LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

O.R. Patient Falls From Table: Doctors, Nurses Held Liable.

The New York Supreme Court, Appellate Division, ruled that the surgeon and two operating room nurses were liable, as a matter of law, for a patient falling from the table in the operating room. Ruling as a matter of law meant the court did not look at the circumstances beyond the basic fact the patient fell. They have a strict legal duty to secure an unconscious patient, the court said. **Schallert v. Mercy Hospital of Buffalo, 722 N.Y.S.2d 668 (N.Y. App., 2001).**

Unlicensed Medicine: Nurse Convicted.

A certified registered nurse anesthetist practiced on the side at her own hypnotherapy and pain-management clinic. She was an advanced nurse practitioner and a graduate of a Mexican medical school but was not licensed as a physician anywhere in the US.

Her Yellow Pages ad and office shingle claiming she was "Dr. ...." prompted a detective to go in wearing a wire posing as a patient. The Court of Appeals of Texas upheld her conviction for practicing medicine without a license. **Weyandt v. State, 35 S.W. 3d 144 (Tex. App., 2001).**

Computer Access: Employee Fired.

The New York Supreme Court, Appellate Division, ruled a pharmacist has no business letting a friend come behind the counter to look up a patient's address for personal reasons and can be fired for misconduct for doing so. **Claim of Columbo, 725 N.Y.S.2d 429 (N.Y. App., 2001).**

Broken Wheelchair: Expert Needed.

The Supreme Court of Appeals of West Virginia ruled a patient needed an expert witness to prove in court a certain wheelchair was in need of repair and a medical expert as to the nature and extent of the injuries from falling when the chair broke. **Daniel v. Charleston Area Medical Center, Inc., 544 S.E. 2d 905 (W. Va., 2001).**

Discrimination: Physician Shareholders Are Employees For Purposes Of Civil Rights Laws.

As a general rule Federal civil rights laws in the US which outlaw employment discrimination simply do not apply to employers with fewer than fifteen employees. There must be fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding year.

That does not stop state legislatures from making their state anti-discrimination laws applicable to smaller employers, but that varies widely from state to state.

An employee of an outpatient gastroenterology clinic sued for disability discrimination after she was terminated. The Federal District Court threw out the case because the clinic apparently had only twelve employees.

An employer must have fifteen or more employees or the US Americans With Disabilities Act and other Federal employment-related anti-discrimination laws do not apply.

Four physician shareholders actively engaged in conducting the business of a health clinic corporation should be considered employees for purposes of the Federal civil rights laws.

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT, 2001.

The US Circuit Court of Appeals for the Ninth Circuit agreed with the District Court that the Americans With Disabilities Act and other Federal employment anti-discrimination laws apply only to employers with fifteen or more employees.

However, the statutory definition of an employee is very vague. The Circuit Court concluded that four physician shareholders of the corporation who were actively involved in managing the clinic should be considered employees in this context, even though they might not be seen as employees in other contexts like income tax or worker's compensation. The clinic had more than fifteen employees by the Circuit Court's reckoning. **Wells v. Clackamas Gastroenterology Associates, P.C., 271 F. 3d 903 (9th Cir., 2001).**