LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

July 2006 Volume 14 Number 7

Failure To Report Child Abuse: Large Verdict Rendered Over Physician's, Nurse's Inaction.

The father brought his three year-old to the walk-in clinic for treatment of a bump on the boy's head. The father said another child had hit him on he head with a golf club.

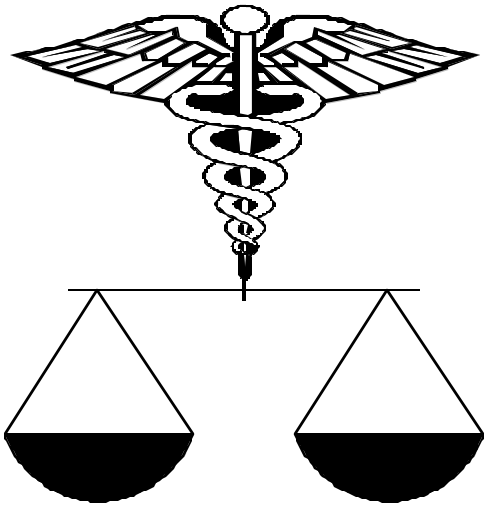
The physician examined the boy. In addition to the large lump on his forehead his body was covered in bruises and his teeth were chipped and decaying.

The physician realized the boy was a battered child. However, she relied on the father's statements that his mother, from whom he was separated, had abused the boy and that he, the father, was going to report her to the authorities in the state where she lived.

The boy was brought back in for stomach pains, nausea and vomiting. The same physician did a blood glucose test but did not ask or follow up herself on the abuse issues.

Ten months after his first visit the boy died from blunt force trauma to his abdomen for which his father and stepmother were convicted of negligent homicide.

A civil lawsuit followed against the clinic based on the inaction of the clinic's physician and nurse in the face of their legal duties as mandatory reporters of child abuse. The jury's verdict was $2,500,000.00.



Any person required to report suspected child maltreatment who willfully fails to do so is civilly liable for the damages caused by that failure.

When any of the following has reasonable cause to suspect a child has been maltreated ... a licensed nurse ... a physician ... the proper authorities must be notified immediately.

SUPREME COURT OF ARKANSAS
June 15, 2006

The Supreme Court of Arkansas pointed to a state statute, similar to statutes in effect in most other states, which contains a long list of persons who are required by law to make a report to specified legal authorities when they have reasonable cause to believe that a child has been subjected to child abuse or maltreatment.

The list includes physicians, licensed nurses and any medical personnel who may be engaged in the admission, examination, care or treatment of patients.

Mandatory reporters of child abuse, among other penalties, can face civil lawsuits for the damages caused by failure to fulfill their legal duty.

These civil lawsuits can be filed by patients after achieving adulthood, by the probate estate of a deceased child, by concerned family members other than the abuser or others who may be able to qualify as legal guardian.

In this case, however, the verdict was overturned on technical grounds. The nurse was not sued, although she could have been. The physician was sued but was not brought into the case until after the statute of limitations had expired, which entitled her to dismissal despite the validity of the allegations against her. A clinic, in Arkansas, is not a mandatory reporter. **Cooper Clinic v. Barnes, __ S. W. 3d __, 2006 WL 1644635 (Ark., June 15, 2006).**

Inside this month's issue ...

July 2006

New Subscriptions
See Page 3

Blood Infusion: Nurses Did Not Clarify, Follow Orders, Death Tied To Negligence.

The patient was admitted to the hospital through the emergency room for treatment of gastrointestinal bleeding.

The emergency physician ordered two units of packed red cells, IV fluids and a telemetry unit.

According to the record in the Court of Appeals of Ohio, the physician did not specify the flow rate for infusion of the blood. He later explained in court he was going to set the infusion rate once the blood actually arrived, but admitted, nevertheless, it was substandard medical practice for him not to give the infusion rate along with the admitting orders on the phone with the patient's nurse.

Nurses Failed To Clarify, Follow Physician's Orders

Leaving aside the physician's negligence, the court also saw negligence on the part of the nurses which was to some degree a factor responsible for the patient's death.

The patient's nurse testified when a physician does not specify an infusion rate for blood it means the physician wants it to infuse at a standard rate of 125 ml per hour, which was how she set it.

The nursing supervisor testified it was the practice among the nurses to run IV's at 125 ml per hour if no other rate was specified by the physician, although the hospital's written nursing policies and procedures did expressly state it is the physician's responsibility to set an infusion rate or hang time for any IV.

In fact, given the urgency of the patient's medical condition, the physician wanted the blood infusion to run wide open. When he visited the patient later that evening he assumed the nurses were running the blood wide open. However, he did not check the IV or the blood-infusion paperwork.

The nurses also did not run the fluid IV at the same time or get the telemetry monitor as ordered by the physician. **Czarney v. Porter, 2006 WL 1360503 (Ohio App., May 18, 2006).**

Expert testimony is required to establish the prevailing standard of care when the professional skill or judgment of a nurse or physician has been called into question in a civil negligence lawsuit.

The correct method to infuse blood or other substances intravenously is not within the common knowledge of lay persons on a jury. It is a subject area where expert testimony must be presented or the patient's lawsuit cannot go forward.

However, no expert is required to establish that it is beneath the standard of care for nurses to fail to clarify and follow physician's orders in the treatment of a patient entrusted to their care.

The jury must still determine whether the nurses' errors or omissions were what caused the patient's demise, and that issue does require expert medical testimony.

In this case the experts stated that the telemetry unit, if in use, would have alerted the nurses the patient was in dire distress.

COURT OF APPEALS OF OHIO
May 18, 2006

E. R.: Patient Was Given Standard Care, No EMTALA Violation.

When they brought their son to the hospital following an auto accident the patient's parents told the desk receptionist in the emergency room they had no medical insurance and their auto insurance would not cover the bill.

A triage nurse and then another nurse examined the patient and found vital signs and all systems within normal limits. The patient complained of rib and shoulder pain presumably from deployment of the airbag in the crash. A physician checked him, ordered x-rays and had the nurses give him pain medication. After his pain subsided in a few hours he was sent home with a diagnosis of two fractured ribs.

Days later he had to have surgery for a ruptured spleen, a problem that was missed in the emergency room.

The EMTALA protects uninsured patients from being treated differently in hospital emergency rooms.

The law is satisfied when such patients are treated the same as others.

UNITED STATES DISTRICT COURT
GEORGIA
May 23, 2006

The US District Court for the Middle District of Georgia found the hospital's nursing and medical staff complied fully with the US Emergency Medical Treatment and Active Labor Act (EMTALA).

The nurses and physician gave this patient the same medical screening examination and stabilizing treatment that any other patient, insured or not, would have received at that hospital with the same presenting history, signs and symptoms. **Bryant v. Archbold Memorial Hosp., 2006 WL 1517074 (M.D. Ga., May 23, 2006).**

Accusations Of Narcotics Diversion: Court Must Look At Agency Nurse's Legal Rights.

Hospital management detected that narcotics had come up missing during the night shift while an agency nurse was on duty.

The hospital chose to solve the problem simply by telling the staffing agency not to send the nurse back to the hospital and not to send her to work at any other facilities associated with the hospital's parent corporation.

The allegation of narcotics diversion was turned over to the state pharmacy board for investigation. However, after the nurse passed a polygraph examination the pharmacy board dropped its investigation.

The staffing agency offered the nurse work assignments at other facilities in the city not associated with the same hospital or its parent corporation.

The nurse declined the offer and sued the hospital and the staffing agency.

The Court of Appeals of Ohio ruled there was no basis for her lawsuit.

To explain its ruling the court looked at the legal rights possessed by agency nurses *vis a vis* their agencies and the client healthcare facilities where they are assigned to work.

With any legal contract comes a duty of good faith and fair dealing.

However, there was no contract between the agency nurse and the hospital.

The contract was between the agency and the hospital. The contract gave the hospital the right to dismiss any agency nurse at the hospital's discretion, with or without cause.

The agency nurse's contract with the agency stated expressly that she agreed to be treated as an at-will employee, meaning the agency had no obligation to provide her with employment or to try to continue an assignment terminated by a client facility.

The agency offered the nurse other assignments. The agency did not have to go to bat for her to get her reinstated at the facility where she wanted to work.

COURT OF APPEALS OF OHIO
June 2, 2006

Agency nurses do not have employment-contract rights with the facilities where they work. Agency nurses are employees of their agencies, not the facilities where they work.

Courts are imposing basic duties on employers above and beyond the details expressly spelled out in formal employment contracts and union collective bargaining agreements to act in good faith when dealing with their own employees. When an employee is suspected or accused of misconduct the employer must investigate, take corrective action short of termination and terminate the employee only if it is necessitated by blatant misconduct on the employee's part.

On the other hand, contracts between staffing agencies and client facilities typically give the facility wide latitude to discontinue a nurse's services at any time at the facility's discretion. In this case the hospital was not required to investigate any further or consider corrective action to resolve the situation. The hospital had the right to resolve the suspicions of its managers by simply getting rid of the nurse in question in a very abrupt manner.

Nevertheless this wide latitude given to facilities to choose whom to keep and whom not to keep does not go so far as to allow a facility to discriminate on the basis of race, gender, national origin, age, disability, pregnancy, etc. Nursing agencies' client facilities are bound by anti-discrimination laws just as if they were employers, but that was not an issue in this case. **Dunina v. Lifecare Hospitals, 2006 WL 1529475 (Ohio App., June 2, 2006).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924

Indexed in
Cumulative Index to Nursing & Allied Health Literature™

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

E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
PO Box 4592
Seattle, WA 98194–0592
Phone (206) 440-5860 Fax (206) 440-5862
info@nursinglaw.com
www.nursinglaw.com

Hepatitis A: New Vaccine Info Materials From CDC.

On May 31, 2006 the US Centers for Disease Control and Prevention (CDC) announced the availability of a new Vaccine Information Statement for Hepatitis A vaccine to be used by healthcare providers starting no later than July 1, 2006.

By law any US healthcare provider who administers certain vaccines to any child or adult must provide a copy of the relevant vaccine information materials.

We placed the CDC's new Vaccine Information Statement for Hepatitis A on our website at www.nursinglaw.com/hepAvis.pdf.

Current versions of all the CDC's Vaccine Information Statements are available on the CDC's website www.cdc.gov/nip/publications/VIS.

FEDERAL REGISTER May 31, 2006
Pages 30938 – 30940

The CDC has highlighted certain features of its current information statement for Hepatitis A.

The vaccine is not to be given to children under one year of age.

Persons who should routinely be vaccinated include:

All children 12 to 23 months old;

Men who have sex with men;

Persons who use street drugs;

Persons with chronic liver disease;

Persons who are treated with clotting factor concentrates.

The CDC's May 31, 2006 announcement from the Federal Register is on our website at www.nursinglaw.com/CDC053106.pdf.

FEDERAL REGISTER May 31, 2006
Pages 30938 – 30940

Hepatitis C: Occupational Disease For A Caregiver, If Linked To Exposure At Work.

Four days after starting her employment at the medical center a lab assistant's hair, mouth, eyes and clothing were splashed with blood from a Hepatitis C positive patient as she was assisting with the patient in the intensive care unit.

The nurse serving as the facility's employee-wellness coordinator had the lab assistant give a blood sample that same day, which tested positive for Hepatitis C.

She was tested again six months later and was again positive.

An occupational disease is defined for purposes of workers compensation as a disease or illness due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease.

COURT OF APPEAL OF LOUISIANA
June 9, 2006

The Court of Appeal of Louisiana acknowledged that the law does recognize Hepatitis C as an occupational disease among healthcare workers.

However, the court denied her claim based on the wellness coordinator's expert testimony. If her blood was already positive on the day of this exposure her illness had to have pre-dated her employment at the medical center. **Jenkinson v. North Oaks Medical Center, __ So. 2d __, 2006 WL 1576066 (La. App., June 9, 2006).**

Labor Law: Nurses Must Pay Union Dues Or Be Fired.

In the companion case filed against the hospital by the union, the US Court of Appeals for the Eighth Circuit recently reiterated its support for the union-security clause in the hospital's collective bargaining agreement with its nurses.

See *Labor Law: Hospital Must Collect Union Dues, Fire Non-Union Nurses.* Legal Eagle Eye Newsletter for the Nursing Profession (14)3, Mar. '06 p. 8.

The court again rejected the argument that the hospital's statutory patient-care responsibilities and the current nursing shortage mean that a hospital does not have to fire nurses who refuse to have union dues deducted from their pay. **United Food and Commercial Workers v. St. John's Mercy Health Systems, __ F. 3d __, 2006 WL 1409416 (8th Cir., May 24, 2006).**

Overtime: Fair Labor Standards Act Applies To Agency Nurses.

The US District Court for the Southern District of New York has taken the position that the US Fair Labor Standards Act gives agency nurses legal rights *vis a vis* the hospitals or other client facilities where they work as well as the nursing staffing agencies which are their nominal employers.

Client facilities exercise functional control over agency nurses in their day to day clinical performance. That creates a dual-employment relationship in which the client facilities are also liable for ensuring that time-and-one-half overtime premiums are paid to agency nurses. **Barfield v. New York City Health and Hospitals Corp., __ F. Supp. 2d __, 2006 WL 1462269 (S.D.N.Y., May 30, 2006).**

Aides Resist Colostomy Care: Facility's Reactions Ruled Unfair Labor Practices.

The new executive director at a long-term care facility announced in a meeting with the aides that a former resident was to be readmitted who would need assistance with her colostomy care. The aides' supervisor responded that the aides would object to being assigned to the colostomy bag emptying routine.

Nine days later three lead aides met with the executive director to present a petition signed by twenty four aides stating they would not take responsibility for any colostomy care.

The petition went on to state that the aides already had a long list of regular responsibilities and complained about verbal abuse from family members and general disrespect by facility management.

The director asked them to identify the author of the petition, but she got no response. Within earshot of the director the aides began discussing a work stoppage to occur two days later.

The director discussed the situation with corporate management. They decided to meet with the aides in small groups to investigate who was responsible for instigating the petition.

The day after the meeting, the day before the threatened work stoppage, the director and two persons from corporate headquarters began calling groups of three to five aides into her office to try to find out who was behind the petition.

There was no work stoppage.

A few days later the director fired the aide who drafted the petition, who was one of the aides who had brought the petition to her office, and demoted a second of the three from her position as lead, although she continued to receive a lead aide's pay.

The union representing the aides filed charges of unfair labor practices with the US National Labor Relations Board.

After a full hearing the Board ruled the facility had committed unfair labor practices and ordered the two aides restored to their previous positions. The US Court of Appeals for the Fourth Circuit agreed with the Board.

The US National Labor Relations Act (NLRA) gives employees in the private sector the right to self-organization and the right to engage in other concerted activities for the purpose of mutual aid or protection.

It is an unfair labor practice for a private-sector employer to interfere with, restrain or coerce employees in the exercise of rights guaranteed by the NLRA.

When an employer disciplines an employee by changing the terms or conditions of the employee's employment in response to the employee's protected activities the employer is coercing the employee from engaging in activities protected by the Act.

An employer can question employees about labor-relations issues. However, such questioning must be done in an atmosphere where employees are assured there is to be no retaliation against the interviewee or others based on the information gathered in the interview. Otherwise it is considered a coercive interview, a form of unfair labor practice.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
May 31, 2006

Concerted Activities

The aides were participating in concerted activities for the purpose of mutual aid and protection, the court said, paraphrasing the express language of the US National Labor Relations Act. They had the right not to be subjected to employer coercion or reprisals over the petition.

Management Prerogatives

The court noted that whom the company hires for management is not a subject for employee concerted action and employee protests are not protected by law.

Coercive Interviews Are Illegal

The court upheld the Board's ruling that management did conduct illegal coercive interviews in this case.

Management can question employees about labor-management issues only if it is done in a non-threatening way. Management has the responsibility to reassure employees and thereby create a non-threatening atmosphere for such interviews. In this case some of the aides testified they felt threatened they could lose their jobs or face demotion or other consequences if they did not betray the author of the petition to the director.

Employer Reprisals

Firing or demoting an employee as done in this case was ruled an unquestioned unfair labor practice.

Illegal Strike / Labor Coercion

The work stoppage allegedly threatened in this case, if it had occurred, would have been illegal. Every private-sector healthcare employer, among other things, is entitled to at least ten days advance notice of any work stoppage or strike.

It would have been a labor unfair labor practice for the union or activist employees to call an illegal work stoppage or strike and/or to coerce or attempt to coerce employees to engage in an illegal strike. The Board determined that there was no such coercion. Every aide scheduled to work showed up that day even as aides called in from other company facilities were standing by in case they did not. **Sunrise Senior Living, Inc. v. NLRB, 2006 WL 1526122 (4th Cir., May 31, 2006).**

Expert Witnesses: Courts Are Seeing A Wider Role For Nurses In Medical Litigation.

The patient, 6' 4," 380 lbs., had a lengthy hospitalization for three open abdominal surgeries to repair a gunshot wound.

When finally transferred to a rehab facility he had decubitus ulcers on his sacral area, feet, heels and head.

He sued his physician, the hospital and the agency which provided med/surg nurse staffing at the hospital.

The physician was dismissed from the case. Before being dismissed the physician testified in his deposition that he was not an expert and could not and would not offer a medical opinion on the subject of skin care and decubitus ulcers.

Patient's Case Based Only On Nursing Expert's Testimony

In this case the patient's nursing expert had eighteen years nursing experience and was familiar with standards for the care of elderly and critically ill patients. She was certified in wound care.

Her expert opinion was that the care given the patient by the hospital's (agency) nurses did not meet accepted standards. They failed to reposition the patient and failed to place protectors on his heels and feet, directly leading to development of avoidable decubitus ulcers.

The judge proceeded to dismiss the patient's case on the grounds a nurse's expert testimony is not sufficient to support a medical negligence case.

The Supreme Court of Oklahoma, however, disagreed with the judge and overturned the dismissal. In its opinion the Oklahoma court reviewed the current widespread acceptance by other state courts of nurses' expertise in healthcare negligence litigation.

Nurses generally are accepted as experts on skin care for hospital, rehab and nursing-home patients, on the issue of appropriate care and whether the lack of appropriate care can or did lead to development of avoidable lesions. The Court cited precedents directly on point from Texas, Hawaii, Kentucky, Florida, Indiana, Missouri, Georgia and Kansas.

According to the patient's nursing expert, the standard of care for a critically ill patient was not followed by the hospital's nurses.

The chart did not show that he was being turned every two hours as a standard practice to avoid bedsores.

There was a 48-hour period where his physician ordered him not to be moved, but there was no nursing documentation of turning before that order was written or after it expired.

Failure to reposition the patient at regular intervals was a direct contributor to development of severe decubitus ulcers on his coccyx, heels and head.

The nurses also failed to place heel protectors on his feet. That was negligent and it led directly to the decubitus ulcers on his heels and feet.

The patient was tall and heavy. He was immobile and suffered nutritional deficits due to trauma and multiple surgical complications.

However, the development of decubitus ulcers was nonetheless avoidable if nursing standards of care had been followed.

SUPREME COURT OF OKLAHOMA
June 13, 2006

The Court went on to cite other US legal case precedents accepting nurses as expert witnesses:

A nurse cannot testify on the standard of care for a physician, only the standard of care for nurses. However, a nurse is an expert on wound care for a post-op patient in a screw-pin head restraint (Minnesota).

A nurse can testify as an expert on standards for assisting a post-operative patient with ambulation (Delaware).

A nurse can testify as an expert on standards for properly supervising a nursing-home resident in a wheelchair to prevent injury (Texas).

A hospital director of nursing can testify that nurses must independently evaluate the appropriateness of a physician's hospital discharge order, and, if necessary, contact the physician to advocate for the patient. That is, a post-op patient who the nurses know still has an elevated temperature should not automatically be discharged just because the physician has ordered it (South Dakota).

A nurse can testify – against a physician – on standards for maintaining the sterility of needles used to draw blood (Georgia).

Pediatric nurse practitioners are widely accepted as experts in child-abuse cases to link physical and behavioral data to abuse by an adult (Georgia).

Nurses are experts on the issue of a parent's parenting skills, or lack thereof, in child-custody disputes (Colorado).

Nurses can testify in personal-injury lawsuits about the personal care that an accident victim will need following an accident due to the injuries from the accident (District of Columbia).

A nurse can testify on medical and nursing standards for assessing a patient for signs of preeclampsia and for monitoring the patient for seizure (Ohio).

A nurse can testify on the cause of a hospital patient's staph infection, if the nurse has a background in infection control (Kentucky). **Gaines v. Comanche Co. Medical Hosp., __ P. 3d __, 2006 WL 1628094 (Okla., June 13, 2006).**

Feeding Tube: Nurses Cleared Of Negligence In Patient's Death.

The patient had had a myocardial infarction during which he stopped breathing for a time. He was left with brain damage from lack of oxygen.

The hospital transferred him to the skilled rehab unit, then discharged him to a nursing home with a gastrostomy tube that had been inserted at the hospital.

While being showered at the nursing home he pulled out his tube. The aide promptly told the nurse. The nurse contacted the hospital and the hospital sent over a nurse practitioner who replaced the tube with a Foley catheter as instructed by the physician.

According to the Court of Appeals of Texas the nurse practitioner injected and ascultated for sounds of air in the stomach before authorizing the nursing home staff to resume feeding him.

Later that afternoon, 1 1/2 hours after he was last fed, a nurse saw him shaking and making facial grimaces. She called 911 and had him taken back to the hospital. An x-ray showed the tube was not in his stomach. He died nine days later from peritonitis.

In a healthcare negligence case the patient must be able to prove by a preponderance of the evidence that negligence occurred and caused harm.

COURT OF APPEALS OF TEXAS
June 7, 2006

The court ruled the evidence was inconclusive as to nursing negligence. The medical experts testified the tube may have not been correctly re-positioned by the nurses or may have been correctly positioned and then pulled loose again by the patient at some time before the x-rays at the hospital. **Estate of Garrison v. Dailey, 2006 WL 1547759 (Tex. App., June 7, 2006).**

O. R.: Range Of Motion For Non-Operative Leg, Ortho Case.

The patient developed compartment syndrome in his right calf after a lengthy orthopedic procedure to repair the posterior cruciate ligament in his left knee.

Intra-Operative Care

The evidence revealed that the circulating nurse, in fact, at least twice during the six-hour-plus procedure reached under the sterile drapes and exercised the non-operative leg.

Still, the expert witnesses related the patient's post-operative complications to range-of-motion not being carried out as frequently and extensively as necessary.

However, the judge dismissed the case because the expert witnesses could point to no established standard setting the accepted parameters for exercising and then re-positioning the non-operative leg during an orthopedic case.

The Court of Appeals of Michigan, however, overruled the dismissal and reinstated the case, believing it would be more appropriate for a jury to hear the experts on both sides, decide what is correct and render a verdict.

Post-Operative Care

The evening after surgery the patient's nurse reported to the physician that his urine was tea-colored, an abnormal finding. A half hour later the patient, as his pain medication wore off, was having pain in his knee.

Then ninety minutes later he told the nurse he was having cramps in the other calf. The nurse reported to the physician that the calf was firm and tense and very painful to the touch. She wanted to do a Homan's test for deep vein thrombosis but the leg was too painful to the touch.

The Court of Appeals faulted the way the residents responded to the nurse's good assessment data. **Schutz v. Ingham Regional Medical Center, 2006 WL 1451557 (Mich. App., May 25, 2006).**

Race Bias: Court Rules Day, Night Nurse Manager Positions Not Equivalent, Pay Differential OK.

The US Circuit Court of Appeals for the Sixth Circuit found a skilled nursing facility not guilty of racial discrimination for paying an African-American night-shift nursing manager $2 per hour less than the Caucasian day-shift nurse manager.

When a minority employee is not paid the same for work that is ostensibly the same as that performed by a non-minority, the employer must be prepared to justify its actions.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
June 1, 2006

Both nurses had essentially the same educational backgrounds and prior nursing supervisory experience. They had the same job title and, at least on paper, the same level of authority and responsibility.

However, according to the court, the day-shift manager had to supervise a larger staff including the rehab aides who only worked during the day, had to address customer-service issues, had to admit and discharge patients and had to take part in quality assurance committee meetings, care conferences, etc.

The night-shift manager only supervised the staff on duty and completed a patient-census form.

In the court's judgment the day-shift position was more demanding. Thus the pay differential could be justified on non-discriminatory grounds. **Hatchett v. Health Care and Retirement Corp., 2006 WL 1525688 (6th Cir., June 1, 2006).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Freedom Of Religion: Court Looks At Nurse's Right To Refuse To Participate In Treatments Based On Moral Convictions.

A nurse who worked in a state-supported university's student health center applied for promotion.

The interviewer was already familiar with the nurse's nursing skills. The interview boiled down to one issue, would she be willing to dispense emergency contraception, that is, the "morning after pill" to the students. The nurse replied she believed life begins at conception, was opposed to abortion, considered emergency contraception a form of abortion and was opposed to its use. The interviewer told her there was another candidate who did not object. The other nurse got the promotion.

The US District Court for the Central District of Illinois reviewed the allegations contained in the nurse's discrimination lawsuit.

Freedom of Religion / Undue Hardship

The court ruled the nurse was deprived of an employment opportunity based on her religious or moral beliefs. However, even when an employee's religious freedom has been curtailed by an employer's actions, the employer can avoid liability for religious discrimination if the employer can show that accommodating the employee's religious or moral beliefs would impose an undue hardship on the employer. The undue hardship issue most often comes up with employees' requests to be absent for non-traditional religious holy days and observances.

The court said the evidence was lacking how the employer in this case would suffer any hardship if this nurse did not have to dispense emergency contraception.

The nurse's lawsuit also pointed to a Federal statute which prohibits recipients of Federal funding from discriminating against health care personnel who refuse to participate in abortion or sterilization procedures. However, the court ruled that this Federal statute was not enacted to give healthcare personnel the right to sue. **Nead v. Eastern Illinois University, 2006 WL 1582454 (C. D. Ill., June 6, 2006).**

Negligent Urinary Catheterization: Court Says Prostate Surgery Patient's Case Can Go Ahead.

The patient had prostate surgery, a radical retropubic prostatectomy for prostate cancer at a US Veterans Administration hospital.

During the procedure the surgeon inserted a Foley catheter. The patient was to be discharged three days after surgery with the Foley catheter intact.

Instead, according to the US District Court for the Western District of Louisiana, the hospital's nursing staff erroneously removed the Foley catheter and replaced it with a condom catheter.

Recognizing the mistake, the Foley catheter was soon reinserted by the outpatient urology clinic.

The patient sued the US government over the mistake made by the nurses at the VA. His suit claimed the urinary blockage, impairment of urinary flow and urinary urgency he experienced after his surgery were caused by the nurse's negligence in removing the Foley catheter prematurely.

Even in cases of obvious negligence, the medical consequences cannot be evaluated on the basis of lay persons' common knowledge without guidance from expert medical opinions.

Expert testimony is needed if the patient is to prove his anastomotic stricture is the cause of bladder spasms, flow control and urinary urgency.

UNITED STATES DISTRICT COURT
LOUISIANA
June 12, 2006

The court made reference to the general rule that a patient suing his caregivers for malpractice must have expert testimony to back up his claim, except in cases of obvious negligence.

Even in a case where the caregivers' negligence is obvious, the patient must still have expert testimony to establish a link between the caregivers' negligence and the harm suffered.

As the patient did not follow court procedures to designate an outside expert his case would be limited to his treating physicians' opinions as to cause and effect. **Coleman v. US, 2006 WL 1627805 (W.D. La., June 12, 2006).**