LEGAL EAGLE EYE NEWSLETTER

November 2006 *For the Nursing Profession* Volume 14 Number 11

Surgical Consent Forms, Informed Consent: Court Finds That Nurse Acted Appropriately.

A facial nerve was damaged during the patient's facelift procedure.

Before the patient's lawsuit went to trial her attorneys had to agree they would not be able to establish negligence as to the way the procedure was performed by the two surgeons.

Patient Sued For Lack of Informed Consent

The only avenue of attack for the patient's lawyers was that she was not advised of the "normal" risks of her procedure and thus was deprived of her right to give informed consent.

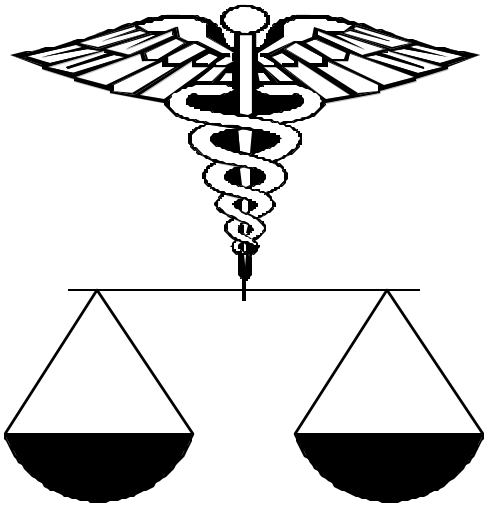
The pre-op surgical consent form became the focus of the lawsuit.

Nurse's Role Surgical Consent Process

The Court of Appeal of Louisiana pointed out it is not the nurse's role to explain the benefits, risks and alternatives of the procedure. That is strictly the physician's responsibility. In this case it may have been true the nurse did not fully explain the procedure to the patient, but that was irrelevant.

The nurse was in the room as the physician carefully explained the procedure to the patient and went over the expected risks, possible complications, anticipated benefits and alternatives.

The physician's pre-op communication with the patient is the critical element. The nurse may be available later as a witness to this critical communication process having taken place.



The physician has the legal responsibility to communicate with the patient about the benefits, risks and alternatives of the proposed procedure and to obtain the patient's consent.

The physician may delegate to a nurse the task of properly completing the consent form and obtaining the patient's signature.

COURT OF APPEAL OF LOUISIANA
October 17, 2006

The physician can delegate to the nurse the task of filling out and having the patient sign the surgical consent form. It is not necessary for the nurse again to explain everything. The consent form only serves as a legal memorial to the communication process that has already occurred between physician and patient.

Consent Form's Legal Rationale

State legislatures have wanted to cut back patients' traditional common-law right to sue for lack of informed consent in cases where no medical negligence has occurred.

If the case goes to court, and there is an apparently valid signed consent form in the chart, the patient's caregivers do not have the difficult burden of proof as to the patient's state of mind on the issue of whether the patient gave truly informed consent.

State statutes say that if the consent form was drafted by the lawyers in conformance with state law, properly filled out by a competent caregiver with the pertinent details of the actual procedure to be done, and signed by the patient, the patient has to prove that he or she did not understand and did not consent. **Anderson v. Louisiana State University, __ So. 2d __, 2006 WL 2956492 (La. App., October 17, 2006).**

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New Subscriptions See Page 3

Surgical Consent Forms/Nurse's Role - Fire Safety/Nursing Homes Emergency Room/Injection Injury - Lantus Insulin - Bed Trapeze Patient Suicide - Sexual Assault/PTSD/Workers Compensation Stroke Patient/Choking/Death - Quadriplegic/Exam Table/Fall Perinatal Nursing Care - Labor Law/No-Solicitation Rule HIV/Nursing Home/Discrimination - Durable Power Of Attorney Nursing Home Patient/Guardian - Bipolar Disorder/Discrimination Light Duty/Reasonable Accommodation - Heparin Overdose/Death

Fire Safety, Alcohol-Based Hand Rubs: New CMS Regulations.

On September 22, 2006 the US Centers for Medicare and Medicaid Services (CMS) published new regulations in the Federal Register.

Smoke Detectors Required Patient Rooms in Nursing Facilities

Effective October 23, 2006 long-term care facilities must at least have battery-operated smoke detectors in patient rooms, that is, unless there is a fire sprinkler system that services the room or a central smoke alarm system in the building with a detector in the room.

Alcohol-Based Hand Rub Dispensers

Existing CMS regulations already allowed alcohol-based hand rub dispensers in patient rooms but not in corridors or other common areas of healthcare facilities, based on fire-safety considerations.

The US Centers for Disease Control and Prevention (CDC) has advocated for their increased availability as an infection-control measure, citing decades of experience with alcohol-based hand rubs in European hospitals with little fire risk.

CMS will now allow the dispensers outside patient rooms if placed in accordance with the latest amendments to the Life Safety Code published by the National Fire Protection Association.

We have CMS's Federal Register announcement on our website at http://www.nursinglaw.com/CMShandrubs.pdf.

Hand-Rub Dispensers Other Liability Considerations

The CMS article delves into legal liability considerations apart from fire safety.

CMS cautions healthcare facilities about unsupervised dementia patients ingesting the liquid from the dispensers and about the slip-and-fall risk from these liquid spilled or allowed to drip on the floor.

FEDERAL REGISTER September 22, 2660
Pages 55326 – 55341

Injection Injury: Emergency Department Nurse Ruled Not Negligent.

A construction worker came to the hospital's emergency department after accidentally injecting paint thinner into his left index finger while maintaining a high-pressure paint sprayer.

He had first gone to a physician's office near the job site. The finger was injected with lidocaine and he was told to go to the hospital emergency room.

The emergency-room triage nurse could see only a small dark ring where the paint thinner had been infused. However, in her initial exam she also noticed when she pressed on the end of the injured finger the capillary refill time was excessive. That indicated to her that the circulation was impaired. She alerted the charge nurse and spoke to one of the physicians.

The physician merely told her to put an orange dot on the chart and have him wait to be seen. He did not get into the operating room for seven more hours.

An injection injury is an extreme emergency requiring the affected digit to be opened and drained immediately to avoid the necessity of amputation.

CALIFORNIA COURT OF APPEAL
October 13, 2006

The California Court of Appeal upheld a jury's verdict finding the physicians and the hospital negligent but absolving the emergency room nurse from liability.

Although an injection injury is not considered life threatening for purposes of emergency-room triage, it nevertheless demands immediate attention to minimize the risk of amputation, the court said. **Morrison v. Loma Linda Univ. Med. Ctr., 2006 WL 2925362 (Cal. App., October 13, 2006).**

Bed Trapeze Collapse: Court Faults Nurse, Ortho Tech.

The patient was injured when the orthopedic trapeze above his bed suddenly came apart as the was trying to lift himself up in bed.

The patient sued the hospital alleging the nurse and orthopedic technician were negligent who assembled the trapeze pursuant to his physician's orders.

The Court of Appeals of Texas hinted that the patient probably had what would be considered a good case of negligence against the hospital. However, that was not the end of the legal analysis.

Under state law in Texas, as in many other jurisdictions, a lawsuit filed in court for professional negligence against a healthcare professional must be accompanied by an expert witness's report detailing the standard of care, departure from the standard of care and a cause-and-effect link to harm suffered by the patient. An expert's report was missing in this case. **Espinosa v. Baptist Health System, 2006 WL 2871262 (Tex. App., October 11, 2006).**

Lantus Insulin: Inmate Sues For Mismatch.

A diabetic inmate in a county jail was given Lantus insulin and another brand of insulin mixed by the jail's nurse into a single injection, causing a serious reaction. A few days later, after reviewing pertinent literature, another nurse told the inmate the two insulins should not have been combined in one injection.

The US District Court for the District of New Hampshire saw negligence, but no deliberate indifference and thus no violation of the inmate's Constitutional rights. **Rix v. Strafford Co. Dept. of Corrections, 2006 WL 2873623 (D.N.H., October 5, 2006).**

Patient Suicide: Court Throws Out Family's Wrongful Death Lawsuit.

The US District Court for the Western District of Missouri has ruled in favor of the US Veterans Administration in a case we reported in February, 2006.

See *Nurse Tells Patient He Might Have Lung Cancer: Court Discusses Liability For Patient's Suicide,* Legal Eagle Eye Newsletter for the Nursing Profession (14)2, Feb. '06 p. 8.

The court's opinion includes a scholarly review of the legal rule disallowing hearsay and the exceptions to the rule allowing courts to consider dying declarations, present sense impressions, statements of physical condition and statements under a belief of impending death, notwithstanding the hearsay rule.

The bottom line is the court cannot accept the daughter's testimony. It is pure hearsay what the deceased told her the VA Hospital nurse told him about his chest x-ray and why he had to come back for follow-up evaluation. **Lentz v. US, 2006 WL 2811252 (W.D. Mo., September 28, 2006).**

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Sexual Assault: Court Upholds Aide's Workers Compensation Claim For PTSD.

A psychological injury, like delayed post-traumatic stress disorder, to qualify for workers compensation as an occupational disease, must be related to a physical injury or to an obvious sudden shock or fright arising out of and in the course of employment.

A physical assault, as a general rule, is considered an "accident" for purposes of workers compensation.

The fact the victim immediately reported the incident to her superiors and gave all the details clearly shows that it was traumatic, frightening and unexpected.

It is not relevant that her employment requires her to interact with dangerous patients, including sex offenders, every day as part of her job. Sexual assault is never a normal occurrence.

COURT OF APPEALS OF VIRGINIA
October 10, 2006

A psychiatric aide working in a facility whose population included committed sex offenders was grabbed, held against a wall and fondled by two of them before she could free herself and get help.

No physical injury occurred. However, she soon started having progressive symptoms of post-traumatic stress disorder including nausea, insomnia, panic attacks, anxiety and irritability and started coming down with frequent chest congestion, coughing and sore throats which her physician linked to stress at work.

Ordinary Job Stress Is Not an Occupational Disease

At first her workers compensation claim was turned down by her employer. The general rule is that on-the-job stress, even if it results in a psychiatric diagnosis and/or physical symptoms, is not covered by workers compensation.

Stress From A Discrete Traumatic Event Can Be an Occupational Disease

However, the Court of Appeals of Virginia ruled her workers compensation claim should be upheld as valid.

Stress caused by a specific event which, in legal phraseology, is "shocking, frightening, traumatic, catastrophic and unexpected" can lead to post-traumatic stress which should be covered by workers compensation as an occupational disease.

The court threw out the argument discounting sexual assault as a normal occurrence in this work environment. **Southwestern Virginia Mental Health Inst. v. Wright, 2006 WL 2860976 (Va. App., October 10, 2006).**

Stroke Patient Chokes On Food, Dies: Court Discusses Legal Standard Of Care.

A stroke patient who is having difficulty swallowing requires a special soft or mechanical diet and close supervision while eating.

The patient cannot be allowed to eat alone or be given unrestricted access to snacks.

Staff must be trained to deal with a choking episode if it occurs.

COURT OF APPEAL OF LOUISIANA
September 27, 2006

The patient had been in the nursing home almost four years after having a stroke.

While eating alone in his room he choked on a bite-sized piece of meat from his sandwich. He wheeled himself into the hallway and gestured for help. A laundry worker and two nurses were unable to clear his airway. Emergency paramedics did finally clear his airway and start CPR, but too late to save him. He died in a nearby hospital emergency room.

No Ruling on Liability
Court Discusses Standard of Care

The Court of Appeal of Louisiana was not able to rule one way or the other from both sides' expert witnesses' affidavits whether the nursing facility was negligent and liable for his death. The court decided a civil jury would have to hear the experts' conflicting testimony, weigh their credibility and render a verdict accordingly.

The Family's Legal Theory

The patient was placed on a calorie-restricted diabetic diet when he came back to the nursing home after prostate surgery two months after his stroke.

The patient's nursing-home admission nutritional assessment had made note of his chewing and swallowing problems and had ordered the dietitian to see that his food was soft and his meat chopped.

However, when he was switched to his diabetic diet only the diabetes-related aspects were copied from his medical chart into his dietary plan and his other ongoing restrictions were carelessly omitted.

The family also argued that once a stroke patient has be assessed with swallowing difficulties the need to monitor for a swallowing hazard never ceases.

After two years in the nursing home his nursing and medical progress notes no longer referred to any difficulties swallowing. That could mean he was no longer having difficulties. The family argued it meant his caregivers were no longer bothering to assess a continuing problem.

A nursing progress note thirteen months before he died said he tolerated oral medications well, but still had difficulty swallowing due to his CVA. Other progress notes, however, indicated he was eating his meals and snacks in his room without any reported swallowing difficulties or choking incidents.

The Nursing Home's Legal Theory

The nursing home's expert witnesses argued that the patient was, in fact, being competently assessed and evaluated.

The physicians had obtained barium swallowing tests six and eighteen months after his stroke which showed no evidence of esophageal abnormality and would tend to show compliance with the standard of care for post-stroke medical care.

His dietary care plan documented that his chewing and swallowing problems were no longer issues after two years of rehab in the nursing home. Experience showed he had regained the ability to tolerate non-soft and non-mechanical foods without difficulty. His swallowing accident was a true accident, something which could have happened to anyone, stroke history or not.

Sharp v. Parkview Care Center, Inc., __ So. 2d __, 2006 WL 2741998 (La. App., September 27, 2006).

Fall From Table: Court Upholds Quadriplegic's Right To Sue.

The legal doctrine of res ipsa loquitur (it speaks for itself) applies to this case.

This was an event that ordinarily does not happen in the absence of negligence.

Other possible causes, including conscious action by the patient, have been ruled out.

The event occurred within the scope of the caregivers' legal duty to their patient.

SUPREME COURT OF PENNSYLVANIA
October 18, 2006

The quadriplegic patient had had more than twenty minor procedures in the physician's office. This time a skin lesion was removed from the left side of his head by the physician with a nurse assisting.

The patient was left alone afterward and fell to the floor from the table.

The Supreme Court of Pennsylvania would not accept the arguments offered by the doctor and nurse in their defense.

A quadriplegic is not capable of intentional movement. He could not have negligently tried to reposition himself. Spastic movement, though not expected, is a possibility to be anticipated if a quad's caregivers leave their patient unattended.

The defendants said he was left lying safely flat on his back; his family member said he was left positioned on his right side supported in place by pillows.

Either way, the court ruled, there is no explanation the law will allow for how a completely helpless patient can end up injured on the floor other than fault by the patient's caregivers. **Quinby v. Plumsteadville Family Practice, Inc., __ A. 2d __, 2006 WL 2972611 (Pa., October 18, 2006).**

Perinatal Care: Arnold Chiari Malformation (ACM) Patient Injured, Given Large Award.

The US District Court for the District of Maryland recently awarded more than $5,000,000 to a woman, married to a US military officer, who suffered a major brain injury during labor and delivery at a US government hospital.

The court's written opinion is very lengthy and the medical and legal issues are highly complex. The court faulted the multidisciplinary team of physicians and nurse practitioners who managed the mother's prenatal care and the nursing and medical staff who cared for her immediately post-partum.

Unbeknownst to her caregivers, the patient had a congenital abnormality of the opening at the base of the skull. The larger-than-normal opening can allow the hindbrain to protrude out of the skull. Any effort resembling Valsalva's maneuver can cause hindbrain herniation and profound neurological damage.

Neurological Work-Up Was Indicated

At her pre-natal appointments the patient complained of persistent dizziness. The court pointed to expert testimony distinguishing positional lightheadedness, not uncommon during pregnancy, from persistent vertigo with nystagmus, which is not normal and which should have prompted an ob/gyn physician or nurse practitioner to get a neurologist's work-up.

Even in pregnancy, the court thought, an MRI would have been indicated in her case and would have caught her ACM and led to a decision to forgo labor and deliver by cesarean section.

The nurses also failed to pick up on the fact, after delivery, that she had sustained serious neurological trauma giving birth. **Lawson v. US, __ F. Supp. 2d __, 2006 WL 2819833 (D. Md., October 2, 2006).**

No-Solicitation Rule: Court Says Employer's Actual Practices Discriminated Against Labor Union.

The hospital's no-solicitation rule, as written, is non-discriminatory. The National Labor Relations Board (NLRB) does not contest that on its face the rule seems to be valid.

However, there is evidence the hospital routinely permitted employees to violate the no-solicitation rule for non-union-related commercial businesses and charitable causes.

Even if the employer's no-solicitation policy seems to be neutral on its face, when the employer has been lax in enforcement for non-union-related activities but enforces the no-solicitation policy against union-related activities, the employer is guilty of an unfair labor practice.

Pro-union employees who were given corrective interviews for violating the no-solicitation rule were victims of an unfair labor practice. They are entitled to have this particular disciplinary action expunged from their employment files.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
October 5, 2006

Several hospital employees were disciplined for passing out union-authorization cards in non-patient-care areas of the hospital in violation of the hospital's no-solicitation rule.

They filed a complaint with their local office of the National Labor Relations Board (NLRB). The Board found the hospital guilty of an unfair labor practice. The US Court of Appeals for the Sixth Circuit agreed with the Board.

Discriminatory Enforcement of Non-Solicitation Rule

The court found the evidence overwhelming that the hospital was lax in enforcement of its non-solicitation rule with respect to non-union-related activities.

Various commercial and charitable solicitations were openly tolerated. Employees routinely solicited other employees in non-patient-care areas selling Tupperware, Avon cosmetics and Girl Scout cookies, the court pointed out. Books, catalogues and order forms for such products were commonly left lying around, even in patient-care areas like nurses stations. Management could and did see what was going on and did nothing to stop it.

This made out a strong case of anti-union bias when the hospital turned around and tried to use its no-solicitation rule to justify disciplinary action against pro-union employees soliciting for the union cause on hospital premises.

Coercion Prohibited

An employer cannot give out wage increases while a union-certification election is in progress. Management cannot comment to employees on the effect that a pro-union election result, once certified, will have on proposed wage increases that are presently on hold, the court pointed out. **NLRB v. Promedica Health Systems, Inc., 2006 WL 2860771 (6th Cir., October 5, 2006).**

HIV: Court Allows Family To Sue Nursing Facility For Disability Discrimination.

The US District Court for the Northern District of California recently upheld the general premise that a patient denied admission to a skilled nursing facility on the basis of HIV, or the family after the patient has died, can sue for disability discrimination.

HIV discrimination is outlawed by Federal and state fair-housing and civil-rights laws, the US Rehabilitation Act and the US Americans With Disabilities Act, the court pointed out.

However, these laws all have different statutes of limitations. By the time the family sued in this case the right to sue under some of these laws had already expired.

Proof of Discrimination
Fictitious Patient Inquiries

The patient's pertinent medical information was faxed to a nursing facility on the list given to the family by a hospital discharge coordinator. The faxed pages revealed he was HIV positive but asymptomatic. The facility called back the next day to say they could not take him.

The family went to a non-profit fair-housing advocacy agency. Even though the patient had already died from his underlying liver disease, the agency continued the process of putting together a case against the facility for HIV-related disability discrimination.

Agency volunteers phoned and faxed the facility apparently trying to obtain admission for patients, all of whom had HIV, who were actually fictitious. The callers would first determine that a bed was available, then raise the HIV issue, then find out their fictitious patients could not be admitted. **Wood v. Vista Manor Nursing Center, 2006 WL 2850045 (N.D. Cal., October 5, 2006).**

Incapacitated Patient: Durable Power Of Attorney Invalid.

When the family cannot agree and a court must make decisions affecting the property or living arrangements of an infirm elderly person, the court, rather than forcing its own decision, may rule instead who among the family members has sole legal authority to make decisions for the incapacitated person.

In a recent case two daughters of an eighty-one year-old nursing home resident became dissatisfied with the care she was receiving and wanted to move their mother to a different facility.

The resident's husband, however, disagreed and wanted her to stay where she was. He pointed to a durable power of attorney for healthcare decisions which his wife had signed which he said gave him authority to make decisions for her.

The two daughters have proven by clear and convincing evidence that their mother was already incapacitated at the time she signed a durable power of attorney appointing her husband as her agent.

NEW YORK SUPREME COURT
APPELLATE DIVISION
October 10, 2006

The New York Supreme Court, Appellate Division, however, pointed out that a durable power of attorney endures from the time when the person still can make decisions to the time after he or she can no longer. It must be signed while the person is still competent to make decisions.

A durable power of attorney signed when the person is already incapacitated is not valid. **In re Susan Jane G., __ N.Y.S. 2d __, 2006 WL 2925210 (N.Y. App., October 10, 2006).**

Incapacitated Patient: Court Appoints Guardian To Uphold Patient's Best Interests.

The patient's wife wanted to move him out of a nursing home because the nursing home's physician prescribed anti-psychotic medication. This would have been the fifteenth time she had moved him for the same reason.

The nursing home contacted the state long-term care ombudsman's office. They had a local attorney file an application with the court to be appointed guardian.

A guardian who will consent to him staying at the facility and receiving anti-psychotic medications is in the patient's best interests.

Without his medication he is combative and it is very difficult for caregiving staff to meet his basic needs.

With his medication his quality of life is significantly better.

COURT OF APPEALS OF OHIO
October 6, 2006

The court appointed a second attorney to represent the patient in the legal proceedings. The situation was fully investigated by the ombudsman's office. A second medical opinion, from a court-appointed psychiatrist, supported the need for anti-psychotic medications.

The state ombudsman's representative testified as a rule she usually advocated against anti-psychotics in favor of a drug-free least restrictive alternative, but this man's case was an exception. **Guardianship of Baker, 2006 WL 2875822 (Ohio App., October 6, 2006).**

Reasonable Accommodation: Light Duty Need Not Be Continued.

When the LPN was hired she had an understanding with the person who hired her that she would be allowed to work in the hospital's emergency room or outpatient clinics rather than on the patient care floors where the physical requirements were too demanding for her.

The LPN had chronic venous insufficiency in her right lower leg, arthritis and degenerative joint disease in her right knee and lumbar radiculopathy, all of which made it difficult for her to stand and walk for extended periods and impossible for her to do any heavy lifting.

However, in the midst of a nursing staff shortage hospital management had to change its policies. All nurses would have to meet the hospital's standards for standing, walking, bending, stretching, pushing, pulling and being able to lift and turn patients. Secondly, the LPN position in the emergency department was eliminated, forcing the nurse in question to move to a nursing-home-care floor which, after only one day, proved impossible for her.

Employer's Reasonable Expectations No Disability Discrimination

The US District Court for the Middle District of Pennsylvania ruled the LPN could not sue for disability discrimination.

A patient-care facility has the right to require all its staff nurses to meet the legitimate expectations for the physical demands of direct patient-care work.

A nurse who is unable to meet the hospital's legitimate physical-capacity expectations does not have the right, under the rubric of reasonable accommodation, to have a light-duty position created or continued just to meet the nurse's special needs. That would be considered an undue hardship for the employer, that is, it would not be considered a reasonable accommodation. **Hosier v. Nicholson, 2006 WL 2816604 (M.D. Pa., September 28, 2006).**

Bipolar Disorder: Disability Discrimination Suit Dismissed.

The threshold requirement to sue for disability discrimination is having a disability as defined by law.

A person claiming a mental disability must show a substantial limitation of a major life activity due to the disabling mental condition.

An individual is not substantially limited in the major life activity of being able to work if only precluded from one specialized job, one type of job or from a particular job of choice.

An individual must be unable to work in a broad range of jobs to be seen as disabled.

Being able to work at the same or a comparable job for a different supervisor or employer means the individual does not have a disability.

Needing to be transferred away from a particular supervisor who aggravates an underlying psychiatric disorder, or who merely causes too much stress, is not considered a disability.

Guaranteeing an employee will be guarded from criticism from supervisors in general, or from a particular supervisor, is not reasonable accommodation.

UNITED STATES DISTRICT COURT
VIRGINIA
September 13, 2006

Following an on-the-job episode described as a panic attack or nervous breakdown, a patient care technician working in a dialysis facility was diagnosed with bipolar disorder.

The technician began taking time off for medical leaves authorized by her supervisors, but was eventually terminated for abandoning her position, that is, she did not return to work after all of the leave time allowed by the US Family and Medical Leave Act had been used up.

Lawsuit Alleged Failure to Offer Reasonable Accommodation

She sued for disability discrimination. The theme of her lawsuit was that she had a disability, bipolar disorder, and that the facility where she worked failed to provide reasonable accommodation to her disability. They refused to allow her to transfer to duties under a different supervisor who would not put her under so much stress.

The US District Court for the Eastern District of Virginia looked at the case from more than one angle and dismissed it as unfounded.

Inability to Do a Particular Job Is Not a Disability

As a general rule the inability to do just one particular job is not a disability. The technician was still able to work in direct patient care and admitted she could do exactly the same job if she just had a different supervisor. In the court's judgment that meant she was not disabled. Not being disabled, she had no right to sue for disability discrimination.

Employee Choosing Own Supervisor Is Not Reasonable Accommodation

Transfer to different duties or to a different physical environment may be necessary as reasonable accommodation to a disabled employee's needs.

However, according to the court, a change of supervisors to accommodate an employee's intolerance for stress is not something the law sees as reasonable accommodation to avoid charges of disability discrimination. **Wiggins v. DaVita Tidewater, __ F. Supp. 2d __, 2006 WL 2662997 (E.D. Va.., September 13, 2006).**

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For the Nursing Profession

Discrimination: Employee Can Sue For Retaliation.

The US Circuit Court of Appeals for the Seventh Circuit agreed with the lower Federal District Court's decision to dismiss the case because it was not conclusive that the inhospitable behavior directed at an Asian Indian nurse had anything to do with her national origin.

However, that was only part of the story. An employee cannot be the object of employer retaliation for complaining to superiors about discrimination, for filing administrative human rights charges or for filing suit in court.

It is not relevant whether the employee actually has a valid discrimination complaint. All that is necessary for a retaliation lawsuit is for the employee to have had a good faith belief he or she was a victim of discrimination. If the employee was not acting in bad faith, for example, to get even with a supervisor or to obtain an undeserved settlement, the employee may be able to sue for retaliation. **Nair v. Nicholson, __ F. 3d __, 2006 WL 2797774 (7th Cir., October 2, 2006).**

Heparin Overdose: Murder Conviction Upheld.

The Court of Appeal of California upheld the second-degree murder conviction of the man who stabbed the victim outside a bar.

A nurse at the hospital where the victim bled to death gave 100,000 units of Heparin instead of the 1,000 units ordered in preparation for a transfusion. The medical examiner ruled the stab wounds the primary cause of death and the Heparin a significant contributing factor.

A healthcare provider's negligence in treatment of a crime victim is a defense to prosecution for homicide only if the negligence fits the legal definition of "gross negligence" and the negligence can be ruled to have been the sole cause of the victim's death.

In this case, according to the court, it could not be proven conclusively that the victim would have survived his wounds even without the nurse's negligence, so the nurse's negligence was no defense. **People v. Gutierrez, 2006 WL 2875504 (Cal. App., October 11, 2006).**

Family Member Falls: Court Rules Hospital Had Knowledge Of Stool's Tendency To Roll Away.

A family member who accompanied a patient into an examination cubicle in the hospital's emergency department fell backward, struck her head and sustained a cerebral concussion when a rolling physician's stool rolled away as she was attempting to sit on it.

The Court of Appeal of Louisiana upheld the jury's total verdict of $34,000 for the family member, based on the hospital's negligence, as well as the jury's finding of 50% comparative negligence by the family member, effectively reducing her recovery, and the hospital's exposure, to $17,000.

Prior Accidents
Incident Reports As Evidence

The court noted there were eight prior accidents in the emergency department virtually identical to this one. In the court's opinion that justified opening up the incident reports for the prior incidents to show that the hospital was on notice there was a problem. Prior notice is a legal prerequisite to liability in a premises-liability lawsuit.

Further, the other similar rolling stools in the other examination cubicles had warning labels that patients and visitors were not to sit on them, but not this one, and the department's nurses as a general rule warned people not to sit on the stools, but not this time.

Basically, the hospital was ruled to have had superior knowledge, compared to its patients and visitors, of a potentially dangerous condition which did in fact cause injury. **Bullock v. The Rapides Foundation, __ So. 2d __, 2006 WL 2873217 (La. App., October 11, 2006).**

The medical center knew, because of eight previous accidents, that the rolling physicians' stools in the examination cubicles could suddenly roll back when sat upon.

The patient's family member had no reason to suspect she could be injured.

The medical center's legal duty was to lock the wheels and/or to warn patrons not to sit on the stools.

COURT OF APPEAL OF LOUISIANA
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