LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

July 2007 Volume 15 Number 7

Cancer Chemotherapy: Fired Nurse Can Sue For Disability Discrimination, Court Says.

A registered nurse with more than forty years experience in a variety of clinical settings was working as a telephone triage nurse for a physicians' pediatric medical practice.

When she was diagnosed with cancer and started chemotherapy her supervisor told her she should go on Social Security disability. The nurse replied that she was not disabled, would not qualify for Social Security, was fully capable of continuing to work and wished to remain in her position. She was terminated two days later.

Employee Falsely Perceived as Disabled Is Protected by the ADA

The US District Court for the Middle District of Florida pointed to the express language of the Americans With Disabilities Act (ADA). An employer cannot discriminate against a qualified individual with a disability who can perform the essential functions of the job. Nor can an employer discriminate against an able individual who is falsely perceived to have a disability.

In short, an employee like the nurse in this case does not necessarily have to be disabled to benefit from the ADA.

Disability discrimination, like other employment discrimination, entitles the victim to back pay to make the victim financially whole for the wrong suffered.

The Americans With Disabilities Act (ADA) outlaws employment discrimination against a qualified individual with a disability.

A person falsely perceived by his or her employer to have a disability, who does not actually have a disability, is protected by the ADA to the same extent as a disabled person.

UNITED STATES DISTRICT COURT
FLORIDA
May 31, 2007

Back pay, as the phrase is used, includes lost salary, raises and fringe benefits, from the date of firing until the day of judgment in court, less any actual income the person earned during that period.

The ADA also allows a victim of discrimination to receive compensation for emotional pain and suffering and mental anguish, up to a maximum of $50,000.

The court can also add the victim's lawyer's fees to the damages for back pay and pain and suffering.

COBRA Violation
Health Insurance Continuation

The nurse was fired at a point in her life where she was very vulnerable to disruption of her health insurance coverage.

By law, an employee discharged from employment is entitled to be notified of the right to continue health coverage on a private-pay basis, according to the US Consolidated Omnibus Budget Reconciliation Act (COBRA).

The court found a COBRA violation on top of the ADA violation.

The court ruled the nurse was entitled to damages for lost income, medical expenses for her chemo not covered by the insurance she should have had, mental anguish and emotional distress and attorney fees, totaling over $155,000. **Doss-Clark v. Babies and Beyond Pediatrics, 2007 WL 1577770 (M.D. Fla., May 31, 2007).**

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New Subscriptions
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Labor & Delivery: Lawsuit Faults Nurse, Failed To Alert Other Physicians First-Year Resident Was "In Way Over His Head."

A complex obstetrics malpractice lawsuit filed in the Superior Court, King County, Washington was settled for $3.2 million on the recommendation of a retired judge who was called in to serve as the mediator on the case.

Medical Malpractice

A first-year resident physician with only minimal obstetric experience attempted vaginal delivery. The mother's prenatal history pointed to a cesarean. Unsatisfactory fetal monitor tracings during labor should have confirmed the need for the staff obstetrician to do a cesarean. He was readily available to assess the progress of labor and to take over if the resident asked.

The baby finally appeared with the umbilical cord wrapped around its neck, which would seem to explain the signs of fetal distress seen on the monitor tracings.

The resident waited five more minutes before calling a second-year resident and the chief resident. He later charted that shoulder dystocia had been the hold-up.

The family's lawsuit alleged malpractice by the first-year resident and alleged that the hospital's system for supervising its residents was wholly inadequate.

Nursing Malpractice
Failure to Advocate for Patient

The experienced labor and delivery nurse, the lawsuit alleged, could plainly see from the fetal monitor that the fetus was in deep distress.

When the baby appeared with a nuchal cord and the resident still did not know what to do, it was clearly time for the nurse to take decisive action.

The nurse was faulted for failing to summon a more experienced resident physician or the staff obstetrician or a nursing supervisor when it was obvious to the nurse that the first-year resident's incompetence was posing a grave threat to the patient. **Baby Doe v. (Confidential) Hospital, 2007 WL 1576360 (Sup. Ct. King Co., Washington, January 30, 2007).**

The experienced labor and delivery nurse could plainly see that the first-year resident was not competently handling the mother's late-stage labor and the start of her delivery.

More experienced physicians were standing by in the department, literally only a few footsteps away.

The fetal monitor strips had become very worrisome, showing intermittent decelerations with diminished variability after pitocin was given to stimulate uterine contractions.

Then the fetal monitor tracing was lost altogether. There was no fetal heartbeat. The first-year resident physician seemed not to realize this was an extreme emergency.

The baby finally appeared with the cord wrapped around the neck. The resident froze. He obviously did not know what to do.

The resident should have asked for help. When he did not, the nurse should have stepped in and summoned more experienced people.

SUPERIOR COURT, KING COUNTY
WASHINGTON
January 30, 2007

Faulty Transfer: Patient's Suit Dismissed.

The seventy-three year-old patient was admitted to an extended care facility after surgical revision of her total-hip replacement.

A Minimum Data Set was prepared upon admission. Her assessment indicated, among other things, that she was totally dependent on staff assistance and required two persons to transfer her.

While one nursing assistant alone was transferring her from her wheelchair to her bed in violation of her treatment plan, a cracking noise was heard that was later identified as a femur fracture.

The Court of Appeals of Texas dismissed her lawsuit against the nursing facility. To succeed with a negligence lawsuit like this a patient needs expert testimony proving precisely how a one-person transfer caused an injury which would not have occurred with a two-person transfer. A bad outcome, in and of itself, does not prove a patient's caregivers committed negligence. **Meyers v. Golden Palms Retirement & Health Center, Inc., 2007 WL 1500819 (Tex. App., May 24, 2007).**

Cause Of Death: Death Certificate Not Conclusive.

The District Court of Appeal of Florida refused to dismiss a case of alleged nursing home negligence simply because the death certificate did not seem to support the family's case.

The cause of death noted by the attending physician or coroner on a death certificate is not conclusive evidence.

The family in this case was ruled to be entitled to have a jury at least consider their medical expert's theory linking the patient's demise to failure to monitor oxygen saturation levels. **Marshall v. HQM of Winter Park, __ So. 2d __, 2007 WL 1647561 (Fla. App., June 8, 2007).**

Polygraph: Not Admissible In Court, One Way Or The Other.

A nurse filed a complex wrongful termination lawsuit against her former employer in the US District Court for the Northern District of Iowa.

The court recently disposed of the legal issues surrounding a polygraph examination the nurse underwent for her state board of nursing in conjunction with allegations she had been stealing morphine from the hospital prior to her termination.

Police and other law enforcement agencies may choose to use a polygraph, or "lie detector" test, as a basis to decide whether to go ahead or to back off from investigating a particular suspect.

Polygraphs, however, are still considered fundamentally unreliable by the courts. They cannot be used in court to incriminate a criminal suspect.

The same is true, as in this case, when the subject passes a polygraph examination. Passing a polygraph examination does not prove innocence any more than failing one proves guilt in a court of law. **Raymond v. U.S.A. Healthcare, 2007 WL 1455862 (N.D. Iowa, May 9, 2007).**

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Needlestick: Court Looks At Proof Linking Injury To HIV Seroconversion.

The basic facts were undisputed. The CNA was stuck at work by a needle that had been used on an HIV+ patient diagnosed with AIDS. The CNA tested negative for HIV at six, ten and seventeen months post-injury. Four years later while getting a physical for life insurance she was found to have seroconverted HIV+.

The state commission found the CNA eligible for worker's compensation for an on-the-job injury. Her employer filed an appeal.

The employer offered the testimony of a medical expert that 99% of people infected with HIV from a needlestick test positive for HIV within six months. According to the medical literature, seroconversion more than seventeen months after an alleged exposure cannot scientifically be traced to the alleged incident.

Legal Burden of Proof

The Court of Appeals of Texas ruled the employer has the legal burden of proof to rule out other explanations.

The CNA was exposed to HIV. She seroconverted. The employer could not prove she had had unprotected sex with an infected person or had abused intravenous drugs. With no plausible explanation on the table other than the needlestick, the CNA was ruled to be entitled to worker's compensation. **Christus Health v. Price, 2007 WL 1500854 (Tex. App., May 24, 2007).**

Medical Error: Nurse Did Not Tell Parents, Case Dismissed Against Nurse.

A two year-old was to have a two-part outpatient procedure, surgical repair of a ptosis of the right eyelid and examination of the left eye while under anesthesia.

The surgeon confirmed with the operating room staff that the surgery was to be done on the right eye. Then he went ahead and started the incision on the left eye. He promptly realized his mistake and stopped. He told the circulating nurse to go out and contact the mother in the waiting room to confirm once and for all that it was the right eye he was supposed to operate on.

The nurse spoke with the mother, reassured her that everything was fine, did not say anything about the surgeon's mistake and returned to the operating room.

The surgery on the right eye went forward with no complications afterward except minor swelling for two weeks near the left eye. The surgeon revealed his mistake to the mother.

The Supreme Court of Mississippi ruled the mother did not have grounds for a lawsuit against the nurse, unless she could come up with a nursing expert to testify as to the accepted standards in the nursing profession delineating when a nurse is to reveal and when a nurse is not to reveal a physician's mistake to a family member. **Smith v. Gilmore Memorial Hosp., __ So. 2d __, 2007 WL 852058 (Miss., March 22, 2007).**

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Race Discrimination: Court Gives Employers More Latitude To Make Decisions.

The facts were very straightforward in a recent race-discrimination case from the US District Court for the Southern District of Georgia.

An African-American registered nurse who worked the night shift on one unit applied for a transfer to the day shift on another unit. The transfer would have changed her hours and upgraded her status from staff nurse to case manager.

It was not disputed that the African-American nurse was more qualified for the position and that she was not chosen. It was given to a Caucasian nurse with two years less total nursing experience.

Applicant Did Not Show Interest and Enthusiasm

The court accepted the reasons given by the hospital for not choosing the African-American applicant. She, unlike the Caucasian applicant, did not demonstrate interest and enthusiasm for the position and lacked clarity, confidence and authority in her telephone voice.

The court looked at the large volume of US legal case precedents which define the analytical steps the courts take in determining whether or not race discrimination has occurred. In many cases, like this one, there no doubt that a fully-qualified minority has been treated differently. The question is whether race was the real motivation as opposed to some legitimate reason.

An employer can defend against allegations of discrimination by offering the court a legitimate, non-discriminatory reason. The court must decide if it is legitimate and non-discriminatory or just a pretext for discrimination.

The court looked at new case law in the Federal circuit courts on the issue of pretext saying that the court only looks at whether the employer's legitimate, non-discriminatory reason is "unworthy of credence." That is a more employer-friendly standard than has been used before. **Cone v. Health Management Assoc., Inc., 2007 WL 1702867 (D. Ga., June 11, 2007).**

Race discrimination cases rarely involve direct evidence of discrimination.

Circumstantial evidence is most often the deciding factor in these cases.

The victim has a prima facie case if the victim is a minority, was qualified and was treated differently than a less qualified non-minority.

The minority may have been treated differently based on his or her race, or based on legitimate, non-discriminatory reasons.

The court has to decide if the legitimate, non-discriminatory reason the employer has offered is really legitimate and non-discriminatory or merely a pretext for discrimination.

The case law is now saying that the court does not second-guess the employer's reasoning process.

Instead, the court looks to see if the reason the employer has given to justify its choice is "unworthy of credence."

Only if the employer's explanation is inherently unbelievable will the court throw it out and rule that discrimination has occurred.

UNITED STATES DISTRICT COURT
GEORGIA
June 11, 2007

Pre-Surgical Assessment: Nurse's Error Linked To Post-Op Infection.

The patient had a lengthy history of surgeries to remove tumorous lumps from her breasts.

A post-operative infection occurred after one of her surgeries. The infection led to additional surgeries and eventually to full bilateral radical mastectomies.

Prior to the surgery in question a nurse at the hospital completed a pre-surgical assessment form. The form asked whether the patient had had a complete blood count in the previous fourteen days. The nurse erroneously checked off that a recent CBC had been done. The most recent CBC was actually several months earlier.

The physicians would assume that the recent CBC, which was not actually done, would have been checked for elevated white counts indicative of a possible infective process.

The physicians believed it was appropriate to proceed with the surgery. In hindsight it is now known there was an infective process underway that should have delayed the surgery.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
May 30, 2007

The Superior Court of New Jersey, Appellate Division, acknowledged there were plausible arguments the surgeons themselves were at fault for not verifying there was a recent CBC, but yet the court refused to disturb the jury's verdict faulting the hospital's nurse. **De Stasio v. Kocsis, 2007 WL 1542607 (N.J. App., May 30, 2007).**

Cholesterol Screening: Nurse Practitioner Did Not Follow Up.

A thirty-one year-old man had his cholesterol checked at a booth at an auto racing event. It was high, so he made an appointment to see his family physician.

In the family physician's office he was twice seen by a nurse practitioner. She advised him to make lifestyle changes in his diet and exercise habits in an effort to lower his cholesterol.

According to the patient's widow, the nurse practitioner expressly said, when she asked her, that it was not necessary to start him on medication to lower his cholesterol.

The patient's cholesterol was 287 and 267 on two separate occasions and he had high blood pressure.

The nurse practitioner advised the patient he did not need medication to lower his cholesterol.

Seven months later he had a fatal heart attack.

The jury awarded his widow $5.1 million.

COURT OF COMMON PLEAS
WYOMING COUNTY, PENNSYLVANIA
March 27, 2007

The jury in the Court of Common Pleas, Wyoming County, Pennsylvania faulted the nurse practitioner for not getting the patient started on cholesterol-lowering medication.

The physician was faulted for not communicating his guidelines to the nurse practitioner, that is, his practice guidelines would have indicated that this patient was a candidate for medication. **Hilliard v. McIntyre, 2007 WL 1650357 (Ct. Com. Pl., Wyoming Co., Pennsylvania., March 27, 2007).**

ER: Testicular Injury Requires Prompt Attention From Urologist.

A sixteen year-old boy injured his groin playing basketball at home with friends. He was still in pain five hours later, so his parents took him to an emergency room. He was told he needed a testicular ultrasound, which could better be done at a nearby teaching hospital. The hospital's emergency communication center contacted the teaching hospital and tried to arranged for an immediate ultrasound to be done by a urologist.

This case is about unreasonable delay in moving forward with a diagnosis and treatment.

Testicular torsion, if that is what is going on, if not addressed promptly, can result in loss of the testicle.

The chances of successfully saving the testicle diminish as the hours pass.

Once the patient was finally seen they had to remove the testicle. At least that was done properly.

COURT OF APPEALS OF GEORGIA
May 25, 2007

The Court of Appeals of Georgia ruled the patient had grounds to sue both hospital's for miscommunication resulting in loss his injured but salvageable testicle.

At the second hospital the emergency room nursing staff apparently thought he was non-emergent and had just showed up to wait around for a planned admission. The emergency communication from the first hospital apparently never got there. **MCG Health, Inc. v. Barton, __ S.E. 2d __, 2007 WL 1518345 (Ga. App., May 25, 2007).**

Emergency Room: Severed Fingers Require Prompt Attention From Orthopedist.

A salesman accidentally cut two fingers off his non-dominant left hand while using a power saw at home.

His severed fingers were put in a plastic bag, the plastic bag was put in a bag of ice and he was taken to the hospital.

In the ER he was seen right away by the triage nurse and classified as urgent, that is, he needed to be seen by the next available physician.

He was seen by a resident physician a few minutes later, then by the emergency room physician a few minutes after that.

STAT Orthopedic Consult Ordered
No Follow-Up

The emergency room physician ordered an immediate orthopedic consult. However, after the order was written there was no prompt follow-up to call in the orthopedist.

As the evening and night wore on the patient had his vital signs taken several times, was sent for ~~x~~rays, got a tetanus shot and was checked several times by the nurses and by the resident physicians.

An orthopedist finally saw him almost five hours after he first arrived at the hospital.

About a half hour later a resident physician simply closed the finger wounds with stitches.

The judge in the Court of Claims of New York awarded the patient $525,000.

It was not a relevant legal issue for the judge to try to apportion blame among the nurses and physicians at the hospital as to who had the personal responsibility to call the orthopedist. It basically was a lawsuit against the State of New York alleging negligence by one or more State employees working at a State-operated medical facility. **O'Shea v. State of New York, 2007 WL 1516492 (N.Y. Ct. Cl., January 22, 2007).**

Narcotics Diversion: Court Discounts Fired Nurse's Version Of The Story.

After the hospital terminated her a licensed practical nurse sued for age and gender discrimination and retaliation for using medical leave guaranteed by the US Family and Medical Leave Act.

The hospital countered her lawsuit with circumstantial evidence the LPN had been diverting narcotics.

The US District Court for the Southern District of Indiana ruled in favor of the hospital.

Evidence of Narcotics Diversion

The hospital had a computerized dispensing system which recorded all withdrawals of narcotics. The first hint of trouble was a system report that the nurse in question, for three weeks in a row, was drawing out hydrocodone on a much more frequent statistical basis than other nurses.

Direct investigation revealed much of the hydrocodone supposedly drawn out for specific patients was not recorded in her patients' charts as actually given.

The nurse in question also seemed too often to draw out narcotics ordered prn for other nurses' patients, who were also getting the same doses of narcotics properly drawn out, administered and charted by their own nurses.

She also claimed she was just trying to help out by getting narcotics for nursing students so they did not have to bother their busy instructors.

If pills were being wasted, as she said, there still was no documentation of the wasting being witnessed by another nurse per hospital policy.

The nurse claimed her charting was substandard because she was distracted by personal stress off the job, but the court found that at best highly dubious in light of the other evidence of diversion. **Hurst v. Ball Memorial Hosp., Inc., 2007 WL 1655794 (S.D. Ind., June 1, 2007).**

Vitamin K: Jury Unable To Find Negligence.

The newborn received a standard vitamin K injection in the nursery and a month later had to have the same leg amputated above the knee.

The jury in the Circuit Court, Duval County, Florida ruled the hospital was not negligent.

The jury accepted expert testimony that vitamin K is necessary to prevent a rare and preventable complication. It has been used safely more than forty years. The experts also testified even if the injection was improperly given into an artery rather than muscular tissue it would not produce the problem the newborn experienced. The problem was more likely a result of congenital malformation and vascular insufficiency in the leg. **Houston v. Southern Baptist Hosp., 2007 WL 1557287 (Cir. Ct. Duval Co., Florida, April 19, 2007).**

Decubitus: Bad Outcome Does Not Prove Negligence.

A patient rendered quadriplegic by a motor vehicle accident filed a lawsuit claiming the skin lesions he contracted in the hospital resulted from negligent care.

The Court of Appeals of Washington agreed with the lower court's decision to dismiss the case.

His sacral bedsores and decubitus ulcers did first appear while he was immobile in a Minerva brace and on a ventilator.

The patient's nursing expert, however, the court believed, could not point to any specific error or omission in his care.

The patient's expert's opinion incorrectly went straight to the conclusion that his care was substandard solely because a bad result was obtained. **Johnson v. UW Medicine, 2007 WL 1589453 (Wash. App., June 4, 2007).**

Discharge Instructions: Nurse And Physician Ruled Not Liable.

The fifty-one year-old male patient was admitted to the hospital on a Sunday for possible cardiac symptoms. He was seen in the hospital by a cardiologist.

The cardiologist wanted him to have stress testing on Monday, but the patient, with no health insurance, did not want to stay overnight in the hospital.

He was discharged with instructions from the cardiologist, which were repeated by the nurse, to come back the next day for his test and to have certain prescriptions, including nitroglycerine, filled at a pharmacy and to begin taking the medications.

The patient never had his prescriptions filled and never came back, probably because of financial reasons. He died six days later from a cardiac arrhythmia.

The jury in the Circuit Court, Palm Beach County, Florida believed the cardiologist and the nurse complied fully with the standard of care by making their best efforts to impress him with the seriousness of his condition and the need for compliance and follow-up. **Dubreuil v. Foucauld, 2007 WL 684317 (Cir. Ct., Palm Beach Co., Florida, January 23, 2007).**

Home Health: Nurse Can Sue Patient.

A jury in the District Court, Tulsa County, Oklahoma awarded a home health nurse $13,500 for a wrist fracture sustained in a slip-and-fall on a patient's driveway. If a patient's home premises are not maintained in a safe condition, a home health nurse has the same right as any other invited visitor to sue for negligence. **Cole v. Hayes, 2007 WL 1228053 (Dist. Ct. Tulsa Co., Oklahoma, February 14, 2007).**

Labor Law: Is A Charge Nurse A Rank And File Employee Or A Supervisor?

A charge nurse in a long-term care facility was fired for circulating a petition among the facility's employees protesting a plan by management to delegate some tasks formerly done by non-licensed CNA's to the facility's RN's and LPN's.

The company fired the charge nurse. She countered by filing an unfair labor practice with the local office of the National Labor Relations Board (NLRB).

The NLRB decided she was a supervisor, not an employee. The NLRB upheld the company's right to fire her. That is, as far as the NLRB was concerned, a supervisor has no rights under the National Labor Relations Act (NLRA).

The US Court of Appeals for the District of Columbia Circuit overruled the NLRB. The court ruled the charge nurse in this case was an employee, not a supervisor. Her conduct was clearly a protected activity within her rights under the NLRA as an employee, assuming she was, in fact, an employee and not a supervisor.

Emerging Legal Issue
When Do Nurses Become Supervisors?

"Supervisor" and "employee" are mutually exclusive categories as the NLRA is interpreted by the NLRB and the Federal courts.

Someone who falls within the definition of a supervisor is not protected by the NLRA. A supervisor is management. The company may feel that engaging in collective action on behalf of the company's employees is a disloyal act for management personnel and may be able to fire a disloyal person in management.

In any event, the relationship between individuals in management and the company itself is not governed by the NLRA. An individual in management has no right to file an unfair-labor-practice complaint with the NLRB.

Facts of the Case
This Nurse Was Not a Supervisor

As a charge nurse she had the responsibility to oversee the other nurses and the CNA's working in her area. As a weekend charge nurse she was the highest-ranking employee on the premises when she was on duty and was paid more than other charge nurses. Those factors, standing alone, would tend to support the argument she was a supervisor, but that was not the full story.

Private sector labor-law issues are governed by the US National Labor Relations Act (NLRA).

The NLRA provides comprehensive protection to employees engaged in collective action against company management relating to the terms and conditions of their employment.

The protection given to employees engaged in collective action goes well beyond union organizing, union collective bargaining, picketing and striking, activities that are traditionally associated with the NLRA.

However, the NLRA applies only to employees.

By definition, a supervisor is not an employee. A supervisor is management. The NLRA does not apply to issues that arise between personnel in management and the company itself.

A supervisor has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other workers.

The authority of a supervisor requires the use of independent judgment, or the person is not a supervisor.

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
March 23, 2007

Did Not Make Disciplinary Decisions

She was expected to write up CNA's and other nurses who still did not perform their jobs correctly after her verbal efforts to correct them were unsuccessful.

However, her disciplinary write-ups went to the directors of nursing and human relations for decisions whether the employees would be reprimanded, suspended, fired or face other disciplinary action.

She was expected and did fill out portions of employees' evaluations that involved her direct observations of their performance.

However, the employee evaluations likewise went to higher ups for decisions whether to retain a probationary employee, promote an employee, give a raise, etc.

Followed Company Policies
Did Not Make Policies

She sent two employees home for reporting to work intoxicated. She had no choice in the matter, no room to exercise her own independent judgment. Policy had been made by management. If an employee reported to work in grossly unfit condition, the charge nurse sent the individual home, period.

On more than one occasion she called the director of nursing at home on the weekend for guidance what to do about employee work-rule infractions that fell into gray areas of interpretation.

That is, she did not have the authority to decide if coming back late from break or if failing to answer call bells promptly was or was not sufficient grounds to send a CNA home for the rest of the shift. That decision required the independent judgment of someone in management, the director of nursing, who, with the authority to use independent judgment, unlike the charge nurse, was a supervisor, not an employee. **Jochims v. NLRB, 480 F. 3d 1161 (D. C. Cir., March 23, 2007).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

National-Origin Discrimination: Nursing Home Employees Not Allowed To Use Own Language.

The US Equal Employment Opportunity Commission (EEOC) obtained a total combined settlement of $900,000 for a case the EEOC filed in the US District Court for the Eastern District of New York on behalf of a group of Jamaican nursing home employees who were not permitted to converse on the job among themselves in their native Creole language.

Management apparently was aware of the EEOC's anti-discrimination regulations specifically covering this subject, as national minorities other than the Jamaicans were permitted to converse among themselves in their own languages. **EEOC v. William O. Benson Rehab Pavilion, 2007 WL 1516479 (E.D.N.Y., April 20, 2007).**

Nursing License: False Statement Can Be Grounds For Suspension.

The state board of nursing suspended a nurse's license pending successful completion of substance-abuse treatment.

The nurse appealed her suspension to the Court of Civil Appeals of Alabama.

The court ruled that a mere arrest for DUI does not prove that a nurse has a substance abuse problem. The nurse pleaded guilty to reckless driving and the DUI charge was dropped. Reckless driving is not grounds to revoke a nursing license as it does not involve an unsafe act in the provision of health care.

However, the nurse neglected to mention the incident on her nursing license renewal. If it was intentional concealment, not an oversight or misunderstanding, the court said the board could go back and discipline her for that alone. **Thornton v. Alabama Board of Nursing, __ So. 2d __, 2007 WL 1519052 (Ala. App., May 25, 2007).**

Family Member Faints At The Sight Of Blood: Court Rules Hospital Is Not Liable For His Injury.

The husband went to meet his wife at the emergency room after she called him at work and said she had badly cut her hand.

When he arrived a nurse was trying to dress his wife's wound. The patient was highly agitated and kept drawing back her injured hand, making it difficult for the nurse. The husband got on the gurney, put one arm around his wife's waist and held her injured hand with his other hand so the nurse could treat her.

As he watched he said he was not feeling well. A PA told him to go back to the waiting room. He got up, started to walk, fainted, fell and hit his head.

The District Court of Appeal of Florida ruled the husband had no legal grounds to sue the hospital, even though he had been encouraged to assist the nurse in treating his wife and did not receive any form of assistance or care when he said he was feeling faint.

After trying to assist the nurse in the emergency room to dress the wound on his wife's hand, the husband fainted, fell and hit his head.

The hospital fulfilled its legal duty by telling him to leave the treatment room if he was feeling ill.

The husband was not the patient. The hospital was not responsible for his adverse reaction when he volunteered to help out.

DISTRICT COURT OF APPEAL OF FLORIDA
May 23, 2007

According to the court, a hospital owes legal responsibilities to its patients but not to visitors or family members who voluntarily choose to become involved in patient care.

Dozens of cases have come up around the country, the court pointed out, involving relatives trying to sue in this very same situation. This court agreed with other US courts that it would not be a sound legal precedent to impose additional responsibilities and liabilities on hospitals *vis a vis* family members, above and beyond hospitals' existing obligations to actual patients. **Ziegler v. Tenet Health Systems, Inc., __ So. 2d __, 2007 WL 1485861 (Fla, App., May 23, 2007).**