LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

May 2005 Volume 13 Number 5

No Designated Driver: Court Refuses To Place Liability Burden On Discharge Nurses.

The Supreme Court of Arkansas has considered a case from the Court of Appeals of Arkansas we covered in our August, 2004 newsletter. See *No Designated Driver: Case Should Have Been Cancelled*. Legal Eagle Eye Newsletter for the Nursing Profession, (12)8, Aug. '04 page 2.

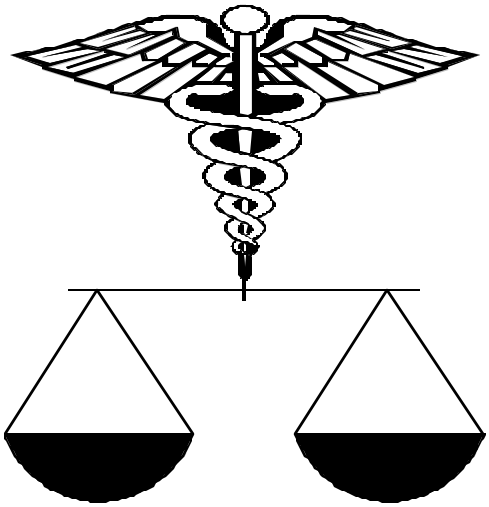
The patient died in a one-car crash shortly after an outpatient colonoscopy done under heavy sedation.

His family sued the clinic for negligence for going ahead and then letting him drive home by himself.

It is still correct, according to the Supreme Court of Arkansas, that an outpatient procedure involving patient sedation should not be started if there is no designated driver for later.

If there is no designated driver available for a patient at the time of admission for a day surgery case involving heavy sedation, the procedure should be rescheduled and the patient should be informed that for his or her own safety transportation arrangements will be absolutely essential.

Further, an outpatient facility must have rules in place requiring its medical and nursing personnel not to go forward with any ambulatory medical procedure involving sedation unless there is transportation for later.



A day-surgery procedure involving patient sedation should not be started unless the patient has someone to drive him home.

Nurses are allowed to rely on what the patient says if the patient says someone will be driving him home.

If the patient insists on driving home afterward he is leaving against medical advice.

SUPREME COURT OF ARKANSAS
March 24, 2005

However, the court ruled that doctors and nurses may rely on the patient saying at the time of admission that someone will be picking him up and if the patient says that sedation can start.

Patient Left Against Medical Advice No Right or Duty To Stop Him

The court agreed with the family that a patient recovering from sedation cannot be discharged without transportation. However, when a patient insists on driving himself the patient technically is not being discharged but is leaving against medical advice.

When a patient leaves against medical advice nurses and doctors have no legal right to restrain the patient physically or to keep his clothes or his car keys. There is no legal duty beyond strongly advising the patient against a highly unsafe course of conduct.

The nurses do not have to call a taxi, call the police, put him up in a hotel, admit him to the hospital or personally try to drive him home when the patient insists upon leaving against medical advice. That, the court ruled, would be too great a liability burden for the courts to place upon the healthcare community. Patients have some responsibility for their own safety. **Young v. Gastro-Intestinal Center, Inc., __ S.W. 3d __, 2005 WL 675751 (Ark., March 24, 2005).**

Inside this month's issue ...

May 2005

New Subscriptions
See Page 3

Narcotics Diversion: Nurse Has Right To See Other Patients' Charts, If Patients' Identities Are Protected.

A hospital staff nurse was terminated from her employment because of irregularities in the way narcotics were being administered and recorded. She exercised her right to appeal her termination to the state's Department of Labor.

As part of her defense the nurse's attorney sent a subpoena to the hospital for the medical charts of certain patients in the hospital who were being cared for by other nurses at the time of alleged narcotics irregularities that had led to the nurse's termination.

The attorney's rationale for the subpoena was that the other patients' charts could reveal alternate explanations for the alleged narcotics irregularities other than diversion by the nurse in question.

The hospital objected to the subpoena on grounds of patient privacy, pointing to the US Health Insurance Portability and Accountability Act (HIPAA) which now places strong Federal privacy protection on patient's medical records.

The New York Supreme Court, New York County, ruled that the nurse in question did have the right to the information her attorney sought to use in her defense. The hospital had no right to rule out access to its patients' charts.

Nurse Has Right To Charts Identifying Information Must Be Blocked Out

However, the HIPAA requires that all personal references be whited out from the records so that the patients' actual names cannot be discerned.

Further, there must be a protective order in conjunction with the subpoena that the records will only be used for the specific purpose of the nurse's legal defense and then will be returned to the hospital to be destroyed upon the termination of the nurse's case. **Chapman v. Health and Hospitals Corporations., __ N.Y.S.2d __, 2005 WL 697435 (N.Y. Sup., March 24, 2005).**

When served with a subpoena a healthcare facility can disclose the contents of patients' medical charts without violating the US Health Insurance Portability and Accountability Act (HIPAA).

Assuming the individual patient has not given written consent for his or her medical information to be disclosed, the patient's individually identifiable health information must be "de-identified."

That is, before the chart is turned over in response to a subpoena the chart must be stripped of identifying material such as name, address, telephone number, social security number, date of birth, etc.

Further, the subpoena is required to state that the information will only be used in connection with the proceeding itself.

Re-disclosure of patients' health information is a criminal offense under Federal law punishable by ten years imprisonment and a $250,000 fine.

NEW YORK SUPREME COURT
NEW YORK COUNTY
March 24, 2005

Nursing Home Residents' Bill Of Rights: Patient Allowed To Lie In Waste, Suit Allowed.

The Court of Appeal of Louisiana has reiterated that it is considered a violation of the state's Nursing Home Residents' Bill of Rights for a resident to be allowed to lie in her own waste for an excessive period of time.

The family's lawsuit claims the patient suffered abuse and loss of personal dignity by being allowed to lie in her own waste for extended periods of time.

If so, that is a violation of the Nursing Home Residents' Bill of Rights. That is not a malpractice case and the family does not need an expert witness.

If the patient developed bedsores as a result, that would be malpractice and expert testimony would be needed.

COURT OF APPEAL OF LOUISIANA
April 6, 2005

The family is allowed to sue on the resident's behalf for non-economic damaged for the resident's loss of her personal dignity. There is no need to jump through the pre-trial procedural hoops for bringing a medical malpractice case and no expert-witness testimony is required.

If the family lawsuit also goes into issues of skin integrity breakdown, however, that would be a malpractice case and expert testimony would be needed. **Burks v. Christus Health, __ So. 2d __, 2005 WL 767008 (April 6, 2005).**

Persistent Vegetative State: Prominent Recent Case Has Not Changed The Legal Fundamentals.

We covered the Terri Schiavo case in June, 2001. See *Persistent Vegetative State: Court Looks For What The Patient Would Have Wanted.* Legal Eagle Eye Newsletter for the Nursing Profession (9)6, Jun. '01 page 6.

That back issue can be downloaded from our Internet website at http://www.nursinglaw.com/jun01ham7.pdf.

Of course we had no way to anticipate that the case would attract widespread media attention four years later.

In 2001 the District Court of Appeal of Florida followed the accepted standard legal rationale in these cases.

First the court determined on the basis of corroborated medical evidence that there was no possibility of recovery of brain function, in this case based upon a CT scan that showed that the cerebral cortex had atrophied and been replaced with cerebrospinal fluid. By law, that is a persistent vegetative state.

Then the court looked for a living will, durable power of attorney or advance directive that would set forth the patient's wishes in the event the patient came to experience irreversible brain dysfunction.

There was no such document in this case.

Public Law No. 109-3 gives the Federal courts jurisdiction specifically to consider and rule upon the arguments advanced by the parents of Theresa Marie Schiavo that life support should not be withdrawn.

If there would be reason to believe the parents will succeed with their arguments, the Federal court can stop withdrawal of life support pending a full legal proceeding to consider their arguments.

However, this new law does not change the legal criteria for determining whether and under what circumstances life support will be continued and when it will be withdrawn.

There is no basis for the court to believe that the previous State court rulings in this case are incorrect, and thus no basis for a Federal injunction.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
March 23, 2005

Then the court looked to those persons close to the patient to determine what the patient would have wanted. The court accepted the husband's testimony she would not have wanted to remain indefinitely on life support but would prefer to be allowed to expire. The court discounted the parents' testimony that the patient herself would have wanted to be kept alive under these circumstances.

US Court of Appeals Finds No Grounds To Disturb State Court Ruling

The US Circuit Court of Appeals for the Eleventh Circuit expressed grave doubts as to the constitutionality of Public Law 109-3 (3/21/05) which applies only to the Schiavo case. However, by literally interpreting this law the court found a basis for a definitive ruling without having to tread upon the Constitutional issue.

Public Law 109-3 gave Federal courts jurisdiction to intervene in this one particular case if the merits of the parents' legal arguments so warranted. The Eleventh Circuit ruled the parents' legal arguments lacked merit, that is, there was no substantial basis to disturb the fundamental wisdom of the Florida State courts' previous rulings.

Thus the State court's decision finally to permit withdrawal of life support, based on the husband's testimony that is what the patient would have wanted, would be allowed to stand.

Public Law 109-3 and the courts' rulings do not change basic existing law on the subject of persistent vegetative state, advance directives and surrogate decision making. **Schindler v. Schiavo, __ F. 3d __, 2005 WL 648897 (11th Cir., March 23, 2005).**

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Religious Discrimination: Nurse Fired For Preaching To Patients, Court Backs Hospital's Actions.

A Roman Catholic nurse worked as a telephone triage nurse.

Patients called the triage service to receive a brief assessment of their symptoms for the purpose of determining the appropriate level and priority for medical treatment.

The facility required its phone triage nurses to query the callers using a computer-based set of branching algorithms designed to sort patients into different risk categories. Nurses were required to proceed systematically through the algorithms to reach the appropriate level, timing and provider of medical care and were not allowed to make personal comments. The average call was to last nine minutes.

When asked for medical information, the nurses were instructed to refer to a predetermined list of approved information sources.

The facility had written policies against deviation from its standard algorithm practices, inefficient work performance, insubordination, behavior which created discord and distribution of printed materials on company time.

Nurse Brought In Her Religious Beliefs

The nurse told one caller to go to a priest to see if the caller had experienced a eucharistic miracle. She got in a heated debate with a caller who took the Lord's name in vain; the caller hung up. The nurse prayed with one caller and talked with another for an hour without entering any algorithm information on the computer.

The US Circuit Court of Appeals for the Tenth Circuit agreed with her employer that there were grounds to fire the nurse without liability for religious discrimination.

Healthcare employees are not permitted to use their own religious convictions as a basis to deviate from their employers' legitimate expectations that policies and procedures will be followed. **Morales v. McKesson Health Solutions, 2005 WL 648216 (10th Cir., March 22, 2005).**

Title VII of the US Civil Rights Act prohibits an employer from discriminating because of an employee's religion.

In this case there was no direct proof of any anti-Catholic bias by the nurse's supervisors.

Discrimination can still be proven indirectly if the employee can show she is a member of a religious faith and was qualified for her job but despite her qualifications was fired while others who were not members of the faith were not fired.

The employer must show a legitimate reason for disciplinary action if there is plausible indirect evidence of religious discrimination.

In this case the nurse repeatedly departed from the triage algorithms she was instructed to use in assessing the patients who called the facility's nurse-information line, after being warned.

An employer must provide reasonable accommodation to an employee's religious beliefs, but reasonable accommodation is not the issue in this case.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
March 22, 2005

Workers' Comp: Nurse Covered, Was Performing A Service For Employer Going For Food For Other Nurses.

An ICU nurse slipped and fell on the hospital's stairs and injured her hip. She filed for and was awarded workers' compensation.

The hospital appealed, arguing even though she was on the premises she was on a personal errand and was not performing services for her employer at the moment when she was injured. She was on her way from the hospital's ICU at 7:15 a.m. to get breakfast to-go from the hospital's cafeteria for herself and the other ICU nurses.

As a general rule an employee is not covered by workers' compensation for an injury on the employer's premises that occurs at a time when the employee is not actually performing services for the employer.

COURT OF APPEALS OF ARKANSAS
March 23, 2005

The Court of Appeals of Arkansas acknowledged the general rule that to qualify for workers' compensation an employee must be performing services for the employer and may not be on a personal errand at the moment of injury.

In this case, the court said, the nurse was performing a service for her employer. That is, her going to pick up breakfast for herself and the other ICU nurses allowed the nurses to remain at their posts in close contact with their patients without having to leave the ICU for a break. **Arkansas Methodist Hosp. v. Hampton, __ S.W. 3d __, 2005 WL 668613 (Ark. App., March 23, 2005).**

Misconduct: Threat Toward Co-Worker Grounds For Termination.

According to the New York Supreme Court, Appellate Division, a verbal threat directed at a co-worker is grounds for a healthcare facility to terminate an employee for just cause. That is, the employee in this case was not entitled to unemployment following his dismissal.

A nursing assistant working in a nursing home got in an argument with a nurse over use of the copy machine. According to the court record, he told the nurse to, "watch her back and watch her car."

The Department of Labor referee concluded the nurse herself had not made any threatening comments toward the aide, that is, he was solely to blame. **Claim of Perkins, 790 N.Y.S.2d 313 (N.Y. App., March 3, 2005).**

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Nurses' Employment Issues: Disability / Pregnancy Discrimination

Legal Issues in Labor and Delivery Nursing

Pressure Sores / Decubitus Ulcers: Avoiding Legal Liability

Family And Medical Leave Act: Court Discusses Nurse's Right To Reinstatement.

The US Family and Medical Leave Act (FMLA) allows eligible employees to take a total of twelve weeks of leave during a twelve-month period for a serious health condition that makes the employee unable to perform the functions of the employee's position.

The FMLA also gives the employee the all-important right to reinstatement to his or her position upon returning from leave. But that right is not absolute.

Basically the employee's rights vis a vis his or her position are the same as if the employee had not taken FMLA leave.

If the employer can show for one reason or another that the employee would not have been employed at the time reinstatement would occur, the employee can be denied reinstatement. This may involve legitimate reductions in force, personnel reorganization, etc.

In this case the nurse's mental health at the end of her twelve-week leave was not appropriate to permit continued employment.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
April 11, 2005

A registered nurse was employed by a hospital as a staff home health nurse. Her employment appraisals were above average for a period of time.

Her mental health status began to deteriorate after two family crises. Later there would be court testimony from her co-workers about sharp mood swings, excessive absenteeism and a general inability to complete assigned patient-care and administrative tasks.

The hospital administrator insisted she take a month's leave to "get herself together," after which her employment status would be re-evaluated.

The nurse went on leave but continued coming to work, bothering her co-workers and dressing and acting more inappropriate than before.

The decision was made to terminate her employment, effective at the end of her medical leave.

The nurse sued the hospital claiming a violation of the US Family and Medical Leave Act. The US Circuit Court of Appeals for the Eighth Circuit ruled her lawsuit should be dismissed.

Right to Reinstatement Is Not Absolute

The right to take leave under the FMLA would be meaningless without the right to be restored to employment at the end of the leave, the court noted. However, the FMLA only gives an employee the same rights at the end of a leave as the employee would have had if the employee had worked the whole time.

Changes can occur legitimately during an employee's leave that can mean that the employee's job will no longer be available when the employee's leave has ended, such as reductions in force, restructuring or, as in this case, the employee being no longer fit for duty.

The employer has the legal burden of proof to justify not restoring an employee to his or her former position. **Throneberry v. McGehee Desha Co. Hosp., __ F. 3d __, 2005 WL 820313 (8th Cir., April 11, 2005).**

Involuntary Discharge From Nursing Home: CMS Rules To Be Followed Or Resident Can Be Ordered Re-Admitted.

A seventy-two year old patient was admitted to a nursing home as a Medicaid patient and placed in the home's Alzheimer's unit.

Over the next several months it was noted in his chart he was becoming increasingly difficult to handle.

He had to be hospitalized for complaints of abdominal pain. While he was in the hospital the nursing home sent a document titled Advance Notice of Discharge informing the patient and his daughter, who was his legal representative, that he was being discharged on the grounds that, "... discharge is essential to safeguard you [the resident] or other residents from physical or emotional injury..." which "... is documented in your clinical record by a physician."

The daughter got a lawyer who filed papers with the Department of Health challenging the discharge notice and demanding a hearing.

While the resident was still in the hospital the Department of Health hearing officer ruled the discharge notice was legally defective. Thirty days notice is required unless there is emergency justification for discharge on short notice, which there was not, and the notice of discharge did not specify, as required, the location to which the resident was being discharged.

However, the hearing officer also ruled he had no legal authority to order the resident re-admitted to the nursing home, whether or not the nursing home had acted improperly in attempting to discharge him in the first place.

The District of Columbia Court of Appeal, however, ruled a hearing officer does have the legal authority, implicit in the Federal regulations for long-term care, to order a resident re-admitted when the hearing office has found an attempted involuntary discharge improper. **Paschall v. District of Columbia Dept. of Health, __ A. 2d __, 2005 WL 775308 (D.C. App., April 7, 2005).**

Transfers and discharges from long-term care facilities are governed by Title 42 Code of Federal Regulations, Section 483.12. See http://www.nursinglaw.com/transfer.pdf.

A resident or the resident's legal representative has the right to challenge a transfer or discharge. Every state is required to have a procedure for a hearing officer to consider and rule upon any such challenge.

In this case the nursing home was wrong to insist that the hearing officer lacked legal authority to order the resident re-admitted if the hearing officer found the timing of the notice of transfer or discharge or the grounds for the transfer or discharge were not legally sufficient.

It is not necessary for the resident or the resident's legal representative to follow a two-step process of going before a hearing officer and then going to court for a legal injunction to enforce the hearing officer's decision.

DISTRICT OF COLUMBIA
COURT OF APPEALS
April 7, 2005

Section 483.12

Transfer and discharge requirements.

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless--

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

****

(5) Timing of the notice.

(i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when--

(A) the safety of individuals in the facility would be endangered ...

(B) The health of individuals in the facility would be endangered ...

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge ...

(D) An immediate transfer or discharge is required by the resident's urgent medical needs ... ; or

(E) A resident has not resided in the facility for 30 days.

(6) Contents of the notice. The written notice ... must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State;

(v) The name, address and telephone number of the State long term care ombudsman;

Federal Courts: CMS Standards Do Not Create Federal Cases.

The son of a nursing-home resident filed suit as legal guardian on his father's behalf against the nursing home.

The lawsuit sought damages for neglect leading to dehydration, malnutrition and a late-stage skin lesion on the resident's buttocks.

The nursing home's attorneys' legal strategy involved trying to have the case transferred out of the local county court of common pleas to the US District Court for the Eastern District of Pennsylvania because the son's lawsuit alleged violations of Federal statutes and CMS regulations for long-term care.

Federal courts are courts of limited jurisdiction.

Federal subject-matter jurisdiction is for cases arising under the US Federal statutes.

The US Social Security Act and CMS regulations establish the standards for long-term care, but that does not confer jurisdiction upon the Federal courts for civil personal injury cases involving allegations of neglect or abuse in nursing homes.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
April 5, 2005

The court ruled that those Federal statutes and regulations do not confer subject-matter jurisdiction on the Federal courts. State courts will remain the proper venues for personal injury cases alleging abuse, neglect or negligence in nursing homes. **Ratmansky v. Plymouth House Nursing Home, Inc., 2005 WL 770628 (E.D.Pa., April 5, 2005).**

Medicare/Medicaid: New Standards, Fire Safety In Healthcare Facilities, Verbal Orders In Hospitals.

The Centers for Medicare and Medicaid Services (CMS) has announced that new fire safety standards will take effect May 24, 2005 as conditions of participation for the Medicare and Medicaid programs.

The new standards apply to containers for dispensing alcohol-based hand rubs in healthcare facilities, following the CDC's recommendation for use of alcohol-based had rubs as an effective infection-control measure.

CMS will now also require smoke detectors in residents' rooms in long-term care facilities and a maintenance program, unless there is an existing hard-wired central smoke detection system in place.

CMS has separately-worded regulations on fire-safety standards for alcohol-based hand-rub dispensers in ambulatory surgical centers, hospices, hospitals, long-term care facilities and intermediate-care facilities for the mentally retarded, etc.

The new fire safety standards are on our website at http://www.nursinglaw.com/firesafety.pdf.

FEDERAL REGISTER March 25, 2005
Pages 15229 – 15239

On March 25, 2005 the US Centers for Medicare and Medicaid services (CMS) published new standards for fire safety that will take effect on May 24, 2005 in healthcare facilities.

The new fire safety rules apply to containers of alcohol-based hand rubs, recommended by the CDC for infection control.

There is also a new requirement from CMS that battery operated smoke detectors be placed and systematically maintained in residents' sleeping rooms in long-term care facilities, starting May 24, 2005.

Authentication of Verbal Orders

On March 25, 2005 CMS also published a proposed new regulation, which is not yet mandatory at this time, that in hospitals all verbal orders will have to be dated, timed and authenticated by the practitioner issuing the order.

CMS is accepting public comments on this new condition of Medicare/Medicaid participation for hospitals until May 24, 2005.

The new regulation, if adopted, will appear in Title 42 of the Code of Federal Regulations, Section 483.23, dealing with nursing services in acute-care hospitals. That would seem to imply that it will be a nursing responsibility to get practitioners such as physicians and advance-practice nurses to sign off on their orders.

CMS noted it is current practice that verbal orders are to be used in hospitals only infrequently and must be authenticated by the person who took the order if not by the person who issued the order.

CMS says forty-eight hours will be the time deadline under Federal regulations for verbal orders to be authenticated by the practitioner who issued the order, unless state law requires it sooner.

CMS says the new regulation, if adopted, will be phased in over a period of five years.

We have this proposed regulation on our website at http://www.nursinglaw.com/verbalorders.pdf.

FEDERAL REGISTER March 25, 2005
Pages 15266 – 15274

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Organ Donation: Court Says Beneficiary Cannot Sue For Kidney Given To Another.

The widow of a patient who died from a massive intra-cranial bleed spoke with a nurse about donating her late husband's kidneys to a family friend who was in dialysis for end-stage renal disease. The widow was referred to the hospital's transplant coordinator.

Both Kidneys Meant For A Specific Person

The widow expressly stated it was her intention that both of her late husband's kidneys were to go to one specified individual and were not to go to anyone else.

When it was time for the designated recipient to receive his transplants he was told the one kidney they had standing by was deemed unacceptable for transplant due to an internal arterial aneurysm. The other kidney, he was told, had already been transplanted into another individual. Further, he was told that that organ would not have been acceptable for him for transplant due to blood-type mismatch and other biological incompatibilities. The designated recipient sued the transplant network and the physicians.

The US District Court for the Eastern District of New York dismissed the lawsuit.

The court noted this was a case of first impression, that is, no lawsuit of this type has ever before been filed.

Based on general legal principles, the court ruled that a designated beneficiary of an organ donation has no legal property right as to the organ or organs in question, and consequently no right to sue if the organs are misdirected.

Next of kin do have the right to direct the disposition of the remains of a deceased person. The corpse is much like their property. However, according to the court, that does not allow them to create property rights in others as to the remains similar to the deceased's car, clothing or residence being given away or sold.

There was no basis for a claim that the doctors had acted fraudulently.

The Uniform Anatomical Gift Act, in force in New York and every other state, the court said, is more concerned with carrying out the wishes the deceased had expressed during life. The Act was not intended, the court ruled, to allow a beneficiary to file a civil lawsuit. **Colavito v. New York Organ Donor Network, Inc., 356 F. Supp. 2d 237 (E.D.N.Y., February 15, 2005).**

Medical Malpractice: Discovery Rule Applied Against Nurse, Understood Her Own Condition.

A licensed practical nurse with over forty years experience in health care had a cancerous tumor removed from her neck. Following that she had radiation oncology for several months in late 1997 and early 1998.

Although free from cancer, the nurse began to have cognitive difficulties which led her personal physician to refer her to a neurosurgeon.

The neurosurgeon diagnosed radiation necrosis and performed surgery to remove an abnormal area of brain tissue located above and behind her ear. Pathology confirmed the initial diagnosis of radiation necrosis.

The nurse discussed the pathology report with her neurosurgeon on May 9 but did not start her lawsuit against the oncologist until November 16, 2001.

The discovery rule allows the injured party a certain period of time to sue after discovering grounds for a malpractice lawsuit, even if the statute of limitations has expired.

Being a nurse, the injured party in this case knew that radiation necrosis in her doctor's records was a side effect of radiation oncology treatment possibly linked to excessive dosages.

COURT OF APPEALS OF MICHIGAN
April 12, 2005

The Court of Appeals of Michigan threw out her lawsuit. Michigan's two-year statute of limitations from the end of her oncology treatments had passed. However, the discovery rule would still give her extra time (six months in Michigan) to file her lawsuit. The extra time started when she discovered the possible basis for a lawsuit.

With her nursing background, the court said, she, unlike a member of the general public, would understand the meaning of what was in her chart. That is, she should have known that the term radiation necrosis refers to death of tissue surrounding the site targeted for radiation oncology treatment, possibly caused by negligently excessive dosages of radiation. **Prins v. Ewald, 2005 WL 839634 (Mich. App., April 12, 2005).**