania RN licensure required. Minimum two years increasingly responsible supervisory experience preferred. BSN preferred. Experience with budget process and policy development/maintenance desirable.

That is, removing the one period after the word *years* seemed to make the two-year requirement applicable to supervisory experience rather than RN licensure.

The position went to a long-term employee of the facility with supervisory and managerial experience who had been an RN only eighteen months. It did not go to a newly hired employee with no supervisory or managerial experience who had been an RN fully sixteen years.

The applicant who had been an RN sixteen years sued for discrimination.

Number of years licensed as a registered nurse is not the only relevant consideration in picking a nurse manager for a hospital's inpatient psych unit and crisis-intervention service.

Supervisory and managerial experience is very significant even if it is not as a nurse supervising nurses.

Number of years at the facility is important even if not licensed as a registered nurse the whole time.

Crisis intervention skills would also be very important for the position.

A BA in psychology is important for work in a mental health facility.

It is not discriminatory to select an application with only 1 1/2 years licensure as an RN over one with 16, when all the other relevant factors are considered.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
NOT SELECTED FOR PUBLICATION
May 23, 2003

The US Circuit Court of Appeals for the Third Circuit threw out her case, in an opinion that has not been selected for publication.

The court believed the removal of the one period from the first posting was a grammatical correction meant to clarify what the personnel department wanted to say in the first place, not a conspiratorial act intended to favor one applicant unfairly over the other.

Facility Permitted to Look At Applicant's Whole Background

The court went on to state that the backgrounds of competing applicants for a nurse-manager position can be looked at in their totality in light of the objective demands for the position, without committing discrimination. Length of time licensed as an RN is only one factor.

Supervisory and managerial experience in general, or better, in healthcare, or better yet, in the same department is a significant consideration in selecting a nurse-manager. Length of time at the same facility can also favor one over the other, even if one was not working as a nurse.

If the position requires special training and skills like crisis intervention, that can be weighed more heavily than simple seniority as a nurse. Educational background outside of nursing can also be given weight, assuming the outside field has some relevance to the mission of the unit or department the nurse manager will be supervising. **Longstreet v. Holy Spirit Hospital, 2003 WL 21205881 (3rd. Cir., May 23, 2003).**

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Post-Surgical Nursing Care: Court Unable To Relate Nursing Negligence To Death From Pulmonary Thromboembolism.

Although there was evidence of nursing negligence the Superior Court of Delaware declined to award any damages whatsoever for wrongful death to the family of a deceased hospital patient.

Five days after an exploratory laparotomy the patient was found in his hospital bed not breathing and with no pulse. Attempts to resuscitate him failed. The autopsy established massive bilateral pulmonary thromboembolism as the cause of death with obesity and cardiomegaly as contributing factors.

A physician hired as an expert witness by the family's attorneys found the nursing care deficient. Measures were not taken to reduce the possibility of post-surgical deep vein thrombosis and the nurses failed to recognize and act upon signs that a pulmonary embolism was underway.

Loss of Chance of Survival

The legal question for the court was whether Delaware would do as some states have done and adopt the legal doctrine called loss of chance of survival.

In some states the doctrine allows heirs and family members suing for wrongful death to multiply the percentage loss of chance of survival, however small, caused by a caregiver's negligence, against the total damages and still obtain compensation. If a patient's life is valued at $1,000,000 the family would still be awarded a $100,000 verdict if a nurse's negligence was only 10% and natural causes were 90% responsible for the patient's death.

In this case the medical expert could not say that the nurses' negligence caused any significant loss of this patient's chances of survival. The family had no right to sue. In an unpublished opinion, the court held on to the traditional rule that negligence must be a substantial factor causing harm to a patient or there is no right to sue (in Delaware). **Parker v. Wilk, 2003 WL 21221895 (Del. Super., May 27, 2003).**

The medical expert witness hired by the attorneys representing the family of the deceased testified that if the hospital nursing staff had acted differently the deceased's chances of survival would have been better than they were.

He had a ventral hernia repair and went home the same day. He needed an exploratory laparotomy and came back a week later.

While he was recovering from the laparotomy the nurses should have sat him up in a chair to reduce the possibility of deep vein thromboses developing.

The nurses should have contacted the physician about transferring him to the ICU.

The nurses apparently did not understand the dire significance of his abnormal oxygen saturation level, respiration, pulse and other unsettling signs.

The nurses should have held back the narcotics which were masking his condition and contributing to depression of respiration and circulation.

SUPERIOR COURT OF DELAWARE
UNPUBLISHED OPINION
May 27, 2003

Nursing License: Nursing Board Must Pay For Board-Ordered Psych Exam, Not Nurse.

A hospital staff nurse was accused of acts of incompetence such as mixing up patients' names on lab samples, not administering meds and then falsifying medication records and removing a chest tube without being qualified to do so.

The Board of Nursing ordered him to go to a specified psychiatrist for a mental-health evaluation, at the nurse's own expense. The nurse agreed to go, but felt the Board should bear the cost.

When there is reason to question a nurse's fitness to practice, the Board of Nursing can require the nurse to submit to a psych exam.

However, the nurse cannot be required to pay for the exam. That would violate his constitutional rights.

COURT OF APPEALS OF INDIANA
June 13, 2003

The Court of Appeals of Indiana sided with the nurse. A citizen has a Constitutional right to maintain a professional license and to work in a chosen field until proven unfit. Having to pay for a mental-health evaluation to keep a professional license, before charges of unfitness have been proven, violates Due Process of Law. The Board had to pay for the exam.

This ruling does not apply to mental health treatment or evaluation that may be ordered or agreed upon so that a nurse actually proven guilty of misconduct or unfitness can keep or regain a license. **Ross v. Board of Nursing, __ N.E. 2d __, 2003 WL 21362711 (Ind. App., June 13, 2003).**

Defamation / Wrongful Discharge: Verdict Awarded To Nurses Wrongfully Accused.

Two LPN's were fired from a long-term care facility over allegations made against them by CNA's who worked with them.

One nurse was accused of failing to chart a fall by a specified resident an aide claimed she witnessed. The other was accused of verbally abusing a resident and of failing to give another resident her prn pain medication when the CNA reported to the nurse the resident needed it.

After both nurses were terminated the grounds for their terminations were reported to the state office of long-term care and to the local police department.

Complained of Improper Patient Care Prior to Termination

The Court of Appeals of Arkansas pointed out that prior to their terminations each nurse had voiced concerns to the facility's director of nursing over improper patient care by the facility's aides. The court did not elaborate on the nature of the nurses' complaints about the aides or comment on whether they were valid.

Verdict Upheld
Defamation / Wrongful Discharge

The nurses sued the nursing home corporation and the director of nursing.

The jury awarded the nurse who had allegedly failed to chart a resident's fall $67,740 for wrongful discharge and $200,000 for defamation.

The other nurse, accused of verbally abusing one resident and failing to give another her prn medication was awarded $65,000 for wrongful discharge and $15,000 for her attorney's fees.

The Court of Appeals of Arkansas upheld the verdict.

Whistleblowers
Caregiving Occupations

Nurses and others who work with vulnerable populations like nursing home patients are required by law to report actual or suspected abuse.

Their employers are strictly forbidden to retaliate against them for fulfilling their legal and moral responsibilities in this area.

Nurses and other employees of long-term care facilities are expressly required by law to report actual or suspected patient abuse or neglect.

Actual or suspected abuse or neglect must be reported to the long-term care facility's administration and to state authorities if nothing is done about it.

No owner or administrator of a long-term care facility can discriminate, retaliate or seek reprisals against a resident or an employee of a long-term care facility who initiates or cooperates with steps taken to investigate or remedy abuse or neglect of a patient.

Making false allegations against a nurse of professional negligence, such as incomplete charting or failing to give meds, is one form that illegal retaliation or reprisals can take.

Legal damages for defamation and wrongful discharge can include loss of income from denigration of a nurse's reputation.

Legal damages can also include compensation for emotional harm and depression, whether or not professional help has been sought.

COURT OF APPEALS OF ARKANSAS
May 28, 2003

Editor's Note: State statutes and common law court precedents across the nation support whistleblowing caregiving employees. However, nurses must be cautioned that US states vary widely on a spectrum from employee-friendly to employer-friendly in respect to how whistleblowing caregivers are protected by law.

That is, employee-friendly states protect employees who so much as verbally threaten to go to state authorities over abuse or neglect. In another state jurisdiction it may be necessary to file a signed written report with state authorities before the employee is considered a whistleblower who can sue for defamation and wrongful discharge.

The complaint must involve illegal abuse or neglect of a vulnerable person, not just a personal difference of opinion on nursing-care policies.

The complaint of abuse or neglect must have come *before* adverse employment was taken or the employee is not really considered a whistleblower.

Compensation for Damages

A nursing home consultant, licensed administrator and former director of nursing testified as an expert witness that she would not hire either of the nurses.

The nurse awarded $65,000, who actually was hired somewhere else, testified she suffered from depression and had come to doubt herself as a nurse.

The other nurse, awarded $267,740, had not been able to find employment.

Privileged Communication

The court did point to the other side of the coin. Facilities are immune from lawsuits after they make good-faith reports of abuse or incompetence to the state registry of caregiving employees. Good faith means there was no malice or ulterior motive and the facility made a reasonably thorough investigation before reporting and firing the employee. The court commented the facility's lawyers should have at least tried to make this argument. **Northport Health services, Inc. v. Owens, __ S.W. 3d __, 2003 WL 21223999 (Ark. App., May 28, 2003).**

Race Bias: Caucasian Nurse Unable To Prove Minority Supervisor's Bias Was Behind Adverse Employment Decision.

A Caucasian registered nurse working in a mental health center took several medical leaves of absence. Although not explicitly stated in the court record it appeared the leaves were for mental health-related issues.

When she wanted to come back to work the director of human resources required her physician to certify her as fit for duty. Her physician instead stated unequivocally she was unable to return to work in any effective capacity as a registered nurse or in any other capacity within the mental health system.

Human resources placed her on administrative leave, meaning basically she was not allowed to come back to work. The nurse sued for racial discrimination. The US District Court for the Northern District of Illinois dismissed her case.

Direct Evidence of Racial Bias Employment Decision-Maker

The nurse's immediate supervisor, an African-American, had made a remark that she, "… did not want any crazy white nurses working for me." The nurse also believed subjectively that her supervisor was prejudiced against her.

However, the court pointed to the accepted legal rule that to prove discrimination by direct evidence, racial bias has to be proven on the part of someone who is an employment decision-maker. This nurse's supervisor could not and did not decide to place her on administrative leave. That was up to the director of human resources, who based her decision strictly on what the nurse's physician said.

Circumstantial Evidence

A Caucasian employee has circumstantial, as opposed to direct evidence of discrimination when treated unfairly in a department where the decision-makers are predominately minorities, but that was not the situation here, the court noted. **Piskorek v. Dept. of Human Services, 2003 WL 21212583 (N.D. Ill., May 22, 2003).**

A Caucasian nurse can sue for race discrimination under some circumstances.

If the nurse is the only Caucasian employee in a department where all or nearly all the employment decision-makers are racial minorities, the Caucasian nurse would be the one considered the minority. In this situation the non-Caucasian decision-makers would have to disprove discriminatory intent as their motivation for an employment decision adversely affecting the Caucasian.

Reverse discrimination is another situation where a Caucasian can sue, if the minority person hired or promoted ahead of the Caucasian was clearly less qualified and management had expressed the desire to hire or promote a minority.

A Caucasian can also sue if there is direct evidence a minority decision-maker was racially biased in making an employment decision, although in discrimination cases there is rarely direct evidence of discrimination.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
May 22, 2003

Race Bias: Nurse's Case Dismissed.

A long-term care facility's African American director of nursing was demoted to director of clinical programs, an assistant director-of-nursing position, after the facility was cited by the state department of health for insufficient hydration of residents, then suspended after the facility was written up again for the same problem.

She was terminated after she told a family member to speak to the administrator or to leave a note for the director of nursing when he complained his wife had a puddle of urine under her wheelchair and was not being attended to, rather than addressing the problem herself.

When a minority employee is terminated there is a prima facie case of discrimination. The employer has to show a legitimate non-discriminatory reason.

The employee can try to prove the employer's non-discriminatory reason is not legitimate, but just a pretext for discrimination.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
NOT SELECTED FOR PUBLICATION
May 20, 2003

The US Circuit Court of Appeals for the Third Circuit, in an opinion not selected for publication, ruled the employer did have legitimate, non-discriminatory grounds to discipline and then terminate the employee, notwithstanding her complaints of racism.

A court does not second-guess the employer's judgment, but instead looks only for implausibilities, inconsistencies, incoherencies or contradictions in how the employer articulated a non-discriminatory reason for taking action against a certain employee, the court said. **Martin v. Health Care & Retirement Corp., 2003 WL 21186126 (3rd. Cir., May 20, 2003).**

Nursing Home Resident Funds: Reimbursement Questioned.

The nursing home's policy allowed an employee to purchase items like drugstore sundries, fast-food meals and clothing for a resident and obtain reimbursement out of the resident's funds.

However, receipts were to be submitted to the administrator's office so that a check could be issued to the employee. Employees were not to obtain any funds whatsoever directly from residents.

During a routine spend-down audit it was discovered a $100 check had been written by the resident to an employee on an account the resident kept herself. The employee was fired and reported for abuse.

Nursing home employees are required to follow state law and the nursing home's own internal procedures for getting reimbursement for personal items purchased for residents.

However, when the employee has not taken advantage of or stolen from the resident there are no grounds to report the employee for abuse of a vulnerable person.

MISSOURI COURT OF APPEALS
May 20, 2003

The Missouri Court of Appeals upheld the firing but ruled that since there was no actual misappropriation funds there was no legal basis to report the individual to the state registry for abuse of a resident.

A state law was violated that required any payment over $10 by a resident to an employee to be reported in writing to the administrator, but that also did not warrant reporting her to the registry for abuse. **Wells v. Dunn, __ S.W. 3d __, 2003) WL 21145844 (Mo. App., May 20, 2003).**

Jail Nursing: Deliberate Indifference To Inmate's Serious Medical Needs.

Nurses working in correctional facilities can be sued and often are sued by prisoners for denial of medical care while incarcerated.

A nurse can be guilty of violating a prisoner's Constitutional rights if the nurse is deliberately indifferent to the prisoner's serious medical needs.

Deliberate indifference to a prisoner's serious medical needs is considered a violation of the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the US Constitution.

A separate issue is that medical care, including receiving attention from the jail nurse, cannot be withheld as a disciplinary measure to punish an inmate for unacceptable conduct.

Inmates have the right to freedom of speech to complain about jail conditions. They are allowed access to their legal representatives and to the jail law library.

No jail personnel, medical or non-medical, can retaliate against an inmate for exercising his or her rights.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
June 4, 2003

Nurses working in correctional facilities increasingly are becoming targets of lawsuits filed by inmates.

Inmates will often name as defendants all the persons perceived as authority figures involved in the inmate's incarceration, all the way from the governor and the superintendent of corrections to the jail guards and the jail nurse. The majority of these lawsuits are dismissed as unfounded.

However, the US District Court for the Southern District of New York recently handed down a ruling that the defendant nurses were guilty of deliberate indifference to the inmate's serious medical needs, which is the catch phrase for alleging a violation of an inmate's Constitutional rights by jail medical personnel.

Inhibitors Withheld from HIV+ Inmate While in Disciplinary Segregation

The inmate was sent to the Special Housing Unit for eight days as punishment for violation of jail rules.

In fact, the court decided, the inmate was the target of retaliation by the jail guards for voicing complaints about jail conditions.

While in disciplinary segregation the inmate did not receive his protease inhibitors from the nurses. His HIV+ status and his consequent need for his inhibitors was a serious medical need, the court reasoned, because of the potential for the progression of the virus to outrun the progress of his therapy during such an interval while he was not taking his inhibitors.

The court did not believe the nurses had the same retaliatory motive withholding his inhibitors that the guards had sending him to disciplinary segregation.

Nurses cannot withhold attention or care to an inmate even for a non-serious medical need as a disciplinary measure, and the nurse's motive in holding back care is not relevant if there is deliberate indifference to serious medical need, the court said. **Soto v. Iacavino, 2003 WL 21281762 (S.D. N.Y., June 4, 2003).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Bone Spur In Foot: Court Says Nurse Has Occupational Disease.

A licensed practical nurse worked at the hospital for seven years before she began having pain in her right foot. Her podiatrist diagnosed a bone spur on her right heel which he related to walking up and down the hospital hallways caring for patients.

The state worker's compensation board awarded compensation, but the hospital appealed. The New York Supreme Court, Appellate Division, ruled in the nurse's favor.

An occupational disease is a condition which derives from the very nature of the employment. The podiatrist who performed the independent medical examination for the worker's compensation department believed the bone spur was aggravated by being on her feet all day walking on hard floors, a distinct feature of a staff nurse's job in a hospital. **Aldrich v. St. Joseph's Hospital, __ N.Y.S.2d __, 2003 N.Y. Slip Op. 14368, 2003 WL 21196531 (N.Y. App., May 22, 2003).**

H&P, Operative Report Backdated: But No Nursing Negligence, Says Nursing Expert.

The nursing expert hired by the attorneys representing the family of the deceased testified it was highly irregular to find the admitting history and physical and the operative report dictated and dated by the physician more than three weeks after surgery, that is, a few days after the patient had died in the ICU.

However, as to the nursing care the deceased received, there was nothing to suggest it was below the standard of care and nothing to suggest it contributed to her death. On this basis the Court of Appeal of California, in an unpublished opinion, ruled that there was no basis for a lawsuit against the hospital.

Although it can raise suspicions, there is no misconduct *per se* when a physician dictates after the fact. **Ross v. Redding Medical Center, 2003 WL 21246105 (Cal. App., May 29, 2003).**

Labor Relations: Charge Nurses In Nursing Home Are Supervisors, Not Part Of The Bargaining Unit.

A nursing home refused to recognize the union as the proper legal representative of the caregiving employees. The union filed an unfair labor practice charge with the NLRB.

The US Circuit Court of Appeals for the Ninth Circuit sided with the nursing home, in an opinion not selected for publication. As a general rule, a bargaining unit that contains rank-and-file workers as well as the supervisors who supervise the rank-and-file is an illegal bargaining unit which the employer has no duty to recognize as the employees' agent for collective bargaining purposes.

Charge nurses in hospitals are more or less the same as staff nurses, the court pointed out, and are not considered supervisors under US labor law.

Nursing home charge nurses use independent professional judgment to make patient-care decisions and to delegate care tasks to aides whom they direct, supervise, counsel, correct and discipline.

Charge nurses are supervisors and do not belong in a bargaining unit with the rank-and-file aides in a nursing home.

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT
NOT SELECTED FOR PUBLICATION
May 27, 2003

Not so in a nursing home. Charge nurses in nursing homes use their independent professional judgment to offer correction and discipline to certified nurse's aides. Directing, supervising, correcting and disciplining aides is a responsibility for which charge nurses themselves are responsible to the director of nursing in a nursing home.

Charge nurses assess nursing home patients and make sophisticated judgments regarding their care. For labor-relations law the important point is that most of that care is actually performed by others acting at the charge nurses' direction, rather than by the charge nurses themselves, making them supervisors, not rank-and-file employees. **Evergreen New Hope Health & Rehabilitation Center v. N.L.R.B, 2003 WL 21259895 (9th Cir., May 27, 2003)**