LEGAL EAGLE EYE NEWSLETTER

October 2005 *For the Nursing Profession* Volume 13 Number 10

Acute Care, Hypotensive Patient: Jury Faults Nurses, Fall Caused By Nursing Negligence.

The seventy-nine year-old patient was in the hospital recovering after cardiac catheterization.

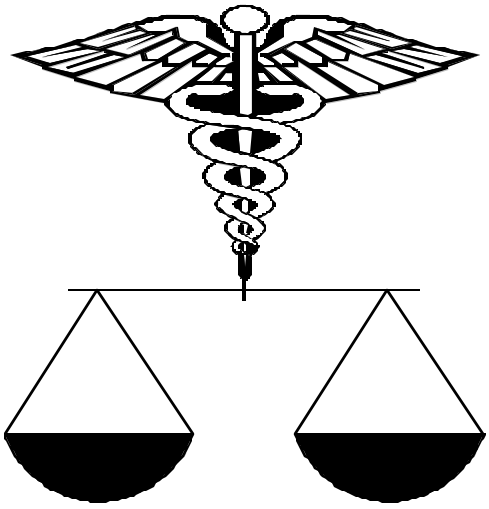
Her recovery was well underway when, early the morning she was scheduled to be released from the hospital, she fell and broke her hip while a nurse was assisting her to the restroom.

During the night before she fell her care was provided by a nurse temporarily reassigned from another unit who was not entirely familiar with the specialized needs of and treatment for cardiac patients.

According to the court record, the patient was on a nitroglycerine drip running at 90 micrograms per minute. Her night nurse, after consulting with his supervising nurse, but without getting authorization from the physician, increased the drip to 100 *u*g per minute because her systolic pressure continued to exceed the upper limit of 150 which had been set by the physician.

The nurse recorded an episode of confusion during the night but did not inform the physician about this aspect of his patient's recovery.

First thing in the morning another nurse came on duty, but the nurse had not been fully briefed about the patient's condition and the events of the previous night.



The lawsuit alleged the nursing staff did not conform to the legal standard of care.

The allegations included under-trained staff, failure to communicate with the physician, failure to communicate between shifts, failure to review the chart before assuming care and failure to assess the need for and to give competent assistance.

MISSOURI COURT OF APPEALS
August 23, 2005

The husband arrived, believing he would be able to take the patient home. He rang for a nurse to help her to the restroom. Without checking the patient's chart or taking the patient's blood pressure the new day nurse helped the patient stand from a sitting position and had the patient push her own IV pole, a tripping hazard, as they proceeded toward the restroom.

Before they reached the restroom the patient fell. At that moment the nurse was not in physical contact with the patient. The patient soon arrested, was revived, went back to the cath lab, arrested again, and died.

Nursing Negligence Found
Cause of Death Disputed

The jury ruled the nurses were negligent and were responsible for her fall and the jury awarded damages against the hospital for her death.

The Missouri Court of Appeals, however, overruled the jury's award of damages and ordered a new trial. Even assuming the nurses were negligent the jury was confused by misleading statements from the lower-court judge linking the patient's arrests and death to her fall, a dubious conclusion with her cardiac history. **Woodward v. Research Medical Center, __ S.W. 3d __, 2005 WL 2007878 (Mo. App., August 23, 2005).**

Inside this month's issue ...

October 2005
New Subscriptions
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Military Service: Nurse Sues For Employment Discrimination.

A nurse had served in the US Army Reserve as a nurse for many years. Over the years his hospital employer consistently met its legal obligation to grant him leave for military training exercises.

He applied for a leave of absence for a non-military clinical internship and then after a complicated series of events resigned his nursing position.

The US Uniform Services Employment and Reemployment Rights Act was enacted by Congress to encourage participation in the military reserves.

The Act prohibits denial of any benefit of employment to members of uniformed services based on membership or performance of military reserve service.

Able employees are entitled to full reinstatement in their civilian jobs after periodic reserve service.

UNITED STATES DISTRICT COURT
PUERTO RICO
September 2, 2005

The US District Court for the District of Puerto Rico acknowledged that his employer had no right to discriminate against him in any way for being a member of the reserves or for taking leave for military training and service.

However, the court believed the evidence was inconclusive that the dispute over a leave for a civilian clinical internship had any relationship to his military reserve status, and dismissed the case. **Figueroa Reyes v. Hospital San Pablo Del Este, __ F. Supp. 2d __, 2005 WL 2124619 (D. Puerto Rico, September 2, 2005).**

Needlesticks: FDA Will Not Change Rules Re Sharps.

In June, 2002 the US Food and Drug Administration (FDA) announced it was considering a petition filed by the Service Employees International Union and the Public Citizen's Health Research Group to ban certain non-needleless IV infusion equipment, butterfly syringes, IV catheters and blood collection devices as unreasonably hazardous to healthcare workers.

See *Needlesticks: FDA Considering Petition To Ban Unsafe Sharps,* Legal Eagle Eye Newsletter for the Nursing Profession (10)8, Aug. '02 p.3.

On September 8, 2005 the FDA published a notice in the Federal Register stating it will not be taking further action in this area at this time, believing existing FDA and OSHA rules are adequate.

We have placed the FDA's notice on our website at http://www.nursinglaw.com/sharps2005.pdf.

FEDERAL REGISTER September 8, 2005
Pages 53326 – 53328

Our Videos Now Available On DVD.

Our instructional videos on legal issues for nurses are now available on DVD disc (DVD-R) as well as VHS tape.

Go to www.nursinglaw.com/videos.htm for more information, including 5-minute previews which can be viewed on your computer over the Internet. (Windows Media Player and a high-speed Internet connection are recommended.)

We currently have seven titles available, covering legal liability issues in the following areas: Basics of Documentation, Do's & Don'ts of Documentation, Restraints, Falls, Employment Issues, Labor & Delivery and Pressure Sores/Decubitus Ulcers.

Confidentiality: Statements To Nurse While In Police Custody Are Privileged.

The driver in an early-morning one-vehicle accident was arrested for drunk driving and taken to a hospital for treatment of his injuries.

During his conversations with the hospital's emergency-room triage nurse he made several incriminating statements about his involvement in the accident.

Later on in court the driver's attorney argued that his client's statements to the nurse came under the so-called doctor/patient privilege and could not be used against him in court.

Unless the patient waives the privilege, a person licensed to practice medicine [or] registered professional nursing ... shall not be allowed to disclose any information acquired in attending a patient in a professional capacity ... which was necessary to ... act in that capacity.

JUSTICE COURT
MONROE COUNTY, NEW YORK
August 8, 2005

The Justice Court, Monroe County, New York agreed.

The nurse was obligated by the medical privilege not to reveal any information gained from her patient in the course of rendering treatment to him.

Further, the patient's statements to the nurse which were overheard by the police officer who was guarding the patient could not be repeated in court by the police officer. Medical confidentiality is strictly protected by law. **People v. Jaffarian, 799 N.Y. S.2d 733 (N.Y. Justice Court, August 8, 2005).**

Asthma Attack: Patient's Profound Brain Injury Tied To Medical, Nursing Negligence.

The US District Court for the Middle District of Florida awarded nearly $6,000,000 to a pediatric patient and his parents for negligent treatment of the patient's asthma attack in the emergency room at a US military hospital facility.

The US Federal Tort Claims Act permits lawsuits against United States medical facilities to the same extent and under the same fundamental legal principles that apply to other medical facilities in the state where the incident occurred. One notable difference is that United States medical personnel cannot be sued personally for their own negligence, quite unlike nurses, physicians, etc., in private-sector medical facilities.

Acute Asthma Attack
Requires Prompt Assessment, Action

According to the court, the nine year-old patient was correctly triaged as an urgent case when his parents brought him into the emergency room suffering from an acute asthma attack.

Within a couple of minutes his mental status changed from cooperative to combative, an ominous indication of oxygen deprivation. Although required to be given no later than ten minutes after ordered, the nurses delayed more than a half hour administering an albuterol treatment and giving methylprednisone and magnesium sulfate. The court said unequivocally that this lapse by the nurses fell beneath the legal standard of care.

A patient suffering an asthma attack must have a triage assessment for oxygenation status.

Medications such as albuterol, methylprednisone and magnesium sulfate, if ordered by the physician, must be given by the nurse at once.

If these medications are not immediately effective in reversing the asthmatic attack and restoring the airway the patient will need to be rapidly intubated, bagged and/or ventilated.

Rapid sequence intubation must take no longer than five minutes, the goal being to restore oxygenation through an airway before cardiac arrest and brain damage can occur.

During the intubation process it must be kept in mind that the succinylcholine is paralyzing the lungs, requiring rapid intubation and bagging.

UNITED STATES DISTRICT COURT
FLORIDA
August 26, 2005

Effectiveness of Medications
Must Be Ruled Out Before Intubation

The court noted that the overall goal is to restore oxygenation through an airway as soon as possible. Medications may not be effective for that purpose. If they are not effective at once in reversing the asthma attack so that the constricted airway will open by itself, the patient has to be intubated, yet the patient should not be intubated unless the medications have been tried and proven unsuccessful.

The patient became even more combative and pulled out his IV, which should have been interpreted as showing further decline in oxygenation status and pointing to the need for rapid sequence intubation.

Once ordered, rapid sequence intubation must be done immediately. The intubation in this case was not accomplished until more than a half hour after the methylprednisone was given, almost one hour after arrival in the emergency room.

According to the court, during rapid sequence intubation the succinylcholine must be given by a physician and not by a nurse. However, the court saw one bright spot in the whole scenario in that it was a nurse who finally was able to get the endotracheal tube situated properly, albeit thirty-two minutes after rapid sequence intubation was started. **Turner v. US, 2005 WL 2077297 (M.D. Fla., August 26, 2005).**

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Drug Addiction/Alcoholism: Federal Court Explains Hospital Employees' Legal Rights.

An African-American hospital unit secretary was fired for excessive tardiness, failure to meet established standards on the unit for prompt transcription of physicians' treatment orders into charts and for one episode of use of profane language in a patient-care area. She had held her same position at the hospital for more than twenty-six years.

She sued for race discrimination, disability discrimination and for violation of her rights under the US Family and Medical Leave Act (FMLA).

The US District Court for the Western District of New York dismissed her claim of race discrimination, finding that her errors and omissions on the job were sufficiently sub-standard to overcome any inference of racial bias as her supervisors' motive in terminating her.

However, as to her disability-discrimination and FMLA claims related to her cocaine addiction and her alcoholism, the court could only discuss the legal parameters which would apply to the case and leave the case open for a final ruling after the underlying factual evidence has been developed more fully.

Chemical Dependency Can Be a Legal Disability

In general terms the law protects an employee from disability discrimination if the employee, number one, has a disability and, two, if the employee is nonetheless qualified for his or her position, with or without reasonable accommodation.

Chemical dependency, that is, drug addiction and/or alcoholism, is a disability. However, the law carves out a major exception to the general rule of protection from disability-discrimination for employees who are currently abusing drugs and/or alcohol.

Errors and omissions on the job, even if they can be traced related to the employee's disability, i.e., the employee's chemical dependency, if they are sufficiently egregious, can be grounds for termination without employer liability for disability discrimination.

Employees suffering from drug addiction and/or alcoholism have certain legal rights.

Chemical dependency is considered a disability protected to some extent by the US Americans With Disabilities Act and the US Rehabilitation Act.

Chemical dependency can qualify as a serious health condition which may entitle some employees to medical leave under the US Family and Medical Leave Act (FMLA).

Employees are entitled to be informed by their employers of their rights under the FMLA, including the right to medical leave if their need for treatment for chemical dependency fits the definition of a serious health condition.

An employee who has an ongoing drug or alcohol problem cannot suffer discrimination for opting to exercise his or her rights under the FMLA.

An employee currently abusing drugs or alcohol is not protected from disability discrimination and can be fired for errors and omissions related to substance abuse.

UNITED STATES DISTRICT COURT
NEW YORK
September 1, 2005

The law looks to the moment of actual termination to determine whether an employee is a current drug or alcohol abuser, not to the time the employee committed the errors or omissions in question for which the employer has sought to terminate the employee.

The rationale is to protect employees who voluntarily elect to seek treatment or rehabilitation. An employee cannot suffer consequences for asking for FMLA leave for a chemical dependency problem. An employee who successfully completes a treatment or rehab program or supervised program of recovery, and who is no longer currently abusing drugs or alcohol at the time of termination, would be considered a victim of disability discrimination, even if the employee's past errors or omissions would have justified termination and the employee was actively abusing substances at the time of the errors and omissions.

The court acknowledged that an understanding of the legal rules in this area might motivate employers to terminate substance abusers right away when errors or omissions justifying such action come to light. That course of action is allowed under the disability discrimination laws and the FMLA.

An employee can be terminated for abusing illegal drugs, even without any relation to errors or omissions on the job, if the employer had an established policy to that effect, applied in a uniform, non-discriminatory manner, which had been communicated to all employees.

Family and Medical Leave Act

Employees who are eligible for medical leave under the FMLA have extensive rights *vis a vis* leave and also have the right to sue if they are not fully informed of their FMLA rights by their employers.

The employee in this case had been on the payroll more than one year and had worked more than 1250 hours in the previous year, satisfying the threshold requirement for FMLA eligibility.

(Continued on next page.)

Drug Addiction/Alcoholism: Court Discusses Hospital Employees' Legal Rights (Cont.)

(Continued from previous page.)

US Department of Labor regulations for the FMLA explicitly state that chemical dependency is grounds for an eligible employee to take medical leave, assuming the employee's (or a family member's) chemical dependency meets the criteria of a serious health condition.

The regulations further require employers to notify their employees of their rights under the FMLA.

The upshot is that an employee suffering from chemical dependency might neglect to apply for FMLA leave to enter treatment or rehab, not knowing that he or she has the right to ask for medical leave for that purpose, and then commit errors or omissions justifying termination, or be caught using illegal drugs on or off the job contrary to employer policy, and be terminated, and sue because the employer failed to notify the employee of his or her FMLA rights. **Gilmore v. Univ. of Rochester Strong Mem. Hosp., __ F. Supp. 2d __, 2005 WL 2105788 (W.D.N.Y., September 1, 2005).**

US Dept. of Labor Regulations – Title 29, Code of Federal Regulations

Sec. 825.300 What posting requirements does the Act place on employers?

(a) Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed ... a notice explaining the Act's provisions. ... The notice must be posted prominently where it can be readily seen by employees and applicants for employment.

Sec. 825.301 What other notices to employees are required of employers under the FMLA?

(a)(1) If an FMLA-covered employer has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning FMLA entitlements and employee obligations under the FMLA must be included in the handbook or other document.

Sec. 825.112 Under what kinds of circumstances are employers required to grant family or medical leave?

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(g) FMLA leave is available for treatment for substance abuse provided the conditions of Sec. 825.114 are met.

However, treatment for substance abuse does not prevent an employer from taking employment action against an employee.

The employer may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment.

However, if the employer has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave.

An employee may also take FMLA leave to care for an immediate family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for an immediate family member receiving treatment for substance abuse.

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Sec. 825.114 What is a "serious health condition" entitling an employee to FMLA leave?

(a) For purposes of FMLA, "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

(1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(2) Continuing treatment by a health care provider.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

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(d) Substance abuse may be a serious health condition if the conditions of this section are met.

However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider.

On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

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Patient Abuse: Court Discusses Legal Definition, How Abuse May Be Proven In Court.

According to the record before the Superior Court of Delaware, an aide working in an assisted living facility responded to a call bell at 5:00 a.m. She provided a bed pan and left the room.

When she returned, she spilled some of the contents of the bedpan on the sheets, became frustrated and flipped the sheet over the resident's head.

The resident told the charge nurse at 7:00 a.m. as she was making her rounds checking her patients. The resident's demeanor seemed like she had been waiting to tell someone and she became more and more tearful as she related the incident.

The charge nurse reported the incident to the director of the facility who immediately went to interview the resident. The resident was still visibly upset and her demeanor was agitated, frustrated and disappointed.

The resident did not know the aide's name but from a description given by the resident all the other aides on duty at 5:00 a.m. were ruled out. Following established procedures, the aide was contacted and told not to report for work the next day, was eventually terminated for the incident and was reported to the state agency maintaining the adult abuse registry.

No Violation of Aide's Right to Due Process of Law

The court ruled the charge nurse's and director's statements about what the patient told them, along with testimony as to the patient's demeanor under the circumstances, were hearsay, but were a form of hearsay which the courts will accept as evidence. The patient does not have to come to court to testify under these circumstances, the court ruled.

An intentional act does not have to cause physical harm to be abuse. Emotional abuse by law is abuse for which a caregiver can be punished. The evidence in this case proved that abuse occurred.

Even if the patient is not physically injured, a caregiver can commit abuse by intentional conduct which promotes fear and anxiety in the patient.

A caregiver accused of abusing a patient has the Constitutional right to a fair hearing if the caregiver wishes to appeal a finding of abuse.

It must be proven that an intentional act caused physical or emotional harm.

A resident's report of abuse to a caregiver's superiors may qualify as an excited utterance, a statement relating to a startling event or condition made while under the stress of excitement caused by the event or condition.

There is an exception to the rule against hearsay for excited utterances.

An excited utterance can be related in court by another person to whom the utterance was made even though it is hearsay.

The resident does not have to be dragged into court just to safeguard an accused abuser's right to Due Process of Law.

SUPERIOR COURT OF DELAWARE
August 25, 2005

Munyori v. Division of Long Term Care, 2005 WL 2158508 (Del. Super., August 25, 2005).

EMTALA: Patient Elopes, Cannot Sue Over Screening Exam.

An eighty year-old patient was slurring her speech so her family brought her to the emergency room.

She was admitted for observation and cerebral vascular accident work-up. Over the next two days the medical work-up indicated her stroke symptoms had stabilized and she could probably go home in another day or two.

However, her physician had to spend a good deal of time and effort trying to convince her to stay in the hospital rather than leaving immediately.

Late that night the patient put on her clothes, left against medical advice and was later found by a nursing assistant in a ditch across the street from the back of the hospital. She was brought back to the emergency room, but refused to allow the triage nurse to take vital signs, assess her mental status or examine or treat a bruise from falling in the ditch. Two nurses told her family members they could not force her to stay, so the family members took her home, where she stroked.

The family sued the hospital under the US Emergency Medical Treatment and Active Labor Act (EMTALA) for not providing a medical screening exam when she was brought back and then inappropriately discharging her without treatment.

The US District Court for the Northern District of California dismissed the lawsuit. One, she was still an inpatient when she was brought back right after the elopement, not a new E.R. case.

Two, the EMTALA does not impose liability on a hospital when a person for whom there is no proof of mental incompetency refuses an appropriate medical screening examination and necessary stabilizing treatment offered in the emergency department. **Cavender v. Sutter Lakeside Hosp., 2005 WL 2171714 (N.D. Cal., September 6, 2005).**

Nurse's Latex Allergy: When Does Statute Of Limitations Run?

A nurse had to go to the emergency room after handling a latex tourniquet on August 14, 1995. She experienced fullness in her throat and urticaria. She was treated with epinephrine and steroids.

On September 20, 1995 her allergy specialist diagnosed her with a latex allergy. She sued the manufacturer of the latex tourniquet on September 8, 1997 seeking damages for her latex allergy.

The US District Court for the Western District of Pennsylvania ruled the two-year statute of limitations in Pennsylvania had already expired and dismissed her case.

A medical diagnosis is not necessarily the point in time when the statute of limitations starts running on a personal injury case.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
August 31, 2005

She had had similar problems with latex gloves in 1993 and 1994. On August 14, 1995 the E.R. physician expressly told her she was most likely having a latex-allergy flare-up, as the same symptoms she had had in the past with latex gloves started up again that day right after another nurse handed her a latex tourniquet.

The nurse signed papers, with the advice of an attorney, in 1996 for a worker's compensation case claiming the August 14, 1995 incident was a work-related latex dermatitis/allergy.

The court ruled the statute of limitations starts to run when a nurse first experiences an event that gives cause to realize that the nurse has contracted a latex allergy. **Smith v. Burrows Corp., 2005 WL 2106594 (W.D. Pa., August 31, 2005).**

Diabetic Nurse: Court Links Nurse's Termination To Incompetence, Disability Discrimination Case Dismissed.

To sue for disability discrimination, an employee must prove all of the following:

That he or she is disabled, or perceived by the employer to be disabled;

That the employer was aware of the disability;

That the employee was qualified for the position;

That the employee was terminated or faced other adverse consequences because of the disability.

Even if all of these factors seem to be present, the employer can come back with proof of a legitimate, non-discriminatory reason for the action taken against the employee.

The tack most commonly taken by employers is to point to employee incompetence that seriously threatened the employer's mission and purpose.

The employee still has one last chance, to come back and expose the employer's stated rationale as a pretext, that is, as a dishonest explanation meant to cover up a discriminatory motive.

UNITED STATES DISTRICT COURT
WISCONSIN
August 25, 2005

A hospital staff nurse who was an insulin-dependent diabetic suffered a hypoglycemic episode at work.

Following that episode and because of that episode she was no longer allowed to work as an on-call nurse in the cardiac special procedures area, an assignment for which the hospital paid a significant shift premium compared to general staff work.

The nurse was assigned as a telephone triage nurse for the hospital's cardiology outpatients, a position it was believed would not be affected by her diabetes. Her role was to take calls from cardiac patients on anti-coagulant therapy.

A patient phoned with an INR at the top end of the target range. The nurse called the physician and believed she received instructions from the physician for the patient to increase the scheduled daily coumadin dosages. The order was actually to decrease the coumadin.

According to the US District Court for the Western District of Wisconsin, a competent nurse would know that the medication dosage should be decreased under these circumstances and would question or at least clarify an order the nurse interpreted as calling for an increase.

No Disability Discrimination

The court ruled the hospital committed no disability discrimination placing the nurse on involuntary medical leave for her diabetes, a more charitable alternative to outright termination for incompetence.

First, there was no direct proof the decision to terminate her actually had anything to do with her diabetes.

Second, an episode of incompetence which directly threatened a patient's safety is grounds to terminate any nurse and would overcome any insinuation the employer was motivated by discriminatory intent, in the court's judgment. **Takle v. Univ. of Wisc. Hosp., 2005 WL 2056294 (W.D. Wisc., August 25, 2005).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Nursing Home Abuse, Neglect, Negligence: Court Upholds Arbitration Agreement.

The family of a deceased nursing home patient sued the nursing home for abuse and malpractice. The allegations included charges the nursing home was understaffed and did not treat her urinary tract infection by encouraging hydration and by seeing that the physician was notified so he could prescribe medications.

The issue before the Court of Appeal of California at this stage of the litigation is whether the Los Angeles County Superior Court was correct to order arbitration by an independent outside arbitrator instead of a jury trial. The Court of Appeal ordered arbitration.

Durable Power of Attorney For Healthcare Decisions

Before her Alzheimer's took its toll, the resident had signed a durable power of attorney for healthcare decisions. Among other things it allowed the patient's surrogate decision maker, her daughter, to give informed consent and to withhold artificial life support. The court pointed out it also gave the daughter authority to sign a binding arbitration agreement at the time of admission to the nursing home.

Arbitration Agreement Was Voluntary

The arbitration clause in the admission agreement was conspicuously marked in capital letters as voluntary and its optional nature was explained to the daughter at the time of admission before she signed anything.

An arbitration agreement forced upon a resident or the family as a condition of admission or buried in the fine print in a complicated legal document the resident or family does not understand would not be valid, the court pointed out, but that was not the case here.

Other Important Rights Not Violated

The arbitration agreement pertained only to what lawyers would call common-law malpractice issues. It specifically did not attempt to limit the resident's legal recourse under the state nursing home residents' bill of rights or her rights under Federal regulations allowing her to protest and request a hearing over an involuntary transfer from the nursing home or disputes over financial issues under the state's Medicaid program. **Garrison v. Superior Court, 33 Cal. Rptr. 3d 350 (August 29, 2005).**

Disability Discrimination: Hospitals Not Required To Allow Family Members To Use O_2 Ports.

A patient was admitted to the hospital pending placement in a hospice.

The patient's wife suffered from chronic obstructive pulmonary disease which required constant use of a portable oxygen tank. To make it easier for her to stay with her husband twelve to fourteen hours a day, her physician wrote a prescription for her to use the wall O_2 port in her husband's room.

However, the hospital denied her permission to use the O_2 port for her own needs as it was contrary to hospital policy for a non-patient to use it.

She sued the hospital for disability discrimination under the Americans With Disabilities Act (ADA). The US District Court for the Northern District of Ohio dismissed her lawsuit.

The Americans With Disabilities Act (ADA) requires hospitals, as places of public accommodation, to make their facilities accessible to family members as well as patients.

The ADA does not require hospitals to provide auxiliary aids such as oxygen, wheelchairs, walkers, special meals, medications, etc., to non-patients visiting patients in the hospital.

UNITED STATES DISTRICT COURT
OHIO
August 25, 2005

A hospital, as a place of public accommodation, must provide generalized reasonable accommodations like wheelchair ramps and handicapped parking spaces for disabled family members.

A hospital must provide more person-specific auxiliary aids like information and consent forms in Braille, sign language interpreters, etc., for disabled patients receiving care.

However, a hospital is not required to provide person-specific auxiliary aids like walkers, wheelchairs, special cafeteria meals, etc., for disabled family members. The hospital was required and did allow her to bring in her own O_2 tank but did not have to allow her to use the in-room oxygen. **Dryer v. Flower Hosp., __ F. Supp. 2d __, 2005 WL 2037364 (N.D. Ohio, August 25, 2005).**