LEGAL EAGLE EYE NEWSLETTER

November 2008 *For the Nursing Profession* Volume 16 Number 11

Medicare/Medicaid: SNF Was Not Treated Fairly, Court Nixes Civil Monetary Penalty.

The official published opinion of the US Court of Appeals for the Eleventh Circuit appears to have important implications going beyond the specific facts of the case.

A complaint prompted a mid-summer inspection of a skilled nursing facility (SNF) in Florida which verified that a bedridden patient had been stung 40+ times by fire ants.

Inspectors found the facility to be in non-compliance with Federal regulations that require an effective pest control program and assessed a civil monetary penalty of $10,000 per day for 12 days while immediate jeopardy was believed to exist for the health and safety of the patient population.

The Court overturned the penalty on the grounds that the facility was not treated fairly in the process.

Specific Guidance Was Lacking Facility Was Treated Unfairly

The Federal government offered no guidance ahead of time as to the criteria that would be used to assess the effectiveness of the facility's efforts to comply with regulatory standards.

Federal regulations require an "effective" pest control program in every long-term care facility. Only two prior recorded decisions of the Centers for Medicare and Medicaid Services (CMS) Appeals Board had dealt with pest control, but neither of those decisions even vaguely defined what the word "effective" actually means, the court said.

In the absence of any prior detailed elaboration of the regulatory requirements it is appropriate to assess the facility's non-compliance only in light of what the facility would have reasonably expected it was supposed to do.

When it happened before the inspectors just suggested something ought to be done.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
October 22, 2008

The only government document on the subject the court could find, a guide-book for survey inspectors, offers at best only a circular definition of an effective pest control program as measures to eradicate and control common household pests.

More importantly, the court pointed out, CMS survey inspectors had never before cited this facility over pest-control issues or even suggested any specific changes in what was already being done despite incidents with ants on-site.

The facility was expressly determined not to be in violation of Federal standards just the previous summer for an incident involving a resident stung by fire ants.

Following that incident the facility was not told its pest-control program was not effective or ordered to change what it was already doing in any respect.

Only after the most recent incident were certain specific expectations spelled out. Once the facility was expressly told what it was supposed to do the facility made the changes it was ordered to make as fully and as quickly as it could. **Emerald Shores v. US Dept. of Health & Human Services, __ F. 3d __, 2008 WL 4648374 (11th Cir., October 22, 2008).**

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Overdose: Nurse Charged In Patient's Death, Hospital Held Liable.

The patient was in the hospital being treated for a hip fracture. The physician's orders allowed up to 1 mg of Dilaudid prn for pain.

The medication management system on the unit dispensed Dilaudid in dosages no smaller than 2 mg. To treat her patient for pain the nurse obtained and mistakenly gave a full 2 mg of Dilaudid IV push.

The overdose resulted in the patient's death.

The police charged the patient's nurse with the criminal offense of obtaining a narcotic by means of a forged prescription.

SUPERIOR COURT OF CONNECTICUT
September 23, 2008

After the patient's demise, aware of the gravity of the error she had committed, the nurse wrote a bogus verbal order in the chart from a certain physician for 2 mg of Dilaudid prn for pain.

The physician, however, was not the patient's physician, at no time treated the patient and never gave any orders whatsoever for the patient. When the nursing supervisor deduced from that that the nurse had forged an order for a narcotic the supervisor informed the police.

The Superior Court of Connecticut noted in passing that a criminal act by an employee is viewed legally as outside the scope of conduct for which the employer can be held liable in a civil lawsuit.

However, that which harmed the patient, the nurse's medication error itself, amounted to civil negligence, not criminality, so the hospital was liable nevertheless. **D'Agostino v. State, 2008 WL 4516225 (Conn. Super., September 23, 2008).**

IV: Systemic Infection Linked To Nursing Negligence.

The patient's IV was started in his right hand by emergency medical service personnel before they transported him to the hospital.

Five days into his hospital stay a cardiologist implanted a permanent heart pacemaker.

Following the pacemaker implantation procedure the patient developed sepsis which led to shock and multiple organ failures. He had to start dialysis and then had to have a kidney removed. As his condition deteriorated he had to undergo limb amputations. The pacemaker also had to be removed.

Hospital policy required any IV line inserted in the field during an emergency to be changed in the hospital at least within 48 hours.

CIRCUIT COURT, ST. LOUIS COUNTY
MISSOURI
July 30, 2008

The jury in the Circuit Court, St. Louis County, Missouri apportioned fault 67% to the cardiologist and 33% to the hospital's nurses. The total verdict reportedly was $2,580,000.

Nursing Negligence

The jury accepted testimony that the hospital's nurses neglected to follow the hospital's protocol that any IV catheter inserted outside the hospital had to be removed and a new line started at a different location after no less than 48 hours.

The cardiologist was saddled with most of the blame for what transpired with the patient for going ahead with the pacemaker implantation even though a cursory visual inspection of the IV site would have put him on alert that an infection was in progress. **Klotz v. St. Anthony's Med. Ctr., 2008 WL 4559899 (Cir. Ct. St. Louis Co., Missouri, July 30, 2008).**

Patient Falls: Jury Finds No Nursing Negligence.

About fifteen minutes after completing a radio-frequency rhizolysis treatment at an ambulatory surgery center the patient asked the post-anesthesia recovery nurse if she could use the bathroom.

The one nurse got her up and positioned herself to help the patient walk to the bathroom, but when the patient took her first step her knee buckled and she had to be helped to the floor.

The seventy-four year-old patient suffered a non-displaced hip fracture which was treated conservatively with bed rest over a period of several months.

The experienced nurse followed the facility's policies and procedures by taking the patient through a series of assessments from lying down to sitting to standing position to assess the need for any extra assistance.

When the knee buckled unexpectedly the nurse was able to guide the patient down gently to the floor by using her own body to prevent the patient from falling abruptly to the floor.

SUPERIOR COURT
LOS ANGELES COUNTY, CALIFORNIA
April 8, 2008

The jury in the Superior Court, Los Angeles County, California accepted testimony from a nursing expert that the nurse competently assessed her patient's ability to ambulate with one-person assist and rejected the argument that two-person assist was indicated, except in hindsight. **Dowling v. Center for Ambulatory Surgical Treatment, 2008 WL 4557617 (Sup. Ct. Los Angeles Co, California, April 8, 2008).**

Labor & Delivery: Original Strips, Chart Notes Not Available, Court Sees No Spoliation Of Evidence.

The hospital was ruled not liable in a complex obstetric malpractice case involving hypoxic neurological injury to the newborn.

The Court of Appeals of Wisconsin ruled, among other issues, that no innuendo of wrongdoing could be drawn from the fact the original chart notes were destroyed after being copied on microfilm from which complete sets of copies could be made for the lawyers.

There was also no particular legal significance to the fact the original paper fetal monitor strips no longer existed.

The original monitor data was still stored electronically within the monitor's computer memory from which full sets of duplicate monitor tracings could be generated on paper strips and provided to the lawyers for use as evidence for the lawsuit.

The court also saw nothing wrong with the pertinent progress notes not being entered into the chart until days after the events in question, as that was the usual and customary practice at this facility with or without a potential lawsuit looming. **Chobanian v. Meriter Hospital, Inc., 2008 WL 4426747 (Wisc. App., October 2, 2008).**

Spoliation of the evidence refers to the situation when documents relevant to a lawsuit are found to have been altered, lost or destroyed.

The judge and jury are allowed to infer that the documents would have been unfavorable to the party responsible for the spoliation.

Spoliation does not occur, however, and no particular inferences can be drawn one way or the other when original chart notes, monitor strips, films, etc., are copied on microfilm or stored in an electronic digital format and the originals are destroyed.

That is, originals relevant to the lawsuit may be copied and disposed of in the institution's usual and customary method in the ordinary course of business without legal prejudice.

COURT OF APPEALS OF WISCONSIN
October 2, 2008

Psych Meds: Court Discusses Grounds For Involuntary Administration.

While the individual was in jail awaiting trial on criminal charges the county filed a petition to have him committed instead for treatment as a mentally-ill person.

The Court of Appeals of Minnesota agreed with that approach and expressly authorized involuntary administration of neuroleptic medications for treatment of paranoid schizophrenia.

Disagreement by the patient with caregivers' plans to start medication, in and of itself, is not evidence of a mental illness or grounds for involuntary administration.

However, in this case the psychiatric clinical nurse specialist and the psychiatrist reported statements from the patient that the county wanted to medicate him as part of a scheme to silence him from exposing criminal wrongdoing by county officials, statements they both characterized as grandiose, paranoid and delusional.

That is, according to the court, the patient's mental illness itself stood in the way of him being able to make the reasoned decision a cogent patient would be entitled to make for himself after weighing the benefits, risks and side effects of taking medication. **Commitment of Sideen, 2008 WL 4629516 (Minn. App., October 21, 2008).**

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Disability Discrimination: Factors Unique To One Job Environment Do Not Create A Legal Disability, Court Says.

The nurse's job responsibilities as the only nurse in the role of "IV nurse" at the clinic included preparing and administering IV's containing Remicade, a monoclonal antibody immunoglobulin.

She began having physical symptoms including blurred vision and aching joints.

She also began getting caught in the act violating basic infection-control practices, throwing used syringes and contaminated bandages in the regular trash and throwing unused uncontaminated supplies in the biohazard receptacles.

The nurse was issued a written disciplinary warning which she refused to sign. She also refused to meet with her managers to work out a corrective plan. She was eventually terminated.

Symptoms, Erratic Behavior Blamed on Workplace Toxins

The nurse's lawyer contacted the clinic stating that his client's erratic behavior resulted from toxic exposure to Remicade on the job and contact with toxic mold in the clinic building.

The lawyer went on to file a disability discrimination complaint with the local office of the US Equal Employment Opportunity Commission (EEOC) followed by a civil lawsuit against the clinic in the US District Court for the Northern District of Mississippi.

Factors Unique to One Work Environment Do Not Create A Disability

The court dismissed the case. Even if her physical symptoms and her erratic behavior were linked to toxic exposures, the nurse still did not have a disability as contemplated by the US Americans With Disabilities Act (ADA).

By definition, a disability is a condition which prevents an individual from working at a broad range of jobs, for example, a person in a wheelchair who cannot work at jobs requiring the ability to stand. **Ballard v. North Mississippi Health Services, 2008 WL 4603315 (N.D. Miss., October 15, 2008).**

A disability, by definition, is a physical or mental impairment that substantially limits the individual's ability to work in a wide range of jobs in the workforce.

The inability to perform a single particular job or to perform work in a specific environment, coupled with the ability to work at other jobs or outside the one particular environment, means that the individual does not have a disability.

The courts have already set the precedent that a lab tech is not disabled because of sensitivity to certain chemicals if there are other opportunities to work in places where the same chemicals are not present.

Employer retaliation is nevertheless strictly out of the question when an employee speaks up about discrimination, files a complaint with the EEOC or a state agency or files a civil court lawsuit.

A victim of retaliation can sue for retaliation even if his or her discrimination case is thrown out, as long as he or she had a good faith belief that it was a valid case.

UNITED STATES DISTRICT COURT
MISSISSIPPI
October 15, 2008

Disability Discrimination: PTSD, Alcohol Not Disabling.

The nurse's physician reported her to the hospital after she came to the physician's home drunk several times.

Hospital human resources gave the nurse time off for treatment and required, as a condition for returning to duty, her signature on a last-chance agreement that she cease alcohol consumption altogether. She was terminated after a co-worker reported the nurse for phoning her off duty while under the influence of alcohol.

First, the nurse failed to establish that her PTSD which started her drinking, and the drinking itself, substantially limited a major life activity.

Second, the ADA excludes active substance abuse from the definition of a disability.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
October 21, 2008

The US Court of Appeals for the Third Circuit threw out the nurse's disability discrimination lawsuit.

As to her PTSD and depression, the nurse testified she was having flashbacks and intrusive thoughts from a recent crime victimization. However, she did not have a substantial limitation of a major life activity within the Americans With Disabilities Act's (ADA) definition of disability.

The court also ruled that a serious health condition which qualifies for Family and Medical Leave Act leave, which the nurse did have, does not necessarily equate to a disability under the ADA.

Current or recurrent active substance abuse is not a disability. **Nicholson v. West Penn Allegheny Health, 2008 WL 4636353 (3rd. Cir., October 21, 2008).**

Chemical Dependency: Evidence Not Conclusive, License Restored.

An LPN committed many errors giving and charting medications, including narcotics. His co-workers found him irritable. He was downright belligerent with his superiors when confronted about mistakes.

One day he arrived late for work, red-faced and agitated, saying his car broke down and he had had to walk in in the cold. He was ordered to give a sample for a drug screen, but it was negative.

His supervisors concluded that a drug problem was the only logical explanation for his behavior overall. They fired him and reported him to the state board. The board took away his license.

The evidence was not conclusive that the nurse was habitually intemperate and addicted to habit-forming drugs.

His license must be restored if he completes an approved course of study in medication administration and documentation.

COURT OF APPEALS OF LOUISIANA
July 23, 2008

The Court of Appeal of Louisiana disagreed. There was no direct evidence; no one could say they ever saw him take drugs on or off the job. His one and only drug screen was negative.

The circumstantial evidence, his level of nursing practice with medications being far below par, did not prove he was diverting narcotics. Nor did his disagreeable personality prove anything. **Primes v. Louisiana State Board, __ So. 2d __, 2008 WL 2877751 (La. App., July 23, 2008).**

Age Discrimination: Court Evaluates Hospital's Policies.

The US Court of Appeals for the Sixth Circuit turned down an age discrimination lawsuit filed by a hospital nurse sixty-three and a transcriptionist fifty-three at the time of their terminations.

Violation of Medical Confidentiality Ostensible Reason for Termination

The nurse got her ten year-old granddaughter's x-rays from the transcriptionist who worked in radiology for her daughter to give to the granddaughter's doctor at an office visit. The nurse's daughter did not sign a written release for her daughter's x-rays, but allegedly did verbally tell the nurse to tell radiology it was alright.

Hospital Did Not Have Policy Requiring Written Release

Although it is now required by the US Health Insurance Portability and Accountability Act (HIPAA) the hospital had apparently never enacted procedures requiring signing of a printed release form prior to transmittal of patient records.

It is high-risk behavior *vis a vis* potential liability for employment discrimination to discipline or terminate a minority or forty-to-seventy year-old for violation of a policy or procedure which does not actually exist on paper. In this case the court happened to be satisfied that the person responsible for the terminations believed there was such a policy and that termination was mandated by HIPAA and thus was not motivated by discriminatory intent.

OK To Target More Senior Employees For Reduction in Force

Hospital management was looking to cut costs by removing employees who had built up more seniority. The court ruled that is legitimate as long as older employees are not disproportionately affected. Job seniority and chronological age are not necessarily equivalent, the court pointed out. **Allen v. Highlands Hosp., __ F. 3d __, 2008 WL 4629518 (6th Cir., October 1, 2008).**

Disability Discrimination: Back Problem, Lifting Restriction Is Not A Disability.

Nineteen years after a lumbar laminectomy a registered nurse was hired by a long-term care facility for a position later described in the court record as "basically an office job with light nursing duties."

When she returned from a medical leave from an unrelated issue that was fully resolved, the facility was not able to give her the same job back. She could only be offered per-diem work as a floor nurse.

She told the scheduler she had medical restrictions against lifting more than 25 lbs., pushing and standing or walking for any extended period of time. She was never scheduled to work.

A lifting restriction from a back injury is not a disability under the Americans With Disabilities Act (ADA).

One Federal case ruled that a 10-pound lifting restriction is not a disability for a nurse.

COURT OF APPEALS OF OHIO
September 26, 2008

The Court of Appeals of Ohio ruled there were no grounds for a disability discrimination lawsuit against the facility.

The court noted it was not breaking new legal ground as there are already many cases on the books stating that a lifting restriction is not a disability as contemplated by the ADA.

Having given a light-duty job to an employee with lifting restrictions does not impose a continuing obligation on the employer to provide light duty if there is good reason to suspend that accommodation. **Kredel v. Austinwoods, 2008 WL 4444730 (Ohio App., September 26, 2008).**

O.R.: Chart Review Is A Nursing Responsibility.

The surgeon went ahead and started the hysterectomy unaware that the patient was actually pregnant. He was censured by the state medical board.

The circulating nurse testified it is routine practice for the nurse to review the patient's chart before the case is started.

Anything that stands out from the chart that needs to be brought to the surgeon's attention must be brought to the surgeon's attention.

If any critical tests are missing from the chart the nurse must call for them or print them out for the surgeon.

DISTRICT COURT OF APPEAL OF FLORIDA
October 22, 2008

The District Court of Appeal of Florida, however, ruled the evidence was insufficient to fault the surgeon.

The court did endorse expert medical testimony that it is below the standard of care to start a hysterectomy on a patient who has a positive pre-op pregnancy test. Nevertheless, it is not below the physician's standard of care for the surgeon to rely on the perioperative nurses for the results of the pre-op testing, the court ruled.

There was no print-out of the pregnancy test result in the chart. The circulating nurse reportedly told the surgeon the pregnancy test was negative and the case went ahead, even though the nurse also testified it is a basic perioperative nursing responsibility to verify important patient data like this to be able to report authoritatively to the surgeon before the case is allowed to start. **Fox v. Dept. of Health, __ So. 2d __, 2008 WL 4643822 (Fla. App., October 22, 2008).**

Labor & Delivery: Fetal Monitor Discontinued While Cervidil In Use, Jury Finds No Negligence.

The jury in the Supreme Court, Rockland County, New York returned a defense verdict. The legal process has reportedly been set in motion by the patient's legal counsel to obtain a new trial and/or to appeal the verdict over the complex legal issue of national versus local standards of medical practice.

The mother's ob/gyn decided it was time to admit her to the hospital and began the induction process with a vaginal Cervidil suppository. The ob/gyn also ordered continuous fetal monitoring.

After a little more than two hours the labor and delivery staff nurses discontinued the monitor so that the mother could ambulate *ad lib,* with periodic checks for the fetal heart beat.

Seven hours later the mother complained of pain. The ob/gyn ordered Stadol, and the fetal monitor was re-started and the Cervidil was removed.

A cesarean was done that evening due to lack of progress in labor. Within 24 hours the infant started seizing and was found to have significant brain injury.

National vs. Local Standard of Care

The judge ruled that a Level A Recommendation from the American College of Obstetricians and Gynecologists calling for continuous fetal monitoring while Cervidil is in place did indeed represent the national standard of care. However, the judge's opinion was that the national standard of care did not pertain to the events in question. **Ritter v. Good Samaritan Hosp., 2008 WL 3166870 (Sup. Ct. Rockland Co., New York, June 2, 2008).**

Labor & Delivery: Fetal Monitor Discontinued, Jury Finds No Negligence.

The mother had a history of asthma. When she began having respiratory problems one week short of her expected due date her physician decided to admit her to the hospital.

In the hospital she was given medication to treat her asthma.

She later testified that she repeatedly told the nurses and doctors she wanted them to deliver her baby by cesarean but they declined, apparently deciding it was necessary to allow the respiratory medication to work and her respiratory situation to stabilize before proceeding further with her obstetric issues.

The day after admission her ob/gyn checked on her and found she was improving. He also reviewed the fetal monitor strips and saw that the fetal heart rate was basically normal and reactive.

The fetal heart monitor was discontinued while the mother remained under observation for her respiratory condition.

Two days later a nurse was unable to detect a fetal heart beat during a routine assessment. An ultrasound confirmed there was no fetal heart beat. A stillborn infant was delivered later that day.

The jury in the Superior Court, Essex County, Massachusetts found no negligence.

The jury heard testimony that a cesarean was contraindicated given the mother's compromised respiratory status while she was being treated with asthma medication. There was also no reason to fault the ob/gyn's judgment that the fetal monitor was not necessary, given the baby's apparent healthy status. **Paul v. Lawrence Gen. Hosp., 2008 WL 4559898 (Sup. Ct. Essex Co., Massachusetts, May 9, 2008).**

Medicare/ Medicaid: CMS Accepts Det Norske Veritas, Inc. For Hospital Accreditation.

On September 29, 2008 the US Centers for Medicare and Medicaid Services (CMS) announced its decision to approve Det Norske Veritas Healthcare, Inc. (DNVHC) for recognition as a national accreditation program for hospitals that participate in Medicare or Medicaid.

Approval is in effect September 26, 2008 through September 26, 2012.

DNVHC's status as a CMS-deemed accreditation body for hospitals is now equivalent to the Joint Commission's.

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

FEDERAL REGISTER September 29, 2008
Pages 56588 – 55589

Heparin: No Physician's Order, Patient Dies After GI Hemorrhage.

The New York Supreme Court, Appellate Division, validated the family's wrongful-death lawsuit to the extent the lawsuit faulted the hospital's nurses for giving Heparin without a physician's order to a patient who had had GI bleeding on admission one month earlier.

Although the court accepted the family's nursing expert's expertise on nursing practices she was ruled not to have the credentials to establish the Heparin as the cause of death. **Zak v. Brookhaven Mem. Hosp., 863 N.Y.S.2d 821 (N.Y. App., September 16, 2008).**

Patient vs. Patient Assault: Court Sees Grounds To Fault Nursing Facility.

The victim, a long-term resident of the nursing home, was given a new roommate, an individual who was admitted to the nursing home less than 24 hours after assaulting a nurse at a Veterans Administration medical facility.

VA Discharged the Perpetrator Because of Violent Tendencies

The first instance the two men were left alone in their room together the new roommate attacked the victim with a metal food tray, causing bilateral subdural hematomas and scalp lacerations requiring a trip to the emergency room via ambulance and five days hospitalization.

It came to light that the VA had discharged him and sent him to the nursing home because of his well-known aggressive and violent tendencies.

The patient's expert's opinion correctly states the standard of care.

No healthcare facility is allowed to expose a patient to the risk of harm at the hands of another patient with a known history of aggressive and violent behavior.

COURT OF APPEALS OF ARIZONA
October 16, 2008

The Court of Appeals of Arizona ruled the patient's lawsuit was on solid ground.

Reportedly there was also an issue with the time it took for a competent assessment of the true severity of the injuries and for emergency services to be called. **Cook v. Scottsdale Residential Care Investors, 2008 WL 4667316 (Ariz. App., October 16, 2008).**

Psych Patient Elopes: Jury Finds Facility Not Liable.

When the individual appeared for arraignment in the county circuit court following his arrest the judge decided to send him to the state hospital for a 72-hour psych hold to assess whether he was in need of mental health treatment.

No Justification For More Restrictive Measures

His initial psychiatric assessment would not justify more restrictive restraint measures than confinement to the unit with 15-minute checks at night and 30-minute checks during the day.

Other patients with an even lower level of restriction were allowed to ask staff to unlock the door from the unit to the outside so they could go out and smoke.

While an aide was unlocking the door for two patients with outdoor smoking privileges this patient suddenly ran by and bolted out the door.

He ran to the parking lot of another state-hospital building nearby and attempted unsuccessfully to car-jack a visitor in her vehicle.

Staff followed policies and procedures and carried out their roles appropriately.

COURT OF APPEALS OF KENTUCKY
September 26, 2008

The Court of Appeals of Kentucky upheld the jury's verdict that the facility was not at fault.

Staff had no basis to expect the patient to try to elope. There was no court order or directive from a designated mental health professional or other legal justification to put him in four-points or lock him in his room. The staff member who opened the door looked around carefully and opened the door only long enough for the two smokers to go outside. **Peddicord v. Bluegrass Regional Psych. Services, 2008 WL 4368149 (Ky. App., September 26, 2008).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Fall: Hand Sanitizer Dripped On Floor Of Corridor, Or So Suit Claimed.

Throughout the corridors of the hospital were dispensers mounted on the walls for a hand sanitizer for physicians, nurses, staff and visitors to clean their hands to avoid contamination.

The hand sanitizer, described by the Superior Court of Connecticut as a "slippery liquid substance," tended to collect in small puddles on the floor directly beneath the dispensers.

A visitor sued, claiming just such a slippery puddle of hand sanitizer was the culprit in her slip and fall injury case.

The court agreed, but only in general terms, that the visitor's allegations pointed to potential legal liability against the hospital.

The eyewitness testimony in this case, however, was that the visitor was walking and fell in the center of the corridor. Any hazard created by drippings from a dispenser was not a factor. **Smith v. Yale-New Haven Hosp., 2008 WL 4514887 (Conn. Super., September 16, 2008).**

E.R.: Premature Discharge Allegedly Caused MVA, Jury Disagrees.

The patient was released after five hours in the hospital emergency department where she had been given Reglan, Phenergan and Ativan for acute pain from an ovarian cyst.

Driving home from the E.R. she crossed the center line and caused a motor vehicle accident in which the other driver was badly injured.

The jury in the Superior Court, Los Angeles County, California ruled the hospital was not to blame. The emergency department records documented that a nurse performed neuro and mental-status assessments and saw the patient successfully walk a line in the hallway, similar to a police field sobriety test, before letting the patient leave, knowing she would be driving herself home.

There was also expert pharmacological testimony that the meds were safely metabolized by the time the patient left. **Pacheco v. Hunting Memorial Hosp., 2008 WL 4557674 (Sup. Ct. Los Angeles Co., California, September 19, 2008).**

Home Health: Nurse Charted Findings Before Actually Seeing Patient, Termination Upheld.

The nurse's claim for unemployment benefits was turned down after her termination on grounds that she was ineligible, having been terminated for misconduct.

The Court of Appeals of Arkansas sided with her employer, ruling there were grounds for her termination.

The nurse had worked as a home-health hospice nurse. Her job was to visit terminally ill patients in their homes, monitor their conditions and vital signs, provide palliative care including getting orders for and obtaining needed medications and report her findings to her agency's central office.

The nurse was given a laptop computer to chart her findings and to transmit her reports to the home health agency.

The nurse claimed she got the data for her report via a telephone conversation with the patient.

Even if that is actually true and the underlying data are factually accurate, the nurse reported a home visit hours before she actually went to the patient's home.

The nurse committed inexcusable misconduct falsifying a report of a home visit to a client.

COURT OF APPEALS OF ARKANSAS
October 1, 2008

For one client she filed a report via her laptop computer several hours before actually going to the client's home. The report included chronic findings that had been there on previous visits and almost certainly would still apply. However, that was not the point.

The issue was not the accuracy of the data or whether the nurse did or did not obtain the data through a phone conference with the patient as she claimed.

Deliberate, intentional falsification of a patient assessment is grounds for a nurse's termination. It is unprofessional conduct and was also a direct violation of the explicit rules in effect at the nurse's agency. **Lemoine v. Ark. Dept. of Workforce Services, 2008 WL 4425580 (Ark. App., October 1, 2008).**