

# LEGAL EAGLE EYE NEWSLETTER

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## Patient's Fall: Court Says Nurse, Nursing Student Were Not Negligent In Patient's Care.

The fifty-four year-old patient fell the day after left total knee replacement.

The night before she fell, hours after surgery, her nurse documented her getting up from her recliner chair without assistance, walking over and getting in bed.

A patient teaching session followed in which the nurse cautioned the patient about the hazards of getting up and moving on her own without assistance.

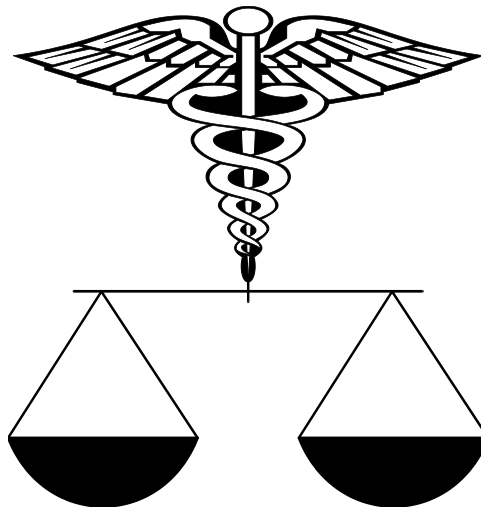
The day she fell a student nurse from the hospital's RN program was caring for her. He had completed classes in patient assessment, safety and bathing.

His supervising nurse who was assigned to the patient was in the nurses station across from the patient's room.

The nursing student offered the patient a sponge bath in bed. She agreed. He washed her upper body and then offered assistance with her perineal area. She declined. He removed her leg brace with her still lying in bed and, after twice cautioning her not to get out of bed and to ask for help if she needed it, he stepped behind the privacy curtain so she could wash herself.

When the student nurse heard a noise he pulled back the privacy curtain and found the patient on the floor. The nurse came from the nurses station right away when the student nurse called for help.

After assessing and helping the patient the nurse charted a progress note about the way the patient told her the fall occurred.



***The patient and the nurse had two different versions of the facts. The court found the nurse credible and discounted the patient's testimony.***

***Within two hours of the incident the nurse charted that, when the nurse asked her right after she fell, the patient stated she stood up on her own to pull up her pants.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
April 28, 2016

The patient told the nurse she fell when she stood up to pull up her pants after she washed her private area.

### **Court Finds No Negligence**

The US District Court for the Eastern District of Pennsylvania found no negligence.

The nursing student tried to respect his patient's privacy and also ensure her safety by standing close by behind the privacy curtain after twice instructing her not to stand up on her own but to ask for his assistance.

The Court discounted the patient's trial testimony that she was wearing a hospital gown when the student nurse stood her up from her bed, took off her leg brace and did not stop her fall.

More credible and persuasive was the nurse's testimony from twenty-six years experience in orthopedics that a patient scheduled for physical therapy that morning more likely would have been wearing stretch pants, not a hospital gown, a factual nuance which the Court pointed out the patient's medical and nursing experts did not catch.

The Court also pointed to the nurse's progress note the nurse placed in the chart within two hours of the incident which reflected the patient's candid initial account of the incident. ***Velez v. Reading, 2016 WL 1696867 (E.D. Penna., April 28, 2016).***

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## Patient's Fall: Lawsuit Alleges Professional Negligence.

A lawsuit against a nursing home alleged that the nursing home's staff did not assess the resident's fall risk appropriately initially or sufficiently reassess her and modify the care plan accordingly after she fell.

It was further alleged that she was not reassessed and her care plan was not modified due to conspiratorial intent to cover up the fact the resident had fallen in the facility.

The Court of Appeals of Louisiana did not pass judgment one way or the other on the factual truth or legal validity of the allegations raised in the lawsuit.

Nevertheless the Court was willing to dismiss the lawsuit on the grounds that the resident's lawyers did not adhere to the preliminary formalities required by state law for filing a professional healthcare negligence lawsuit.

It was not acceptable to attempt to characterize this lawsuit as something other than what it was to make it easier for the patient to get her case before a jury. **White v. Glen**, \_\_ So. 3d \_\_, 2016 WL 1664502 (La. App., April 27, 2016).

## Medicare/Medicaid: New Regulations From CMS For Fire Safety Take Effect July 5, 2016.

On May 4, 2016 the US Centers for Medicare and Medicaid Services (CMS) announced that new fire-safety regulations will take effect on July 5, 2016.

The new regulations apply to hospitals, long term care facilities, ambulatory surgical centers, hospices and certain other facilities.

The new regulations are contained in CMS's announcement in the Federal Register which we have placed on our website at <http://www.nursinglaw.com/CMS050416.pdf>

The actual regulations themselves for hospitals and long term care facilities begin on page 29 of the PDF document, Federal Register page 26899.

CMS has included a provision in the new regulations for a facility to apply for a waiver as to provisions of the new regulations which would cause undue hardship, as long as patient health and safety are not adversely affected.

FEDERAL REGISTER May 4, 2016  
Pages 26872 - 26901

## Arbitration: Court Rules Power Of Attorney Gives Authority To Sign An Arbitration Agreement.

The US District Court for the Western District of Kentucky recently handed down two decisions involving the same legal issue, reaching the same result in both cases.

Each case was a civil lawsuit against a nursing home's parent corporation by the estate of a former nursing home resident, now deceased, who allegedly was a victim of professional negligence or other mistreatment or suffered a violation of the resident's legal rights at the nursing home.

The nursing homes countered each of the lawsuits by pointing out that a person who held a power of attorney for the deceased at the time of admission signed an agreement to submit any and all disputes to mandatory arbitration as an alternative to jury trial in court as a method of dispute resolution.

***A power of attorney does not have to state expressly that the person named as attorney-in-fact has authority to sign an arbitration agreement for that person to have such authority.***

***Generic language in standard power of attorney documents is sufficient if it allows the designated person to enter into legal contracts, convey property and manage finances.***

UNITED STATES DISTRICT COURT  
KENTUCKY  
May 13, 2016

The power of attorney documents did not expressly state that the person designated as attorney-in-fact had authority to agree to arbitration.

However, the Court ruled it would violate the US Federal Arbitration Act to limit arbitration of healthcare cases involving powers of attorney only to cases where the power of attorney expressly conferred authority to agree to arbitration on the patient's behalf.

Alternative resolution of claims and disputes through arbitration is preferred by healthcare institutions and is opposed by attorneys who represent injured parties. The US Federal Arbitration Act makes alternative resolution a method preferred by the legal system itself, the Court said. **Riney v. GGNSC**, 2016 WL 2853568 (W.D. Ky., May 13, 2016), **Owensboro v. Henderson**, 2016 WL 2853569 (W.D. Ky., May 13, 2016).