LEGAL EAGLE EYE NEWSLETTER

July 2020 *For the Nursing Profession* Volume 28 Number 7

Emergency Nursing: Patient Died Eight Hours After Discharge, No Liability Found.

The lawsuit was filed by the widow and daughter of a patient who died with an acute aortic dissection eight hours after being discharged from the hospital's emergency department.

The California Court of Appeal dismissed the lawsuit, finding no negligence by the emergency department nurses.

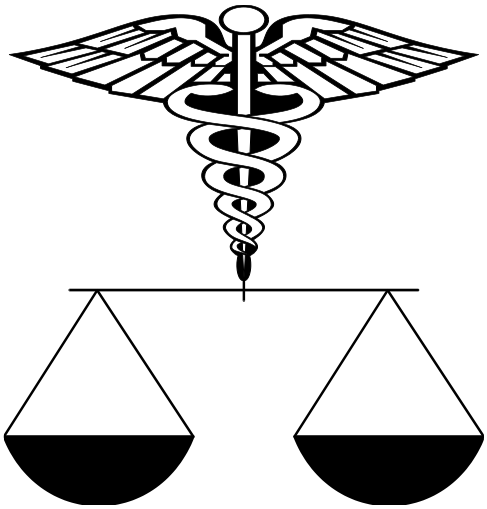
The lawsuit tried to fault the nurses for failing to obtain an adequate history of cardiac risk factors.

The nurses did not record in the chart or report to the emergency physician that the patient was morbidly obese and had a history that included smoking, high blood pressure, high cholesterol, a heart murmur and hernia repair surgery.

The family's lawsuit against the hospital for alleged negligence by the nurses was based on a string of conjectures as to what they claimed should have occurred.

According to the family's lawsuit, if the nurses had charted and reported the cardiac risk factors to the emergency physician, the physician would have brought in a cardiologist, the cardiologist would have ordered a chest CT scan, the chest CT scan would have revealed the aortic dissection to the cardiologist, the cardiologist would have called in a surgeon and the surgeon would have repaired the aortic dissection in time to prevent the patient's death.

That was pure speculation, according to the Court, and no basis for a lawsuit.



The emergency nurses cannot be faulted for not obtaining a background medical history, noting it in the chart and relaying it to the physician.

When the patient is alert and oriented the physician can get any background information from the patient that the physician needs in order to diagnose the patient and formulate a plan of care.

CALIFORNIA COURT OF APPEAL
June 1, 2020

Emergency Nursing

The patient came in at 4:02 a.m. with stomach and neck pain, a sore throat, cough and chest congestion.

The triage nurse noted he was fully alert and able to speak audibly and coherently. He denied chest pain or shortness of breath. Vital signs were taken and he was allowed to lie and rest.

An hour later another nurse assessed the patient. She noted epigastric pain but no chest pain or shortness of breath. She made sure the heart monitor was working and the IV was open and drew new labs.

The physician read the EKG an hour later and checked the chest x-ray.

About 11:00 a.m. the patient was discharged. All the vital signs from the nurses had been normal for several hours, the EKG was normal and the troponin was negative.

The patient was given an outpatient cardiology referral for the next day and was sent home.

The Court saw nothing in the competent assessments done by the emergency nurses, the vital signs they obtained, the care they provided or the labs ordered by the physician that should have alerted the nurses to do more than what they did. **Wicks v. Hospital, __ Cal. Rptr. 3d __, 2020 WL 2832563 (Cal. App., June 1, 2020).**

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Deaf Patient: Hospital Did Not Violate Patient's Rights.

The patient is deaf and communicates with American Sign Language (ASL).

He cut his thumb accidentally while working at his job in a restaurant kitchen and went to the emergency room with a person described as his partner. Soon his mother also arrived at the hospital.

Through his partner the patient requested an in-person ASL interpreter. No interpreter was provided. The patient was treated and released within an hour with no medical complications.

The US District Court for the Middle District of Louisiana dismissed the case he filed against the hospital alleging discrimination due to his deafness.

Federal Regulations

Appropriate Auxiliary Aids

Federal regulations state that an in-person ASL interpreter is not required just because a deaf patient makes it known he or she wants one.

An ASL interpreter would be required only if it is the only method that will provide effective communication between the patient and hospital caregivers.

An ASL interpreter might be the only way to give a patient a meaningful explanation of an unusual diagnosis, complex treatment options and their benefits and drawbacks and what will happen and is happening during an unfamiliar procedure.

In this case, however, even without an ASL interpreter the patient could easily understand that they were simply bandaging the cut on his thumb.

Video Remote Interpreting

In this case an emergency department nurse admitted the video remote interpreting (VRI) was not working at the time.

The Court offered guidance on the VRI issue anyway, even though it was legally irrelevant due to the fact the patient refused out of hand to try to use it.

VRI is expressly authorized by Federal regulations in lieu of in-person ASL interpretation, if it provides effective communication.

The courts have given facilities considerable leeway with technical glitches in their VRI monitors and tablets, where good faith efforts were being made to get them working to meet patients' needs. **Lockwood v. Hospital, 2020 WL 3244121 (M.D. La., June 15, 2020).**

The patient sued the hospital claiming that denial of an in-person ASL interpreter made him feel frustrated and confused, anxious, isolated and afraid.

He claimed his right was violated to an appropriate auxiliary aid to communication to afford him an equal opportunity compared with hearing persons to participate in his healthcare.

However, the facts are that the patient was seen almost immediately, was treated for his thumb laceration which did not require stitches and was sent back to work with no restrictions.

The patient spent only about an hour in the emergency department. An ASL interpreter could not have been called in before he had already left, and it would have been pointless to delay his discharge.

The patient authorized his partner to hear and speak for him. The hospital is not responsible for their problems understanding each other because the partner is not proficient in ASL.

It would have been a violation of the patient's and his mother's rights to force her to interpret for him, but there is no evidence that was done.

UNITED STATES DISTRICT COURT
LOUISIANA
June 15, 2020

Skin Breakdown: Court Finds No Basis For Lawsuit.

Two years into his stay in long term care an eighty-six year-old gentleman developed a Stage II decubitus ulcer on his buttocks.

A month later he was transferred to another nursing facility. During his four-month stay there before he passed away his skin lesions progressed to the point that sepsis required amputation of his leg.

The family's nursing expert is qualified to give an expert opinion on the nursing standard of care for prevention and treatment of pressure lesions.

However, it is not sufficient merely to state in general terms that the nurses at the defendant facility failed to treat the patient within the standard of care.

The expert must identify what needed to be done, specify what was not done and show just how that produced the outcome.

COURT OF APPEAL OF LOUISIANA
June 10, 2020

The Court of Appeal of Louisiana dismissed the lawsuit the family filed against the first nursing facility.

The Court agreed with the Louisiana medical review panel that pre-existing dementia, diabetes and chronic peripheral vascular disease were the cause.

The evidence before the panel was that the nurses properly assessed the patient, promptly identified his skin breakdown and notified his physician and family, tried to adjust his nutrition, and initiated an appropriate skin breakdown protocol in accord with the physician's orders.

Because the nurses fully complied with the standard of care they were not legally responsible for the unfortunate outcome. **Simon v. Nursing Home, __ So. 3d __, 2020 WL 3071599 (La. App., June 10, 2020).**

CRNA: Court Sees No Liability For Selection Of The Anesthesia.

A three year-old child went into cardiac arrest during a cardiac ablation procedure performed by a cardiologist. The arrest lasted thirteen minutes and left her with profound brain damage.

The anesthesiologist and the cardiologist settled out of court. The details of the settlements were not reported in the record of the Court of Appeals of North Carolina.

After the settlements the only remaining defendants were the certified registered nurse anesthetist (CRNA) and his employer the hospital.

The Court of Appeals dismissed the CRNA and his employer. The grounds for that dismissal were that the selection of the anesthetic and route of administration amounted to the practice of medicine.

Only the anesthesiologist could practice medicine, not the CRNA. Therefore, according to the Court, the selection of the anesthetic and route of induction was the anesthesiologist's sole responsibility.

A CRNA theoretically could be liable for substandard practice in giving an anesthetic, but there was no evidence of that in this case. **Connette v. Hospital, __ S.E. 2d __, 2020 WL 3240905 (N.C. App., June 16, 2020).**

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Involuntary Mental Health Hold: Court Sees Grounds For Patient's Lawsuit For False Imprisonment.

Even if there was valid justification to detain the patient forty-eight hours for a mental health evaluation, a further extended hold required a court order based on valid assessment data.

A court order for extended involuntary commitment must be based on a medical opinion that the patient has a mental illness that causes a significant risk of serious harm to self or others that will occur imminently unless the patient is held immediately for treatment, and that the proposed confinement is the least restrictive alternative that will meet the patient's needs.

The petition for a court order must state the patient's psychiatric diagnosis and must supply specific behavioral incidents that support the diagnosis.

COURT OF APPEALS OF TEXAS
May 29, 2020

The seventy-nine year-old lady lived with her son and daughter-in-law in their home.

The lady threw a coffee cup at her daughter-in-law. The daughter-in-law later described it as a temper tantrum. The cup did not hit the daughter-in-law but did shatter when it hit the floor. The daughter-in-law called the police.

The police took the elderly lady to a local mental health facility. The officer told the admitting personnel she had threatened to harm herself by starting her car and letting it run in the closed garage or by overdosing on her medication supply.

A psychiatrist admitted her for forty-eight hours observation based on a telemedicine interview he said revealed a major depressive disorder, single episode, without psychotic features. Then the lady, a retired nurse, was held eight more days over her repeated pleas that she did not want to be there and did not belong there.

False Imprisonment

The Court of Appeals of Texas saw grounds for the patient's lawsuit against the facility for false imprisonment.

Beyond the basic fact that she was deprived of her right as a citizen to enjoy her personal liberty, in the facility she was frightened by severely disturbed psychiatric patients who cried out and acted out in disturbing ways. Her cane was taken away, which made it painful for her to walk, and she was not allowed her usual medications. **Huntress v. Hospital, 2020 WL 2781795 (Tex. App., May 29, 2020).**

Peer Review: Court Says Nurse Personnel Files Are Open To Discovery In Malpractice Case.

The underlying case alleged malpractice in the alleged failure of physicians and nurses at the hospital to diagnose and treat a newborn infant's meningitis, leading to permanent brain damage.

The parents' lawyers demanded in pretrial discovery that the hospital turn over the complete personnel files of five identified nurses who were involved in the infant's care.

The hospital refused, citing the peer review privilege. After reviewing the files in private the judge ordered the files to be turned over. The Court of Appeals of Ohio upheld the judge's decision.

Peer Review Privilege

A healthcare facility has the burden of proof to convince the court that the peer review privilege applies and should block civil discovery of certain documents demanded by the patient suing in a malpractice case. The plaintiff patient does not have to prove the opposite.

The healthcare facility must demonstrate to the court that it actually has a peer review committee and must supply the court with details as to its composition and regular functioning as a committee.

That is not presumed from the fact that regulations, conditions of participation and accreditation standards require a committee to be established and to function.

The healthcare facility must have records that were created at the time and not after the fact that the documents were generated by the peer review committee or requested and submitted and considered by the peer review committee in the regular course of its functioning.

A peer review committee might look at documents that were not created specifically for the committee, like a plaintiff patient's medical chart or an employee's appraisal and disciplinary records, but that does not cause the peer review privilege to attach to those documents.

The courts favor a policy of full access to materials needed by plaintiffs to prove their cases. An institution bears a substantial burden attempting to block that process. **Spurgeon v. Hospital, 2020 WL 2745654 (Ohio App., May 27, 2020).**

The peer review privilege is meant to protect the integrity and confidentiality of the peer review process so that healthcare institutions have the freedom to review and critique the quality of care they provide.

The peer review privilege is not meant to hinder lawsuits against healthcare institutions by casting a cloak of secrecy over subjects only peripherally related to the peer review process.

The peer review privilege provides protection only to documents generated by the institution's peer review committee itself and documents generated by other sources inside the institution to be presented to the peer review committee for consideration.

That does not encompass any and all of a healthcare institution's files.

The hospital in this case is not able to show that the nurse's personnel files were generated for the use of the hospital's peer review committee.

Personnel files are sometimes referenced in the quality review process but their basic purpose is not connected with the peer review committee.

COURT OF APPEALS OF OHIO
May 27, 2020

Psychiatrists Sued By Nurse: Court Protects Patient's Confidentiality.

A nurse was attacked and seriously injured by a psychiatric patient at a facility where the nurse worked.

She sued three psychiatrists who treated the patient in the facility.

The psychiatrists informed the nurse's attorney they would not appear for depositions to testify about their treatment of the patient. They pointed to the patient's right to medical confidentiality and their obligation as physicians to respect and preserve their patient's rights.

A patient can be required to give up medical confidentiality to sue a healthcare provider for malpractice or to sue another individual for personal injuries.

A patient does not give up medical confidentiality by being sued or by another person being sued in a case where the patient's medical care is an issue.

NEW YORK SUPREME COURT
APPELLATE DIVISION
June 3, 2020

The New York Supreme Court, Appellate Division, ruled that anything communicated by the patient to his physicians during the course of treatment is confidential and cannot be accessed by the nurse for use in her lawsuit.

The patient has the right to authorize his physicians to disclose his confidential information, but the patient did not choose to do that in this case.

All that being said, the Court did rule that the psychiatrists must appear for depositions. If they are asked a question that calls for confidential information their attorneys can raise an objection for the court to rule upon. Any questions not calling for medical confidences will have to be answered. **Janye v. Smith, __ N.Y.S.3d __, 2020 WL 2892810 (N.Y. App., June 3, 2020).**

Family & Medical Leave Act: Court Dismisses Nurse's Retaliation Suit.

A nurse was fired after she and the nurse on the next shift both gave the same patient the flu shot the patient requested.

Both nurses were to blame for the breakdown in communication, but only the nurse in question was fired, according to management, because this incident was the culmination of a series of prior patient-care errors and attendance problems.

The final attendance problem was time off that was deemed an unexcused absence rather than FMLA leave because the nurse did not submit the required paperwork from her physician on time.

The nurse was not entitled to Family and Medical Leave Act (FMLA) leave, and was guilty of an unexcused absence, because she did not meet the deadline to provide physician verification as to her serious medical condition and need for leave from work.

However, that does not necessarily foreclose her right to sue if her employer retaliated because she applied for FMLA leave.

UNITED STATES DISTRICT COURT
NORTH CAROLINA
May 21, 2020

The US District Court for the Middle District of North Carolina found it suspicious that the nurse was fired within months after the problem with her leave.

Even if an employee's leave request is invalid and can be disallowed, the employee is still protected from employer retaliation for applying for that leave.

However, the Court ruled the flu shot incident was serious enough to justify her firing on non-retaliatory grounds. **Priddy v. Hospital, 2020 WL 2572285 (M.D.N.C., May 21, 2020).**

Patient Struck By Aide: Court Finds Misconduct.

While an aide tried to put a gait belt around an elderly resident to assist her off the bedside commode, the resident dug her fingernails into the aide's arm and drew blood.

The aide reflexively slapped the resident across the mouth, but not hard enough to actually cause injury. Then the aide immediately went and told her charge nurse what she had done and admitted it was wrong and a violation of the facility's policy against physical abuse.

The aide admitted she knew she would be caring for potentially combative residents on the dementia unit and that she had been trained to maintain a calm demeanor to tone down interactions with aggressive and combative residents.

COMMONWEALTH COURT OF
PENNSYLVANIA
June 10, 2020

After the facility fired the aide the Commonwealth Court of Pennsylvania ruled she was guilty of willful misconduct and was disqualified from collecting unemployment benefits.

The Court overturned the administrative law judge's ruling of no misconduct. The judge should have ruled it irrelevant that the aide reacted reflexively without intending or causing any physical harm.

It was also irrelevant that there was a prior history of animosity by this resident toward this aide, which the aide brought up with the nurse in the room when she asked the nurse to get another aide to help her get the resident off the commode and into bed, right before the incident transpired.

The Court ruled that any striking of a vulnerable patient, premeditated or not, even a light tap, is unacceptable conduct by a caregiver and grounds for the employer to terminate the caregiver for just cause. **Hospital v. Board, 2020 WL 3072001 (Penna. Cmwlth., June 10, 2020).**

Drug Diversion: Court Throws Out Nurse's Emotional Distress Lawsuit.

The hospital tracks the handling of narcotic medications by its employees to identify possible drug diversion.

The automated dispensing system records every withdrawal of narcotics and links it with a specific nurse. A pattern of abnormal use can lead to a chart audit.

One nurse was highlighted for drawing out fentanyl more often than her ICU coworkers over a one-year period.

A look-back audit of her patient charting for that period showed significant amounts of fentanyl, Ativan and hydrocodone the nurse checked out that were never documented as given to her patients.

The hospital was required by law to report loss or theft of controlled substances to the Department of Health, the DEA and the state Pharmacy Board.

The hospital had a policy to report any possible drug diversion to the Board of Nursing and the state Department of Criminal Investigation.

SUPREME COURT OF SOUTH DAKOTA
May 13, 2020

The Supreme Court of South Dakota dismissed the lawsuit the nurse filed against her former employer after she was fired for discrepancies in her handling and documentation of narcotics.

Right before her firing her urinalysis came back negative for narcotics. The Board of Nursing only required counseling and continuing education classes and did not take her license. The DEA, Pharmacy Board and state Department of Criminal Investigation took no action.

Nevertheless, the Court believed the hospital had sufficient evidence on its side to avoid liability in this lawsuit. **Henning v. Hospital, __N.W. 2d__, 2020 WL 3273035 (S. Dak., May 13, 2020).**

Sexual Assault: Court Sees No Grounds For Patient's Civil Suit.

In 2013 the patient moved into the facility as a fully independent resident of the retirement community.

In 2014 she transitioned into assisted living because she was consistently forgetting to do things and needed supervision.

In 2015 she was admitted to the nursing unit for care for advanced dementia.

In the dementia unit she complained to a female aide that a male aide who had just directed her to her room exposed himself and made her touch his private parts. The female aide confronted the male aide who was still in the corridor outside the room and verified it was he who had just escorted the patient to her room.

The female aide immediately reported the incident to the director of nursing and phoned the patient's daughter.

The director alerted risk management and quality control. Together they saw to it that the male aide was immediately suspended pending an investigation. The incident was timely reported to the state Department of Health.

The Department and the facility itself were unable to substantiate the complaint. A physician's report as to the patient's advanced dementia had to be taken into consideration, meaning there was no credible eyewitness. The male aide's name was not placed in the state registry and he was permitted to return to work.

In the patient's civil lawsuit against the facility the trial judge dismissed the assault allegation and the jury ruled out the battery allegation.

The Court of Appeals of North Carolina upheld those rulings. After the incident became known the facility did everything that was required.

Management immediately suspended the perpetrator, began an investigation and reported the incident to the State.

Not lack of due diligence, but the absence of a credible eyewitness doomed the facility's investigation. The aide had to be presumed innocent until proven guilty.

As a precaution against further incidents, real or imagined, he was transferred to another unit when he returned to work so he and the patient would have no further contact. **Keller v. Retirement, __ S.E. 2d __, 2020 WL 2844346 (N.C. App., June 2, 2020).**

As a general rule an employer is not liable for an employee's act that is not within the employee's duties with the employer.

An exception exists when an employer in essence ratifies an employee's wrongful act by not taking appropriate action.

The Court rejects the patient's claims that the facility failed to take appropriate action after the fact.

The facility was not required to notify law enforcement, rather than investigate in-house, to bring in police investigators skilled in interviewing alleged perpetrators of sexual crimes.

The facility was not required to bring in an expert skilled in interviewing victims of alleged crimes who suffer from dementia.

The facility did not have to interview the alleged perpetrator in person rather than over the phone.

The facility was not wrong not to fire the alleged perpetrator.

The facility was not wrong to ask staff to watch the patient's further interactions with male staff rather than asking that they monitor the alleged perpetrator's interactions with female patients after he returned to work.

COURT OF APPEALS OF
NORTH CAROLINA
June 2, 2020

Jane Doe: Hospital Ruled Not Liable To Deceased's Next Of Kin.

As soon as an unidentified woman who was found unresponsive was brought to the emergency room, two hospital social workers began trying to identify her and locate her next of kin.

The investigation continued after the patient passed away in the hospital that night. The social workers asked around at nearby homeless shelters. The county public administrator was notified, but his office could not make any headway and went ahead and had the body buried.

Three weeks later the deceased's relatives found out she had died. They exhumed the body, had a funeral service, reburied her and then sued the hospital.

A hospital can be liable for failure to notify a deceased patient's next of kin.

The next of kin have the sole right to possession, preservation and burial of the remains.

With a Jane Doe patient legal liability arises only if the hospital fails to make a reasonable effort under the circumstances to determine the deceased patient's identify and find the next of kin.

NEW YORK SUPREME COURT
APPELLATE DIVISION
June 12, 2020

The New York Supreme Court, Appellate Division, agreed that the next of kin can sue a hospital for mishandling or unauthorized disposal of a loved one's remains.

However, a hospital with an unidentified deceased patient on its hands is not liable if the hospital made a reasonable effort to identify the deceased and find the next of kin and notified any public agency that might be able to help. **Green v. Iacovangelo, __ N.Y.S.3d __, 2020 WL 3160435 (N.Y. App., June 12, 2020).**

Transfer After Disc Surgery: Court Dismisses Case.

While recovering in the hospital the first day after lumbar discectomy surgery the patient was allegedly dropped abruptly into a chair by nursing personnel while being transferred from his bed.

Nursing notes from the next day, the second day after surgery, referenced renewed pain in the patient's lower extremity like before his surgery that was absent on the first day after surgery.

The patient was transferred to another hospital, where renewed herniation of one of the operative discs was discovered and corrected surgically.

The law distinguishes between medical diagnosis and nursing diagnosis.

Nursing diagnosis pertains to the actual and potential health problems for which the law allows nurses to provide care.

COURT OF SPECIAL APPEALS OF MARYLAND
May 26, 2020

The Court of Special Appeals of Maryland dismissed the patient's lawsuit which alleged negligence by the hospital's nurses.

It was a fatal legal flaw in the patient's case that the expert witness certification required by law to be filed along with the suit came from a registered nurse.

The nurse could testify as an expert that mishandling the patient during transfer fell below the nursing standard of care.

However, the nurse could not testify as an expert on the critical question whether mishandling the patient was what reinjured his back. That involves a medical diagnosis which the law declares to be the sole province of a physician.

Lumbar disc dysfunction which requires medical intervention is clearly a medical issue.

In contrast, a familiar example of a nursing issue would be actual or potential for skin breakdown, a condition suited to nursing interventions. **Gore v. Hospital, 2020 WL 2731226 (Md. App., May 26, 2020).**

Face Masks Not Worn: Court Sees Grounds For Lawsuit For Infection During Procedure.

According to the patient's sworn affidavit, the two nurses who prepped her were not wearing masks in the operating room, at least until she lost consciousness a few seconds after the anesthesia was given.

According to patient's medical expert, it is more likely than not that the patient's epidural abscess was the result of bacterial contamination introduced into her spinal area during an epidural injection of steroids at the pain clinic.

Such contamination could only have occurred because the actions of the staff of the clinic fell below the standard of care for a sterile procedure in an operating room.

That is, it is more likely than not that the source of the patient's infection was the clinic personnel not wearing surgical masks during the entirety of her spinal injection procedure.

Medical literature supports the conclusion that breach of sterile or aseptic technique can cause a patient's infection.

That is a sufficient basis for this lawsuit without direct proof of what happened to this patient.

COURT OF APPEALS OF TEXAS
June 18, 2020

Five days after the third of three spinal steroid injections for chronic back pain the patient was admitted to a hospital where she was diagnosed with a spinal abscess, sepsis and spinal meningitis.

Her lawsuit against the pain clinic where the injection was given was based on a physician's expert opinion. His opinion linked her infection to failure by the nurses and physicians to observe proper technique, that is, to wear face masks in the operating room with the patient.

A sworn affidavit was provided by the patient herself. The patient stated that two nurses were not wearing masks in the operating room when they prepped her for the procedure. Her physician only put on his mask after he entered the room.

The patient insisted the nurses were still not wearing masks when she lost consciousness soon after the anesthesia was injected, the last time she could remember anything before her procedure.

Court Accepts Expert's Opinion Based On Medical Literature

The Court of Appeals of Texas accepted the patient's medical expert's opinion which was based on review of medical literature without any direct knowledge of what exactly happened with this particular patient.

Numerous published studies have linked iatrogenic infections to failure by surgical staff to wear face masks.

The literature reports that the particular pathogens actually identified by the laboratory in conjunction with the patient's hospitalization can cause hospital-acquired infections, to a sufficient degree of medical probability to satisfy the Court.

The Court rejected the argument that a pain management clinic giving spinal injections is not subject to the same standards that mandate sterile technique in a hospital's surgery department.

Standards for aseptic and sterile technique apply across the board in medical facilities. Thus this patient's physician expert did not need any special qualifications in infection control to render an opinion. **Medical v. Cheeks, 2020 WL 3393463 (Tex. App., June 18, 2020).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Confidential Records: Patient ZIP Code List Protected By HIPAA.

A physician sought to use Illinois' Freedom of Information Act (FOIA) to require the local county health department to disclose a list of the five-digit ZIP codes where persons who had received mental health services in the county jail were released to reside after incarceration.

The purpose was to find the optimal location for a new outpatient mental health clinic where it would do the most good for the most people.

The local health department resisted the FOIA request on the grounds that the ZIP codes of former mental health patients, even without their names or details of their treatments, are confidential information protected by the US Health Insurance Portability and Accountability Act (HIPAA) and the state mental health treatment confidentiality statute.

The Appellate Court of Illinois agreed with the local health department. Complex HIPAA regulations strictly limit disclosure of patient demographic data even when patients are not specifically identified. **King v. County Health, __ N.E. 3d __, 2020 WL 3287316 (Ill. App., June 18, 2020).**

Blood Products: FDA Recommendations Re Creutzfeldt-Jakob, HIV, Malaria.

On June 17, 2020 the US Food and Drug Administration (FDA) announced the availability of new and revised recommendations to reduce the risk from blood and blood products for transmission of Creutzfeldt-Jakob, HIV and malaria.

These materials are available directly from the FDA website specifically for blood products at https://www.fda.gov/vaccines-blood-biologics/biologics-guidances/blood-guidances

The FDA's more general website for guidance documents for a long list of biologics is https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances

The FDA has emphasized that its recommendations are only recommendations based on current thinking at the FDA. FDA recommendations are not binding and do not create legal responsibilities for healthcare providers or confer legal rights on the public.

FEDERAL REGISTER June 17, 2020
Pages 36593 - 36600

Diabetic Student: Reasonable Accommodation Not Offered By School Nurses For Disability.

The mother of an insulin dependent student in grade school was often in conflict with the nurses and teachers at his school.

Management of his diabetes required two injections during the school day with syringes of mixed insulins. School officials refused to text videos to the mother of the insulins being mixed at school as she requested.

Even though it was approved by the boy's pediatrician the school nurses refused to use syringes the mother filled at home and insisted on using the ones the nurses themselves prepared.

One time when the mother could not read her son's blood glucose on her phone at home she went to the school and met her son without signing in at the office, a violation of policy for which she was banned from returning.

The school's nurses, teachers and administrators refused to consider alternatives to the school nurses managing the child's insulin injections at school based only on their judgment and district policy.

Failure even to consider modifications of policy and practice requested by his mother violated the child's right to reasonable accommodation to his disability.

UNITED STATES DISTRICT COURT
UTAH
May 22, 2020

Finally the conflict between the mother and the school resulted in the child being put on home hospital status for a full school year.

The US District Court for the District of Utah ruled the mother could sue the school on her son's behalf for disability discrimination.

Disabled individuals have the right to reasonable accommodation.

Reasonable accommodation can include modification of institutional policies and practices to meet a disabled person's special needs.

To that end the disabled person's right to reasonable accommodation includes the institution's duty to engage in an interactive communication process to determine his or her special needs and how those needs can be met. **Watkins v. School District, 2020 WL 2617928 (D. Utah, May 22, 2020).**