LEGAL EAGLE EYE NEWSLETTER

March 2012 *For the Nursing Profession* Volume 20 Number 3

Nursing Home Negligence: Supreme Court Upholds Pre-Dispute Arbitration Agreements.

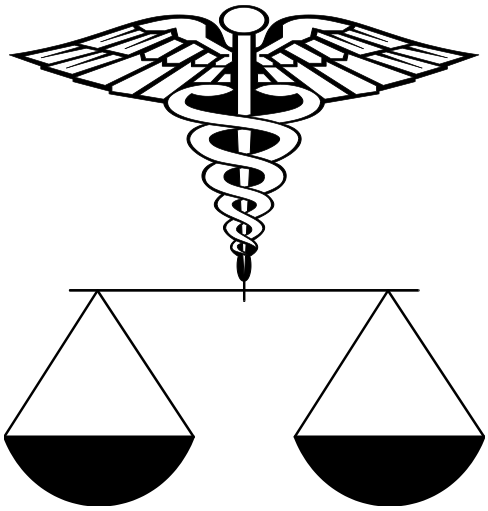
Several nursing-home negligence suits were consolidated for a ruling by the US Supreme Court on the question of the validity of an arbitration agreement signed at the time of the resident's admission, that is, before a negligence claim had arisen by the patient or patient's family against the facility.

The Supreme Court ruled that the US Federal Arbitration Act is the paramount legal authority in this area. Being a Federal statute, the Act trumps any state law, state statute or state court precedent which runs contrary.

The basic principle behind the Supreme Court's ruling is the supremacy of Federal laws passed by the US Congress under Congress's preemptive authority under the Interstate Commerce Clause of the US Constitution.

The Federal Arbitration Act sets out a strong Federal policy in favor of alternate dispute resolution of disputes in healthcare and elsewhere, assuming the parties have freely agreed to arbitration, the Supreme Court said.

The Act says in no uncertain terms that arbitration agreements are meant to be enforced. Any state law which negates or tries to qualify what the Act says is in conflict with the Act and that conflict must be resolved in favor of the Court holding the contrary state law or judicial ruling invalid.



The lower courts misread Federal law and ignored US Supreme Court precedents when they ruled that arbitration clauses in nursing home admission documents are not enforceable if they are signed by the patient or patient's representative before the actual negligence claim has arisen between the patient or patient's family and the facility.

UNITED STATES SUPREME COURT
February 21, 2012

The case before the Supreme Court involved negligence suits by family members of three different nursing home residents who had signed virtually identical nursing home admission forms when entering the same facility.

The admission papers required the parties to arbitrate all disputes except collection actions for payment of nursing home fees, and to arbitrate under the arbitration rules of the American Arbitration Association.

Each of the cases was filed *post-mortem* by the family seeking damages for nursing home negligence allegedly responsible for the resident's death.

The lower courts in West Virginia, all the way up to the state's Supreme Court of Appeals, ruled that West Virginia courts have adopted a common law principle of public policy that arbitration agreements in nursing-home negligence cases are not valid and not enforceable if they are signed before the alleged error or omission occurs which gives rise to the patient's or family's claim for damages.

The US Supreme Court invalidated the state's common law public policy statement because it runs contrary to Federal law. Federal law controls in this situation. **Marmet Healthcare v. Brown, 565 U.S. __, 2012 WL 538286 (U.S., February 21, 2012).**

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March 2012

New Subscriptions
See Page 3

Shampoo Cap: Hospital Ruled Not Liable.

A hospital nurse supplied a rinse-free shampoo cap to the patient's family member after the patient complained he had a problem with his hair.

After the family member used it to wash his hair the patient complained the shampoo cap gave him scab-like burns on his head and made his hair fall out.

The hospital's risk management department had on file the manufacturer's Material Safety Data sheet which indicated the shampoo cap contained only chemicals defined by OSHA as non-hazardous and non-irritating.

The shampoo cap is not an unreasonably dangerous product. There was nothing on file at the hospital indicating any prior adverse experience with the shampoo cap.

COURT OF APPEALS OF KENTUCKY
February 3, 2012

The Court of Appeals of Kentucky ruled the hospital was not liable.

A hospital is not considered a retailer of the product in question when a personal care item is provided to a patient or patient's family member in the original packaging in which it came from the manufacturer, the Court said.

After giving it to the family member the hospital had no further control over the way the patient or family member used it.

According to the Court, it could have been a different case if the nurse herself had undertaken to use the cap to cleanse the patient's hair and somehow misused the cap and injured the patient. In that case the issue would not have been the cap itself as a defective product but the hospital nursing service of providing personal care to a patient. **Hughes v. Taylor Reg. Hosp., 2012 WL 330402 (Ky. App., February 3, 2012).**

Smoking: Nursing Home Resident's Family Obtains Large Jury Verdict.

The eighty-six year-old resident was admitted to the nursing home when his early-stage Alzheimer's began to make it difficult for the family to look after him in the apartment where he lived by himself. He also had a history of a stroke, although it was not clear from the court record whether than occurred before or after admission to the nursing facility.

His nursing assessment indicated he needed to be closely monitored while he smoked cigarettes. His care plan stated unequivocally that he was to be prevented from smoking except when being directly supervised.

He caught fire soon after he was left unsupervised in the dining area with smoking materials and suffered massive burns over 30% of his body which led to sepsis from which he died almost two years later.

The Nursing Home Care Act outlaws abuse and neglect of nursing home residents and guarantees them the right to adequate supervision.

Violation of the Act is grounds for a civil lawsuit.

APPELLATE COURT OF ILLINOIS
February 10, 2012

The Appellate Court of Illinois ruled the family was entitled to go back to court for a new trial to seek damages for their own mental anguish and emotional distress in addition to $1.5 million for medical expenses and attorneys fees, which, although awarded to them by the jury, will not end up in their pockets.

The facility was negligent and violated the state's Nursing Home Care Act by failing to ensure strictly that smoking materials were kept away from the resident except when he was under direct visual supervision by a staff member. **Watson v. South Shore, __ N.E. 2d __, 2012 WL 470158 (Ill. App., February 10, 2012).**

Sexual Assault: Court Faults Nursing Supervision.

A female patient in an addiction treatment center was assaulted in bed in her room by a male psych aide. Earlier that day he slipped into her room while she was showering and she told him to leave.

A medical facility is not necessarily liable for an employee's conduct when an employee commits an act such as a sexual assault which is outside the course and scope of the employee's duties.

A medical facility is liable when supervisors are negligent in their supervision of a subordinate and thereby fail to prevent an assault from being committed.

COURT OF APPEAL OF LOUISIANA
February 14, 2012

The Court of Appeal of Louisiana found grounds for the patient's lawsuit against the facility.

The Court looked to the testimony of one of the nurses at the facility who had eighteen years experience in psychiatric nursing. She explained that the psych aides are front-line treatment personnel who interact with patients closely on a 24/7 basis to assist the nurses. They act under supervision from the nurses in the provision of quality nursing care.

The facility's nurses are directly responsible for enforcing the facility's policies for maintenance of appropriate boundaries between staff and patients. The nurses are responsible for educating the staff whom they supervise and for monitoring their interactions with patients to ensure that boundaries are being maintained. At a fundamental level any sexual contact between staff and a patient is strictly off limits. **Buford v. Williams, __ So. 3d __, 2012 WL 469871 (La. App., February 14, 2012).**

Patient Suicide: Jury Finds Nursing Negligence, Court Overturns Verdict Holding Patient Partially To Blame.

Family members called the police after the forty-nine year-old woman took a number of Klonopin pills and drank a whole bottle of wine in an apparent suicide attempt.

Shortly before that the patient had sent goodbye emails to her sister and her boyfriend. She had a history of bipolar disorder and previous suicide attempts.

When the police got her to the hospital she was combative and crying and said she wanted to die. The E.R. staff phoned her long-time psychiatrist. The patient refused to be admitted as the E.R. doctor and her psychiatrist wanted, so the hospital, which did not have a psychiatric unit, held her involuntarily and transferred her, by ambulance in restraints, to another hospital with an inpatient psychiatric service.

At the other hospital a nurse who spent an hour evaluating her and a psych resident decided she was no longer a danger to self and released her from restraints.

The next morning, however, another nurse and the patient's own psychiatrist found the patient hostile and combative. She said she wanted to leave and was pounding on the windows. She screamed profanities, spit at and tried to bite staff members and threw a plastic container at her psychiatrist. The psychiatrist ordered restraints, Haldol, lithium and Ativan.

As a general rule the patient's own negligence is a factor for the jury to consider in a healthcare malpractice case.

The monetary damages awarded to the patient can be reduced to take into account the percentage to which the patient's own conduct contributed to the adverse outcome.

Psychiatric patients are an exception to the general rule.

A psychiatric patient who has reached the stage of being "completely devoid of reason" cannot legally be held even partially to blame for an adverse outcome like self-harm or suicide, and it is judicial error for a judge to allow a jury to factor in the patient's own conduct in assessing the monetary damages awarded to the patient or the family of a deceased individual.

APPELLATE COURT OF ILLINOIS
February 3, 2012

The morning after that the patient told her psychiatrist she was sorry she did not die the previous day. Based on danger to self her psychiatrist certified her for involuntary hold beyond the initial 72 hours.

Her psychiatrist ordered seclusion, physical restraints and continuous visual observation. The order for seclusion and restraints, which by law must be time-limited, expired that afternoon and 3:00 p.m. but could be continued by the nurses after consultation with the psychiatrist.

The patient remained agitated, hostile, crying and threatening throughout the morning. At noon, however, a nurse released her restraints and set up 15-minute checks because the patient said she did not want to hurt herself.

The patient was found dead hanging from a bed sheet on the bathroom door hook at 9:17 p.m., two minutes after a 9:15 p.m. check by a mental health tech.

No Nursing Assessment Documented Before Release From Restraints

The day nurses could show no documentation of a nursing assessment or consultation with a physician before the decision to discontinue physical restraints and continuous observation for a suicidal patient who minutes earlier was still agitated and fighting her restraints. The p.m. nurse was only able to testify in general terms as to her routine for interacting with patients while she passed medications.

The Court of Appeals of Illinois ordered a new trial because the judge allowed the jury to hold the patient 49% at fault. **Graham v. Northwest, __ N.E. 2d __, 2012 WL 400486 (Ill. App., February 3, 2012).**

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Skin Care: Nurse Disqualified As Expert In Critical Cardiac Care.

Several days after cardiac-bypass surgery the nurses in the cardiac critical-care unit discovered a pressure blister on the back of the patient's neck and a Stage I decubitus ulcer on his coccyx.

After being released from the hospital the patient went to another hospital for plastic surgery for the sacral pressure ulcer.

He sued the hospital where he had his bypass for negligence allegedly committed by the critical care nurses and obtained a $300,000 jury verdict in his favor.

The patient's nursing expert was allowed to testify about routine skin assessment and care for hospital patients in general.

However, her professional nursing background did not include the care of critically ill patients.

Her testimony as to the standard of care for critical care nurses was not a sound basis for a legal case against the hospital.

SUPREME COURT OF ALABAMA
November 18, 2011

The Supreme Court of Alabama threw out the jury's verdict.

The critically ill patient was at times at risk of death. His critical-care caregivers were struggling with post-operative bleeding and he was on a ventilator much of the time. In deciding how and when to reposition him the nurses had to prioritize potentially life-threatening considerations.

The generic hospital-nursing mandate to turn every patient every two hours advocated by the patient's nursing expert incorrectly oversimplified the complexities involved in his care, the Court said. **Springhill Hosp. v. Critopoulos, __ So. 3d __, 2011 WL 5607816 (Ala., November 18, 2011).**

Worker's Comp: Aide's Claim Will Go Forward.

The first time the CNA injured her hip she was in the process of making a two-person transfer of a bed-bound resident to the bathroom commode.

When her hip popped out of place a physical therapy aide on duty was able to pop the hip back in place. The CNA continued working, transferring seven or eight more residents that morning with help from a co-worker.

That afternoon she injured the same hip again, this time trying to move a patient by herself from a wheelchair to bed. The patient's care plan identified her as a high fall risk and called for two-person transfers or use of a Hoyer lift. This second injury kept the CNA off work several days.

An employee injured on the job due to the employee's own culpable negligence cannot be awarded worker's comp benefits.

Thoughtless, heedless or inadvertent acts, mere errors in judgment or simple inattention do not constitute culpable negligence.

SUPREME COURT OF WYOMING
February 2, 2012

The Supreme Court of Wyoming ruled the CNA was not guilty of culpable negligence and was entitled to worker's compensation.

Staff Not Educated About Own Risk From Incorrect Transfer Technique

There was no evidence the CNA had ever been educated as to the risk to herself of injury from failure to use proper technique in transferring a patient. The facility's policy for two-person transfers of high-fall-risk patients, as the CNA apparently understood the policy, was solely intended to promote patient safety. There was no evidence the facility took steps to educate care-giving staff that the policy was there for their own protection as well. **Shepherd of the Valley v. Fulmer, __ P. 3d __, 2012 WL 309532 (Wyo., February 2, 2012).**

Long-Term Care: Facility Cannot Require Payment Guarantee.

The elderly couple signed a complicated financial agreement when they entered the facility. At first they would live in an assisted living apartment. Later the entrance agreement contemplated they would be transferred to skilled nursing care or custodial nursing care as their needs progressed.

After moving into the facility the couple realized their existing assets were rapidly being depleted and inquired how they could draw into the sizeable sum denominated in the contract as the "unearned portion of the entrance fee" as a means to continue making their monthly payment.

Facility management at that point informed them by letter that they had to come up with a signature from a third-party guarantor of payment or leave the facility. They had to move out.

Federal law strictly prohibits a nursing facility or a skilled nursing facility from requiring a third-party guarantee of payment as a condition for entering or remaining in the facility.

UNITED STATES DISTRICT COURT
FLORIDA
February 8, 2012

The US District Court for the Southern District of Florida ruled that the facility violated Federal law by insisting on a third -party guarantee of payment as a condition for remaining in the facility.

By violating Federal law the facility also violated Florida state law which gives nursing facility residents the right to sue a facility for violation of their rights protected by Federal law.

It was not relevant whether the facility was a skilled nursing facility or a nursing facility as defined by Federal law. Either way there is a prohibition from insisting on a third-party guarantee, the Court said. **Altman v. Lifespace, 2012 WL 414826 (S.D. Fla., February 8, 2012).**

Racial Bias: Caucasian Nurse's Discrimination Case Dismissed.

The US Court of Appeals for the Fifth Circuit accepted the underlying premise that a Caucasian employee has the right to complain and even to file suit over racial discrimination by an African-American supervisor, if there are facts to support the case, which in this case there were not.

The Caucasian staff nurse claimed the facility's African-American director of nursing discriminated against her based on her race.

The evidence does not show that race was a factor in the nurse's termination.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
February 9, 2012

There were three separate incidents that preceded the nurse's termination: She charted non-existent physician's orders that a resident needed to be sent to the hospital, gave one resident's medication to another resident and injured a patient using substandard technique in removing a urinary catheter.

The Court was willing to defer to the nurse's employer's judgment that these incidents added up to legitimate justification for a nurse's termination.

The falsified documentation placed in a resident's chart was reported to the director of nursing by a Caucasian nurse practitioner who was very upset about it. The medication-error incident was reported to the director of nursing by a Caucasian staff nurse co-worker.

The director of nursing, who was African-American, had the final say but the fact that other Caucasian employees had serious issues with the job performance of the nurse in question and wanted something done tended to negate the argument that race was a factor, the Court said. **McVille v. Inter-Community Healthcare, 2012 WL 407012 (5th Cir., February 9, 2012).**

Disability Discrimination: E.R. Nurse Restricted From Essential Job Functions, Case Dismissed.

To have a valid case of disability discrimination based on the employer's failure to offer reasonable accommodation, the employee must prove:

The employee had a disability as disability is defined for purposes of the Americans With Disabilities Act;

The employer knew about the disability;

The employee could perform the essential functions of the employee's position with reasonable accommodation; and

The employer refused to offer reasonable accommodation.

The hospital in this case does not dispute that the nurse was disabled.

The question is whether the nurse was a qualified individual with a disability.

That is, could the nurse perform the essential functions of the job, functions which bear more than a marginal relationship to the job in question? Would any reasonable accommodation by her employer enable her to perform those functions?

The answer to these questions is "No." This is not a case of disability discrimination.

UNITED STATES DISTRICT COURT
VIRGINIA
February 1, 2012

A hospital E.R. RN was restricted for a period of six weeks by her personal physician from lifting more than 10 lbs. with her left arm.

Her supervisors agreed to accommodate her restriction and allowed her to continue to work.

Then the nurse provided new information, a physical-capacities assessment form filled out by her physician which increased the level of restriction to "no lifting/carrying 0-20 lbs., no pushing/pulling and no stretching or working above shoulders."

Her supervisors were not able to accommodate these new restrictions. They removed the nurse from the schedule but informed her by phone she could return to work once her physician lifted her restrictions. Her lawyer sent a letter stating her restrictions had been lifted but the hospital never heard from the nurse herself again despite two letters sent to her informing her she could return to work.

Nurse Was Not A Qualified Individual With A Disability

The US District Court for the Eastern District of Virginia agreed with the nurse she was disabled but nevertheless dismissed her case. The Court agreed with the hospital that during the relevant time period she was not a qualified individual with a disability.

The Court endorsed the hospital's job description for a clinical nurse in the E.R. An E.R. nurse must be able to lift heavy equipment, push and pull stretchers and wheelchairs, support patients who are weak or unsteady, assist patients with walking, standing or sitting, physically assist patients to chairs, wheelchairs, stretchers, exam tables and bathrooms, lift patients to chairs and exam tables, roll patients on stretchers, use equipment located above shoulder level, perform CPR, perform procedures on patients who might resist and move equipment and furniture.

All of the above were essential functions of the nurse's position, which she was unable to fulfill based on the medical documentation provided by her physician. **Wulff v. Sentara Healthcare, 2012 WL 320518 (E.D. Va., February 1, 2012).**

Bowel Obstipation: Nurses Provided Appropriate Care, Prison Inmate's Suit Dismissed.

A prison inmate put in a sick-call request and was seen by a nurse in the prison infirmary for complaints of vomiting and diarrhea.

His vital signs were normal and he had no fever but there was generalized abdominal pain. The nurse gave him anti-nausea and anti-diarrheal medications, restricted his diet to clear liquids and excused him from work detail.

The next day when he returned to the infirmary the nurse had him seen by the physician. His vomiting had stopped after taking his anti-nausea medication but the diarrhea medication was not working. His vital signs were again normal and he had no fever. The nurse had him seen again later that same day. The physician related his abdominal pain to a diagnosis of gastroenteritis and put him on a different anti-diarrheal medication.

Four days later the inmate came back and saw the nurse again for his nausea and diarrhea. His vital signs and bowel tones were normal and he had no fever but still had abdominal pain. The nurse got a urine sample. The lab found no evidence of a urinary tract infection and the normal specific gravity ruled out dehydration.

Two days after that the patient came in four separate times. This time his pulse and blood pressure were up, so the nurse contacted the physician who ordered medications which brought his pulse and BP back within normal limits.

Later that night the guards brought him in in a wheelchair. Something was acutely wrong. The nurse on duty phoned the physician who ordered him sent to the hospital. At the hospital a CT revealed severe bowel obstipation. Several hours later his colon ruptured and he had to be rushed into surgery.

The US District Court for the Eastern District of North Carolina discounted expert testimony that antibiotics should have been given early on and would have prevented the outcome. There was no indication early on of any infectious process. All the care he received was appropriate under the circumstances. **Brown v. Medical Staff, 2012 WL 368644 (E.D.N.C., February 3, 2012).**

Obstipation, severe constipation leading to bowel obstruction, is extremely rare in an otherwise healthy thirty year-old man.

His complaints and the nursing staff's repeated assessments were consistent with a diagnosis of gastroenteritis and failed to suggest he was developing obstipation which could and did cause a colon rupture.

His obstipation and colon rupture were extraordinary outcomes which could not have been anticipated by the prison infirmary nursing and medical staff.

He received competent and professional care up to the point in time when it became apparent that medical care was necessary from outside sources. At that point the nurse saw to it he was sent to the hospital for further evaluation.

In fact, the colon rupture did not occur until several hours after the patient was admitted to the hospital.

If he were kept in the infirmary longer instead of being sent to the hospital that could be considered negligence, but not deliberate indifference to the inmate's serious medical needs.

UNITED STATES DISTRICT COURT
NORTH CAROLINA
February 3, 2012

Heart Attack: Nurse Provided Competent Care, Suit Dismissed.

A jail inmate began having symptoms during the early morning hours but told the guards it was not necessary to call in the nurse. She could wait to see the nurse until the nurse came in to work at her usual 8:00 a.m. start time.

At 8:15 a.m. she saw the nurse for chest pains, nausea, vomiting and burns on her right arm. Her BP was 180/117. She mentioned she was very upset over just learning that one close family member had almost killed another close family member the previous day.

The nurse phoned her supervisor who told her to treat the patient for anxiety. After giving Vistaril the BP began to decline. The patient started feeling better and returned to her cell.

At 9:15 a.m., however, the inmate was found in her cell dead from a heart attack.

The nurse followed the procedures and clinical pathways set up by her employer, the company who contracted to provide healthcare in the jail.

She phoned her supervisor, a nurse practitioner, reported the signs and symptoms and treated the patient for anxiety as she was told.

UNITED STATES DISTRICT COURT
TENNESSEE
February 3, 2012

The US District Court for the Eastern District of Tennessee dismissed the family's lawsuit. The nurse was familiar with this long-term inmate who never had prior cardiac issues. The nurse did what was expected based on the procedures and clinical pathways she was required to follow. She was not to be held liable based only on hindsight as to the actual unfortunate outcome. **Miller v. Monroe County, 2012 WL 368740 (E.D. Tenn., February 3, 2012).**

Emergency Room: Hospital Nurses Ruled Not Liable.

The husband called paramedics after the forty-five year-old patient collapsed at home during a grand mal seizure.

She was revived in the ambulance on the way to the hospital but then had another seizure. The first vital signs were taken in the hospital by an E.R. nurse, pulse low 40's, BP 49 over palpable and Glasgow coma scale 3.

The physician right away gave Valium to prevent another seizure, then atropine and epinephrine to restart the heart, then started Anectine to facilitate intubation. Before intubation the patient expired.

The E.R. nurses should have triaged her as level-one, not level-two, recorded her vitals earlier and more frequently and should have questioned the physician's decision to give Valium with her vital signs so low.

However, it was only the physician's failure to intubate the patient promptly that caused her demise.

DISTRICT COURT OF APPEAL
OF FLORIDA
February 1, 2012

The District Court of Appeal of Florida overturned a jury verdict against the hospital for nursing negligence after the E.R. physician settled out of the lawsuit.

The E.R. nurse testified from the medical records that this patient presented with level-one acuity and someone erred checking the level-two acuity-level box on her E.R. face sheet.

The Court agreed with the family's experts that the E.R. physician should not have given Valium with the patient's depressed vital signs, but failure by the nurses to question that decision was not the cause of the eventual outcome. The physician's failure to intubate promptly was the cause of the patient's demise. **Hollywood Med. Ctr. v. Alfred, __ So. 3d __, 2012 WL 280243 (Fla. App., February 1, 2012).**

Low Platelet Court, Brain Bleed: Court Finds Nursing Negligence.

Initially the physician in the E.R. ordered Coumadin for the patient even after the results from the lab had come back and showed his platelet count was undetectable.

The E.R. nurses were faulted in the family's lawsuit for giving the Coumadin, that is, for not refusing to carry out the physician's order.

Nurses have a legal duty to follow and carry out the orders of the physician in charge of the patient unless those orders are obviously negligent.

The E.R. nurses were not responsible for evaluating the degree to which Coumadin's action in suppressing the production of fibrin could compromise blood clotting in this patient and, based on that evaluation, countermand the E.R. physician's judgment.

However, platelets ordered by the E.R. physician at 4:15 p.m. were not started by the E.R. nurse until 6:45 p.m.

The family's nursing expert identified that delay as a breach of the nursing standard of care and the family's medical expert said that it was a contributing factor in the patient's death.

COURT OF APPEALS OF MINNESOTA
February 6, 2012

The patient was on Coumadin in connection with his prosthetic aortic valve.

He went to an outpatient physician's office because of bleeding gums and bruising. He was told to return if the problem got worse. When he came back the next day the physician phoned the hospital where the E.R. physician agreed he should be sent in via ambulance.

At the hospital the E.R. physician at first ordered Coumadin as well as platelets. The nurses gave the Coumadin, but there was a two and one-half hour delay starting the platelets. Later that evening a hematologist took over. He stopped the Coumadin and ordered a steroid medication and IgG. The patient suffered an intracranial hemorrhage later that night and was sent to the ICU where he died.

Nursing Negligence

The Court of Appeals of Minnesota ruled there was no nursing negligence committed by the E.R. nurses who did not refuse to give the Coumadin ordered by the E.R. physician.

The Court ruled that that order, although later changed by the hematologist and unadvised in hindsight, was not obviously negligent at the time it was given.

The E.R. nurse on duty was ruled negligent, however, for failing to get the platelets started until 6:45 p.m. which were ordered at 4:15 p.m.

The nurse on duty later that night did not promptly give the steroid medication ordered by the hematologist and the IgG was apparently never given in the E.R. but was given in the ICU later that night.

The Court declined to hold the E.R. nurse responsible who delayed the steroid and did not give the IgG, but only because the patient's condition by then had deteriorated to the point that a serious negative outcome was already inevitable due to earlier errors and omissions by the E.R. nurse and the E.R. physician.

The Court said the E.R. nurses apparently were completely unaware of the physiologic dynamics going on with this patient and failed to understand the responsibilities they owed to him. **Kramer v. St. Cloud Hosp., 2012 WL 360415 (Minn. App., February 6, 2012).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

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

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

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

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

EMTALA: CMS Stands By Current Position.

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

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

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

FEDERAL REGISTER February 2, 2012
Pages 5213 - 5217

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

The patient was in the hospital recovering after hip surgery.

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

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

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

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

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

COURT OF APPEALS OF OHIO
February 15, 2012

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

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

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