YOUR ARTICLE IS ON PAGE TWO.

LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

July 2015 Volume 23 Number 7

Patient's Fall: Court Sees Evidence Of Faulty Nursing Assessment Of Patient's Injuries.

The sixty-nine year-old patient was admitted to a medical facility for rehabilitation after back surgery.

Her admission assessment pointed to a high fall risk based on a history of multiple falls, chair-bound status, poor vision and her current medications.

Two-person assists with transfers and extensive assistance with activities of daily living were required.

She was considered to have good potential for physical rehabilitation even with her limitations.

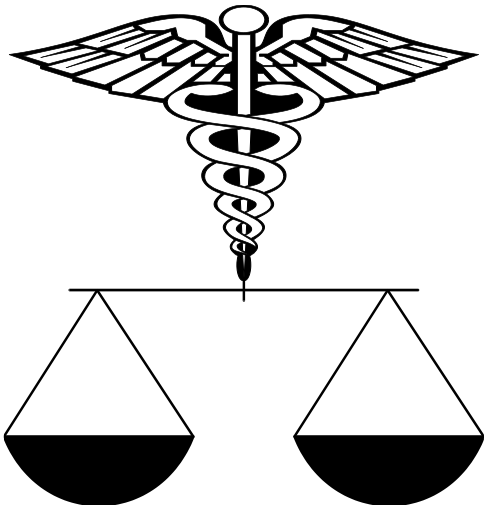
Deep vein thromboses in her legs were a major concern. Her physician ordered bed rest, Coumadin and Lovenox and INR and prothrombin time checked twice weekly, which was not done after two initial readings.

Her prothrombin time was more than twice the higher value of the normal range three days before she fell.

The day she fell the patient was found sitting on the floor next to her bed. A nurse noted that she had tried to get back into bed by herself but was unable. The physician was notified. X-rays showed no fractures.

The next day the nurses noted there were no injuries from the fall except purple bruising on her right buttock.

The day after that the patient was pale and her breathing was labored. She was sent to an acute care hospital.



The purple bruising to the right buttock after the patient fell should have alerted her nurses that this patient on anticoagulant therapy was at risk for internal bleeding from blunt-force trauma in her fall.

The nurses should have frequently monitored her vital signs, watched for signs of hemorrhagic shock and alerted her physician in time.

COURT OF APPEALS OF TEXAS
June 12, 2015

The patient died the next day. The autopsy revealed retroperitoneal hemorrhage and multiple organ failure. The cause of death was blunt force trauma associated with Coumadin therapy.

Court Accepts Family's Expert's Opinions

The Court of Appeals of Texas accepted the opinions of the patient's family's physician expert witness.

The expert's principal focus was on the nurses' faulty assessment of the patient's condition after she fell. The expert made only passing reference to allegedly inadequate fall-risk assessment and precautions.

According to the expert, the nurses should have realized that a patient on anticoagulant therapy is at risk for internal retroperitoneal bleeding after blunt force trauma to the lower back.

The patient's vital signs should have been frequently monitored for signs of shock from internal bleeding.

The nurses should have realized that a rapid pulse, labored breathing, mental confusion and increased pain are potential signs of hemorrhagic shock and alerted the physician so that transfusions to reverse anticoagulation, IV diuretics to save the kidneys and intubation could have started sooner. **Nexion v. Townsend, 2015 WL 3646773 (Tex. App., June 12, 2015).**

Inside this month's issue...

July 2015

New Subscriptions See Page 3

Organ Transplant: Patients Diagnosed With Hepatitis C.

The kidney transplant recipient and the donor both sued the hospital after each was diagnosed with Hepatitis C following the transplant.

The recipient sued for being infected with Hepatitis C from the donor.

The donor sued over a blood sample not drawn for medical diagnosis as she was told but drawn for forensic purposes after the recipient's infection was discovered, and over losing a kidney she should not have been allowed to donate.

The donor is the recipient's significant other and the mother of his child.

Institutional Failure to Communicate

The hospital's selection criteria required donors to be screened to rule out Hepatitis C along with a host of other factors being taken into consideration.

Three physicians independently reviewed the donor's chart and concluded she was suitable. However, the chart contained no documentation that donor Hepatitis C screening had been done.

Two months later, just before the actual transplant procedure, a sample of the donor's blood was sent to the lab for Hepatitis C screening specifically ordered by the transplant surgeon himself.

A report came back from the lab that the sample contained an insufficient quantity of blood for the Hepatitis C test.

The lab report was faxed to the nurse who served as transplantation coordinator. She simply entered it in the donor's chart and made a note that another sample had to be obtained and sent to the lab for Hepatitis C screening. That was never done. A week later the transplant went ahead.

Court Ruled On Discovery Issues

There has yet been no court ruling whether the hospital is or is not liable.

The Superior Court of Pennsylvania ruled the state Department of Health is not a professional health care provider and thus the particulars of its investigation do not fall within the peer review privilege and are available to the patients' attorneys.

The Court ruled the details of the hospital board's meeting to discuss the matter fall under the peer review and attorney-client privileges and will not be disclosed. **Yocabet v. UPMC, __ A. 3d __, 2015 WL 3533851 (Pa. App., June 5, 2015).**

The hospital was cited by state Department of Health inspectors for violation of Federal Medicare conditions of participation found at 42 CFR §482.90.

A transplant center must actually use its written patient selection criteria in determining a patient's suitability for placement on the waiting list or for transplantation.

If a transplant center performs living donor transplants, the center must also use its written donor selection criteria in determining the suitability of candidates for donation.

The transplant center must document in the living donor's medical records the living donor's suitability for donation.

Federal regulations do not specify the actual criteria to be used for donor selection.

This facility was given an extensive plan of correction which assigned responsibilities for different aspects to different staff members at the transplant hospital.

Nevertheless, the Department of Health is not a professional health care provider as defined in the state's peer-review privilege statute. The Department's investigation and conclusions are not privileged.

SUPERIOR COURT OF PENNSYLVANIA
June 5, 2015

Wrongful Birth: Communication Breakdown Leads To Large Verdict.

After abnormalities found in a routinely scheduled prenatal ultrasound at eighteen weeks were reported to the physician the physician told staff members to arrange a follow-up appointment.

Miscommunication resulted in failure to schedule the appointment. Having been told nothing to the contrary, the mother believed her pregnancy was proceeding normally.

Another ultrasound three months later showed clear signs of hydrocephaly in the fetus which by then was almost at term, which a nurse reported to the mother.

Further testing confirmed that the child if born alive would have profound deficits from a malformed head and brain.

Nevertheless, rather than undergo late-term termination of her pregnancy the mother elected to deliver her baby.

The breach of the standard of care by the patient's caregivers did not cause the fetus's condition.

Rather, the patient was deprived of the opportunity to make a meaningful choice whether to continue or terminate her pregnancy.

UNITED STATES DISTRICT COURT
WEST VIRGINIA
May 29, 2015

The US District Court for the Southern District of West Virginia did not entertain any serious argument the mother and child were not entitled to sue for wrongful birth.

The only meaningful question was how much to award as damages.

Nurses played significant roles in that aspect of the case. They testified as expert witnesses as to the special care this child would need at various stages in his life. Even though his troubled life would likely be cut short of normal life expectancy the Court awarded $12,116,165.00. **Simms v. US, __ F. Supp. 3d __, 2015 WL 3457519 (D. W.Va., May 29, 2015).**

Forced Psychiatric Medication: Court Dismisses Patient's Excessive Force Suit Against Nurses.

The patient had been involuntarily committed to a mental health center where she was forcibly injected with medication against her will on two separate occasions.

The first incident occurred right after the patient objected to her and other patients' snack privileges being curtailed.

Two security guards were directed by a nurse to go get the patient and escort her to an examination room. Then the nurse came in and administered the injection.

The second incident began when the patient became agitated over the fact her sitter was following her around the unit and was not giving her any personal space.

The psychiatrist was summoned by the sitter. The patient and the psychiatrist got into a heated argument about the course of the patient's treatment. The patient had been reading a book which questioned the efficacy of conventional psychiatric practice. Such reading material was not allowed on the unit.

The psychiatrist told the patient she needed to calm down. That had no effect, so the psychiatrist instructed two nurses to inject the patient with medication.

The patient was injected by one of the two nurses while the other nurse and the same two security guards as before forcibly restrained the patient.

The test for excessive force is whether the force was applied in good faith for a legitimate purpose, or was applied maliciously or sadistically to cause harm.

The court will also ask whether the action was taken for a legitimate purpose or was undertaken for purposes of punishment.

When treatment is performed by a nurse acting as a medical professional pursuant to a physician's order, the law presumes it has a legitimate purpose.

The presumption of a legitimate purpose is lost only if a substantial departure can be shown from accepted professional judgment, practice or standards so as to demonstrate that professional judgment was not the reason behind the action in question.

UNITED STATES DISTRICT COURT
ILLINOIS
June 15, 2015

The patient's lawsuit alleged excessive force and retaliation for exercise of her First Amendment right to Freedom of Speech.

The US District Court for the Northern District of Illinois dismissed the nurses from the lawsuit who were involved in the second incident, but not the nurse involved in the first.

As to the second incident it was clear from the court record that the nurses were acting under a fresh and direct order from the physician who had just assessed the patient as being agitated to the point that forced sedation was medically indicated.

The Court was not convinced that the nurses in the second incident had any reason to suspect the physician's medical judgment or any legal duty to refuse or even to discuss with him his order for forced medication with a sedative.

While carrying out ostensibly legitimate physician's orders, the law presumes a nurse's actions are legitimate medical treatment and not excessive force.

As to the first incident, the nurse's decision came quickly on the heels of a complaint from the patient. The Court saw grounds for the patient's claim that she was a victim of retaliation for speaking out.

There was nothing in the court record about a fresh assessment by a physician or a nurse that the patient's acute emotional or psychological status warranted sedation, or a physician's order, before the nurse made the decision to direct that the patient be forcibly medicated. **Webber v. Hussain, 2015 WL 3747687 (N.D. Ill., June 15, 2015).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924

Published monthly, twelve times per year.

Print edition mailed First Class Mail

Electronic edition distributed by email file attachment to our subscribers.

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Hostile Workplace: Aide's Case To Go Forward.

An African-American woman who herself had emigrated to the US from Africa worked as a patient care assistant.

She was harassed by two coworkers at the hospital who called her racially offensive names. One of them elbowed and pushed her.

She complained to her supervisor, but for three weeks the harassment still went on while the supervisor simply assured her that labor relations at the hospital was looking into the problem.

The employer is liable to an employee for a racially hostile environment created by the employee's coworker if the employer fails to take prompt and effective remedial action once the employer knows or should know about the problem.

UNITED STATES DISTRICT COURT
NEW YORK
June 15, 2015

The US District Court for the Southern District of New York found grounds for the patient care assistant's civil rights lawsuit against the hospital.

For a hostile work environment to constitute a civil rights violation for which an employee can sue, the work environment must be infected with animosity toward the employee related to a legally protected characteristic like race, nationality, religion, gender or age, rather than simple personal animosity.

In this case the coworker's remarks were sufficiently tainted with plain racial innuendo to amount to a civil rights violation by the coworker's employer, if the employer failed to take prompt and effective remedial action.

The harassment did continue at least three weeks after the victim complained to her supervisor. Generally the courts expect to see immediate employer corrective action on a complaint of racial harassment in the workplace. **Amar v. New York, 2015 WL 3754999 (S.D. N.Y., June 15, 2015).**

Worker's Comp: Nurse's Award For PTSD Upheld.

A nurse had a history of mental health treatment for post-traumatic stress disorder (PTSD) stemming from a chaotic and difficult family history that included an alcoholic and abusive father.

Her father also sexually abused the nurse's own five year-old daughter. That event was followed by a series of hospitalizations for the nurse for PTSD.

Then the nurse experienced a serious relapse of her PTSD symptoms soon after a new supervisor took over at the medical center where she worked.

The nurse went out on medical leave, never returned to her job and filed for worker's compensation benefits.

Worker's compensation does not cover emotional disability arising out of bona fide personnel action. However, there is an exception for intentional infliction of emotional harm.

APPEALS COURT OF MASSACHUSETTS
June 16, 2015

According to the Appeals Court of Massachusetts, worker's compensation does not cover emotional stress, even if it is genuinely disabling, from garden-variety on-the-job conflict with a supervisor.

However, emotional harm triggered intentionally is compensable under worker's compensation, the Court ruled.

In this case the Court saw intentional acts by the nurse's supervisor toward her which exceeded the limits of appropriate workplace conduct.

An incident in which the nurse's supervisor yelled at her was a deliberate act of humiliation intended to make the nurse the scapegoat for something that was the supervisor's responsibility, the Court said.

It also appeared to the Court that the supervisor denied the nurse bereavement leave in a time of personal hardship as a purely malicious act of retaliation. **Wicklow's Case, 2015 WL 3677763 (Mass. App., June 16, 2015).**

Conspiracy, Slander: Nurse's Suit Affirmed.

A physician who was not a hospital employee who served as staff liaison for the physicians who practiced in the hospital decided he wanted an emergency department supervising nurse fired.

The physician called for a meeting involving the nurse, the nurse's supervisor, the hospital's CEO and the hospital's HR manager. The physician voiced his objections to the nurse's conduct, particularly her frequent disputes with physicians over patient-care and non-patient-care issues in the emergency department.

Following the meeting, to keep her job the nurse was offered an improvement plan and demotion to a non-supervisory position. After she refused she quit, according to the hospital. She claimed she was fired.

The jury awarded the nurse $80,000 as damages against the hospital for conspiring with the physician to interfere with the nurse's employment relationship with the hospital.

COURT OF APPEALS OF MISSISSIPPI
May 26, 2015

The Court of Appeals of Mississippi affirmed the jury's verdict for the nurse.

The Court chose to disregard the apparent inconsistency that the verdict applied only to the hospital while the physician who was not a hospital employee was the one who slandered her.

Complaints to superiors about an employee's job performance are legally privileged from liability for slander. However, the privilege is not absolute. It is only a qualified legal privilege, meaning it does not protect disparaging information offered up with malicious intent.

The nurse did not have an employment contract with the hospital, yet that did not prevent the jury from finding the hospital conspired with the physician to interfere unjustly with the nurse's existing employment relationship with the hospital. **Southern Health v. Crausby, __ So. 3d __, 2015 WL 3541907 (Miss. App., May 26, 2015).**

Uneven Discipline: Court Sees Possible Racial Discrimination.

A fifty-nine year-old African American woman with an arthritic condition was terminated from her position as a psychiatric assistant following an episode of inappropriate acting-out by adolescent psychiatric patients under her care.

Her job was basically to serve as a sitter for a designated patient assigned to her who required constant observation to prevent self-harm from acting out.

The incident that led to her termination occurred when she volunteered for an overtime shift in the adolescent psychiatric unit where she normally did not work.

She did not intervene or report to the nurses when her designated patient went along with other adolescent patients playing around kissing and pulling down each others' pants, all of which was caught on the unit's surveillance cameras.

The minority employee alleged in her lawsuit that two non-minority coworkers who witnessed the same incident of patients' inappropriate sexual horseplay did not intervene or report it to the nurses.

The coworkers were not fired or even disciplined.

UNITED STATES DISTRICT COURT
ALABAMA
June 8, 2015

The US District Court for the Northern District of Alabama believed that the psychiatric assistant's failure to take action was a significant dereliction of duty for which she could be terminated.

However, the fact that two non-minority coworkers guilty of the same dereliction of duty during the same incident experienced no adverse consequences was grounds for the fired minority employee to sue for race discrimination. The Court found no evidence of age or disability discrimination. **Freeman v. Board, 2015 WL 3604197 (N.D. Ala., June 8, 2015).**

Narcotics Diversion: Fired Nurse Not Entitled To Protection As A Whistleblower.

The LPN pointed out that she was treated differently than her supervisor, both of whom were accused of misconduct involving drugs.

The director of nursing fired the LPN for diversion.

As to her supervisor whom the LPN accused of drug use, the director merely said she would handle the problem in her own way, which did not include firing the supervisor.

When a whistleblower is accused of misconduct and treated more harshly than another employee also accused of misconduct who is not a whistleblower, a court can see that as evidence of a retaliatory motive against the whistleblower

However, the LPN and her supervisor were not in the same situation for purposes of this analysis.

Drug diversion poses a more serious threat to patient safety. Not only is a care worker impaired, but there is also a potential for interference with patients being properly medicated.

Drug diversion is also easier to establish and prove. Inconsistencies in documentation are evidence that will stand up in court.

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT
June 10, 2015

An LPN who worked in a nursing home began reporting to the director of nursing that her immediate supervisor seemed to be under the influence of drugs while on duty.

At the same time the LPN's coworkers began reporting to the director that the LPN herself might be diverting narcotics.

Evidence of Narcotics Diversion

A coworker reported that the LPN had documented an oxycodone dose for a patient who had not been in pain for quite some time. The LPN was also documenting oxycodone for another patient whom other nurses were not medicating prn for pain. When questioned, both patients said they never got their pain medication.

Further evidence included documentation by the LPN of pain medication for a resident who had already been discharged, medication documentation that clearly was backdated by a day or two and absent or illegibly scribbled second signatures documenting the LPN's wasting of narcotics.

The LPN was fired for suspected diversion of narcotics.

She was also reported to the State Board of Nursing and admitted to the Board she was guilty of substandard documentation of narcotics.

Then she turned around and sued her former employer for violation of her legal rights as a whistleblower, having become a whistleblower, she claimed, by reporting her supervisor to the director of nursing for being under the influence while on duty.

Whistleblower Lawsuit Dismissed

The US Court of Appeals for the First Circuit (Maine) ruled that reporting her nursing supervisor for being under the influence on duty did qualify the LPN as a whistleblower, and she was fired by her employer at a point in time after she raised that allegation with the director of nursing.

However, the Court found insufficient proof that whistle-blowing was the reason for the LPN's termination. The evidence was highly compelling as to the LPN's narcotics diversion or at least as to wholly substandard documentation of her narcotics. **Murray v. Kindred, __ F. 3d __, 2015 WL 3609907 (1st Cir., June 10, 2015).**

Scope Of Practice: Discipline For Nurse Who Refused To Follow Physician's Order.

A registered nurse provided direct patient care to the residents of the licensed adult family home she owned and operated.

One resident had had prior complications from a combination of a blood thinner and an antibiotic prescribed by the patient's physician. The resident had had to be hospitalized for bleeding in her eye and on discharge from the hospital the blood thinner was ordered discontinued.

The same resident, later the same year, had to be hospitalized for fever and abdominal pain. The patient's attending physician at the hospital diagnosed an infection of a prosthetic limb implant. The hospital physician prescribed antibiotics.

Fearing a potentially fatal deep vein thrombosis in the leg, the hospital physician also prescribed enoxaparin, a blood thinner, for one month after discharge.

With the resident back in the adult family home the nurse decided not to give the enoxaparin, fearing a recurrence of the past problem with bleeding in her eye.

For nine days the nurse withheld the enoxaparin while she tried to contact the primary care physician, not the physician at the hospital who prescribed the enoxaparin. She actually gave one dose before an order came from the primary care physician to discontinue the medication.

Refusal to Give Medication Leads to Administrative Sanctions

The nurse was cited by two separate state agencies, as to her license to operate a group home and as to her license to practice as a registered nurse. She paid a fine and kept her group home license.

Her nursing license was placed on probation for two years and she was required to attend remedial nursing education classes. She appealed that ruling.

The Court of Appeals of Washington upheld the conditions placed on her nursing license. The hospital physician testified it was her medical judgment that the benefit of the medication as prophylaxis against a potentially fatal deep vein thrombosis trumped the risk of possible eye complications. **Stevenson v. State, 2015 WL 3422170 (Wash. App., May 27, 2015).**

The scope of practice of a registered nurse does not include the authority unilaterally to decline to follow a physician's order.

When a registered nurse has concerns about a physician's order, the nurse should try as soon as possible to contact the physician who gave the order to discuss the nurse's concerns.

Failure to follow the treating physician's medication order and failure to attempt to contact the treating physician placed this nurse's patient at an unreasonable risk of harm.

Although the patient in this case suffered no actual harm from missing her medication, the patient could have suffered significant harm including death as a result of the nurse's actions.

A nurse has a legal duty to communicate significant changes in the patient's condition to the physician.

In this case that meant that the nurse had to communicate to the physician who wrote the order for the enoxaparin that she was not giving it due to her concerns over complications.

COURT OF APPEALS OF WASHINGTON
May 27, 2015

Trip On Feeding Tube: Court Lets Case Go Forward.

A friend was visiting a friend who was a patient in the hospital. The patient was in bed. The patient motioned for his visitor to come around to the side of his bed.

As the visitor walked past the head of the bed the patient decided it would be better to go around to the other side of the bed, so the visitor began walking back around the near side and then the foot of the bed to get to the other side.

While she was walking around the bed the visitor's foot got tangled in a feeding tube hanging over the side. She tripped and fell and sustained personal injuries.

The visitor's lawsuit alleged that the hospital's nurses departed from the legal standard of care in the community by permitting a hazard to remain in place.

The hazard was medical tubing draped upon the floor in or around a patient's bed, which the nurses should have known created a hazard of falling for the patient's visitors.

COURT OF APPEALS OF TENNESSEE
June 15, 2015

The Court of Appeals of Tennessee ruled this case is a premises liability case and not a medical malpractice case. Thus the patient is entitled to a special grace period granted by the state legislature as to the statute of limitations after legislation was enacted to clarify the distinction between malpractice and garden-variety negligence occurring in healthcare settings.

According to the Court, the action of leaving a section of medical tubing in a dangerous place, creating a tripping hazard, does not bear a substantial relationship to the rendition of medical treatment and thus does not involve issues of professional judgment. **Coggins v. Holston, 2015 WL 3657778 (Tenn. App., June 15, 2015).**

Trip On Call-Light Cord: Court Lets Case Go Forward.

An adult child was visiting her father in the hospital and was assisting a nurse giving her father a sponge bath in his hospital bed when the daughter tripped on the call-light cord, fell and sustained personal injuries.

The daughter claimed she did not know about the cord's presence because it was covered by a blanket in a confined space at the side of the bed in a dimly lit hospital room.

The local county court of common pleas gave the hospital a summary judgment dismissing the daughter's lawsuit.

Family members visiting a patient in the hospital are considered the hospital's invitees under the law.

Invitees are entitled to be warned about hazards on the premises that may jeopardize their safety.

However, the hospital's duty to warn invitees does not apply to hazards which are open and obvious.

The open and obvious nature of readily apparent hazards serves as a sufficient warning to invitees.

COURT OF APPEALS OF OHIO
June 11, 2015

The Court of Appeals of Ohio ruled instead that it is a jury question whether the hazard created by the cord's presence was an open and obvious danger, for which the hospital's nurse had no legal duty to warn the daughter, or a hidden danger whose presence the daughter would not be expected to anticipate, thus creating a legal duty to warn her.

The hospital refused to tell daughter's attorneys the dimensions of the room and the bed and the distance between the bed and the wall, which the Court felt was not proper. **Abdelshahid v. Cleveland, 2015 WL 3647112 (Ohio App., June 11, 2015).**

Surgical Complications: Court Says Nurse Had No Legal Duty To Intervene During Procedure.

A registered nurse or certified surgical technician is not responsible for deciding whether electrohydraulic lithotripsy is or is not an accepted modality of treatment in the situation that was encountered by the urologist in this case.

It would not be within the scope of their practice to make such a decision.

A decision of that nature is considered the practice of medicine and is not an area in which a fully qualified nurse or surgical technician is expected to have relevant education.

It was not contrary to the legal standard of care for the surgical nurse or the surgical technician in this case not to attempt to intervene in some fashion when the urologist chose that modality of treatment to attempt to alleviate the unexpected problem he perceived he was facing.

It would be outside the scope of nursing practice for a nurse to attempt to interfere with the surgeon in the midst of an ongoing surgery to prevent the surgeon from doing what the surgeon deemed necessary to address unforeseen complications.

APPELLATE COURT OF ILLINOIS
May 29, 2015

A CT scan during an E.R. visit for abdominal pain revealed a stone in the patient's left kidney. She was given pain meds and was seen by a urologist.

Five days later she saw the urologist again. He recommended readmission to the hospital the next day for a diagnostic uteroscopy. While under general anesthesia in the hospital a fiberoptic tube would be inserted into her bladder and then through her ureter up to her kidney to determine the cause of her continuing pain.

For the procedure the urologist was assisted by a registered nurse and a surgical tech from the hospital. They were the only personnel in the operating room.

The urologist visualized a kidney stone which he believed could be pulled out with the basket at the end of the uteroscope. However, the stone proved to be too large and it got stuck at the junction of the ureter and the kidney.

At this point the urologist decided to use an electrohydraulic lithotripsy device to attempt to break the stone into smaller pieces. When the patient's ureter was torn the urologist aborted the procedure, leaving kidney stone fragments and items of surgical hardware inside the patient.

Two weeks later another procedure was done to remove and repair what had been left behind. Over the ensuing months the patient had additional surgeries and eventually the kidney had to be removed.

The patient died from a pulmonary thromboembolism her family's medical expert in the ensuing litigation related to surgical complications.

Surgical Nurse Not Expected to Intervene

After the urologist settled with the family the Appellate Court of Illinois dismissed the hospital from the case.

The Court accepted the hospital's nursing expert's testimony. It was not within the scope of the surgical nurse's practice to question the urologist's decision to use the lithotripsy device. Nor would it have been appropriate for her to attempt to disrupt an ongoing surgical case. **Essig v. Advocate, __ N.E. 3d __, 2015 Ill. App. (4th) 140546 (Ill. App.. May 29, 2015).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

CDC: New Vaccine Information Materials For Td, Tdap, Hib, Rotavirus.

On June 5, 2015 the US Centers for Disease Control and Prevention (CDC) announced that after November 1, 2015 all US healthcare providers when they provide Td, Tdap, Hib or rotavirus vaccinations to their patients will be required to provide adult patients or child patients' parents or guardians copies of the CDC's new vaccine information materials.

The new vaccine information materials for these vaccines will replace the interim materials for these vaccines from October, 2014.

Copies of the new vaccine information materials, copies of the CDC's existing required vaccine information materials for a long list of other routine and non-routine vaccines and instructions from the CDC for use of the materials are available from the CDC's website http://www.cdc.gov/vaccines/hcp/vis/index.html.

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NIOSH/CDC: New List Of Hazardous Drugs In Healthcare Settings.

On May 28, 2015 the US National Institute for Occupational Safety and Health (NIOSH) and the US Centers for Disease Control and Prevention (CDC) announced the availability of a document in draft form titled *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings: Proposed Additions to the NIOSH Hazardous Drug List 2016.*

According to the announcement, the draft document is intended only to communicate NIOSH's and the CDC's latest recommendations and does not have the force and effect of law.

The 2016 list of proposed additions is posted at http://www.nursinglaw.com/CDC052815.pdf.

The 2014 list of hazardous drugs to which the 2016 additions are being added is posted at http://www.nursinglaw.com/NIOSH2014.pdf.

The original 2004 guidance document is posted at http://www.nursinglaw.com/NIOSH2004.pdf.

FEDERAL REGISTER May 28, 2015
Pages 30463 - 30464

Arbitration: Facility Used Obsolete Legal Forms, Court Orders Jury Trial Of Malpractice Lawsuit.

When the patient was admitted to the hospital a family member signed an arbitration agreement on her behalf.

There was no question the patient's power of attorney gave the family member full legal authority as attorney-in-fact to sign an arbitration agreement.

After the patient's death, the same family member as personal representative of the patient's probate estate sued the hospital for alleged negligence leading to her wrongful death from her treatment at the hospital.

The lawsuit demanded trial by jury. The hospital's first line of defense was to petition the court to order the case into binding arbitration, rather than jury trial, based on the arbitration agreement signed on the now-deceased patient's behalf by her attorney-in-fact.

As consideration for the family giving up the patient's right to jury trial, the facility offered arbitration as a preplanned, efficient dispute resolution process.

That consideration cannot be provided to the family as was offered, due to the facility's use of obsolete legal forms from an organization that no longer provides healthcare arbitration services.

DISTRICT COURT OF APPEAL
OF FLORIDA
June 17, 2015

The District Court of Appeal of Florida declined to order arbitration and ruled that the case was appropriate for jury trial as requested by the estate.

In 2011 the hospital was still using a set of legal forms which called for arbitration to be conducted by and under the rules of an organization which stopped offering consumer arbitration services in 2008 after being investigated and sued for consumer fraud by the attorney general of another state.

The Court said it still conceivably could come up with a set of procedural rules and select someone to conduct an arbitration hearing.

However, the Court refused to do that and blamed its decision on the hospital for knowingly using outdated and obsolete legal forms. **Sheptak v. Transitional, __ So. 3d __, 2015 WL 3759531 (Fla. App., June 17, 2015).**