LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

June 2005 Volume 13 Number 6

Hospital E.R. Restrains Combative Patient: Court Throws Out Excessive-Force Lawsuit.

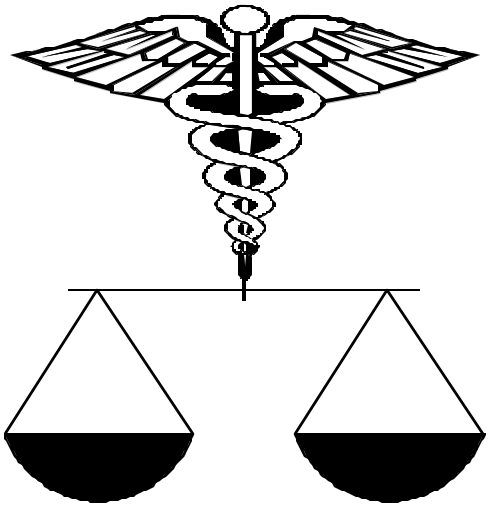
The patient was brought to the hospital's emergency room at 10:00 a.m. on a Sunday morning. His blood alcohol level was still twice the legal limit for driving under the influence.

Late Saturday night, while extremely intoxicated and under the influence of marijuana, he had put his arm through a glass window while fighting with a friend. He sustained severe lacerations as well as possible closed-head injuries.

The patient himself had no memory of the events in the emergency room. The only evidence was the testimony of hospital personnel and the hospital's security videotapes.

The Chief Judge of the US District Court for the Western District of Kentucky reviewed the testimony and the videotapes carefully before rendering a decision.

The patient was belligerent and uncooperative. He was using foul language and racial slurs. He had to be moved to an isolation room, with its own video surveillance system. After he began removing the dressings from his lacerated arms he was placed in six-point restraints on a gurney. When he began spitting, a biohazard hood was placed over his head and taped in place by a hospital nurse.



Every person is entitled to proper medical care and humane treatment even if their own conduct makes it more difficult.

Hospital personnel are entitled to take reasonable measures to facilitate care, to protect patients from self-destructive acts and to treat a patient without fear of injury.

UNITED STATES DISTRICT COURT
KENTUCKY
April 26, 2005

Late Sunday afternoon, after he calmed down, his injured hands were carefully sutured by a hand surgeon and a head CT scan could be done which was negative for trauma.

Lawsuit Thrown Out

As the court pointed out, the patient arrived at the hospital with obvious and potentially serious injuries. The hospital had a legal duty to care for him despite his belligerence.

Whether or not he consented to treatment was a moot point. Consent to treatment is not required in a medical emergency. A medical emergency exists when the patient needs care but is not mentally competent to make an informed judgment for his own well-being.

After treatment began his actions showed not just an inability to follow instructions but an inability even to comprehend the instructions he was being given. His own conduct posed a danger to himself, i.e., he unwrapped his bandages and assaulted the medical personnel who were trying to help him.

There was no evidence of any intent by the hospital's personnel to harm the patient, only to restrain him for his own safety so that he could be treated. **Taylor v. University Medical Center, Inc., 2005 WL 1026190 (W.D.Ky., April 26, 2005).**

Inside this month's issue ...

June 2005

New Subscriptions
See Page 3

Labor Relations: Court Rules Nurses' Strike Illegal, Allows Employer To Fire Them.

The union certified to represent the nurses at a clinic gave notice to the clinic of the union's intent to go on strike after the union rejected the clinic's last contract offer and the union membership voted to authorize a strike.

Healthcare Facilities – Special Rules

The US National Labor Relations Act (NLRA) has a special strike-notice rule for private-sector employees who work for healthcare providers. A union must give a private-sector healthcare employer a minimum ten-days notice of the exact date and time a strike will commence.

Further, the union must stick to the exact date and time stated in the strike notice unless the employer and the union mutually agree to extend the strike deadline for some reason, usually to permit last-minute negotiations to avert the strike.

The purpose of the ten-day notice is to allow the employer, in the interest of patient safety, to make arrangements for temporary replacement workers and/or to transfer or shut down its patient-care operations temporarily.

Union's Tactics Faulted

In this case the union called the strike for 8:00 a.m. on a specified day. Then the union secretly told its member nurses to report for work anyway, to work until noon and then suddenly all to walk off the job together.

In this case the clinic experienced a significant disruption of service by having to have the replacement nurses stand by on the premises while management tried to figure out what to do and then had the union nurses all walk out abruptly four hours into the day shift.

The US Circuit Court of Appeals for the Eighth Circuit ruled the nurses' union violated the NLRA by unilaterally extending the strike deadline. The nurses acted illegally and could be fired and had no recourse under US labor law. **Minn. L.P.N. Assn v. N.L.R.B., __ F. 3d __, 2005 WL 1107330 (8th Cir., May 11, 2005).**

The union cannot unilaterally shorten or extend the date or time of the strike deadline after giving notice to a health care employer.

The nurses thus struck illegally in violation of Section 8 (g) of the US National Labor Relations Act.

By striking illegally the nurses lost the usual protected status which private-sector employees have when engaged in legitimate collective bargaining negotiating tactics with their employers over the terms and conditions of employment.

The nurses were discharged lawfully by their employer.

The individual nurses may have acted in good faith relying upon unsound advice from their union and the union's legal counsel.

However, that does not justify rewarding their unlawful conduct by ordering their employer to reinstate them with back pay, the usual remedy for an employer's unfair labor practice.

The nurses' employer did not commit an unfair labor practice.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
May 11, 2005

O.R.: Incorrect Sponge Count Excused, Was An Emergency.

The patient was involved in a horrific automobile accident and sustained massive internal trauma.

The trauma team at the hospital opened his abdomen and did what was described as "damage control" to keep the patient alive pending transfer to a major trauma center. They removed his spleen and took out ruptured bowel segments, packed the abdomen with lap sponges, closed the surgical incision and transferred him to a Level I trauma center.

The nurses at the Level I trauma center did all they could under the circumstances.

They counted the lap sponges that were actually removed during the second surgery, but made a note on the operative record that the count was "incorrect," meaning that one or more sponges were still inside the patient's body.

SUPERIOR COURT OF PENNSYLVANIA
May 12, 2005

After two more surgeries at the trauma center at least one lap sponge remained inside. The patient died of sepsis and multiple organ failure. His widow sued the trauma center. The jury found no negligence. The Superior Court of Pennsylvania upheld the jury's verdict.

The court ruled this was hardly the run of the mill case of a surgical sponge inadvertently being left inside the patient. Under the circumstances the nurses and physicians did all they could and they should be excused from liability. **Faherty v. Gracias, __ A. 2d __, 2005 WL 1120081 (Pa. Super., May 12, 2005).**

West Nile Virus: FDA Revises Guidelines For Blood Donors.

On May 6, 2005 the FDA announced immediate implementation of a new guideline regarding West Nile Virus screening of blood donors.

Recent history of fever and headache will no longer be criteria for deferring blood donation, as the FDA no longer believes such signs and symptoms are strongly indicative of West Nile infection.

The FDA's latest announcement is on our website at http://www.nursinglaw.com/westnilevirus2.pdf.

On April 20, 2005 the FDA announced proposed new comprehensive standards for West Nile Virus screening to replace the standards announced in October, 2002 (http://www.nursinglaw.com/westnilevirus.pdf).

The proposed new comprehensive standards, emphasizing laboratory testing rather assessing donor signs and symptoms, are available from the FDA at http://www.fda.gov/cber/guidelines.htm.

FEDERAL REGISTER April 20, 2005
Pages 20575 – 20576

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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Misconduct: Harassment Of Nursing Home Patient Ruled Grounds For Termination.

The Court of Appeals of Minnesota has ruled that sexual harassment of a nursing-home resident by a licensed practical nurse is grounds for termination for cause, assuming there has been an investigation and substantial evidence of wrongful conduct has been found. **Williams v. Regency Health Care, 2005 WL 949187 (Minn. App., April 26, 2005).**

Misconduct justifying termination is any intentional, negligent or indifferent conduct on or off the job that is a serious violation of the standards of behavior that the employer reasonably has the right to expect of the employee.

Inefficiency, a simple instance of unsatisfactory conduct, poor performance or a good-faith error in judgment is not considered misconduct justifying termination.

COURT OF APPEALS OF MINNESOTA
April 26, 2005

Patient Abuse: Aide Convicted Of Criminal Offense.

According to the court record before the Court of Appeals of Mississippi, a certified nursing assistant repeatedly slapped a resident's hand and pulled her hair when the resident grabbed her bed rail and would not let go so that the aide could proceed with her care.

The incident was witnessed by a CNA co-worker and by an aide in training. After the aide in training reported the incident to the charge nurse the charge nurse found the resident frightened and withdrawn lying in her bed.

The resident's hand was reddened and bruised according to the aide's and the charge nurse's testimony in court. **Walker v. State, __ So. 2d __, 2005 WL 949230 (Miss. App., April 26, 2005).**

Abuse: Aide No Longer To Work With Vulnerable Adults.

The Court of Appeals of Minnesota upheld the department of health's decision to place an aide's name in the registry of persons who may no longer work with vulnerable adults who bruised a resident's wrist yanking her to a standing position. **D.F.C. v. Comm'r, 693 N.W. 2d 451 (Minn. App., March 22, 2005).**

Family And Medical Leave Act: Court Upholds Nurse's Lawsuit.

A nurse needed to take every Friday off work for twelve weeks to take her adult daughter to her cancer chemotherapy treatments. The nurse applied to her employer for intermittent family leave under the US Family and Medical Leave Act (FMLA) and the parallel California state law. She was approved.

An employee is entitled to intermittent leave to care for a qualifying family member's serious health condition. However, the nursing home later went back on its allowance of intermittent family leave on the grounds that a non-disabled adult child is not within the FMLA's definition of a family member for whose serious health condition leave must be given. The nurse was told her only options were to work Fridays, take a full-time leave for the twelve week period or resign altogether.

The nurse resigned and sued for violation of the Federal and California state family leave laws.

The US District Court for the Northern District of California upheld her right to sue, adding a new legal wrinkle to the interpretation of the FMLA.

Employer's Misinterpretation of the Law Was Prejudicial

The court ruled the employer was eventually correct in its interpretation of the FMLA that an adult child who was not disabled prior to onset of the serious health condition at issue is not within the definition of a family member for whom an employee can take FMLA leave.

However, this nurse's employer caused actual prejudice to this nurse's employment situation by granting her leave request and then by going back on its decision and forcing her to resign through a misinterpretation of the FMLA.

Although the nursing home had no obligation to honor the nurse's request for intermittent leave in the first place, the court ruled the employer gave this nurse certain legal rights once her leave request was approved in error. After that the employer had no right to force the nurse to resign. **Headlee v. Vindra Inc., 2005 WL 946981 (N.D.Cal., April 25, 2005).**

The US Family and Medical Leave Act (FMLA) gives an employee who has been on the job at least a year the right to take up to twelve weeks unpaid leave for the employee's or a family member's serious health condition.

However, the FMLA limits the definition of family member to a spouse, son, daughter or parent. A son or daughter must be under the age of eighteen, or, if older than eighteen, the son or daughter must be incapable of self-care due to a pre-existing physical or mental disability.

The nurse's adult daughter, who required chemotherapy for cancer, had a serious health condition, but was not otherwise physically or mentally disabled and did not fit within the FMLA's definition of a family member for whom the employee could take leave.

Nevertheless, her employer acted prejudicially first approving FMLA leave in error, then going back on its decision and requiring the nurse to resign her position altogether so she could care for her daughter.

UNITED STATES DISTRICT COURT
CALIFORNIA
April 25, 2005

Disability Discrimination: Nurse Not Disabled, Suit Dismissed.

The US District Court for the Northern District of Illinois has reiterated the analysis the courts use in evaluating nurses' disability discrimination cases.

The threshold requirement in any disability discrimination case alleging failure to provide reasonable accommodation is for the employee to establish that he or she has a disability as contemplated by the Americans With Disabilities Act (ADA).

If the employee does not have a legal disability, the employer has no obligation to provide reasonable accommodation and the employee has no right to sue.

The nurse's medical restrictions, which included no repetitive lifting, pushing, pulling or squatting and no lifting over fifteen to twenty pounds, are not severe enough to qualify as a disability under the Americans With Disabilities Act.

UNITED STATES DISTRICT COURT
ILLINOIS
April 27, 2005

The ADA defines disability as a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

The courts routinely rule that restrictions on physical activity that may make an employee unsuitable for some jobs but do not rule the employee out from employment somewhere in the relevant job market do not make the employee disabled. The nurse in this case was eventually placed in the ENT clinic where physical activity is minimal, meaning she was never disabled all along. **Hannah v. County of Cook, 2005 WL 1026716 (N.D.Ill., April 27, 2005).**

Breast Cancer: US Court Validates Nurse's Right To Reasonable Accommodation From Her Employer During And After Treatment.

A licensed vocational nurse with three years seniority was diagnosed with breast cancer. Her employer granted her four months medical leave for surgery, chemotherapy and radiation treatment.

At the end of the four months her employer placed certain roadblocks in the path of her transition back into the workplace which resulted in the nurse filing a disability discrimination lawsuit. The US District Court for the Eastern District of California validated the legal premises behind her lawsuit.

Reasonable Accommodation
Medical Leave

The nurse requested additional medical leave time beyond the four months that was initially granted. Her physician backed her up on the medical necessity for additional leave to complete treatment.

The employer, however, had a steadfast policy that no employee could have more than four months medical leave and would be terminated if he or she could not return to full duty after four months.

The Americans With Disabilities Act (ADA) prohibits an employer from discriminating against a qualified individual with a disability.

Disability discrimination can include not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual, unless the employer can demonstrate that the accommodation would impose an undue hardship upon the employer.

A medical leave of absence can be a reasonable accommodation if it will permit the employee to pursue treatment after which the employee will be able to return to work.

Part-time and modified work schedules are another form that reasonable accommodation can take, if, again, it does not impose an undue hardship on the employer.

Employers are required to communicate with their employees on the subject of reasonable accommodation. Inflexible rules that have no business justification can be discriminatory.

UNITED STATES DISTRICT COURT
CALIFORNIA
April 28, 2005

The court ruled an inflexible leave policy which lacks any business justification cannot stand up against an employer's obligation of reasonable accommodation under the ADA. The court could find no actual hardship to the employer in allowing this nurse additional unpaid leave to complete her course of treatment.

Reasonable Accommodation
Part-Time, Flexible Scheduling

Federal regulations state explicitly that part-time and flexible work scheduling is one form that an employer's obligation of reasonable accommodation to a disabled employee's needs may take.

In this case the court could find no justification for not allowing this nurse to work part-time after she returned from her cancer treatments. The employer would not even consider it. When an accommodation is requested the employer must make an effort to communicate with the employee about the employee's needs and must make an effort to accommodate those needs, up to the point that those needs will impose an unreasonable burden.

Reasonable Accommodation – Transfer

The court faulted the employer for its inflexible attitude toward the nurse's request to transfer to another facility owned by the same corporate parent that would reduce her daily driving commute by sixty miles. Again, by law, a transfer is something an employer must consider by way of reasonable accommodation and must grant a disabled employee's request unless there is undue hardship to the employer.

Reasonable Accommodation
New Position / Duty to Communicate

An employer is not required to create a new position just to fulfill a disabled employee's need for reasonable accommodation, i.e., an office position which would keep the nurse off her feet, but nevertheless the employer must at least consider it under the obligation to communicate with a disabled employee. **Velente-Hook v. Eastern Plumas Healthcare, __ F. Supp. 2d __, 2005 WL 1039056 (E.D.Cal., April 28, 2005).**

Online Edition Still Available.

The online edition of our newsletter is available to all paying subscribers at no additional charge beyond the basic subscription price.

Each month, about ten days before the print copies go out, we send you an e mail containing a link to the online edition's location on the Internet.

Each month a certain number of current subscribers' e mail addresses on file turn up no longer valid.

If you want to receive the online edition by e mail and are not receiving it, please update your e mail address.

Please e mail your e mail address to info@nursinglaw.com and identify yourself by name and postal mailing address.

Nurse As Expert Witness: Opinions Found Inadequate, Patient's Case Dismissed.

A patient filed suit against her outpatient cancer chemotherapy clinic over a chemical burn to her arm allegedly suffered as a result of extravasation of doxorubicin. In addition to the injury to her arm the patient also claimed damages for delay in her cancer therapy as a result of the extravasation incident.

Nursing Negligence Was the Issue

The lawsuit alleged nursing negligence in the IV administration of the chemotherapeutic agent. To support her claim the nurse's attorney submitted an expert witness report written by a registered nurse. The clinic's lawyers argued the expert's report was fundamentally inadequate to support a malpractice suit. The Court of Appeals of Texas agreed with the clinic's lawyers and ordered the case dismissed.

Nurse's Expert Report Inadequate

The nurse's report contained a lengthy laundry list of generic safety-oriented nursing considerations for administering chemotherapeutic agents.

The list of generic nursing responsibilities was followed with a generalized assertion that the standard of care was not followed and that that caused the extravasation incident.

Absent, in the court's judgment, was any direct statement of what specific nursing responsibility or responsibilities were ignored, a factual the basis for such a statement and a reasoned explanation how any specific nursing responsibility being ignored in fact caused the extravasation.

It would be completely improper, the court pointed out, for a court to allow an expert witness to reason backward from the fact that harm did occur to the conclusion that the harm must have been caused by a departure from the standard of care.

A bad outcome, even one which genuinely does cause serious harm to the patient, in and of itself, does not prove that the patient's caregivers were at fault. **Hillman v. Diagnostic Clinic of Houston, P.A., 2005 WL 995453 (Tex. App., April 28, 2005).**

A nurse is considered competent as an expert witness in a malpractice case involving allegations of nursing negligence.

However, the opinions of a nursing expert, like any other expert used in court, must comply with the fundamental legal rules for expert-witness testimony.

An expert's testimony must point out the applicable standard of care, must detail the manner in which the care rendered by the physician or other health care provider failed to meet the standard of care and must show the cause-and-effect relationship between that failure and the injury, harm or damages to the patient claimed in the lawsuit.

An expert witness must be able to point out all of the factual information relied upon in reaching his or her conclusions.

That generally means the expert must have reviewed all of the medical records pertinent to the case and must be able to point to specific facts documented in the records which support the expert's opinions and conclusions.

COURT OF APPEALS OF TEXAS
April 28, 2005

Post-Op Care: Standard Of Care Followed, Nurses Not Liable For Patient's Death.

The patient was transferred from acute care to the skilled nursing unit three days after gastric-bypass surgery.

She was found dead in her bed in her room the next day at 3:00 p.m., one hour after a nurse had last checked on her.

Her next of kin sued for medical and nursing negligence. The Court of Appeal of Louisiana upheld the jury's verdict of no negligence.

The elderly obese patient died of cardiac arrhythmia on the skilled nursing unit four days after gastric bypass surgery.

There is no proof of any error or omission in the post-op nursing care.

COURT OF APPEAL OF LOUISIANA
April 26, 2005

The family's lawyer's theory was that fluid overload was the root cause of the arrhythmia which killed the patient.

However, there was no error or omission in how the nurses monitored and recorded fluid intake and output per the physician's orders. In fact, based on the nurses' I/O charting there was no solid proof that fluid overload was occurring.

The nurse did not take vital signs when she checked on the patient one hour before she died. However, vital signs were ordered to be taken and were taken consistently q four hours. It would only be speculation to say that if vitals had been taken one hour before she died an arrhythmia would have shown up. **Dutton v. O'Connell, __ So. 2d __, 2005 WL 954987 (La. App., April 26, 2005).**

AV Dialysis Fistula: Hospital Not Liable For Accidental Exsanguination.

The patient had three episodes of abnormal bleeding from her AV dialysis fistula in her forearm. She was hospitalized for evaluation each time. After the third incident her physicians decided to rest the fistula for at least a month and to gain access for her dialysis through a temporary dual lumen catheter into her right internal jugular vein in her upper chest.

While at home alone two weeks later her AV fistula began to bleed. Being alone and significantly disabled, the patient was not able to do anything but bleed to death sitting in her wheelchair.

The family filed suit against the hospital which treated her three AV fistula bleeding incidents.

There was nothing in the clinical records to fault the decisions of the nursing and medical staffs of the hospital or the dialysis clinic, that is, nothing even to suggest they should have proceeded differently in this patient's care.

SUPERIOR COURT OF CONNECTICUT
April 8, 2005

The Superior Court of Connecticut dismissed the lawsuit.

There was no proof of substandard care for the AV fistula and no proof of how or why the fistula began to bleed.

The patient was disabled, in poor health and only marginally able to care for herself. It was not the fault of her caregivers that she was unable to appreciate or deal with the medical emergency which took her life at home. **Carchia v. Yale-New Haven Hosp., 2005 WL 1090685 (Conn. Super., April 8, 2005).**

Continuous Passive Motion: Court Finds Nursing Care Negligent.

Five days after bilateral knee replacement surgery a nurse became involved in the patient's care who was not familiar with the continuous passive motion (CPM) therapy which had been ordered by the physician.

One nurse put one CPM device on one knee and left the room. Another nurse, not familiar with CPM, put a second device on the other knee and left the room.

The confused patient ended up on his side with both devices going. As a result he developed a chronic foot drop which required orthopedic bracing.

The standard of care requires that two continuous passive motion devices cannot be used at the same time on both of the patient's legs.

A patient who has dementia or who is confused must be closely watched while continuous passive motion is in use.

MISSOURI COURT OF APPEALS
May 10, 2005

The Missouri Court of Appeals upheld a substantial jury verdict against the hospital for the nurses' negligence.

According to the nursing and medical experts whose testimony was accepted at trial, two CPM devices are never to be used at the same time. Further, a patient, especially an elderly, confused patient, requires frequent close monitoring while CPM is in use. Both of these errors and omissions were ruled the cause of the patient's injury. **Redel v. Capital Region Medical Center, __ S.W. 3d __, 2005 WL 1084105 (Mo. App., May 10, 2005).**

Long Term Care: Legal Issues, Patient v. Patient Sexual Assault.

An eighty-three year-old female nursing home resident was assaulted by a sixty-one year-old resident of the same facility. Both residents suffered from dementia.

A lawsuit was filed against the facility on the victim's behalf. The facility asked the court for summary judgment, that is, they wanted the case dismissed outright rather than submitted for a jury trial.

The nursing home residents' bill of rights law gives every nursing home resident the legal right to safety, personal dignity and quality care.

However, for a facility to be liable for a sexual assault there must have been some reason for the staff to have foreseen it.

SUPERIOR COURT OF CONNECTICUT
March 24, 2005

The Superior Court of Connecticut ruled the evidence was not clear one way or the other and ordered a civil jury trial.

The court acknowledged that the nursing home residents' bill of rights gave this victim the right to a safe environment with her personal dignity protected.

However, for a patient to succeed in a patient v. patient sexual-assault lawsuit the staff must have negligently failed to take action in the face of some prior notice, such as improper advances or sexual acting-out, that should have alerted them to separate the two patients and watch, restrain or discharge the perpetrator. **Jane Doe v. Advisors Healthcare, Inc., 2005 WL 1089176 (Conn. Super., March 24, 2005).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Medication Safety: FDA Announces Pilot "Drug Watch" Informational Program.

On May 10, 2005 the US Food and Drug Administration (FDA) announced it is developing a pilot medication-safety-awareness program entitled "Drug Watch."

According to the FDA, it is developing this pilot program as a reaction to public and Congressional criticism of the way the FDA has handled emerging safety considerations with the drug Vioxx and certain antidepressants used with pediatric patients.

Drug Watch will be an Internet web page on which the FDA will post significant emerging safety information that the FDA has received about certain drugs or classes of drugs while the FDA is still actively evaluating the information.

Posting of safety-related information on the Drug Watch web page in and of itself will not constitute a formal statement from the FDA that the drug is in fact dangerous or that it is deemed by the FDA to be inappropriate for use.

The FDA points out that after drugs are deemed generally recognized as safe and become widely prescribed for use in large populations of patients, reports of previously unknown side effects can present themselves of which healthcare professionals need to be made aware.

The FDA's goal will be to share emerging safety information before the FDA has fully determined its significance or taken formal regulatory action. The FDA says it wants patients and healthcare professionals to have the most current information the FDA has concerning the potential risks and benefits of marketed drug products.

The Drug Watch Internet web page is not currently up and running. The FDA has posted a web page containing a full explanation of what it intends to do when it does initiate the Drug Watch web page at http://www.fda.gov/cder/guidance/6657dft.htm#_Toc102985740.

The FDA's May 10, 2005 announcement in the Federal Register is available on our website at http://www.nursinglaw.com/drugwatch.pdf.

The FDA will accept public comments until August 8, 2005 before it goes ahead with implementation of this new program.

FEDERAL REGISTER May 10, 2005
Pages 24606 – 24607

Job-Related Mental Stresses: Court Disallows Injured Nurse's Worker's Compensation Claim.

A licensed practical nurse worked in a facility for developmentally disabled adults.

A change in policy at the facility resulted in more higher-functioning patients being re-assigned to a physically less restrictive environment, meaning that the nurse's unit's population makeup shifted toward more difficult, demanding patients more prone to aggressive acting out.

The nurse twice was kicked by her patients. She sustained relatively minor injuries. Her worker's compensation claims for her medical expenses were honored and paid.

The nurse also began to suffer depression and other mental problems which required outpatient and inpatient care which her physicians related to her job stress. The nurse eventually accepted voluntary termination under a workforce reduction program, then filed for worker's comp long-term disability based on her work-related depression.

Being subjected to aggressive behavior by mentally-challenged patients is not an extraordinary and unusual condition of employment as a nurse in a developmental facility, as it occurs frequently and is the subject of specific training for facility employees.

It is not unexpected that the nurse would have fear of loud and aggressive behavior by patients.

COURT OF APPEALS
OF SOUTH CAROLINA
April 18, 2005

The Court of Appeals of South Carolina upheld the worker's compensation commissioner's ruling that this nurse's job stress was not an occupational illness and did not qualify her for worker's comp disability benefits.

There was nothing unique or extraordinary about her experiences working on the unit. All of the stresses she experienced, including fear of injury and actual injury, were an ordinary part of the job she had chosen, the court said. **Doe v. Dept. of Disabilities & Special Needs, __ S.E. 2d __, 2005 WL 894791 (S. C. App., April 18, 2005).**