LEGAL EAGLE EYE NEWSLETTER

May 2010 *For the Nursing Profession* Volume 18 Number 5

Child Abuse: Care Providers Can Be Liable To The Child For Failure To Detect And Report.

A six year-old child was brought to the hospital with severe head trauma. Fifty-four other traumatic injures were found.

Child protective services were notified. Their investigation resulted in the arrest and conviction of the mother's boyfriend for child abuse.

The child now has severe brain damage and is a quadriplegic.

Lawsuit Faulted E.R. Visit Three Months Earlier

The child's natural father and a court-appointed legal guardian together filed a lawsuit against the hospital, the physicians and their medical practice groups over what happened and what did not happen in a visit to the same emergency room three months earlier.

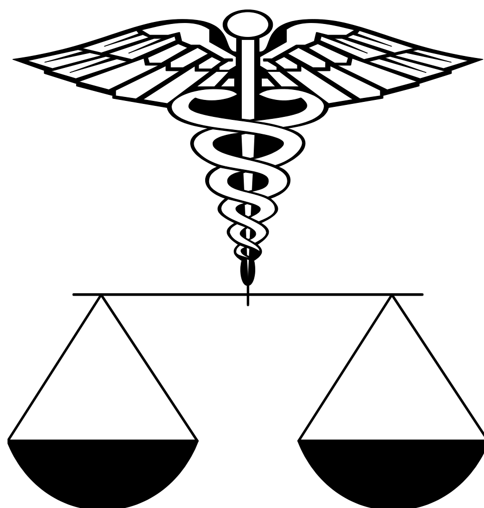
The hospital's nurses as well as the physicians were faulted in the lawsuit for failing to detect and report signs of child abuse that were fairly obvious during the earlier visit to the E.R.

Questionable Explanations for Injury

At the time of the earlier visit the child had a wrist injury the child said came from falling down at home.

When the child was seen separately by the E.R. physician, by a nurse practitioner and by a pediatrician the child gave them three different accounts of how it happened.

(Continued on page 6.)



Non-accidental trauma is always something to be considered when a child comes in with a significant injury. A fracture is a significant injury.

The presence of both new and old injuries, particularly new and old fractures, means that a thorough evaluation is warranted. If abuse is not reported, the child is at risk for further injury.

COURT OF APPEALS
OF NORTH CAROLINA
April 6, 2010

Child Abuse Reported: Nurse Ruled Immune From Civil Suit.

An emergency room nurse witnessed the father strike his twelve year-old son, the older brother of the child for whom treatment was being sought.

The nurse asked the father to leave the examination room. When he became aggressive and refused to leave, the nurse summoned hospital security.

A hospital security officer removed the father, detained him and placed him under arrest. He spent the next seventy-two hours in jail.

After charges of disorderly conduct were dismissed, the father sued the clinic and the nurse for defamation, false imprisonment, malicious prosecution, false arrest, negligence and negligent infliction of emotional distress.

Civil Lawsuit Dismissed

The Court of Appeals of Ohio upheld the local county district court judge's ruling which threw out the father's lawsuit against the nurse and her employer.

Nurses are mandatory reporters of child abuse. Along with the mandatory duty to report child abuse to child protective services and/or local law enforcement the law provides immunity from a civil lawsuit for such a report.

(Continued on page 6.)

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Nurse As Patient Advocate: Nurses Faulted For Patient's Death.

The patient had another stroke while she was at home recovering from a previous stroke.

She was taken by ambulance to the hospital's E.R. The E.R. physician saw her right away and ordered a head CT scan. The CT scan, done one hour after she arrived, showed severe brain damage from the recent stroke.

The patient was sent back to the E.R. She stayed there four and one-half hours before being moved to a telemetry unit.

She was not seen and treated by her own physician until fourteen hours after she first arrived in the E.R.

Family members repeatedly asked the E.R. nurses and the E.R. physician to notify the patient's treating physician that she was in the hospital.

The jury did not believe a nurse from the telemetry unit actually called the physician's office as she said.

The physician's partner who was on call was finally notified twelve hours after the patient came in.

COURT OF APPEAL OF LOUISIANA
March 26, 2010

The Court of Appeal of Louisiana endorsed the jury's verdict in the family's favor, agreeing that the hospital's nurses' failure to advocate for their patient caused crucial delay in treatment being started for her new stroke and was to some extent a factor leading to her death late in the afternoon the day after she came to the hospital.

Although the patient's health admittedly was very poor before her second stroke, the court said, the nurses' failure to advocate deprived the patient of some chance of surviving her second stroke. **Norwood v. Medina, 2010 WL 1170452 (La. App., March 26, 2010).**

PEG Tube: Nurse Faulted For Aspiration, Death Of Patient.

Due to complications of past medical treatment the patient had an esophageal stricture which necessitated that she receive nourishment through a PEG tube inserted into her GI tract.

She was in the hospital's ICU recovering from surgery to remove an infected hip prosthesis.

Family members testified they saw the ICU nurse lay the patient flat on her back to remove drains from her incision while infusing nutrition through her PEG tube at the same time.

They testified the patient aspirated fluid into her lungs and the nurse had to page a physician.

DISTRICT COURT
CADDO PARISH, LOUISIANA
March 19, 2009

The patient's nurse reportedly paged the physician to report that the patient's oxygen saturation had dropped, but did not mention anything about aspiration of nutrition during the tube feeding.

The patient deteriorated and had to be intubated and placed on a ventilator. At some point the patient pulled out her own endotracheal tube and suffocated to death.

The family filed a lawsuit against the hospital, alleging that the ICU nurse should have raised the head of the bed and not laid the patient flat on her back while she was receiving a tube feeding. If that negligent act had not been committed, they alleged, the patient would not have had to have been intubated and would not have died.

The jury in the District Court, Caddo Parish, Louisiana awarded the family $478,000 for wrongful death. **Welch v. Willis Knighton Med. Ctr., 2009 WL 6312529 (Dist. Ct. Caddo Parish, Louisiana, March 19, 2009).**

Fall: Nurses Did Not Meet Standard Of Care, But Were Not Responsible For Patient's Injuries.

The patient had been admitted to the hospital several days earlier for complaints of lightheadedness and shortness of breath.

He had a longstanding history of congestive heart failure.

The patient was given Ambien 10 mg and then later was found on the floor in his room with head trauma diagnosed as a subdural hematoma. He died two years after that from unrelated causes.

The nurses should have warned the physician the patient was a fall risk when they obtained the order for Ambien and should have implemented other fall precautions.

SUPREME COURT
SUFFOLK COUNTY, NEW YORK
February 8, 2010

The jury in the Supreme Court, Suffolk County, New York found numerous departures from the standard of care by the patient's nurses prior to his fall.

The jury ruled at the same time, however, that none of those departures actually caused the fall. The hospital, therefore, had no liability to pay damages.

The nurses should have alerted the physician the patient was a fall risk when they got the order for the Ambien. The jury determined the physician nevertheless already knew that, prescribed the drug anyway and was not negligent for doing so.

The patient should have had a sticker on his chart, a sticker on his ID bracelet and signs in his room about his fall risk, but their absence, the jury believed, was not a factor behind his fall. **Williams v. Brookhaven Mem. Hosp., 2010 WL 1212980 (Sup. Ct. Suffolk Co., New York, February 8, 2010).**

Labor & Delivery: Critical Evidence Missing From The Chart, Court Validates Patient's Right To Sue.

The child now suffers from medical disorders which are recognized as being associated with trauma from substandard care during labor and delivery.

One of the first steps in the parents' lawsuit was for the parents' attorneys to demand copies from the hospital of all of the mother's and child's medical records from the mother's labor and the child's delivery by emergency cesarean.

The hospital responded to the lawyers' demand by stating that certain of the records were missing from the chart and could not be accounted for.

Specifically, the hospital was unable to produce the following:

Nursing progress notes from 7:45 p.m. the evening before through 2:00 p.m. the day of delivery;

Labor flow sheets from 6:00 a.m. through 2:00 p.m. the day of delivery;

Fetal heart monitor strips from 2:50 a.m. through 2:00 p.m. the day of delivery;

Perioperative nursing notes from the cesarean section.

(The emergency cesarean was started at 2:30 p.m. on the day in question.)

The physician hired by the parents' lawyers as an expert witness stated in his report that he could not render an opinion due to the fact that he was not able to review records that were critical to the case.

A hospital owes a legal duty to each of its patients to maintain the patient's medical records. In Indiana the period is seven years post-treatment.

When a hospital fails to fulfill this duty the hospital commits a breach of a professional responsibility which can lead to consequences from state licensing authorities.

As with other breaches of a healthcare provider's professional duties, the patient also has the right to sue over the fact his or her records have suspiciously come up missing.

The focus is not the negative impact on the patient's care. The focus is the negative impact the records being missing has on the ability to purse a malpractice case effectively against those responsible for the records being missing.

COURT OF APPEALS OF INDIANA
April 16, 2010

With the parents' malpractice case against the hospital sitting dead in the water the judge allowed the parents' attorneys to amend the allegations they were making in the case.

They were permitted to shift the thrust of the case away from medical malpractice, which they could not prove without the missing records, and sue instead for the fact the hospital was unable to furnish the critical medical records they needed.

The Court of Appeals of Indiana ruled the parents and child still had the right to sue, clearing up any confusion whether a right of action separate and distinct from medical malpractice exists in Indiana just as does in many other US state jurisdictions.

Spoliation of the Evidence Gives the Patient the Right to Sue

Spoliation of the evidence is the legal term for a patient's lawsuit against an individual healthcare provider or institution for negligent alteration, loss or destruction of medical evidence which deprives the patient of the effective ability to bring legal action against the provider or institution for malpractice.

The concept applies not only to paper medical records, monitor strips and computer files, but also to films, slides, pathology samples and defective medical devices and equipment which have been altered or have disappeared under a cloud of reasonable suspicion of intent to cover up the basis for a patient's lawsuit. **Howard Regional Health v. Gordon, __ N.E. 2d __, 2010 WL 1524870 (Ind. App., April 16, 2010).**

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Fall: Facility Pays Settlement.

The elderly total-care patient had resided in the nursing facility for two and one-half years before a fall-risk assessment was conducted.

The assessment was that she was at high risk for falling. A bed alarm was to be turned on while the resident was in bed.

Several months later she fell again and fractured her left humerus. The bed alarm reportedly was not turned on.

The facility paid a settlement of $70,000 for the resident's case filed in the Circuit Court, Winnebago County, Illinois. **Winiecki v. Alden-Park, 2009 WL 6059577 (Cir. Ct. Winnebago Co., Illinois, July 2, 2009).**

Resident Abused: Facility Pays Settlement.

An aide reportedly grabbed and twisted the ear of an eighty-six year-old Alzheimer's patient to get him to quiet down and stop disturbing other residents in the day room. Other staff members stood by and watched and failed to intervene.

The resident required medical attention for his injuries.

The family's lawsuit against the facility alleged substandard training and supervision of its non-licensed personnel.

The facility paid $25,000 to settle the lawsuit filed in the Circuit Court, Racine County, Wisconsin. **Woiteshek v. Racine County, 2009 WL 6323756 (Cir. Ct. Racine Co., Wisconsin, August 28, 2009).**

Chemical Burns: Hospital Settles.

Topical acetic acid was supposed to be diluted to 5% but was applied full-strength during the patient's gynecological procedure, resulting in chemical burns which required treatment in a burn center.

The lawsuit resulted in a settlement of $475,000 from the ob/gyn, circulating nurse and pharmacist. **Confidential v. Confidential, 2009 WL 6084862 (Superior Court, Massachusetts, May, 2009).**

Understaffing: Court Says Charts Of Nurse's Other Patient's Are Relevant.

The basic allegation in the patient's suit against the hospital was that her nurse missed the fact her systolic pressure dropped from 132 to 86 during the night and it was not reported to her physician.

As a result, the patient alleged, she suffered permanent kidney damage from insufficient perfusion.

Lawsuit Alleges Nursing Negligence And Inadequate Staffing

Nursing guidelines at the hospital required a patient's nurse to contact the patient's physician any time the patient's systolic pressure dropped below 90.

Nursing guidelines at the hospital also required six nurses on the unit if the patient census was thirty-four. On the night in question the unit had only five nurses and the patient's nurse had seven instead of six patients assigned to her.

The unit nurse manager stated in her affidavit that staffing decisions for the unit that night were completely appropriate, based on the acuity levels of all of the patients assigned to the patient's nurse, but that is not necessarily true.

SUPREME COURT OF UTAH
March 26, 2010

There has been no definitive ruling that the hospital or the patient's nurse were guilty of negligence. The Supreme Court of Utah made only a preliminary ruling setting one of the ground rules.

The patient's attorneys will be allowed to examine the charts of all of the nurse's patients that night, with every bit of patient identifying information deleted, so that the patient's nursing experts can come to their own conclusion whether staffing was sufficient that night to meet all the patients' needs. **Staley v. Jolles, __ P. 3d __, 2010 WL 1133335 (Utah, March 26, 2010).**

Rehab Patient: Nurses Did Not Look At Lab Work, Missed MI.

The sixty-six year-old patient was admitted to the nursing home's special wing reserved for short-term rehab patients. He had had pulmonary emboli while hospitalized for his recent back injury and was on chemo for lung cancer.

When his wife came to pick him up late in the afternoon of the last day of his planned one-week admission she told the nurses he was clammy and perspiring, short of breath and incoherent.

The LPN on duty told her it was a just a urinary tract infection and it was still all right for him to go home.

The wife thought differently. She called paramedics. They transported him to the hospital. It was not possible to save him. He died six hours later from an MI.

Blood was drawn at 1:00 p.m. and the nurses got the lab results back at 3:45 p.m.

His enzymes were critically elevated, which indicated that he had had a heart attack. There was no indication of infectious processes consistent with a urinary tract infection.

The patient was discharged at 5:05 p.m.

DISTRICT COURT
ADAMS COUNTY, COLORADO
January 27, 2010

The jury in the District Court, Adams County, Colorado awarded the widow $450.000.

The widow's lawsuit faulted the nursing home's parent corporation for hiring staff LPN's instead of RN's for the rehab unit. Registered nurses, it was alleged, would be more appropriate to manage the care of this man, a more medically complex patient than those usually seen in nursing homes. **Reigel v. SavaSeniorCare, 2010 WL 1040040 (Dist. Ct. Adams Co., Colorado, January 27, 2010).**

Refusal Of Illegal Act: Termination Upheld.

An LPN was terminated from her position in a nursing home after she refused to go through with what she considered to be an illegal act she was told by her supervisor to perform.

The LPN was told to get one dose of Dilaudid ready for a cancer patient to take with him the next morning when he left the facility for an out-of-town medical appointment. That is, the LPN was told to put one pill in a plastic baggie.

The LPN phoned the director of nursing and other supervisors to complain. She believed that it was not appropriate for a patient to take Dilaudid without being under direct nursing supervision.

She also believed she would be practicing illegally as a pharmacist without a pharmacy license by packaging and dispensing medication and, further, that the medication had to be labeled in compliance with the state's pharmacy-practice act and not just put in an unmarked plastic bag.

The sued for wrongful discharge after her termination.

Employee Cannot Be Forced To Commit an Illegal Act

The Court of Appeals of Michigan agreed with the underlying premise that an employee cannot be terminated for refusing to perform an illegal act, even a so-called employee at will who has no employment contract or vested union rights.

However, it is not illegal under state or Federal law for a nurse to permit a patient to self-medicate, if the nurse first obtains an order from the physician allowing the patient to do so.

The LPN should have phoned the physician for an order That was what she was first told when she raised her legitimate concern that there was no order.

Further, there was no legal basis for the LPN's subjective belief that the pill had to be dispensed by a pharmacist and labeled in compliance with the state pharmacy-practice law, the Court went on to say.

What the LPN was told to do, assuming a physician's order was obtained ahead of time, was not an illegal act. **Bonds v. Laurel Health Care, 2010 WL 1629622 (Mich. App., April 22, 2010).**

Discrimination: Nurses Aide Sues For Retaliation.

A nurses aide quit her job at the state veterans home following a verbal altercation with a co-worker.

About six months later she filed a complaint with the US Equal Employment Opportunity Commission (EEOC) alleging that she did not quit her job but was forced out by ongoing harassment directed at her because of her race.

A month after that she contacted the veterans home about coming back to work.

The aide was told she would not be considered for rehiring because she had filed a discrimination complaint with the EEOC.

UNITED STATES DISTRICT COURT
MISSISSIPPI
April 20, 2010

The aide sued her former employer for discrimination.

The lawsuit alleged that racial discrimination forced her out of her job and, on top of that, retaliation for filing a complaint with the EEOC was the reason she was not considered for rehiring.

The US District Court for the Southern District of Mississippi found no evidence that any racial discrimination occurred or any evidence that discrimination forced the aide to have to leave her employment.

Nevertheless, it was still fairly clear the aide's former employer violated her civil rights by refusing to consider rehiring her because she had filed a discrimination complaint with the EEOC, albeit a complaint which itself could not be substantiated to the Court's satisfaction.

Retaliation Suit Survives After Discrimination Suit Dismissed

Title VII of the US Civil Rights Act strictly prohibits retaliation by an employer against an employee who files a charge of discrimination. The employee can pursue a retaliation lawsuit even if the underlying complaint of discrimination is ruled not valid. **Dettor v. Miss. Veterans Home, 2010 WL 1609728 (S.D. Miss., April 20, 2010).**

Disability: Hospital Provided Nurse With Reasonable Accommodation.

A nurse had an on-the-job back injury which caused a chronic lower-back condition.

She began to have difficulty with her own personal activities of daily living such as bathing, cooking for herself and cleaning her own house.

Her supervisors decided a staff registered nurse position was too physically demanding for her and allowed her to train as a clinical case manager.

Even sitting at a desk for prolonged periods proved problematic. Her physician wrote notes to human resources that she needed to stand and walk around for a few minutes at least every hour or two, which her supervisors did not stop her from doing. She was also allowed to work an eight rather than twelve-hour day.

Nevertheless, she began calling in sick more than half the days she was scheduled to work and had to resign.

The US Court of Appeals for the Seventh Circuit believed the nurse's difficulties managing her own activities of daily living gave her legal rights as a disabled person, but ruled against her on the issue of reasonable accommodation. The hospital did all that the Americans With Disabilities Act required by way of reasonable accommodation. **Boston v. Memorial Med. Ctr., 2010 WL 1490365 (7th Cir., March 17, 2010).**

Discrimination: Patient Refused To Be Treated.

The patient sued for race discrimination after a visit to the E.R. for trauma from domestic abuse.

The patient reportedly refused to allow a nurse of a different race to draw her blood, then complained to the same nurse she did not like being treated differently because of her race. The US Court of Appeals for the Third Circuit dismissed the case. **Madison v. Jefferson Hosp., 2010 WL 1401258 (3rd Cir., April 8, 2010).**

Child Abuse: Providers Liable.

(Continued from page 1.)

Old Fractures Found

Two separate chest x-rays were ordered after the child vomited in the E.R. The chest x-ray showed old rib fractures. However, the child had already been discharged before the x-rays were read, with a diagnosis, "Wrist fracture. Falling from residential premise, undetermined if accident/purposely inflicted."

After the x-rays were read after the child had left nothing was done by way of follow-up on the issue of child abuse.

The Court of Appeals of North Carolina ruled the evidence pointed to a case of negligence against the caregivers who saw the child the first time in the E.R., all mandatory reporters of child abuse. They failed to see signs and should at least have suspected abuse and reported what they observed during the first E.R. visit. **Gaines v. Cumberland Co. Hosp., __ S.E. 2d __, 2010 WL 1306429 (N.C. App., April 6, 2010).**

Hospitals' nursing and medical personnel are mandatory reporters who must report abuse to child protective services.

The report does not have to come from a primary care physician; it can be any health care provider in the hospital setting.

Caregivers need not wait to report until they know for certain that abuse has occurred. There must be an index of suspicion.

This hospital had policies in place that all staff were expected to report cases in which there was reasonable cause to believe that a child has been a victim of maltreatment or may be in need of protective services.

COURT OF APPEALS
OF NORTH CAROLINA
April 6, 2010

Child Abuse Reported: Nurse Ruled Immune From Civil Suit.

(Continued from page 1.)

The Court reviewed the pertinent state statues in Ohio which are similar to laws on the books elsewhere in the US.

Mandatory Reporter Defined

Mandatory reporters of child abuse include physicians, nurses and a long list of other licensed healthcare professionals.

Mandatory Reporters Legal Duty Defined

No person designated by law as a mandatory reporter who is acting in an official or professional capacity and knows, or has reasonable cause to suspect, based on facts that would cause a reasonable person in a similar position to suspect, that a child under the age of eighteen years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability or condition that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the children's protective services agency or to a municipal or county peace officer.

Mandatory reporting laws also apply to physicians' and nurses' patients who are not children, but are likewise acutely vulnerable to abuse and neglect. These persons include developmentally and mentally challenged adults and frail elderly persons who are being cared for as the physician's or nurse's patients.

Abuse of these other vulnerable persons can be physical, mental, psychological or financial.

Permissible Reporters

The mandatory reporting laws do not apply in every situation. For a healthcare worker, only the worker's patients come under the healthcare worker's mandatory obligation to report abuse and neglect.

The law does not penalize nonreporting in non-mandatory-reporting situations. However, the law does extend the protection of the law to any person who, acting in good faith, voluntarily chooses to report abuse or neglect of a child, disabled or vulnerable person to protective services or local law enforcement.

That would apply, for example, to a nurse's or physician's neighbor or other person who is not a patient and for whom no mandatory reporting duty exists.

Legal Immunity From Civil Lawsuit Given to Reporter Reporting in Good Faith

The benefit to society from prevention of abuse of children and other vulnerable persons outweighs the harm that might occur from the filing of an occasional false report, the Court pointed out.

Any mandatory or permissible reporter of child abuse or abuse of other vulnerable persons who reports such abuse to legal authorities in good faith, or who participates in legal proceedings connected with a report of such abuse, is immune from civil or criminal liability for losses suffered by other persons as a result.

In this case, the Court pointed out, it was clear the emergency room nurse was a mandatory reporter of child abuse.

Good Faith Defined

A healthcare provider facing a lawsuit over a report of abuse must come to court and answer to the lawsuit.

In doing so, however, the provider has the right to insist the person who filed the lawsuit come forward with evidence of bad faith on the provider's part. The healthcare provider does not have prove his or her own good faith. The other side has the burden of proof to show bad faith.

The father had no evidence to offer to the court of bad faith on the part of the nurse or the hospital security officer. They were entitled to dismissal of the father's civil lawsuit.

The nurse directly witnessed the father strike his child. She reported what she saw to a hospital security officer who was a peace officer with comparable authority to a police officer.

The nurse's only motivation was to be able to continue treating her patient and to protect the other child from further abuse.

The father had no proof to offer the court that the nurse had a dishonest purpose, intent to deceive or to mislead, an ulterior motive or malice toward the father.

The Court did not seem to find any relevance in the fact that the other child whom the father did not strike was the one for whom treatment was being sought at the E.R. **Workman v. Cleveland Clinic Foundation, 2010 WL 1611102 (Ohio App., April 22, 2010).**

Labor & Delivery: Nurses Failed To Report Uterine Hyperstimulation.

The child was diagnosed with cerebral palsy at three months of age. By the time his case went to court at age six he was profoundly delayed in development.

The child's injuries were blamed on gradually reduced oxygen during the last hours of his mother's labor, in turn blamed on failure of the hospital's labor and delivery nurses to recognize and report contractions that were rapid and prolonged, signs of uterine hyperstimulation.

The obstetrician had standing orders at the hospital for his labor and delivery patients on Cytotec.

If the mother's contractions lasted longer than 90 seconds or if the interval between contractions was less than 60 seconds, terbutaline was to be given and he was to be contacted.

COURT OF APPEALS OF MINNESOTA
April 6, 2010

The Court of Appeals of Minnesota, upholding a jury verdict in the child's favor against the hospital, endorsed expert testimony outlining the standard of care for labor and delivery nurses under the circumstances of the case.

If six or more contractions are seen in a ten-minute span, the mother can be turned on her left side, which improves circulation to the fetus, and oxygen can be given. If that does not effectively slow the frequency of contractions, terbutaline can be given with a physician's order. That will not stop a contraction, the patient's expert went on to say, but it generally will decrease the frequency and strength. If not, the obstetrician or another physician must be notified.

Nurses cannot just wait and hope that the situation will resolve itself. **Perseke v. Ross, 2010 WL 1286843 (Minn. App., April 6, 2010).**

Labor & Delivery: Nurse Faulted For Fundal Pressure, Shoulder Dystocia.

The mother was admitted to the hospital at thirty-eight weeks. Pitocin was given during the first eight hours of labor. The mother started pushing and the head became visible. Then the baby's head retracted back into the birth canal, an indication of shoulder dystocia.

The obstetrician took steps to dislodge the shoulder while the labor and delivery nurse continued to apply fundal pressure, application of force with the hands on the fundus of the uterus - the mother's upper abdomen - to push the fetus down the birth canal in an effort to accomplish delivery.

Shortly after birth the infant was diagnosed with Erb's Palsy, a paralysis of the left arm, wrist and hand due to injury to the nerves of the brachial plexus.

In the mother's lawsuit the Court of Appeals of Texas ruled the mother's expert witness correctly stated the standard of care for the labor and delivery nurses:

Once a shoulder dystocia occurs, the nurse should not apply fundal pressure.

The inappropriate use of fundal pressure by the nurse during a shoulder dystocia and the force involved in such a maneuver causes the shoulder to be further impacted against the mother's pubic bone. This greater impaction actually stretches the brachial plexus nerves as the shoulder has nowhere to go. Fundal pressure risks stretching, tearing or avulsing the nerves which come from the spinal cord and causing impaired function of the arm, shoulder and hand as occurred in this case.

The medical literature also associates more brachial plexus nerve injuries with the use of fundal pressure during shoulder dystocia.

Given that [the baby] experienced a severe shoulder dystocia during delivery with several maneuvers used to deliver the baby along with simultaneous inappropriate use of fundal pressure, more likely than not, in reasonable medical probability, the use of fundal pressure during the shoulder dystocia caused the baby's brachial plexus injuries. **Reedy v. Pompa, __ S.W. 3d __, 2010 WL 1010049 (Tex. App., March 18, 2010).**

Labor & Delivery: Nurses Faulted, Fundal Pressure, Shoulder Dystocia.

After the hospital had paid a settlement, amount not disclosed, on behalf of the two labor and delivery nurses, the case went to trial against the obstetrician and his medical practice group.

The jury in the District Court, Harris County, Texas returned a verdict of $1,799,000 for the infant born with a brachial plexus injury related to shoulder dystocia during delivery.

The lawsuit alleged at the start that the nurses continued to apply fundal pressure to the mother's abdomen after shoulder dystocia was encountered while the obstetrician was in the process of freeing the infant from shoulder entanglement behind the mother's pubic bone. **Ibarra v. Doctors Hosp., 2010 WL 1039992 (Dist. Ct. Harris Co., Texas, February 26, 2010).**

Overdose: Jury Rules Nurse Not Negligent.

The sixty-seven year-old patient had orthopedic surgery for a fractured tibial plateau.

The patient was initially given 2 mg of morphine when he went to the recovery room and was started on a morphine pump which automatically dispensed 1 mg per hour and allowed the patient to self-administer 2 mg every eight minutes.

Phenergan 15 mg prn for nausea was also ordered by the physician. The nurse decided to give the Phenergan, but gave only half the permitted dose and afterward watched her patient closely for five minutes for any sign of an adverse reaction.

The patient coded later that day. He was revived but now has significant hypoxic brain damage.

The jury in the Superior Court, Fayette County, Georgia ruled that the nurse did not depart from the standard of care. **Head v. Fayette Comm. Hosp., 2009 WL 6084776 (Sup. Ct. Fayette Co., Georgia, March 20, 2009).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Health Care Reform: Legislation Enacted.

We have placed the entire text of the new health care reform bill on the Internet at www.nursinglaw.com/HealthCareReform.pdf.

Please note that the full text of the bill is 2309 printed pages and 3.34 megabytes of digital disc space. A high-speed Internet connection is recommended for those who intend to download.

The bill brings in comprehensive changes to the health-insurance industry.

The bill also calls for wide-ranging amendments to Federal Medicare and Medicaid standards to improve the quality and the availability of care.

The parts of the bill calling for changes to Medicare and Medicaid standards, at this point in time, are only generalized directives from the US Congress to the US Secretary of Health and Human Services to conduct studies and then to propose new regulations in specific areas of facility-management and patient-care, regulations which will be consistent with the overall intent of Congress in enacting the health care reform bill.

New regulations affecting patient care standards should begin to be seen in about one year and will begin to take effect in the next two or three years after that.

Health Care Reform - Highlights

Whistleblowers are expressly given the right to sue their employers in Federal court. Effective in one year, any employee who works at a skilled nursing facility or nursing facility who complains in good faith about the quality of care is protected by law from employer reprisals, including so-called retaliatory reporting of the employee to a state licensing agency.

Facilities will be required to post notices advising employees of their rights. These rights may not be signed off in an employment agreement with the facility.

Skilled nursing facilities and nursing facilities will be required to have compliance and ethics training programs to prevent and detect criminal, civil and administrative violations and to promote quality of care. These programs will encourage employees to report violations by others without fear of retribution.

The new bill requires the Secretary of Health and Human services to conduct a study specifically to determine if existing regulations need to be augmented regarding pre-employment and continuing training standards for non-licensed personnel who care for dementia patients.

Falsification Of Records: Nurse Did Not Perform Assessment Herself, Nurse's Firing Upheld.

A nurse working in an outpatient cancer treatment clinic was confronted by the human relations manager and her nursing supervisor.

The nurse's supervisor verified the facts the day before she confronted the nurse when she phoned the patient to discuss her medications, having been told by another staff member that the patient was not actually seen the nurse.

Nurse Charted Physician's Statement As Her Own Patient Assessment

The nurse admitted to her nursing supervisor she charted *verbatim* what the patient's physician relayed to her concerning the level of pain the patient reported to the physician.

The data was charted as the nurse's own nursing assessment of the patient's pain without the nurse ever having personally seen the patient herself.

The nurse misrepresented that she performed a professional assessment of her patient which she herself did not perform.

Falsification of patient records is a violation of the law. It is gross misconduct and permits the employer to terminate the employee.

It is not relevant whether the assessment was accurate or whether not seeing the patient impacted the quality of the patient's care.

SUPERIOR COURT OF NEW JERSEY
April 5, 2010

The nurse testified in her defense that she was overtaxed by her workload and also stated that it was not uncommon at the clinic for herself and others to complete their required assessments by relying on what other professional staff told them, without personally seeing their patients.

That was no excuse for the nurse not to conduct and chart her required nursing assessments in a manner consistent with professional nursing standards, that is, she had to see her patient herself, the Superior Court of New Jersey ruled.

Further, the court said, it is not appropriate for a nurse to take advice from other professional staff, like a radiation therapist, as to the extent of a nurse's professional obligations. **Fore v. Board of Review, 2010 WL 1329071 (N.J. App., April 5, 2010).**