LEGAL EAGLE EYE NEWSLETTER

November 2009 *For the Nursing Profession* Volume 17 Number 11

Definition Of Family Member: Court Sets Limits On Patients' Life-Partners' Rights.

Mindful of the Court of Appeals of Washington's December, 2008 unpublished ruling on visitation rights of patients' domestic partners, the US District Court for the Southern District of Florida recently handed down a decision which sets limits on those rights.

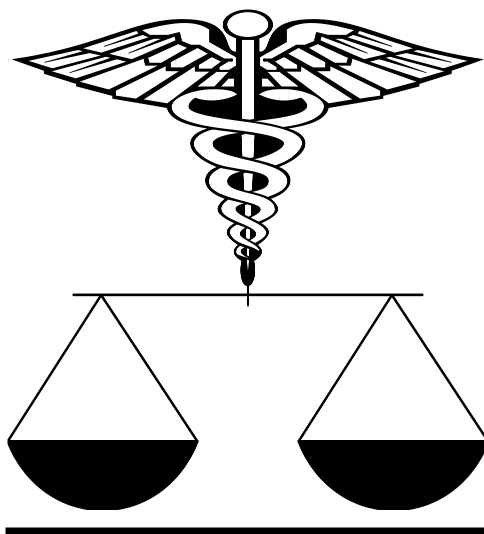
See *Definition Of Family Member: Court Allows Suit Against Critical Care Nurse Who Excluded Life-Partner From Room.* Legal Eagle Eye Newsletter for the Nursing Profession (17)1, Jan. 09 p.8.

In the 2008 case from Washington the nurse would not allow the patient's life-partner into the room at times when blood relatives were being allowed to visit, simply because the nurse felt that a life-partner did not appropriately fit the definition of a family member.

Medical Justification

In the recent Florida case the court stated that patients' treatment needs take precedence when deciding whether or not to allow visitation in a patient's ICU room.

Even if a life-partner is a family member, a hospital still has no unequivocal legal duty to allow visitation any time a family member wants. The patient was in acute crisis in critical care. Her caregivers could exclude any and all bystanders from the ICU who might get in the way, the court said.



The doctors obtained the life-partner's consent to a brain monitor, then advised her thirty minutes later that surgery was no longer an option.

The life partner was allowed to visit as the last rites were being administered.

There is no basis for a lawsuit against the hospital for intentional infliction of emotional distress.

UNITED STATES DISTRICT COURT
FLORIDA
October 2, 2009

In the 2008 case from Washington, unlike the recent Florida case, there were times when the ICU patient had no critical-care interventions immediately underway and the nurse was allowing blood relatives, but not her life-partner, into the ICU room.

Healthcare Surrogate

In the recent Florida case the hospital fully respected the life-partner's status as the patient's healthcare decision maker, once she corroborated her status by phoning for a copy of the patient's durable power of attorney to be faxed to the hospital. She was kept fully informed what was going on and was allowed to communicate her decisions, from the waiting area.

Hospitals must follow state law. Florida does not recognize a life-partner *per se* as a surrogate decision maker, unlike a husband, wife, parent, adult sibling or adult child who would have healthcare decision-making authority by default if a living will or durable power of attorney did not exist.

A life-partner, however, like any competent adult, can be named by the patient as surrogate decision-maker in a living will or durable power of attorney, and that decision by the patient absolutely must be respected. **Langbehn v. Public Health Trust, __ F. Supp. 2d __, 2009 WL 3247185 (S.D. Fla., October 2, 2009).**

www.nursinglaw.com/
nov09gho3.pdf

November 2009

New Subscriptions
See Page 3

Family Member/Life Partner - Nurse Whistleblower - Suicide
Nurse As Patient's Advocate - Nurse/Lifting Restriction/Disability
Patient Abuse - Fall/Bed Alarm - Medication Errors - Decubitus
Labor & Delivery Nursing - Chemotherapy/Extravasation
Health Care Reform - Osteoporosis/Fractures
Diabetes Insipidus - Fall/Wheelchair - Medication Overdose
Patient Confidentiality - Deaf Patient/Sign Language Interpreters
Needlestick - Laminectomy/Post-Operative Nursing Care

Nurse As Whistleblower: Case Against Hospital Not Proven.

A senior nurse manager in the surgery department was asked to apply for a position in some other hospital unit besides surgery because her job performance in surgery allegedly was substandard.

She found another position at the same hospital with the same salary and benefits as before, but then abruptly resigned and filed suit against the hospital for violation of New York's healthcare employees' whistleblower statute.

New York's whistleblower law, like similar laws in other states, protects a healthcare employee from employer retaliation who reports or threatens to report any practice, procedure, action or failure to act which violates any law, rule, regulation, or departmental interpretive ruling.

NEW YORK SUPREME COURT
APPELLATE DIVISION
September 29, 2009

The New York Supreme Court, Appellate Division, dismissed her case.

Even if the nurse could prove she was asked to transfer out of surgery because of her complaints about the quality of care, not because of substandard performance, she still was not able to point out specifically the statutes, regulations or official guidelines the hospital was violating with the conduct she was complaining about.

Whistleblowers are protected from retaliation for complaining about or reporting improper patient care. However, improper patient care in the whistle-blowing context refers only to practices or procedures that violate the law. **Luiso v. Northern Westchester Hosp. Ctr., __ N.Y.S. 2d __, 2009 WL 3136150 (N.Y. App., September 29, 2009).**

Nurse As Patient Advocate: Jury Finds No Negligence.

The patient was in the hospital for treatment of congestive heart failure.

He was sent to the intensive care unit after a procedure to aspirate a large quantity of fluid from his chest. His physicians put him on diuretic medication to remove more fluid from his body.

The patient's nurse and a hospital resident physician kept reporting to the patient's attending physician that his blood pressure was too low.

The patient's attending physician related the low blood pressure to the patient's congestive heart failure and the diuretic therapy that was underway and saw no justification to change what was being done for the patient.

After the patient died it was determined he, in fact, had internal bleeding in his abdomen, a condition that his attending physician completely missed.

The jury hearing the lawsuit the Circuit Court, Jefferson County, Alabama found no negligence by the attending physician or the nurse.

Differential Medical Diagnosis Is Not A Nursing Responsibility

The jury discounted the testimony of the patient's family's nursing expert.

The patient's expert wanted to fault the ICU nurse for not advocating with her nursing supervisors to call in other physicians to rule out other possible medical diagnoses that might account for the consistently low blood pressure readings the nurse was getting as she closely monitored her patient's vital signs.

A nurse has a legal duty to advocate for the nurse's patient only when the patient's working medical diagnosis itself points to inappropriate action being taken or appropriate measures being ignored.

It goes too far to say that nurses' duty to advocate can be used to point a finger of blame at the nurses and open up the hospital's deep pockets any time the physician does not diagnose the patient correctly. **Powe v. Boger, 2008 WL 6912671 (Cir. Ct. Jefferson Co., Alabama, August 28, 2008).**

Lifting Restriction: Nurse Not Disabled, No Disability Discrimination.

A registered nurse was manager of the hospital's rehab department.

Because her nurse-manager position did not require any lifting it was not an issue that she had a 22-pound lifting restriction due to a back injury from an auto accident years earlier.

She took a one-year medical leave for a knee injury. When she was ready to come back to work she was told her management position was no longer available.

To be considered disabled, an individual must be significantly restricted in the ability to perform either a class of jobs or a broad range of jobs compared to the average person with comparable training, skills and abilities.

Inability to perform a single, particular job does not make a person disabled.

UNITED STATES DISTRICT COURT
INDIANA
September 25, 2009

The US District Court for the Southern District of Indiana dismissed her disability discrimination lawsuit.

Although she did not get her manager job back and was not hired elsewhere in the hospital the nurse did find employment as a home care nurse and as a psychiatric nurse in positions which did not call for patient lifting.

If the individual does not have a disability as disability is defined for purposes of the Americans With Disabilities Act, the individual is not entitled to reasonable accommodation and cannot sue for disability discrimination for being denied a light-duty assignment. **Linville v. Community Hosp., 2009 WL 3163119 (S.D. Ind., September 25, 2009).**

Suicide: Facility Pays Settlement.

The patient was a retired veteran receiving compensation for a 100% service-connected psychiatric disability.

He checked himself into a VA psychiatric facility because of psychotic symptoms related to his bipolar disorder, paranoid delusions of persecution to the effect his neighbors were plotting to kill him.

Signs of Impending Suicide Charted No Action Taken

Medical progress notes were written during his first two days assessing him as a suicide risk with depression, delusions of persecution, auditory hallucinations, extreme paranoia and suicidal ideation. He reportedly stated, "I could fall down in the shower on purpose."

The nurses twice documented explicit verbalizations that he wanted to harm himself. Yet there was no follow-up by the nurses or other professional caregivers to treat him as an acute suicide risk.

The patient was found fully clothed in his bathroom having hanged himself from a non-suicide-proof grab bar with his own leather belt that was not confiscated upon admission. The US Government paid the family $700,000 to settle their case filed in the US District Court for the Western District of Washington. **Whitcomb v. US, 2009 WL 3244920 (W.D. Wash., June 22, 2009).**

LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

ISSN 1085-4924

© 2009 Legal Eagle Eye Newsletter

Indexed in
Cumulative Index to Nursing & Allied Health Literature™

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

E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
PO Box 4592
Seattle, WA 98194–0592
Phone (206) 440-5860
Fax (206) 440-5862
kensnyder@nursinglaw.com
www.nursinglaw.com

Patient Abuse By Family Member: Court Says Nurses Reacted Appropriately, Lawsuit Dismissed.

Nursing home staff began closely watching the daughter because they thought she and her brother were being overly aggressive while participating in their mother's care.

A staff nurse notified the charge nurse when she found bruising after the daughter shoved the resident into her wheelchair.

Believing that a reportable incident of elder abuse had occurred, the director of nursing notified the state department of health and the local police.

The police saw probable cause to arrest the daughter for elder abuse.

At her arraignment the local magistrate also saw grounds for a criminal prosecution and released the daughter on her own recognizance pending trial.

UNITED STATES DISTRICT COURT
IOWA
October 9, 2009

The nursing home's nursing staff reported a resident's daughter to the police after a nurse saw her push her elderly mother roughly into her wheelchair in the facility's dining room and then found new bruises on the resident's arms.

The state department of health was also notified that a possible episode of elder abuse had occurred at the facility.

The daughter claimed they called the police on her in retaliation for her complaints about her mother's care. The nursing home staff were encouraging her mother to drink her juice when she did not want to, were insisting her mother get out of bed and were trying to get her to walk when she preferred just to sit in her chair.

The daughter's criminal trial for elder abuse ended in her acquittal. The investigation by the state concluded that no abuse could be substantiated.

Notwithstanding those outcomes, the US District Court for the Northern District of Iowa dismissed the daughter's civil civil-rights lawsuit against the nursing home.

Caregivers Are Required to Report

A nursing home is required by law to investigate, to report to the state and to notify local law enforcement any time what appears to be elder abuse occurs. The motivation behind the nursing home's staff in reporting the daughter was only to protect the resident and to fulfill staff members' legal duties, the court concluded. **Veatch v. Bartels Lutheran Home, 2009 WL 3270823 (N.D. Iowa, October 9, 2009).**

Clip and mail this form. Or if you prefer, order online at www.nursinglaw.com

Print $155/year _____ Online $95/year _____ Phone 1-877-985-0977
Check enclosed _____ Bill me _____ Credit card _____ Fax (206) 440-5862
Visa/MC/AmEx/Disc No. ____
Signature ______________________________ Expiration Date __________

Name ____
Organization ____
Address ____
City/State/Zip ____
Email (If you want Online Edition*) _________________________________

***Print subscribers also entitled to Online Edition at no extra charge.**
Mail to: Legal Eagle Eye PO Box 4592 Seattle WA 98194-0592

Fall: Bed Alarm Not Activated, Jury Finds Negligence.

The sixty-seven year-old patient was hospitalized after a fall at home after a mild stroke which left some degree of weakness on the left side of his body.

He was identified on admission as a high fall risk due to his history of a recent fall, his stroke and the residual weakness.

He was sent to the intensive care unit, where all of the beds at this hospital have alarms to alert the nurse when the patient attempts to get out of bed.

Confused and thinking he was at home the patient got out of bed during the night, fell on his weak left side and fractured his left hip.

The bed alarm was apparently never turned on by the ICU nurses. The jury in the Superior Court, Providence County, Rhode Island awarded him $4,300,000 and his wife an additional $230,000. **Villegas v. Roger Williams Med. Ctr., 2009 WL 3278733 (Sup. Ct. Providence Co., Rhode Island, June 25, 2009).**

Shoulder Injury: Nurse Faulted For Fundal Pressure.

The baby was diagnosed with Erb's palsy and has a left arm that will be paralyzed for the rest of her life.

The jury in the Superior Court, Essex County, New Jersey awarded $1,635,250 as damages from the ob/gyn who delivered her and the hospital where she was delivered.

The ob/gyn reportedly ordered the nurses to apply fundal pressure to the mother's upper abdomen to force the baby out while the ob/gyn manipulated and pulled the head

That was inappropriate obstetric technique, according to the patient's experts, when shoulder dystocia is encountered during labor. **Llanos v. Meglio, 2009 WL 3359147 (Sup. Ct. Essex Co. New Jersey, September 22, 2009).**

Decubitus Ulcers: Repositioning Was Documented, Jury Sides With The Nursing Home.

The ventilator-dependent woman in her seventies was a patient in a subacute facility specializing in the care of ventilator patients.

During her stay she developed pressure sores that progressed to Stage II and eventually Stage IV decubitus ulcers which necessitated surgical debridement.

After she passed away the personal representative of her estate sued the facility for negligence.

The jury in the Court of Common Pleas, Bucks County, Pennsylvania found no negligence and awarded no damages.

The family's lawyer argued unsuccessfully to the jury that the extensive documentation in the chart of frequent repositioning of the patient was inconsistent with the development of pressure sores and progression of the lesions to decubitus ulcers.

COURT OF COMMON PLEAS
BUCKS COUNTY, PENNSYLVANIA
July 16, 2009

The jury accepted at face value the nursing documentation in the chart showing frequent repositioning of the patient and believed the facility's expert's testimony that some patients can experience significant breakdown in skin integrity even with the best possible nursing care.

That is, the facility argued in its defense that any patient's skin care is problematic when the patient is in a persistent vegetative state and on a ventilator.

The facility also argued that a patient in a persistent vegetative state does not feel pain and that damages should not be awarded to the family for his pain and suffering. **Estate of Lambert v. Fox Subacute Center, 2009 WL 3278737 (Ct. Comm. Pl. Bucks Co., Pennsylvania, July 16, 2009).**

Medication Error: Jury Awards No Damages.

The patient came to the hospital's emergency room for a rash.

The physician ordered IV Benadryl and Decadron, oral Zantac and subcutaneous epinephrine.

The nurse gave the Benadryl and Decadron through the IV line. Then she began giving the epinephrine the same way. The patient complained she was starting to feel strange. The nurse caught her mistake right away and stopped the epinephrine after only about .1 to .3 mg of epinephrine had been given IV.

The patient said she was dizzy. Her heart was racing. The nurse put her on O_2 and a cardiac monitor and notified the E.R. physician. The physician ordered a cardiac enzyme workup, got a cardiology consult and had her admitted to the hospital overnight for observation.

The nurse acknowledged her mistake and apologized to the patient.

In the trial in the Superior Court, Los Angeles County, California the hospital's attorney candidly admitted to the jury that the nurse made a mistake. The cardiologist testified that the nurse's mistake caused no significant or lasting harm to the patient. The jury returned a defense verdict. **Kashefi v. Long Beach Mem. Med. Ctr., 2009 WL 3359012 (Sup. Ct. Los Angeles Co., California, August 4, 2009).**

Medication Error: Settlement Paid.

The patient was in the hospital recovering after two surgeries for an advanced case of stomach cancer.

The patient got IV Dilantin for more than two weeks without complications.

Then a nurse mistakenly gave oral suspension Dilantin through the patient's IV. The patient lapsed into a coma and soon died.

The settlement of the lawsuit in the Superior Court, Orange County, California was $175,000 from the nurse's staffing agency's insurance and $25,000 from the hospital. **Confidential v. Confidential, 2009 WL 3250204 (Sup. Ct. Orange Co., California, March 24, 2009).**

Extravasation: Nurse Did Not Monitor Infusion.

The sixty-nine year-old patient was getting chemotherapy with Adriamycin for breast cancer through a port surgically implanted in her chest above her left breast.

The patient's first two chemotherapy sessions went OK.

During the next session the patient complained of pain while an unspecified medication was being administered before the Adriamycin was started. The nurse reassured her that everything was well and went ahead with the Adriamycin.

The patient's daughter then alerted the nurse that there was swelling and redness developing around the site where the needle went through the skin, but the nurse went ahead and allowed the full dose of Adriamycin to be given.

Tissue damage from extravasation of the Adriamycin resulted in a total mastectomy of the left breast being necessary.

The jury in the Circuit Court, Washington County, Wisconsin returned a verdict of $450,000 for the patient based on the nurse's negligence.

The jury heard testimony from the nurse's employer's nursing expert that it is a known complication of chemotherapy that extravasation can cause significant damage to surrounding tissue.

However, the patient's nursing experts countered that the potential for extravasation places a duty upon the patient's nurse to watch carefully for signs of extravasation, to pay attention to the patient's complaints, to discontinue the infusion promptly if there is a problem, to treat the affected area with ice to reduce perfusion of the chemo agent and minimize swelling and tissue damage, and to notify the physician promptly.

The evidence was inconclusive that any error or omission occurred in the insertion of the needle into the catheter port. Only what happened after the extravasation became apparent or should have been apparent, and not that issue, was a factor in the jury's decision in the patient's favor. **Knight v. Physicians Ins. Co., 2009 WL 3320299 (Cir. Ct. Washington Co., Wisconsin, March, 2009).**

Quadriplegia: Nurse Did Not Stabilize Neck After Fall.

The Appeals Court of Massachusetts did not see any reason to delve into the issue of assigning fault for the fact the patient fell out of bed in the hospital.

It was not clear whether the nurse who found the patient on the floor was the nurse who had been assigned to care for him. For the record, the Court stated it would be assumed that no nurse-patient relationship existed between the patient and the nurse before she went to his aid after he fell.

The malpractice lawsuit filed against the nurse by the probate estate of the deceased patient focused only on what happened after he was found on the floor.

Neck To Be Stabilized Before Moving Patient After Fall

The Court accepted the testimony of the estate's nursing expert that the standard of care required any registered nurse finding a patient on the floor to take the necessary precaution of stabilizing the neck with a neck brace before moving him.

In this case the patient became quadriplegic from a neck injury from improper handling after he fell and his quadriplegia, the Court said, contributed to his death. **Estate of Valda v. Raby, 2009 WL 3379069 (Mass. App., October 22, 2009).**

Osteoporosis: Burden Of Proof On Caregivers To Account For Fracture.

The New York Supreme Court, Appellate Division, pointed to the fact that for several months the eighty-seven year-old nursing home patient was non-ambulatory and required staff assistance even for repositioning in bed.

While getting her out of bed for a shower an aide noticed her right ankle was swollen. It was reported it to the nurse on duty and the patient was promptly taken by ambulance to an emergency room.

X-rays revealed that the ankle and the femur were fractured. The leg had to be amputated above the knee.

The Court accepted testimony from the patient's probate estate's nursing expert that the fractures most likely occurred during routine care.

The patient's advanced osteoporosis, in the estate's expert's opinion, required a very special level of caution when handling the patient. Osteoporosis most likely explained, but unlike what the nursing home's expert testified, did not excuse what occurred, the Court said. **Estate of Tedesco v. Eden Park Health Services, Inc., __ N.Y.S. 2d __, 2009 WL 3380517 (N.Y. App., October 22, 2009).**

Surgical Supplies: Jury Sees No Negligence.

A jury in the Circuit Court, Osceola County, Florida declined to find fault with the hospital for the fact that the hospital's assortment of aortic valves in stock did not include the smallest one that is currently manufactured and so the fifty-eight year-old patient's surgery was delayed while one was found at another hospital. **Estate of Lopez v. Suarez-Cavelier, 2009 WL 3388188 (Cir. Ct. Osceola Co., Florida, July 10, 2009).**

Healthcare Reform: Text Of Senate Bill Is Now Available.

Senate Bill S. 1796 "America's Healthy Future Act of 2009" is available online from the US Senate Finance Committee website at http://finance.senate.gov/press/Bpress/2009press/prb102009c.pdf

Note that the full text of the bill takes up 1504 printed pages or 2.5 megabytes of digital space.

Diabetes Insipidus: Nurses Did Not Report Excessive Urine Output.

The fifty-four year-old patient was admitted to the hospital for treatment of low serum sodium. She had been diagnosed with diabetes insipidus.

Patient's Urine Output
10 Liters / 16 Hours

On her second day in the hospital the patient urinated more than ten liters over a sixteen-hour period. The nurses caring for the patient reportedly did not notify the attending internist of this development.

The next morning the patient's husband found her non-responsive. She remained comatose for three weeks before she died. The cause of death was brain damage from dehydration and excessive serum sodium.

A jury in the District Court, Harris County, Texas returned a verdict of $1,400,000 and apportioned responsibility 40% to the hospital's nursing staff and 60% to the patient's internist and his medical practice group. **Estate of Dorriety v. Mehta, 2009 WL 3011575 (Dist. Ct. Harris Co., Texas, August 3, 2009).**

Overdose: Jury Faults Nurse, Not Physician.

The nurse insisted the physician's phone order to start his patient on Zyprexa was 25 mg, not 2.5 mg, even though 25 mg would still be more than the daily maximum even for a patient proven to be able to tolerate Zyprexa.

The patient had to be rushed to the hospital from the nursing home, intubated and ventilated. His lawsuit in the Court of Common Pleas, Philadelphia County, Pennsylvania alleged that this episode started a downward spiral in his health.

The jury awarded $125, 000 from the nursing home and found the physician not negligent. **Greenberg v. Aguirre, 2009 WL 3011546 (Ct. Comm. Pl. Philadelphia Co., Pennsylvania, June 16, 2009).**

Fall From Wheelchair: No Expert Needed To Prove Nurse Was Negligent.

A man collapsed in a hospital corridor from a sudden heart attack just as a nurse was wheeling another patient out to the curbside so her husband could pick her up following outpatient day surgery.

The nurse immediately left her own patient and went to the man's aid.

The nurse's patient tried to get up from the wheelchair on her own, fell down and fractured her kneecap.

The wheels were apparently left unlocked in the nurse's understandable haste to go and assist the other individual.

Placing blame for an injury occurring while a patient is being transported in a wheelchair is not beyond the experience possessed by a lay person and requires no expert testimony.

COURT OF APPEALS OF OHIO
October 13, 2009

The Court of Appeals of Ohio ruled the patient with the fractured kneecap had grounds for a negligence lawsuit against the nurse and the hospital, and she did not need an expert witness to prove her case.

For a negligence lawsuit involving conduct within the common knowledge and experience of the average juror, expert testimony is not necessary as to the professional standard of care.

Any lay person would know the nurse's patient would be anxious not to have to watch what was happening with the other individual, would want to stay out of the way and would not want to leave her husband waiting for her, the court said.

Hospital policy stated expressly that the wheels were to be locked when any occupied wheelchair was not being pushed or steadied. **Hill v. Wadsworth-Rittman Area Hosp., 2009 WL 3255311 (Ohio App., October 13, 2009).**

Labor & Delivery: Nurses Delayed Calling Physician Re Bradycardia.

The patient came to the hospital for induction of labor. Her previous pregnancy had resulted in a delivery by cesarean section.

This time the mother suffered a ruptured uterus from hyperstimulation of the uterus caused by failure of the nurses to monitor the administration of pitocin. The ruptured uterus was followed by abruption of the placenta, an event which placed the fetus in grave and immediate danger.

The fetal heart rate slowed drastically and then disappeared altogether, but the nurses waited approximately fifteen minutes before the first call was made to obtain assistance from a physician.

The child was delivered by cesarean very quickly after the physician was made aware of the situation, but not before an estimated eighteen to twenty minutes of complete oxygen deprivation.

The family's lawsuit against the hospital in the Court of Common Pleas, Montgomery County, Ohio resulted in a $30,000,000 verdict against the hospital for the negligence of the labor and delivery nurses.

The labor and delivery nurses were faulted for failing to appreciate that management of the pitocin drip requires special vigilance in a post-cesarean vaginal induction. The nurses needed to watch carefully the intensity of the contractions and the resting tone and adjust the pitocin drip, stop it altogether and/or reporting to the physician when problems were encountered.

Whatever happened to cause the fetal bradycardia and loss of the heart tone, immediate and decisive action was required by the nurses at the point that became apparent, the lawsuit alleged.

The jury apparently discounted arguments by the hospital's attorneys that the mother had signed an informed consent form indicating she understood the significant risks associated with induction of labor in a pregnancy subsequent to a cesarean section. **Stanziano v. Miami Valley Hosp., 2009 WL 3167368 (Ct. Comm. Pl. Montgomery Co., Ohio, July 6, 2009).**

Nurse Rescues Newborn, Mother: Court Validates Her Termination.

The eighteen year-old mother of a premature infant revealed to the neonatal intensive care nurse that she had been trying to hide her pregnancy from her father who she said would kill her if he ever found out.

The nurse gave her her own address and phone number.

Three weeks after discharge from the hospital the young mother showed up at the nurse's home with her new baby.

The nurse let them stay with her for a few days. Then the nurse phoned the parents, told them where she was and all about the baby and asked them to promise she would be safe if she came home. Her father and sister came for her and she reluctantly went away with them.

The nurse's union grievance resulted in an order of reinstatement. The arbitrator ruled the hospital acted hastily before fully investigating the allegations.

That still does not give the nurse grounds to sue the hospital. Her termination was based on violation of patient confidentiality.

CALIFORNIA COURT OF APPEAL
October 8, 2009

Child Protective Services soon became involved in the case. CPS saw it as inappropriate for the nurse to have contacted the mother's family. They notified the nurse's supervisor at the hospital.

The nursing supervisor fired the nurse for violation of patient confidentiality, but without discussing the details with the CPS worker or speaking with the mother. The California Court of Appeal ruled the nurse did violate patient confidentiality and had no right to sue the hospital over the disciplinary action that was taken against her. **Bentley v. Lucile Packard Children's Hosp., 2009 WL 3216248 (Cal. App., October 8, 2009).**

Adoption: Nurse Acted As Go-Between, Termination Upheld.

The hospital has an express policy on adoptions. Responsibility is vested with hospital social services. Only those staff members directly assigned to the case are allowed access to information about the case.

Employees of the hospital often have access to intimate facts regarding patients and their treatment.

The hospital's policy is to protect the privacy of each patient concerning his or her treatment.

Only hospital clinical staff assigned to care for the patient are authorized and qualified to discuss and evaluate among themselves, in private, the condition of the patient or the effectiveness of treatment.

Confidential information about any patient is never to be revealed to anyone outside the hospital.

Hospital employees are made aware during orientation and training of their obligations under Federal and state law to protect patient confidentiality.

Violation of the hospital's policies concerning patient confidentiality is grounds for dismissal, and every hospital employee has been informed of the hospital's policy.

COURT OF APPEALS OF TENNESSEE
October 13, 2009

The hospital social worker was in the process of contacting licensed adoption agencies on behalf of an underage mother who had just given birth at the hospital and had expressed a desire to put her newborn up for adoption.

A nurse at the hospital, one who was never assigned to care for the patient in question, learned of her situation through the hospital's gossip grapevine. On her own initiative the nurse got in contact with a friend whose daughter she thought might be interested in adopting a child.

The nurse's friend's daughter said she was interested, so the nurse got her permission to give her name and number to the patient.

The nurse then went to see the biological mother in her room while she was still a patient at the hospital and told her she knew of a potential adoptive family. The biological mother said she would like to speak with them and the nurse left the contact information.

The biological mother's parents got in touch with the other family. That contact eventually resulted in a legal adoption.

Nurse Terminated for Violation Of Patient Confidentiality

When the nurse's supervisors learned what she had done she was terminated for violation of patient confidentiality. The Court of Appeals of Tennessee ruled she had no legal grounds to sue the hospital for wrongful termination.

For the record and to back up its decision the Court pointed to a progress note penned by the patient's own nurse.

The birth mother abruptly told her own nurse she was no longer interested in following through with the adoption process already set in motion by hospital social services after another nurse whom the patient had never seen before came to her room and told her she knew someone who was interested in adopting.

After the other nurse told her and her mother to keep it secret what they were up to, the mother suddenly stopped cooperating with her assigned nurse's and social worker's care planning and stopped returning calls to the adoption agency. **Morton v. Covenant Health Corp., 2009 WL 3270180 (Tenn. App., October 13, 2009).**

Needlestick: Family Member Can Sue.

The aunt of a four year-old patient was sitting in the clinic's exam room with her sister and her other niece, a two year-old.

The two year-old picked up a used hypodermic syringe from the floor which had apparently spilled out of an over-full used sharps disposal container hanging on the wall.

The aunt went to take the needle away from the two year-old and was stuck in the right index finger. Clinic staff were notified and they sent her right from the clinic to the emergency room. The E.R. physician started her on Combivir as a precaution against HIV. She continued taking the Combivir for several weeks. She never became HIV positive.

The judge in the Court of Common Pleas, Philadelphia County, Pennsylvania found the clinic negligent and awarded her $8,500 as compensation for her injured finger and for the side effects, lethargy, nausea and vomiting, caused by having to take the Combivir. The judge, however, declined to award damages for her apprehension and fear over the possibility she might contract AIDS. **Colston v. Temple University, 2009 WL 3125311 (Ct. Comm. Pl. Philadelphia Co., Pennsylvania, May 1, 2009).**

Post-Operative Care: Paraplegia Related To Nursing Negligence.

The ninety year-old patient was in the hospital recovering from a laminectomy performed earlier that day.

She complained to her nurses of severe pain and numbness in her legs and became incontinent. The patient reportedly asked the nurses to call her orthopedist who had done the surgery but the nurses declined to do so.

The next day the orthopedist came to see the patient on his regular rounds. When the patient finally was able to tell him about her pain and numbness the orthopedist ordered a CT scan. The scan revealed an epidural blood clot that was compressing the spinal nerves. He asked for an operating room for emergency surgery, but none was available for several hours.

The patient became paraplegic, then died from unrelated causes. The jury in the Superior Court, King County, Washington awarded the probate estate $1,818,583. **Sandbo v. Valley Med. Ctr., 2009 WL 3244925 (Sup. Ct. King Co., Washington, July 7, 2009).**

Sign-Language Interpreters: Child Had To Sign, He And His Parents Can Sue For Discrimination.

Before he checked into the hospital and numerous times during his stay for carotid endarterectomy surgery the deaf patient, his deaf wife and their two hearing teenage children requested the hospital to provide a certified American Sign Language interpreter.

Hospital policy required a nurse, physician or other staff member to whom such a request was made to refer the request to the hospital's Speech and Hearing Center, which was supposed to obtain a certified interpreter.

In this case the nurses reportedly continued telling the family, "We're working on it," even to the point when the patient was already in the PACU after his surgery and the patient's thirteen year-old son was being forced to try to function as sign-language interpreter for his father.

The hospital relied on the deaf patient's hearing children to translate complicated medical terms even though the children were not competent to provide ASL interpretation.

The patient, his wife and his son were victims of disability discrimination.

The hospital did not provide appropriate auxiliary aids to ensure effective communication.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
October 6, 2009

The patient stroked in the PACU. The nurse ignored his anguished gesturing, believing it was simply the communication style of an attention-seeking deaf person. The son did not know and could not explain what was going on.

The US Court of Appeals for the Second Circuit ruled this case rose to the level of deliberate indifference, the legal threshold for damages to be awarded from a healthcare facility to a deaf person denied reasonable accommodation to his or her disability.

The Court ruled the hearing son was also a victim of disability discrimination and could sue for damages for the trauma he experienced. Families are meant to benefit from reasonable accommodation to deaf patients' communication needs. **Loeffler v. State Island Univ. Hosp., __ F. 3d __, 2009 WL 3172687 (2nd Cir., October 6, 2009).**