LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

March 2004 Volume 12 Number 3

Patient Falls, Develops Decubitus Ulcer: Court Upholds Verdict For Negligence.

The elderly patient was admitted to the hospital with numerous medical problems including diabetes, hyperglycemia, diabetic retinopathy, neuropathy, peripheral vascular disease and hypertension.

Her right leg had been amputated below the knee.

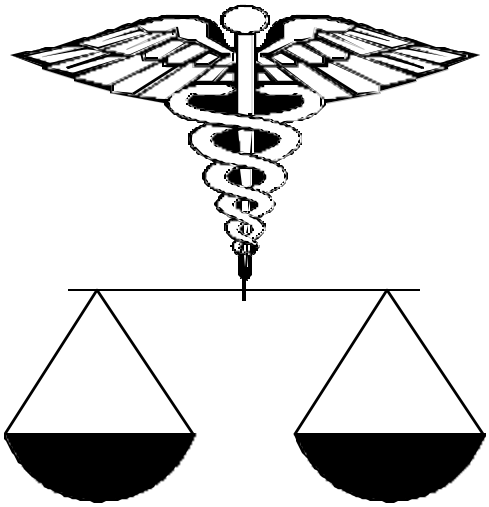
The specific reason for admission was to be close to her dialysis treatments for end-stage renal disease.

She was placed in a chair near the nurses station during a bout of confusion from her dialysis. Unrestrained, she tried to stand, fell and fractured her right hip.

After surgery for the hip she developed a sacral bedsore that progressed to an infected Stage III decubitus. Eventually the family stopped dialysis and she passed away from renal failure.

The family sued for nursing negligence. The Court of Appeals of Kentucky approved the jury's verdict awarding medical expenses (reduced post-trial to eliminate double recovery from Medicare) and punitive damages. The Court also upheld the jury's award of zero compensation to the family for the deceased's pain and suffering.

The verdict was for negligence leading to her fall and negligence leading to her skin breakdown.



A nurse can testify it is a personal habit and the institution's routine practice to turn patients every two hours on patient-safety rounds.

However, the medical records will be used as evidence. The lawyers can probe the records and question the nurses for specific chart references showing that the patient was actually turned.

COURT OF APPEALS OF KENTUCKY
February 6, 2004

Habits and Routine Practices Nursing Documentation

As a general rule the courts accept testimony about a person's habits or an institution's routine practices. A nurse can testify after the fact that he or she out of habit turns and repositions patients as necessary and that it is routine institutional practice to do so.

However, in this case the patient's chart did not show turning actually being done q 2 hours. This deficiency in the charting supported the family's allegations of nursing negligence.

A jury is not required to accept testimony about nurses' personal habits or the facility's routine practices in the face of ambiguous charting as to habits and routines actually being followed.

Delays in Treatment

The chart also pointed to a glaring two-day delay in getting the air mattress after the physician ordered it based on the nurses' own skin-breakdown assessment and the advice of the wound-care nurse.

Delays were also obvious directly from the patient's chart in how promptly the wound-care nurse responded to requests for consultation, according to the court. **Thomas v. Greenview Hosp., Inc., __ S.W. 3d __, 2004 WL 221198 (Ky. App., February 6, 2004).**

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Decubitus Ulcer: Court Accepts/Rejects Nurse's Expert Qualifications.

The family of a deceased elderly nursing home patient filed a malpractice lawsuit against the nursing home alleging that nursing negligence caused the resident to develop a decubitus ulcer and/or that the decubitus ulcer was permitted to worsen to the point it caused his death.

The Court of Appeals of Texas pointed out, in its unpublished opinion, that Texas requires the plaintiff to get an expert witness report not later than six months after filing a malpractice lawsuit.

Every US state requires at some point before a jury can consider a medical malpractice lawsuit against a physician, nurse or other healthcare provider that the patient or the family of a deceased patient provide expert testimony supporting all the basic elements of the case.

Nurse's Expert Qualifications Accepted Standard of Care / Breach

The family's nursing expert had been an RN for decades. She was certified in gerontological nursing, worked a few years as a nurse, had been a nursing instructor for many years and had published numerous journal articles on nursing home care and personnel management issues.

The court ruled she was a highly qualified expert on the standard of care in this case, that is, every nursing home's basic legal duty to prevent avoidable bedsores and to prevent avoidable progression of such lesions to potentially fatal decubiti.

Nurse's Expert Qualifications Rejected Medical Causation

That being said, the court ruled in fairness to the nursing home that it could not allow the family's nursing expert to testify to a reasonable degree of certainty that this particular resident's decubitus ulcer actually caused his death. That would require a physician's testimony, if in fact it was true. The possibility in general of death from a decubitus ulcer is not enough in a court of law. **Highland Pines Nursing Home, Ltd. v. Brabham, 2004 WL 100403 (Tex. App., January 21, 2004).**

There are three basic elements to a lawsuit for medical malpractice, whether the lawsuit is against a physician, nurse or other healthcare provider.

1. There must be evidence of the legal standard of care applicable to the provider in question under the specific circumstances presented by the case.

2. There must be evidence of a breach of the legal standard of care by the provider.

3. There must be evidence linking the provider's breach of the legal standard of care to harm suffered by the patient.

All three basic elements must be present and all three must be proven by expert testimony.

A nurse is competent to testify as to the first two elements of a malpractice case involving allegations of negligence by nurses.

However, a nurse is generally not considered qualified to render an expert opinion on medical cause-and-effect. There are exceptions for nurses with specialized education and practice experience.

COURT OF APPEALS OF TEXAS
UNPUBISHED OPINION
January 21, 2004

Decubitus Ulcers: Surveys Do Not Prove Negligence.

The probate administrator of a deceased nursing home resident's estate sued the nursing home for wrongful death. The administrator's lawsuit claimed her mother's death was attributable to avoidable decubitus ulcers which developed and/or were allowed avoidably to progress while she was a resident in the facility.

The physician's note on the death certificate indicated that multiple decubiti were a significant contributing factor, although not the cause of death.

The legal rules of evidence state that other acts of a similar nature are not relevant to prove the commission of a particular act.

Even if relevant, evidence can be excluded if it is unduly prejudicial or misleading to the jury.

COURT OF APPEALS OF KENTUCKY
UNPUBLSIHED OPINION
February 6, 2004

State survey reports showing multiple violations at the facility of state regulations requiring proper positioning and frequent turning of residents were ruled irrelevant and inadmissible as evidence by the county court judge. The Court of Appeals of Kentucky, in an unpublished opinion, approved the judge's ruling and the jury's finding of no negligence.

The surveys did not necessarily establish that the resident in question received substandard care and could easily prejudice the jury toward a punitive verdict even if there was no proof the resident in question was mistreated. **Renfro v. E.P.I. Corp., 2004 WL 224397 (Ky. App., February 6, 2004).**

Decubitus Ulcers: Court Finds Substantial Compliance With Patient's Care Plan, Downgrades Sanctions From State Agency.

State survey inspectors on more than one occasion found a certain nursing home resident was not wearing padded boots as per his plan of care.

Pressure Sores Present At Time of Admission

The padded boots were to be worn at all times. They were included in the care plan because he entered the facility with pressure sores on both his heels.

While in the facility one of the pressure sores healed completely and the other became much smaller. The District Court of Appeal of Florida attributed this to the high quality of care he got in the facility.

In Bed Without Boots

On one occasion the resident was found in bed without his padded boots. The nursing home argued the pressure mattress which it provided him made the boots unnecessary while he was in bed.

Sitting in Wheelchair in Street Shoes

On another occasion he was sitting in his wheelchair in his street shoes, but there was no weight bearing on his feet and fresh, clean dressings had been placed on his heels.

If the state surveyors are bent on requiring perfect compliance with every detail of every patient's care plan, every inspection of every nursing home will result in a finding of some deficiency.

Some of the details of an admission care plan can be ordered hastily without full investigation of the resident's medical history.

A nursing home caregiver should not be intimidated into ignoring common sense for fear of incurring the wrath of state survey inspectors.

The law looks for substantial compliance with the overall plan of care, not perfect compliance with each and every minute detail of a care plan, assuming there is no more than minimal discomfort and no harm to the resident.

DISTRICT COURT OF APPEAL OF FLORIDA
January 30, 2004

Substantial Compliance With Plan of Care

The court agreed with the nursing home that there was substantial compliance with the resident's plan of care for the pressure sores on his heels. Thus the court ruled that the state Agency for Health Care Administration could not downgrade the facility's license over this issue.

The court accepted the nursing home's argument that perfect compliance with every aspect of a patient's care plan, without regard to the circumstances and in the absence of any potential for harm, is an unreasonable and unattainable standard of perfection.

A state survey agency is required to factor in the potential for harm to the resident from a deviation from a care plan before writing up the facility for a patient-care deficiency, the court said.

The court stated it was not right to deprive nursing home staff members of the use of their common sense and professional judgment in caring for their patients, notwithstanding how a particular patient's care plan has been phrased.

Care plans may at first be drafted hastily without full appreciation of a resident's history and present needs and thus must be allowed to evolve as the resident's needs and the professional staff's assessment of those needs change over time, the court pointed out. **Beverly Healthcare Kissimmee v. Agency for Health Care Administration, __ So. 2d __, 2004 WL 177018 (Fla. App., January 30, 2004).**

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Student Nurse/Instructor: Court Discusses Host Hospital's Legal Liability.

A former hospital patient sued the hospital for negligence in the administration of one or more intramuscular injections of Demerol and Vistaril.

The injections were given by a student nurse under the direct supervision of her nursing instructor from her community college nursing program.

The patient alleged the student nurse was also under the direct supervision of an unnamed hospital staff nurse but later withdrew that allegation from his lawsuit.

The alleged error or omission by the student nurse was incorrect placement of the needle which punctured the sciatic nerve.

Hospital's Defense Not Hospital Employees

As a general rule persons and corporations are liable for the negligent errors and omissions of their employees whom they supervise and control but are not liable for errors or omissions of non-employee independent contractors over whom they have no right of control and do not control.

The patient's lawsuit was initially dismissed on the grounds the patient could not prove the student nurse and her instructor were hospital employees.

Expanded Definition of Hospital's Agent

The Court of Appeals of Ohio reversed the dismissal and reinstated the patient's lawsuit against the hospital.

In a patient-care setting the patient's expectations when seeking care are more important that strict legal technicalities.

Patients seeking care from a particular institution assume the care they will receive in the institution is provided by the institution. The institution cannot claim after the fact that independent outsiders provided such care. The patient's lawsuit will succeed, the court ruled, if the patient can show his expectations were to receive care only from agents of the hospital. **Lovett v. Lorain Community Hosp., 2004 Ohio 598, __ N.E. 2d __, 2004 WL 239927 (Ohio App., February 11, 2004).**

It is wrong for a court to throw out a patient's negligence lawsuit against a hospital for the errors or omissions of a student nurse and/or the student's nursing instructor on the grounds that neither was a hospital employee.

The important factor is to look for the patient's expectations when entering the hospital for medical care.

The patient looks to the hospital itself for the medical care he or she will receive while in the hospital.

The patient expects that all medical care provided in the hospital is being provided by the hospital rather than outside parties who are independent contractors with no direct connection to the hospital.

The patient most likely sees all hospital caregivers as agents of the hospital.

Unless the patient has been specifically informed and has agreed to accept care in the hospital from persons who are not directly associated with the hospital, all the patient's caregivers will be considered hospital agents for legal purposes.

COURT OF APPEALS OF OHIO
February 11, 2004

Home Health: Court Rejects Physician As Expert On Nursing Care.

The patient filed suit against her home health nursing agency for negligent IV antibiotic therapy at home after discharge from the hospital.

The IV antibiotic gentamicin was started at the hospital on orders from a physician at the hospital.

The physician's report fails to specify his qualifications to state the legal standard of care for nurses monitoring a patient in a home healthcare setting.

He stated what should have been done differently and why, but he did not differentiate between what the hospital did wrong and the home health nurses did wrong or state how the home health nurses are responsible for the patient's injury.

COURT OF APPEALS OF TEXAS
February 10, 2004

The Court of Appeals of Texas ruled it unfair to blame the home health nurses based on a physician's generalized statement of the risks of IV's and prolonged use of a potentially neurotoxic antibiotic.

The case was dismissed because the patient's physician/expert failed to state the specific standard of care for home health nurses continuing IV therapy through a port started at the hospital and how these home health nurses violated that standard. **Jones v. Ark-La-Tex Visiting Nurses, Inc., __ S.W. 3d __, 2004 WL 235075 (Tex. App., February 10, 2004).**

Patient Falls Getting Out Of Bed: Court Affirms Ruling Of No Nursing Negligence.

A seventy-four year-old patient was admitted to the hospital for treatment of a urinary tract infection.

While in the hospital he fell in his room and sustained a head injury involving a skin laceration and subdural hematoma. At the request of his family he was transferred to another hospital.

Nursing Negligence Alleged

Almost a year later the patient sued the hospital and his treating physician. The lawsuit alleged nursing negligence by the p.m. shift nurse who cared for him the evening he fell.

The judge directed the jury to return a verdict that no negligence was attributable to the nurse and then the judge dismissed the hospital from the case. After being allowed to deliberate, the jury returned a verdict of no negligence by the physician either. The Supreme Court of Illinois affirmed the judgment in all respects.

Fall-Risk Assessment

The patient had had a stroke and was partially paralyzed on one side. That impaired his ability to walk independently. He could not speak but could understand others and could respond with physical gestures.

He was categorized as having impairments that increased his risk of falling.

Close Nursing Observation

His nurse had all four bed rails up. His nurse twice caught him trying to get out of bed through the bed rails. Twice she cautioned him not to do try it again and he seemed to understand.

Physician Notified
No Posey / Ativan Ordered

After the third time she caught the patient trying to get out of bed the nurse phoned the treating physician. She reported what happened and noted also that the patient appeared to be getting agitated.

The physician expressly rejected the nurse's suggestion of a Posey vest on the grounds it would likely make the patient become even more agitated. He ordered a small h.s. dose of Ativan for agitation and for sleep and more Ativan prn that night.

The trial judge correctly rejected the patient's medical witness, a board-certified internist, as an expert on the legal standard of care for nurses.

Physicians generally have no first-hand knowledge of nursing practice except for observations of nurses in patient-care settings.

A physician who is not a nurse is no more qualified to offer expert testimony as to the standard of care for nurses than a nurse would be to offer an opinion as to the physician's medical standard of care, even though nurses stand shoulder to shoulder with physicians and observe medical procedures every day.

A situation which can give rise to allegations of nursing negligence occurs when a nurse fails to activate the institutional chain of command when a physician refuses to respond to a significant development. It is unlikely that any physician would be familiar with the policies and procedures involved in such a situation.

A physician is not a nurse and does not have direct knowledge of the nursing standard of care.

SUPREME COURT OF ILLINOIS
February 5, 2004

The nurse gave him one milligram of Ativan h.s. Although she expected him to sleep at least two hours she checked or had an aide check on him every half hour.

Five minutes after the nurse looked in and saw him sleeping, two hours after the Ativan, a technician heard a noise, went to the room and found him on the floor bleeding from a fresh head injury.

Board-Certified Internist
Rejected As Expert
On Nursing Standard Of Care

The patient's medical witness testified the patient's nurse should have initiated the hospital's nursing chain of command as advocate for her patient to have the treating physician's decision overruled not to order a Posey vest.

The internist also stated that the nurse should have had a sitter placed in the room for one-on-one supervision unless and until the Posey could be implemented, or should have placed him in the hallway where he could be constantly observed.

The trial judge allowed the physician to testify, over the hospital's objections, but then at the close of the case directed the jury to return a verdict of no negligence by the nurse.

Essentially the judge found that the physician did not have the qualifications to testify as an expert witness on nursing standards and practices.

Without his testimony there was no evidence of nursing negligence and no basis upon which the jury could even deliberate upon the issue of nursing negligence.

The court pointed to numerous case precedents stating that physicians, unless they happen to have credentials in nursing, are not qualified as experts in nursing theory or practice just because they are physicians.

The court said it was ironic for a physician to set himself up as an expert on the issue of a nurse's duty to go over a physician's head within the institutional chain of command. **Sullivan v. Edward Hosp., __ N.E. 2d __, 2004 WL 228956 (Ill., February 5, 2004).**

Premature Discharge, Discharge Plan Not Implemented: Court Blames Nurse For Multi-Million Dollar Verdict Against Health Plan.

The Court of Appeals of Texas recently approved a jury verdict of $13,050,000 against a medical insurance plan for negligence by the plan's nurse reviewer/patient care coordinator and the patient's treating physician.

The verdict included $3,050,000 actual damages to the family of the deceased patient and $10,000,000 punitive damages.

Lawsuit for Wrongful Death

A short summary of the complex scenario would focus on the fact the patient never got his oxygen at home after discharge from a skilled nursing unit associated with an acute-care hospital.

The next day the family had to call 911 to get the paramedics to take him back to the hospital emergency room. In the E.R. his blood pressure was 91/54 and his O_2 saturation was 77%.

This was the physiologic insult the medical experts would later testify resulted in the family having to agree to a DNR order in his chart, stop his dialysis and other heroic measures and allow him to pass away in the hospital seven days later.

Premature Discharge From Skilled Nursing Care

There were two prongs to the family's allegation the patient was discharged prematurely from skilled nursing.

First, his care needs simply did not allow him to be sent home.

Alternatively, his care needs did not allow him to be sent home before all the details were in place for his home care. A nurse arranging a discharge for a patient who will absolutely require a high level of home care should know better than to send a patient home abruptly at 9:00 p.m. on a Friday night, the court said.

The nurse reviewer claimed she faxed the physician's order for oxygen at home to someone at the home service company, but none of the paperwork could be located after the fact.

A health plan or health insurance carrier is liable to a patient enrollee if the plan or carrier fails to exercise ordinary care when making health care decisions affecting the patient enrollee.

Failure to exercise ordinary care is the traditional common-law touchstone for negligence.

A health care treatment decision can mean, among other things, a determination whether certain medical services are actually provided by the health care plan or any decision which affects the quality of the diagnosis, care or treatment provided to the plan's insureds or enrollees.

The law treats this situation basically the same as a lawsuit for professional negligence or malpractice.

The patient must present expert testimony as to the legal standard of care for the nurse or physician alleged to have been negligent, violation of the standard of care and medical cause-and-effect linking the violation of the legal standard of care to harm suffered by the patient.

COURT OF APPEALS OF TEXAS
February 12, 2004

Home Oxygen Not Implemented

The court faulted the nurse reviewer for not seeing to it that the oxygen equipment was actually set up and ready in the home and that someone would meet the patient in his home to get it started.

This allegation went hand-in-hand with the allegation it was highly improper to fax off some paperwork and send a patient home by ambulance late on a Friday evening right before the weekend.

The court further faulted the nurse reviewer for the Friday p.m. discharge because any discharge nurse should anticipate that no one from her office or the home health contractor would be answering the phone over the weekend. She herself had her phone pager turned off.

Physiologic Insult – Death

The patient was eighty-three years-old. He had been in the hospital for severe anemia, congestive heart failure, chronic obstructive pulmonary disease and renal failure. He had a pacemaker and had had several strokes over the preceding nine years.

He was discharged from the hospital to the hospital's skilled nursing unit for physical therapy strength training. He was getting three liters of O_2 through a nasal cannula.

The physician's discharge orders noted he was not having symptoms of congestive heart failure and his emphysema had improved.

However, the physician's orders specifically stated he was not to be sent home unless and until his O_2, all his medications, physical therapy and skilled nursing visits had been arranged for his home.

The medical experts testified the episode that sent him back to the hospital worsened his depression and caused him basically to give up his struggle to improve and thus it was the legal cause of his death.

Cigna Healthcare of Texas, Inc. v. Pybas, __ S.W. 3d __, 2004 WL 253941 (Tex. App., February 12, 2004).

Tubal Ligation Was Not Done: Court Discusses Nurse's Liability For Faulty Information.

After sorting out the complicated case record, the Court of Appeals of Georgia affirmed the jury's verdict that the patient's treating ob/gyn was not responsible for her unwanted pregnancy following a c-section delivery during which the physician did not perform a tubal ligation as she wanted.

Nurse's Negligence Not Attributed To Doctor

The patient sued her treating ob/gyn physician for negligence. She did not sue his professional corporation, his office nurse or the hospital. The jury found the physician was not negligent in his own right, because the patient did not bring her consent forms with her that she had signed with his office nurse some weeks earlier.

The court ruled that the office nurse was an employee of the physician's medical corporation. As a general rule a shareholder in a corporation is not personally seen as the employer of an employee of the corporation and is not personally liable for the employee's negligence.

The admitting nurses at the hospital did not bring it to the physician's attention that the patient requested a tubal ligation when she entered the hospital.

The physician would not be liable for the negligence of the hospital's admitting nurses, if they were in fact negligent.

Office Nurse Made Assumptions Did Not Check Medical Chart

The court's dis cussion pointed to fault by the office nurse, even though for technical legal reasons her fault or absence of fault did not determine the legal outcome.

The office nurse should have appreciated the consequences. The patient would be having sexual activity without contraception and risked an unwanted pregnancy. The nurse should not have assumed an important fact, that the tubal ligation had been done, just because the patient had signed the papers, without checking the operative report from the hospital.

DeVooght v. Hobbs, __ S.E. 2d __, 2004 WL 144244 (Ga. App., January 28, 2004).

Six weeks after the patient's c-section the office nurse told her her tubes had been tied and that contraceptives would no longer be necessary.

The office nurse simply assumed the procedure had been done on the basis that she had had the patient sign the forms for it. The nurse did not actually check the operative report.

The office nurse went over the consent forms with the patient, had her sign them and told her to bring them with her to the hospital when it was time for her to deliver her twins which she was carrying in a breech position that would require a c-section.

Included with the paperwork were the consent forms she signed for a tubal ligation.

The patient did not bring the paperwork with her when she went to the hospital and the physician did not do the tubal ligation.

The patient herself was negligent to some extent for not bringing her paperwork with her to the hospital as she was instructed by the office nurse.

COURT OF APPEALS OF GEORGIA
January 28, 2004

Suicidal Patient: Court Faults Hospital.

The Court of Appeals of Texas ruled there are grounds for a negligence lawsuit against an acute care hospital for placing a suicidal patient in a fourth-floor med/surg room with windows and screens that can be opened by the patient.

The patient had voiced suicidal ideation and had taken an overdose of Dilantin as a suicide gesture or suicide attempt. She was moved from the ICU to a med/surg room awaiting transfer to a psychiatric facility, went out on the fourth-floor window ledge, fell and broke her arm.

Even in a general-purpose hospital precautions must be taken for the safety of a suicidal patient, the court stated. This would include the room having window screens that cannot be opened by the patient from the inside. Better yet there should be non-breakable glass which would prevent the patient from getting out.

The court dismissed the patient's med/surg nurses from the case, being unable to find anything they personally did wrong.

Russ v. Titus Hosp. Dist., __ S. W. 3d __, 2004 WL 193192 (Tex. App., February 3, 2004).

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LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Assault: Court Upholds Criminal Conviction.

The somewhat agitated patient came to the nurse's station at 4:00 a.m. demanding his pain medication. The LPN said she would bring it to the room. Five minutes later an aide heard the patient screaming.

Several nursing assistants saw that the patient had a broken nose. The police were notified.

The Court of Appeals of Ohio, in an unpublished opinion, upheld the LPN's conviction for felonious assault and patient abuse. His license was taken.

The court rejected the LPN's argument the patient should not have been allowed to testify. The patient had Alzheimer's and a guardian had been appointed by the local probate court. However, the judge found no problem with his ability to perceive, recall or communicate accurately what happened and it was corroborated by others. **State v. Murphy, 2004 Ohio 638, 2004 WL 254217 (Ohio App., February 12, 2004).**

Admission Contract: Court Refers Wrongful Death Lawsuit To Arbitration.

Without passing judgment one way or the other on the validity of the underlying allegations, the Supreme Court of Alabama referred two wrongful death lawsuits against the same nursing home to arbitration.

The families argued the alternative dispute resolution program administered by the National Health Lawyers Association was a puppet for the health care and long term care industries and stacked the deck against patients for dispute resolution by industry insiders.

The court, however, could not find any proof submitted by the families in support of their allegations of bias. There also was no evidence that arbitration is inherently unfair to one side. **Briarcliff Nursing Home, Inc. v. Turcotte, __ So. 2d __, 2004 WL 226087 (Ala., February 6, 2004).**

Medical Records: Court Upholds Nursing Home's Efforts To Maintain Patient Confidentiality.

The daughter filed a medical malpractice lawsuit against the skilled nursing facility alleging substandard care was provided to her mother during her stay in the facility.

The daughter then approached the management of the facility for copies of all of her mother's treatment records.

The daughter presented a document the daughter stated was a power of attorney signed by her mother giving her authority to prosecute the legal action on her mother's behalf.

The facility questioned why it was only a photocopy, why pages were missing and whether the daughter could sign the document as a witness if she was the one who supposedly was to be given power of attorney. The facility referred it to their legal counsel.

A healthcare provider cannot release medical records to a third party without proper written permission from the patient.

It was proper for the nursing facility to question the daughter's alleged power of attorney from her mother and to refer the whole matter to the nursing home's legal counsel, who also acted properly denying the daughter's request.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINON
February 4, 2004

The daughter sued the facility's lawyer, alleging a conspiracy to retain the records so they could be altered and falsified, in violation of the state's consumer protection act.

The California Court of Appeal, in a unpublished opinion, ruled the nursing facility acted with all due concern for the mother's privacy and her right to medical confidentiality by refusing to give up the records without proper authorization, and also exonerated the facility's attorney from blame.

After four months in court the daughter did get copies of the complete chart, after it was established she did have her mother's consent to be provided with that information. **Starkey v. Covenant Care, Inc., 2004 WL 206209 (Cal. App., February 4, 2004).**