LEGAL EAGLE EYE NEWSLETTER

June 2004 *For the Nursing Profession* Volume 12 Number 6

Quadriplegic Falls From Exam Table: Court Finds Nurse And Doctor Negligent.

The patient had been a quadriplegic for nineteen years and for more than nineteen years had been a patient of the physician in question.

He came to the physician's office to have a mole removed from the side of his head.

After this routine procedure the nurse and physician left him lying on his back on the examining table.

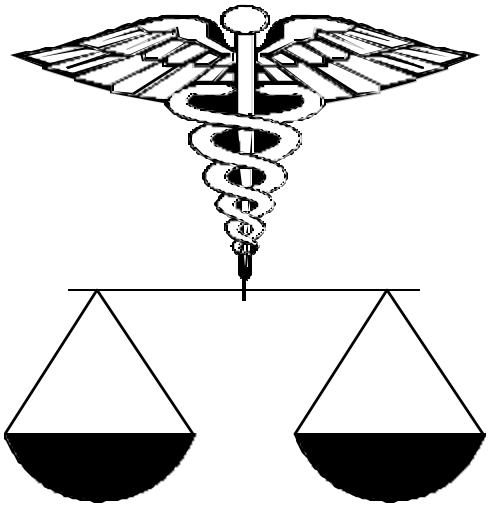
He fell from the table and soon died from his injuries from the fall. The patient's wife sued the physician and nurse. The jury sided with the physician and nurse.

On appeal, however, the Superior Court of Pennsylvania, overruled the jury, found the physician and nurse negligent and sent the case back for another jury only to assess how much compensation to award.

How, Why Did the Patient Fall?

The patient was incapable of voluntary movement. Expert witnesses testified quadriplegics can experience involuntary spasmodic movements, although there was no proof that that happened here or that if it happened such involuntary spasms would have had sufficient magnitude to move him off the table.

The bottom line was it was not legally relevant how or why he fell.



A quadriplegic should never be left unattended with no side rails or restraints.

It was not clear how or why he fell off the exam table. He could not move on his own.

When a helpless patient is injured like this the nurse or doctor responsible for the patient is legally liable unless they can explain to the court why they were not negligent.

SUPERIOR COURT OF PENNSYLVANIA
April 23, 2004

The Superior Court needed only the common-sense idea that a quad would not normally fall off an exam table without someone being negligent.

No one other than the nurse and physician had access to the patient during the relevant time period.

There was no evidence of involuntary spasm. Even if that happened it was no defense. The nurse and physician would be expected to anticipate it.

Burden of Proof Reversed

As a general rule in medical negligence cases the patient has to prove how the healthcare providers were negligent.

In special cases involving basically helpless patients who are injured those responsible for the patient's care must be able to prove they were not negligent or risk liability in a civil lawsuit.

The legal rule for these cases is, "*Res ipsa loquitur*," which means, "It speaks for itself." The rule is most often applied in cases of unexplained injuries to anesthetized surgical patients.

The lack of proof how this helpless patient fell helped the family in court. His caregivers were ruled negligent because they could not prove otherwise. **Quinby v. Burmeister, 2004 PA Super 135, __ A. 2d __, 2004 WL 869575 (Pa. Super., April 23, 2004).**

Inside this month's issue ...

June 2004

New Subscriptions Page 3

Persistent Bleeding: Court Finds Fault With Advice Given To Patient.

The obstetrician's office nurse told the patient not to worry that she was still bleeding six days after delivery.

About a month later the obstetrician's office receptionist gave the patient the same advice and told her to wait for her scheduled appointment ten days later to tell the physician.

Vaginal bleeding that persists for some time after childbirth requires follow-up with a physician.

A nurse should advise the patient to see a physician.

APPEALS COURT OF MASSACHUSETTS
UNPUBLISHED OPINION
May 7, 2004

The Appeals Court of Massachusetts, in its unpublished opinion, questioned the advice the nurse gave.

The nurse told the patient she would likely pass some "liver-like" tissue, that is, fragments of retained placenta. After that the bleeding should stop.

If it did not stop, however, she had to see the physician. The nurse did not tell her that, a critical omission by the nurse.

The patient did pass the tissue, but the bleeding did not stop. She developed chronic endometritis leading to Asherman's syndrome and a hysterectomy.

The court did not fault the obstetrician's medical care, but did fault her office procedures. Methods should be in place to assure that all staff know that potentially serious post-operative complications must be reported to the physician for a decision by the physician whether to follow up with an in-person exam. **Traniello v. Rudek, 2004 WL 1043219 (Mass. App., May 7, 2004).**

Blood Donors: New History Questionnaire From FDA.

On May 12, 2004 the US Food and Drug Administration (FDA) published a full-length donor history questionnaire and accompanying materials to provide a specific process for administering questions to donors of blood and blood components intended for transfusion and further manufacture to determine their eligibility to donate consistent with current FDA requirements and recommendations.

The US Food and Drug Administration (FDA) has made available a draft of a new history questionnaire for use in screening human donors of blood and blood products.

Use of this draft document is not mandatory at this time.

We have placed the full seventy-eight page document on our website at http://www.nursinglaw.com/blooddonors.pdf. It is not copyrighted and anyone is allowed to reprint it.

FEDERAL REGISTER May 12, 2004
Page 26399

The FDA has emphasized that use of the draft document is not mandatory at this time, even though it is meant to contain the most current thinking on the subject of blood-donor screening.

As with any new Federal regulation the FDA must open the process to public comment before issuing a final mandatory regulation on the subject.

FEDERAL REGISTER May 12, 2004
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Undocumented Injury: Court Accepts Patient's Testimony.

The Court of Appeal of Louisiana approved a judge's award of $1,500 damages to a patient who claimed a nurse dropped one of the footrests from her wheelchair on her knee during a transfer, causing her pain and suffering, even though there was no corroboration from the nurses on duty or the chart that the incident occurred.

Both of the patient's nurses testified they could not recall the incident.

The incident was not documented in the chart.

The hospital's policies require that any incident in which a patient claims to have been injured must be reported to the nursing supervisor. It was never reported nor could the supervisor recall it.

The judge still believed the patient was injured and awarded damages.

COURT OF APPEAL OF LOUISIANA
April 21, 2004

At the same time the court accepted the hospital's argument that the incident was in no way a cause for the patient's second knee surgery. That meant a lot less compensation than the patient sued for.

The court ruled that this type of incident does not require expert nursing or medical testimony to establish that negligence has occurred, assuming the facts of the incident can be taken as true.. **Mitter v. Touro Infirmary, __ So. 2d __, 2004 WL 943535 (La. App., April 21, 2004).**

Pregnancy Discrimination: Aide Not Allowed Light Duty Cannot Sue, Federal Court Says.

The US District Court for the District of Maryland dismissed a certified nursing assistant's pregnancy discrimination claim against the nursing home where she had worked.

The court validated the employer's policies in all respects.

Nursing Staff Must Be Able To Lift

The court accepted the nursing home's legal position:

It is critical for a long-term care facility to employ nurses and nursing assistants who can provide direct patient care that includes lifting and transporting residents who are unable to ambulate by themselves.

Failure to provide sufficient on-duty staff of nurses and nursing assistants who are able to provide the full gamut of patient care, including lifting and transporting patients, could jeopardize a long-term care facility's license and could lead to legal liability.

It is reasonable for a long-term care facility to require certified nursing assistants to be able to lift, push and pull at least seventy-five pounds.

The restriction was imposed by her physician. It in no way involved a stereotypical judgment by her employer as to a pregnant woman's capabilities.

It is not unlawful discrimination to refuse light duty to pregnant nursing staff whose physicians have imposed lifting restrictions.

The US Pregnancy Discrimination Act (PDA) does not require employers to treat pregnant employees more favorably than other employees whose physicians have imposed comparable lifting restrictions.

The law says only that pregnant employees cannot be treated less favorably than others due to the condition of being pregnant.

The aide voluntarily dropped from her lawsuit her allegation that her employer violated the US Americans With Disabilities Act (ADA).

Pregnancy is not a disability. That is, pregnancy discrimination is covered by the PDA, not the ADA.

UNITED STATES DISTRICT COURT
MARYLAND
May 10, 2004

Light Duty Was Allowed Only After On The Job Injuries No Discrimination

The court upheld the employer's policy of allowing light duty only for workers with physician's lifting restrictions from on-the-job injuries at the nursing home while recovering from their injuries.

The policy was strictly limited to on-the-job injuries. The court found that the policy was applied uniformly to males *versus* females and pregnant *versus* non-pregnant females.

The court pointed to the economic realities of the nursing home industry. Worker's compensation imposes a tremendous cost burden in the form of workers with back injuries who temporarily are unable to do heavy labor tasks.

Employers can alleviate this burden to some extent by keeping injured workers on the job performing some, although not all, of the tasks associated with their jobs while recovering from compensable on-the-job injuries rather than sitting at home drawing time-loss disability checks.

Lessening the economic burden of compensating on-the-job back injuries that temporarily restrict workers from full-duty lifting capability is a legitimate reason behind the nursing home's policy of restricting light duty to on-the-job injury cases.

Pregnant workers are not entitled to special consideration, only to be treated the same as everyone else, which they were here with respect to the on-the-job-injury-only policy for allowing light duty, the court said. **Daugherty v. Genesis Health, __ F. Supp. 2d __, 2004 WL 1047388 (D. Md., May 10, 2004).**

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

Indexed in
Cumulative Index to Nursing & Allied Health Literature™

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

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Decubitus Ulcers: Manslaughter Conviction Upheld. Adult Home Operator Had Nursing Training, Should Have Known The Risks.

The operator of an adult residential care home took the resident to a doctor's office for a urinary tract infection.

The physician noticed a five-by-six centimeter decubitus ulcer (in an area of the body not specified in the court record.)

The physician instructed the operator to wash the ulcer with Betadine solution, apply Intrasite gel and cover the wound with a new Duoderm pad every day.

Two days later the resident was brought back to the physician's office for the UTI, which had resolved, but the decubitus was still present. The physician referred her to another physician for the decubitus.

Two days after that the second physician found two decubiti with necrotic tissue beginning to show. This physician debrided the necrotic tissue. He applied a sterile wet-to-dry dressing and instructed the adult home operator how to change the dressing, which needed to be done two or three times each day. He told her to bring the resident back in one week.

A month later the resident was taken to a hospital emergency room. She had no pulse and was not breathing when they took her out of the car. She had multiple large, black, smelly decubitus lesions with pus coming out. The next day she died in the hospital's intensive care unit.

Manslaughter Conviction Upheld

The operator of the home was charged and convicted of manslaughter in the resident's death. The Intermediate Court of Appeals of Hawai'i upheld her conviction.

The court approved the instructions given to the jury which returned the manslaughter conviction:

The defendant is charged with the offense of manslaughter based upon reckless conduct.

A person commits the offense of manslaughter based upon reckless conduct if she causes the death of another person by recklessly failing to perform a duty imposed by law, by failing to provide health care within her capabilities as prescribed by a physician, consciously disregarding a substantial and unjustifiable risk that her failure to provide health care would result in the death of another person.

A person commits the criminal offense of manslaughter if he or she recklessly causes the death of another person.

Manslaughter is a class A felony.

In the usual case manslaughter occurs with the commission of an act.

Criminal liability for manslaughter can also occur with the omission of an act if the law imposes a duty to perform the omitted act.

A duty to take action for the health and safety of residents is imposed by law.

Failure to take required action can constitute a criminal offense by omission.

An adult residential care home must be able to recognize, record and report to the resident's physician significant changes in the resident's health status.

The home must provide health care within the home's capabilities.

The home must see that residents are transported and accompanied to an emergency room or other medical care facility as needed.

INTERMEDIATE COURT OF APPEALS
OF HAWAI'I
May 7, 2004

Defendant Had Nursing Training Should Have Know The Risks

The defendant had completed a three-month certified nursing assistant course at a community college. Her course work specifically included a unit titled, "Use of Decubitus Prevention Aids."

The defendant had worked in an nursing home as a certified nursing assistant for sixteen months where a substantial portion of her in-service training was directed toward care and prevention of decubitus ulcers.

She was aware of the legal requirements for adult residential care homes. Under Hawai'i law the requirements are substantially equivalent to Federal regulations for extended care nursing facilities.

She had heard and been given written instructions by the resident's physician, all of which she understood.

She asked the physician to prescribe an egg-crate mattress for the resident's bed and a seat cushion for her wheelchair, but did not follow up to obtain these items.

The defendant stated in court that the lesions were not progressing, but were resolving, up until the point the resident had to be taken to the hospital near death.

Survey Reports Admissible Evidence

As a rule in civil nursing-home negligence cases state and Federal survey reports are not admissible in evidence.

In this criminal case, however, the court ruled the reports were admissible evidence as well as the testimony of the nurse-inspector who prepared the reports. The court ruled it went to the issue of the defendant's reckless state of mind that she obviously ignored what the survey team was telling her about this resident's substandard care. **State v. Bermisa, __ P. 3d __, 2004 WL 1013359 (Hawai'i App., May 7, 2004).**

Latex Allergy: Court Fixes Date Of Nurse's Injury With Prior Employer. Time For Filing Worker's Compensation Claim Has Lapsed.

The Supreme Court of Nebraska has upheld the unpublished opinion of the Court of Appeals of Nebraska we reported in March, 2003. *(Latex Allergy: Court Looks At Timing Of Occupational Exposure versus Filing Of Worker's Comp Claim.* Legal Eagle Eye Newsletter for the Nursing Profession, (11)3, Mar. '03 p.4.)

Latex Allergy Is A Compensable Occupational Disease

The Supreme Court ruled that a latex allergy can be a legitimate occupational disease for a nurse who repeatedly must use latex gloves in the workplace. The nurse in this case had a legitimate occupational disease.

Exposure, Symptoms, Disability, Claim Timing Is A Critical Factor

However, the nurse's occupational disease occurred for legal purposes in 1992 while she was working at a hospital where she had worked for ten years as a surgical nurse.

She filed her worker's compensation claim in 2001. She claimed as of early 1999 she could no longer work in any environment where latex was present, even the low-latex environments where she had worked for four different employers after leaving her surgical-nurse position at the hospital in 1992.

She filed for compensation well past the deadline to obtain benefits for an occurrence in 1992, according to the court. Her two most recent employers, for whom she had worked recently enough still to be within the statute of limitations, had no legal responsibility for the onset of her latex allergy as an occupational disease.

History of Illness

After starting as a surgical nurse in 1981 she gradually began having difficulty with rashes, hives and respiratory wheezing. It began to happen as often as once a month and did require medical attention.

At this point she did not yet have an occupational disease.

The nurse's latex allergy occurred in 1992 on the day she had her anaphylactic reaction in the operating room. She had to have an epinephrine shot and had to leave work for the day. Soon afterward she had to quit the hospital altogether.

Her anaphylactic reaction that day was the culmination of more than ten years of exposure to latex gloves at the hospital.

She has had two full-time and two part-time low-latex-exposure nursing jobs since then with four different employers.

She finally applied for worker's compensation in 2001.

That is too late and her employers since the hospital where she had the anaphylactic reaction are not responsible for paying her benefits.

The legal system needs an identifiable instant in time to start the claim period running, establish the worker's right to benefits, determine which year's version of the statute applies and to determine which employer and which insurance company are responsible.

SUPREME COURT OF NEBRASKA
April 29, 2004

Date Of Anaphylactic Reaction = Date Of Injury

The legal system has the need to set a specific date of injury in cases of occupational diseases just like acute occupational injuries.

On a specific date in 1992 the nurse had an anaphylactic reaction to latex. She had to leave the O.R., go down to the hospital's E.R. for an epinephrine shot, leave the hospital for the remainder of the day and take some time off to recover.

The court pointed to court cases from around the US and quoted legal textbooks on the specific topic of fixing the date of occurrence for an occupational disease.

It has been observed that occupational diseases typically result from recurrent exposure to a noxious chemical agent or repetitious trauma in the workplace.

The date of injury for an occupational disease is when the accumulated effects of recurrent exposure or repetitious trauma first manifest themselves in disability, that is, cause the worker to have to be absent from work. That date is the all-important benchmark that sets deadlines running and establishes which employer or insurer is responsible for payment of benefits according to which year's tabulation of payable compensation.

Occupational Disease Defined

An occupational disease is a disease which is due to causes and conditions which are characteristic of or peculiar to a trade, occupation or employment.

The definition of occupational disease excludes ordinary diseases of life to which the general public is exposed.

The court looked for guidance at the legal principles from cases in other states involving dentists with latex allergies making claims for occupational diseases. Complications from wearing latex gloves are accepted as peculiar to and characteristic of certain occupations. **Ludwick v. Triwest Healthcare, 678 N.W. 2d 517, 2004 WL 905996 (Neb., April 29, 2004).**

Bladder Perforation: Hospital Not Liable For Peritonitis, No Deficit Found In Post-Laparoscopic Nursing Care.

The surgeon accidentally perforated the patient's bladder during a routine laparoscopic exploratory procedure.

The patient apparently had had a urinary tract infection at the time which migrated to the bladder and from the bladder through the perforation into the peritoneum. The patient developed peritonitis which sent her into a coma and then to intensive care for six weeks.

The patient and her family obtained a settlement from the surgeon for a sum of money that was not disclosed in the court record. Then they sued the hospital as the employer of the nurses who provided her post-operative care.

The Court of Appeals of Washington ruled for dismissal of the case against the hospital, in an unpublished opinion.

No Deficits In Nursing Assessment, Nursing Care, Nursing Advocacy

The patient complained of pain in the post-anesthesia recovery room. Although pain was to be expected it was reported to the anesthesiologist. The patient complained of urgency but was unable to void. The anesthesiologist ordered a bladder scan which showed 89 cc in the bladder and ordered in-and-out catheterization prn. The nurses felt that amount of urine did not warrant catheterization.

The patient wanted to stay in the hospital but her nurses did not advocate for her on this issue.

The court found nothing abnormal that could or should have been detected by the nurses that was not reported.

With everything appearing normal at the time there was no basis to fault the nurses for not catheterizing her or for not advocating that she stay in the hospital, even though with 20/20 hindsight it was known her peritonitis would have been detected right away if she was still in the hospital a couple of days later. **Sewell v. King County Hosp. Dist., 2004 WL 1045911 (Wash. App., May 10, 2004).**

The heart of this case is the issue of medical cause-and-effect.

Medical causation must be proved by testimony from an expert witness.

It is not sufficient for the patient suing a healthcare provider to set forth the facts and circumstances of the case and then leave it to the judgment of a lay person whether the provider should be liable.

Whether or not the nursing assessment of this patient was inadequate or the nurses failed to advocate for their patient, there is no way the patient's peritonitis could have been diagnosed before she was discharged from the hospital on the same day as her surgery.

Peritonitis takes a day or two before signs and symptoms are present.

Even if the nurses had advocated for their patient a physician would not have had grounds to keep the patient in the hospital based only on her commonplace post-laparoscopic symptoms.

COURT OF APPEALS OF WASHINGTON
UNPUBLISHED OPINION
May 10, 2004

Newsletter Online Edition Security Update.

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We are finding that the newest version of the Microsoft Outlook Express e mail system with the most up-to-date security patches will not allow our online edition links to be opened directly from the text bodies of our e mails.

We are also finding that our online edition is being rejected as an "unsafe" and simply cannot be opened as a file attachment to an e mail. In the past e mail recipients were warned not to open suspicious file attachments. Now that freedom is being taken away as one ill-advised decision by one user theoretically could set a virus or worm loose on the Internet.

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We will include this message and any updates in our e mails to our subscribers as we publish the online edition each month.

Epidural Hematoma: Hospital Not Liable For Spinal Cord Compression. Court Based Its Ruling On Post-Op Nursing Documentation.

The patient underwent a lumbar laminectomy at the hospital. On the third post-operative day his condition began to deteriorate. He was diagnosed with an epidural hematoma which resulted in spinal cord compression.

Although he underwent decompression surgery to alleviate the hematoma he was left with permanent neurological damage. He sued the hospital for medical malpractice and nursing negligence.

Jury Finds No Medical Malpractice
No Nursing Negligence

The civil jury could find no medical malpractice or nursing negligence and ruled in favor of the hospital.

Based largely on the thoroughness of the post-operative nursing progress notes, the Court of Appeals of Ohio upheld the jury's ruling and absolved the defendants from negligence, notwithstanding the fact the patient did sustain significant post-operative complications.

Early Post-Op Nursing Assessments
No Neuro Signs Seen

According to the nursing progress notes, the patient did well for the first two days after his surgery, the surgery itself having been accomplished without any complications.

Early on the morning of the third day he was doing well. The progress notes showed he had no numbness or leg pain, was moving all extremities well and had no neurological signs or symptoms.

At 10:45 a.m. his nurse first heard him complain of pain, which was recorded in the nursing notes.

The nurse noted at the same time he seemed to have general weakness with some limited mobility secondary to low back discomfort. The nurse also noted that he was up to the bathroom with supervision and exhibited no other changes.

Complaints of Increasing Pain

By mid-afternoon he was starting to complain of pain, progressing to excruciating pain at the operative site.

The classic signs and symptoms of epidural hematoma include:

1. A sudden violent onset of pain in the area where the hematoma is occurring;

2. Motor – mild weakness progressing to more severe motor impairment;

3. Sensory – tingling progressing to numbness;

4. Full blown cauda equina syndrome – loss of function of the bowel and bladder, sexual dysfunction.

The patient testified in court that he complained to his nurse of pain and numbness before noon.

The nursing progress notes do not support the patient's testimony.

The nursing progress notes indicate a nursing neurological assessment just after midnight included complaints of numbness and decreased sensation.

The nurse reported this significant change in the patient's status to the resident physician on duty.

An MRI and decompression surgery were done within less than six hours.

No delay can be attributed to faulty nursing assessment.

COURT OF APPEALS OF OHIO
April 29, 2004

The p.m. nurse on duty promptly reported the patient's new complaints of pain to the neurosurgery resident, who came to the room to see him.

The resident found his neurological status intact. He reasoned that his increased activity out of bed was aggravating his surgical incision and ordered pain medication. The resident came back and saw him later that evening.

Nursing Assessment
Reduced Fluid Intake / Output

The nurse on duty reported to the resident later that evening that the patient was still complaining of pain.

She also reported, and recorded in the nursing notes, that fluid output was low, possibly an ominous sign of change in neurological status, or possibly simply the result of decreased fluid intake which the nurse was also noticing.

The resident thought it was probably just low fluid intake and advised the patient be encouraged to increase fluids.

Nursing Assessment
Numbness, Urinary Incontinence

Just after midnight the nurse first heard the patient complain of numbness and decreased sensation in his legs, along with the back pain. She promptly reported this to the resident.

By 2:00 a.m. the patient had become incontinent of urine and was losing motor strength in his legs.

The resident ordered an MRI. Due to the lateness of the hour the "stat" MRI took ninety minutes and decompression surgery was not started for four hours, but the court found that was within the standard of care under the circumstances.

Nursing Documentation Was Critical

Because of the thoroughness of the nursing documentation the court discounted the patient's testimony that he started complaining of numbness more than twelve hours earlier than reflected in the nursing notes. **Perla v. Cleveland Clinic Foundation, 2004 Ohio 2156, 2004 WL 906115 (Ohio App., April 29, 2004).**

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For the Nursing Profession

Staph Infection: To Sue, Patient Must Identify How It Happened.

The New York Supreme Court, Appellate Division, threw out a lawsuit against a hospital for a Staph infection contracted by the patient at some point in her three-week hospitalization following a cervical laminectomy.

Nursing Expert's Testimony Discounted

The patient's nursing expert stated it was her opinion that a non-sterile surgical instrument must have been used or there must have been a lapse in post-operative infection control.

The hospital's experts stated the surgery and post-op care fully met the standard of care.

The court ruled that for an infection that shows up post-operatively the patient's expert cannot use circular reasoning but must identify the actual source of the infection and show why it fell below the standard of care. **Hoffman v. Pelletier, 775 N.Y.S.2d 397, 2004 N.Y. Slip Op. 02797, 2004 WL 793268 (N.Y. App., April 15, 2004).**

Comparative Fault: Cause Of Underlying Injury Not Relevant.

The patient was brought to the E.R. after a single-vehicle accident with a closed-head injury. His blood alcohol was .20%.

Hospital Admits Nurse Was At Fault

The patient sustained more significant brain damage by being hooked up with an oxygen tank that was only half full during his CT scan.

According to the Supreme Court of Tennessee his nurse also did not verify or record the settings and alarm parameters on his cardiac monitor. No one knew until too late that he went into distress during the CT procedure.

The Supreme Court threw out the jury's assignment of 30% comparative fault to the patient for being intoxicated and causing the underlying accident. The Court reinstated the full $7.3 million verdict, not $5.1 million, against the hospital. **Mercer v. Vanderbilt University, 2004 WL 936808 (Tenn., May 3, 2004).**

Medication Administration Records: Recording Another's Initials Ruled Employee Misconduct.

A licensed practical nurse was the site coordinator for a an assisted-living facility. She oversaw administration of medications to residents by certified nursing assistants.

The assistants were expected to give the medications that a nurse had placed in each resident's pill counter, then initial the medication administration record (MAR) in the resident's chart to attest that the medications had been given. Nursing assistants were supposed to complete their charting by the end of each day.

When the LPN noticed that an assistant had not initialed the MAR in a resident's chart, she would check the pill counter to verify the pills were gone and record the assigned assistant's initials in the patient's MAR.

Misconduct that will justify termination is any intentional conduct that disregards standards of behavior the employer has the right to expect from employees.

The employer's policies made it the nurse's duty to verify that all charting of medications was completed at the end of the day by the person who had given the medication.

COURT OF APPEALS OF MINNESOTA
UNPUBLISHED OPINION
May 4, 2004

The LPN's supervisor and director fired her immediately when they learned what she was doing. They believed it constituted falsification of medical records and that falsification of medical records by a nurse, in violation of express institutional policy, is grounds for immediate termination.

The Court of Appeals of Minnesota agreed, in an unpublished opinion.

When a nurse initials an MAR it is legal attestation by the nurse that the medication has been properly given to the named individual patient.

Without giving the medication or witnessing it being given a nurse cannot legally attest in the patient's chart that it has been administered, the court said. **Woods v. Spectrum Community Health, Inc., 2004 WL 954764 (Minn. App., May 4, 2004).**