LEGAL EAGLE EYE NEWSLETTER

March 2010 *For the Nursing Profession* Volume 18 Number 3

Emergency Room: US Court Lets Patient Raise The Issue Of Timeliness Of Services.

The patient arrived at the hospital's E.R. at 5:00 p.m. with shortness of breath and severe chest pain.

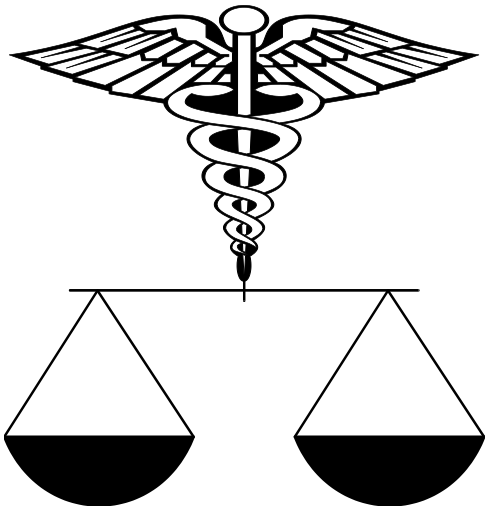
Twenty minutes later the patient was seen by a hospital employee he assumed was a nurse who drew blood and started an EKG. Thirty minutes after that a chest x-ray was obtained.

Over the next several hours, the patient alleged, although the heart monitor was in place, no oxygen or "clot busting" medications were offered or provided to him.

A physician eventually saw the patient. The physician explained his options to the patient, clot busting medications or a stent. The physician recommended the latter. The patient agreed with the physician's recommendation and was taken to the heart catheterization lab. The catheterization procedure was completed about 11:30 p.m.

The patient sued the hospital. One of his allegations was that the hospital violated his rights as a patient under the US Emergency Medical Treatment and Active Labor Act (EMTALA).

The EMTALA was enacted to prevent disparate treatment of uninsured and indigent patients by private hospitals, patients who were sometimes sent off to public receiving hospitals or sent home without an appropriate screening examination or stabilizing treatment.



The US Emergency Medical Treatment and Active Labor Act requires every hospital which has an emergency department to provide every emergency-department patient with the same examination and treatment as every other patient with the same presenting signs and symptoms, regardless of insurance or ability to pay privately.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
February 5, 2010

The appropriateness of a patient's examination and treatment in the emergency room is judged for purposes of the EMTALA by comparison with the standard examination and treatment the hospital gives to other patients with the same presenting signs and symptoms.

This patient received the same basic screening examination and stabilizing treatment as any other patient at that hospital for signs and symptoms of myocardial infarction, that is, nursing triage, lab tests, EKG, physician consultation and cardiac catheterization.

However, according to the US District Court for the Eastern District of Pennsylvania, when a patient sues for violation of the EMTALA the court must compare not only what basic services but also how promptly the same services were provided to the patient in comparison with other patients with the same presenting signs and symptoms.

Unreasonable delay in providing acutely needed care can be a factor that effectively amounts to denial of treatment, the Court said.

The Court declined to dismiss the hospital from the case simply for being able to show that the patient eventually did get all the same care as any other emergency chest-pain. **Byrne v. Cleveland Clinic, __ F. Supp. 2d __, 2010 WL 481007 (E.D. Pa., February 5, 2010).**

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Emergency Medical Treatment And Active Labor Act
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Family And Medical Leave Act - Cardiac Rehab Nurse/Diabetic
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Bed Rail Entrapment/Positional Asphyxia - Arbitration Agreement
Neonatal Intensive Care - Skilled Nursing/Medicare Regulations

E.R. Trauma Care: Court Faults Nursing Assessments.

The patient was brought to the E.R. by emergency-response paramedics at 3:44 a.m. after a tractor-trailer rollover accident at 2:30 a.m.

He arrived in an ambulance on a backboard with a cervical collar in place. He had lacerations to both sides of his head, pain in his ribs and left shoulder and pain and swelling on the left side of his neck.

He was seen immediately by the E.R. triage nurse. Although he had obvious head trauma, there had been no loss of consciousness, no headache and no numbness or weakness.

A physician did not see the patient until 6:07 a.m. By that time the nurse had allowed the patient to remove the cervical collar, although the rationale was reportedly not documented in the nursing progress notes.

The physician's exam focused on severe right-side chest pain. A chest x-ray showed the patient's 7th through 10th ribs were fractured. A chest CT confirmed the x-ray findings and an abdominal CT was negative.

Signs of Head, Neck Injuries Not Reported to Physician

Around 12:00 noon a nurse noted in the chart a "new onset of weakness." That finding was never explained more fully in the chart or communicated to the charge nurse or to a physician.

The patient also started having pain in his neck and left shoulder and his arm went numb. That also was never communicated to anyone by the patient's nurse.

The patient was sent home at 2:00 p.m. without a head CT being done. The next morning he was found unresponsive by his family and taken to a different hospital were a head CT revealed multiple cerebral infarcts and a fracture at C-3. The patient died at that hospital six days later.

The US District Court for the Northern District of New York made a preliminary ruling endorsing a legal nurse consultant's opinion that substandard ongoing nursing assessment could have been a contributing factor in the physicians not seeing the need for a head CT scan that would have revealed the true extent of the patient's injuries. **Miller v. Wilson Memorial, 2010 WL 411002 (N.D.N.Y., January 27, 2010).**

Substandard ongoing nursing assessment could have been a factor in the physicians not getting a head CT scan which would have revealed the full extent of the patient's injuries.

A rollover motor vehicle accident must be seen as a high-risk situation.

A patient who comes in in an ambulance immobilized with obvious head injuries must be triaged with an acuity level requiring immediate assessment by a physician.

Nursing neurological assessment is required at least every two hours, unless ordered more frequently by a physician.

Neurological assessment has to include recording pupil size and reactivity, level of consciousness, orientation and Glascow Coma Scale scoring.

Hospital policy for the E.R. required pain assessments every two hours, that is, assessment and documentation of the duration, location and severity of the pain.

New onset of weakness is an ominous neurologic sign, but there was no documentation that it was reported to the E.R. charge nurse or to a physician.

UNITED STATES DISTRICT COURT
NEW YORK
January 27, 2010

E.R.: Nurse Incorrectly Assessed Child's Acuity Level.

When the eighteen-month-old's father filled out the paperwork on arrival in the hospital's E.R. he wrote "blue/purple lips" as the reason for the visit.

When the E.R. nurse first spoke with the father she obtained a history that the child had been vomiting and having diarrhea for the previous eighteen hours. The child's rectal temperature was 97.5° F.

The nurse triaged the child's acuity level as 3/5. At this hospital that meant the child could wait up to one hour to be seen by the physician.

The child sat with his father in the E.R. waiting room for three hours without being seen by the physician and without being reassessed by the nurse.

The father and other people kept telling the receptionist the child seemed to be getting worse.

SUPERIOR COURT
LOS ANGELES COUNTY, CALIFORNIA
December 9, 2009

The child had become severely dehydrated by the time he was actually seen by a physician. He was diagnosed with viral myocarditis. The treatment team had difficulty getting venous access for an IV. Once IV's were started in his legs his left foot began to swell due to the fact his venous circulation was shutting down to protect blood supply to his core organs. The child's foot had to be amputated.

The case filed in the Superior Court, Los Angeles County, California settled for $420,000, more than half of which was paid by the nurse and her nursing agency.

The basis for the suit was that the child should have been seen by the physician within thirty minutes and not allowed to sit unattended for several hours. **Confidential v. Confidential, 2009 WL 5854045 (Sup. Ct. Los Angeles Co., California, December 9, 2009).**

Suicidal Patient: Court Rules Clinic Staff Acted Appropriately, Dismisses Patient's Lawsuit.

A medical assistant in the hospital's outpatient dermatology clinic answered what started out as a seemingly routine call from a patient who needed to cancel her appointment.

When she asked the patient why she needed to cancel, the patient said she just did not want the doctor to worry about her if she did not show up.

From the patient's tone the medical assistant alertly began to sense that something more serious might be going on. A little further into the conversation the patient stated she was embarrassed to be seen right now because she had not combed her hair or gotten dressed in a while, she did not feel good inside and her life was not worth living. She went on to say she had lost the battle, every day was too hard and she did not want to go on.

Patient's Phone Call Handled As a Suicide Threat

The medical assistant kept the patient on the phone and kept her talking. At the same time she let her charge nurse know what was happening. The charge nurse contacted a hospital social worker. The social worker knew it was not right to try to assess suicide risk over the phone, so the social worker called 911. The 911 operator dispatched police to the patient's residence to bring her to the hospital.

All the people at the hospital acted appropriately. There is absolutely no evidence to the contrary.

The state mental health treatment statute immunizes public and private agencies and their employees from civil damages lawsuits, provided the employees' actions in performance of their duties were in good faith without gross negligence.

The hospital's attorneys offered the patient the chance to dismiss her lawsuit voluntarily, and threatened to ask the judge to penalize her for filing a frivolous lawsuit if she refused.

The judge was correct not only to dismiss the patient's lawsuit but also to enter judgment against the patient in favor of the hospital for $1,500 for filing a frivolous lawsuit.

COURT OF APPEALS OF WASHINGTON
January 25, 2010

The patient would not open the door to let the police into her apartment, so they got the apartment manager to let them in.

Paramedics had to strap the uncooperative patient to the gurney for transport. At the hospital the E.R. triage nurse noted her patient was disheveled, anxious, tearful and withdrawn but she denied any suicidal ideation or plan.

An advanced practice psychiatric nurse assessed her and recommended involuntary hospitalization for major depressive disorder with suicidal intent. The county mental health professional, however, made the final judgment call not to admit her for treatment, as the evidence of current suicidal intent was not sufficient.

The patient was discharged home at 1:00 a.m. after being at the hospital seven hours.

Early that same morning the patient called back and spoke with the charge nurse in the dermatology clinic to complain about how she had been treated.

Charge Nurse Told Medical Assistant To Document Her Conversation

The patient threatened to sue for $10.5 million. The charge nurse told the medical assistant right away to write out as completely as she could remember her conversation with the patient the day before. That proved very useful later on.

The Court of Appeals of Washington upheld the judge's decision to dismiss the patient's lawsuit and to order her to pay the hospital $1,500 for filing a frivolous lawsuit. **Thomas v. Univ. of Wash., 2010 WL 276107 (Wash. App., January 25, 2010).**

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Transfusion: Delay Leads To Patient's Death, Settlement.

The patient was admitted to the hospital with a diagnosis of gastrointestinal bleeding.

The next day a resident physician ordered a blood transfusion. It took the blood bank six hours before they were able to notify the patient's caregivers that the transfusion was ready.

Three hours later, without the blood products having been picked up from the blood bank or the transfusion started, the patient died from cardiac arrest related to his internal bleeding.

The patient's family sued the resident physician, two staff nurses, the hospital and several on-call physicians for negligence. The lawsuit filed in the Superior Court, Monmouth County, New Jersey was settled for a total payment of $1,175,000. **Estate of Bravo v. Jersey Shore Univ. Med. Ctr., 2010 WL 354363 (Sup. Ct. Monmouth Co., New Jersey, January 5, 2010).**

Whistleblower: Court Turns Down Tech's Lawsuit.

Nearly two years after he last complained to his supervisors about certain patient-safety issues, an imaging technician was fired over an angry outburst at a co-worker in front of a patient.

The technician sued the hospital, claiming to be a whistleblower actually fired in retaliation for his complaints.

The technician complained to his supervisors that patients were being left alone in the hallways, that two persons should be used to transfer patients from a stretcher to the CT table and that a pregnant woman had had a CT scan, which he considered unsafe.

SUPREME COURT OF MISSOURI
February 9, 2010

The Supreme Court of Missouri dismissed his lawsuit.

State and Federal laws state in very general terms that every patient has the right to receive care in a safe setting.

However, the technician was not able to point to any specific statute or regulation at the state or Federal level which expressly forbids patients on stretchers being left in hospital hallways, or which expressly mandates two staff persons for certain types of transfers or which expressly defines when a pregnant patient can and cannot have a CT scan.

Complaining about an alleged violation of a vague, generalized policy in favor of patient safety does not clothe a health-care employee or former employee in the special status of a whistleblower.

To be able to sue for wrongful discharge, a true whistleblower must have challenged a clear violation of a statute or regulation which expressly defines a standard for patient care. **Margiotta v. Christian Hosp., __ S.W. 3d __, 2010 WL444886 (Mo., February 9, 2010).**

Misconduct: Aide Refused Patient-Care Assignments, Termination Is Permitted.

An aide was fired from her job in a nursing home after she repeated refused to accept patient-care assignments she did not want to take.

Aide Refused to Accept Heavy-Care Patients

The aide complained, then flat-out refused to work with a patient who required assistance to transfer and another patient who needed to be walked daily with assistance. She was reprimanded for refusing to bathe other patients who needed full assistance with personal hygiene.

The aide also refused to fill in on the Alzheimer's dementia unit as needed, insisting that she only worked on the one floor where she usually was assigned and did not work for the facility at large.

An employer is justified in terminating an employee for misconduct.

Misconduct means an act which shows willful disregard of the standards of behavior that an employer has the right to expect.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
February 18, 2010

The Superior Court of New Jersey, Appellate Division, ruled that her employer was justified in terminating her for misconduct after repeatedly making it clear to her through verbal and written warnings that her actions violated the facility's work rules and would not be tolerated.

The Court ruled she was ineligible to received unemployment benefits after her employment was terminated. **Lewis v. Board of Review, 2010 WL 546583 (N.J. App., February 18, 2010).**

Infant Born In Bathroom: Court Finds No Negligence.

The mother was about to give birth when she arrived at the hospital's emergency room.

A nurse told her to go into the bathroom and change into a hospital gown before being examined. While she was straddling the commode the baby came out and fell into the water in the commode but was quickly pulled out.

The child was carefully examined and found to be a normal, healthy baby.

The Court of Appeals of Kentucky acknowledged that the incident was traumatic for the mother, but there was no harm to the baby, so no damages were awarded to her or her infant. **James v. Ashland Hosp., 2010 WL 199574 (Ky. App., January 22, 2010).**

Sexual Harassment: Court Upholds Jury's Verdict.

A jury in the US District Court for the Southern District of New York awarded a verdict of $1,124,183 for a nurse practitioner from her former employer, a drug and alcohol rehab center.

Nurse Practitioner Was Not the Victim Assisted Coworker With Her Complaint

The nurse practitioner became the target of reprisals from her supervisor, the facility's medical director and from the facility's director of psychiatry after she provided a written statement to a female nurse co-worker to corroborate that the director of psychiatry was sexually harassing the co-worker.

Reprisals from the two physicians took the form of unfounded complaints against the nurse practitioner to the state office of professional discipline, unjustified on-the-job disciplinary write-ups and, finally, her termination.

An employee cannot be subjected to retaliation for filing a complaint of sexual harassment.

An employee cannot be subjected to retaliation for complaining about another employee being sexually harassed or for assisting another employee in prosecuting her own complaint of sexual harassment.

UNITED STATES DISTRICT COURT
NEW YORK
January 15, 2010

The jury awarded more than $400,000 for lost income. The rest of the verdict was for mental anguish and emotional distress and punitive damages. The Court did have to discount the punitive damages to $200,000, the maximum allowed by Title VII of the US Civil Rights Act. **Mugavero v. Arms Acres, Inc., __ F. Supp. 2d __, 2010 WL 157490 (S.D.N.Y., January 15, 2010).**

Sleep Apnea: Court Finds No Disability Discrimination.

A staff nurse was given several verbal and written warnings because he was consistently late for the 6:30 a.m. start of his day shift at the hospital.

He faxed a letter to his supervisor stating that he was overwhelmed by his workload, had little energy and was always fatigued at work, he believed, because he suffered from sleep apnea.

He was terminated the day after he requested six months leave to look for another job. After being terminated he went in for a work-up which confirmed he had obstructive sleep apnea syndrome. He was prescribed a CPAP machine which completely took care of his symptoms.

A person whose physical or mental impairment is corrected by medication or other measures does not have an impairment that substantially limits a major life activity.

That is, the nurse's sleep apnea is not a disability

UNITED STATES DISTRICT COURT
PENNSYLVANIA
January 20, 2010

The US District Court for the Eastern District of Pennsylvania ruled the nurse had no legal basis to sue the hospital for disability discrimination.

First, Federal regulations set out a long list of conditions which are recognized as disabilities for purposes of the Americans With Disabilities Act. Sleep apnea is not on the list.

Second, a physical or mental condition is not a disability if it can be corrected by use of medication or other means so that it no longer impairs the individual's ability to work, as a general rule.

Third, the nurse voluntarily resigned without requesting reasonable accommodation. **Keyes v. Catholic Charities, 2010 WL 290513 (E.D. Pa., January 20, 2010).**

Lifting Restriction: Court Finds No Pregnancy Discrimination.

An LPN's job description for the rehab unit required her to do moderate to heavy lifting and to be able to assist a patient to the floor who became unable to remain standing during ambulation.

When she became pregnant her ob/gyn restricted her from lifting more than 25 lbs. That was not compatible with her nursing position. For a time the hospital let her work on a patient telephone survey but then had to let her go when sit-down office work was no longer available.

The hospital's temporary duty program's purpose was to provide temporary modified light duty for employees who were restricted from their regular work due to work-related injury or illness.

The modified duty accommodating program's purpose was to provide an appropriate work situation for employees who, due to injury or illness, had work restrictions lasting six months or longer.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
January 27, 2010

The US District Court for the Eastern District of Pennsylvania ruled she had no grounds to sue for pregnancy discrimination. Federal law does not require an employer to provide accommodation to a pregnant employee who cannot meet the legitimate demands of the job because of restrictions imposed by her physician.

An employer is permitted to set up a light-duty policy in such a way that it does not apply to pregnant employees. **Noecker v. Reading Hosp., 2010 WL 363840 (E.D. Pa., January 27, 2010).**

Family And Medical Leave Act: Court Finds That Nurse's Legal Rights Were Violated.

A hospital staff nurse was terminated after she requested a medical leave to have surgery on her wrist for a non-job-related problem.

Her supervisors were apparently getting tired of having to schedule around her repeated but legitimate requests for medical leaves for various health conditions.

The nurse sued her former employer for violating her rights under the US Family and Medical Leave Act. The judge in the US District Court for the Northern District of Indiana endorsed the jury's verdict in her favor over objections by the hospital's attorneys that the verdict was contrary to the evidence.

The judge saw it as an open-and-shut case. The nurse was not able take leave to which she was entitled because she was terminated from her position shortly before her leave was to start. Her vested rights were interfered with, and that was that.

Workplace Rules Were Not Enforced Uniformly

The hospital's lawyers tried to complicate the case by saying that the nurse was actually terminated, not for taking yet another medical leave, but for violating the hospital's policies against sexual harassment in the workplace.

She apparently did participate in inappropriate sexually explicit conversations with her co-workers on the job in the neonatal intensive care unit.

Even if that was true, as it apparently was, none of the other guilty parties were ever warned or disciplined, much less terminated for their own clearly prohibited misconduct.

When work rules are not applied uniformly across the board with all employees, an employee caught up in a dispute over a work rule infraction can often argue convincingly that he or she has been singled out for special treatment for an underlying reason that has nothing to do with the work rule in question, lending credence to the employee's case if the employee is claiming in reality to be a victim of discrimination or retaliation. **Staples v. Parkview Hosp., 2009 WL 4885156 (N.D. Ind., December 16, 2009).**

An employee has the right to sue his or her employer for violation of the US Family and Medical Leave Act (FMLA) if:

The employee was entitled to time off from work because the employee had a serious medical condition that made the employee unable to perform the functions of the job;

The employee gave the employer proper notice of the need for time off from work; and

The employer in any way interfered with, restrained or denied the employee's entitlement to take time off.

It is not relevant to delve into the motivation or the state of mind of the employee's supervisors. If action is taken which interferes with the employee's rights, the employer can be held liable.

It was probably true that the nurse in this case did violate the hospital's policies against sexual harassment by going along with her co-workers in sexually explicit conversations on the job. But none of the others were disciplined, much less fired, only the nurse in question.

UNITED STATES DISTRICT COURT
INDIANA
December 16, 2009

Cardiac Rehab: Blood Glucose Not Checked, Nurse Not Liable For Patient's Accident Driving Home.

The patient had been an insulin-dependent diabetic for at least fifteen years before she started an outpatient cardiac rehab program at the hospital following open heart surgery.

The rehab program consisted of cardiovascular exercise routines performed under the supervision of a nurse with a specialized background in cardiac rehab.

The nurse usually checked this patient's and the other diabetic patients' blood glucoses at the end of each exercise session before letting them leave.

No Indication of a Problem With Blood Sugar

One day, however, the nurse did not check the diabetic patients' blood glucoses because she had to focus on another patient who said she was not feeling well. The patient in question had a hypoglycemic episode on the way home and was injured in a one-car motor vehicle accident.

The jury in the Superior Court, Norfolk County, Massachusetts ruled the nurse was not liable. There was no reason that day for the nurse to suspect a problem with the injured patient's blood glucose. **Russell v. LaFond, 2009 WL 5498604 (Sup. Ct. Norfolk Co., Massachusetts, May 22, 2009).**

Arbitration: Sister Had No Authority To Sign.

The Court of Appeals of Kentucky ruled that the deceased's family's lawsuit against the nursing home would go to trial before a jury, and not go to arbitration, because the arbitration agreement was signed at the time of admission, not by the resident but by his sister who had no authority to sign legal documents on his behalf. **Stanford Health & Rehab v. Brock, 2010 WL 323274 (Ky. App., January 29, 2010).**

Labor And Delivery: Nurses Did Not Report Abnormal Monitor Tracings To The Physician.

The patient, an insulin-dependent diabetic, went to see her ob/gyn at thirty-six weeks because she had not felt any fetal movement for two days. She was admitted to the hospital two days later.

When the patient's ob/gyn came into the patient's room the nurse held up the monitor strip as if to signal to him there was a problem which required his immediate attention.

The nurse testified later she did not want to say anything in front of the mother that might alarm her and did not want to leave her patient to go out in the hallway to talk to the physician.

The physician did not understand what was going on, left the room and went to see his other patients.

COURT OF APPEAL OF LOUISIANA
December 22, 2009

For more than an hour a number of different nurses caring for the mother saw problems with the monitor tracings, but the physician was never notified what was going on.

The start of the cesarean was delayed several hours and the infant was delivered with brain damage and cerebral palsy.

The Court of Appeal of Louisiana approved a jury verdict in favor of the infant and family, apportioned 80% against the hospital for nursing negligence and 20% against the patient's obstetrician for medical malpractice. **Johnson v. Morehouse Gen. Hosp., __ So. 3d __, 2009 WL 4912390 (La. App., December 22, 2009).**

Medication Noncompliance: Psychiatric Nurse Practitioner's Negligence Leads To Attack On Clinic Worker.

The patient was discharged from the state hospital into the care of a psychiatric registered nurse advanced practitioner at an outpatient community mental health clinic for management of her anti-psychotic medication.

The patient had been sent to the state hospital for involuntary treatment after she doused an H&R Block tax preparer with gasoline and attempted to light him on fire, then attacked a police officer.

The nurse practitioner lowered her medication dosage after the patient complained it made her feel drowsy in the morning.

Then the patient went off her medication entirely and accosted, slashed and stabbed an employee at another community clinic where she was scheduled for a dental appointment, apparently thinking she was a woman who was stalking her.

The victim's lawsuit filed in the Superior Court, King County, Washington resulted in a $5.5 million settlement from the state agency which employed the nurse practitioner.

Nurse Practitioner Failed to Investigate Her Patient's History of Violence

The nurse practitioner never looked into the reason her patient was committed to the state hospital in the first place.

If the nurse practitioner had looked into her patient's background, it was alleged, she would have realized that medication non-compliance posed a serious risk of violence to other persons.

Concern over her patient's potential for violence should have led, in turn, to use of depot medication injection to insure medication compliance and to close watch for the onset of psychotic symptoms pointing toward re-institutionalization on grounds of danger to others. **Dowe v. Community Psychiatric, 2009 WL 5715461 (Sup. Ct. King Co., Washington, September 21, 2009).**

Bed Rail Entrapment: Settlement Paid For Resident's Death.

The settlement of the case filed in the Superior Court, Wake County, North Carolina was reported on condition that the names of the patient, nursing facility, medical director, medical equipment supplier and manufacturer remain confidential.

The settlement was $1,635,000 for the family of a sixty-one year-old Alzheimer's patient who died from positional asphyxia after his head was caught in the bed rails of an obsolete hospital bed model which had been recalled by the manufacturer several years earlier for the very same entrapment hazard.

This was an older-style hospital bed which had been recalled by the manufacturer because the bed rails presented an entrapment hazard.

The first time the resident's head was caught in the bed rails staff did nothing. The second time he was strangled and died.

SUPERIOR COURT
WAKE COUNTY, NORTH CAROLINA
September 1, 2009

The facility staff did nothing the first time the resident's head got caught in the bed rails. The resident was not injured but the incident did put staff on notice of a potentially fatal entrapment hazard.

It was not clear how or why the medical supply company filled the order specifically for this resident with a make and model hospital bed known in the industry to have been recalled several years earlier and whether the supplier or the manufacturer was responsible for the fact it was still in stock. **Confidential v. Confidential, 2009 WL 5766598 (Sup. Ct. Wake Co., North Carolina, September 1, 2009).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Skilled Nursing: Court Finds Violations Of Regulations, Upholds Penalties.

The US Court of Appeals for the Fourth Circuit upheld civil monetary penalties imposed on a skilled nursing facility for violations of patient-care standards.

Failure to Assess/Monitor Significant Changes in Patient's Condition

A sixty-nine year-old patient suffered from a seizure disorder, dementia, agitation and depression. He was highly agitated at breakfast time. His CNA measured his BP as 190/120. The nurse called the physician, who ordered Valium which the nurse gave at 10:15 a.m.

For the rest of the day he was looked in upon and always seemed to be sleeping, not unusual for a patient recently given Valium.

The nurses found him unresponsive at 8:45 p.m. He was rushed to the hospital where he died several hours later. He had been in a hyperosmolar coma with cerebral edema which led to fatal brainstem herniation.

The facility was faulted for not trying to wake him regularly and take his vital signs during the ten and one-half hours after he got the Valium, a violation of at least three separate Federal regulations, the court said.

Failure to Provide Pharmaceutical Services

A patient needed to wear an airway mask at night for sleep apnea. For more than five years his a.m. routine had been to be awakened and given Cafergot for the headaches he often had.

The night nurse woke him as usual but gave him Darvocet instead of Cafergot because they were out of Cafergot. In report she told the day nurse that she needed to order some more Cafergot. The day nurse did not get around to it until 10:00 a.m. or 11:00 a.m. and the medication did not arrive on the unit until after 4:30 p.m.

By the time he got his Cafergot at 5:00 p.m. the patient's headache pain had become so severe they were giving him Ultram and Darvocet.

According to the Court, Darvocet is not a substitute for Cafergot. It is substandard nursing practice to substitute a non-equivalent medication. There was a courier service on-call for the nurses to obtain urgently needed medications, but the nurses did not use it. That was a violation of Federal regulations requiring nursing facilities to provide pharmaceutical services sufficient to meet residents' needs. **Universal Healthcare v. US Dept. of Health and Human Services, 2010 WL 325961 (4th Cir., January 29, 2010).**

Neonatal Intensive Care: Bacteria Infiltrate IV Line Leading To Sepsis, Thromboembolic Stroke.

The infant was born at thirty-three weeks gestation, the third of triplets. She weighed 1,715 gm. Her Apgars were 7 at one minute and 9 at five minutes.

In the neonatal intensive care unit an IV was started in her right arm. Some time between eighteen hours and two days later skin breakdown led to an open wound at the IV site.

The lesion allowed opportunistic bacteria, Enterobacter and Enterococcus faecalis, to enter the blood stream, which led to systemic sepsis and thromboembolic stroke.

The stroke left the infant with left hemiplegic cerebral palsy.

The family's lawsuit in the Superior Court, Riverside County, California faulted the nursing care in the neonatal intensive care unit.

The check-boxes on the nursing flow sheets in the NICU were consistently checked for regular inspections of the newborn's IV site by her nurses.

However, the NICU nurses' testimony in their pretrial depositions revealed a wide range of variability in their understanding of just what was required of them when they inspected a newborn's peripheral IV site.

SUPERIOR COURT
RIVERSIDE COUNTY, CALIFORNIA
November 18, 2009

The chart showed all the check-boxes had been checked on the intensive-care nursing flow sheets for regular IV site inspections.

However, when the infant's NICU nurses were later called in one by one to testify in their depositions for the legal case it came to light that there was little common ground among them as to their understanding of what exactly was required of them by hospital policies and procedures when inspecting a newborn infant's peripheral IV.

The mother was reportedly prepared to testify she was not aware of any such inspections ever being done.

The hospital agreed to pay a pretrial settlement of $1,000,000 on the recommendation of a court-appointed mediator. **Jones v. Tenet Healthcare, 2009 WL 5818427 (Sup. Ct. Riverside Co., California, November 18, 2009).**