

## Patient's Last Will And Testament: Nursing Notes Strong Evidence Of Mental Capacity.

One of the deceased's nine adult children filed papers with the local probate court to confirm her own appointment as executor of her mother's estate and to declare her mother's last will and testament valid, which her late mother signed just ten days before her death.

Five of the children opposed their sister's plan to validate the will. Presumably each of them would have fared better in an equal nine-way split of the assets which would occur if she had left no will or left a will that was not valid.

The Court of Appeal of Louisiana looked to the nursing progress notes at the nursing home on the day the will was signed, the children's testimony being conflicting and basically self-serving. At that time she was alert and oriented, her memory was intact, her speech was clear and her behavior was appropriate. The nursing notes gave the Court grounds to find that the deceased was fully competent to dispose of her property as she saw fit. **Succession of Folse**, 2012 WL 440395 (La. App., February 13, 2012).

## EMTALA: CMS Stands By Current Position.

On February 2, 2012 the US Centers for Medicare and Medicaid Services (CMS) published a notice in the Federal Register to the effect that CMS intends to stand by its current interpretation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) that one way a hospital can fulfill its legal obligations under the Act is to admit the patient in good faith as an inpatient to provide stabilizing medical treatment.

That is, a patient who comes in through the hospital's emergency department, is admitted and then is medically stabilized while an inpatient, but who later becomes medically unstable, is not necessarily entitled at that point by the EMTALA to further treatment just because the patient came into the hospital in the first place at the hospital's emergency department.

A cautionary note is that the US Federal courts are not in unanimous agreement around the US in support of CMS's position. Another consideration is that the EMTALA does not lessen hospitals' exposure for substandard treatment decisions under state malpractice laws.

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## Bedsore: Physical Evidence Implicates Hospital, Nurse And Agency Dismissed From The Case.

The patient was in the hospital recovering after hip surgery.

At 10:00 p.m. his skin integrity assessment was good. By 8:00 a.m. the next morning he had two bedsore on his buttocks. Those lesions required two surgeries to repair the skin damage and confined him to a nursing home for several weeks longer than the time dictated by his surgical wound alone.

A wound-management physician at the hospital wrote a progress note that the lesions were "likely device induced." In other words, the size, shape and location of the lesions pointed to the conclusion they were caused by the patient having been left on the bedpan in bed for an excessive length of time.

An agency nurse assigned to the patient's care during the night shift was sued along with the hospital.

***The patient had expert testimony that it was a breach of the standard of care to leave a patient on the bedpan for an extended period of time, so long a time that the patient developed bedsore on his buttocks.***

***However, there was no direct evidence linking the agency nurse herself to the outcome, apart from other persons employed by the hospital on duty working that night in the hospital.***

COURT OF APPEALS OF OHIO  
February 15, 2012

The Court of Appeals of Ohio ruled the wound-management physician's testimony provided grounds for a lawsuit against the hospital.

However, according to the Court, the evidence was not conclusive that the agency nurse and her agency were responsible for what happened simply because she was the nurse the hospital had assigned to care for the patient.

The patient himself was at the time heavily dosed on his post-operative pain medications. His mental state could have contributed to his remaining positioned on the bedpan for an extended time and it also made it impossible for him to recall who it was who put him on the bedpan, an aide, the agency nurse or another nurse employed directly by the hospital. **Meehan v. AMN Healthcare**, 2012 WL 473751 (Ohio App., February 15, 2012).