LEGAL EAGLE EYE NEWSLETTER

June 2002 *For the Nursing Profession* Volume 10 Number 6

Sexual Assault: Court Blames The Nurses For Failing To Step In With The Patient.

After laser surgery for genital warts a patient was taken to the recovery room. The small recovery room for ambulatory surgery at the hospital had four beds quite close together separated by cloth curtains that could be drawn around each bed for privacy.

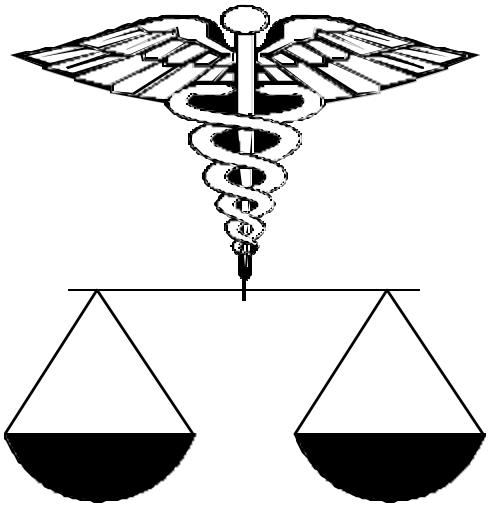
A male surgical resident physician, wearing the hospital's surgical scrubs and valid identification as a hospital employee, went into the curtained area where the patient was recovering. He sexually assaulted her with his fingers.

Several nurses and the unit nursing supervisor were very close by. The nurse specifically assigned to this patient was in the next curtained area assisting that patient's nurse and the nursing supervisor. They all were aware the resident had gone into the adjacent curtained area but paid no attention to what exactly he was doing.

The resident was not listed on the patient's chart as having any involvement with her case. Only as the resident was leaving did the nursing supervisor speak to him. Soon thereafter the patient complained to the nurses that he had sexually assaulted her.

Nurses' Inaction Leads to Liability

The Court of Appeals of New York found grounds for a lawsuit against the hospital for the nurses' inaction.



Nurses are not gatekeepers who stop and question physicians, ascertain the reasons for their presence or stand guard and monitor physicians' interactions with patients.

However, when a nurse happens to observe something which common sense says is potentially harmful to a patient it triggers a legal duty to step in and protect the patient.

COURT OF APPEALS OF NEW YORK, 2002.

Female Staff To Be Present During Examinations

A male physician can be disciplined for examining a female patient without female staff present and can be sued in civil court and prosecuted in criminal court for a sexual assault.

A female nurse also has the responsibility, if she knows a male physician is not following protocol in this regard, to go into the room to see what is going on, the court ruled in this case. If the nurse fails to act and the patient suffers harm, the nurse and her employer can be legally liable.

Nurse's Responsibility to Intervene

When nurses observe something unusual going on or sense something is not right, they have to step in, find out what is going on and take measures to protect their patients, the court said.

For example, a male physician has no business being alone with a female patient, so what is he doing? What was this particular resident doing in the recovery room? Why was he with this patient so long?

A nurse could have prevented what happened, the court believed, if the nurses had paid more attention, noticed something was wrong and one of them had stepped in by the patient's bed.

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Inside this month's issue ...

June 2002

Disability Discrimination: US Supreme Court Places Seniority Rights Above Accommodation To An Employee's Disability.

What takes priority, a disabled employee's right to ask for a light-duty position as reasonable accommodation to the employee's disability, or another employee's right to bid for the position under a seniority system?

One Worker's Seniority Takes Precedence Over Another Worker's Disability

The US Supreme Court has ruled that seniority rights take precedence over accommodation to disability. It was a disability discrimination lawsuit filed by an airline baggage handler with a back condition.

We have covered this issue in our newsletter as lower US courts have handed down decisions relating to nurses specifically and to the healthcare field in general.

See *Back Condition: Nurse Not Entitled To Preference In Transfer.*, Legal Eagle Eye Newsletter for the Nursing Profession (10)3, March, 2002, p. 5., or *Nurse's Lifting Restriction: Hospital Ruled Not Liable For Disability Discrimination.*, Legal Eagle Eye Newsletter for the Nursing Profession (8)7, July, 2000, p. 2.

The typical case is a worker who cannot perform a physically demanding job. A nurse with lifting restrictions from a back problem asks to transfer out of orthopedics into pediatrics, or a disabled CNA asks to work as a unit secretary. However, there are rules for allotting open positions on the basis of seniority at the healthcare facility and the disabled employee is not the most senior person who is qualified and asks for the job.

In the healthcare field the courts have consistently valued other employees' seniority rights over disabled employees' right to accommodation under the Americans With Disabilities Act. The US Supreme Court has now expressly endorsed that approach to these often difficult cases. **US Airways, Inc. v. Barnett, 70 U.S.L.W. 4285 (April 30, 2002).**

When an employee asks for a specific job reassignment as an accommodation to the employee's disability, and the employer can show that the disabled employee getting the job would conflict with existing seniority rules, the accommodation asked for is not "reasonable accommodation" as that phrase is used in the US Americans With Disabilities Act.

This is not a hard and fast rule and a disabled employee may still have a valid argument.

There is still room for argument when the employer is in the habit of granting exceptions that go against its own seniority rules.

If non-disabled employees are known to get the benefit of exceptions to the employer's seniority rules, and disabled employees do not get exceptions in their favor, that is discriminatory.

If the employer is in the habit of often changing the employer's own seniority rules unilaterally, and refuses to do so for the benefit of a disabled employee, that is also discriminatory.

UNITED STATES SUPREME COURT, 2002.

Sexual Assault: Nurses Failed To Step In, Hospital Liable.

(Continued from page 1)

Hospital Not Liable For Resident Physician's Misconduct

Paradoxically, the court ruled that the hospital *was not* liable for the resident physician's misconduct while the hospital *was* liable for the nurses' failure to step in and prevent what he did.

Course and Scope of Employment

In general terms, the law holds employers liable for their employees' wrongful acts only when those acts are committed within the course and scope of their employment.

The court ruled that the resident was acting completely outside the course and scope of his employment with the hospital when he assaulted this patient. Thus the hospital was not liable for what he did.

In other sexual assault cases other courts have held employers liable for their employees' misconduct. A common scenario that leads to civil liability is when a personal caregiver who is assigned to care for a particular patient assaults the patient while caring for her. Legal liability can arise when male or female caregivers become sexually involved touching private bodily areas during the course of legitimately necessary personal care.

The legal distinction in this case seems to have been that this resident had no caregiving relationship with this patient. He merely used his status as a physician at the hospital to obtain access to a vulnerable individual.

The Hospital Was The Only Defendant

It is also noteworthy that the patient's lawyers elected to sue only the hospital, not the resident physician or the nurses. The strategy in these cases is just to obtain compensation for the victim.

Insurance for a named-insured's errors and omissions by law does not and cannot compensate the victim of the named-insured's intentional misconduct. **N.X. v. Cabrini Medical Center, 739 N.Y.S.2d 348 (N.Y. App., 2002).**

Newsletter Now Available In Online Edition.

Since September, 2001 our newsletter has been available online to our paying subscribers. All subscribers still get a print copy in the mail. There is no additional charge for the online edition.

If you are interested send an e mail to info@nursinglaw.com with the name and address where we mail your print copy and the e mail address where you wish to receive notices for the online edition.

Each month we e mail you a notice of the URL of that month's online edition.

June 2002 = http://www.nursinglaw.com/jun02fyi2.pdf

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November 2001 = http://www.nursinglaw.com/nov01abcd.pdf

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CDC: New Draft Guideline For Disinfection And Sterilization In Healthcare Facilities.

The CDC's new draft guideline deals with disinfection of endoscopes, laparoscopes, arthroscopes, cystoscopes, dental instruments and environmental surfaces with specific disinfectant agents like alcohol, chlorine, formaldehyde, glutaraldehyde, hydrogen peroxide, iodophor, orthophthalaldehyde, peracetic acid, phenolics and quaternary ammonium.

It also deals with sterilization with steam, ethylene oxide, hydrogen peroxide gas plasma, peracetic acid and other practices.

The new draft guideline contains the CDC's current considerations for specific organisms including HIV, other bloodborne pathogens, tuberculosis, Creutzfeldt-Jakob, C. difficile, Cryptosporidium, Heliobacter pylori, E. coli and human papilloma virus.

FEDERAL REGISTER, April 30, 2002
Page 21252.

On April 30, 2002 the Centers for Disease Control and Prevention (CDC) issued a proposed new *Draft Guideline for Disinfection and Sterilization in Healthcare Facilities.*

This document is not a mandatory Federal regulation at this time.

The CDC is accepting public comments on the draft guideline until June 14, 2002 and will review those comments before deciding to redraft it or issue it as a mandatory new regulation in final form at some point in the future.

The new guideline is intended to replace the portions of *Guideline for Handwashing and Hospital Environmental Control (1985)* dealing with sterilization and disinfection.

The guideline is available on the CDC website at http://www.cdc.gov/ncidod/hip/dsguide.htm.

The document is 148 pages long. It is in Adobe Acrobat software format. *It takes time to download; please be patient!*

According to the CDC's announcement, print copies can be obtained from the CDC by writing to Resource Center, Attention: DSGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E-68, 1600 Clifton Rd., NE, Atlanta, GA 30333. Fax (404) 498-1244 e mail dsrequest@cdc.gov.

We have placed the entire new guideline on our website at http://www.nursinglaw.com/disinfection.pdf.

FEDERAL REGISTER, April 30, 2002
Page 21252.

Nurses Not Acting As Patient's Advocate: Substantial Verdict Entered Against Hospital.

The seventeen year-old patient was brought to the hospital's emergency room following a motorcycle accident at a motocross event.

Serious Orthopedic Trauma Plus No Pulse In Lower Leg

The nurses tried repeatedly and failed repeatedly to locate a pulse in the left lower leg both by palpation and with a portable Doppler device.

The patient was seen briefly by the emergency room physician. One of the nurses reported to the physician that she could not get a pulse and asked why. He stated he did not know why.

For two and one-half hours the emergency room nurses closely monitored the patient. The nurses wrote extensive progress notes in his chart that he complained over and over again of severe pain in his left knee and numbness in the left foot.

Nevertheless the nurses discharged the patient home with his mother with instructions to his mother to get an office appointment with an orthopedist sometime in the next few days.

The next morning his mother took him to the emergency room at another hospital. There they found a lacerated popliteal artery, did extensive surgery and managed to save the leg from amputation.

Still there were lifetime residuals. A jury awarded $880,000 in damages from the hospital for the nurses' negligence. The patient had settled with the physician's insurance for $270,000 before the case went to trial against the hospital.

Nurses Tried To Cover Themselves Failed to Act As Patient's Advocate

The Supreme Court of Appeals of West Virginia was not impressed with the nurses' extensive progress notes. The court interpreted the progress notes only as the nurses trying to cover themselves rather than performing a caregiving function on the patient's behalf.

According to the court, the nurses knew this patient was not getting the care he needed and deserved. They knew it was not right to discharge a patient home from the hospital with unexplained symptoms that were not being addressed by the physician.

This was the hospital's chain of command policy, which the jury found was not followed by the emergency room nurses:

"Should there be an occasion when an RN believes that appropriate care is not being administered to a patient by a physician, the following procedure shall occur:

"One, the RN will discuss her (sic) concerns with the physician. If, after the discussion, she still feels that the care is inappropriate, she will report it to the clinical manager, if available, or the patient care coordinator on duty.

"Secondly, the clinical manager or patient care coordinator will weigh the factors involved and if she (sic) feels that the concern is valid, she will discuss it with the physician. If nothing is done to ease her concerns, she will contact nursing administration.

"Thirdly, nursing administration will discuss it with the clinical manager and contact the chief of service for guidance and assistance. If nursing administration, after discussion with the chief of service, feels that appropriate action still has not been taken, the problem will then be referred to the assistant executive director of medical affairs.

"The director of medical affairs will contact the attending physician and/or chief of service. Should appropriate action not be taken at this level, the director of medical affairs will contact the president of the medical staff.

"Nursing administration may at any point in time request assistance from administration."

This policy is sound but it just was not followed.

SUPREME COURT OF APPEALS OF WEST VIRGINIA, 2001.

Nurses As Advocates Hospital Chain of Command

The hospital had a policy that nurses were expected to advocate for their patients and had outlined the specific steps how a staff nurse's concerns could be taken all the way to the top to get appropriate action from the medical staff.

The court validated the hospital's chain-of-command policy, albeit by ruling the nurses were negligent for not following that policy.

In more general terms, every nurse has the obligation, the court said, to go to a nursing supervisor when the nurse believes medical issues are being ignored or handled inadequately or inappropriately. **Rowe v. Sisters of the Pallottine Missionary Society, 560 S.E. 2d 491 (W.Va., 2001).**

Sympathy Strike: Court Says Nurses Can Strike Despite No-Strike Clause In Collective Bargaining Agreement With Hospital.

The California Nurses Association gave notice to a hospital in the Bay Area that the Association intended to conduct a twenty-four hour sympathy strike at the hospital to show support for other union workers who were planning to engage in a primary strike. The Association represented all of the approximately 650 nurses who worked at the hospital.

When the hospital first received the strike notice from the Nurses Association the hospital went to Federal District Court asking for a court order to block the strike.

After the strike did not happen the hospital still argued it was entitled to a ruling a strike would have been illegal and was entitled to compensation from the Nurses Association for the substantial costs of pre-strike precautionary measures.

A local chapter of the International Longshore and Warehouse Union represented the hospital's x-ray techs. They were in contract negotiations and the x-ray techs' union had set a strike deadline.

Ten days prior to the x-ray techs' strike deadline the Nurses Association gave the hospital ten-days notice of the Nurses Association's intent to conduct a nurses' sympathy strike in support of the x-ray techs if the x-ray techs' union called the x-ray techs out on strike.

At a healthcare institution, ten days notice is required by the US National Labor Relations Act for any strike, picketing or concerted refusal to work.

In general, sixty days notice is required when a union intends to strike if the strike will occur at the expiration of the union's own current labor contract.

The hospital took extensive pre-strike precautions such as canceling some elective surgeries, transferring some of its patients elsewhere and declining to admit some new patients.

The x-ray techs settled with the hospital right before their strike deadline and the Nurses Association's sympathy strike never took place.

A no-strike clause has to refer to sympathy strikes specifically or sympathy strikes are not prohibited by the no-strike clause.

The term sympathy strike refers to a strike conducted by workers belonging to one bargaining unit in support of a primary strike that is conducted by workers belonging to another bargaining unit at the same shop or plant.

The two groups of workers are usually represented by different unions.

The primary strikers are seeking improved wages, benefits and working conditions or are protesting unfair labor practices or other grievances.

The sympathy strikers do not have a primary objective of their own, but are seeking only to assist the primary strikers to achieve their goals.

In 1942 the US Supreme Court ruled that sympathy strikes are basically the same thing as honoring another union's picket line. The right to honor a picket line was established by the original US National Labor Relations Act in 1935.

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT, 2002.

Nurses' Sympathy Strike Ruled Legal

The Federal District Court sided with the Nurses Association. The US Circuit Court of Appeals for the Ninth Circuit agreed that the Nurses Association had the right to call a sympathy strike despite the no-strike clause in the Nurses Association's collective bargaining agreement with the hospital.

Threatening or calling a sympathy strike was ruled not to be an unfair labor practice, so the Nurses Association did not have to compensate the hospital.

Right to Strike Can Be Waived By Collective Bargaining Agreement

The US National Labor Relations Act gives employers and employees wide latitude to bargain over the terms and conditions of employment. The law begs off from defining what does and does not belong in a union contract, but instead seeks only to guarantee the integrity and fairness of the collective bargaining process.

Employees through their unions can agree not to strike. They can agree not to call a primary strike or a sympathy strike or both. However, the US Supreme Court has consistently ruled that if the right to strike is given up it must be stated clearly and unmistakably in the contract. Giving up the right to strike is never inferred or surmised.

The Ninth Circuit Court of Appeals said the Nurses Association clearly and unmistakably bargained away the right to call the hospital's nurses out on a primary strike in support of the nurses' own contract objectives.

However, there was no basis to infer or surmise from the no-primary-strike clause that the Nurses Association gave up the right to call a sympathy strike. The Nurses Association had that right under Federal labor law and never agreed to include no-sympathy-strike language in the contract.

Children's Hospital Medical Center of Northern California v. California Nurses Association, 283 F. 3d 1188 (9th Cir., 2002).

Resident's Accidental Drowning: Court Places Blame On Assisted Living Facility.

The children placed their elderly father in an assisted living facility.

The facility offered different levels of service to residents, depending on their needs. One of the principles behind assisted living arrangements is that residents' needs can change over time.

Landlord / Tenant

Apartments were rented to residents who did not need assistance with activities of daily living. The legal relationship between the facility and these residents was essentially landlord – tenant.

Caregiver / Patient

Services were offered to residents who needed help. The contract with the deceased's family obligated the facility to administer his medications, assist him with bathing, provide two meals a day and do his laundry. The legal relationship between the facility and these residents was essentially nursing home – patient.

No Assessment of Mental State

According to the District Court of Appeal of Florida, there was no clear evidence his cognitive acuity was assessed when he first moved in or later.

After several months in the facility, right before he drowned in a drainage canal on the facility's premises right behind the facility, the children had, they said, begun to notice what they described as mild dementia.

Accidental Drowning Foreseeable

The court pointed out the facility's residents had been walking down by the canal so much that a dirt path was worn in the grass. The path led off the premised to a nearby flea market that the residents were known to frequent.

First thing in the morning a nurse's aide tried to find him to give him his medications. Not until that evening was the family notified. The staff assumed he had wandered off and they urged the children to report him to the police as a missing person.

The next morning he was found face down in the canal, dead from accidental drowning.

In general, the common law places no duty on the owner of a natural or artificial body of water to fence it for the protection of the public at large.

The common law places no liability on landowners when an adult or unsupervised child voluntarily assumes the risks associated with certain features of another person's property.

By contrast, there is a special relationship between the owner and residents of an assisted living facility. An assisted living facility has a special legal obligation for the care and protection of its residents.

Some residents enter assisted living facilities because advancing age has diminished their mental and perceptual acuity, cognitive capacity, memory and physical abilities.

For these residents an assisted living facility is not like an apartment or hotel. There is an obligation to assess and appreciate residents' limitations and a need to take special care with conditions that would not be the least bit hazardous for younger adults or even children.

DISTRICT COURT OF APPEAL OF FLORIDA, 2001.

Assisted Living / Special Relationship

The court ruled that an assisted living facility has a special legal relationship with its residents. They have been forced by deteriorating mental acuity and physical decline to give up their homes. For their safety they go to live where trained personnel can give them special care and attention and protect them from danger.

Open, Obvious Hazards
Common-Law Principles

By contrast, apartment buildings, hotels, motels, real estate developments, stores, malls, public parks, etc., in general have no special obligation to put up fences around open, obvious hazards like natural or artificial bodies of water.

There are special statutes and ordinances that require, for example, that swimming pools in apartment complexes be fenced. Nevertheless, the common law generally exonerates landowners from liability for open and obvious hazards on the premises. Adults and children alike are considered to have the ability to make their own reasoned choices whether to assume the risks associated with conditions present on other people's property, and the owner is not liable when they get hurt.

Assisted Living Is Like Nursing Home

The court's ruling establishes that an assisted living facility is more like a nursing home or hospital and less like a residential apartment or hotel, at least for the residents who come to live in the facility because they need personal assistance.

The common law rules of liability that are highly landlord- and landowner-friendly do not apply to assisted living facilities serving vulnerable adults.

The court ruled expressly that the canal should have been fenced, even though there was no state statute, city ordinance or administrative regulation requiring it.

Implicitly the court said this man's status should have been assessed more carefully and much better care should have been taken to account for this man's whereabouts. **Selvin v. DMC Regency Residence, Ltd., 807 So. 2d 676 (Fla. App., 2001).**

Family Secrets: Mental Health Worker Fired For Breach Of Confidentiality.

A substance abuse counselor was fired by a county mental health clinic for sharing information from a private session with one client, the daughter, with another client, the mother, in the mother's private session. She sued, claiming disability discrimination was behind her firing.

The US Circuit Court of Appeals for the Seventh Circuit ruled there was a legitimate, non-discriminatory reason to fire her. The court dismissed her disability discrimination claim without actually getting into the issue whether her asthma was a true legal disability. **Curry v. Cass County Mental Health Association, 32 Fed. Appx. 146 (7th Cir., 2002).**

A counselor was having sessions with mother and daughter together.

The daughter asked to speak with the counselor alone and spoke with her alone. The counselor assured her what she said would be kept confidential from her mother.

But then in a one-on-one session with the mother the counselor shared what the daughter had told her in her private one-on-one.

That was a breach of the clinic's policy on medical confidentiality and a violation of state law.

There were grounds to fire the counselor even if her asthma was a disability.

UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT, 2002.

Failure To Monitor Patient: $9,000,000 Verdict Upheld For Nurses' Negligence.

A patient was admitted to the hospital with pneumonia.

The physician elected to put in a left-side chest tube to drain accumulated fluid and wrote orders for Tylenol Extra Strength and Lorcet Plus q six hours prn for pain and Ativan prn for anxiety.

Staff Nurse
Working Two Full Time Jobs

The Supreme Court of Mississippi began by pointing a finger at the hospital for allowing a staff nurse taking care of critically ill patients to work two full-time jobs. The LPN assigned to this patient worked 11:00 p.m. to 7:00 a.m. at the hospital, then reported for a 7:00 a.m. to 3:00 p.m. shift at the State Hospital nearby.

Assessment Adequate
On Afternoon Shift

According to the court, the p.m. shift nurses periodically checked on the patient, took her vital signs and saw and charted that she was experiencing no distress. Notes and an audiotape nursing report were left for the night shift.

Assessment Inadequate
On Night Shift

The night shift staff LPN and unit charge nurse did not go into the patient's room until an hour into their shift.

The charge nurse hung an IV bag and left. She later stated it was her habit to inspect the patient visually as she is hanging an IV bag, but there were no vital signs taken or a progress note charted that would support what she said.

The staff LPN took her vital signs at midnight and found she had a slightly elevated pulse. She was having pain on the left side of her chest, the same side as the chest tube. The staff LPN did nothing further until 2:00 a.m.

At 2:00 a.m. he did not take the patient's vital signs, but he gave her a Tylenol because she was still complaining of pain. He went and talked to the charge nurse and came back and gave some Ativan by IM injection.

Respiratory Distress
More Narcotic / No Assessment

At 2:40 a.m. the patient was sitting up in bed and complaining her pain had increased. The LPN saw that her respirations had become short and rapid.

Believing the earlier Lorcet Plus was wearing off, the LPN gave more. The court faulted him for failing to appreciate a narcotic's potential to depress respiration that is already compromised, for failing to take vital signs before and for failing to continue to take vital signs after giving a dose of narcotic medication.

At 3:00 a.m. the charge nurse came in and hung another IV bag.

Patient Assessed
Nurse Appreciates Seriousness

At 3:30 a.m. the LPN came back. The patient was in severe distress, nauseous, disoriented and diaphoretic. The LPN checked her vital signs and went to get the charge nurse but did not stress to the charge nurse that it was an emergency.

They both came back at 3:40 a.m. They found the patient cyanotic and called a code. She was revived.

However, for the rest of her life the patient will have profound hypoxic brain damage. A lawsuit was filed for her. The jury awarded $9,000,000. The Supreme Court of Mississippi ruled that was not excessive under the circumstances.

No Code Sheet

The hospital used a pre-printed flow sheet for staff to chart the progress of code incidents. Even though the court issued a pre-trial order for the hospital to turn it over, the code sheet could not be found.

It was not entirely clear what exactly the code sheet would have proven. However, the judge permitted the patient's lawyers to suggest to the jury the fact that no one apparently bothered to fill out a code sheet or did fill one out but then lost it showed a disturbing overall lack of professionalism at the hospital. **Brandon HMA, Inc. v. Bradshaw, 809 So. 2d 611 (Miss, 2001).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Ambulation: Nurse Does Not Assist, Liability Found.

The patient had had a heart transplant. She returned to the hospital for follow-up tests in the cardiac catheterization lab.

After the tests were completed the physician asked the patient if she was dizzy and the patient said she was not. The physician tried to help the patient off the examining table by having her step down to a step stool, then down to the floor. She fell and fractured her hip.

The New York Supreme Court, Appellate Division, found fault with the physician. There was a nurse standing by during the procedure who could have helped him help the patient, but he neglected to ask the nurse for assistance. The court did not find fault with the nurse.

The court also ruled the patient did not need an expert witness for her case. It was not an erroneous professional medical judgment, but lack of common sense, the court said, for the physician not to ask the nurse for assistance in helping the patient. **Reardon v. Presbyterian Hospital, 739 N. Y.S.2d 65 (N.Y. Super., 2002).**

Ambulation: Nurse Does Not Assist, No Liability Found.

The patient had just had dental surgery at the hospital. His friend was with him. There was also a nurse present.

The patient tried to get up and his friend tried to help him. The patient weighed almost 400 pounds. The nurse was close by but did not attempt to assist the patient or assist the friend who was assisting the patient.

The patient fell on his friend. The friend, not the patient, sued the hospital for the nurse's negligence. He claimed he suffered a herniated disk in his neck either when the patient grabbed his arm or when the patient fell on him.

The New York Supreme Court, Appellate Division, ruled the nurse was negligent for standing by and neglecting to offer assistance. However, the court believed the friend's neck condition was not a herniated disk from recent trauma, but old degenerative arthritis. Thus cause-and-effect was lacking and there was no liability, the court ruled. **Radish v. De Graff Memorial Hospital, 738 N.Y.S.2d 780 (N.Y. Super., 2002).**

Melenic Stools Not Reported To Physician: Nurses' Neglect Contributed To Patient's Decline.

The patient was admitted to the hospital after complaining of nausea and vomiting blood.

She had been to the hospital before and was diagnosed with upper gastrointestinal bleeding. Her history included a stroke, delirium tremens secondary to alcohol abuse, hypertension and tachycardia.

While in the hospital this time she suffered another stroke and died. The death certificate listed the cause of death as cerebral vascular accident secondary to atherosclerotic vascular disease as a consequence of hypertension. Her physicians traced the stroke to a plaque-occluded left carotid artery.

The patient's daughter sued the hospital alleging negligent and substandard nursing care.

The nurses' negligence probably exacerbated the patient's overall poor health condition, caused pain and suffering and contributed to her decline, even if it was not the ultimate cause of her death.

Loss of blood and low hemoglobin contributed to the angina she suffered in her last days.

Gastrointestinal bleeding did not cause the stroke from which she died.

SUPREME COURT OF MISSISSIPPI, 2002.

The Supreme Court of Mississippi made a qualified ruling that there were grounds for the lawsuit.

The nurses charted but did not report the melenic stools to the physician, even though the patient had an upper GI hemorrhage, low hemoglobin and angina. Not reporting a significant health condition is nursing negligence, and the court believed it contributed to the patient's pain and suffering and overall decline but did not directly cause her death.

A legal nurse consultant is competent to testify about nursing standards and practices. However, only a physician, not a nurse, can testify on the issue of cause-and-effect linking nursing negligence to a patient's death. **Richardson v. Methodist Hospital, 807 So. 2d 1244 (Miss., 2002).**