LEGAL EAGLE EYE NEWSLETTER

March 2006 *For the Nursing Profession* Volume 14 Number 3

Nurse As Patient Advocate: Nurse Should Have Questioned Why No Order Was Written.

The patient's coronary artery stent occluded ten days after he was discharged from the hospital after cardiac catheterization.

He sued the hospital for professional negligence. The Court of Appeals of Texas ruled that the patient's lawyers' nursing expert witness report did correctly state the legal standard of care for the hospital's discharge nurse, overruling a lower court judge's opinion to the contrary.

Nurse As Patient Advocate

In the hospital the patient had been taking Plavix, a medication meant to inhibit platelet aggregation that could cause thrombus formation.

The patient's discharge instructions, formulated by the cardiologist to be related to the patient by the hospital's discharge nurse, contained information for the patient about Plavix.

However, there was no prescription contained in the discharge orders for Plavix for him to take home.

The patient's nursing expert pointed to the Texas Nurse Practice Act as one of the legal bases for this nurse's duty to advocate for the nurse's patient. The Act expressly says that a nurse must *"clarify any order or treatment regimen that the nurse has reason to believe is inaccurate."*

The discharge instructions for the nurse from the physician included information about a medication the patient was taking in the hospital and was supposed to continue at home, but no prescription was written for the medication.

The nurse should have questioned the physician why no prescription was written for the take-home med.

COURT OF APPEALS OF TEXAS
February 2, 2006

General principles of nursing practice require a nurse, as patient advocate, to question the physician about any obvious inconsistencies in the physician's orders, the court ruled.

In this case the nurse was expected to teach the patient about a medication that the patient probably should be getting, which had not actually been prescribed for the patient. A nurse cannot ignore such a glaring incongruity.

Nurse As Expert Witness

The court accepted the patient's nursing expert as a fully qualified expert on nursing standards of care.

However, the court dismissed the patient's nursing expert's opinion about the cause-and-effect relationship between the lack of anticoagulant drug therapy and the patient's stent occlusion. That was beyond a nurse's qualifications. The issue was, nevertheless, addressed in the patient's expert cardiologist's medical report.

The general rule in malpractice is that nurses, not physicians, are recognized as experts on nursing care standards, while only physicians can testify as experts on the physiologic cause-and-effect link between nursing negligence and harm to a patient. **Martin v. Abilene Regional Medical Center, 2006 WL 241509 (Tex. App., February 2, 2006).**

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March 2006

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Disability Discrimination: Nurse Not Entitled To Keep Extraordinary Accommodation.

In a very complicated legal opinion, the US District Court for the Eastern District of New York ruled that a visiting nurse service did not commit disability discrimination against a former management-level nurse employee.

The nurse was badly injured in an off-the-job motor vehicle collision and was not able to continue in her position.

She was eventually offered flexible, part-time work on selected management-level projects, many of which she could do at home. The court pointed out that this arrangement was never looked upon as a regular position with the company and no formal job description was ever compiled.

At some point the projects the nurse was doing were merged into a newly-created management-level social worker position and the nurse was advised there was nothing left for her to do. Her part-time salary and full-time benefits ceased. She sued for disability discrimination.

No Right To Keep Extraordinary Accommodation

The court's legal analysis focused on the purposes of the Americans With Disabilities Act (ADA), to help disabled persons obtain and continue gainful employment by outlawing discrimination and by requiring reasonable accommodation.

However, it is well settled that it would go far beyond reasonable accommodation to require an employer to create a new position just to meet a disabled employee's needs. That is extraordinary, not reasonable, accommodation.

The court was of the opinion that employers should be and will be encouraged to make voluntary extraordinary accommodations they have no obligation to make if employers who go beyond their obligation of reasonable accommodation are allowed to discontinue extraordinary accommodations when legitimate business considerations make extraordinary accommodations no longer realistic. **Exarhakis v. Visiting Nurse Service of New York, 2006 WL 335420 (ED.N.Y., February 13, 2006).**

The courts have settled the issue that an employer need not create a new job just to accommodate the needs of a disabled employee. It is considered unreasonable or extraordinary accommodation.

The legal question in this case is whether an employer who offers an extraordinary accommodation beyond what is required by law, in this case a new job created solely to accommodate an employee who became totally disabled, can be liable for disability discrimination when continuing that accommodation becomes unrealistic for the employer.

For example, many case precedents have said that an employee has no right to have temporary light-duty assignments made permanent when the employee is unable to perform the essential functions of the permanent job the employee had when the employee became disabled or any other permanent job that exists within the organization.

Employers should not be penalized for exceeding their legal obligations.

UNITED STATES DISTRICT COURT
NEW YORK
February 13, 2006

Patient Logs vs. Patient Records: Court Discusses Quality Review Confidentiality.

The parents sued the hospital claiming that medical and nursing negligence in the neonatal intensive care unit (NICU) leading to repeated episodes of hypoxia and ischemia resulted in permanent brain injuries to their child.

The underlying allegations of negligence leveled against the hospital have not yet been decided in a court of law.

The preliminary issue recently discussed by the Court of Appeals of Texas was the scope of pre-trial discovery that would be permitted to allow the parents' attorneys to build their case against the hospital from records made and kept by the hospital.

Admissions Logs Are Confidential Quality Review / Peer Review

The court ruled the hospital would not be required to cull its admissions logs for the NICU to garner statistics showing the number of <1000 gm infants admitted, the number of such infants transferred to other facilities and the number who were not transferred and died at the hospital.

The admission logs were kept at the behest of the Joint Commission solely for internal quality review. They are privileged from discovery in civil litigation.

Patients' Charts Not Covered By Quality Review / Peer Review Privilege

On the other hand, to the extent it would not be unduly burdensome to the hospital and if patients' actual identities are protected, it would not be out of line for the parents' attorneys to ask the judge to order the hospital to compile the same data from patients' hospital charts for the same time frame in question.

Patients' charts are covered by medical confidentiality but they are not covered by the privilege of confidentiality which applies to quality review and peer review documents. **In re Christus Health Southeast Texas, 2006 WL 302229 (Tex. App., February 9, 2006).**

No-Spanish Rule: Court Finds Discrimination But Sees No Grounds To Award Damages.

The employee in question was not of Hispanic national origin. She grew up speaking English and learned Spanish in high school.

Through a very complicated series of events she got in trouble for speaking Spanish with Spanish-speaking Hispanic co-workers at the hospital, in violation of the hospital's no-Spanish, English-only policy.

The court disallowed her discrimination lawsuit, not being able to find a connection between her speaking Spanish on the job in violation of hospital policy and her supervisors' disciplinary actions over which she sued.

The United States District Court for the District of New Mexico got the opportunity in this case to review the current legal status of on-the-job English-only rules *vis a vis* the US Civil Rights Act.

Simply stated, it is discriminatory and unlawful for employers to prevent minority members from speaking to one another on the job in their native national languages if they so choose. **Barber v. Lovelace Sandia Health Systems, __ F. Supp. 2d __, 2005 WL 3664323 (D.N.M., December 31, 2005).**

An "English only" rule has to be based on some legitimate business justification or it will be presumed to be national-origin discrimination in violation of the US Civil Rights Act.

An employer may have a rule requiring that employees speak only in English at certain times when the employer can show that the rule is justified by business necessity.

For example, an employer may have to insist that employees who deal with the public do so only in English or that employees speak only English when dealing with co-workers who do not speak their language.

EEOC regulations require employers to notify their employees in advance of their legitimate expectations for use of English on the job.

UNITED STATES DISTRICT COURT
NEW MEXICO
December 31, 2005

LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

ISSN 1085-4924

© 2006 Legal Eagle Eye Newsletter

Indexed in
Cumulative Index to Nursing & Allied Health Literature™

Published monthly, twelve times per year.
Mailed First Class Mail at Seattle, WA.

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Stress: High Cholesterol Can Be A Nurse's Occupational Disease.

In a recent unpublished opinion, the Court of Appeal of California accepted the proposition that a stroke coming on after increasing serum cholesterol levels can be considered a stress-related occupational disease for an ICU nurse.

The nurse's medical chart with her general practice physician showed a spike in her total cholesterol from 195 to 246 after she transferred to the ICU, then a moderate decline to 233 when she began taking medication, then a rise to 276 just before she stroked.

No Baseline Cholesterol Levels In The Doctor's Records

However, in this particular case, the court pointed out the nurse's medical chart did not contain any total-cholesterol levels going back before she started working in the ICU. More importantly, the court said, her doctor had no pre-ICU baseline cholesterol risk ratios for her.

If it could have been proven that her cholesterol risk ratio was benign to start with, but shifted in the direction of greater risk after she transferred to the ICU, it might have been possible to prove a connection between her high-stress job in the ICU and her stoke, making her stroke an occupational disease covered by worker's compensation. **Paradise Valley Hosp. v. Worker's Comp. Appeals Board, 2006 WL 75348 (Cal. App., January 13, 2006).**

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Patient vs. Patient Assault In Long Term Care: Court Finds Violation Of Federal Regs.

An elderly gentleman was admitted to a long term care facility with a diagnosis of organic brain syndrome.

For almost three years at the facility he had numerous incidents of aggression toward staff and other residents. Some of the episodes involved physical assaults on other residents, others were merely verbal.

He was seen numerous times by psychiatric professionals. Recommendations were made that he needed a structured behavior program, something the facility in question did not offer. With organic brain syndrome he was not a candidate for treatment in a psychiatric hospital.

At times his acting out would subside, and once did subside for almost a year with close medical monitoring of his psychiatric medications. At other times he did act out in ways that were quite alarming to facility staff.

The administrator began the process of involuntarily transferring him to a facility with a structured behavior program for patients like him, but the state long term care ombudsman told the administrator she would block any attempt to move him.

He then attacked a vulnerable female resident who had a walker, pushing her against the wall. The resident died from her injuries. The episode prompted a state investigation.

Federal Regulations

The department found a violation of Federal regulations which require long-term care facilities to attend to their residents' psychosocial needs.

Regulations dealing with abuse and neglect by facility staff were not violated.

The Court of Appeals of Indiana ruled expressly that the administrator should have known that the ombudsman had no legal authority to block an involuntary transfer and should not have aborted the process on that basis. **Board of Health Facility Administrators v. Werner, __ N.E. 2d __, 2006 WL 306385 (Ind. App., February 10, 2006).**

The facility violated Federal regulations for long-term care, specifically 42 CFR 483.25(f):

(f) Mental and Psychosocial functioning.

Based on the comprehensive assessment of a resident, the facility must ensure that--

(1) A resident who displays mental or psychosocial adjustment difficulty receives appropriate treatment and services to correct the assessed problem, and

(2) A resident whose assessment did not reveal a mental or psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern was unavoidable.

The regulations at 42 CFR 483.13(c) dealing with abuse and neglect by staff were not violated.

The overall quality of care at the facility was actually quite good. The administrator should have been censured, not suspended.

COURT OF APPEALS OF INDIANA
February 10, 2006

Refusal To Attend Interview: Court Finds Misconduct.

A certified nurses aide working in a residential care facility was asked to attend a meeting with her supervisor to discuss her job performance.

The aide refused on the grounds she was afraid she might say something that might lead to her termination.

Her supervisor warned her that refusal to attend the meeting in and of itself would lead to her termination. She still refused.

The New York, Supreme Court, Appellate Division, ruled that refusal to attend a corrective interview with a supervisor, after having been warned of the consequences, amounts to misconduct justifying termination for cause. **Matter of Daniul, 807 N.Y.S. 2d 477 (N.Y. App., January 26, 2006).**

Patient Found On Floor: Court Sees No Nursing Negligence.

On admission to the hospital the patient was assessed as a low fall risk and was given bathroom privileges. While in bed he had a face mask for O_2 because he had been having shortness of breath.

He was found face-down on the floor in his room without his mask. He had aspirated vomit into his lungs. A code was called and then he was airlifted to a regional trauma center where he died.

The Court of Appeal of Louisiana ruled that the adequacy of a fall-care plan and the adequacy of a nursing care plan to monitor a patient on O_2 are not judged after the fact with 20/20 hindsight, just because a tragic incident occurs. The court upheld a judgment in favor of the hospital dismissing the case. **Henderson v. Homer Memorial Hosp., __ So. 2d __, 2006 WL 217933 (La. App., January 27, 2006).**

No Seatbelt: Wheelchair Patient Injured In Van Accident.

A wheelchair-bound patient was being transported in the nursing home's van to a dental appointment when the nurse driving the van had to hit the brakes to avoid a collision with another vehicle.

According to the Supreme Court of Arkansas, the patient was not strapped into her wheelchair. The court record did not indicate whether the wheelchair itself was secured from moving inside the van.

The patient was thrown forward and hit her head and face on the seat in front of her and was taken back to the nursing home lying on the floor of the van.

The injuries from the accident started a downward spiral in her condition. As her mood, mobility and appetite decreased, she began to suffer complications like contractures, bedsores and urinary tract infections. Eventually she died from sepsis from a decubitus ulcer. The jury's award of damages against the nursing home and its corporate parent companies was almost $2,000,000. **Health Facilities Management Corp. v. Hughes, __ S.W. 3d __, 2006 WL 301084 (Ark., February 9, 2006).**

Post Surgical Drainage: Jury Believes Family, Awards Damages.

The Court of Appeal of Louisiana upheld a large verdict for the family of a post-surgery patient who died in the hospital after going into cardiac arrhythmia.

The jury discounted the nurses' testimony only 5 – 10 cc's of fluid was in his drain reservoirs. The jury accepted the family's testimony his back and bed linens were covered with blood right before he coded. **LeBlanc v. Walsh, __ So. 2d __, 2006 WL 329839 (La. App., February 14, 2006).**

Misappropriation Of Resident's Funds: Court Places Aide On Permanent Disqualification List.

Misappropriation is a term used in the statutes and regulations governing the nursing home industry.

Misappropriation is not a technical legal term. In court the word is given its plain and ordinary meaning from the dictionary.

Various dictionaries define misappropriation as dishonest diversion of another person's money or property for one's own use.

Undue influence means a person uses dishonest motives to substitute his or her will for the will of another.

Undue influence is influence amounting to over-persuasion, force or coercion. The law says coercion occurs when one person exploits another person's special vulnerability.

With factors present in the donor like extreme age and impaired mental or physical condition, the courts can easily see undue influence.

Mental debility does not have to amount to full-blown incompetence to find undue influence.

Another factor is whether there was independent advice before the transaction.

MISSOURI COURT OF APPEALS
February 14, 2006

An aide caring for an elderly patient in a nursing home wrote one of the patient's personal checks to herself in the amount of $15,000. The aide's name and the amount of the check were in the aide's handwriting. The signature on the check was genuinely the patient's own.

The aide endorsed the check on the back and deposited it in her bank account. The patient's niece, who had legal power of attorney for the patient, discovered the check about a month later and reported it to the facility's administrator. The administrator immediately contacted the state Department of Health and Senior Services. The Department called the local police who were able to arrange for recovery of the funds from the aide's bank account.

The Missouri Court of Appeals upheld the Department's decision to place the aide's name on the registry of persons permanently barred from working with vulnerable adults.

The Law Closely Scrutinizes Vulnerable Persons' Gifts To Caregivers

The aide claimed the patient voluntarily gave her the funds for a down payment on a home purchase.

The court pointed out that gifts and bequests from vulnerable persons to caregivers have to be closely scrutinized for undue influence.

Undue influence is presumed when a caregiver receives a substantial gift from a patient who is vulnerable because of age and physical and/or mental infirmity. The caregiver has the burden of proof that the gift was knowing and voluntary.

No Trusted, Independent Advice Prior to the Transaction

The most telling factor for the court was that the patient was not given the opportunity to obtain independent advice from a trusted person, such as the niece who held her power of attorney, before going ahead with signing the check. **Miller v. Dunn, __ S.W. 3d __, 2006 WL 327850 (Mo. App., February 14, 2006).**

Islamic Nurse: Court Discusses Religious Discrimination Issues.

The Superior Court of New Jersey carefully considered the complex allegations behind an Islamic nurse's religious discrimination case and ruled that, on balance, her hospital employer's actions were justified.

Anti-Muslim Remark By Supervisor

The nurse first pointed to the fact, which was corroborated by the testimony of others, that her supervisor had once said she did not want to hire a Muslim.

The court pointed out, however, that the nurse, a Muslim, was in fact hired. An employee or applicant for employment must suffer some sort of adverse employment action to have a discrimination case, under the legal analytic framework set down by the US Supreme Court, and since she was actually hired there was no adverse employment action.

The supervisor, when confronted, did apologize. The court said, in general, that one biased remark by a supervisor, standing alone, is not enough over which to sue.

Religion vs. Seniority Rights

The Islamic nurse wanted July 2nd off to attend a wedding which she stated was a religious celebration in her culture.

Her supervisor, however, told her that time off on the July 4th holiday weekend had to be allocated strictly on the basis of seniority under the hospital's nurse-staffing guidelines. The court pointed out that the general rule is this situation is that one employee's religious preference is only secondary to others' seniority rights.

Christmas / Non-Christian Employee

The Islamic nurse also objected to being required to work on Christmas. She claimed it was religious discrimination to force a non-Christian to work on a Christian holiday or holy day so that a Christian employee could take the day off.

The court ruled it simply is not religious discrimination to expect an employee to work on a day which has religious significance to others but does not have significance to the employee in question. **<u>El-Sioufi v. St. Peter's University Hosp.</u>, 887 A. 2d 1170 (N.J. App., December 29, 2005).**

In religious discrimination cases the courts use the same format for analysis as with other forms of discrimination.

Does the employee belong to a minority group?

Was the employee performing the job at a level that met the employer's legitimate expectations?

Did the employee suffer an adverse employment action?

Did other employees, nonmembers of the same minority group, not suffer similar adverse employment action?

If the answer is "yes" to all four questions the employer has to show a legitimate, non-discriminatory reason behind its actions.

In practical terms the courts look for thorough documentation of the employee's shortfalls and of the corrective action that was taken to convey the employer's expectations.

The employee gets the last word, to try to show that the issues the employer has raised are only a pretext behind an unlawful discriminatory motive, if that is truly the case.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
December 29, 2005

Prison Nursing: Court Sees No Deliberate Indifference To Serious Medical Needs.

A state prisoner in Texas sued two nurses, a physician's assistant, a physician and the University of Texas Health System which provided health care in the institution.

He had a mild heart attack. A nurse in the prison clinic did three EKG's over a two hour period and did not release him to his cell until a normal EKG was obtained.

A second nurse gave him medications for indigestion, as he was complaining of symptoms of indigestion, after another EKG was non-specific for cardiac signs.

A prisoner incarcerated in a state or federal institution can sue for violation of his Constitutional rights if a doctor, nurse or other healthcare provider has been deliberately indifferent to the prisoner's serious medical needs, that being considered a form of cruel and unusual punishment outlawed by the 8th Amendment.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
February 15, 2006

Even if the second nurse was negligent in her diagnosis, the nurse did treat him appropriately for the condition she genuinely believed he had. Care from the first nurse was completely appropriate. The US Circuit Court of Appeals for the Fifth Circuit ruled the suit was frivolous. **<u>Holloway v. Oguejiofor</u>, 2006 WL 346304 (5th Cir., February 15, 2006).**

Shower Chair Breaks: Court Allows Lawsuit To Go Forward.

A paraplegic was a patient in the hospital for treatment that was not specified in the court record.

The court record did indicate, however, that the patient was independent in his activities of daily living such as transferring himself from his wheelchair to a bed or another chair.

On the morning of his scheduled discharge he asked to take a shower. A nurse placed a shower stool in his shower and allowed him to transfer independently to the shower stool. After he sat on the stool and leaned back, the back broke off and he fell against the shower stall wall on his way to the floor, injuring his hip.

The cause of his injury was one or more of the metal screws holding on the back of the shower stool had rusted from exposure to moisture in the shower. The patient sued the hospital and the manufacturer of the shower chair.

This is a case of ordinary negligence, not medical malpractice.

COURT OF APPEAL OF LOUISIANA
January 25, 2006

The Court of Appeal of Louisiana ruled that this was not a case of medical malpractice as far as the hospital was concerned. It was a case of ordinary negligence based on the hospital's failure to inspect the shower chair for moisture-related deterioration which could pose a risk of harm to a patient.

The legal significance is that the patient would not be required to submit expert medical testimony to a pre-lawsuit medical review panel, as in a medical malpractice case, and would not need expert testimony when the case went to trial. **Wilson v. Invacare Corp., __ So. 2d __, 2006 WL 167675 (La. App., January 25, 2006).**

Evidence Missing From The Chart: Judge Should Have Told The Jury They Could Draw Their Own Conclusions.

When a healthcare provider loses or destroys evidence that is crucial to a patient's ability to sue for malpractice, the jury is allowed to draw its own conclusions whether the evidence would have helped the patient and hurt the provider in the lawsuit.

The patient's lawyer has the right to ask the judge to instruct the jury that the healthcare provider must come up with a satisfactory explanation why the crucial evidence is missing. If the provider's explanation is unsatisfactory, the jury is allowed to conclude that the evidence would have been damaging to the healthcare provider's position in the lawsuit.

In this case the judge was wrong to ignore the legal principle of spoliation of the evidence and to refuse to give such an instruction.

The jury's verdict exonerating the hospital for the patient's death must be overturned and a new trial will be held in which the jury will be given proper instructions.

COURT OF APPEALS
OF SOUTH CAROLINA
January 23, 2006

The otherwise healthy thirty-seven year-old patient went to post-anesthesia recovery after routine surgery to remove his cancerous thyroid and certain lymph nodes from his neck.

After two hours in post-anesthesia recovery, where he had an oxygen mask and pulse oximeter, he was transferred to an acute-care floor designated as the pediatric unit, without his oxygen or the oximeter. He coded and died after two and one half hours on the pediatric unit.

His post-mortem showed he died from respiratory failure from post-surgical neck swelling that compromised his airway.

The family's attorney's theory was that the nursing staff on the pediatric unit were unfamiliar with care of adult post-thyroidectomy patients, failed to appreciate the possibility that hematoma at the surgical site could obstruct his breathing, failed to monitor him closely and failed to have an adult tracheostomy kit at the beside as a routine precaution in case there happened to be a code.

Crucial Evidence Was Not In The Chart

Lab results for the blood gases drawn during the code were simply gone from the chart, as was his vital signs nursing flow sheet from the pediatric floor.

Both pieces of documentation, the family's lawyer argued, could have supported the lawyer's case of inadequate monitoring of his respiratory status and could have rebutted the hospital's theory of a sudden, unexplained heart attack.

The Court of Appeals of South Carolina ruled that the trial court judge should have instructed the jury, as the family's lawyer insisted, that they were allowed to draw negative inferences against the hospital based on the fact that crucial evidence was missing. **Stokes v. Spartanburg Regional Med. Ctr., __ S.E. 2d __, 2005 WL 3692613 (S.C. App., January 23, 2006).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Labor Law: Hospital Must Collect Union Dues, Fire Non-Union Nurses. Court Throws Out Arguments Based On Nursing

The US Court of Appeals for the Eighth Circuit has upheld an order of the US National Labor Relations Board (NLRB) requiring a hospital to discharge its nurses who refused to pay the union initiation fee and union dues as required by the union-security clause in the nurses' collective bargaining agreement.

The court overruled several arguments made by the hospital.

State Law

As a general rule, the US National Labor Relations Act (NLRA) does not permit the NLRB or the US courts to enforce a clause in a collective bargaining agreement which requires an employer to violate state law.

State law (Missouri) does require hospitals to maintain adequate levels of nurse staffing to meet their patients' needs. However, according to the court, that does not invalidate a union-security clause requiring a hospital to discharge a certain number of its nurses.

Nursing Shortage / Public Policy

Even if the hospital's statistics are accurate that there is a nursing shortage, that is no justification to ignore a union-security clause, the court said. The court pointed out the hospital had dealt with a nurses' strike in the past by hiring temporary replacement workers and by shifting patients and nurses between locations affected and not affected by the work stoppage.

Congressional Intent

The court found no basis for the argument the NLRA gives special treatment to health care employers with regard to union-security clauses.

Current Union Contract

The court would not consider the question whether the 2001 union contract (union security clause) or the newer 2004 contract (no union security clause) actually applied to this case as the hospital had not raised that issue with the NLRB. **St. John's Mercy Health System v. NLRB, __ F. 3d __, 2006 WL 229912 (8th Cir., February 1, 2006).**

Nurse Suspended, Unable To Wash Hands: Court Throws Out Disability Discrimination Lawsuit.

A nurse's supervisor suspended her for a month after the nurse fell on the ice in her own driveway at home and needed to wear a hand splint prescribed by her physician for a broken index finger. The reasons her supervisor gave for suspending her were time off to heal from her injury and time off as discipline for her co-workers' complaints of lack of professionalism.

The nurse sued for disability discrimination, claiming that her supervisor's reaction to her co-worker's complaints was just a pretext for disability discrimination over her hand injury.

The hospital countered the lawsuit by arguing that the splint the nurse was wearing prevented her from washing her hands, handwashing perhaps dozens of times each day being a legitimate and indispensable occupational requirement for a hospital nurse.

The threshold question in any disability discrimination lawsuit is whether the employee has a disability as disability was contemplated by the Americans With Disabilities Act (ADA).

A nurse who must temporarily wear a hand splint due to an injury from falling on the ice does not have a disability.

The court does not have to resolve any other issues.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
February 8, 2006

The US Court of Appeals for the Third Circuit pointed to a simple legal rationale for dismissing the case: the nurse did not have a disability.

A temporary medical condition, even if it prevents an employee from doing one particular job, is not a disability unless it substantially impairs a major life activity.

Impairment of a major life activity is the term used in the ADA, the court said, to rule out relatively minor conditions from being considered disabilities. Reasonable accommodation is not necessary and a discrimination suit is not possible if there is no disability. **Vierra v. Wayne Memorial Hosp., 2006 WL 288665 (3rd Cir., February 8, 2006).**