

## Nurse As Witness: Court OK's Testimony As Lay Witness.

A nurse slipped and fell on the floor while visiting a nursing home. She filed a personal injury lawsuit against the nursing home. She claimed residual disability from a torn meniscus and bursitis in her shoulder.

### A Nurse Is Not A Medical Expert

In an opinion that has not yet been released for publication, the California Court of Appeal ruled the nurse could not testify as an expert in orthopedics in support of her allegation of a torn meniscus. The court discounted the nurse's twenty years work experience in the emergency room. But that was not the end of her case.

### A Nurse Can Testify As A Lay Witness

Lay persons, that is, persons who do not qualify as medical experts, can testify about pain and suffering and limitation of activities, often the heart of the legal damages in personal injury cases. Hurd v. Windsor Garden Convalescent Hospital, 2002 WL 1558600 (Cal. App., July 16, 2002).

## Age Discrimination: Negative Comments On Exit-Interview Form Rule Out Nurse's Lawsuit.

A fifty-six year-old nurse complained about preferential treatment for younger nurses in shift assignments and leave requests. After eight months she resigned. A few months later she applied for re-hire as a per-diem nurse, but was not accepted.

When she resigned the nurse had filled out an exit-interview form for the hospital's human resources department where she voiced many other areas of dissatisfaction with the hospital.

The US Court of Appeals for the Sixth Circuit ruled the nurse's pre-resignation claim was filed beyond the statute of limitations. As to the claim of discrimination for not being rehired, the court ruled her negative exit comments were a valid, non-discriminatory basis for not rehiring her. Weigel v. Baptist Hospital, \_\_ F.3d \_\_, 2002 WL 1489616, 89 BNA Fair Empl. Prac. Cas. 718 (6th Cir., July 15, 2002).

## Nurse Signing Prescriptions For Physician: Court Finds No Delegation Of Practice, No Misconduct.

A physician was accused of professional misconduct for having his office nurse sign her name to his pre-printed prescription forms for medications the physician prescribed for his patients.

The nurse herself was not formally charged with professional misconduct. Nevertheless the District Court of Appeal of Florida noted in passing that the nurse in fact committed no professional misconduct. She was following procedures implemented by her employer over which she had no personal control, the court stated.

### No Delegation of Medical Practice

The key to the court's decision was the nurse's testimony that her employer did not delegate the practice of medicine to her. Delegating the practice of medi-

***The physician did not delegate to his office nurse any medical discretion concerning patient care.***

***The physician determined the type of medication, administration, strength and other particulars of the prescription.***

***The nurse acted only as the physician's agent in transcribing the physician's orders and directions.***

DISTRICT COURT OF APPEAL  
OF FLORIDA  
August 12, 2002

cine to a person not licensed as a physician would be professional misconduct for a physician.

As long as the selection of the medication and the dose, route, timing, etc., is solely and completely a matter for the physician's professional judgment, there is no professional misconduct when a nurse transcribes the physician's orders, even going as far as signing the nurse's own name to a prescription for a patient, the court ruled.

The court upheld the hearing officer's original finding of no misconduct which was overruled by the department of health. The court believed the hearing officer was actually in the best position to make a correct decision. Prysi v. Dept. of Health, \_\_ So. 2d \_\_, 2002 WL 1828133 (Fla. App., August 12, 2002).