LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

May 2002 Volume 10 Number 5

Haldol Given, Patient Taken To Nursing Home: No Battery, False Imprisonment.

The elderly patient had been in the hospital four weeks recovering from gallbladder surgery. She spent most of that time in intensive care.

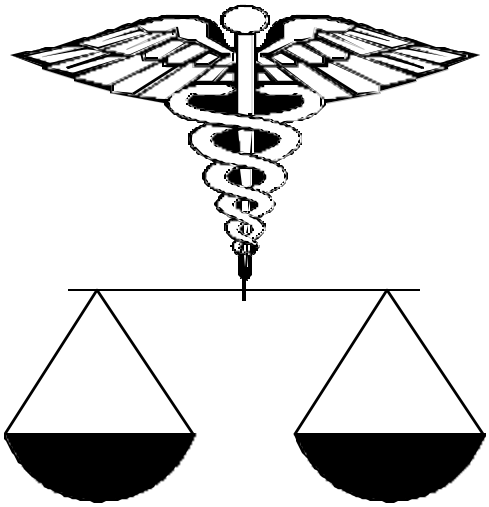
Before entering the hospital she was living with her niece and her niece's family. Her niece visited the patient often in the hospital and consulted with her physicians and nurses regarding her care.

The niece made arrangements for sitters to stay with the patient during her hospital stay.

The patient had episodes in the hospital where she became angry, agitated and combative and verbally and physically abused her caregivers. The patient struck out at a staff nurse who tried to stop her from removing her IV line and gastrostomic tube.

During at least five of these episodes the patient herself expressly consented to being injected with Haldol 2 mg to calm her agitation.

The discharge plan was for the patient to go home and be cared for by round-the-clock sitters and frequent visits from home health nurses. One day prior to discharge, however, the patient had another combative episode. With the niece's consent the plan for home discharge was scrapped in favor of a nursing home placement.



The patient was out of control. She had become aggressive, agitated and combative. She ordered her sitters out of her hospital room. It was felt in her mental state the plan would not work to discharge her home with sitters round the clock and visits from home health nurses. She was injected with Haldol and taken to a nursing home.

COURT OF APPEALS OF MISSISSIPPI, 2001.

At the time planned for discharge the patient refused to be moved and insisted on seeing her doctor. The nurses contacted the doctor. He ordered Haldol 5 mg. Her nurse refused to give the medication, but another nurse on the unit agreed to give it. She and a third nurse rolled the patient on her side, with no resistance from the patient, and gave the injection.

The patient was then taken to a nursing home where the niece had toured the day before.

When the patient's daughter learned she was in a nursing home, the daughter took steps to become the legal guardian and removed her mother from the nursing home. The patient went back to live in her own home. She was cared for with round-the-clock sitters until she died from a heart attack a few months later.

After her death the administrator of the patient's probate estate filed a civil lawsuit for battery and false imprisonment.

To achieve closure in difficult civil cases the courts make an effort to justify the jury's verdict. The jury ruled in favor of the patient's caregivers. The Court of Appeals of Mississippi found no grounds not to let the verdict stand.

(Continued on page 7)

Inside this month's issue ...

May 2002

New Subscriptions Page 3

Libel, Slander: Statements To Nursing Board Are Protected By Law, Court Says.

A nurse sued her former employer for defamation. Her lawsuit focused on a letter sent by her employer to the State Board of Nursing summarizing the findings of the hospital's internal peer-review process. The hospital's conclusion was the nurse was guilty of negligence resulting in injury to a patient which justified termination.

The US District Court for the Eastern District of Missouri ruled when the case went to trial the hospital would have no absolute judicial immunity from suit but would have to prove the existence of a qualified privilege.

Libel / Slander / Defamation

Defamation is the modern legal term that encompasses both libel and slander. In the old common law libel was defined as a defamatory written statement and slander was spoken.

Absolute Judicial Immunity versus Qualified Privilege

For reasons of public policy, the law gives certain classes of statements a qualified privilege or even outright immunity from defamation lawsuits.

In these special situations the court does not look at whether the statement was true or false, only at the circumstances to see if the author is protected from a lawsuit even if the statement was untrue.

Just as in a court of law, persons who testify before the Board of Nursing have absolute judicial immunity from defamation lawsuits over their testimony.

However, when a nurse is being reported to the Board only the rule of qualified privilege applies. The law values both candid reporting and the rights of persons being reported. If the author had reasonable grounds to believe the statement was true and no malicious motivation, qualified privilege is a defense to a defamation lawsuit even if the statement turns out to have been untrue. **Haynes-Wilkinson v. Barnes-Jewish Hospital, 131 F. Supp. 2d 1140 (E.D. Mo., 2001).**

The Board of Nursing is performing a judicial function when taking sworn testimony in a hearing to resolve issues relating to a nurse's license to practice.

The same rules are in effect that apply in a court of law.

Persons who give testimony before the Board relating to the matter under the Board's consideration have absolute judicial immunity for their testimony.

Judicial immunity means a witness cannot be sued after the fact for defamation by the person who was the subject of the testimony. Judicial immunity is a complete defense to a lawsuit without weighing the truth or falsity of what was said.

The rule is different when a private individual initiates a complaint to the Board about a nurse.

Qualified privilege applies in this situation. To avoid a civil defamation lawsuit a person reporting a nurse must be able to demonstrate a genuine belief in the truth of the report based upon reasonable investigation and an absence of malicious motivation.

UNITED STATES DISTRICT COURT, MISSOURI, 2001.

Maternity Leave: Hospital Must Justify Decision To Eliminate Position.

While the hospital's director of perioperative services was out on maternity leave her position was eliminated and a new position was created. She was allowed to apply for the new position of surgical services director if she wanted to return to work. Suspecting physician retaliation for taking her maternity leave, she sued for pregnancy discrimination.

When an employee is not restored to her previous position when she is ready to return from maternity leave, a court will use principles of pregnancy discrimination law as the framework to judge the employer.

The employer can invoke the need to reorganize management functions and cite budgetary considerations, but the court will look carefully to see if that was what was really going on.

UNITED STATES COURT OF APPEALS, FIRST CIRCUIT, 2002.

The Federal District Court dismissed her case. The US Circuit Court of Appeals for the First Circuit upheld the dismissal. However, the court made strong general statements to the effect that an employer does not have *carte blanche* to cite management restructuring as a excuse for eliminating a position while an employee is out on maternity leave. If the employee feels justified in claiming pregnancy discrimination the burden is on the employer to justify the legitimacy of its actions. **Weston-Smith v. Cooley Dickinson Hospital, Inc., 282 F. 3d 60 (1st Cir., 2002).**

Patient's Charts: No Place For Employee's Complaints.

A hospital social worker was hired to counsel patients with dual diagnoses of mental illness and chemical dependency.

Only seven weeks into her employment she was terminated for falsifying a patient's chart. The New York Supreme Court, Appellate Division, found sufficient grounds and upheld her termination.

The social worker noted in a patient's chart the patient was not getting his therapy sessions because the social worker was too overworked to be able to see him.

First, the court said, that was false. Any false statement in a patient's chart is potentially detrimental to the patient.

Second, the statement was potentially detrimental to the hospital as it could expose the hospital to liability and be used against the hospital in a court of law.

Third, patients' charts are not the place for caregivers to express complaints to their supervisors about staffing or other employment issues, even if their complaints are legitimate. **Claim of Rice, 735 N.Y.S.2d 637 (N.Y. App., 2001).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924

Indexed in
Cumulative Index to Nursing & Allied Health Literature™

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

E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
12026 15th Avenue N.E., Suite 206
Seattle, WA 98125-5049
Phone (206) 440-5860
Fax (206) 440-5862
info@nursinglaw.com

Mental Abuse: Court Uses Objective Standard, Subjective Effect On Patient Irrelevant.

In this case an aide used a vulgar term for a resident's genitals while cleansing her perineal area.

It is not necessary to delve into the mental state of the patient in question. Whether or not she was offended or distressed is not relevant.

To determine if mental abuse occurred the issue is not whether the act in question had an adverse effect on the patient in question.

The issue is whether the act in question would tend to have an adverse affect on a reasonably alert and cognizant patient.

Any alert and cognizant nursing home resident who is helpless and vulnerable while receiving perineal care would be expected to suffer some degree of mental distress from a personal caregiver using such offensive language.

SUPREME COURT OF CONNECTICUT, 2002.

A nursing assistant used a vulgar term for the resident's genitals while cleansing her perineal area. The aide was found guilty of abuse. She appealed all the way to the Supreme Court of Connecticut, which upheld the finding of abuse.

Intent

Intent is a necessary legal element of abuse. However, the law looks for intent to commit the act, not intent for the act to have a harmful effect. The aide intended to say exactly what she said. Perhaps she meant no harm, but that is immaterial.

Mental Abuse / Objective Standard

The courts use an objective standard to determine if mental abuse has occurred. The courts look at whether a reasonably alert, oriented, sentient and cognizant patient would suffer mental distress from the conduct in question.

In this case, the court ruled it is objectively abusive for a caregiver to use vulgar and offensive language while performing a patient's most intimate personal care.

That means it is not relevant to delve into the particular resident's mental state to see if the resident in fact suffered harm. This resident testified in a statement that she was deeply offended, but that was irrelevant. The court did not have to decide if this particular resident was offended to any degree to rule that abuse occurred.

One Episode Sufficient

The court had no problem ruling that just one objectionable abusive episode is enough to discipline a personal care worker. **Salmon v. Department of Public Health, 788 A. 2d 1199 (Conn., 2002).**

Medicare/Medicaid: Regulations Proposed To Allow State Funding For Paid Feeding Assistants In Long-Term Care Facilities.

SUMMARY: This proposed rule would provide states the flexibility to allow long term care facilities to use paid feeding assistants to supplement the services of certified nurse aides if their use is consistent with state law.

If facilities choose this option, feeding assistants must complete a specified training program.

This proposed rule would improve the quality of care in long term care facilities by ensuring that residents are assisted with eating and drinking as needed.

PUBLIC COMMENTS: The Centers for Medicare & Medicaid Services will consider written comments from the public if the comments are received at the following address on or before May 28, 2002:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2131-P, PO Box 8017, Baltimore, MD 21244-8017.

Comments cannot be submitted by fax or e mail.

Persons filing public comments are asked to refer to file code CMS-2131-P.

An original and three copies must be submitted if the comments are to receive consideration.

BACKGROUND AND RATIONALE: Currently there is no provision in Federal regulations for the use of single-task workers such as paid feeding assistants in nursing homes.

To insure the safety of nursing facility residents, current regulations require that qualified nursing staff provide assistance with eating and drinking to residents who need assistance or supervision while eating and drinking.

In this context qualified nursing staff include registered nurses, licensed practical nurses and certified nursing assistants who have completed seventy-five hours of training.

The Centers for Medicare & Medicaid Services (CMS) has put a proposal on the table to allow states to fund the use of feeding assistants in long-term care facilities.

Feeding assistants will work with close direct supervision by registered nurses or licensed practical nurses under the proposed new regulations.

At this time this development is only a proposal that has not yet gone into effect.

As a general rule any Federal agency proposing new regulations must first publish the regulations in the Federal Register and accept public comments before making the decision to issue new or amended regulations in final form.

CMS has indicated it may also be necessary on a state-by-state basis for states to amend their laws which define the scope of nursing practice and the duties of non-licensed certified nurses' aides to remove any incompatibility with the requirements and duties of feeding assistants as outlined in the proposed new Federal regulations.

FEDERAL REGISTER, March 29, 2002
Pages 15149-15154.

National CNA Shortage

According to CMS, there is a national CNA shortage, while the nursing-home population is becoming increasingly frail as assisted-living arrangements become popular for elderly persons who do not need assistance with basic ADL's.

Paid feeding assistants will be intended to supplement and work along side rather than replace certified nurse's aides. They will help to feed residents whose nurses have decided need assistance with meals and snacks but do not require a licensed nurse to help them.

Assessment, Supervision To Remain Nursing Responsibilities

Professional nurses will continue to have the responsibility to assess and identify residents who need help with feeding, which often must be done on a day-to-day basis. They will continue to have the responsibility to delegate feeding to a CNA or a feeding assistant, or see that the resident receives assistance from a nurse.

Licensed nurses must always be standing by on the unit to intervene if a certified aide or feeding assistant encounters a problem with feeding and requests help.

CNA or a Feeding Assistant?

CMS anticipates that some residents, for example those with recurrent lung aspiration or difficulty swallowing or who have parenteral, nasogastric or gastrostomal feeding tubes, can be fed by specially trained certified aides who have demonstrated their competence, but will not be candidates for feeding by paid feeding assistants with more minimal training.

Errors and Omissions

Nursing facilities will have the same liability as at present for CNA's for errors and omissions of feeding assistants.

Registry of Abuse, Neglect

Feeding assistants will be subject to the same reporting requirements as licensed nurses and certified nurse's aides for incidents of abuse or neglect of residents.

FEDERAL REGISTER, March 29, 2002
Pages 15149-15154.

Medicare/Medicaid: Regulations Proposed To Allow State Funding For Paid Feeding Assistants In Long-Term Care Facilities.

PROPOSED NEW REGULATIONS: PART 483--REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart B-Requirements for Long Term Care Facilities

Sec. 483.35 Dietary services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

* * * * *

(h) Paid feeding assistants

--(1) General rule. A facility may use a paid feeding assistant, as defined in Sec. 488.301 of this chapter, to feed residents who meet the following conditions:

(i) Need assistance with eating and drinking.

(ii) Based on the comprehensive assessment, do not have a clinical condition that requires the assistance with eating and drinking of a registered nurse, licensed practical nurse, or nurse aide.

(2) Requirements on facilities.

If a facility uses a paid feeding assistant, the facility must ensure that the feeding assistant meets the following requirements:

(i) Training. Completes a State-approved training course that meets the requirements of Sec. 483.160.

(ii) Supervision. Works under the direct supervision of a registered nurse or licensed practical nurse. This means that a nurse is in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary.

(i) Sanitary conditions. The facility must--

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

CMS anticipates that some paid feeding assistants will be part-time employees such as retirees or homemakers who will work just a few hours each day.

Facilities may also opt to cross-train other personnel as feeding assistants, such as housekeepers and maintenance workers, and may even require clerical and administrative staff to complete the training.

Facilities can continue to draw upon community volunteers to feed residents. Volunteers, including family members, will not be expected to complete the same training that will be required for paid feeding assistants.

The full text of this announcement has been placed on our website at http://www.nursinglaw.com/67fr15149.pdf

FEDERAL REGISTER, March 29, 2002
Pages 15149-15154.

* * * * *

Sec. 483.75 [Amended]

3. In Sec. 483.75(e), the definition of "nurse aide" is amended by adding the following sentence to the end of the definition: "Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants as defined in Sec. 488.301 of this chapter."

Subpart D--Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation; and Paid Feeding Assistants

Sec. 483.160 Requirements for training of paid feeding assistants.

(a) A State-approved training course for paid feeding assistants must include, at a minimum, the following:

(1) Feeding techniques.

(2) Assistance with feeding and hydration.

(3) Communication and interpersonal skills.

(4) Appropriate responses to resident behavior.

(5) Safety and emergency procedures, including the Heimlich maneuver.

(6) Infection control.

(7) Resident rights.

(8) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

(b) A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

(c) A State must require a facility to report to the State all incidents of a paid feeding assistant who has been found to neglect or abuse a resident, or misappropriate a resident's property. The State must maintain a record of all reported incidents.

* * * * *

Sec. 488.301 Definitions.

As used in this subpart -- Paid feeding assistant means an individual who meets the requirements specified in Sec. 483.35(h)(2) of this chapter and who is paid to feed residents by a facility, or who is used under an arrangement with another agency or organization.

FEDERAL REGISTER, March 29, 2002
Pages 15149-15154.

Decubiti, Sepsis, Dehydration: Jury Finds No Evidence Of Nursing Home Negligence.

A patient was discharged from the hospital to a nursing home following hip surgery. About six weeks later he was taken by ambulance back to the hospital. He died there one week after admission.

The hospital staff physician who admitted him believed the patient had suffered abuse and neglect in the nursing home and he notified the state Department of Health.

Specifically, according to the court record, on admission to the hospital the patient's tongue was noted to be coated with a thick membrane, his mucous membranes were dry, fecal material was smeared on his perineum and legs, his urine was cloudy, he had gangrene of the right foot and there were decubiti on the heels of his feet and his right hip.

After he died the family sued the nursing home for negligence. The jury ruled against them, finding no negligence. The Court of Appeals of Texas affirmed the verdict.

Hospital's Admitting Physician's Conclusions Ruled Speculative

The court ruled it would be pure speculation for the admitting physician to offer an opinion about the quality of care at the nursing home, as he had not seen the patient at the nursing home, reviewed the records, consulted with the staff, etc.

In the court's view the physician's comments would be highly inflammatory and prejudicial if brought to the jury's attention.

Basic assessment data from the hospital chart, on the other hand, was admissible evidence, although in and of itself it did not necessarily prove the quality of care at the nursing home.

State Investigation Ruled Confidential

Attorneys for the state Department of Health fought vigorously and successfully against the family's attomeys' efforts to open up the state's investigative file.

The Court of Appeals agreed that the investigator's notes, photographs and report were by law strictly confidential. These materials were meant only for internal use within the agency for quality review. The court believed nursing home residents will benefit in the long run if the courts maintain the confidentiality of the state's investigative and quality review functions and keep the results of the process out of the malpractice litigation arena.

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

However, a nurse with an impressive academic and consulting background is not necessarily an expert on the nursing standard of care in a nursing home.

This nurse conceded she had never worked as an administrator, charge nurse or staff nurse in a nursing home and had never performed routine shift work in a nursing home.

She is not qualified as an expert witness in a nursing home negligence case.

In civil medical malpractice cases the trial judge has a great deal of discretion whether to accept or to reject an offer of expert testimony.

The judge is required by law to ensure that an individual who is offered as an expert witness truly has expertise concerning the actual subject about which the witness is to testify.

The expert must have specialized knowledge, skill, experience, training or education regarding the specific issue before the court before the expert can give an expert opinion.

COURT OF APPEALS OF TEXAS, 2001.

Nursing Documentation

The most important factor influencing the court was the nursing documentation created at the nursing home.

Skin Assessment On Admission

The nurses carefully assessed the patient's skin integrity when he entered the nursing home. It was documented he already had pressure sores on his heels and redness and excoriation on his buttocks and perineal area on admission.

Care Plan

The care plan called for a nurse to check his status hourly. The plan was to turn him every two hours, and it was documented he was being turned, but with his cognitive deficits he needed closer monitoring to see that he stayed repositioned.

Nutritional Assessment/Flow Charting

There was a nutritional assessment. There was flow charting of how much fluid he was getting with his meals, with his medications and whether his bedside pitcher was being refilled q shift.

Input and output could not be monitored because he was incontinent. The facility did not have the capability for IV fluid replacement.

Nursing Progress Notes

The nurses carefully documented the progression of his skin lesions and noted they called in a physician who ordered antibiotics and a debriding agent.

The nurses documented that the family declined the nurses' recommendation that he go back to the hospital because of his skin lesions, just six days before he finally did go back to the hospital.

The patient was diagnosed with sepsis in the hospital, but there was no proof it did not develop in the hospital rather than at the nursing home. **Pack v. Crossroads, Inc., 53 S.W. 3d 492 (Tex. App., 2001).**

L&D: Case Dismissed, No Proof Of Cause And Effect.

The Court of Appeals of Texas was willing to accept a physician's written report that was based on retrospective review of the monitor strips and the nursing and medical progress notes. His opinion was that the nurses were negligent. They failed to appreciate non-reassuring fetal heart rate patterns on the monitor strip and did not notify the physician.

Nurses must watch the monitor strip for non-reassuring patterns, must notify the physician immediately when a non-reassuring pattern is detected and must carefully chart their observations, the vital signs and any medications being given.

With a non-reassuring fetal heart rate and contraction pattern it is a medical judgment whether to induce labor, do a cesarean or wait.

COURT OF APPEALS OF TEXAS, 2001.

Nevertheless, the court ruled there was insufficient evidence for the lawsuit to go forward as a medical malpractice action.

In medical malpractice litigation there is a strict requirement for proof of negligence by caregivers, harm to the patient and a cause-and-effect link between the negligence and the harm.

In this case, the court said, there was no proof that the physicians not inducing labor twenty-four hours after the patient's membranes ruptured, but waiting thirty-six hours, in and of itself had any effect on the baby. **Gonzales v. El Paso Hospital District, 68 S.W. 3d 712 (Tex. App., 2001).**

Battery, False Imprisonment: Patient Given Haldol, Taken To Nursing Home.

A common-law civil battery occurs when a person's body is so much as touched by another person without consent.

Any medical intervention that involves touching the patient must be authorized by the patient or the patient can sue for battery.

To avoid liability for battery there must be consent from the patient or from someone who can consent on the patient's behalf.

Even though a niece generally cannot consent on a patient's behalf, this patient had established a pattern of allowing her niece to give consent on her behalf.

To determine if a detention amounts to common-law false imprisonment, the court must look at the totality of the circumstances to see if the defendant's actions were objectively reasonable.

In this case the patient was out of control and was not acting competently or reasonably in refusing necessary care.

It was not unreasonable to medicate this patient in her condition and take her to a nursing home.

COURT OF APPEALS OF MISSISSIPPI, 2001.

(Continued from page 1)

The court looked at several factors which supported the jury's decision in favor of the patient's caregivers.

Niece Had Given Consent Before

From her very first visit to the doctor in his office the patient had indicated her niece was the one to be contacted in case of an emergency.

When she was admitted to the hospital and while in the hospital the patient's consent forms were signed by the niece for the patient. The patient at no time expressed disagreement to her hospitalization or to any of the procedures that were done with consent expressed by the niece until the last dose of Haldol prior to her discharge to a nursing home.

On the other hand, the court pointed out for legal purposes it would have been safer to seek out and get consent from a close family member other than a niece.

By law a spouse, child, parent or sibling is deemed to have authority to give medical consent, while a niece is not mentioned in the medical consent statute.

Patient Must Be Mentally Competent To Refuse Treatment

A competent adult has the right to refuse medical care, even care that is necessary for survival. A competent adult would be expected to become agitated if held and treated against his or her wishes.

It was a judgment call, but the court saw this patient's agitation and combativeness as evidence of unsoundness of mind, giving her caregivers the right and the duty to override her expressed wishes.

The court said the patient's placement in the nursing home was reasonable under the circumstances.

It would have been a safer course of action to keep her in the hospital and get a court order appointing the niece as the legal guardian with authority to decide what to do or for the court order to specify what was in the patient's best interests.

Marchbanks v. Borum, 806 So. 2d 278 (Miss. App., 2001).

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Home Delivery: Court Upholds Legal Sanctions Against Unlicensed Midwife.

The mother and father did not want to go to the hospital and did not want a doctor or a nurse to deliver their baby. They opted for a home birth with a self-styled midwife. They knew she was not licensed and knew the state Department of Regulation had issued an administrative cease-and-desist order against her forbidding the unlicensed practice of midwifery.

The baby presented feet-first. After ten minutes they called 911. The police also responded and confiscated a videotape that was being made of the birth. The Appellate Court of Illinois issued an injunction against further unlicensed practice. The court used this case as an opportunity to emphasize the importance of the state law requiring all licensed midwives to be registered nurses or advanced nurse practitioners. **People v. Cryns, 763 N.E. 2d 904 (Ill. App., 2002).**

Heath Maintenance Organization: Court Finds Fault With Visiting Nurse.

The patient and her husband filed a lawsuit against their health maintenance organization (HMO) claiming the patient was discharged and sent home from the hospital too soon after routine childbirth.

The HMO's policy was to see that the mother was out of the hospital no later than twenty-four hours after an uncomplicated vaginal delivery.

The New York Supreme Court, Appellate Division, refused to fault the HMO's policies. As long as the HMO allowed payment for visiting pediatric nurse visits the HMO fulfilled its responsibility. The court went on to rule that the nurse, an independent contractor, was at fault. She failed to appreciate that the baby's jaundice required he be taken to the doctor's office immediately but instead told the mother to wait and see until the next morning. **Jones v. US Healthcare, 723 N.Y.S.2d 478 (N.Y. App., 2001).**

Thrombolytic Therapy: Cardiologist Faults Nurse For 15 – 18 Minute Delay In Starting Infusion.

A patient sued the hospital and the hospital's emergency room nurse for negligence. He claimed the nurse unreasonably delayed the start of thrombolytic therapy ordered by the emergency room physician shortly after the patient presented with symptoms of an acute myocardial infarction.

The plaintiff's expert witness was the physician who treated him in the emergency room, who happened to be a board-certified cardiologist.

The hospital argued in its defense that the cardiologist, a physician with no background in nursing, was not qualified to render an opinion as an expert on nursing standards. Without an expert witness testifying against them the hospital argued they were entitled to have the case dismissed.

In this case a cardiologist was qualified to testify that the nurse was negligent.

It is absolutely critical to the success of the patient's medical care during or following a heart attack that infusion of a thrombolytic agent be started as quickly as possible after it is ordered by the physician. That is a medical judgment and there is no room for a nurse's discretion when to start the medication.

APPELLATE COURT OF ILLINOIS, 2002.

The trial judge did dismiss the case, but the Appellate Court of Illinois overruled the dismissal.

The Appellate Court went into great detail about the benefit of thrombolytic therapy to a heart attack patient. It can dissolve a blood clot in the heart and allow circulation to return to the affected area preventing the area from suffering permanent ischemic damage.

The Appellate Court accepted the physician's testimony that the nurse's delay of fifteen to eighteen minutes could have the potential to compound the patient's injuries. According to the court, a nurse does not have to monitor the infusion process, but must see that it is started as quickly as possible. **Moyer v. Southern Illinois Hosp. Service, 764 N.E. 2d 155 (Ill. App., 2002).**