LEGAL EAGLE EYE NEWSLETTER

June 2006 — *For the Nursing Profession* — Volume 14 Number 6

ICU Psychosis: Jury Holds Physician And Nurse Responsible For Patient's Suicide.

The patient was admitted to the hospital's intensive care unit (ICU) for treatment of medical issues which were not specified in the court record in the Appellate Court of Illinois.

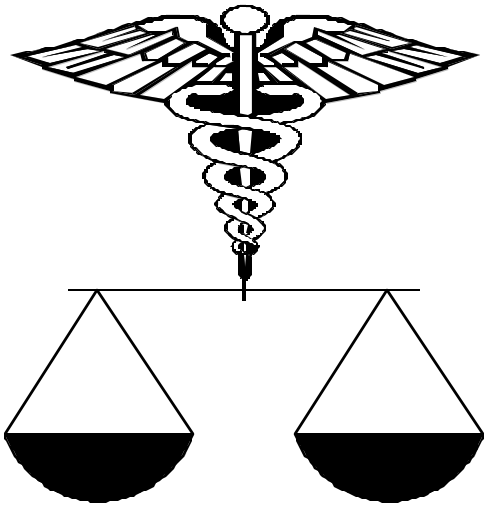
Early in the a.m. three days later she became combative and uncontrollable. A hospital psychiatric nurse who examined the patient detected paranoid ideation, that is, a belief that people in the hospital were trying to invade her privacy and hurt her.

Later in court the experts would describe her condition as a form of delirium known as ICU psychosis.

The psychiatric nurse phoned the hospital's attending psychiatrist and they formulated a treatment plan. The patient would be moved off the ICU to a med/surg unit where there was a calmer atmosphere, Haldol would be ordered to control her psychosis and one-to-one nursing care would be ordered prn for unpredictable behavior.

On the med/surg unit the patient would be ambulatory, no longer on bed rest. She could get out of bed and walk around on her own.

That evening on the med/surg unit the patient said she was seeing green and purple lights and movement on the ceiling.



A patient suffering from delirium in the form of ICU psychosis is at risk for self-harm.

This patient was classified as ambulatory and sent to a med/surg unit with an order for one-to-one nursing care prn for unpredictable behavior.

The patient's psychotic symptoms persisted but her nursing care plan was not implemented.

APPELLATE COURT OF ILLINOIS
May 15, 2006

At 3:55 a.m. a patient found her in the bathroom. She had hanged herself with her hospital gown. The family sued the hospital, the psychiatrist and the staff nurse. The jury awarded the family $1,212,000.00.

The family's lawyers claimed the hospital was at fault for failing to implement one-on-one nursing care for a patient suffering from ICU psychosis, such a patient being at high risk for self-harm.

The hospital's psych nurse who had examined the patient testified she had been concerned the patient could act out impulsively and unpredictably and could harm herself. The psych nurse faulted the hospital for not allowing her to complete her examination and said she thought the psychiatrist should have come in and done a full mental-status evaluation. She also faulted the hospital's medical and nursing staff for failing to implement one-on-one nursing care, a measure strongly indicated for any patient at high risk for self-harm.

The psychiatric experts hired by each side predictably disagreed whether the patient's suicide was foreseeable. That being so, the trial judge, in the Appellate Court's opinion, was in error on a technical point as to how he presented the foreseeability question to the jury. The verdict was thrown out and a new trial ordered. **Hooper v. County of Cook, __ N.E. 2d __, 2006 WL 1319458 (Ill. App., May 15, 2006).**

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June 2006

New Subscriptions
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Psych Patient Commits Murder: Nurse, Other Caregivers Ruled Not Liable.

The family of a murder victim who was killed by a violent psych patient sued the patient's caregivers claiming they were responsible for the victim's death.

The civil-court defendants included the clinic, several psychiatrists and therapists, a chemical dependency counselor and a psychiatric nurse.

The Court of Appeals of Ohio dismissed the case. For mental health caregivers to be held liable in civil court for harm to a crime victim if they fail to notify law enforcement and the potential victim, the dangerous patient must have made an explicit threat of an imminent intent to harm a specific identified person.

Nurse's Initial Assessment

The patient talked about multiple situational problems, including problems with his girlfriend, whom he did not identify, and said he wanted to work with a therapist on anger-management issues. He denied any suicidal or homicidal thoughts and said he did not own or have access to any weapons. The patient was referred to a therapist.

Ongoing Mental Health Treatment

Three weeks later the patient called the nurse. He said he was very angry and had begun destroying his own furniture and other belongings with a hammer. He also said he had built a pipe bomb and was considering blowing himself up. She tried to talk him into hospitalizing himself but he refused.

The nurse called the psychiatrist to have his medication increased. The patient did come in the next day and did pick up his new medication.

A week later the patient stalked his girlfriend after work, ran her car off the road and shot her. Then he shot himself.

The court could not fault the nurse for the victim's death. The patient was angry and violent, but never verbalized a specific intent to harm a specific, identified victim, the legal standard for civil liability. **Stewart v. North Coast Ctr., 2006 WL 1313098 (Ohio App., May 12, 2006).**

A nurse or other mental health caregiver cannot be held liable for the consequences of a mental-health patient's violent behavior unless:

The caregiver has reason to believe the patient has the intent and ability to carry out an explicit threat of imminent and serious physical harm to clearly identifiable victim who is a family member or someone known to the patient.

If a threat is verbalized:

The mental health caregiver must, if feasible, communicate to a law enforcement agency and, if feasible, communicate to each potential victim the nature of the threat, the identity of the patient or client making the threat and the identity of each potential victim.

The nurse in this case was working with the patient on anger management.

He told the nurse he was destroying his own possessions, had guns and had made a pipe bomb.

However, he never communicated anything specific to the nurse about an intent to harm his girlfriend whom he murdered.

COURT OF APPEALS OF OHIO
May 12, 2006

Patient Will Not Leave Hospital: Judge Provides Court Order.

A patient was admitted for gangrene in both feet complicated by a history of diabetes, and for nutritional issues.

In a few weeks she was medically stable and appropriate for transfer to a subacute facility.

She refused to leave. Her caregivers found her difficult and demanding. She refused to abide by the rules, ordered in Chinese food and pizzas, went out for donuts and sneaked into the hospital kitchen at night to steal deserts, all contrary to her strict dietary restrictions.

Acute care hospitals have a legal duty not to allow their facilities to be diverted to uses which were not intended.

The utility of a hospital is in jeopardy when a patient who no longer requires services refuses to leave, thereby preventing other needy patients from using the space for inpatient care.

SUPERIOR COURT OF
CONNECTICUT
May 3, 2006

The Superior Court of Connecticut ruled it was not appropriate for her to remain in an acute care hospital. The hospital's mission is to treat other patients in need of acute care. Her dressing changes and nutritional management could be handled well in a skilled nursing facility.

The judge deemed she was illegally trespassing in the hospital and signed a court order for her to cooperate. She had to sign all necessary papers and move to a skilled nursing facility. **Midstate Medical Center v. Jane Doe, 2006 WL 1320149 (Conn. Super., May 3, 2006).**

Arbitration: Court Sees No Unfairness, No Reason Not To Enforce Arbitration Clause.

In an effort to control healthcare costs healthcare facilities are trying to minimize the financial impact of malpractice lawsuits filed by patients and their families by placing arbitration agreements in their admitting documents.

If the patient or family should at some point decide to go ahead with a legal claim for damages against the facility, the case is heard by a panel of one to three experienced lawyers who make a binding decision which, if necessary, can be converted into a judgment in a court of law.

Arbitration has basic cost advantages.

Legal expenses are dramatically reduced. A malpractice trial before a jury can take weeks while the same case in arbitration might take only a few days.

More importantly, the risk of a huge runaway jury verdict for non-economic damages is far less if a case heard by professional arbitrators. Unlike a jury of lay persons from the community, arbitrators are generally not swayed by emotion and generally will give rational consideration to the impact their decisions can have on caregiving individuals and institutions.

Predictably, patients' lawyers resist arbitration of their clients' cases.

The arbitration agreement was separate, not buried in the admission papers.

The family members were told it was their choice whether or not to sign the arbitration agreement and that refusal to sign would not prevent the patient from being admitted. She could even opt out during the three-day revocation period and still stay.

The patient needed to go into a nursing home but did not have to go into that particular nursing home that particular day. There was time to shop around.

Contrast this with other cases where a family member is told they have to sign the arbitration agreement while the patient is en route from the hospital or already admitted. Any such duress over signing an arbitration agreement can cause a court to disregard it.

DISTRICT COURT OF APPEAL
OF FLORIDA
May 10, 2006

Healthcare workers who deal with patient admissions need to understand how the courts differentiate cases in which arbitration is upheld *versus* cases where it is disallowed in favor of a jury trial.

The circumstances of signing rather than how the lawyers have drafted the paperwork often makes the difference.

In a recent case, the District Court of Appeal of Florida upheld an arbitration agreement signed along with nursing-home admission papers and ordered arbitration of a nursing-home negligence case.

The nursing home staff spent two hours going over the paperwork, fully explaining everything to the elderly patient's daughter. Before signing the papers she was given the opportunity to ask questions, even to get outside advice if she chose. She was not rushed or forced to sign anything she did not agree with.

The patient's admission was not tied to the patient or a family member having to sign an arbitration agreement. There were three days post-admission to opt out of the arbitration agreement but the patient could still stay in the nursing home.

The court contrasted other cases where the families were told they had to sign arbitration agreements under pressure because the patient was already en route from the hospital or already admitted. In cases where the patient or family signs under duress the arbitration agreement is usually thrown out as fundamentally unfair, and any negligence case against the facility goes before a jury. **Bland v. Health Care and Retirement Corp., __ So. 2d __, 2006 WL 1235910 (Fla. App., May 10, 2006).**

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Burst Appendix: Nurse Faulted, Did Not Check Temps.

The New York Supreme Court, Appellate Division, ruled that the physician's professional corporation and the nurse's hospital employer were each 50% responsible for injuries suffered by the patient when her appendix burst.

The physician did not diagnose her medical condition in a timely fashion.

The nurse failed to monitor the patient's temperatures over an eight-hour period.

The court ruled the jury's verdict of $20,000.00 was inadequate and raised the damages to $150,000.00. **Malaspina v. Victory Memorial Hosp., __ N.Y.S.2d __, 2006 WL 1303950 (N.Y. App., May 9, 2006).**

Patient Falls: Patient Not Checked For Injuries.

An eighty-one year-old patient fell in a nursing home while being assisted to the restroom by a nursing assistant.

She was helped back to bed without being examined by a nurse to check whether or not she had been injured.

After two months of persistent pain she was taken to the hospital. X-rays showed an untreated leg fracture.

The Court of Appeals of Georgia ruled that helping a nursing-home patient to ambulate to the bathroom is a professional healthcare service. For a patient to sue for negligence an expert witness's report is required by state law. Failure to file the required expert report is grounds for dismissal, whether or not the case otherwise would have been valid. **Brown v. Tift Health Care, Inc., __ S.E. 2d __, 2006 WL 1194752 (Ga. App., May 3, 2006).**

Blood, Urine Taken In E.R.: Court Reviews Definition Of Medical Emergency.

The police stopped an individual driving five miles per hour on the wrong side of the road at 2:45 a.m. Her breathalyzer was negative so they took her to the emergency room.

She was verbally abusive to staff, could not walk straight, was intermittently alert and drowsy and had slurred speech. She had with her a prescription bottle, in another person's name, for twenty Soma pills. It had been filled the previous day but only seven pills remained.

A drug overdose was strongly suspected. The physician ordered the E.R. nurses to draw blood, to catheterize her forcibly for urine and to give Narcan and activated charcoal, all without express consent from the patient and against her expressed wishes.

Court Reviews Definition of a Medical Emergency

Only in a medical emergency can a patient be treated without express consent, the Appellate Court of Illinois pointed out.

A caregiver is not required to obtain consent to treatment if the treatment is necessary immediately to protect the patient's health and it is impossible or impractical to obtain consent from the patient or from a family member or other individual authorized by law to consent to treatment on a patient's behalf.

By definition, it is not possible to obtain consent from a patient when the patient is mentally incompetent to make medical decisions, as in this case.

The legal sticking point, still undecided in this case, is whether there was time to hold and observe the patient in the E.R. while a family member was contacted for consent to treatment. **Allen v. Rockford Health Systems, Inc., __ N.E. 2d __, 2006 WL 1195525 (Ill. App., May 2, 2006).**

Sleeping On Duty: Employee Excused Of Misconduct.

An aide working in a group home serving physically and mentally disabled adults was seen sleeping on the job.

The home's personnel policies listed a number of offenses, including sleeping on the job, which could result in immediate dismissal.

The Court of Appeal of Louisiana, however, took into account the fact the man was taking blood pressure medication every morning and evening. He took an additional dose when he got a headache on the job, as opposed to asking to be relieved of duty and go home. Then he nodded off to sleep.

Under the circumstances there was no intentional disregard of his employer's standards of conduct and no justification to terminate him for cause, the court ruled. **Delta American Healthcare, Inc. v. Burgess, __ So. 2d __, 2006 WL 1329692 (La. App., May 17, 2006).**

Patient Falls: Nurses Should Have Sought Restraints.

The Court of Appeals of Texas ruled that a certified gerontology registered nurse practitioner is qualified to testify as an expert witness on the nursing standard of care in a patient-fall case.

The court accepted her expert opinion that when a confused elderly patient is found on the floor during the night the standard of care requires the nurses to seek a physician's order for a restraint as the patient is being put back to bed. If the patient falls again without a restraint the nurses are liable. **Northeast Medical Ctr. v. Crooks, 2006 WL 1358361 (Tex. App., May 19, 2006).**

Breach Of Confidentiality: Hospital Worker Not Guilty Of Misconduct.

The phlebotomist came to the room shared by two pediatric patients to carry out a physician's order to draw blood from one of the patients. Both patients had parents visiting in the room.

The mother asked why blood needed to be taken. The other patient's parent overheard the phlebotomist reply it was to test for HIV and hepatitis.

The phlebotomist was fired after the patient's mother complained to hospital management.

In light of the hospital's practice of placing patients in shared rooms, requiring hospital employees to provide medical treatment in these rooms, allowing visitors during treatment periods and failing to provide alternative locations for hospital employees to discuss sensitive patient information, we conclude that the hospital had no reasonable expectation that all patient information would remain totally confidential.

COMMONWEALTH COURT
OF PENNSYLVANIA
May 9, 2006

The Commonwealth Court of Pennsylvania ruled there were no grounds to fire this employee. A family member made a legitimate request for information, he had to respond and he had no control over the fact the patients' beds were only eight feet apart in the small room. **Docherty v. Unemployment Board, __ A. 2d __, 2006 WL 1226578 (Pa. Cmwlth., May 9, 2006).**

Gastrostomy: Sepsis, Death Tied To Nurses' Failure To Check Patency Before Feeding.

A nursing home must have a policy and must make sure all the nurses understand that a patient is not to be fed or given medications through a gastrostomy tube if there is any question about the tube's correct placement.

The risk is sepsis from infusion of non-sterile material into the abdominal wall or peritoneum.

Any nurse caring for a patient with a gastric tube must be trained to recognize that when liquids will not flow freely there is a problem that must be addressed immediately.

That is, the infusion must be stopped and a knowledgeable physician or qualified nurse must check the correct placement of the tube and, if needed, properly replace the tube before any infusion is resumed through the tube.

In a nursing home setting that generally means a trip to a hospital emergency room for the patient.

A nurse who replaces a gastric tube and is unsure it is correctly situated must have a physician double-check what has been done.

COURT OF APPEAL OF LOUISIANA
May 3, 2006

The forty year-old patient was placed in a nursing home with head injuries which left him basically immobile and unable to communicate except with eye blinking and hand squeezes.

He had an 18 gauge French Foley gastrostomal feeding tube with an inflatable bulb at the proximal end to hold it in place once it was properly situated all the way into the upper quadrant of the stomach.

He pulled out his feeding tube and the nursing home sent him to the emergency room at the hospital next door.

Hospital Nurse Failed to Advocate

According to the Court of Appeal of Louisiana, the E.R. nurse went ahead and replaced the tube even though she knew she was not sure what she was doing. Instead of advocating for her patient to get a physician to check her work the nurse merely notified the nursing home when she sent the patient back that she was not sure she had correctly replaced the tube.

Nurse Did Not Check Tube's Patency

Back at the nursing home a nurse resumed feeding the patient without checking the tube. She later testified she believed there was no reason to check it and, even so, she was not trained to do so.

A different nurse later that afternoon detected a flow problem while giving meds through the tube. She sent the patient back to the emergency room and the hospital transferred him to another hospital.

An internist discovered that his nutrition product had been infused into the anterior abdominal wall.

Sepsis was detected the next day. Ten days later the family discontinued life support and the patient died.

The jury found the nursing home and the first hospital each 50% responsible. Substantial damages were awarded to the family for the pre-death pain and fright the patient experienced without any means to complain or communicate what was wrong. **Cockerham v. LaSalle Nursing Home, Inc., __ So. 2d __, 2006 WL 1155871 (La. App., May 3, 2006).**

Patient Falls While Nurses Were Busy With Another Patient: Court Finds Negligence.

The Court of Appeals of Ohio ruled that the hospital's psychiatric specialty nurses were negligent and that their negligence was the legal cause behind the patient's injuries from her fall.

The jury's verdict which exonerated the nurses was thrown out in favor of a new trial before a different jury.

Patient's Medical History

The patient for some time had suffered from Parkinson's disease, scoliosis, osteoarthritis, osteoporosis and severe depression. Because of her depression she refused to eat, lost a considerable amount of weight and experienced severe dizziness and fatigue.

As treatment for her depression her psychiatrist admitted her to the hospital for electroconvulsive therapy (ECT).

High-Risk Fall Assessment

The patient's medical diagnoses, in and of themselves, would make her a prime candidate for a high fall-risk assessment while receiving hospital care.

In addition to that, the side effects of ECT can include headaches, memory difficulties, confusion and hallucinations.

Despite the risks, the physician's rationale for ordering ECT was to help the patient in the long run to recover from her depression, although it was predictable in the short term that ECT could actually contribute to her mental debility.

The court's rationale for pointing this out was that the patient's nurses should have been aware, or were aware, that her ECT treatments would tend to contribute to her already high fall risk.

Restraints Ordered

Two days before her fall her psychiatrist ordered a vest restraint because the patient was combative with staff and was hallucinating.

Going hand in hand with any order for a restraint is the requirement that the patient be closely monitored by the nursing staff. When not in her vest restraint in bed the patient was placed in a geri chair and positioned close to the nurses station to be watched closely.

The patient was a high fall risk. She was having ECT treatments. She was confused and had been hallucinating for several days.

The psychiatric special-care nurses should have expected the patient to be awakened and become agitated, confused, even delirious, from the noise and general mayhem created by a new psychiatric admit screaming in the room across the hall from her.

The nurses on the unit had been alerted that the new patient had already been placed in four-point restraints in the emergency room and would be coming on the unit in a highly agitated state.

All three nurses went to his room to admit him.

When the patient fell a few minutes after the new patient arrived, two of the unit's three nurses were still in his room and the two aides from the E.R., whom they could have asked to stay and help, had left.

The third nurse was not aware what was happening with the unit's other patients and could only guess what happened with her before she fell.

COURT OF APPEALS OF OHIO
April 21, 2006

Patient Transferred To Psychiatric Special Care Unit

The patient could not sleep and continued to hallucinate. Her psychiatrist believed this was a predictable side effect of her ECT and still wanted the ECT continued. She was taken in her vest restraint to her ECT, then transferred to the psychiatric special care unit, still in her restraint.

The court pointed out that the psychiatric special care unit had six patient beds and was staffed with three nurses.

Standard practice on the unit was for patient checks at least every fifteen minutes. The psychiatrist chose not to order one-on-one supervision. He did, however, discuss his concerns with the nurses about her confusion and told them she was hallucinating.

The patient's anti-depressant was increased and Haldol was added. The patient slept for most of the afternoon and evening without her vest restraint.

Nursing Negligence

The crux of the court's finding of negligence was that the unit's nurses were apparently paying all their attention to the admission of another patient, a highly agitated paranoid schizophrenic, when this patient fell in her room.

The nurses were alerted that he was coming. A highly agitated patient coming from the E.R. in four-point restraints was not an unusual occurrence on this unit.

The nurses checked all the other patients before he arrived and found them sleeping. Then all three nurses went to the new patient's room to admit him.

The court's opinion was the nurses should have anticipated that the ruckus from the new patient's arrival could awaken, startle and frighten an already confused and hallucinating patient sleeping across the hall without her restraint, causing her to fall trying to get out of bed.

At the actual moment the patient fell one of the nurses was not in the new patient's room. It was not clear why she was not checking other patients. **McLaughlin v. Firelands Community Hosp. 2006 WL 1047499 (Ohio App., April 21, 2006).**

Nurse As Patient Advocate: Court Sets Standards.

A nurse was fired from the hospital, in part, because she took sides in a disagreement between a physician and a patient's family.

She sued for wrongful discharge. As the basis for her lawsuit she pointed to two publications, the American Nurses Association's ***Code for Nurses with Interpretive Statements*** and the American Association of Critical-Care Nurses' ***Role of the Critical Care Nurse.***

Her argument was that she had an ethical responsibility as a nurse to advocate for her patients and could not be fired for carrying out that responsibility.

An employee cannot be fired for opposing conduct by a manager, supervisor or co-worker which violates a specific statute, regulation or professional standard of a state board.

COLORADO COURT OF APPEALS
May 4, 2006

The Colorado Court of Appeals disagreed with the legal basis for her lawsuit.

An employee can sue for wrongful discharge only if fired for going against an employer's policies or practices which violate the statutes, laws, regulations or standards of a governmental authority.

An employee cannot sue for wrongful discharge if fired for following a private organization's opinions on the subject of professional ethics.

No Employment Contract

The nurse was not working under a union collective bargaining agreement or individual employment contract.

If there were a contract she would not have been an at-will employee and could have protested her firing as a violation of her contract rights, the court said. **Jaynes v. Centura Health Corp., __ P. 3d __, 2006 WL 1171858 (Colo. App., May 4, 2006).**

Bed Rails Down, Patient Falls: Nurse Ruled Negligent. Nurse OK As Expert Witness.

A lawsuit against a hospital for negligence does not necessarily have to involve medical malpractice committed by a physician.

A hospital's nurses have their own independent legal duties in assessing and caring for their patients.

A hospital is not relieved of its own legal liability for negligence just because the hospital's staff nurses followed the physician's orders.

That is, a hospital's nursing staff cannot necessarily rely on a physician's standing orders for a patient to be up and out of bed and leave the bed rails down.

A patient freshly out of surgery who is taking pain and sedative medications must be evaluated continually by the nursing staff.

The patient's present physical and mental state is all that matters.

The nurses may have to disregard the physician's standing orders and instead follow the hospital's policies and procedures for a restraint in the form of raised bed rails when necessary to insure the patient's safety.

COURT OF APPEALS OF WASHINGTON
April 25, 2006

The record from the Court of Appeals of Washington contained a very simple set of facts.

Bed Rails Down

The patient's leg had just been amputated. He was sedated. His nurse left him alone unattended with the bed rails down. He fell and was injured.

The patient sued the hospital for negligence. The patient's lawsuit pointed to the hospital's own policies and procedures requiring satisfactory precautions to be taken to restrain disabled patients.

The court saw the hospital's own internal policies and procedures as one basis for a nurse's legal duty correctly to assess a patient's physical and mental condition and not to leave the patient unattended in an unsafe position in bed.

Nurse As Expert Witness
Nursing Standard of Care

Any patient's lawsuit alleging negligence by a healthcare professional must be based on expert testimony. Even a lawsuit over something as simple as a patient falling out of bed cannot be left to a jury of lay persons without the benefit of expert testimony. A court will throw out a patient's lawsuit against a healthcare professional if the patient's attorneys are unable to provide satisfactory expert testimony.

A nurse who the court believes has sufficient knowledge, skill, experience, training and education can testify as an expert witness on the quality of nursing care, assuming the expert is able to apply general principles of nursing practice to the specific facts of the case.

In this case the patient's nursing expert testified that, in addition to the hospital's policies and procedures, general principles of nursing practice hold that a recent post-surgery patient in a state of disorientation from his medications should not be left alone unattended to in a hospital bed without all the bed rails up and locked. **Greenberg v. Empire Health Services, Inc., 2006 WL 1075574 (Wash. App., April 25, 2006).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Labor Law: Nursing Home RN's, LPN's Are Supervisors, Use Independent Judgment To Direct, Discipline Other Employees.

A privately owned extended-care facility refused to negotiate with the union voted in by the facility's RN's, LPN's and CNA's.

The union complained to the US National Labor Relations Board. The Board ordered the facility to negotiate with the union or be charged with an unfair labor practice. The US Court of Appeals for the Sixth Circuit, however, ruled the union certification election was invalid and the facility did not have to recognize the union.

Nursing Home Nurses Are Supervisors, Not Rank-And-File Employees

US labor law excludes a supervisor from the definition of an employee. Only employees have the right to union representation.

A supervisor is someone who uses his or her own independent judgment in exercising authority over others in the workplace.

Independent Nursing Judgment

Nurses in nursing homes use their independent judgment, the court pointed out, to assess residents' needs on a daily basis, to decide what care is needed and to direct the actions of nursing assistants. Nurses must take guidance from doctors' orders and residents' care plans, but nevertheless still have to use their own independent professional nursing judgment to see that residents' needs are fully met.

Disciplinary Decisions

Employee discipline is another area where nurses in nursing homes can and must use their own professional judgment. A mistake by a nursing assistant may call for no intervention, informal or formal in-service education, a corrective write-up, or disciplinary proceedings to have the aide terminated by management.

Although the director of nursing and administrator make final decisions about termination, floor nurses' actions made a lot of difference in how other nursing-home employees are disciplined, making them supervisors in the court's view. **Extendicare Health Services, Inc. v. N.L.R.B., 2006 WL 1307474 (6th Cir., May 9, 2006).**

Age Discrimination: Hospital Had Grounds To Fire Nurse, Court Throws Out Bias Allegations.

A staff nurse was mistreating her patients. The neonatal clinical manager, nursing manager and a human resources representative obtained written statements from six nurses on the unit corroborating the facts.

The nurses actually witnessed the nurse pinching infants' noses to get them to eat and then force-feeding them. In one incident the infant became dusky but the nurse simply blew in the baby's face to restore breathing.

The nurse had also been seen spanking, shaking and yelling at her patients and applying pressure to infants' jaws to get them to suck a bottle.

She was informed an investigation was underway and was told she could name any witnesses she had on her side to dispute the allegations being made.

Employees forty to seventy years of age are protected from discrimination.

Before treating any such employee adversely compared to someone younger, the employer must have proof of a legitimate, nondiscriminatory justification.

Mistreating or otherwise endangering patients is a legitimate, nondiscriminatory basis for disciplinary action.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
May 9, 2006

The nurse, sixty years of age, was fired and replaced by two part-time nurses in their twenties and thirties. She sued for age discrimination.

Protected Employee
Legitimate Justification Required

Before any employee in the protected 40-70 year-old age bracket is treated adversely compared to younger workers, the employee's supervisors must be prepared to prove they have a legitimate, nondiscriminatory justification, the US Court of Appeals for the Sixth Circuit pointed out.

The court ruled that fully investigated documented incidents of patient mistreatment by a healthcare worker are legitimate justification for firing. **Stephens v. Kettering Adventist Healthcare, 2006 WL 1307476 (6th Cir., May 9, 2006).**