LEGAL EAGLE EYE NEWSLETTER

November 2012 *For the Nursing Profession* Volume 20 Number 11

Child Neglect/Abuse: E.R. Nurse's Actions Were Correct, Parent's Lawsuit Dismissed.

The mother brought her four-month-old to the E.R. because the child was having difficulty breathing.

The E.R. physician's exam record noted a clinical impression of bronchitis, dehydration and possible malnutrition and child endangerment. An IV was started for fluid replenishment and blood was drawn for the lab.

At some point the mother became dissatisfied with the care her daughter was receiving and told the physician she wanted to take her child and leave.

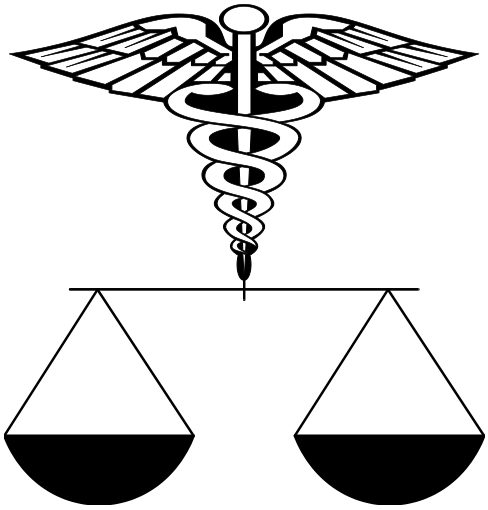
The E.R. physician recommended instead that the child be admitted to the hospital. Then the nurse took over.

E.R. Nurse's Interaction With the Mother

The nurse first explained to the mother why the child needed IV fluids even though the reason the mother brought her in was a breathing problem.

The nurse went on to inform the mother that the child needed to be kept in the hospital to continue IV fluid replenishment and to continue to be observed and monitored by hospital staff.

The nurse told the mother that on the hospital's inpatient pediatric floor a different doctor than the E.R. physician who had been somewhat brusque with her would be treating her daughter and the new doctor would be willing and able to explain the lab results in detail.



State law requires an individual who believes that a child is the victim of neglect or abuse to report the neglect or abuse to proper legal authorities.

State law provides immunity from civil and criminal liability to anyone who makes such a report, unless the report was made maliciously or in bad faith. The child's mother has no evidence of that.

COURT OF APPEALS OF INDIANA
October 4, 2012

When the mother said she was going to leave and take the child to a nearby children's hospital, the nurse offered to make all the arrangements for medical transport, ostensibly so that the child's IV therapy would not be interrupted, but realistically so that the child would actually arrive at the hospital where she belonged.

Finally the nurse had to tell the mother that as a nurse she had no option but to phone Child Protective Services if the mother tried to remove the child from the hospital. The nurse followed through and made the call.

The Court of Appeals of Indiana ruled there were no grounds for the lawsuit the mother filed against the hospital because the E.R. nurse properly followed through and called Child Protective Services.

The Court said the nurse was not trying to threaten or intimidate the mother but instead had only the child's welfare and the nurse's own legal responsibilities in mind.

The mother's lawsuit pointed up no evidence of malicious intent or bad faith by the nurse, that being required to support a successful lawsuit against a mandatory reporter under these circumstances. **Miller v. Anonymous Hosp. & Jane Doe Nurse, 2012 WL 4718673 (Ind. App., October 4, 2012).**

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November 2012

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Skin Care: Court Awards Damages To Family For Patient's Death From Decubitus Ulcers.

The US District Court for he District of Oregon awarded the family $125,000 from the US Government for the deceased's pain and suffering prior to his death from sepsis and multi-organ failure related to decubitus ulcers contracted at a Veterans Administration hospital.

In its lengthy ruling the Court reviewed in detail aspects of the legal standard of care for nurses caring for patients with skin-integrity issues.

Nursing Assessment

The sixty year-old patient had a history of alcoholism and smoking. He had had a triple coronary artery bypass, cardiac catheterization and a cardiac defibrillator and had hypertension, COPD, peripheral vascular disease and chronic renal failure.

His present admission was for a right lower lung lobectomy for lung cancer. After surgery he was sent to the ICU.

At this hospital the Braden Scale is used to assess each ICU patient's risk of breakdown of skin integrity. This patient's score was 20 on admission to the ICU and never fell below 14, all times at high risk.

According to the Court, decubitus ulcers are in many cases preventable and a primary method of prevention is frequent turning of the patient.

Turning / Documentation

The testimony in the trial was that the nurses had a practice of turning immobile patients every two hours. However, the Court was unable to find documentation on the ICU flow sheets or in the nursing progress notes of it having been done.

The day following surgery the ICU flow sheet documented the patient as "self turning" but that was the only documentation regarding skin integrity issues for a twelve-hour period. At 5:00 a.m. the next day the patient was listed as "Q2" turns, but no actual turning was documented until 1:00 p.m. that afternoon.

The Court found that the documentation in the chart was incomplete and inconsistent. From that fact the Court concluded that the patient more likely than not was not being properly repositioned every two hours as required by the standard of care for an immobile patient and by the hospital's own internal policies.

The nursing progress notes in the chart are incomplete and internally inconsistent.

The nurses are permitted simply to chart "Q2" at the beginning of the shift and not document each two-hour turning of the patient, and the nurses testified that was their routine practice.

However, the actual practice seemed to have been to chart "Q2" at the beginning of every shift and then also to chart position changes as they occurred sporadically throughout the day.

The family testified he was often not repositioned every two hours.

In any event, once the decubitus ulcers appeared, heightened scrutiny and vigilance were required, including thorough and accurate documentation of the patient's position changes.

If oxygen desaturization was preventing the nurses from turning him every two hours, that should have been documented and the nurses should have requested an order to increase his oxygen prior to turning him and/or to premedicate him with anti-anxiety drugs to reduce his anxiety upon turning him.

UNITED STATES DISTRICT COURT
OREGON
October 9, 2012

Treatment of Decubitus Ulcers

An at-risk patient can develop a pressure ulcer with only two to six hours of unrelieved pressure on sensitive skin, according to an experienced wound care nurse who testified as an expert witness for the family's case.

The physical therapist and a second year resident first noted a large discolored area on the buttocks and the resident ordered a wound care consult that same day. No one saw to it that a wound care specialist came in until one week later, a violation of the hospital's own internal skin-care policies.

The hospital's own policies required any change in the patient's condition with regard to decubitus ulcers be reported to the patient's attending physician, but that was not done.

An ICU nurse made a note some days later that the skin on the buttocks was continuing to deteriorate since surgery and that the patient was to be kept off his backside as much as possible. Nevertheless, later that day the patient was left lying on his back for three hours and then moved to his chair for nine hours, twelve hours of pressure bearing down on the buttocks lesions.

The wound care consult finally did come, but from a nurse who was not yet certified for wound care management who was filling in for the regular wound care nurse who was out on maternity leave.

Her assessment of the staging of the wounds was not accurate, according to the Court, and misstated the severity of what was actually going on. The physical descriptions of what she saw would place the buttocks lesions at State III or IV, while she rated them merely at Stage II.

Drainage began coming from the buttocks wounds but the ICU nurses did not actually see the wounds which were covered by creams and dressings. The nurses simply noted that the wounds were difficult to assess for that reason.

The patient began to have issues with fecal incontinence, but the care plan was not updated and nothing was done. The lab values began to show systemic infection from the infected wounds. **Delehant v. US, 2012 WL 4794147 (D. Or., October 9, 2012).**

Lift Chairs: Court Throws Out Citations Against Nursing Home.

A nursing home was cited for violations allegedly rising to the level of immediate jeopardy for allowing residents to use recliners with a lift feature that their families had brought in for them.

The facility was accused by survey inspectors of violating Federal regulations which require an assessment of the resident's physical capacity and care planning to go along with the use by the resident of any assistive device. The facility was also accused of creating an accident hazard in violation of Federal regulations.

The US Court of Appeals for the Sixth Circuit threw out the citations and exonerated the nursing facility.

Nowhere in the regulations, Resident Assessment Protocol, Minimum Data Set or State Operations Manual is there any indication that a chair with a lift feature provided by a resident's family for the resident's comfort is an assistive device as that term is used in the Federal regulations.

Nor was there any reasonable basis for concluding that these lifting recliners posed an accident hazard, the Court went on to say. **Cal Turner Extended Care v. US Dept. of Health & Human Services, 2012 WL 4748146 (6th Cir., October 5, 2012).**

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Unsupervised Absence: Suit For Dependent Adult Neglect Upheld.

Neglect is defined as the negligent failure of any person having the care or custody of an elder or dependent adult to exercise the degree of care that a reasonable person would exercise.

Neglect includes failure to assist in personal hygiene, failure to provide food, clothing, shelter or medical care for physical or mental health needs and failure to protect from health and safety hazards.

The nursing home had the legal responsibility for meeting the patient's basic needs. They knew he was a disabled man suffering from mental-health issues and was under psychiatric care. They knew he was not supposed to leave alone or without taking his mental-health medications.

They failed to follow his physician's orders by letting him leave alone.

CALIFORNIA COURT OF APPEAL
October 4, 2012

The fifty-one year-old wheelchair-bound nursing home resident was blind in one eye and had had one leg amputated. He also had disordered thought processes, paranoia, schizophrenia, delusions, anxiety and agitation.

His attending physician had written orders permitting him to leave the facility on a temporary pass, if he left with a responsible party and if he was taking his lithium and his anti-psychotic Zyprexa.

Nevertheless he was allowed to leave by himself after he told the charge nurse he wanted to "go to the gym." He had not taken his medications that morning.

He was due back at 1:00 p.m. but his failure to return was not reported to the local police until the next a.m. He was found face down on a street with severe head trauma and taken to a local hospital.

Even though a CT revealed intracranial bleeding he was allowed to leave the hospital AMA and died shortly thereafter.

The family's civil lawsuit alleged neglect of a dependent adult by the nursing home for allowing him to leave in violation of his physician's orders and for not reporting his failure to return promptly so the police could start looking for him. He had left the facility unsupervised once before.

The family's lawsuit also faulted the hospital for failing to realize he was gravely disabled due to his head injury and his psychiatric issues and failing to institute an involuntary mental health hold.

The California Court of Appeal ruled there were grounds for the family's lawsuit. **Chaidez v. Paramount, 2012 WL 4713093 (Cal. App., October 4, 2012).**

Whistleblower: Court Finds A Legal Basis For Nurse's Case.

Soon after the hospital opened a cardiac care unit the overall census of critically ill and mechanically ventilated patients increased to the point that these patients were being placed on medical surgical floors due to an insufficient number of critical care and intensive care beds.

An LPN with twenty-plus years at the hospital began to complain through the union about the increasing workloads for the nurses caused by this practice and the increasing safety risks for the patients posed by insufficient numbers of nurses caring for these patients. Many of the med/surg nurses on non-critical floors were relatively inexperienced new graduates.

LPN Fired After Mix-Up With Physicians' Orders

A physician ordered a new PICC line for one of her patients and the LPN entered it on the computer system. A different physician then ordered it held. The LPN told a unit secretary who had floated in that day from pediatrics to make the change on the computer, but the unit secretary did not do it and the PICC line was erroneously started anyway. The LPN was fired.

The LPN sued the hospital. In her lawsuit she claimed her termination over a mix-up that was not necessarily her fault after twenty-four years of exemplary service was a pretext to cover up a retaliatory motive on the part of hospital management.

She insisted she had the right to legal protection as a whistleblower for her complaints about quality of care and patient safety issues.

New York Supreme Court, Appellate Division, agreed that the LPN's case stated valid grounds for a whistleblower lawsuit.

Her lawsuit pointed to a specific section of the New York Code of Rules and Regulations which requires a hospital to provide nursing services that meet the care needs of all patients in accordance with established standards of nursing practice and to provide sufficient nurse staffing to insure immediate availability of a professional nurse for bedside care.

The LPN could not be made a victim of employer retaliation for complaining about a violation of the law. **Minogue v. Good Sam. Hosp., __ N.Y.S.2d __, 2012 WL 4513064 (N.Y. App., October 3, 2012).**

The state's Whistleblower Law gives legal rights to an employee who discloses or threatens to disclose an employer activity or practice which is in violation of a law, rule or regulation and which creates a substantial and specific danger to the public health.

A health care employee also benefits from a statute which gives a healthcare employee the right to sue his or her employer or former employer for damages if the employee suffers retaliation for disclosing or threatening to disclose to a supervisor or to a governmental agency an activity, policy or practice which the employee believes in good faith constitutes improper quality of patient care, that is, a violation of a law, rule, regulation or agency ruling, where the violation relates to a substantial and specific danger to public health or safety or the health of a specific patient.

State and city rules and regulations require hospitals to maintain nursing services to meet patients' needs and to provide for immediate beside care by a professional nurse for any patient who may require such care.

NEW YORK SUPREME COURT
APPELLATE DIVISION
October 3, 2012

Discrimination: Court Finds Basis For Nurse's Case.

The nurse had been an insulin-dependent diabetic since age five. She had been working at the hospital eighteen years, taking short breaks to test and to inject insulin and to eat snacks, which did not seem to interrupt or affect her work.

She began to suspect the hospital had drawn up a list of old and sick nurses to weed out and that she was on the list.

She was approached by the physician chief of surgery and candidly answered the questions he had about a particular physician. After the subject physician complained to hospital management the nurse was fired. She sued for age and disability discrimination.

The reason given for the nurse's termination was that she went outside the hospital's set chain of command for nursing advocacy.

However, the chain of command policy did not apply to what actually happened.

UNITED STATES DISTRICT COURT
VIRGINIA
October 12, 2012

The US District Court for the Western District of Virginia found grounds for the nurse's lawsuit.

The hospital's policy for nursing advocacy required a nurse to go to up the chain of command to the charge nurse, nurse unit manager and house nursing supervisor before any of the medical staff.

It would be a clear breach of the chain of command policy for a nurse to go straight to the chief of surgery with concerns about a physician's performance, but that did not happen. He came to her and she was not out of line to speak with him.

The hospital's stated reason for the nurse's termination was so transparently wrong that discrimination was most likely the true underlying motivation, the Court said. **Horne v. Clinch Valley Med. Ctr., 2012 WL 4863791 (W.D. Va., October 12, 2012).**

Pregnancy Discrimination: LPN's Case Dismissed.

Although she was licensed as an LPN, being an LPN was not a requirement for her position as a client services supervisor for an agency which provided in-home, non-professional personal services for its clients.

When she became pregnant she started to worry that her pregnancy would not be accepted by her supervisors and she would be terminated.

In fact she was terminated. It happened after she visited the home of a one-hundred-year-old potential new client and completed the full gamut of admissions paperwork only by speaking with the family and never even seeing, speaking with or conducting any hands-on assessment of the elderly lady who was lying in her bed in the bedroom and had already died.

There was no direct evidence the company discriminated against the LPN because she was pregnant.

The company generally allowed pregnant employees to continue to work.

UNITED STATES DISTRICT COURT
INDIANA
October 2, 2012

The US District Court for the Northern District of Indiana dismissed the LPN's pregnancy discrimination case.

The Court went over the grim details of the botched assessment of the already-expired client and concluded the LPN's conduct was a sufficiently outrageous example of misconduct to justify termination for cause and to overcome any accusation of illegal discriminatory intent.

There was nothing suspicious about the timing of her firing five weeks after her supervisor learned she was pregnant. Her subjective feeling her duties were being increased and her supervisors were looking at her more closely proved nothing, the Court said. **Hitchcock v. Angel Corps., 2012 WL 4513922 (N.D. Ind., October 2, 2012).**

Pregnancy Discrimination: CNA's Lawsuit Dismissed.

The facility's policy is legitimate only to recognize medical restrictions from work-related injuries as the basis for allowing an employee to continue working on light-duty status.

The facility's policy was applied in practice on a non-discriminatory basis.

A non-pregnant male CNA was treated the same as the pregnant CNA in this case.

He was taken off the active roster after his physician imposed a lifting restriction for his non-work-related injury and was offered up to twelve weeks of unpaid Family and Medical Leave Act leave until his physician cleared him as medically able to return to work without his lifting restriction.

It is irrelevant that, unlike the female CNA who filed this lawsuit, her male CNA co-worker chose to accept the medical leave offered to him and came back to work when his physician cleared him instead of forfeiting his employment.

Pregnancy is not recognized by the courts as a disability for purposes of the Americans With Disabilities Act. The allegations of disability discrimination raised in this lawsuit thus have no legal foundation.

UNITED STATES DISTRICT COURT
MICHIGAN
September 27, 2012

Her supervisors learned she was pregnant when the CNA declined to take her annual TB test because she was pregnant.

To continue to be scheduled for work shifts at the nursing home she was told she had to obtain a note from her own physician stating whether or not she could work as a CNA without any restrictions. Her physician faxed back a note stating that she could work, with a restriction against lifting more than 50 lbs.

The CNA was taken off the active roster and offered twelve weeks of unpaid Family and Medical Leave Act leave. She declined the offer and was terminated.

She sued her former employer for pregnancy and disability discrimination. The US District Court for the Eastern District of Michigan dismissed her case.

Facility's Policy Was Neutral As To Pregnancy

The facility's policy was that all direct care personnel had to be able to work without any medical restrictions unless the restriction was from a work-related injury. Light duty was made available only for a work-injury-related medical restriction.

The Court first looked at a direct care worker's duties in a nursing home, assisting patients in and out of bed and wheelchairs, helping them shower and assisting them to the floor when they fell while ambulating, etc. It was legitimate and non-discriminatory not to let a CNA work with a 50 lb. lifting restriction, the Court said.

The CNA's arguments in support of her lawsuit pointed to a non-pregnant male aide who was not terminated after he became unable to work due to a 50 lb. lifting restriction from a non-work-related injury.

However, his situation actually proved the non-discriminatory nature of the facility's policy. He was treated exactly the same, except that he accepted the unpaid medical leave offered to him and returned when he was able to work without restriction, rather than forfeiting his employment.

The Court also noted that pregnancy simply is not recognized by the courts within the definition of disability for purposes of the disability discrimination laws. **Latowski v. Northwoods Nursing Ctr., 2012 WL 4475542 (E.D. Mich., September 27, 2012).**

EMTALA: Court Sees Nothing Wrong With Nurse's Screening In The E.R., Dismisses Case.

The patient came to the E.R. and was diagnosed with a subdural hematoma. He was admitted, surgery was performed and he was discharged six days after his initial presentation in the E.R.

The legal case arose out of a visit four days later back in the same E.R. The E.R. triage nurse thought his headache was not serious, classified him as non-emergent, had him seen briefly by the E.R. physician and then he was sent home.

The next day he went to a different hospital's E.R. and was diagnosed with a post-surgical infection which was treated at that hospital.

The patient sued the first hospital for violation of the Emergency Medical Treatment and Active Labor Act (EMTALA). The US Court of Appeals for the Fifth Circuit (Texas) dismissed the case.

Hospital's Triage Procedures Upheld

The hospital treated this patient basically the same as it would have treated any other patient. The hospital's policy was that an experienced triage nurse would assess the patient promptly and determine the order in which the patient will receive treatment, based on the apparent acuity of the individual's presenting complaints.

The hospital did not have a policy that a post-surgical patient who returned to the E.R. had be seen or evaluated by the patient's own surgeon or by a surgeon or by a specialist physician or given extensive diagnostic testing just for being a post-surgical patient. Assessment of the presenting complaints was the relevant factor.

The hospital's policies did not disallow the E.R. physician from relying to a great extent on the triage nurse's assessment in deciding the depth which would be pursued in medically screening the patient.

Thus the E.R. nurse and the E.R. physician could not be faulted for not following policies or procedures which did not in fact exist in this hospital's E.R.

The Court cautioned that there can be liability for common-law malpractice even where the EMTALA is not violated, but that was not raised by the patient as an issue in this case. **Stiles v. Tenet Hosp., 2012 WL 4762212 (5th Cir., October 8, 2012).**

The US Emergency Medical Treatment and Active Labor Act (EMTALA) says that when an individual presents at a hospital emergency room requesting treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether an emergency medical condition exists.

If the screening reveals such a condition, the individual must be provided with stabilizing treatment or be transferred to another facility according to the strict guidelines imposed by the EMTALA and supporting Federal regulations.

Whether a medical screening examination in the E.R. is appropriate for purposes of the EMTALA is judged by the degree to which it was performed equitably in comparison to other patients with similar signs and symptoms.

If the patient's condition is erroneously determined to be non-emergent and handled on that basis, that may be malpractice, but it does not violate the EMTALA.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
October 8, 2012

Labor & Delivery: Court Relates Infant's Injuries In Part To Nursing Negligence.

The infant was born with cerebral palsy caused by hypoxic ischemic brain injury at birth and died at age seventeen months.

There is nothing in the chart that a nursing assessment was done and documented on admission to the labor and delivery unit as to the fetal presentation.

That negligent omission was one factor that delayed the cesarean after the membranes ruptured.

SUPERIOR COURT OF PENNSYLVANIA
October 5, 2012

The jury awarded more than two million dollars to the parents from the hospital and the obstetrician.

The Superior Court of Pennsylvania upheld the verdict. The Court ruled that the family's medical expert's testimony was a valid basis for the jury to impose liability on the hospital for a negligent omission by the labor and delivery nurses.

According to the family's expert, there was nothing to be found in the chart as to a nursing assessment of the fetal presentation, which was transverse in this case.

Had discovery and documentation of the transverse presentation been a part of the admitting nursing assessment, the attending obstetrician and others would have seen the urgency of getting the cesarean done quickly once the membranes spontaneously ruptured, the family's medical expert went on to say in his testimony.

The family's medical expert was also critical of the fact that the attending obstetrician never documented his own determination of the transverse presentation in the chart prior to the cesarean. **Hatwood v. Hosp. of Univ. of Penna., __ A. 3d __, 2012 WL 4748194 (Pa. Super., October 5, 2012).**

Emergency Room: Hospital Admitted The Patient For Care, EMTALA No Longer Applies.

The patient came to the hospital's emergency department ready to deliver her third child.

She had been diagnosed with pre-eclampsia with her second pregnancy and this time the E.R. diagnoses included pre-eclampsia, eclampsia and HELLP syndrome.

The E.R. physician admitted her to the hospital and wanted to send her to the ICU, but the ICU was full. She was not transferred to another hospital with available ICU capability. The patient died in the hospital shortly after giving birth.

The US District Court for the Northern District of California went over the complicated regulations that apply to emergency medical screening, medical stabilization and appropriate transfers of unstabilized patients from a hospital's emergency department other hospitals.

The Court did that, however, only to point out that 2003 amendments now incorporated into the regulations state that the regulations no longer apply once the patient has been admitted as an inpatient.

After a hospital admits an E.R. patient as an inpatient in good faith for treatment, the complex requirements of the US Emergency Medical Treatment and Active Labor Act no longer apply to decisions made regarding the patient's care.

UNITED STATES DISTRICT COURT
CALIFORNIA
October 10, 2012

Current EMTALA Regulations
Medical Screening / Stabilization

Congress passed the Emergency Medical Treatment and Active Labor Act (EMTALA) to prohibit hospital emergency rooms from refusing to treat indigent and uninsured patients or transferring patients to other hospitals without first stabilizing their conditions.

When an individual requests treatment in a hospital emergency department, the EMTALA requires the hospital to provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including available ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists.

If the hospital determines that the individual has an emergency medical condition, the hospital must provide either -

(A) Within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) For appropriate transfer of the individual to another medical facility in accordance with the requirements of this section.

A hospital stabilizes a patient by providing sufficient treatment that the patient's condition is not likely to materially deteriorate during or as a result of transfer or, where the emergency medical condition is a pregnant woman having contractions, by delivering the child.

If the hospital admits the individual as an inpatient for further treatment, the hospital's obligation under this section ends. (Emphasis added.)

Current EMTALA Regulations
Appropriate Transfer

The hospital may not transfer the individual unless -

(A)(1) The individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under this section and the risks of transfer, in writing requests transfer to another facility; and

(ii) A physician has signed a certification that based on the information available at the time of the transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual, and in the case of labor, to the unborn child from effecting the transfer, or

(iii) If a physician is not present in the emergency department at the time of transfer, a qualified medical person such as a nurse has signed a certification after a physician in consultation with the qualified medical person has made the determination described above and subsequently countersigns the certification.

(B) The transfer is an appropriate transfer in which the receiving facility

(i) Has space available and qualified personnel for the treatment of the individual, and

(ii) Has agreed to accept transfer of the individual and to provide appropriate medical treatment.

(C) In which the transferring hospital sends to the receiving hospital all medical records relating to the emergency condition and the informed consent.

(D) In which the transfer is effected through qualified personnel and transportation equipment, including life support.

If a hospital has screened an individual and found the individual to have an emergency medical condition, and admits that individual as an inpatient in good faith in order to stabilize the emergency medical condition, the hospital has satisfied its special responsibilities under this section with respect to the individual. (Emphasis added.)

The important but somewhat circular definition of the term "inpatient" is an individual who is admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services with the expectation that he or she will remain at least overnight and occupy a bed even though the situation later develops that the individual can be discharged or transferred to another hospital and does not actually use a hospital bed overnight.

No EMTALA Violation Found
Lawsuit Dismissed

According to the Court, this hospital did the very best it could under the circumstances by admitting the patient in good faith as an inpatient and trying to care for her within its existing capabilities available on the day in question. **Lopez v. Contra Costa Reg. Med. Ctr., 2012 WL 4845610 (N.D. Cal., October 10, 2012).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Narcotics Diversion: Rehabilitated Nurse Regarded As Active Drug Addict, Disability Discrimination Lawsuit Upheld By Court.

During the mid-1990's a nurse who had become addicted to morphine was caught diverting narcotics and was fired.

She entered a program run by the state board of nursing. After several months of drug treatment she obtained nursing employment that was compatible with her restricted license which did not allow access to narcotics. While she worked she remained under board of nursing supervision for three years. She also completed a deferred prosecution with the local criminal court. Criminal charges for stealing narcotics from her former employer were dropped.

Several years later while working on an inpatient psychiatric unit she began to have medical issues with lupus, spinal stenosis and depression.

Her supervisors knew that she had a history of addiction and diversion and also knew that she had successfully completed a supervised program with the board of nursing years earlier.

Gossip began to circulate that she was once again diverting and abusing narcotics.

A number of charting errors fueled her supervisors' suspicions that the rumors were true that she was again in trouble with addiction. She blamed the charting errors on her medical issues which were making it harder for her to focus and concentrate. She expressly denied drug use.

Testing for Narcotics Was Negative

She was told to report for a drug test. The drug test was negative. She was terminated five days later nevertheless.

The US District Court for the Western District of North Carolina ruled the nurse had grounds for a disability discrimination lawsuit.

Successfully rehabilitated drug addicts and recovered alcoholics are considered to have a disability that is protected by the Americans With Disabilities Act.

Adverse employment action taken against an individual with a disability who is regarded as having an impairment like active drug addiction is considered discriminatory if the impairment does not in fact exist. **Scott v. Presbyterian Hosp., 2012 WL 4846753 (W.D.N.C., October 11, 2012).**

Forged Medication Order: Nurse's Age, Disability Discrimination Lawsuit Dismissed By Court.

An RN was terminated after she gave IV 50% dextrose solution to a patient without a physician's order and forged a physician's signature to an order to obtain it from the pharmacy.

The nurse sued her former employer for alleged age and disability discrimination and alleged retaliation because she requested Family and Medical Leave Act leave from her job to have surgery.

The US District Court for the Southern District of Ohio dismissed her case.

The nurse had no direct evidence that discrimination played any part in the motivation behind her termination.

The hospital had legitimate, non-discriminatory grounds to terminate the nurse for conduct that was clearly illegal under state law.

The law prohibits nurses from making medical diagnoses and from prescribing medications.

The nurse not only administered IV 50% dextrose solution without a physician's order, she signed a physician's name to a bogus order to obtain it from the pharmacy.

There were legitimate, non-discriminatory reasons for firing the nurse.

UNITED STATES DISTRICT COURT
OHIO
September 27, 2012

The Court pointed out that after the episode occurred it was fully investigated by her nurse manager who conferred with human resources and senior nursing management before they collectively decided to terminate the nurse for misconduct.

The Court refused to look into the nurse's argument that she was only following the hospital's own protocols. The hospital could not possibly have a protocol on its books for nurses that went contrary to state law.

There was no similar situation available for comparison involving a younger nurse at the hospital who was not fired for a medication error, that is, one who had gone so far as to forge a physician's signature on falsified documentation. **Kapp v. Jewish Hosp., 2012 WL 4483368 (S.D. Ohio, September 27, 2012).**