

## Nurse As Civil Juror: Court Finds No Misconduct.

A husband and wife filed suit against various parties after the wife slipped and fell and fractured her tibial plateau while a patron at a riverboat gambling casino. Dissatisfied with the verdict of only \$55,000, the couple appealed. Among other allegations they claimed juror misconduct by a nurse on their jury.

***A juror who has specialized knowledge in a certain field is not supposed to use that knowledge or share that knowledge with other jurors sitting on a civil case to influence the jurors in reaching a verdict.***

***Introduction of extraneous information on top of the evidence presented in court is considered prejudicial to the civil court's processes.***

COURT OF APPEALS OF INDIANA  
December 8, 2003

The jury awarded nothing for future medical expenses, even with solid evidence she needed future surgeries costing \$107,000, because the nurse/juror told the other jurors Medicare would cover it.

The Court of Appeals of Indiana agreed that jurors are not supposed to use their specialized knowledge they bring with them to influence the jury's decision.

However, it is common knowledge, not specialized knowledge among health-care professionals, that Medicare pays bills for eligible persons even if they have the means to pay. Furthermore, a juror with specialized knowledge is supposed to be excused and if not commits no wrongdoing sharing his or her knowledge and experience. ***Evans v. Buffington Harbor River Boats, LLC***, \_\_ N.E. 2d \_\_, 2003 WL 22883320 (Ind. App., December 8, 2003).

## Patient Falls: Court Sees It As Malpractice, Dismisses Case.

A nurse stood the patient on her feet while assisting her to get dressed so that she could be discharged from the facility where she had been undergoing rehab from a head injury.

The patient fell and fractured her leg. She sued for negligence. The local county circuit court judge dismissed her case. The Court of Appeals of Michigan agreed, in an unpublished opinion.

***The act of assisting a patient in this patient's condition, i.e., recovering from a head injury and bedridden for a prolonged period of time, to stand or to move from a bed to a chair, requires training and the exercise of professional judgment, both to minimize the patient's discomfort and to guard against further injury.***

COURT OF APPEALS OF MICHIGAN  
UNPUBLISHED OPINION  
December 2, 2003

A nurse is not necessarily negligent just because a patient falls.

While a patient at the rehab facility there were physician's orders for the nurses to have the patient get out of bed, have her sit in her chair, have her learn to ambulate with a walker and have her resume her own self-care. In assisting the patient to stand and dress the nurse was performing a professional nursing intervention. Therefore, there must be expert witness testimony as to the nursing standard of care and breach of the standard of care by the nurse. The patient in this case was unable to provide an expert so the case had to be dismissed. ***Lewandowski v. Mercy Memorial Hosp. Corp.***, 2003 WL 22850024 (Mich. App., December 2, 2003).

## Patient Falls: Lawsuit Will Go Forward.

The family members of an eighty-one year-old deceased nursing home resident appealed from the ruling of a medical review panel that exonerated the defendants from liability for the deceased's fall in a nursing home. She was found by her bed with a broken hip.

The Appeals Court of Massachusetts, in an unpublished opinion, overruled the review panel and said the family will get their day in court to present their evidence before a judge and jury and ask for an award of damages in their favor. ***Danna v. Marina Manor, Inc.***, 2003 WL 2288936 (Mass. App., December 8, 2003).

***The family of the deceased obtained a letter from a doctor stating his expert medical opinion.***

***His expert medical opinion was that the nursing home staff breached the acceptable standard of care, which caused her fall, which contributed to her premature death.***

***They knew she required supervision walking due to an unsteady gait and non-compliance with walker usage, and because she fell at home before admission.***

***There was a legal duty to use a Posey vest restraint to keep her in bed and to observe her more closely.***

***The nursing staff needed and should have sought a medical order for restraints, for the resident's safety.***

APPEALS COURT OF MASSACHUSETTS  
UNPUBLISHED OPINION  
December 8, 2003