LEGAL EAGLE EYE NEWSLETTER

March 2002 *For the Nursing Profession* Volume 10 Number 3

Crime Revealed To Police: Psychiatric Nurse Violated Medical Confidentiality.

For more than two years a patient was being seen at a psychiatric clinic. The morning of the day after he robbed a bank he phoned the clinic, spoke with the nurse and made an appointment for that afternoon.

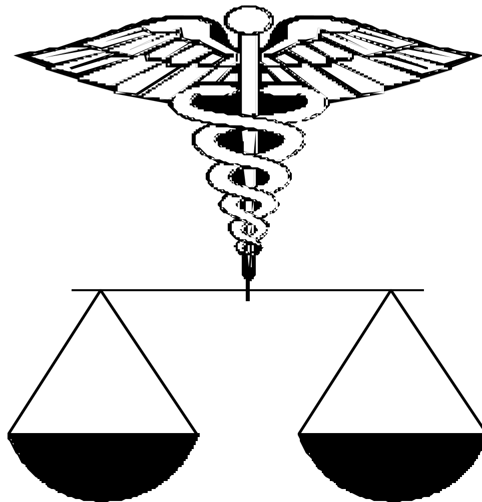
He came in an hour early. He was highly agitated. He told the nurse he had done something very stupid and was going to go to jail.

He also told the nurse he had taken an overdose of his psychiatric medications. The nurse interpreted it as a suicide attempt.

The patient showed the nurse a handgun he was carrying, which he said was not the weapon he had used in the robbery the day before. He said he had used a toy gun. She asked if it was loaded, asked him to unload it and asked him to put it in her desk drawer.

The nurse told the patient he should go to the hospital for the medication overdose and as a suicide precaution. She called 911 for transport.

As standard procedure the ambulance company called the police. At the clinic the nurse gave them the gun. The patient was taken to the hospital. Upon further investigation the nurse told the police the patient said he had robbed the bank. He was arrested at the hospital the next day.



When the patient told the nurse at the psychiatric clinic he had robbed a bank and had a gun, the nurse got him to unload it and leave it in her desk drawer. At that point the gun posed no threat of harm.

The nurse acted properly turning the gun over to the police, but telling them the patient had confessed to a crime was a breach of confidence.

SUPREME JUDICIAL COURT OF MASSACHUSETTS, 2002.

Violation of Medical Confidentiality

A healthcare professional, particularly in mental health, has a strict obligation to maintain the confidentiality of information revealed by a patient in the course of treatment.

There is a widely-recognized exception to this rule when a patient reveals an intent to harm an identifiable person or an intent to commit a crime. A healthcare professional can and must take steps to prevent it by informing the intended victim and by reporting to law enforcement what the patient said.

No Threat / No Evidence of a Crime

According to the Supreme Judicial Court of Massachusetts, once the gun was locked in the nurse's desk drawer there was no further threat of harm. The nurse could give the gun to the police just to get rid of it, but since it was not evidence of a crime she could not identify its source or reveal anything more about the circumstances.

Past Crime Is Strictly Confidential

The court noted it is strictly confidential when a patient reveals in the course of treatment that he or she has committed a crime and it is unprofessional for a healthcare professional to report it to anyone, including law enforcement. **Commonwealth v. Brandwein, 760 N.E. 2d 724 (Mass., 2002).**

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Evangelizing: Nurse's Freedom Of Religion Not Violated.

A nurse consultant with the state department of public health went to interview a male homosexual AIDS patient in his home he shared with a male partner. After she expressed to them her religious beliefs that homosexuality was immoral they sued the state for discrimination, but their case was dismissed.

Employees in general have the right to express their religious beliefs and in general have the right to expect their employers to offer reasonable accommodation to their religious practices.

On the other hand, public healthcare agencies have a strict legal obligation to provide care in a religion-neutral environment.

On balance, it is not discriminatory to discipline an employee for evangelizing personal religious beliefs to patients.

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT, 2001.

The nurse was disciplined with a two week suspension. She sued the state herself. The US Circuit Court of Appeals for the Second Circuit threw out her lawsuit.

It is not a violation of freedom of religion or religious discrimination in employment for a public agency to prohibit employees from evangelizing their religious beliefs to their patients, the court ruled. **Knight v. Connecticut Department of Public Health, 275 F. 3d 156 (2nd Cir., 2001).**

Side Effects Of Medications: Court Says Nurse Not At Fault For Patient's Auto Accident.

A patient was being treated in the doctor's office for lower back pain two months after discharge from the hospital for a herniated disk.

Treatment included injections of Demerol and Phenergan. Before the day in question the patient had been to the office six times for therapy and had received these medications.

Assessment / Warnings Were Charted

On the day in question, before administering the medications, the nurse asked the patient if he had ever had any problem driving home after receiving the medications. He denied any prior problems.

The nurse noted in the chart that she told the patient after administering the medications that he should not drink alcohol, not drive an automobile and not operate machinery for at least twelve hours.

The medications were given between 11:30 a.m. and noon. The patient left the office at 12:30 p.m. At 6:45 p.m. he was involved in a motor vehicle accident. The police took blood and urine samples after the accident which were positive for marijuana, the court pointed out.

Nurse Ruled Not Negligent

The other motorist sued the patient as well as the doctor who was the nurse's employer. The Court of Appeals of Georgia ruled there were no grounds for the suit against the doctor for the nurse's conduct.

The nurse did everything she was expected to do. She assessed the patient, warned the patient of specific potential side effects and charted what exactly she told the patient.

There is no legal duty or legal right in this situation for a healthcare provider to control a patient's behavior by trying to do more than the nurse did. As a general rule no one has the right to control another's behavior and has no responsibility for another's actions, unless there is a special circumstance like a patient being involuntarily committed for psychiatric care. **Shortnancy v. North Atlanta Internal Medicine, P.C., 556 S.E. 2d 209 (Ga. App., 2001).**

The nurse and doctor are not liable to the other motorist for this collision. The nurse did everything that was expected of her as a healthcare professional.

When prescribing or administering medications that can cause sedation which can pose a hazard when operating a motor vehicle, healthcare providers have the legal obligation to assess their patients, warn them of side effects and urge them to be careful.

There is no legal duty to restrain or control a patient's behavior outside the involuntary psychiatric treatment setting.

As a general rule the law imposes no duty on one person to control the conduct of another person to prevent the other person from causing harm to a third party.

An exception to the general rule exists for patients who have been committed involuntarily for psychiatric treatment on the grounds they pose a threat of harm to others. Their caregivers do have the legal obligation to control them to prevent them from harming others.

COURT OF APPEALS OF GEORGIA, 2001.

Second Opinion: No Right To Be Taken To The Office.

As a general rule, when a patient has been hospitalized involuntarily for mental health treatment the patient keeps the right to communicate with outside healthcare providers of the patient's own choice, unless the commitment order has for some reason taken that right away.

Patient Has the Right to Communicate With Outside Psychiatrist

The Court of Appeals of Ohio ruled recently this basic legal right that is retained by hospitalized psychiatric patients means that a patient must be allowed to communicate with a psychiatrist on the outside for a second opinion as to the need for the mental health commitment.

However, that does not mean that staff at a mental health treatment facility have the obligation to transport the patient to the psychiatrist's office. The court refused to void the patient's commitment order just because the staff refused to transport him. He was a legitimate escape risk. **In re Beekman, 760 N.E. 2d 59 (Ohio App., 2001).**

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Involuntary Commitment: Court Order Void, Less Restrictive Alternatives Not Considered.

A mental health patient being treated involuntarily has the right to receive treatment in the least restrictive milieu that will achieve the treatment goals that are appropriate for the individual patient.

When seeking to treat a patient despite the patient's expressed wishes to the contrary, mental health workers must consider alternatives less restrictive than hospitalization.

It must also be spelled out in their written reports or in their court testimony specifically how the less restrictive alternatives they considered would not meet the patient's needs.

Regardless of the patient's actual need for psychiatric care a court order can be overturned if the court was not told the reason why less restrictive alternatives were rejected.

SUPREME COURT OF NORTH DAKOTA, 2001.

The patient's treating psychiatrist, the patient's brother and the local sheriff who first brought the patient to the hospital testified in favor of a ninety-day involuntary commitment at the state hospital.

The patient had severe paranoid delusions that law enforcement personnel and his immediate family were out to get him. Based on the patient's own statements, there were legal grounds to believe the patient posed a serious risk of harm to others, particularly his family, if he was not detained for mental health treatment.

However, the patient's lawyers appealed the commitment order. The Supreme Court of North Dakota ruled the commitment order was not valid and the patient was entitled to be released.

Less Restrictive Alternatives Must Be Considered

Fundamental civil and constitutional rights are at stake in involuntary mental health commitment proceedings.

A mental health patient has the fundamental right to receive treatment in the least restrictive setting that will meet the patient's needs, that is, in the setting that imposes the least burdensome intrusion upon the patient's right to personal liberty.

Mental health workers seeking to hospitalize a patient must consider less restrictive alternatives to hospitalization, for example, assisted outpatient care or transitional living, and they must document and be able to explain to the court specific concrete reasons why they ruled out those less restrictive alternatives, the court said. **In re D.P., 636 N.W. 2d 921 (N.D., 2001).**

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Quality Review: Court Upholds Physician's Suspension Based On Nurse's Incident Report.

The Colorado Court of Appeals did not delve into the facts of the underlying incident on the labor and delivery unit.

The only relevant issue was whether the two physicians who reported another physician to the hospital's peer-review committee and got his staff privileges suspended acted reasonably and in good faith with the information available to them.

The court ruled it was reasonable for the two physicians to report a fellow physician and for the peer-review committee to move forward based upon the incident report prepared by the attending obstetrical nurse.

The court said the reporting physicians and the review committee were entitled to accept the obstetrical nurse's opinion that the physician in question had committed malpractice and that his incompetence was an ongoing grave threat to the safety of mothers and fetuses.

No Lawsuits Permitted Against Persons Acting In Good Faith

The suspended physician tried to bring an expert witness in obstetric medicine to court to review the underlying incident and to offer an expert opinion that the suspended physician was not guilty of malpractice.

However, the court said reviewing and reevaluating the underlying incident was not the issue. A Federal law, the Health Care Quality Improvement Act, flat-out bars lawsuits against internal peer-review bodies and against persons who report physicians unless the physician who was reported can prove they acted in bad faith.

Bad faith means acting with a motive other than furtherance of quality care, such as personal malice or bias or professional jealousy. Bad faith can also mean going ahead without a reasonable belief in the truth of the allegations based on an actual investigation.

The court dismissed the lawsuit. It was not bad faith for the physicians to rely on the nurse's incident report. **Berg v. Shapiro, 36 P. 3d 109 (Colo. App., 2001).**

The US Health Care Quality Improvement Act disallows suits against persons who sit on or who assist professional review committees, if certain conditions are met.

To be immune from suit anyone involved with an internal peer-review body must act with a reasonable belief that his or her actions are in furtherance of quality health care and there must be a reasonable effort to obtain the facts.

The physician who is disciplined is entitled to advance notice to prepare a defense before being disciplined or suspended.

The obstetrical nurse herself was not sued. Two supervising physicians were sued because they relied upon the nurse's incident report in recommending another physician's staff privileges be suspended.

However, the physician who came in to testify as an expert in quality management stated the two physicians who filed the complaint acted reasonably in all respects by relying on an incident report prepared by an obstetrical nurse.

COLORADO COURT OF APPEALS, 2001.

Premature Return To Work: Nurse's Case Thrown Out.

A nurse injured her neck off the job doing stretching exercises. At the time she was on light duty at work from lower extremity injuries from a fall.

Her physicians diagnosed only a cervical strain and cleared her to return to work.

One month after she returned to work she was terminated because she was physically unable to do her job. Two weeks later she had an MRI that showed protruding and herniated disks in her neck.

She sued her physicians for medical malpractice.

In a professional malpractice case the patient must prove the medical professional departed from the accepted standard of care.

There is also a strict requirement in medical malpractice cases that the cause-and-effect link between the negligent act and harm to the patient must be proven with expert medical testimony.

APPELLATE COURT OF CONNECTICUT, 2001.

The Appellate Court of Connecticut agreed in general terms it would be medical malpractice for a physician to misdiagnose the true severity of a patient's condition and send the patient back to work prematurely.

However, in this case the physician who did the MRI was not able to state an opinion to a reasonable degree of medical certainty that the nurse was sent back to work too soon or that it caused or aggravated the cervical disk problem, so her case was dismissed. **Gordon v. Glass, 785 A. 2d 1220 (Conn. App., 2001).**

Back Condition: Nurse Not Entitled To Preference In Transfer.

The US District Court for the District of North Dakota agreed for the record that the nurse had a genuine disability which kept her from working in direct patient care.

She had been transferred to quality review because of her disability but then hers and others' quality review positions were eliminated. She sued for disability discrimination because she was not given the telephone triage position she wanted.

A disabled employee is entitled to reasonable accommodation.

Reasonable accommodation can mean transferring the employee to an available vacant position.

It is not reasonable to expect an employer to violate a union contract by giving preference to a disabled employee rather than following the open-bid procedure that was written into the contract to protect other employees' rights.

UNITED STATES DISTRICT COURT,
NORTH DAKOTA, 2001.

The court ruled the telephone triage position was not a vacant available position as the phrase is used in disability discrimination regulations because it had to be opened to other employees to bid pursuant to the union contract.

Disabled employees asking for reasonable accommodation do not have preference over other employees who also have rights, the court pointed out. **Joelson v. Dept. of Veterans Affairs, 177 F. Supp. 2d 967 (D.N.D., 2001).**

Anxiety Attacks: Court Dismisses Nurse's Disability Discrimination Claim.

To sue for disability discrimination an employee must have a physical or mental impairment that substantially limits one or more of the employee's major life activities.

The full extent of the legal definition of disability was not spelled out by Congress and it must be decided by the courts on a case-by-case basis.

Mental illness is considered a disability only under limited circumstances. For example, an employee diagnosed with major depression and taking anti-depressants is considered to have a disability.

However, a temporary condition is not generally thought of as a disability.

The nurse had two major anxiety attacks, one a few months and one two years earlier. She was treated and she returned to work. This does not fit the definition of a disability.

Even so, a disabled person would have to be otherwise qualified for the job despite the disability.

Someone who threatens violence is not qualified to work as a nurse.

UNITED STATES DISTRICT COURT,
PUERTO RICO, 2001.

A hospital staff nurse was written up for failing to revise the unit's medication list, which was one of her duties.

The US District Court for the District of Puerto Rico noted there already was friction between the staff nurse and her supervisor. The staff nurse was a qualified clinical nurse specialist. She declined that position which would have required her to move her family and took a staff nurse position which meant being supervised by someone less qualified than herself.

Threats of Violence

The nurse told a co-worker she was thinking of buying a gun and shooting her supervisor. She went to the director of the facility and confessed she was so angry she wanted to assault her supervisor.

The nurse was sent home. Then she was transferred to a facility in another city. She filed a grievance. The grievance went to arbitration. The arbitrator overturned the transfer order but imposed a seven-day suspension. The nurse sued for disability discrimination. The court threw out her lawsuit.

Anxiety Attacks Not A Disability

The nurse had had two previous episodes involving angry outbursts toward co-workers. After each episode she saw a psychiatrist, took prescribed medications and went to monthly therapy sessions. The last therapy session from the second episode was a few months earlier and she had stopped taking her medications.

The court ruled that a temporary mental illness that resolves is not a disability. Because the nurse's anxiety disorder and/or depression was not a disability it was not relevant whether the nurse's present conduct was related to her illness.

Second, the court pointed out that threats of violence, even if caused by a genuine psychiatric illness, are not appropriate for a nurse. That meant she was not qualified for her job as a nurse even if she had a true legal disability, and she had no right to sue. **Mendez v. West, 117 F. Supp. 2d 121 (D. Puerto Rico, 2001).**

Bacterial Meningitis: Jury Rules Nurse And Physician Misjudged Condition.

The initial impression was that the patient, a thirty-five year-old developmentally disabled woman living in a group home, died from an unwitnessed seizure.

If true, that would have made her a prime candidate for organ donation. A local organ bank contacted the patient's attending physician. The physician told them that she had been suffering from viral cold symptoms and that she had had an elevated CBC, but a second CBC right before her death was normal.

However, the autopsy showed she died from bacterial meningitis related to Strep pneumoniae.

The patient's parents sued the group home and the physician. The jury held the group home 20% at fault and the physician 80% at fault. They should have found out the patient had a serious bacterial infection potentially treatable with antibiotics, not a viral illness. The Supreme Court of Tennessee did not uphold the verdict, only because the amount of damages awarded was too small.

Charting After The Fact Proven With Handwriting Expert

There were numerous phone message slips generated as the nurse and other staff at the group home informed the physician of the progression of the patient's illness.

However, a handwriting expert hired by the parents' lawyers testified some of the message slips were created after the fact just like some entries in the chart.

The handwriting expert noted that some entries on the same page actually made different impressions due to different materials being underneath when they were written, that is, they were not made on the same dates as indicated.

The staff were trying to create the impression they had fully advised the physician and had reported the CBC results, which were lost apparently with no one appreciating their importance. **Rothstein v. Orange Grove Center, Inc., 60 S.W. 3d 807 (Tenn., 2001).**

The patient was a thirty-five year-old retarded adult living in a group home. Right before her death the staff placed her alone in a darkened room to see if that would calm her agitation and cause her breathing difficulties to subside.

The autopsy revealed the patient died from bacterial meningitis caused by Strep pneumoniae.

It had been assumed it was a viral infection that would not have responded to antibiotics.

For the group home the legal question was when and how thoroughly the signs and symptoms were reported to the physician and what exactly happened to the results of the CBC's the physician ordered.

As the signs of the patient's illness progressed, the nurse at the group home and other staff were in contact with the physician by phone.

A lot of phone message slips were generated which came in as evidence at the trial. However, some of the phone messages and chart notes actually were written after the fact.

SUPREME COURT OF TENNESSEE, 2001.

Consent Forms: Nurses Took On The Physician's Responsibility.

It was a very complex medical malpractice lawsuit. The jury found the patient's physicians liable but did not find the hospital liable.

The patient appealed the jury's verdict. The US Court of Appeals for the Sixth Circuit upheld the patient's appeal and ordered a new trial.

Making sure the patient has given truly informed consent for a specific surgical procedure is the surgeon's responsibility.

If the surgeon is not a hospital employee, the hospital is not liable if the surgeon does not fully inform the patient what to expect and what the alternatives were.

However, if a nurse takes on the task of explaining the procedure, the possible complications and the available alternatives, the nurse and the nurse's employer are open to a lawsuit after the fact for lack of informed consent.

UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT, 2002.

The Court of Appeals ruled the judge should have instructed the jury to consider whether or not the hospital's nurses gave inadequate explanations to the patient before his surgeries such that his consent was not truly informed consent.

By taking on this task, normally the physician's responsibility, the nurses exposed the hospital to potential liability. **Rogers v. T.J. Samson Community Hospital, 276 F. 3d 228 (6th Cir., 2002).**

Placental Abruption: Verdict Upheld.

The patient was thirty-three weeks pregnant when she was involved in a motor vehicle accident. Emergency medical personnel extracted her from her vehicle and transported her to the emergency room at a hospital that did not offer labor and deliver services.

The patient complained of severe abdominal pain. The fetal heart rate was above 160. Hematocrits looked at belatedly showed the mother was possibly bleeding internally.

It took several hours to get her to another hospital where her baby was delivered dead by cesarean.

If a patient comes to a hospital that has an emergency room but does not have obstetrical capability, and the history, signs and symptoms point to placental abruption, there is very short time frame in which to assess the patient and arrange for transfer to a hospital that offers full obstetrical and neonatal services.

COURT OF APPEAL OF LOUISIANA, 2001.

The Court of Appeal of Louisiana accepted testimony from a physician as an expert witness in the field of emergency medicine that it should have taken no more than twenty minutes for the hospital staff to set the wheels in motion to transport this patient by ambulance to a hospital with full obstetrical and neonatal capability.

Severe abdominal pain starting right after blunt trauma to the abdomen of a woman thirty-three weeks pregnant should have been enough to raise a red flag about placental abruption, the court said, especially with an elevated fetal heart rate. **Rebstock v. Hospital Service District No. 1, 800 So. 2d 435 (La. App., 2001).**

Slip And Fall: Lawsuit Against Hospital Upheld.

A patient was brought to the hospital by his wife for an outpatient procedure. While waiting for the husband's procedure to be completed the wife decided to walk to the hospital cafeteria to have lunch.

She had never been to this hospital and was unfamiliar with the layout.

She opened a door in a corridor and walked through the doorway. She did not notice a step-down just past the doorway. She fell and twisted her knee and ankle.

She sued the hospital. The Court of Appeals of North Carolina ruled the local county court judge was wrong to dismiss her case.

She was a business patron of the hospital. There was no warning of the step-down. It was reasonable for her to be looking straight ahead rather than down at the floor and not to see or expect the step down, the court ruled. **Barber v. Presbyterian Hospital, 555 S.E. 2d 303 (N.C. App., 2001).**

Nurses Praised, Physician Reprimanded.

The Court of Special Appeals of Maryland upheld a reprimand imposed upon an obstetrician by the State Board for a patient's avoidable death.

In contrast to the physician's negligence, the court praised the nurses' competence. The court record was full of references to the nursing notes, exact times when tests were ordered by the physician, exact times when samples were taken and sent to the lab, exact times when results came back or when someone was sent to get them and exact times when and exactly how the physician was notified. **Gabaldoni v. Board of Physician Quality Assurance, 785 A. 2d 771 (Md. App., 2001).**

Pregnancy Bias: Case Dismissed.

Title VII of the Civil Rights Act of 1964 outlawed gender-based discrimination in employment. The US Supreme Court ruled Title VII did not apply to pregnancy until Congress clarified its intention in 1978 with the Pregnancy Discrimination Act.

In a recent case the Court of Appeal of Louisiana had to sift through the evidence carefully, and found that an aide's employer did not discriminate.

It is unlawful pregnancy discrimination for an employer arbitrarily to reduce a patient-care employee's hours just because the employee is pregnant.

When there are conflicting explanations for the employer's motivation in reducing an employee's hours, the employee has the burden of proof.

The employee has to prove discrimination was the motive, or the employer will prevail in court.

COURT OF APPEAL OF LOUISIANA, 2001.

The court accepted testimony from the aide's supervisor that Medicaid cuts made it necessary to reduce the aide's hours. The cuts went into effect at about the same time as she became pregnant, but that was just a coincidence.

The court looked at the aide's relationships with some of her patients. One made her depressed, so she asked for a transfer, and another became very attached to her, which caused friction with other aides that made reassignment necessary.

And for a time the aide's physician had recommended she not work because of morning sickness. **Brittain v. Family Care Services, Inc., 801 So. 2d 457 (La. App., 2001).**

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For the Nursing Profession

Delayed Neuro Consult: E.R. Staff Ruled Negligent.

The patient came to the emergency room complaining of a severe headache. Her headache improved and she was released from the hospital. About five hours later she returned to the emergency room with the same complaint of a severe headache.

She was at the hospital the second time for more than five more hours before anyone obtained a neurologist's consult for her. The neurologist determined she had had an intracranial hemorrhage. Some time later she began having seizures and had epilepsy surgery, but she is now seizure-free with medication.

The New York Supreme Court, Appellate Division, ruled it was a departure from the standard of care to make this patient wait five hours for a neuro consult after her return to the emergency room. However, there was no solid evidence the delay had anything to do with causing her seizure disorder, so the case was dismissed. **Migliaccio v. Good Samaritan Hospital, 733 N.Y. S.2d 713 (N.Y. App., 2001).**

Home Health: Nurse Was An Employee.

The patient sued his home health nurse and the home health nursing agency. His lawsuit claimed his nurse negligently injected morphine into the downstream port leading to his body while attempting to refill his implanted morphine pump, causing an overdose.

Before getting to the question of the nurse's negligence the court had to decide if the nursing agency was a proper defendant. If the nurse was an independent contractor and not an employee the agency should be let out of the lawsuit.

Although the agency referred to her as an independent contractor, supplied her an IRS Form 1099 rather than a W-2 and paid her from the operations account rather than the payroll account, she was an employee.

The Court of Appeal of Louisiana ruled the agency had the right to supervise and control the nurse's clinical performance. That made her an employee of the agency, not an independent contractor, and the agency was liable for her errors and omissions. **Murray v. Option Care, 801 So. 2d 1203 (La. App., 2001).**

Patient Falls From Stretcher In E.R.: Patient Alert And Oriented, Side Rails Up, Lawsuit Dismissed.

After hearing testimony about what happened the local trial judge dismissed the case against the hospital. The Court of Appeals of Mississippi upheld the trial judge's ruling.

The patient came from a nursing home by ambulance at 4:55 a.m. with complaints that were unclear.

The nurse found her alert and oriented and placed her on a stretcher to wait for the physician to see her. The stretcher was set at its lowest level and the side rails were up. At 5:22 a.m. the nurse found the patient on the floor. Apparently she became disoriented and climbed over the side rails.

The patient sued for her minor injuries from the fall. The emergency room nurse was not negligent, the court ruled.

No Basis For Restraints

The medical center's policy correctly allowed restraints only when needed and favored less restrictive restraints until more restrictive measures were actually proven necessary.

Patient's Nursing Expert Was Not Qualified For This Case

The trial judge would not allow a nurse consultant with a masters in nursing to testify.

The Court of Appeals agreed the nurse consultant did not have sufficient professional experience in emergency-room nursing to qualify as an expert witness for this case. Judges conducting malpractice trials have a great deal of discretion whether to accept or reject a particular witness's qualifications. **Stanton v. Delta Regional Medical Center, 802 So. 2d 142 (Miss. App., 2001).**

A nurse can testify as an expert witness on the nursing standard of care, as a general rule.

However, the nursing expert the patient's lawyers hired had not worked in emergency care for several years and was not affiliated with an institution that provided emergency care.

The judge was correct not to allow the nurse to testify as an expert witness.

COURT OF APPEALS OF MISSISSIPPI, 2001.