LEGAL EAGLE EYE NEWSLETTER

November 2003 *For the Nursing Profession* Volume 11 Number 11

Urinary Catheterization: Nurse Followed Proper Procedures, Lawsuit Dismissed.

The patient was to have an exploratory laparotomy due to persistent lower abdominal pain. After the patient was under general anesthesia the scrub nurse gave the circulating nurse a flexible latex urinary catheter to be inserted and remain during the surgery.

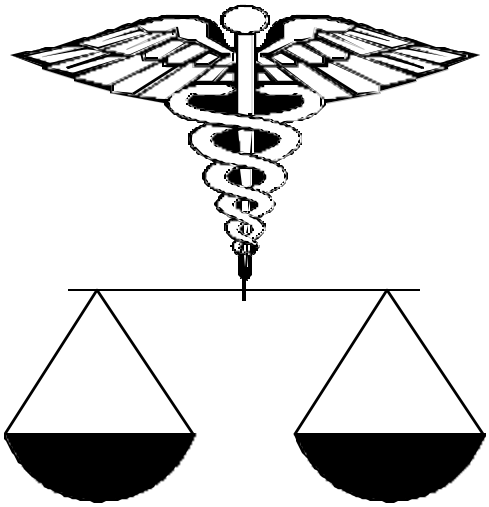
The circulating nurse applied about ten cc's of lubricant and inserted it through the meatus into the urethra.

Resistance was encountered so the nurse withdrew the catheter slightly and rotated it to determine if the catheter had kinked and for that reason was not going in easily.

Some reddish fluid was seen coming out into the waste discharge tubing. The nurse withdrew the catheter entirely and notified the physician who was scrubbing for the surgery in an adjacent room.

The surgeon tried a smaller-diameter catheter to obtain some of the fluid to see if it was blood or just dark urine. He decided it was probably blood and called in a urologist.

The urologist did a cystoscopy, found a urethral stricture and dilated the stricture so that a #18 French catheter could be inserted. Then the diagnostic abdominal laparotomy went forward. Abdominal adhesions were lysed and the appendix was removed.



In a patient with an existing urethral stricture the mucosa is so friable that tears can occur and result in bleeding even when the utmost care and caution are used in catheterization.

The nurse acted within the standard of care by rotating and withdrawing the catheter when resistance was met and calling the physician.

SUPERIOR COURT OF PENNSYLVANIA
September 19, 2003

The Superior Court of Pennsylvania upheld the jury's verdict ruling out negligence by the nurse and the physicians.

Patients with pre-existing urethral strictures have urethral mucosae so fragile that injury can occur in catheterization even when the utmost care and caution are used, according to expert testimony the court accepted.

Urethral stricture is a condition a nurse is not expected to know about before attempting catheterization. Bleeding and damage to the urethral mucosa, in and of themselves, do not indicate that a nurse used excessive force in attempting the catheterization.

However, as in this case, when resistance is encountered and the catheter is determined not to have kinked, or bleeding appears, the catheter must be withdrawn and a physician contacted to determine the cause and what to do about it, even if it means a consult with a urology specialist.

The court did believe a surgical patient has the right to be informed that urinary catheterization will be part of the procedure. The court dismissed that from the suit on a technicality. **Tucker v. Community Medical Center, __ A. 2d __, 2003 PA Super 356, 2003 WL 22161438 (Pa. Super., September 19, 2003).**

Inside this month's issue ...

November 2003

Russian Nurses: Court Approves Lawsuit Alleging Race, National-Origin Employment Discrimination.

A Caucasian female nurse of Russian descent was terminated from her employment as a staff registered nurse in a hospital.

In the Federal-court lawsuit she filed following her termination she alleged numerous incidents of harassment and discrimination by her supervisor, an African American female nurse who was the hospital's managing director.

The lawsuit alleged the managing director announced to the nursing staff in so many words that there were too many Russian nurses and patients and that it had to change.

All the Russian-speaking nurses in the program were replaced eventually by African American nurses.

English-Only Rule = Discrimination

According to the US District Court for the Eastern District of New York, two-hundred forty of the Russian nurse's program's three hundred patients were Russian-speaking. The managing director, however, insisted that the Russian-speaking nurses speak only English to each other on the job and to their patients, while other nurses were permitted to speak languages other than English on the job such as Creole, according to the court.

Hospital Not Entitled To Dismissal Of Lawsuit

At this stage the court has not ruled definitively that the hospital committed discrimination. The court ruled only that the hospital was not entitled to dismissal of the lawsuit, that is, the Russian nurse was entitled to her day in court.

The US Federal anti-discrimination laws are broad enough to encompass a lawsuit by a Caucasian of Russian descent against an African American supervisor, if discriminatory treatment in fact can be proven, the court said. **Sharabura v. Taylor, 2003 WL 22170601 (E.D.N.Y., September 16, 2003).**

The nurse went ahead without an attorney representing her and filed charges with the US Equal Employment Opportunity Commission (EEOC) of national-origin discrimination.

The EEOC issued a right-to-sue letter. She filed a lawsuit against the hospital, still without an attorney.

Then she hired an attorney. The attorney raised allegations in the lawsuit of race and color discrimination on top of the nurse's original national-origin claim to the EEOC.

The hospital argued that the nurse failed to raise claims of race and color discrimination in her EEOC complaint and was barred from claiming those things in her lawsuit.

However, her claims of race and color discrimination will be interpreted to be reasonably related to the national-origin discrimination claim. The superficial error the nurse made without the benefit of legal counsel will not be held against her in this case.

UNITED STATES DISTRICT COURT
NEW YORK
September 16, 2003

Discrimination: Cancellation Of Physician Agreement Seen As Retaliation.

The nurse practitioner who was suing had filed at least five discrimination complaints with the EEOC. Both sides in her lawsuit agreed to that for the record.

She was also named as a witness by another nurse in the other nurse's discrimination claim. Her nurse co-workers said behind her back that participating as a witness in that case was disloyal and disrespectful and she did not deserve to keep her job. Shortly after she testified for the other nurse her physician supervisor called her in and told her if she discussed the department's problems with anyone outside the department she would be transferred out of the city.

Under state law a nurse practitioner is required to have a collaborative agreement with a physician in order to be able to practice and keep her job.

Canceling a nurse practitioner's collaborative agreement, or offering only one that is entirely unworkable, is a form of illegal discriminatory retaliation.

UNITED STATES DISTRICT COURT
ILLINOIS
October 3, 2003

The physician department head then told her he was disgusted with her and was no longer designating her supervisor as her supervisor and would not approve another collaborative agreement.

The US District Court for the Northern District of Illinois saw grounds to sue for illegal retaliation. **Antunovich v. County of Cook, 2003 WL 22284198 (N.D. Ill., October 3, 2003).**

Combative Patient: Court Approves Emergency Use Of Physical Restraints, Throws Out Patient's Lawsuit For Battery And False Imprisonment.

The patient was a diabetic with a history of seizures. He had been brought into the same hospital's emergency room on numerous occasions prior to the night in question.

On the night in question his niece believed he was experiencing an episode of low blood sugar and phoned 911. The emergency medical services paramedics began transporting him unconscious to the hospital's emergency department.

He awoke and became combative in the ambulance shortly before arrival. At the hospital he was unable to give consent and his niece gave consent to treatment on his behalf.

He punched one nurse more than once who tried to take his blood pressure, then twisted another nurse's fingers when she approached with a finger stick to try to get some blood for a blood-sugar reading.

The emergency room physician was not able to communicate with the patient in any meaningful respect. He continued yelling profanities and threatening hospital staff and generally disrupted the entire emergency department.

A physician or a person assisting a physician or acting at a physician's direction has a legal privilege to use force in restraining another person if -

The force is used for the purpose of administering a recognized form of treatment which is believed will promote the physical or mental health of the patient and -

The treatment is administered with the consent of the patient or -

The treatment is administered in an emergency when the patient or another person competent to consent on the patient's behalf cannot be consulted and -

A reasonable person, wishing to safeguard the welfare of the patient, would consent to the treatment being administered to the patient.

COURT OF APPEALS OF KENTUCKY
UNPUBLISHED OPINION
September 19, 2003

At the physician's direction he was placed in four-point restraints and the police were called. The whole time he continued his belligerent attitude, refused to be treated and no medical treatment was administered to him.

The police escorted him out of the hospital, got him to calm down and released him to return home. He sued the hospital for battery, malicious prosecution and false imprisonment.

The Court of Appeals of Kentucky, in an unpublished opinion, approved the local county court's dismissal of the lawsuit.

Use of Physical Restraints Justified In An Emergency

As a general rule no one has the right to restrain another person's liberty or even so much as touch the another person without the person's consent.

However, the law provides medical personnel with a legal privilege against being sued for restraining and treating an individual in an emergency.

An emergency exists when neither the individual or anyone on the individual's behalf is competent or available to consent to treatment. The patient was not competent to consent or refuse and his family member did not refuse consent.

The medical and security personnel at the hospital were acting under a physician's direction in order that clearly appropriate and indicated medical treatment could be rendered. **Johnson v. St. Claire Medical Center, Inc., 2003 WL 22149386 (Ky. App., September 19, 2003).**

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

Indexed in
Cumulative Index to Nursing & Allied Health Literature™

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

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Medicare & Medicaid: Paid Feeding Assistants Approved For Long Term Care Facilities.

SUMMARY: This final rule permits a long term care facility to use paid feeding assistants to supplement the services of certified nurse aides under certain conditions.

States must approve training programs for feeding assistants using Federal requirements as minimum standards. Feeding assistants must successfully complete a State-approved training program and work under the supervision of a registered nurse or licensed practical nurse.

The intent is to provide more residents with help in eating and drinking and reduce the incidence of unplanned weight loss and dehydration.

EFFECTIVE DATE: These regulations are effective on October 27, 2003.

Subpart B--Requirements for Long Term Care Facilities

Sec. 483.35 Dietary services.

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

* * * * *

(h) Paid feeding assistants--(1) State-approved training course. A facility may use a paid feeding assistant, as defined in Sec. 488.301 of this chapter, if--

(i) The feeding assistant has successfully completed a State- approved training course that meets the requirements of Sec. 483.160 before feeding residents; and

(ii) The use of feeding assistants is consistent with State law.

(2) Supervision. (i) A feeding assistant must work under the supervision of a registered nurse (RN) or licensed practical nurse (LPN).

(ii) In an emergency, a feeding assistant must call a supervisory nurse for help on the resident call system.

(3) Resident selection criteria.

(i) A facility must ensure that a feeding assistant feeds only residents who have no complicated feeding problems.

(ii) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.

The US Centers for Medicare & Medicaid Services has announced new regulations permitting the use of paid feeding assistants in long-term care facilities.

Volunteers who feed residents, who are usually family members, are not mentioned in the new regulations. CMS's official comments say unpaid volunteers can still feed residents. Volunteers are encouraged but not required to complete the eight-hour feeding assistant training course. Facilities are potentially liable for the errors and omissions of unpaid volunteers.

The entire text of the CMS announcement is on our website at http://www.nursinglaw.com/feeding.pdf. It includes a detailed statement from CMS of the rationale for the use of feeding assistants.

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FEDERAL REGISTER
September 26, 2003
Pages 55528 – 55539

(iii) The facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care.

* * * * *

Sec. 483.75 [*The definition of nurses aides as used generally in the Federal regulations for long-term care facilities does not*] include those individuals who furnish services to residents only as paid feeding assistants as defined in Sec. 488.301 of this chapter. [*That is, an individual must be fully trained as a nurses aide to function as a nurses aide*.]

* * * * *

(q) Required training of feeding assistants. A facility must not use any individual working in the facility as a paid feeding assistant unless that individual has successfully completed a State-approved training program for feeding assistants, as specified in Sec. 483.160 of this part.

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

Sec. 483.160 Requirements for training of paid feeding assistants.

(a) Minimum training course contents. A State-approved training course for paid feeding assistants must include, at a minimum, 8 hours of training in the following:

(1) Feeding techniques.

(2) Assistance with feeding and hydration.

(3) Communication and interpersonal skills.

(4) Appropriate responses to resident behavior.

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

(6) Infection control.

(7) Resident rights.

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

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

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Paid Feeding Assistants In Long-Term Care (Continued.)

Editor's Note: Please refer to *Asphyxiation Death: Court Says A Family Member Should Not Have Fed The Patient*. Legal Eagle Eye Newsletter for the Nursing Profession, (8)1, Jan. 00, p. 1.

This article is on our website at http://www.nursinglaw.com/asphyxiation.pdf.

In that case a certified nursing assistant left a food tray in a resident's room. The skilled-nursing patient had been assessed as incapable of feeding himself. A certified nurses aide was supposed to feed him, note what and how much he had eaten so that it could be charted, and then remove the food tray from his room.

However, his elderly wife came in and tried to feed him from his meal tray and he choked and died. The wife apparently had no idea there was any potential danger in what she was doing.

The Supreme Court of Alabama ruled the skilled nursing facility was negligent.

The court stressed that it is inappropriate to allow individuals who have not been trained to appreciate the danger of asphyxiation, to do the Heimlich maneuver, to suction or to have someone immediately suction a choking person, or who at least know to call 911 when there is an emergency, to feed certain patients.

We covered the issue of feeding assistants in *Medicare/Medicaid: Regulations Proposed To Allow State Funding For Paid Feeding Assistants In Long-Term Care*. Legal Eagle Eye Newsletter for the Nursing Profession, (10)5, May 02, p. 4.

The regulations just announced in final mandatory form, more so than the regulations that were merely a proposal last year, stress the importance of correct nursing judgment in the screening of residents who are appropriate to be fed by feeding assistants as opposed to certified nurses aides or licensed personnel.

Gender Discrimination: Male Nurse's Lawsuit Dismissed.

A male nurse, who works in a mostly female profession, is covered by Title VII of the US Civil Rights Act which outlaws gender discrimination in employment.

In legal parlance a male nurse, like racial minorities, is said to be a member of a protected class of persons.

Belonging to a protected class is only the first prong of the four-pronged legal analysis to determine if discrimination has occurred.

The male nurse must also have been performing his job to his employer's satisfaction, and in spite of meeting his employer's legitimate expectations he must be disciplined or terminated, and he must be treated less favorably than similar female employees with respect to discipline or termination.

There were no female nursing employees whose behavior was similar in all relevant respects to serve as a basis of comparison.

Two female nurses did request not to be placed on call, but they requested it right away rather than waiting until the day before, and they did not act out in a demanding and insubordinate manner.

UNITED STATES DISTRICT COURT
ILLINOIS
October 10, 2003

A male dialysis nurse got in a dispute with his employer over on-call shift assignments. After he had to be fired he sued for gender discrimination.

Male Nurse As Minority

A male nurse can sue for gender discrimination. In a mostly female occupation a male nurse is considered a minority protected by the US Civil Rights laws.

Differential Treatment
Basis of Comparison Required

The essence of discrimination is differential treatment based on a personal characteristic that identifies the victim as a minority. To show differential treatment a male nurse like any other minority must point to one or more non-minority co-workers who were similar in all other relevant respects but were treated more favorably. Without a basis of comparison, differential treatment does not exist and discrimination cannot be proven.

The US District Court for the Northern District of Illinois described in detail the friction between the facility and the nurses, male and female, over scheduling of on-call shifts.

It was necessary during all hours when the clinic was closed that an identified nurse have the absolute duty to come to the hospital to dialyze a patient if a patient needed to be dialyzed during the specific shift the nurse was on call.

The bottom line for the court was that the male nurse acted out in a very unprofessional manner compared to his female co-workers when notified of on-call assignments he did not want

According to the court, he was prone to calling in the day before he was scheduled to be on call, sometimes leaving the facility with no on-call dialysis nurse coverage, rather than complaining when the on-call shifts were first posted, or finding a replacement, or consenting to be on call even when he did not want to be on call like the other nurses did who also objected to their on-call assignments but were not fired and happened to be female. **Robertson v. Total Renal Care, 2003 WL 22326579 (N.D. Ill., October 10, 2003).**

Child Abuse: Emergency Room Personnel Not Entitled To Good-Faith Legal Immunity.

The parents brought their eight year-old daughter to the hospital's emergency room with a high fever.

A routine urinalysis in the emergency room at first showed trace amounts of spermatozoa in the child's urine. The police were called. They came to the emergency room and began questioning the mother.

The mother insisted the urinalysis be redone. It was redone. The second urinalysis came back completely negative for spermatozoa. The hospital's emergency-room physician insisted on doing a vaginal exam on the child, which proved entirely negative for evidence of sexual abuse.

Then the mother was assured, in light of the negative vaginal exam, that the first urinalysis sample must have belonged to another patient. An apology was offered to her for the whole mix-up.

Abuse Not Reported
Hospital Launched An Investigation

Unspecified emergency room personnel employed by the hospital, however, insisted on admitting the child. The child was given repeated vaginal exams while they continued to interrogate the mother.

Hospital personnel informed the mother she could not take her child home until child protective services allowed her.

However, after the parents sued it came to light that no protective-services case file or case number could be located to substantiate that the hospital actually filed a report, the Court of Appeals of Illinois pointed out.

No Presumption of Good Faith
Hospital Has Burden of Proof

For filing a report with protective services there is a legal presumption of good faith. The plaintiff trying to sue has to prove the defendant did not act in good faith. Otherwise, as in this case, the defendant has to prove good faith. The party who has the burden of proof on the issue of good faith usually loses in court. **Lipscomb v. Sisters of St. Francis, __ N.E. 2d __, 2003 22127891 (Ill. App., September 15, 2003).**

The traditional common law gives parents an inherent right to the care and custody of their own children.

At the same time the government has the right and the obligation to protect children from abuse, even from their own parents.

The government may curtail the natural parent-child bond only in very special circumstances, like when there is clear evidence of child abuse.

To balance the common-law right of parents to keep their children and the government's right to prevent child abuse, the law says that any person or institution who in good faith reports child abuse to appropriate government authority has legal immunity from a parent's lawsuit for intruding into the natural bond between parent and child.

Reporting and investigating child abuse are two very different things.

When a private individual or institution takes up the task of investigating possible abuse there is no legal immunity from a parent's lawsuit.

COURT OF APPEALS OF ILLINOIS
September 15, 2003

Hospice Care: CMS Re-Approves CHAP For Medicare, Medicaid.

On September 26, 2003 the US Centers for Medicare & Medicaid Services (CMS) re-approved the Community Health Accreditation Program (CHAP) as a national accreditation program.

Re-approval extends from November 21, 2003 through November 21, 2009.

CHAP accreditation is an optional alternative to state survey certification for hospices that wish to participate in Medicare or Medicaid.

It should be noted that CHAP, at CMS's insistence, has made certain changes to its accreditation standards since April, 2003 to make them equivalent to CMS's most current regulations.

We have placed the full text of the CMS announcement from the Federal Register on our website at *http://www.nursinglaw.com/CHAP.pdf.*

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Quality Review: Peer Review Privilege Given To Nurse Testing Forms.

The District Court of Appeal of Florida did not go into the clinical specifics of the case except to say the patient's lawsuit alleged nursing negligence in the administration of analgesia and sedation.

The preliminary issue to be resolved was whether the patient's lawyers were entitled to access to blank copies of confidential test forms used by the hospital internally to assess nurses' clinical competency in the use of analgesia and sedation.

The hospital uses these test forms for peer review.

Even the blank forms not specifically related to this case must be kept confidential to promote full, frank and honest internal quality review that is essential to the best possible patient care.

DISTRICT COURT OF APPEAL
OF FLORIDA
October 15, 2003

The court ruled that blank forms used to test nursing competency in a specific clinical specialty come under the legal rubric of medical peer review documents. As such they cannot be admitted into evidence and cannot even be obtained by the patient's lawyers in pre-trial discovery.

Assuming there is no vital information about the case the patient cannot find in sources other than peer review materials, the legal system will not intrude into the internal quality review process. Self-policing was judged extremely important by legislative policy makers who enacted peer-review confidentiality into law. **Tenet Health System v. Taitel, __ So. 2d __, 2003 WL 22336129 (Fla. App., October 15, 2003).**

Nursing Home Negligence: Court Throws Out Arbitration Agreement In Nursing-Home Admission Paperwork.

Courts as a rule uphold arbitration clauses and decline to schedule civil trials when they can order arbitration instead. Resolving disputes quickly and economically out of court has a compelling value in the legal system.

However, there are limits. An arbitration agreement in nursing-home admission papers will not be enforced if it is unconscionable.

An arbitration agreement must be explained and the resident or family member must have a realistic option whether or not to sign.

An arbitration agreement in nursing home admission paperwork cannot take away any of the important legal rights a nursing home resident would have when suing in court under the state's Nursing Home Residents' Bill of Rights.

Punitive damages and reimbursement of the resident's attorney fees from the nursing home must be in the arbitrator's arsenal for cases when the resident's claim is validated.

DISTRICT COURT OF APPEAL
OF FLORIDA
October 1, 2003

Going against the current legal trend in favor of pro-arbitration language in nursing-home admissions contracts, the District Court of Appeal of Florida ruled a resident's claim for damages under the state's Nursing Home Residents' Bill of Rights should be decided in civil court before a judge and jury.

The court strongly suspected unfairness in the circumstances under which the arbitration agreement was signed. The arbitration agreement itself was also invalid in important respects even if the resident and her family member completely understood it and freely agreed to sign it.

Unfairness Found In Circumstances of Signing

The resident fell in her home, sustained a non-operable hip fracture, could not be cared for by her elderly husband and had to be admitted immediately. The paperwork was presented to them after she was already in the nursing home. No explanation was given of the six-page agreement to arbitrate and no meaningful choice was offered whether or not to sign the arbitration agreement.

Denial of Legal Rights Punitive Damages / Attorney Fees

The law protects nursing home residents with states' nursing home residents' bill-of-rights legislation by allowing punitive damages and attorney fees to be awarded to residents with validated claims of nursing-home abuse or negligence.

According to the court, if the arbitration agreement had allowed the arbitrator to award punitive damages and attorney fees, the arbitration agreement would be valid and the case should properly have been remanded out of court to arbitration.

Because those two important rights were left out, the arbitration agreement had to be invalidated in favor of a court trial before a judge and jury. **Romano v. Manor Care, Inc., __ So. 2d __, 2003 WL 22240322 (Fla. App., October 1, 2003).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Re-infusion Of Patient's Blood: Jehovah's Witness Can Sue.

The patient, a Jehovah's Witness, made it clear to his surgeon he could not, as a matter of religious belief, have a blood transfusion under any circumstances, even his own blood.

During the knee arthroplasty the surgeon elected to use a Gish Orthoinfuser to collect blood from the surgical site, a medical device that can be used to collect the patient's own blood for autologous re-infusion. The surgeon told the nurse anesthetist, who allegedly told the post-anesthesia recovery nurses, that the patient nevertheless was not to have a re-infusion.

The recovery nurses, according to the Supreme Court of Iowa, simply assumed from the use of the Gish Orthoinfuser they were to re-infuse his blood and did not read the chart. The court ruled the patient could sue for negligence and did not need a medical expert witness. **Campbell v. Delbridge, __ N.W. 2d __, 2003 WL 22299473 (Iowa, October 8, 2003).**

Confession To Nurse: Criminal Conviction Stands.

A high-speed police chase ended with the bank-robbery suspect's car being crashed intentionally by two police cruisers and the suspect being attacked and bitten by a police dog. The suspect was taken to the hospital.

The suspect bragged to the emergency room nurse that he had just robbed a bank.

The Court of Appeals of Washington, in an unpublished opinion, ruled the nurse's testimony was admissible in court to convict him, along with evidence from a search warrant on his home and an accomplice's statement who was caught with the money in her possession.

While in the hospital being treated the suspect was in police custody. He had been read his Miranda rights and voluntarily made a statement which he had been warned could be held against him in a court of law. **State v. Skylstad, 2003 WL 22293605 (Wash. App., October 7, 2003).**

Surgery On Wrong Hand: Court Rules Nurse Had Legal Duty To Bring Error To Surgeon's Attention.

The patient had been diagnosed with carpal tunnel in both hands.

However, because she was at the time asymptomatic on the left side it was the surgeon's intent only to do the release procedure on her right hand.

When all the preparations seemed to be for surgery on her left hand the patient questioned the nurse.

The nurse looked at the preoperative records and the surgical consent form in her chart. All the paperwork indicated the operation was supposed to be on her left hand.

The procedure went forward erroneously on the patient's left hand. She sued for negligence. The New York Supreme Court, Appellate Division, ruled she had grounds to sue the hospital for nursing negligence separate and apart from her medical malpractice claim against the surgeon.

The patient told the nurse she thought her carpal tunnel surgery was supposed to be on her right hand, not her left.

When a patient questions a nurse about a possible mix-up in a medical procedure that is to be done, the nurse must thoroughly investigate that possibility.

At a minimum the nurse must review the chart and talk to the physician.

NEW YORK SUPREME COURT
APPELLATE DIVISION
October 2, 2003

A nurse has a legal duty to investigate in this situation, the court ruled. The nurse must review the chart with an open mind to the possibility the preoperative paperwork could be wrong if it is at odds with the patient's understanding of what is to be done.

If the paperwork in the chart does not match what the patient is saying the nurse should contact the physician and explain the problem.

The nurse should sure that the nurse's efforts to contact the physician and whether the physician spoke with the patient before going ahead are written down in the patient's chart. **Muskopk v. Maron, __ N.Y.S.2d __, 2003 WL 22257518 (N.Y. App., October 2, 2003).**