LEGAL EAGLE EYE NEWSLETTER

July 2009 **For the Nursing Profession** Volume 17 Number 7

Disability Discrimination: Court Rules That Deaf Patient Has Grounds To Sue Hospital.

The patient is diabetic and has had a heart pacemaker since last year. The patient is also deaf.

He has recently had to go to the same local hospital three times for his fragile medical condition. It is likely he will continue to need the services of the same local hospital in the future. It is one of only two in the local community.

On these three separate occasions he specifically asked hospital personnel for sign-language interpretive services. His requests were all turned down.

Instead, the hospital's nurses tried to communicate with him through handwritten notes about his medical condition and the complex procedures he was facing. The notes were written both in English and Spanish. The patient does not understand Spanish and his English literacy is limited.

His most recent trip to the same emergency room finally resulted in transfer to another hospital which has interpretive services. This was done because the original hospital simply does not have a policy or the means to accommodate hearing disabilities.

That sparked a lawsuit against the hospital in the US District Court for the Southern District of Texas, which ruled he had the right to sue under the US Americans With Disabilities Act (ADA) and the US Rehabilitation Act.

The patient's requests for sign language interpretative services were denied on three separate visits to the hospital.

The hospital's nurses attempted to communicate with him using handwritten notes.

The hospital had no policy to accommodate deaf persons.

The patient has grounds to sue under the US Americans With Disabilities Act.

UNITED STATES DISTRICT COURT
TEXAS
June 18, 2009

New Court Ruling Upholds Deaf Patient's Rights

Until now hearing impaired patients' lawsuits against hospitals over lack of interpretive services have faced an uphill battle in the Federal courts.

The Federal courts have been unwilling to order a hospital to change its practices unless the particular patient who was suing could prove the change will have a beneficial impact on the quality of care he or she will actually receive in the future at that same hospital.

In a nutshell, one patient has no standing to file a Federal lawsuit to enforce the rights other patients who might need reasonable accommodation in the future.

Many hearing-impaired patients, legitimate victims of isolated instances of discrimination, have seen their legal cases simply fall by the wayside.

However, the quality of this hearing-impaired patient's future care is not a moot point, given his chronic medical issues and the fact he has been going to the same local hospital over and again.

The court has made it clear that he will not be able to participate fully in his own health care and medical decision-making to the same extent as a hearing patient, which is his right, if certified interpretive services are not provided the next time he has to go back to the same hospital. **Benavides v. Laredo Medical Center, 2009 WL 1755004 (S.D. Texas, June 18, 2009).**

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July 2009

New Subscriptions
See Page 3

Disability Discrimination/Hearing Impaired/Interpretive Services
EMTALA - Emergency Room/Stroke - Psych Nursing/Suicide
Psych Nursing/Patient Supervision - Nurse As Expert Witness
Post Op Nursing Care/ACLS/Intubation - Power Of Attorney
Discrimination/White Male Nurse - Perioperative Nursing
Dialysis Nursing - Living Will/Nursing Care Plan/Pain Management
Labor & Delivery Nursing/Fetal Monitor/Student Nurse - Patient's Fall
Catheter-Related Urinary Tract Infections/CDC Guidelines

Emergency Room: Nursing Care, Hospital Procedures In Compliance With EMTALA.

The parents brought their seven year-old to the emergency department after he had vomited several times and appeared to be running a fever.

The triage nurse saw him within three minutes of arrival, got a quick history from the parents and took vital signs. His temp and BP were normal but his heart rate was 145. A heart rate above 140 in a pediatric patient, under the hospital's guidelines, required classification as emergent so she took him to an exam room.

Another nurse saw him eight minutes later. He charted the results of his thorough exam: *Appears uncomfortable, well developed, well nourished, well groomed. Behavior is anxious, appropriate for age, cooperative, crying. Neuro: Level of consciousness is awake. alert, obeys commands. Oriented to person, place, time. EENT: Tympanic membrane clear on right ear and left ear. Ear canal clear on right ear and left ear. Oral mucosa is moist. Good dentition noted. Throat is clear. Cardiovascular: Capillary refill < 3 seconds. Hear tones S1 S2. Edema is absent. Pulses are all present. Rhythm is regular sinus tachycardia Chest pain is denied. Respiratory: Respiratory effort is even, unlabored, relaxed. Respiratory pattern is regular symmetrical. Airway is patent. Sputum is non verbalized. Breath sounds are clear bilaterally. GI: Abdomen is flat, Non-distended. Bowel sounds present x 4 quads. GU: No deficits noted. Derm: No deficits noted. Musculoskeletal: No deficits noted. Injury description: atraumatic.*

As the second nurse was completing his exam the physician came in, examined the patient and ordered a CBC.

The lab results came back an hour later "red flagged" for a high white cell count for which the automated result had to be redone manually. The manual test confirmed the abnormally high white cell count a half hour later.

Without waiting for the white-cell recount the physician discharged the child home based on a diagnosis of a viral syndrome which seemed to have resolved with fluids and medication in the E.R.

In fact, the child was coming down with a serious case of bacterial pneumonia. His parents had to bring him back to the E.R. the next morning. Later that same day he had to be transferred to a pediatric tertiary-care hospital.

The child has been left with systemic organ damage from sepsis.

Nurses Actions, Hospital's Policies Complied With EMTALA

The actions of the hospital's nurses and the hospital's policies for screening of E.R. patients were ruled to be in compliance with the US Emergency Medical Treatment and Active Labor Act (EMTALA). The US District Court for the Southern District of Texas dismissed the hospital from the lawsuit.

The court has not as yet ruled whether the physician's apparent misdiagnosis was medical malpractice. **Guzman v. Memorial Hermann Hosp., 2009 WL 1684580 (S.D. Tex., June 16, 2009).**

An emergency screening examination fulfills the requirements of the EMTALA if it is reasonably calculated to identify the existence of an emergency medical condition.

The hospital gave this patient the same medical and nursing exams and the same tests as any other patient with the same signs and symptoms.

The EMTALA is meant to insure that every emergency patient who presents with the same signs and symptoms is given the same screening.

UNITED STATES DISTRICT COURT
TEXAS
June 16, 2009

E.R.: Nurses, Physicians Failed To Catch Impending Stroke.

The patient, twenty-eight weeks pregnant, came to the emergency room complaining that her right arm was numb. A head CT was obtained, a neurology consult was ordered and her obstetrician was phoned.

The patient's obstetrician, without waiting for the neurology consult, sent the patient home based on a diagnosis of generalized anxiety.

Two days later she went to another hospital where the weakness in her right upper and lower extremities was tied to a left middle cerebral artery stroke.

Elevated hormone levels predispose a pregnant woman to thromboembolic events.

The work-up when signs of neurological deficit are seen should include a CBC with platelet count, prothrombin time and partial thromboplastin time.

COURT OF APPEALS OF TEXAS
June 18, 2009

The Court of Appeals of Texas endorsed a physician's expert report filed by the patient's attorney which implicated the emergency room triage nurse for negligence along with the emergency room physician and the patient's obstetrician.

According to the expert, all of the patient's caregivers should have been concerned about the possibility of an impending stroke. The patient should have been admitted to the hospital for anti-platelet medications, medications to control her blood pressure and treatment of eclampsia and toxemia of pregnancy. An immediate cesarean should also have been considered. **Rittger v. Danos, __ S.W. 3d __, 2009 WL 1688099 (Tex. App., June 18, 2009).**

Suicide: Gun Brought Onto Psych Unit, Patient Was Not Searched Returning From Five-Hour Pass.

The deceased was a patient on the hospital's locked behavioral health unit for two weeks before she was released off the unit for a five-hour pass.

On her return she and her personal belongings were not searched.

The patient shot and killed herself on the unit the next day.

She had hid a handgun and some ammunition in a folded pair of jeans and a jean jacket she brought back with her.

The gun and ammunition were also not discovered during routine daily room searches that day and the next.

Hospital policy for the locked behavior unit required a search of any new or returning patient's person and any personal belongings brought onto the unit, as well as daily searches of patients' rooms, but hospital policy was not followed in this instance.

The Court of Appeals of Wisconsin upheld a lower court's preliminary ruling that the husband could sue the facility for wrongful death due to ordinary negligence and did not have to file suit for medical malpractice. **Snyder v. Injured Patients and Families Compensation Fund, 2009 WL 1457752 (Wis. App., May 27, 2009).**

This is an ordinary negligence case, not medical malpractice.

If this were a malpractice case the husband would need expert testimony to establish the standard of care for searching the person and personal belongings of a patient returning from a day pass to a locked behavioral unit.

In an ordinary negligence case, on the other hand, the jurors are allowed just to use their own judgment to decide whether or not the caregivers' actions were appropriate. Expert testimony is not required.

From the standpoint of courtroom tactics, an ordinary negligence case is much more likely to produce a jury verdict favorable to a patient or a deceased patient's family.

COURT OF APPEALS OF WISCONSIN
May 27, 2009

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Psych Patients Not Supervised: Penalty Upheld.

The US Court of Appeals for the Fifth Circuit upheld a large civil monetary penalty imposed on a long-term care facility for violations of Medicare regulations.

A resident diagnosed with depression and paranoid schizophrenia who was having active hallucinations was allowed to sign out by herself to smoke on a fishing pier across the street that extended 1700 feet out over open water.

Another resident who was allowed to check himself out returned to the facility drunk and then was allowed to check himself out again right away.

A third resident, known for hoarding, was found to have three pills of an unspecified prescription medication in her room and was also caught alone in the medication room.

These three incidents, in the court's judgment, were enough evidence that a state of immediate jeopardy existed threatening the health and safety of the facility's residents to justify Federal survey inspectors imposing a substantial civil monetary penalty.

Medicare regulations 42 CFR § 483.25 (h)(2) require nursing facilities to provide adequate supervision of residents to prevent accidents. If you are reading our Online Edition, click anywhere in this article to be connected to the CMS regulations for quality of care in nursing facilities. **Hotel Reed Nursing Center v. US Dept. of Health and Human Services, 2009 WL 1657034 (5th Cir., June 15, 2009).**

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Nurse As Expert Witness: Court Widens Nurses' Role In The Courtroom.

The patient was paraplegic from spinal injuries in a motor vehicle accident.

Pressure sores developed on his buttocks and sacrum while he was in physical rehabilitation and progressed to the point that he had to be transferred back to the hospital for surgical debridement.

The surgery was successful and the lesions healed. He was returned to the rehab facility to complete his course of therapy and then discharged home.

Nurse Was Not Allowed to Testify

A major stumbling block came up in the patient's lawsuit against the rehab facility when the judge sustained an objection to his nursing expert's testimony on the issue of causation.

By way of background, in malpractice cases the patient needs proof of negligence, that is, a departure by his or her caregivers from the standard of care, proof of damages and proof of causation linking the caregivers' negligence to the damages.

The judge did allow the patient's nursing expert to testify that the patient's nurses' conduct fell below the standard of care. The damages were obvious.

However, because the patient's nursing expert was a nurse and not a physician, the judge did not allow her to testify that the treating nurses' substandard practices caused the patient's pressure sores. That stranded the patient high and dry without a crucial element needed for his case.

The judge cited the state's nurse practice statute. It permits nurses to make nursing diagnoses but expressly bars nurses from making medical diagnoses as beyond the scope of nursing practice.

Traditionally the courts have not allowed nurses to testify on the issue of medical causation in malpractice cases, even in malpractice cases only involving other nurses. The Supreme Court of Pennsylvania threw out the traditional rule. If a nurse is qualified through education and experience, the nurse is not barred from recognition as an expert in the legal arena just for being a nurse and not a physician. **Freed v. Geisinger Medical Center, __ A. 2d __, 2009 WL 1652856 (Pa., June 15, 2009).**

The Professional Nursing Law permits nurses to make nursing diagnoses but prohibits nurses from making medical diagnoses.

Nursing diagnosis is defined as the identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen.

There is no reason, however, why the principles governing nursing clinical practice should apply to malpractice and negligence cases in the legal arena.

Testimony in the legal arena is governed by the Rules of Evidence.

The Rules of Evidence state in very broad terms that a witness who is qualified by specialized knowledge, skill, experience, training or education is qualified and may testify in court as an expert.

There is no reason why a nurse should categorically be denied the opportunity to testify as an expert on the issue of medical causation, if the court is satisfied the nurse has sufficient knowledge, skill, experience, training or education.

SUPREME COURT OF PENNSYLVANIA
June 15, 2009

Post-Op Care: Nurse Should Have Been Able To Intubate A Patient.

The patient had a facelift, eyelid reconstruction, nasal septum reconstruction, upper and lower lip augmentation and chin augmentation in the plastic surgeon's office. The surgeon decided the patient needed to stay overnight and he left the clinic at 9:30 p.m. with a nurse on duty.

By 6:30 a.m. the next morning the patient was in serious trouble. She was dizzy and fainted trying to walk to the bathroom. The nurse took vital signs. Her O_2 saturation was only 70%.

The nurse started CPR with an ambu bag and face mask and began frantically making calls on her cell phone. Paramedics got there about a half hour later, intubated the patient and transported her to the hospital where she was declared brain-dead and allowed to pass away the next day.

The physician testified he thought the nurse's ACLS certification included training in intubation.

The nurse testified she knew there was a laryngoscope and an endotracheal tube in the surgical suite, but she had no training in how to use them.

NEW YORK SUPREME COURT
APPELLATE DIVISION
May 28, 2009

The New York Supreme Court, Appellate Division, ruled the family had grounds to sue the physician for negligence.

Blood clotting in the airway was a foreseeable possibility after the procedures the patient had had. The patient should only have been left in the care of qualified personnel trained to act appropriately in an emergency, the court said. **Cregan v. Sachs, 879 N.Y.S.2d 440 (N.Y. App., May 28, 2009).**

Misuse Of Residents' Credit Cards: Nursing Home Did Not Commit Malicious Prosecution.

The local police were notified after two nursing home residents complained that their credit cards were missing and that unauthorized charges at local stores had shown up on their credit card bills.

Police detectives went to the stores, got the store surveillance tapes and showed the tapes to two nursing home employees who were able to identify the purchasers as aides who had cared for the residents whose credit cards were missing.

The police then obtained arrest warrants. The two residents, however, passed away before the cases went to court and the prosecutor decided to drop the charges.

The aides filed a civil lawsuit for malicious prosecution against their two former co-workers and the nursing home itself.

The police instigated the investigation and the criminal prosecution.

The nursing home employees did no more than provide information to the police and assist them in identifying the individuals making the purchases on the store surveillance tapes.

The aides implicated for theft have no basis to sue for malicious prosecution.

UNITED STATES DISTRICT COURT
CONNECTICUT
May 21, 2009

The US District Court for the District of Connecticut dismissed the case. A citizen cannot be held liable for providing information, albeit incriminating, or for cooperating with the police in good faith. The criminal charges having been dropped proved nothing. **Kafaru v. Burrows, 2009 WL 1457153 (D. Conn., May 21, 2009).**

Employment Discrimination: White Male Nurse's Case Thrown Out.

A white male filed suit against his employer of twenty-three years after his applications were turned down for three different Certified Registered Nurse Practitioner positions which would have represented a substantial job promotion for him

The reason given was the positions all called for a minimum of two years prior mental-health work experience as a CRNP, which he did not have.

One of the positions went to a Caucasian female who had ten years prior experience. Two of the positions went to African American females, one with four and one with six years prior experience.

The US District Court for the Middle District of Alabama noted for the record that a white male nurse would be considered a minority group member for purposes of the US anti-discrimination laws under this particular factual scenario.

No one disputes that the white male in this case fits the definition of a minority for purposes of Title VII of the US Civil Rights Act.

UNITED STATES DISTRICT COURT
ALABAMA
May 29, 2009

That being said, the facility was able to show a legitimate, non-discriminatory reason for not giving him one of the positions: although he did have the certification he did not have the prior experience that the job descriptions called for.

The court gave no credence to the contention that the two-years experience requirement was maliciously added into to the job descriptions just to keep him from getting a promotion. He had the burden of proof on that issue but had no actual proof to offer. **Lisenby v. Shinseki, 2009 WL 1510781 (M.D. Ala., May 29, 2009).**

General Power Of Attorney: Family Member Can Consent To Arbitration.

Before becoming incapacitated and needing to go to a nursing home the elderly gentleman had signed a general power of attorney giving his son authority to act on his behalf in personal business affairs.

After the elderly gentleman passed away the son wanted to sue the nursing home. The Court of Appeals of Georgia ruled the son's signature was valid on the nursing home's arbitration agreement as his father's attorney-in-fact. The son is required to arbitrate the case and cannot proceed further in civil court. **Triad Health Management v. Johnson, __ S.E. 2d __, 2009 WL 1532509 (Ga. App., June 3, 2009).**

Power of Attorney For Healthcare Decisions: Family Member Cannot Consent To Arbitration.

A power of attorney for healthcare decisions, unlike a general power of attorney, is only for giving consent to healthcare procedures on behalf of the patient after the patient is incapacitated.

Much like a living will, a power of attorney for healthcare decisions also allows the appointee to refuse consent and to withhold life-sustaining measures if that is what the patient would have wanted.

The Court of Appeals of Georgia ruled that the daughter named in a power of attorney for healthcare decisions had no legal authority to sign an arbitration agreement on her mother's behalf when she admitted her mother to a nursing home. The arbitration agreement is null and void. She can sue the nursing home in civil court. **Life Care Centers v. Smith, __ S.E. 2d __, 2009 WL 1692040 (Ga. App., June 18, 2009).**

Operation On Wrong Knee: Court Faults Surgical Nurse.

The patient was sent to the hospital for exploratory surgery when his physician found a mass, possibly cancerous, in the popliteal fossa behind the left knee.

Before the arthroscopy began a perioperative nurse from the hospital marked the left knee for surgery.

However, the circulating nurse from the surgeon's medical group put the tourniquet on the other knee and the surgeon went ahead on that knee.

When the surgeon became aware of the error he went out to the waiting room and got permission from the wife to continue on the left knee, the correct knee.

The surgeon and his medical group paid a settlement and were dropped from the patient's lawsuit.

The case went to trial against the hospital in the District Court, Caddo Parish, Louisiana, but the jury ruled the hospital was not negligent. **Malant v. Willis Knighton, 2008 WL 6153784 (Dist. Ct. Caddo Parish, Louisiana, June 30, 2008).**

Mother, Newborn In Car, Infant Dropped: Hospital Pays Settlement.

The mother arrived in the hospital's parking lot just after giving birth. Nurses and other hospital personnel accidentally dropped the infant trying to get the mother out of the car onto a gurney with the newborn still in her pants.

The hospital settled the case for $65,000. Had the case gone to trial in the Circuit Court, Cook County, Illinois, the patient's lawyer's argument would have been that a hospital needs to have procedures in place and must train its people ahead of time to handle a contingency of this nature safely and effectively. **Cooper v. Mercy Hosp., 2009 WL 1739985 (Cir. Ct. Cook Co. Illinois, February 4, 2009).**

Dialysis: Nurse Cancelled Order For Lab Work.

A few minutes into her dialysis treatment in her nephrologist's office the patient began bleeding at her catheter site.

The nephrologist had to send her to the emergency room at a local hospital. The emergency room physician phoned the nephrologist. An order was entered on the hospital's computer for lab work which would have included a potassium level.

About an hour later the emergency room physician, having stitched up the catheter site, discharged the patient from the hospital.

Nurse Cancelled Patient's Lab Work

About two hours after the patient was discharged a hospital nurse cancelled the lab work, apparently because the patient had already been sent home.

The next morning the patient's mother phoned the nephrologist about the fact her daughter's dialysis was not completed the previous afternoon. The nephrologist told the mother not to worry. The emergency room doctor would have phoned him about the lab work if there was anything wrong like an excessively high potassium level.

Later that night the patient, back in the emergency room, died from hyperkalemia.

Nurses in this hospital's E.R. were allowed to obtain routine lab work without a physician's order.

However, no lab work ordered by a physician was to be cancelled except upon a physician's order.

COURT OF APPEALS OF TENNESSEE
May 21, 2009

The Court of Appeals of Tennessee endorsed a substantial jury verdict against the two physicians, the hospital and the nurse who cancelled the lab work.

Even though the patient had been discharged her lab work still should have been done and read by someone knowledgeable and, if necessary, the patient contacted to come back to the hospital. **Howell v. Turner, 2009 WL 1422982 (Tenn. App., May 21, 2009).**

Living Will: Court Finds Fault With Care Planning.

The patient was a disabled veteran who had lost both of his feet.

Years before he died he was operated upon for bladder cancer and received an ileostomy. Eight years later he began having cerebrovascular accidents and falling at home. He had aortofemoral bypass graft surgery and mitral valve replacement two years after that and was diagnosed with renal artery stenosis, COPD, atrial fibrillation, DVT, degenerative joint disease, peripheral vascular disease and dementia.

Home care was not working out so he was placed in a Veterans Administration nursing facility.

Patient's Living Will
No Life-Sustaining Treatment

On admission to long-term care he signed a living will directing that life-sustaining treatment be withheld or withdrawn in the event he suffered from a terminal illness. He expressly told a VA social worker he did not want a feeding tube.

After he passed his widow sued the US Government for negligence.

The US District Court for the Eastern District of Arkansas would not award damages for the patient's significant weight loss, breakdown skin integrity and pressure sores. Those developments were inevitable, the court ruled, from the patient's own decision to decline a feeding tube, a decision reiterated by his wife when a PEG tube was suggested to her.

Nurses Should Have Advocated
For Pain Management

The court still found fault with the nursing care plan in that the care plan did not adequately address the issue of pain management.

He had bedsores and a recently repaired hip fracture from a fall. For both issues the court likewise believed the nurses could not be faulted.

However, narcotics were discontinued when he left the hospital after hip surgery.

The nurses should have advocated for continuation of the narcotics after he left the hospital until he passed. **Butler v. US, 2009 WL 1607912 (E.D. Ark., June 9, 2009).**

Labor & Delivery: Nurse Applied Fundal Rather Than Suprapubic Pressure.

Considerable evidence was presented in the courtroom that the four year-old child has significant problems with his dominant right arm.

His doctors testified the problems stem from Erb's palsy which resulted from cervical nerve-root damage suffered at or near the time of his birth.

He will need physical therapy throughout his childhood and multiple surgeries as an adolescent and will have a major disability for life.

His mother testified that during the delivery the infant's shoulder got caught. The obstetrician called to the nurse that he needed "pressure."

The nurse apparently knew what to do when shoulder dystocia was encountered during delivery. She began applying suprapubic pressure just above the mother's pubis to try to free the shoulder which was most likely hung up underneath the pubic bone.

Nurse Followed Physician's Orders

The obstetrician, however, told the nurse he wanted fundal rather than suprapubic pressure.

The nurse reportedly responded to the obstetrician's instructions by discontinuing suprapubic pressure and by placing her forearm over the mother's abdomen and using her own body weight to bear down and force the infant through the birth canal.

The jury in the Circuit Court, Norfolk, Virginia heard expert testimony from obstetric physicians that use of fundal pressure by a physician or a nurse is below the standard of care during a vaginal delivery in which shoulder dystocia has become an issue.

The jury returned a verdict of $1.75 million.

In this case the attorney representing the child and his mother elected to sue only the obstetrician and elected not to sue the nurse, and thus only the obstetrician was found liable for negligence. **Williams v. Jones, 2009 WL 1586968 (Cir. Ct. City of Norfolk, Virginia, May 1, 2009).**

Labor & Delivery: Nurse Waited To Report To The Obstetrician.

The now-four-year-old child has been diagnosed with cerebral palsy due to hypoxic brain injury suffered immediately before birth.

At 4:15 a.m. the monitor began to show a drop in the fetal heart rate along with persistent variable decelerations. The decelerations continued more than an hour and a half before the patient's nurse started her on O_2 and then waited ten more minutes to call in the obstetrician.

The obstetrician recognized the situation posed a threat to the fetus's life and delivered the infant vaginally.

The patient's expert witnesses were prepared to testify the nurse should have summoned the obstetrician no later than one hour after she first observed the drop in the fetal heart rate and variable decelerations. The obstetrician would have done an immediate cesarean which would have prevented the brain damage the infant sustained, it was alleged.

The lawsuit in the Superior Court, Atlantic County, New Jersey settled for $6,250,000.

$5,312,500 was reportedly allocated for the infant's future developmental needs and $937,500 for the mother's emotional distress. **Long v. Shore Memorial Hosp., 2009 WL 1677200 (Sup. Ct. Atlantic Co., New Jersey, May 12, 2009).**

Fall: Nursing Home Settles.

A seventy-five year-old was recovering after diabetes-related amputation of two toes. She fell as one aide tried to help her to the restroom.

Her adult children sued the nursing home in the Superior Court, San Bernardino County, California, alleging she should have had a bedside commode and/or been assisted by two persons or a wheelchair used in lieu of ambulating her. They obtained a $75,000 settlement. **Confidential v. Confidential, 2009 WL 1677107 (Sup. Ct. San Bernardino Co., California, April 7, 2009).**

Labor & Delivery: Student Nurse Did Not Know How To Read The Monitor.

The parents of a child with cerebral palsy who suffered catastrophic brain injuries at birth obtained a $4,400,000 jury verdict in the Court of Common Pleas, York County, South Carolina.

The lawsuit pointed squarely at the decision made at the hospital to assign only a student nurse to care for the mother during her labor.

The medical experts reviewed the fetal monitor strips and testified at trial that there were clear signs of fetal distress which would have prompted a fully trained and competent labor and delivery nurse to call in the obstetrician. **Wilson v. Piedmont Medical Center, 2009 WL 1740411 (Ct. Comm. Pl. York Co., South Carolina, February 13 ,2009).**

Discrimination: Nurse Did Not File Complaint With EEOC.

A nurse from Nigeria sued her former employer alleging that remarks by her former co-workers which she felt were racially motivated created a hostile work environment and forced her to resign.

The US District Court for the Northern District of Texas dismissed her case without going into the details. Before filing her lawsuit in Federal court she did not file a complaint with the US Equal Employment Opportunity Commission (EEOC), which had to be done no later than 300 days after the racially offensive conduct.

The court did point out that the nurse still had the right to file suit for racial discrimination in state court under Texas state law and get her day in court that way, even though her Federal lawsuit is done.

State law provides similar legal remedies to US Title VII and contains no requirement first to file an administrative-agency complaint. **Ndupu v. Methodist Health System , 2009 WL 1490694 (N.D. Tex., May 27, 2009).**

Gender-Based Shift Assignments: Male Aide's Bias Lawsuit Thrown Out.

The US District Court for the Southern District of New York ruled it is not unlawful gender discrimination for an inpatient health care facility to give scheduling preference to female over male caregivers for assignments involving intimate personal care of female patients.

Female gender is recognized by the courts as a *bona fide* occupational qualification in caregiving situations only where intimate personal care of female patients is required.

The court thus endorsed the facility's policy for at least one female aide to be scheduled on every shift on a unit caring for female psychiatric patients, even if that policy limited a male caregiver's opportunities to earn overtime.

If intimate personal care of female patients was not required of him he would have a legitimate right to complain about gender discrimination for preferences being shown to female staff.

Babcock v. New York State Office of Mental Health, 2009 WL 1598796 (S.D.N.Y., June 8, 2009).

Catheter-Related Urinary Tract Infections: New CDC Guideline.

The US Centers for Disease Control and Prevention (CDC) published a notice in the Federal Register June 3, 2009 announcing the availability of *Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections 2008* for use by nurses and other healthcare providers who develop and implement infection-control programs.

This document is now only in draft form. The CDC will accept public comments until July 6, 2009. A mandatory regulation in final form is expected to follow at some future date.

The draft document is available from the CDC at http://wwwn.cdc/gov/publiccomments.

The document (322 pages / 3.56 mb) is also on our website at http://www.nursinglaw.com/CDCJune3,2009.pdf. If you are reading our Online Edition, click anywhere in this article to be taken to the draft document.

FEDERAL REGISTER June 3, 2009
Page 26704

Prenatal Care: Court Faults Clinic's Practices For Screening Patients Re Current Medications.

The patient came to the ob/gyn clinic after a positive home pregnancy test. She was six weeks pregnant. She was started on prenatal vitamins and told to follow up.

In the civil lawsuit which ensued after her baby died shortly after delivery the patient testified she told the physician she was on Prozac, Wellbutrin and Benicar and that the physician told her it was all right to continue with all of her current medications.

Benicar is an angiotensin II receptor antagonist used to control high blood pressure. Contraindications have been published against its use during pregnancy.

The physician testified he told the patient to discontinue the Benicar, but that conversation was not documented in the chart.

It is a nursing as well as a medical responsibility to question a prenatal patient about the medications she is taking, to know which medications are not appropriate during pregnancy and to counsel the patient accordingly.

Procedures are needed in a clinic to double-check that each prenatal patient's current medications have been ascertained and documented in the chart.

SUPREME COURT OF ALABAMA
June 12, 2009

The Supreme Court of Alabama threw out a multi-million dollar jury verdict in the patient's favor and ordered the case to be re-tried.

The court agreed with the jury that the clinic's nurses and the physician did not live up to standards of care. They had independent responsibilities to screen the medications the patient was taking and to advise the patient to discontinue anything contraindicated or even ill-advised during pregnancy.

Nevertheless, a pivotal medical expert testified that stopping the Benicar *possibly could have* saved the baby but balked at saying it *probably would have* saved the baby.

Only that the bad outcome *possibly could have* been avoided is insufficient proof in a medical malpractice case.

Mobile Ob-Gyn P.C. v. Baggett, __ So. 3d __, 2009 WL 1643350 (Ala., June 12, 2009).