LEGAL EAGLE EYE NEWSLETTER

May 2003 *For the Nursing Profession* Volume 11 Number 5

Lifting Restriction: Court Turns Down Nurse's Disability Discrimination Claim.

A staff nurse was injured while working in the hospital's cardiac care unit when a patient grabbed on to the nurse's left shoulder in the process of sitting up in bed.

The nurse applied for and received worker's compensation time-loss and medical payments benefits and was approved for two extended periods of medical leave according to the Family and Medical Leave Act (FMLA).

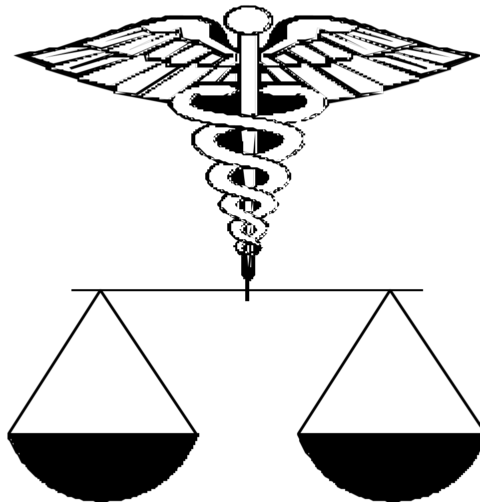
A controversy arose when the nurse felt he was ready and wanted to return to work.

His physician certified him as fit to return to duty, with a medical restriction against lifting more than forty pounds. Human resources told him he had to be 100% fit for duty and able to perform CPR.

Accommodation Requested

After speaking with a representative of the US Equal Employment Opportunity Commission (EEOC) the nurse wrote a letter asking for what he believed was a reasonable accommodation so he could return to work.

Pointing to the Americans With Disabilities Act (ADA) the nurse officially requested an accommodation from the hospital in the form of a nursing position that did not involve lifting more than forty pounds.



The nurse's medical restriction that he cannot lift more than forty pounds is not a disability under the Americans With Disabilities Act.

In order to be substantially limited in the ability to work for a living an individual must be unable to perform a broad class of jobs, not simply a single job or type of job.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
April 3, 2003

Job Description Revised To Meet JCAHO Recommendation

Human resources told the nurse the hospital had just recently revised the generic job description for staff nurses to require all staff nurses to be able to lift at least fifty pounds, in line with a recommendation to the hospital from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) that specific quantitative benchmarks be implemented for nurses' clinical competency.

In February 1999 the nurse finally resigned. He sued for disability discrimination, citing the hospital's alleged refusal to provide reasonable accommodation to his disability.

Court Turns Down Nurse's Disability Discrimination Claim

Nurses with medical restrictions against lifting who are not given light-duty positions do not have the right to sue their employers for disability discrimination, as a general rule.

The US District Court for the Southern District of New York went through the series of steps the courts use in the legal analysis of these cases.

The threshold issue is always whether the employee has a disability as disability is defined by the ADA.

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May 2003

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Bedsores: Not Appropriate To Reposition Patient During Heart Catheterization, Court Says.

A diabetic paraplegic went to the heart institute for cardiac catheterization and three days later had bypass surgery.

Later he developed bedsores and decubitus ulcers on both heels and on his buttocks. He had to have both feet amputated below the knees and large sections of his buttocks were surgically removed.

The patient sued the heart institute and his physicians for negligence. He alleged the physicians and nurses should have known of his heightened susceptibility to skin breakdown and repositioned him during the four-hour procedure.

The jury heard testimony from both cardiologists that, notwithstanding his diabetes and susceptibility to skin breakdown, it would not have been right to move him once the procedure was underway.

The cardiologists, in fact, had both reached settlements with the patient prior to trial, leaving the heart institute as the only defendant before the jury.

That is, the only issue for the jury to rule upon was the alleged negligence of the institute's perioperative staff.

The jury found for the heart institute and the Court of Appeal of Washington affirmed the jury's verdict in an unpublished opinion.

Too Dangerous to Move the Patient

The court agreed with the physicians' judgment it would have been very dangerous to the patient to try to move the patient while cardiac catheterization was underway, while metal probes were in a major blood vessel leading to the heart, even though a patient like this generally cannot go four hours without repositioning.

Positioning, Padding Were Adequate

The court was also unable to find anything wrong with how the patient was positioned and padded from the start.

He was placed flat on his back lying on a one-inch foam pad with both arms supported by arm rests attached to the sides of the narrow catheterization table. **Todd v. Hearth Institute of Spokane, 2003 WL 1824981 (Wash. App., April 8, 2003).**

A diabetic paraplegic patient is extremely susceptible to skin breakdown and decubitus ulcers.

The nurses who attended to the patient during his heart catheterization had multiple opportunities to reposition him during the procedure to minimize the risk of skin breakdown.

He developed decubitus ulcers on both heels and on his buttocks and had to have both feet amputated and large sections of his buttocks resected.

However, in the cardiologists' judgment it was not appropriate to move him at all once the cardiac catheterization was underway.

The catheterization took more than four hours, longer than expected. The first cardiologist tried to go in through the right femoral artery, then had the nurses scrub and prep the left femoral artery. When that was not successful he called for his associate to scrub in and try the left brachial artery, which was successful.

During the whole time the patient had to be kept completely still.

COURT OF APPEALS OF WASHINGTON
UNPUBLISHED OPINION
April 8, 2003

Cardiac Care: Nurse Fails To Answer Pager, Court Affirms Dismissal.

A registered nurse was discharged from her employment as a staff nurse on a hospital's cardiac care unit after she failed to respond promptly to a pager alert set off by a patient.

Failure to comply with an employer's policies and procedures may be considered conduct justifying termination for cause, especially in cases where the employee is a health care professional whose lapses could jeopardize the safety of a patient.

NEW YORK SUPREME COURT
APPELLATE DIVISION
April 10, 2003

The New York Supreme Court, Appellate Division, ruled the employer had grounds to terminate the nurse for cause.

According to the court, the pager alert that was ignored by the nurse was triggered by a heart arrhythmia detected by the patient's cardiac monitor.

Arrhythmia is potentially a serious condition. If a competent evaluation and an appropriate response are not promptly given, the patient could die, the court pointed out.

The court also pointed out that the nurse had already received several warnings and a three-day suspension for unsatisfactory job performance, although the nature and seriousness of these incidents were not specified in the court record.

The court accepted the supervisor's testimony there was nothing wrong with the pager. **Claim of Shene, __ N.Y.S.2d __, 2003 N.Y. Slip Op. 12938, 2003 WL 1849718 (N.Y. App., April 10, 2003).**

Nursing Expert: Court Disallows Testimony, Dismisses Case.

After surgery to remove a brain tumor the patient contracted meningitis and died in the hospital's intensive care unit.

The family's wrongful death lawsuit alleged nursing negligence was a contributing factor in the patient's death.

The family's medical expert, a neurologist, criticized the medical care he received, but did not believe the ICU nurses were guilty of any errors or omissions.

The family's nursing expert stated the patient should have been restrained and had an O_2 sat monitor. The nurses should also have seen him sleeping without distress as an alarming sign after his previous restlessness and confusion and done a full nursing neurological assessment.

Nursing Expert Disallowed

The Court of Appeals of Kentucky, in an unpublished opinion, noted the family's nursing expert had no experience in neuro intensive care and had never been certified in neuroscience nursing. In fact, her employment as an RN had been sporadic and her license had been suspended. **Hall v. Caritas Health Services, Inc., 2003 WL 1786644 (Ky. App., April 4, 2003).**

AMA: Court Questions If Patient Was Fully Advised, Nurses Had Not Put Panic Labs On Chart.

Contributory negligence and assumption of risk are common-law defenses to civil negligence which apply to some extent in medical malpractice cases.

When a patient leaves the hospital against the advice given by doctors and nurses it can be considered contributory negligence or assumption of risk by the patient.

If the patient has complications and sues the hospital, the patient is allowed to question the competency the advice given by the doctors or nurses before the patient made the decision to leave against such advice.

In this case the deceased's lab results indicating PANIC LEVELS EXCEEDED were not placed on his chart by the nurses so that the physician could competently advise him.

SUPREME COURT OF ALABAMA
April 11, 2003

The Supreme Court of Alabama acknowledged it was a complicated case, legally and medically.

The local judge exonerated the hospital's emergency room physicians and nurses from negligence. The deceased patient's personal representative appealed. On appeal the Supreme Court of Alabama reversed the judge and ordered a jury trial.

The jury reached the same conclusion, that is, no negligence, and the personal representative appealed again.

In the second appeal, while expressing strong misgivings about the care the deceased received the Supreme Court of Alabama upheld the jury, based on the legal system's strong policy favoring the finality of a verdict of a civil jury that has heard the evidence first-hand.

Panic Lab Values Not Noted In Chart

For a patient to be ruled at fault for leaving against medical advice, and the patient's caregivers to be ruled not liable based on the patient's own contributory negligence or assumption of risk, the medical advice against which the patient left has to have been competent advice.

A blanket statement in the hospital's AMA form, that the patient could die after leaving, might not be adequate, the court felt, if there was more direct evidence about the patient's condition the patient was not given, due to negligent mishandling of critical information by the institution's medical, nursing or laboratory personnel. **Lyons v. Walker Regional Medical Center, Inc., __ So. 2d __, 2003 WL 1861023 (Ala., April 11, 2003).**

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Family Member Barred From Nursing Home: Court Throws Out Lawsuit For Retaliation.

A nursing home resident's son sued the nursing home after he was barred from the premises at the request of the nursing staff.

His civil lawsuit alleged retaliation for his complaints to state authorities about alleged substandard practices at the nursing home. His lawsuit further alleged he was the victim of emotional distress intentionally inflicted by the nursing staff.

The jury dismissed the retaliation claim but awarded $25,000 in damages for emotional distress against the nursing home and $25,001 against the nursing home administrator. But then the judge awarded judgment in favor of the nursing home and the administrator notwithstanding the verdict, that is, the judge overruled the jury and dismissed the emotional distress claim along with the retaliation claim the jury itself had dismissed.

The Supreme Court of Rhode Island affirmed the judge's decision, effectively throwing out the lawsuit in its entirety.

Facts Disputed

There were two sides to the story. The son claimed the nurses took a cavalier attitude toward their duties while residents' needs went unmet and their complaints went unheeded.

The nurses claimed the son made himself a general nuisance, hurling insults at the nurses and the aides and even trying to feed a resident himself.

The nursing home administrator barred him from the facility and told him he could sue if he did not like it. While the suit was pending the lawyers provisionally set up three weekly half-hour sessions when the son could see his mother in the lobby with staff supervision.

Retaliation Was Presumed Nursing Home Had Burden of Proof

The son phoned in several reports to the state Department of Health and Elderly Affairs that he though the nurses and aides were neglecting their duties, but he never filed a formal written complaint.

Nonetheless, according to the court, the son was entitled to legal protection against retaliation. That is, because the adverse action of barring him from the nursing home took place soon after he contacted the state authorities, the nursing home had the burden of proof to convince the court that retaliation was not the reason he was barred from the facility.

The law strongly favors the rights of persons who blow the whistle on actual or suspected abuse or neglect of nursing home residents.

It is not necessary that the charges a whistleblower raises or threatens to raise actually be proven valid, as long as the whistleblower genuinely thought valid issues were being raised and was not motivated solely by malicious intent to harass.

That being said, the court was satisfied that the son's vexatious behavior toward staff and other residents was sufficiently bothersome that his behavior, not retaliation for going to the state authorities, was the nursing home's motivation, notwithstanding the law's presumption there is retaliation a situation like this.

They were acting to protect the staff and other residents' from the son's inappropriate behavior.

Right To Have Visitors Is Resident's Right

The court also pointed to the wording of Federal regulations, state regulations in Rhode Island and comparable regulations in other states on the subject of visitation rights. Residents of nursing homes have an important right to have family and others visit them. However, it does not say anywhere that family members have the right to visit persons in nursing homes.

Residents have the right to sue when their rights are violated and, in general, family members can sue on residents' behalf when residents' rights are violated.

However, according to the court, it would be a stretch to interpret the statutes and regulations that give nursing home residents the right to sue to give persons other than nursing home residents the right to sue and collect for themselves. **Jalowy v. The Friendly Home, Inc., __ A. 2d __, 2003 WL 1524569 (R.I., March 26, 2003).**

Federal regulations grant residents of nursing facilities that participate in Medicare and Medicaid very broad rights to have relatives visit them.

Code of Federal Regulations Title 42, Section 483.10 (j)(1))(vii) expressly says a long-term care resident has the right to visits from immediate family and other relatives and the facility must provide immediate access if the resident so requests, subject to the resident's right to deny or withdraw consent at any time.

Many states have similar rules and regulations that give residents the right to have visitors, as long as the visitors do not pose a health or safety risk to other residents, staff or visitors and comply with reasonable policies for visiting hours and security procedures.

However, these laws, rules and regulations do not confer legal rights on visitors, only upon residents.

These laws, rules and regulations do not give visitors the right to file civil lawsuits for damages or injunctive orders if they are denied access to a nursing home.

SUPREME COURT OF RHODE ISLAND
March 26, 2003

Lifting Restriction: Court Turns Down Nurse's Disability Discrimination Claim.

(Continued from page 1)

Disability Defined By Americans With Disabilities Act

The ADA defines a disability as a physical or mental impairment that substantially limits one more of the major life activities of the individual. An employee can also be considered disabled for purposes of disability discrimination law if the employee is regarded by the employer as having such an impairment, even if the employee in fact has no such impairment.

Impairment Must Substantially Limit a Major Life Activity – Lifting

For an impairment to be substantially limiting it must significantly restrict the individual in comparison with an average person in the general population in terms of how well the individual can perform a major life activity.

In this case, according to the court, the nurse's lifting restriction did not come under the definition of a disability under the ADA because the inability to lift over forty pounds is not a substantial limitation. Since the average person in the general population may not be able to lift forty pounds or more, the nurse's lifting ability was not substantially restricted in relation to that of most people, the court said.

Working as a Major Life Activity

Looking at it from a different angle, in order to be substantially limited in the ability to work, an individual must be unable to perform a broad class of jobs, not simply a single job or a single type of job.

Since many jobs in the general economy do not require lifting over forty pounds, a person who cannot lift more than forty pounds is not substantially limited in his ability to work, the court ruled.

Employer's Perception of Employee As Disabled

According to the court, the hospital did not consider the nurse to have a substantial limitation of his ability to work.

First, the hospital's own medical examiner considered him only "mildly" disabled by his restrictions, not completely disabled from working altogether.

Employers must exercise extreme caution when dealing with disability discrimination issues.

An employee's right to sue for retaliation is not affected by the fact the employee does not actually have a disability as the law defines a disability.

An employee who asks for reasonable accommodation or who complains about discrimination is protected from employer retaliation, assuming the employee has a good-faith belief that the employer's conduct is unlawful.

To sue for retaliation an employee must show that he or she engaged in an activity protected by the ADA, like requesting something the employee believes is his or her legitimate legal right, and that the employer then took adverse action.

The employer then has to convince the court there was a legitimate, non-retaliatory reason behind the action taken.

The employee then can try to discount the employer's reason as merely a pretext for discrimination or retaliation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
April 3, 2003

Second, the hospital went along with the nurse being placed under surveillance by a private security firm while he was out on worker's comp, suspecting he was actually working somewhere else as a nurse while drawing time-loss payments.

Third and most important, human resources offered the nurse the option of looking at non-nursing positions without the fifty-pound lifting requirement for staff nurses. Had the hospital considered him significantly limited, the court reasoned, the hospital would not have done this.

When an employee makes an allegation, like saying his employer perceives him as disabled, the employee has to prove the allegation. The employee has to come up with facts to back it up. The employer does not have to disprove something that the law says is the employee's burden of proof, the court noted in passing.

Retaliation Is A Separate Issue

The hospital put in its explicit fifty-pound lifting requirement for staff nurses while this nurse was still in the process of trying to get light-duty as a reasonable accommodation, having been advised by the EEOC that light duty was his right.

The court ruled the hospital's doing this gave the nurse a *prima facie* right to sue the hospital for retaliation, whether or not his underlying disability discrimination case was valid.

When the employee has a *prima facie* case of retaliation apart from the underlying discrimination case, the employer has the burden of proof to show a legitimate, non-retaliatory reason behind its action.

In the final analysis the court accepted the hospital's desire to go along with JCAHO as a non-retaliatory motive for putting in the new lifting requirement.

The court said it made a close call when it threw out the nurse's *prima facie* case of retaliation. The hospital did not ever test other staff nurses for how much they could lift and did accommodate pregnant nurses who had medical lifting restrictions. **Taylor v. Lenox Hill Hospital, 2003 WL 1787118 (S.D.N.Y., April 3, 2003).**

Retaliation: Court Throws Out Nurse's Lawsuit, Reported Patient Abuse *After* Being Terminated.

An LPN called her supervisor at home to report that an agency LPN was not following the long-term care facility's procedures and was giving inappropriate care. The resident had to go in for emergency surgery as a result. In its recent unpublished opinion, the Court of Appeals of Minnesota did not elaborate any further than this upon what exactly happened with the patient

State authorities were not notified, although the facility itself did conduct an internal investigation. The court did not elaborate upon the outcome of the facility's internal investigation.

Unrelated Dispute Leads to LPN's Termination

Three weeks later the LPN met with the director of nursing to discuss her work schedule.

At this meeting the LPN did not have anything to say about the inappropriate care incident that occurred three weeks earlier.

Again a week later the LPN met with the director of nursing, this time to complain that another LPN had been hired for the time slot the LPN had indicated in the earlier meeting she wanted for herself.

The LPN went to see the facility's administrator and human resources director at the end of her shift to express her dissatisfaction with the outcome of her meeting with the director of nursing.

The LPN did not get what she wanted at this meeting. She went out to the nurses' station near the patient-care areas and began creating a disturbance. According to the court record, she was asked to leave and the human resources director escorted her out of the building.

The next day the administrator returned the LPN's call, told her not to call back again and informed her she was fired.

The day after that she called the state Department of Health and reported the original patient-care incident.

The Department of Health determined that patient neglect actually had occurred and cited the facility for violation of relevant long-term care regulations.

When an employer takes adverse action against an employee soon after the employee reports actual or suspected abuse or neglect of a vulnerable person to the authorities, or threatens to do so, the law presumes the employee was the victim of employer retaliation.

That is, under these circumstances the employer has to prove the employer did not retaliate.

COURT OF APPEALS OF MINNESOTA
UNPUBLISHED OPINION
March 18, 2003

No Retaliation Occurred

The court noted that the law very strongly protects an employee from adverse consequences *after* an employee has reported actual or suspected abuse or neglect of a patient to state authorities or even threatened to do so.

When adverse action is taken against such an employee soon afterward (within ninety days in Minnesota) the usual burden of proof is reversed. If the employee elects to take the employer to court the court will presume there was retaliation. The law forces the employer to prove there was no retaliation or the employee wins his or her case in this situation.

Having said that, however, the court threw out the LPN's retaliation suit and ruled she was terminated for cause. Her blow-up after her meeting with management justified termination. It had nothing to do with the earlier patient-care incident. **Strickland v. Martin Luther Manor, 2003 WL 1219204 (Minn. App., March 18, 2003).**

Retaliation: Whistleblower's Suit Dismissed, Complained Of Understaffing.

A registered nurse was fired from her position in a long-term care facility after various disciplinary problems.

She had also voiced her concerns over staffing levels at the facility.

To sue for wrongful discharge as a whistleblower the former employee must fit the legal definition.

The whistleblower's complaint must relate to a violation of the letter of the law by the employer which is a criminal offense or relate more generally to a hazard to public health and safety.

Furthermore, the employee must first report the problem to the employer in writing and follow up with a prompt written report to state authorities, or the employee is not strictly speaking a whistleblower and has no right to sue.

COURT OF APPEALS OF OHIO
March 19, 2003

The Court of Appeals of Ohio ruled she had no right to sue for wrongful discharge. She was not a whistleblower.

A healthcare worker must report a problem to his or her supervisor, then promptly follow up with a formal written report to state authorities, and then be faced with consequences, to be considered a whistleblower with the right so sue. **McGuire v. Elyria United Methodist Village, 2003 Ohio 1296, 2003 WL 1339167 (Ohio App., March 19, 2003).**

EMTALA: E.R. Nurses Failed To Get EKG For Patient With Chest Pains, Court Sees Basis For Lawsuit Against Hospital.

The US District Court for the District of Puerto Rico looked carefully at all that happened in the emergency room on the day in question, Christmas Day, 2000.

Commenting at length on the evidence against the hospital, the court ruled that the hospital was not entitled to summary judgment of dismissal.

The deceased patient's family was entitled to their day in court before a civil jury to argue their case that the hospital violated the US Emergency Medical Treatment and Active Labor Act (EMTALA).

Court Questions Triage Nurse's Assessment

Standard procedure at the hospital was for emergency room patients first to be seen by the triage nurse.

Triage, as the court pointed out, means quickly placing the patient into one of three categories: unstable needing urgent care, stable yet needing attention, or ambulatory, that is, one who can wait.

In EMTALA court cases the emergency room triage nurse's triage is often the first step in the hospital's effort to provide the appropriate medical screening examination the EMTALA requires and the first step in the legal analysis after the fact whether the EMTALA was violated.

Even before triage, how long does the patient have to wait to be seen by the triage nurse? In this case the triage nurse did not even take vital signs for almost thirty minutes, too long, the court felt.

Then how did the triage nurse categorize the patient? If wrongly categorized by the triage nurse a patient who needs and is entitled to a physician's care and prompt diagnostic tests as part of the usual emergency room work-up will not get the appropriate medical screening examination the EMTALA requires.

Although emergency room nurses' actions can lead to EMTALA liability, by the express wording of the law only a hospital or a physician can be sued, unlike ordinary medical malpractice.

The Emergency Medical Treatment and Active Labor Act was enacted in 1986 to prevent hospitals from "dumping" indigent or uninsured emergency-room patients by turning them away or sending them to public hospitals.

However, even when the patient is not turned away the hospital has specific legal obligations.

The hospital must perform an appropriate medical screening examination to determine if an emergency medical condition exists.

An appropriate medical screening examination means more than just hands-on attention by the emergency room medical and nursing staff.

As part of the screening of each emergency room patient the hospital must make use of the ancillary services routinely available in the emergency department customarily used to identify and rule out critical medical conditions.

That is, if patients with chest pains routinely get EKG's, every patient with chest pains must get one.

UNITED STATES DISTRICT COURT
PUERTO RICO
March 20, 2003

Signs / Symptoms of Heart Attack Should Be Triaged as Urgent

The court commented that the patient's family's case would begin by focusing on the patient's chest pains, headache, light headedness, nausea and vomiting, which would tend to show he was having a heart attack, was unstable and needed care urgently, contrary to what the triage nurse believed.

EKG Was Routine Procedure For E.R. Patients With Chest Pains

The court noted it was standard procedure at this hospital for an emergency patient with chest pains to get an EKG right away and for the EKG to be read immediately by the emergency room nurse.

In legal terms the EKG would be considered part of the ancillary services the EMTALA requires hospitals to incorporate into the appropriate medical screening examination every patient must receive in the emergency room, as were the routine blood tests ordered by the physician.

Lab Tests Delayed

It was not clear from the records, after the patient was actually seen by a physician, whether or not and if so when the lab tests (CBC) and the EKG ordered by the physician were done and evaluated.

That would be an argument in favor of the patient's family's case when they went before the jury, the court indicated.

Responsibility Placed on Nurses

The court put responsibility on the emergency room nurses to orchestrate the medical tests being done and interpreted by a trained nurse or physician to be sure the hospital did not violate the EMTALA.

Duty to Stabilize

The EMTALA also requires a hospital to stabilize the patient medically before discharge. It was questionable whether this patient was stable, but it is not a nursing responsibility to certify the patient as stable. **Marrero v. Hospital Hermanos Melendez, Inc., __ F. Supp. 2d __, 2003 WL 1597837 (D. Puerto Rico, March 20, 2003).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Medicare/Medicaid: Quarterly Listing Of Interpretations And Guidelines.

Every three months the US Centers for Medicare & Medicaid Services (CMS) is required to publish a listing of manual instructions, interpretive rules, statements of policy and guidelines of general applicability for the benefit of patients, providers, state Medicaid agencies, state survey agencies and fiscal intermediaries that process and pay bills.

The quarterly listing for October through December 2002 was published in the Federal Register on March 28, 2003.

In addition to the current material for the final quarter of last year there is information how to obtain CMS coverage manuals for the Medicare and Medicaid programs.

We have placed this lengthy document on our website at http://www.nursinglaw.com/medicare.pdf.

FEDERAL REGISTER, March 28, 2003
Pages 15196 – 15206

Food And Drug Administration: Annual Listing Of Agenda Topics.

Every year the US Food and Drug Administration (FDA) publishes a listing of guidance documents that are currently being developed and reviewed but which have not as yet been published as mandatory new regulations.

The compilation of documents published in the Federal Register on April 4, 2003 is considered by the FDA to be its agenda for the coming year. The FDA has indicated it wants to inform the public and seek input from the public on specific topics it has under consideration.

Topics under consideration include medical devices like surgical hardware, drapes and gowns, gloves, needleless injection devices, intravascular stents, etc.

We have placed this lengthy document on our website at http://www.nursinglaw.com/fdaagenda.pdf.

FEDERAL REGISTER, April 4, 2003
Pages 16523 – 16541

Nurse Attacked By Patient: Court Says Group Home Had No Duty To Control Patient's Behavior.

A nurse employed by the hospital was attacked at the hospital by a patient while the nurse attempted to insert a catheter into his arm.

The patient was over twenty-one years of age, had been diagnosed as profoundly retarded and very aggressive and was already on medication for obsessive compulsive behavior.

The New York Supreme Court, Appellate Division, pointed out the patient was admitted to the hospital for diagnosis and treatment of his violent outbursts. The hospital was experienced with developmentally-disabled persons and had a special unit for them where staff were specially trained.

The direct care worker from the group home who was trained to restrain the patient was not in his hospital room when the nurse was attacked. The only group home employee present was a nurse there only to obtain nursing and medical data relevant to his care.

As a general rule the law imposes no duty on one person to protect another by controlling the conduct of a third person, unless a special relationship exists.

Special relationships include parents controlling their children, employers controlling their employees and common carriers controlling their passengers and other patrons.

NEW YORK SUPREME COURT
APPELLATE DIVISION
March 17, 2003

Negligence Claim Against Group Home Thrown Out

The injured nurse sued the group home for negligence. The law defines negligence as the existence of a legal duty, breach of the duty and harm to another caused by the breach.

The court ruled the group home had no legal duty to protect the nurse from harm under the circumstances. The court found no exception existed here to the general rule that the law does not require one person to control third persons for the safety of another. **Edwards v. Mercy Home, 755 N.Y.S.2d 737, 2003 WL 1240440, (N.Y. App., March 17, 2003).**