LEGAL EAGLE EYE NEWSLETTER

November 2004 *For the Nursing Profession* Volume 12 Number 11

Diabetic Patient: Court Validates Wrongful Death Lawsuit Against Nursing Facility.

The patient was admitted to the nursing facility for rehab following knee surgery.

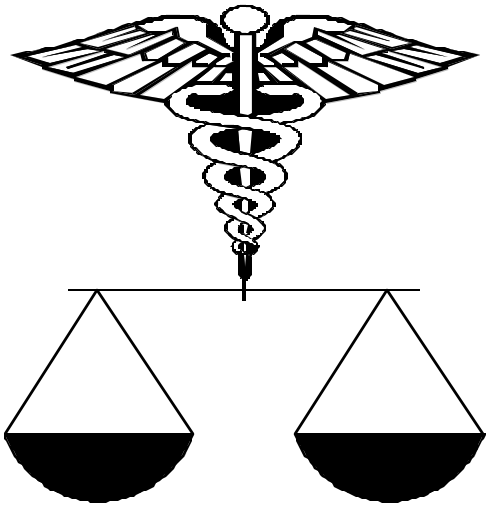
She had a history of diabetes, rheumatoid arthritis, hypertension and a recent urinary tract infection.

The day after admission her blood sugar was 283 but the nurses did not call her attending physician. Two days later her nurse charted a blood sugar of 295 and notified the physician but did not obtain orders what to do about it. After another two days her blood sugar was 370, she was incoherent and lethargic and had a temp of 103.3° F.

Two days later a nurse found her nonresponsive with no pulse or respirations. She was taken to a hospital where she died.

The autopsy related the death to pericardial infection from a port-a-cath which before her hospitalization for the knee surgery had been implanted for central venous access, which the nurses apparently had neglected.

The patient's son filed a wrongful death lawsuit on behalf of the family. The allegations were that the nurses failed to assess, monitor and communicate her health status to her physician, her care team and her family. The Court of Appeals of Tennessee upheld the lawsuit.



The patient's blood sugar rose from 283 to 295 to 370 without the nurses obtaining orders from the physician.

The patient became increasingly lethargic, then unresponsive with no pulse or respiration and was taken to the hospital where she died from a pericardial infection.

The family can sue for wrongful death.

COURT OF APPEALS OF TENNESSEE
September 24, 2004

Statute of Limitations
Civil Wrongful Death Lawsuits

The court ruled that the statute of limitations, the strict legal deadline for filing a lawsuit against caregivers for wrongful death of a patient, does not start to run when the patient dies.

Instead, the legal system gives the family a certain amount of time after such a tragic event to gather pertinent information about the circumstances before deciding whether to go ahead with a lawsuit. The court ruled Tennessee's one-year statute should be applied to the date when a copy of the autopsy report first became available to the patient's son. It was not transcribed until more than two months after his mother's death.

Each US state's legislature decides the number of years for the statute of limitations for each type of case. Most state courts' interpretations of the law include a "discovery rule" to give patients and family members some leeway. The statute of limitations to take legal action generally starts to run on the date the patient or family discovered or reasonably should have discovered grounds for a suit, not necessarily when harm to the patient occurred. **Puckett v. Life Care of America, 2004 WL 2138337 (Tenn. App., September 24, 2004).**

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Job Stress: Court Says Workers Compensation Is Nurse's Only Legal Option.

A nurse emigrated to the US from India in 1981 and began working at a hospital where the nurses were mostly of Filipino ancestry.

Over the next nineteen years she had a difficult time working in this environment which she felt was discriminatory.

However, to sue for discrimination she would have had to have been treated differently by a managerial or supervisory employee with decision-making authority over the terms and conditions of her employment, based on her Indian national origin.

The nurse did have a long list of grievances against her supervisors which she claimed caused her to have to take disability leave for stress. She sued the hospital for intentional infliction of emotional distress. The California Court of Appeal, in an unpublished opinion, ruled she could not sue, but would be limited to filing a workers compensation claim.

Normal Employment Environment versus Intentional Harassment

The court pointed out that even a great measure of dissatisfaction with how one is treated by one's supervisors is a normal part of the employment relationship.

Only when there has been an outrageous level of intentional harassment by co-workers or supervisors, meant to cause extreme emotional distress, will the courts disregard the exclusive-remedy provisions of the workers compensation statutes.

The nurse felt she was required to do work which compromised patient safety, was unfairly assigned to the float pool, received negative performance reviews, was accused of laziness, had to work on holidays and through her lunch breaks, was given assignments beyond the scope of her job description, etc. The court ruled these things are not out of the ordinary and are not intentional harassment. **Asileti v. California Hosp. Medical Center, 2004 WL 2293696 (Cal. App., October 13, 2004).**

When hospital management's actions are a normal part of the employment relationship, stress which a nurse experiences as a result must be treated as an occupational disease under the workers comp law.

It would be different if the nurse had been subjected to harassment intended to cause emotional distress.

Under workers comp, the employee is entitled to time loss benefits if the employee is disabled from working and medical benefits for treatment.

When a condition is covered by the workers comp law, the employee is not allowed to sue the employer.

That means the nurse in this case has no right to sue the hospital for general monetary damages for intentional infliction of emotional distress.

Monetary damages for emotional distress are not paid under workers compensation.

Stress is very difficult to prove as an occupational disease unless it is due to factors peculiar to the worker's occupation.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
October 13, 2004

Carpal Tunnel: No Connection To Work In Nursing Home, Aide's Case Dismissed.

A nurses aide filed for workers compensation for her bilateral carpal tunnel syndrome. She sought compensation for time loss and two surgical release procedures.

Her testimony went over the fact her job is very demanding physically, requiring her to lift patients, change patients' linens with the patients in bed, transfer patients to wheelchairs, shower chairs and toilets and she must feed, shave, bathe and groom her patients.

Carpal tunnel syndrome is a very common occupational disease.

It commonly results from repetitive actions of the hands and fingers, e.g., typing, cashier work, moving heavy objects or using vibrating tools.

Although a nurses aide's job is physically demanding, nurses aides do not typically develop carpal tunnel.

COURT OF APPEAL OF LOUISIANA
September 29, 2004

The Court of Appeal of Louisiana pointed out, however, that carpal tunnel is not the sort of ergonomic injury commonly associated with rendering nursing and personal care to patients, noting that her own treating physician had reluctantly admitted the same thing in his testimony. **Welcome v. Martin DePorres Nursing Home, __ So. 2d __, 2004 WL 2181442 (La. App., September 29, 2004).**

Nursing Home Litigation: Court Rules Other Residents' Records Are Relevant, Allows Access To Lawyer, With Adequate Privacy Protection.

The personal representative of a deceased nursing home resident's probate estate filed suit against the nursing home where he had resided.

The lawsuit alleged negligence and violations of the nursing home residents' bill of rights.

No judge or jury has as yet ruled on the validity of these allegations. The legal issue at this time is whether the nursing home must provide the personal representative's lawyers with copies of all of the medical charts of all of the other residents who were in the facility at the same time as the resident whose care is in question in the lawsuit.

Other Residents' Charts Are Relevant Or May Reveal Relevant Facts

The resident's personal representative's lawyers want to probe into the acuity levels of other patients at the facility, to determine the numbers of staff members needed to provide adequate care facility-wide, to determine whether the facility was adequately staffed, to determine in a roundabout fashion whether the resident in question received proper care.

As a general rule in civil cases, the lawyers for one side are allowed access to documents in the possession of the other side if the material contained in the documents is relevant to the issues in the lawsuit.

The lawyers are also entitled to access documents in the possession of the other side if the court is satisfied that a request for access to the documents, although not necessarily relevant, is reasonably calculated to lead to the discovery of relevant information that will assist in the preparation of the case against the party in possession of the documents.

However, patients' privacy must be protected in the whole process. The other patients not involved in the lawsuit have not waived medical confidentiality.

DISTRICT COURT OF APPEAL
OF FLORIDA
October 13, 2004

The District Court of Appeal of Florida overruled the lower court judge's decision that the other patients' medical charts are irrelevant and thus off limits for the lawyers representing the patient in question.

Whether or not the records are relevant is not the legal standard. The legal standard for pre-trial discovery of documents in the possession of the opposing party is whether a request for the documents is at least reasonably calculated to lead to the discovery of relevant information.

The acuity levels of other patients in the facility, in conjunction with personnel records showing staffing levels, could tend to show that the patient's personal representative's lawyers' legal theory of the case does hold water, that the facility was understaffed and the resident in question suffered accordingly. Or it could prove staffing levels were adequate. Either way, the lawyers will get copies of the other charts to prepare for jury trial.

Patient Confidentiality Must Be Protected

The court nevertheless upbraided the lawyers for not conceding that all identifying information had to be whited out, or, in legal parlance, redacted, before the charts left the facility.

The local judge will have supervisory responsibility to see that the other patients' privacy rights are preserved. **Age Institute of Florida, Inc. v. McGriff, __ So. 2d __, 2004 WL 2289686 (Fla. App., October 13, 2004).**

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Nurse's Med Error, Patient Falls: No Proof Seen That Negligence Caused Brain Hemorrhage.

The elderly patient entered the hospital to have colon cancer surgery. While he was in the hospital his physician also wanted to get a CT scan to aid in diagnosis of the patient's bouts of mental confusion.

While being placed on the gurney to go to radiology for the CT scan he fell and hit his head. He was taken to radiology anyway, and his CT scan was normal.

Back in his room, a nurse gave him a bolus of heparin, following a standard hospital protocol to boost his blood levels, but going against his physician's orders, after his Coumadin had been stopped for the colon cancer surgery. He had been on Coumadin more than 20 years.

His PPT rose to a panic level, then slowly subsided to normal. Then the heparin was changed to Lovenox. Soon after that he died from a brain hemorrhage.

Damages For Pain And Suffering
No Verdict For Wrongful Death

The jury awarded $18,000 damages against the hospital for the radiology tech's negligence in allowing the patient to fall from the gurney during transfer.

However, the medical testimony was inconclusive that the head injury from the fall or the nursing error in giving a bolus rather than a slow drip of heparin in any way caused his fatal brain hemorrhage.

The Court of Appeal of Louisiana, in approving the jury's limited verdict, pointed to the fact he had been on anticoagulants for some years, was having bouts of confusion which could have been caused by cerebral vascular insufficiency, and had to have plaque removed from his carotid arteries before the doctors would be willing to go ahead with the colon cancer surgery.

With such a complex pre-existing history there is no presumption that an accident produced an injury which showed up after the fact, the court said. **Desselle v. Jefferson Parish Hosp. Dist., __ So. 2d __, 2004 WL 2291554 (La. App., October 12, 2004).**

In personal injury lawsuits the law presumes that a disabling medical condition resulted from an accident:

If the injured person was in good health prior to the accident; and

The disabling condition manifested itself shortly after the accident; and

The medical evidence indicates that there is a reasonable possibility of a cause-and-effect relationship between the accident and the disabling condition.

That is hardly the case here. The trial judge did not err in refusing to instruct the jury as to any such legal presumption. This is a case where the patient's family must prove cause-and-effect.

True, there was a nursing error, giving an IV bolus of heparin to a patient whose Coumadin had just been stopped (so he could undergo surgery), and the patient fell off a gurney and struck his head (CT normal less than an hour later.)

However, given his dire medical history, neither of these events was behind his fatal brain hemorrhage some five days later.

COURT OF APPEAL OF LOUISIANA
October 12, 2004

Lyme Disease: Diagnosis Missed, Nurse Practitioner Not Negligent.

The parents brought their two year-old to the doctor's office. He was seen by a nurse practitioner.

He had a body rash, fever, diarrhea, decreased appetite and fatigue.

The nurse practitioner's diagnosis was dermatitis for which she recommended the mother buy and use an over-the-counter topical antihistamine. Two days later when that did not seem to be working the nurse practitioner prescribed a prescription-strength topical antihistamine.

After three months of no improvement the parents took the child to an emergency room where the ER physician ordered tests which showed Lyme disease antibodies in his blood. They went back to the same physician for whom the nurse practitioner worked and he started him on an oral antibiotic. They took him to other physicians who changed the antibiotics.

The patient's lawyers did not correctly raise their objection to the argument that the child's later health problems were complications related to another physician's substitution of antibiotics.

SUPREME COURT OF CONNECTICUT
October 12, 2004

The jury ruled the nurse practitioner not liable on the grounds that the boy's health complications were side effects of the antibiotics other physicians gave him later. The Supreme Court of Connecticut declined to disturb the jury's ruling. **Tetreault v. Eslick, 271 Conn. 466, __ A. 2d __, 2004 WL 2210185 (Conn., October 12, 2004).**

Employment Grievance: Nurse's Union Owes Fair Representation.

An African-American nurse filed grievances against her employer for racial discrimination. The grievances resulted in findings that certain personnel reassignments were not discriminatory and that discipline was based upon a proven patient-care error.

The nurse objected on the grounds that her union was not providing her with fair representation in the handling of her grievances against her employer.

Section 301 of the US Labor Management Relations Act allows a private-sector employee to file a so-called "hybrid" lawsuit claiming the union failed in its duty to provide fair representation in the handling of a grievance and also that the underlying grievance was prompted by the employer's breach of the union contract.

UNITED STATES DISTRICT COURT
NEW YORK
September 10, 2004

The US District Court for the Eastern District of New York agreed in principle that any private-sector employee covered by a collective bargaining agreement has rights not only under the collective bargaining agreement, but also has the right under Federal law to have the union provide fair and effective representation toward vindication of those rights.

That being said, the court found no clear-cut evidence of substandard union representation in this case. **Blossomgame v. N.Y. Health & Human Service Union, 2004 WL 2030285 (E.D.N.Y., September 10, 2004).**

Osteoporosis: Court Sees No Grounds For Lawsuit That Aide Mishandled Patient.

X-rays before the patient's knee surgery showed no fracture.

X-rays after she complained of severe pain in her leg revealed a femur fracture.

All the x-rays prove is that the fracture occurred after her surgery, while the patient was on the hospital's skilled nursing unit.

Before-and-after x-rays do not prove a femur fracture was caused by a caregiver's negligence, that being the key to a lawsuit.

That is an example of the post hoc fallacy, the tendency to assume that because one thing happened before another the first was the cause of the second.

That brand of faulty logic is strictly out of bounds in professional negligence cases.

The testimony of the doctors and nurses at the treating hospital, the only legally acceptable evidence in the case, was that disuse osteoporosis rather than negligent mishandling of the patient by a caregiver, was the most likely explanation for the patient's femur fracture.

COURT OF APPEALS OF KANSAS
October 4, 2004

The Court of Appeals of Kansas affirmed the lower court's dismissal of the patient's medical negligence claim.

***Post Hoc* Logic Not Valid**
Expert Opinion Required

The patient had been helped into bed by a nursing assistant. Her leg was being positioned as indicated in her physician's orders. The patient felt her leg crack and she cried out in intense pain.

The patient later stated that the aide gave her leg too hard a tug and dropped her leg rather than lowering it gently.

The patient's legal case relied solely upon two radiology reports. One from before her knee surgery showed no fracture; one after the incident in question showed her femur was fractured.

The hospital, on the other hand, had a medical expert and a nursing expert who each stated that there was no departure from the proper standard of care in how the aide assisted and positioned the patient. The patient's own treating physician testified the patient had extensive pre-existing osteoporosis and admitted that spontaneous fractures can occur in osteoporotic patients even with the best of care without anyone necessarily being at fault.

The court reaffirmed the principle that faulty *post hoc* logic is strictly out of bounds in professional malpractice litigation. Before and after x-rays, in and of themselves, prove absolutely nothing that would be relevant in a court of law.

The court reaffirmed the principle that expert testimony is required to establish the legal standard of care. The only expert testimony came from the medical and nursing experts at the hospital.

The patient's own opinion that the aide pulled and tugged on her leg improperly would likewise be out of bounds in a court of law because this particular patient was not qualified as an expert on nursing standards and practices. **Cunningham v. Riverside Health System, Inc., __ P. 3d __, 2004 WL 2213681 (Kan. App., October 4, 2004).**

Labor & Delivery: Court Sees Nursing Negligence As Cause Of Baby's Neurological Injuries.

In a complicated labor and delivery birth-injury case, the California Court of Appeal struggled with different formulations the court precedents have used to define the concept of medical causation.

Three Necessary Elements
Professional Negligence Cases

To prevail in a lawsuit for medical or nursing negligence, the patient or patient's representative must prove the doctor or nurse was negligent, that harm occurred, and that the harm was caused by the doctor's or nurse's negligence.

All three of these essential elements must be proven to the judge's and jury's satisfaction or the patient's case must be dismissed as groundless.

In this case the lower court judge threw out the case against the hospital which employed the labor and delivery nurses, despite the fact there was strong evidence of their negligence and conclusive evidence of severe neurological birth injury to the newborn.

The Court of Appeal ruled the patients' (mother's and baby's) nursing expert's testimony fulfilled the legal requirement of proof of causation, rendering their case valid against the hospital, and overruled the lower court judge.

High-Risk Obstetric Patient
Nursing Responsibilities

The Court of Appeal agreed with the patients' nursing expert that it is a nursing responsibility to classify a labor and delivery patient as high-risk when the nurses first observe abnormal decelerations in the fetal heart tracings.

At that point it becomes a nursing responsibility to ascertain that nursing staff are present with the mother who are fully competent to monitor and assist with a high-risk delivery.

It is also a nursing responsibility when a labor and delivery patient is first classified by the nurses as high-risk to ascertain who is the attending physician, where exactly the physician is presently located and exactly how the physician can be contacted.

As an essential element of the case a patient or patient's representative suing for negligence must prove a proximate causal connection between the alleged medically negligent act and the harm for which compensation is sought.

Cause must be proven with reasonable medical probability based on competent expert testimony.

An adverse result may be considered a medical probability if it is more likely than not that the injury to the patient was caused by the defendant healthcare professional.

The defendant healthcare professional's conduct has to have been a substantial factor in bringing about the particular result.

Conduct is a substantial factor in bringing about a harmful result if the conduct has created a force or series of forces which are in continuous and active operation up to the time the actual harm occurs.

If in the absence of the defendant's negligence it is reasonably probable the patient would have had a better result, cause is proven.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
October 5, 2004

Identifying Backup Physician
Nursing Responsibility

More vitally, when a patient has been classified by the nurses as high-risk, the nurses must ascertain who is the backup obstetrician and must plan how to call in the backup immediately if necessary.

In this case the primary ob/gyn was in surgery with another patient during a critical time frame in the mother's labor, rendering him completely unavailable to the nurses' high-risk patient, an intolerable situation in the Court's view.

Pushing / Decelerations
No Physician Present

The nurses had the mother push twice, seven hours after ominous decelerations were first seen, without a physician present. These pushes each produced two more periods of extended fetal heart rate deceleration which should have been seen as signs that an emergency cesarean was indicated.

The nurses also failed to ascertain that the mother was fully dilated before having her push, an error the Court thought was especially significant in conjunction with signs of ongoing fetal hypoxia.

Pitocin Left Running

After the mother had pushed and the fetal heart rate had slowed unacceptably, the nurses neglected to stop the pitocin, a critical error in the opinion of the patients' nursing and medical experts.

Physicians Also Negligent

In any negligence lawsuit, more than one party can be at fault and ruled liable to pay damages.

It is no defense for nurses to argue that one or more physicians were also negligent. Nurses have legal responsibilities independent of what the doctors are or are not doing for their patients.

On a practical level the patients' lawyers usually want to maximize their clients' chances of obtaining a large recovery by suing each of the doctors as well as the hospital if the hospital's staff have been negligent. **Nichols v. Good Samaritan Hosp., 2004 WL 2222384 (Cal. App., October 5, 2004).**

Legal Ethics: Lawyer Made Improper Contact With Witness, Faces Reprimand.

An attorney represented an employee of a nursing home who had filed a workers compensation claim.

The lawyer went to the nursing home to obtain background information for his client's claim through a proper legal deposition of the nursing home's office manager.

He left after the legal deposition, but then came back unannounced and questioned the director of nursing for the whereabouts of three nurses who he believed may have witnessed his client's injury taking place.

A lawyer is strictly prohibited by the Bar Association's Rules of Professional Conduct from contacting a person who is or employee of a corporation that is represented by another lawyer without getting permission from the other lawyer.

SUPREME COURT OF KENTUCKY
September 23, 2004

The Supreme Court of Kentucky ruled the lawyer guilty of unprofessional conduct and formally reprimanded him.

It is strictly unethical for a lawyer to communicate with a person or with an employee of a corporation whom the lawyer knows to be represented by legal counsel with respect to the matter at issue, without notifying and getting permission from the person's or corporation's legal counsel. The nursing director herself was not guilty of any wrongdoing. **Callis v. Kentucky Bar Ass'n., __ S.W. 3d __, 2004 WL 2128543 (Ky., September 23, 2004).**

Premature Labor: Pitocin Drip Was Nursing Error, Father Still Has No Right To Sue.

The mother went into labor prematurely after the nurse erroneously started a pitocin drip.

However, going into labor, although painful, is not what the law contemplates as an injury for purposes of filing a negligence lawsuit. Labor is the natural consequence of pregnancy.

The baby was born prematurely, with low birth weight, respiratory problems and hyperbilirubinemia.

In this case that is also not considered an injury for purposes of filing a lawsuit, because after the baby left the hospital's neonatal intensive care unit in satisfactory condition there was no reason to expect further complications.

The father was there when it all happened. Because he was not actually injured himself he can at most only qualify as what the common law refers to as a bystander.

To be eligible to sue for damages a bystander must show that someone very close was actually injured as a result of negligence.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
October 4, 2004

The mother was hospitalized at thirty-two weeks for treatment to prevent premature labor. She was given repeated IV infusions of magnesium sulfate which was successfully preventing active labor.

Nurse Gave Pitocin
Instead of Magnesium Sulfate

Seventeen days into her hospital stay a nurse mistakenly gave the mother IV pitocin, a medication the California Court of Appeal pointed out in its unpublished opinion is used to induce labor rather than retard or prevent labor from starting.

The mother gave birth to her daughter at thirty-four weeks. The daughter's birth weight was less that five pounds and she had respiratory distress, hyperbilirubinemia and possible sepsis. She needed nine days hospitalization in the hospital's neonatal intensive care unit.

Mother and daughter were eventually discharged in good condition with no solid reason to expect further complications from the premature delivery or birth.

Father Sues As Bystander

The father, however, sued the hospital on his own for negligent infliction of emotional distress.

He was in the room when a nurse found and corrected the error another nurse had committed starting the pitocin drip. He heard the nurse explain that the wrong medication had been given and was producing exactly the opposite of the intended result. He was also at the hospital for much of his daughter's nine-day stay in neonatal intensive care.

The court ruled, however, following established legal case precedents, that a bystander can sue for emotional distress only when a family member is actually injured due to another's negligence.

As the nursing error was corrected and no actual harm occurred to either of the bystander's family members, the father as a bystander had no grounds to sue. **Batchelder v. Loma Linda Univ. Med. Ctr., 2004 WL 2211572 (Cal. App., October 4, 2004).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Defective Hospital Equipment: Court Validates Injured Nurse's Right To Sue.

A surgical nurse sustained a back injury while trying to move a 600-pound surgical microscope and floor stand unit in the hospital where she worked.

Worker's Compensation Law Does Not Rule Out Products Lawsuit

As an employee injured in the course and scope of her employment duties, the nurse qualified for workers compensation. The other side of the coin is that an employee eligible for workers comp, whether or not the employee actually files for workers comp, cannot sue the employee's own employer for an on-the-job injury. However, that does not rule out a lawsuit against a third party whose negligence caused the employee's on-the-job injury.

The nurse filed suit against the manufacturer and distributor of the microscope and microscope stand.

The New York Supreme Court, Appellate Division, accepted the defendant manufacturer's and distributor's expert engineering testimony that there was no defect in the design of the product. The court also accepted the argument that a manufacturer or distributor has no legal duty to provide warnings to users of such equipment that manually moving such equipment can pose a hazard of injury in the form of lower back strains and sprains.

Manufacturing Defect Nurse Has Right To Sue

However, although the product was generally safe when manufactured according to specifications, this particular unit was not correctly assembled, the court ruled.

After the nurse was injured a hospital maintenance worker was able to make the machine roll easily along the floor without posing a hazard of injury, by replacing a broken wheel caster with which the brand-new unit had been allowed to leave the factory.

Testimony of another nurse at the hospital corroborated that the unit was unexpectedly difficult to move the day it was delivered at the hospital, after the nurse in question was injured and before it was repaired after the fact by the hospital. **Wesp v. Zeiss, 2004 WL 2211397 (N.Y. App., October 1, 2004).**

Nurse's Latex Allergy: Court Issues Ruling On Complicated Statute Of Limitations Issues.

A nurse was diagnosed with a type-one latex allergy her doctor related to long-term on-the-job exposure to latex gloves.

Slightly more than three years after her diagnosis her lawyers filed a lawsuit against eighteen separate corporate defendants involved in the manufacture and distribution of latex gloves used by healthcare workers.

The Supreme Court of Alabama agreed with the corporate defendants the nurse had no right to sue for strict liability under the state's products-liability law.

However, she still could sue for breach of implied warranty under a different state law which has a four-year rather than three-year statute of limitations.

The nurse's lawsuit was filed more than three years after she was diagnosed with a general allergy to latex.

Three years is the Alabama statute of limitations for strict liability under the products liability law.

Four years is the statute of limitations for breach of implied warranty, so there is still time to make that claim.

SUPREME COURT OF ALABAMA
October 8, 2004

Statute of Limitations

The important lesson is that civil lawsuits to vindicate important rights must be filed within the applicable legal deadline, or those rights, no matter how important, simply expire.

The medical diagnosis of a latex allergy sets the clock running to make the decision whether or not to sue.

In this case the nurse's lawsuit was not thrown out altogether. However, the particular state law with the three-year statute of limitations is more consumer-friendly than the other law with the four-year statute. The proof required for compensation under the latter law may be too high a hurdle for the nurse to obtain compensation. **Locke v. Ansell Inc., __ So. 2d __, 2004 WL 2260473 (Ala., October 8, 2004).**