LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Labor Law: Arbitrator Cannot Substitute His Or Her Own Judgment.

A nurse was fired for violating the hospital's policy against threats, intimidation and disruptive conduct. The nurse phoned another nurse at home five times to demand that she change her vacation plans so the nurse in question could go on vacation when she wanted. Later she confronted her in the break room.

The nurse in question grieved her firing. The grievance proceeded to arbitration. The arbitrator ruled the hospital should have stayed with progressive discipline, that is, the hospital should only have reprimanded the nurse for this incident, her first violation of the hospital's policy.

The US District Court for the District of Massachusetts overruled the arbitrator for improperly substituting his own judgment for the hospital's as to the way the matter should have been handled. An arbitrator can only interpret the collective bargaining agreement. The hospital's agreement with the nurses expressly allowed the hospital at its sole discretion to dispense with progressive discipline. **Hospital v. Assn., __ F. Supp. 3d __, 2018 WL 6093672 (D. Mass., November 21, 2018).**

Patient Fall: County Paid For One-To-One Monitoring, But It Was Not Provided.

When the elderly patient was returned to the nursing facility after hospitalization for liver failure the hospitalist recommended one-to-one monitoring due to her extreme fall risk.

Her physician concurred with that recommendation and the county public conservator who allocated funding made funding available for a 24/7 sitter.

After a couple of weeks the physician at the nursing facility apparently misunderstood the requirement that the conservator review and re-authorize funding every two weeks to mean that funding had only been authorized for two weeks and then was stopped. That was not true; funding had been continued.

On that basis the physician changed the order to q 15 minute checks rather than constant monitoring. The patient fell and sustained a fatal subdural hematoma. The California Court of Appeal found grounds for the family to sue for elder abuse. **Hernandez v. Health, 2018 WL 6499453 (Cal. App., December 11, 2018).**

Patient's Falls: Court Finds No Deviation From The Standard Of Care, Family's Suit Dismissed.

Because she suffered from dementia and was unable to care for herself the seventy-seven year-old patient was discharged to a nursing facility.

Staff at the hospital had recommended a 24/7 bedside sitter due to her extreme risk of falling if she tried to get out of bed by herself.

On admission to the nursing facility her attending physician ordered that she be situated where she could easily be observed, like near the nurses station, that she be watched directly when she was out of bed and that she receive a wander guard.

After she fell three weeks into her stay the interdisciplinary team reviewed her care plan but made no changes. After another fall the team ordered a lap belt alarm and a tray for her wheelchair, which were provided.

The family's lawsuit alleged in general terms that not enough was done at the nursing facility to prevent their loved one from falling.

However, the lawsuit does not point to any specific deviation from the standard of care.

The proof in court must include a nursing or medical expert's assessment of the patient's needs and proof from the record that those needs were not met.

CALIFORNIA COURT OF APPEAL
December 19, 2018

Several weeks later a nurse noticed she was in pain. An x-ray disclosed a fracture of her fibula, apparently from an unwitnessed fall. The patient was unable to recount what happened. At the hospital x-rays disclosed further leg trauma.

The son filed suit against the nursing facility as his mother's guardian and continued the suit for the family as her probate administrator after she passed from unrelated causes.

The California Court of Appeal upheld a summary judgment of dismissal because the family could not point to any deviation from the standard of care by the staff of the facility.

The fact an elderly dementia patient falls, in and of itself, does not prove negligence by caregivers. **Castillo v. Healthcare, 2018 WL 6630332 (Cal. App., December 19, 2018).**