LEGAL EAGLE EYE NEWSLETTER

June 2011 *For the Nursing Profession* Volume 19 Number 6

Diabetes Insipidus: Nurses Did Not Monitor Output, Report Sodium Level To Physician.

The patient was diagnosed with diabetes insipidus more than twenty-six years before she was admitted to the hospital for signs and symptoms her physicians related to a low blood sodium level.

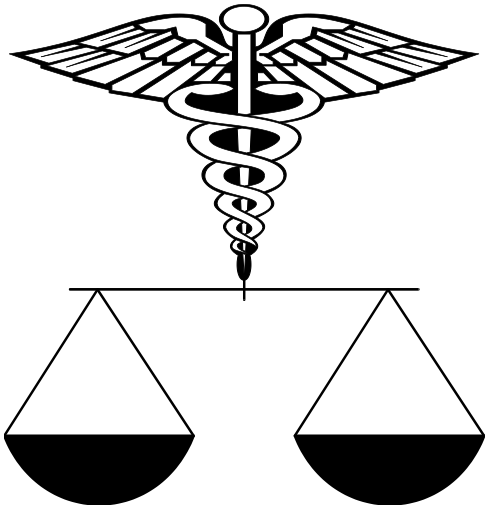
Her condition had been managed over the years with desmopressin acetate, a posterior pituitary hormone which tends to correct the patient's underlying pituitary hormone deficiency which, if left uncorrected, would tend to allow unrestricted elimination of water by the kidneys and a dangerously high sodium level.

To raise her sodium level the desmopressin acetate was stopped by her physicians, but that meant that the hospital's nurses would have to follow the physician's orders and monitor her fluid input and output very closely to prevent her sodium and other electrolytes from fluctuating and to detect if her sodium rose too high.

Increased Fluid Output Not Reported to Physician

The patient's fluid output began significantly to exceed her fluid input during the afternoon, but her nurses did not notify the physicians of this development.

That night her vital signs were reportedly not taken while this development unfolded.



One of the physicians testified that the elevated sodium level that came back from the lab at 6:15 a.m. was a panic value, yet the nurses did not contact anyone until 7:50 a.m.

The nurses were not monitoring the patient's fluid output which started greatly exceeding input the previous afternoon, nor were vital signs being taken during the night.

COURT OF APPEALS OF TEXAS
May 19, 2011

A blood draw for lab values the next morning revealed a dangerously high sodium level, caused by excessive elimination of water through her kidneys, which the lab phoned to the nurses on the floor at 6:15 a.m. It was not relayed to the physician until 7:50 a.m. A physician testified after the fact that he would have considered her sodium level at that time a panic value.

The patient's husband found her unresponsive in bed in her room when he came in believing she was to be discharged that morning and he would be able to take her home. Instead, she was transferred to intensive care, then to a tertiary care facility and then to a hospice where she died, never having recovered from a coma.

The jury returned a verdict in favor of the husband. The hospital's nurses were ruled 40% at fault and one of the physicians who treated her 60% to blame for her death. The total of the damages awarded was $1,478,949 of which the family will only recover 40% from the hospital, having voluntarily discontinued the lawsuit against the physician before the verdict.

The Court of Appeal of Texas found no basis to disturb the jury's assessment of the damages. **Christus Health v. Dorriety, __ S.W. 3d __, 2011 WL 1886572 (Tex. App., May 19, 2011).**

www.nursinglaw.com/jun11cld7.pdf

June 2011

New Subscriptions
See Page 3

Skin Care: Quad Patient Obtains Jury Verdict.

The patient was a quadriplegic man in his twenties.

Over the course of 28 months in a skilled nursing facility he developed Stage II bedsores on his feet and heels and a Stage IV lesion on his buttocks. The buttocks lesion required surgical debridement.

The medical chart could only account for two-thirds of the required positional changes actually being done by the patient's nursing caregivers.

The patient testified they were preoccupied with the elderly patients in the facility who required a great deal of attention.

SUPREME COURT
BRONX COUNTY, NEW YORK
March 9, 2011

The jury in the Supreme Court, Bronx County, New York awarded the patient $750,000 from the nursing facility.

A quadriplegic patient is at high risk for breakdown of skin integrity and requires frequent scheduled repositioning. Only two-thirds of the required scheduled repositionings could be accounted for in the patient's medical chart.

The jury discounted the nurses' testimony blaming the patient himself for declining to wear the boots that were prescribed for him and for insisting on sitting in his wheelchair for longer intervals than recommended for him, putting excessive pressure on the skin of his buttocks.

The jury accepted testimony from a physician pain-management specialist that his quadriplegia does not prevent him from feeling pain. The jury also heard testimony from a nurse wound-care specialist that once having had foot and buttocks lesions will make this relatively young patient more susceptible to the same problems for the rest of his life. **Alvarez v. Beth Abraham Health, 2011 WL 1562083 (Sup. Ct. Bronx Co., New York, March 9, 2011).**

Diabetic Patient: Nurse Practitioner Misdiagnosed Over The Phone.

The father called the child's pediatrician's office and spoke with a nurse practitioner because his nine year-old son had been lethargic, disoriented and feeling very ill for three days.

The nurse practitioner diagnosed the symptoms as a viral infection and told the father to bring him to the office the next day if he did not improve by then.

When the boy stopped breathing the next morning the father called 911. By the time they got the boy to the hospital his pupils were fixed and dilated and there was no heartbeat or spontaneous respiration.

Hospital personnel were not able to resuscitate him.

The labs that came back after the boy had already been pronounced disclosed a blood glucose of 1,165 and a potassium level of 7.1.

Lethargy and disorientation in a pediatric diabetic patient can be signs of a potentially life-threatening emergency.

The parents should have been instructed to take the child to an emergency room at once for evaluation and treatment.

SUPERIOR COURT
MIDDLESEX COUNTY, MASSACHUSETTS
September 1, 2010

The parents' lawsuit filed in the Superior Court, Middlesex County, Massachusetts settled for $1,000,000.

The parents' lawyers were prepared to argue that lethargy and disorientation in a pediatric diabetic patient can be signs of a potentially life-threatening medical emergency which requires that the parents be advised to take the child to an emergency room at once for evaluation and treatment. **Confidential v. Confidential, 2010 WL 6538290 (Sup. Ct. Middlesex Co., Massachusetts, September 1, 2010).**

Preeclampsia: Nurses Failed To Advocate For The Patient.

When she was admitted to the hospital to deliver her baby the mother had signs and symptoms of preeclampsia, high blood pressure, edema, abnormal EKG's, chest tightness and difficulty breathing.

Although her situation worsened after her baby was born her physician declined to provide further care and reportedly told the nurses not to call him any more.

When the patient complained she felt she was suffocating she was transferred to the ICU and intubated, but died several days later from aspiration pneumonia.

After the mother delivered her baby her physician told the hospital's nurses not to call him any more.

The nurses did not call him any more and did not report her condition to any other physician.

DISTRICT COURT
DALLAS COUNTY, TEXAS
August 9, 2010

The family's lawsuit in the District Court, Dallas County, Texas resulted in a $1,000,000 settlement, most of which was paid by the physician and his medical practice group.

Nurses Did Not Advocate for the Patient

However, the hospital still contributed a portion of the settlement. The hospital's nurses failed to advocate for the patient when it became obvious that her classic signs and symptoms of preeclampsia were not improving, her condition was actually deteriorating and the physician who had been caring for her was doing nothing for her and expressly stated he was not going to do anything further for her.

Orders should have been obtained from another physician to transfer the patient to the ICU for close monitoring and necessary treatment before emergency intubation became necessary. **Robinson v. Texas Health, 2010 WL 6543159 (Dist. Ct. Dallas Co., Texas, August 9, 2010).**

Readmission Fall-Risk Assessment: Court Sees Recklessness.

The elderly patient was admitted to a nursing facility selected by the family for its ability to meet his special needs stemming from diagnoses of dementia, coronary artery disease, diabetes and arthritis.

A few weeks after admission he was found on the floor in his room, confused and hallucinating but uninjured. He was provided with a wheelchair because of his noticeably unsteady gait.

A few days after that his increasing confusion prompted a five-day admission to the hospital for reevaluation of his dementia-related medical issues.

The same day he was discharged from the hospital back to the nursing facility he was left unattended and unrestrained in a wheelchair near the nurses station. He stood up, tried to walk, fell and broke his hip and struck his head on the floor.

In the family's lawsuit it came to light that there was no comprehensive nursing reassessment done when he was readmitted to the facility. Had a comprehensive reassessment been done it would have revealed his current dementia-related deficits with regard to personal safety and his need for close supervision and possibly restraints. The Superior Court of Connecticut ruled there were grounds for a lawsuit. **Estate of George v. Haven Health Center, 2011 WL 1886594 (Conn. Super., April 21, 2011).**

The nursing facility's failure to conduct a comprehensive readmission reassessment of the patient's needs for supervision and personal safety goes beyond negligence to the level of recklessness.

Recklessness is considered intentional misconduct for which punitive damages may be awarded in addition to compensation for the injuries suffered.

The nursing facility was fully aware of the patient's health status, that he had just been hospitalized for reevaluation of his confusion and other dementia-related medical issues.

There was a willful decision not to conduct a full reassessment of his current status and needs promptly upon readmission and a willful decision to leave him unattended to ambulate in an open area of the facility.

SUPERIOR COURT OF CONNECTICUT
April 21, 2011

Sharps Container: Psych Patient Was Known To Steal Needles.

The patient had a long history of substance abuse, depression and hospitalization for psychiatric issues.

Her well-known prior medical history included incidents of having gotten into and removed used needles from the sharps disposal containers which are commonly found in hospital rooms.

She was found dead in her hospital room at 1:15 a.m. several days into an emergency hospitalization for diabetic ketoacidosis with a syringe containing an orange substance on the floor beside her.

The autopsy fixed the cause of death as foreign body granulomatous inflammation of the heart and lungs as commonly seen in deaths from intravenous narcotism.

The Superior Court of Connecticut ruled the family's lawsuit could go forward.

The lawsuit papers contained general allegations that the hospital's staff were negligent in failing to provide a psychiatric consult, failing to search her belongings to ensure that she had no items with which to harm herself, failing to conduct daily mental status assessments and failing to observe her adequately.

The lawsuit also alleged negligence for failing to address a special safety concern, her known propensity for removing discarded needles from the sharps containers. **Estate of Ramirez v. Eastern Connecticut Health, 2011 WL 1886510 (Conn. Super., April 20, 2011).**

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Chemotherapy: Nurses Ruled Not Liable For Extravasation.

The patient's lawsuit against the hospital alleged that the physician negligently implanted his portacath and that the hospital's nurses negligently administered chemotherapy by allowing extravasation of medication into his chest wall.

The patient was diagnosed with non-Hodgkin's lymphoma during an admission to the hospital for surgery and was re-admitted a few weeks later to the oncology service to begin chemotherapy.

The patient refused to allow his nurses to access his portacath without giving him pain medication. They gave him Dilaudid and two and one-half hours later started rituximab through his portacath. The infusion took more than five hours.

The next a.m. the patient was manipulating his central line and complaining that he wanted to go home. After a psych consult a nursing progress note was written that the patient was unstable mentally. The oncologist decided it was unsafe to continue chemotherapy with an uncooperative patient, but later that day a different physician decided to go ahead with the chemo treatment with Haldol given beforehand.

The nursing progress note that evening indicated the patient remained safe through the shift.

During the night the patient got a chemo treatment with vincristine. The nurses documented good blood return through the portacath beforehand and no side effects or reactions afterward.

Later that night a nursing noted stated the patient complained of burning at the portacath site and the site appeared slightly swollen and pinkish. The nurse applied an ice pack to the area. The nurse reported the situation to the physician on call, who told the nurses to continue the chemotherapy with Cytoxan.

Early in the a.m. a nursing progress note indicated the medication was infusing and that the patient had no complaints.

At 9:30 a.m. the same morning a nursing progress note indicated the patient was alert and oriented and was complaining of a burning sensation at the portacath site.

The next day the patient was discharged from the hospital, his portacath having been flushed with Heparin.

The patient's nurses competently evaluated and assessed the patient, documented the patient's clinical condition and status, kept his physicians informed of his condition and status and followed his physicians' orders caring for him and took into consideration the medical circumstances presented throughout his hospitalization.

It is not the responsibility of the patient's nurses or other non-physician hospital staff to determine the mode and manner in which chemotherapy is to be administered.

CALIFORNIA COURT OF APPEAL
May 13, 2011

The next day he was readmitted due to issues with the portacath. The physician's note indicated a possible problem with extravasation during chemotherapy.

Lawsuit Dismissed
No Nursing Negligence

The California Court of Appeal could find no negligence on the part of the patient's nurses. The nurses provided care that met the legal standard of care, kept the physicians informed and thoroughly documented their care.

It was not a nursing responsibility, the Court ruled, to decide whether to continue chemotherapy with an uncooperative patient, a patient with mental-health issues, a patient who was apparently manipulating the lines into his portacath or with a patient who was being given heavy doses of sedation while undergoing chemotherapy treatment.

The physicians who made those decisions were not hospital employees. **Flowers v. Fountain Valley Reg. Hosp., 2011 WL 1832615 (Cal. App., May 13, 2011).**

Racial Bias: Court Sees Grounds For Discrimination Lawsuit.

The US District Court for the Middle District of Tennessee dismissed most but not all of the allegations raised in an African-American nursing technician's lawsuit against her former employer.

A few isolated insensitive remarks from co-workers are not enough to create a racially hostile work environment.

The aide's supervisor took a harsh tone speaking with her on two occasions and generally seemed to be more friendly with her white co-workers. That is also not evidence of a racially hostile work environment.

However, the facility was not able to offer an explanation for the fact that this aide's hours were reduced while her white co-workers' hours were not.

UNITED STATES DISTRICT COURT
TENNESSEE
May 17, 2011

The aide's supervisor did not treat her in the same cordial manner she seemed to reserve only for her white co-workers, but there was never any overt racial component. Isolated insensitive remarks from co-workers do not fulfill the threshold of a racially hostile work environment.

However, after the tech began to complain about the way she was being treated her hours were reduced, while the hours of her white co-workers were not. The employer has the burden of proof to explain any apparently race-based discrepancy in compensation, or be held liable for discrimination, the Court ruled. **Norman v. Rolling Hills Hosp., 2011 WL 1877651 (M.D. Tenn., May 17, 2011).**

Last-Chance Agreement: Nurse Violated Terms, Firing Upheld.

After she was caught under the influence of illegal drugs at work a registered nurse's license was restored and she was allowed to return to work on condition that she sign and strictly follow a last-chance agreement.

The last-chance agreement required her to get express permission from her charge nurse each time before she dispensed narcotics and to get her charge nurse or manager to check her documentation of wasting of unused narcotics each time after she dispensed narcotics to insure that she followed procedures.

On nine separate occasions her documentation of wasting of narcotics was found be in violation of the hospital's procedures, which for her amounted to nine separate direct violations of the last-chance agreement she had signed.

The nurse was terminated.

An employer is justified in terminating an employee for misconduct, which means a direct violation of an employer policy which has a detrimental effect on the employer's interests.

NEW YORK SUPREME COURT
APPELLATE DIVISION
May 19, 2011

The New York Supreme Court, Appellate Division, ruled that the hospital was justified in terminating the nurse's employment for misconduct.

Failure to follow the hospital's policies for administration of narcotics and documentation of administration and wasting of narcotics is misconduct justifying termination, the Court said. In this case the misconduct was aggravated by the fact it went counter to the last-chance agreement the nurse had specifically agreed upon as a condition of continued employment. **Claim of Sutton, __ N.Y.S.2d __, 2011 WL 1886180 (N.Y. App., May 19, 2011).**

Patient Abuse: Aide's Conviction Of Criminal Charges Upheld.

An eighty year-old Alzheimer's patient was well known by nursing home staff for easily becoming agitated, combative and violent.

She was usually restrained in her wheelchair with a lap belt.

Early one morning she wanted to elope from the facility and opened a door which immediately set off an alarm.

The charge nurse decided for the patient's own safety to sedate her with an IM medication. Several staff tried to hold her down, but that only made her more agitated and more combative and she lashed out verbally with threats toward staff.

Nursing home policy at that point required her caregivers to pause, release her, step away, leave her alone temporarily and give her time to calm down.

One of the aides, however, decided instead to escalate the provocation by coaxing her into the TV room where the aide kicked her wheelchair, punched and slapped her and pulled out some hair.

When the director of nursing was informed of the incident the next morning she reviewed the surveillance videotape from the TV room and then fired the aide on the spot, along with two other aides who stood by and watched and did nothing to stop what their co-worker was doing.

Then the DON turned the videotape over to the local police.

The Court of Appeals of Ohio upheld the aide's conviction of criminal charges of patient abuse. The videotape evidence left little doubt what the aide had done. Technical legal objections to the admissibility of the videotape were overruled by the judge who heard the case.

Physical Injury Is Not Required To Prove Patient Abuse.

The DON and other nurses who examined the victim after the incident found no physical evidence of injury other than some of her hair that had been pulled out, but physical injury is not a necessary legal element of the crime of patient abuse. **State v. Simmons, 2011 WL 1646819 (Ohio App., April 29, 2011).**

Falsified Documentation: Nurse's Firing Upheld, No Age Discrimination.

A registered nurse was fired after she forwarded to her supervisor a copy of a forged record ostensibly from a hospital chart showing that she had intubated the patient for surgery.

The nurse was trying to fulfill an ongoing requirement of her status as a flight nurse that she intubate at least one patient every three months.

After her firing she sued her former employer for age discrimination.

The US Age Discrimination in Employment Act may allow a discrimination suit if the employee or former employee is in the protected 40 to 70 year age range and was treated less favorably than a younger person.

UNITED STATES DISTRICT COURT
COLORADO
May 9, 2011

The US District Court for the District of Colorado dismissed her case.

In age discrimination case, even if the employee or former employee is in the protected age range and was treated adversely, the employer can successfully defend by showing a legitimate non-discriminatory reason for the action taken.

The Court said it was beside the point whether the nurse had merely been guilty of a mistake providing a copy of an incorrect procedure record or had engaged in premeditated dishonesty.

The point was that the nurse's supervisor recalled having intubated the patient in question himself and had good reason to conclude that the nurse had committed a blatantly dishonest act and had good grounds to terminate the nurse's employment for blatant dishonesty, the Court said. **Turner-Schlieman v. Centura Health, 2011 WL 1755432 (D. Colo., May 9, 2011).**

Cardiac Stress Testing: Court Looks At The Standard Of Care.

The medical center advertised in the local newspaper that its healthy heart symposium would be held at a local hotel on a Saturday morning.

A nurse practitioner would be providing free heart screenings between 8:00 a.m. and 11:00 a.m. to participants who preregistered.

The heart screening included a basic test of cardiovascular fitness which involved having the participant step up and down from a fourteen-inch block for three minutes in synch with a metronome.

One of the participants became fatigued two minutes into the step test, lost her balance, fell and fractured her wrist. She sued the medical center for negligence.

Her lawsuit alleged negligence in the fact the step block was placed too close to a wall, which did not allow the participant to balance himself or herself naturally by leaning forward while stepping up and down.

The lawsuit also alleged negligence in that she was not medically screened beforehand and basically left alone during the step test without being closely observed for signs that the testing should be stopped in the interests of patient safety.

The Court of Appeals of Texas agreed with the patient that the American College of Sports Medicine's *Guidelines for Exercise Testing and Prescription* are an authoritative source and that the allegations raised in her lawsuit made good common sense. However, the Court had to dismiss the lawsuit.

Exercise testing involves professional judgment. Pre-screening and observing the participant during a cardio step test must be done by a healthcare professional, like a nurse or nurse practitioner, who has the necessary professional competence.

A lawsuit alleging a lapse in professional judgment or a departure from the professional standard of care, in Texas as in most US jurisdictions, requires testimony from an expert witness.

Making a plausible common-sense argument and attaching a copy of the pertinent *Guidelines* to the court papers is not legally sufficient, the Court ruled. **Covenant Health v. Barnett, __ S.W. 3d __, 2011 WL 1832754 (Tex. App., May 13, 2011).**

The American College of Sports Medicine's Guidelines for Exercise Testing and Prescription are an authoritative source.

The Guidelines require the person conducting an exercise stress test to clear the participant beforehand for risk factors commonly associated with coronary artery disease.

During the stress test the participant is to be observed and the testing stopped if the participant develops angina or angina-like symptoms, a significant drop or rise in blood pressure, light-headedness, confusion, ataxia, pallor, cyanosis, nausea, cold or clammy skin, failure of the heart rate to increase with exercise intensity, physical or verbal manifestations of severe fatigue or unusual or severe shortness of breath.

The Guidelines anticipate that the person conducting the test will possess sufficient medical competence to evaluate the test participant and make the medical judgments necessary to initiate and continue testing.

That involves an exercise of professional judgment. A lawsuit alleging a lapse in professional judgment requires expert testimony to support the case.

COURT OF APPEALS OF TEXAS
May 13, 2011

Nurse Midwifery: Midwives Exceeded Scope Of Practice.

The patient's obstetrician advised the patient against a home birth and insisted upon admission to the hospital because her fetus was in a transverse lie that could spell complications above and beyond an uncomplicated vaginal delivery.

The patient chose instead to rely on contrary advice from her nurse midwives that she could safely deliver at home. However, as soon as her labor began at 36 weeks it quickly became apparent it was not going to be an uncomplicated delivery. The midwives decided to drive the mother to the hospital but made it only as far as the hospital parking lot, where the mother delivered in the back seat of the car.

Rendering medical advice or treatment is beyond the scope of practice of a licensed nurse midwife.

Contradicting the advice given to a patient by the patient's physician is not permissible, nor is a midwife permitted to extract a placenta which does not deliver spontaneously.

SUPERIOR COURT OF CONNECTICUT
April 5, 2011

The Superior Court of Connecticut found several aspects of the case went beyond the midwives' scope of practice and amounted to illegal unlicensed practice of medicine.

A midwife cannot legally give medical advice to a patient which contradicts the advice of the patient's own physician. A midwife cannot attempt to extract a placenta which will not deliver spontaneously. The midwives were also in the wrong, according to the Court, when they took control of the newborn infant and refused to allow paramedics and hospital personnel to take the newborn from the parking lot into the hospital for evaluation. **Albini v. Connecticut Medical Board, 2011 WL 1566994 (Conn. Super., April 5, 2011).**

Reusable Medical Devices: Draft Guidance From FDA For Processing, Reprocessing.

We have the FDA's new draft guidance document on our website at http://www.nursinglaw.com/FDAreprocessing.pdf

FEDERAL REGISTER May 2, 2011
Pages 24494-24495

On May 2, 2011 the US Food and Drug Administration (FDA) announced the availability of a draft guidance document titled "Draft Guidance for Industry and FDA Staff: Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling."

The draft guidance is not in final form and is not mandatory at this time.

According to the FDA, in recent years there has been an evolution towards more complex reusable medical device designs that are more difficult to clean and disinfect or sterilize.

The new guidance document, a revision of a guidance document issued in 1996, reflects scientific advances in this area.

The guidance document is targeted by the FDA directly to medical device manufacturers, who are required by law to provide instructions to end-users in the healthcare community for proper sterilization and re-processing of the devices which they manufacture and distribute.

We believe, however, that the guidance document and the reference materials cited in it may contain information useful to end-users in the healthcare community.

The FDA's May 2, 2011 Federal Register announcement is available at http://www.nursinglaw.com/FDA050211.pdf

FEDERAL REGISTER May 2, 2011
Pages 24494-24495

Flu Vaccination: Proposed New Regulations From CMS.

On May 4, 2011 the US Centers for Medicare & Medicaid Services (CMS) announced proposed new regulations to require certain facilities that participate in Medicare or Medicaid to offer all patients an annual influenza vaccine unless medically contraindicated or unless the patient or the patient's representative or surrogate declines vaccination.

The new regulations are not mandatory at this time. CMS is accepting public comments until July 5, 2011.

We have reproduced the proposed new regulations for hospitals in the column to the right. Proposed regulations were also announced for other facilities which participate in Medicare or Medicaid. These are worded identically except to substitute critical access hospital, rural health clinic, Federally qualified health center or end-stage renal disease facility for hospital.

Long-term care facilities are already covered by comparable regulations for influenza immunizations which were proposed in August 2005 and became mandatory in October 2005. See the November 2005 issue of our newsletter or go to http://www.nursinglaw.com/LTCvaccines.pdf

FEDERAL REGISTER May 4, 2011
Pages 25460-25477

CMS's proposed new regulations are not mandatory at this time.

CMS's May 4, 2011 announcement from the Federal Register is available from our website at http://www.nursinglaw.com/CMS050411.pdf

The proposed regulations themselves begin at Federal Register page 25476.

FEDERAL REGISTER May 4, 2011
Pages 25460-25477

PART 482--CONDITIONS OF PARTICIPATION FOR HOSPITALS

Subpart C--Basic Hospital Functions

* * * * *

(c) Standard: Influenza vaccinations.

(1) The hospital must develop and implement policies and procedures regarding administration of annual and pandemic influenza vaccinations. Pandemic procedures are to be implemented when a pandemic event is announced by the Secretary.

(2) The hospital's policies and procedures must take into account, and reflect reasonable consideration of, the recommendations in guidelines established by nationally recognized organizations (including, but not limited to, guidelines addressing patients for whom vaccination may be prioritized or temporarily contraindicated).

(3) Within its policies and procedures, the hospital must ensure all of the following, subject to the reasonable availability of vaccine and where appropriate taking into account the condition of particular patients

(i) Before receiving the influenza vaccination, each patient, or, where appropriate, the patient's representative or surrogate (as allowed under State law), receives education regarding the benefits, risks, and potential side effects of the vaccine.

(ii) Each patient is offered an influenza vaccination annually, from the time the vaccine is available on or after September 1 through the end of February of the following year, except when such vaccination is medically contraindicated or when the patient has already been vaccinated during this time period.

(iii) The patient, or, where appropriate, the patient's representative or surrogate, has the opportunity to decline vaccination.

(iv) The patient's health record includes documentation that indicates, at a minimum, the following:

(A) The date the patient, or the patient's representative or surrogate, was provided education regarding the benefits, risks, and potential side effects of influenza vaccination.

(B) The date the patient either received the influenza vaccination or did not receive the influenza vaccination due to medical contraindications, previous influenza vaccination during the time period, or patient refusal.

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Cell Phones: On-Duty Facebook Posting Violated Rules, Nurse's Firing Upheld.

A registered nurse was fired from her position in a nursing home for using her personal cell phone to post comments on Facebook about a co-worker who had just had an accident in the bathroom and soiled herself.

The nurse was passing medications to patients at the same time she went on Facebook.

She had been warned five months earlier after she was caught talking on her personal cell phone while on duty.

The nursing home had a work rule prohibiting employees' use of personal cell phones while on duty. Nursing home personnel policy was to provide progressive discipline for infractions of work rules, but the nursing home also reserved the right to terminate any employee immediately for an infraction which could cause a life-threatening situation to a patient or patients.

The Commonwealth Court of Pennsylvania ruled the nurse was guilty of willful conduct justifying immediate termination for cause.

The decision of the Unemployment Compensation Board of Review was upheld denying her employment benefits.

The Court pointed out that nursing home management verified by accessing her Facebook page that the comments were posted on Facebook at the same time the nurse was on duty passing medications. That was done before they fired her. Checking her Facebook page was not a violation of the nurse's privacy rights.

When confronted, the nurse admitted she was passing medications and using her cell phone to access Facebook at the same time.

The Court ruled it was reasonable for the nursing home to have a policy prohibiting personal cell phone use by employees on duty, that the policy had been communicated to this nurse and that she was aware of the consequences.

It was also reasonable, the Court said, for the nursing home to consider a nurse being distracted by using her cell phone to access Facebook while distributing medications to patients as a serious enough infraction to justify dispensing with progressive discipline and going ahead with immediate firing, as it threatened patients' health and safety. **Chapman v. Unemployment Comp. Bd., __ A. 3d __, 2011 WL 1549057 (Pa. Comwlth., April 25, 2011).**

Labor & Delivery: Nurses Failed To Report Abnormal Monitor Tracings, Hospital At Fault.

The Supreme Court of Louisiana ruled the hospital and the obstetrician would each be assessed 50% legal responsibility for the newborn's cerebral palsy.

The mother's pregnancy was considered high-risk because of her diabetes. Her obstetrician wanted to do a c-section as soon as fetal lung maturity could be confirmed. He did an amniocentesis in the office at 36 1/2 weeks, but the onset of labor required the mother to be admitted to the hospital before the lab tests came back.

The obstetrician claimed he had to have the lab results before he could do the c-section and the hospital got the lab report back but did not inform him until the next morning. The Court pointed out he still waited until late that afternoon before starting the c-section.

A hospital is responsible for staffing its obstetrical unit with labor and deliver nurses who are trained and capable of reading and interpreting the monitors competently.

Physicians depend on the hospital's nurses to monitor the patient and carry out orders to report immediately any abnormalities which could indicate problems with the mother or the child.

SUPREME COURT OF LOUISIANA
May 10, 2011

As to the hospital's nurses, the Court accepted testimony that earlier on the same afternoon the c-section was done the monitor strip began to show loss of beat-to-beat variability and late decelerations, but the labor and delivery nurses assigned to the patient waited more than ninety minutes before notifying the obstetrician.

The patient's obstetric expert testified that loss of short-term beat-to-beat variability is a subtle sign, but one which labor and delivery nurses are trained to detect and know to report at once. The obstetrician can assume that the patient's nurses are watching the patient's monitors, know how to interpret the tracings and will notify the obstetrician as soon as any ominous abnormality is seen. **Johnson v. Morehouse Gen. Hosp., __ So. 3d __, 2011 WL 1759932 (La., May 10, 2011).**