LEGAL EAGLE EYE NEWSLETTER

May 2020 *For the Nursing Profession* Volume 28 Number 5

Emergency Department: Screening Protocol Not Folowed, Court Sees EMTALA Violation.

A seventy-nine year-old man was taken from his home to the hospital by ambulance after his wife called 911.

At the hospital he was triaged by an emergency department nurse. His chief complaints were acute abdominal pain, intense thoracic pain and pain in the right and left chest.

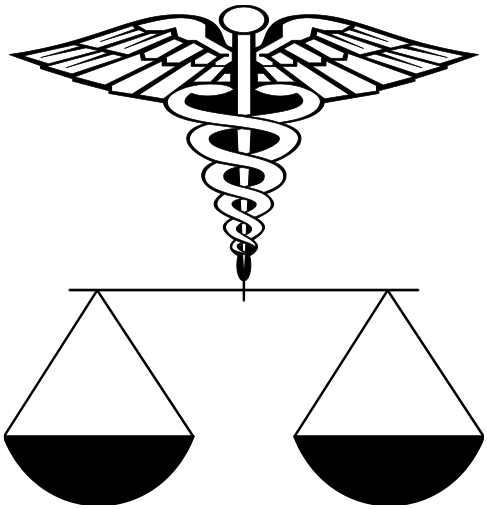
Nine minutes later he was seen by the emergency physician. The physician elicited a history of cigarette smoking and daily alcohol consumption and a current complaint of a stomach ache.

The physician's impression was epigastric tenderness. The physician ordered laboratory tests.

An hour later the patient was found unresponsive. A half-hour effort at resuscitation was unsuccessful and less than two hours after his arrival in the emergency department the patient was pronounced dead from cardiac arrest.

The US District Court for the District of Puerto Rico noted that the hospital's own protocol was never followed for an emergency patient with chest pains. The hospital expected an EKG within ten minutes of such a patient's arrival to set the course in a case of possibly life-threatening acute coronary syndrome.

The Court upheld the widow's right to sue the hospital for violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA).



The hospital's own established protocol for screening an emergency patient with cardiac symptoms called for an EKG no later than ten minutes after arrival.

The patient's widow's lawsuit is based on a straightforward EMTALA violation. Her husband complained of chest and epigastric pain but never got an EKG before he arrested.

UNITED STATES DISTRICT COURT
PUERTO RICO
April 21, 2020

Patient Not Indigent or Uninsured

In 1986 Congress passed the EMTALA to stop hospitals from turning away uninsured and indigent emergency patients without treatment or "dumping" them on public institutions.

Now Federal regulations and court decisions allow lawsuits for all emergency patients who are denied EMTALA's required medical screening examination, even those who have insurance or can pay.

Hospital Did Not Follow Its Own Screening Procedures

The only relevant fact for the widow's EMTALA case was that the hospital did not follow its own emergency department screening protocols.

It was not relevant whether the common law standard of care would have been more forgiving of the lapse in not getting the EKG.

This hospital's own emergency screening protocols required every emergency patient with cardiac symptoms to receive an EKG within ten minutes. This patient's complaints pointed to cardiac involvement but nevertheless he was not given an EKG within the hospital's own mandated time frame, in fact not at all, a very straightforward violation of the EMTALA. **Vazquez-Colon v. Hospital, 2020 WL 1933652 (D. Puerto Rico, April 21, 2020).**

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Mental Health: Manager Was Fired For Her Behavior, Not Her Disabilities.

The information manager for a healthcare facility was terminated after a series of interactions with other managers and the director of nursing that strongly suggested mental health problems.

The management-level employee who was terminated has bipolar disorder and schizophrenic psychosis, which are disabilities.

Even though her disabilities brought on her unacceptable behavior, she was terminated for her unacceptable behavior, not because she has disabilities.

UNITED STATES DISTRICT COURT
LOUISIANA
April 21, 2020

The US District Court for the Western District of Louisiana dismissed the disability discrimination she filed against her former employer.

The Court justified its ruling with coworkers' detailed accounts of her history of problematic interactions in which she behaved erratically on the job and at times uttered profane, threatening and completely nonsensical statements, sometimes with no memory afterward.

In this type of case the court must decide whether disciplinary action or termination was an untoward reaction to a person with a disabling mental illness, or a justifiable inability to tolerate inappropriate and unacceptable behavior brought on by the mental illness.

In this particular case her managers showed their good faith by trying repeatedly to work with the individual before they had no choice but to fire her. Patience and compassion were shown for her until her problem behavior could no longer be tolerated. **Roberson v. Health, 2020 WL 1930467 (W.D. La., April 21, 2020).**

Racial Profiling: Court Sees Basis For Lawsuit Against Hospital.

In July 2015 the patient, a black man, came to the emergency department with a headache, fever and vomiting.

The patient was accompanied by his sister in law. She is a black woman born in Nigeria who is certified as a nurse practitioner in the US. The sister in law's two year-old daughter was also with them.

The sister in law explained to the emergency room physician that her brother in law had a history of malaria and needed to be admitted for what appeared to be a flare up of his chronic symptoms.

The whole emergency room panicked, going off on the idea the patient had Ebola. The patient, his sister in law and her child were taken by EMTs in full hazmat gear to a room and confined for six hours without food, liquids or access to a bathroom.

The asymptomatic sister in law and child were kept in a small room with an individual believed by hospital staff to be contagious with the Ebola virus.

The hospital's reaction was most likely based on racial profiling of the patient and his family members as Africans. No one paid any attention to the history and symptoms related by his sister in law who is a nurse practitioner, a black woman from Nigeria

UNITED STATES DISTRICT COURT
RHODE ISLAND
April 13, 2020

The US District Court for the District of Rhode Island saw grounds for the sister in law and her daughter to sue for violation of their civil rights as victims of racial profiling by a healthcare provider, even though they were family and not patients.

For reasons not explained in the court record the patient himself is not a party to the lawsuit. **Olofinlade v. Hospital, 2020 WL 1848084 (D. Rhode Island, April 13, 2020).**

Skilled Nursing: Visitor's Slip And Fall Is Not A Healthcare Liability Case.

The husband of an employee of the skilled nursing facility came and sat with her in the dining room to discuss the joint custody of their daughter.

When he stood up to leave and began walking out of the dining room he slipped and fell on a puddle of urine he did not see on the floor that had dripped out of the bag of a resident sitting at a table eating lunch.

A healthcare case must be dismissed if the plaintiff does not have expert testimony on the standard of care, violation of the standard of care and harm caused by that violation.

Not everything that leads to a lawsuit against a healthcare facility is a healthcare liability case.

COURT OF APPEALS OF TEXAS
March 31, 2020

The Court of Appeals of Texas ruled the husband's case is a garden variety personal injury suit not subject to dismissal for want of a medical or nursing expert.

Attending to a patient with a catheter and urine bag is medical treatment. However, this case does not turn on the issue of proper medical treatment of a patient.

The only issue here is the duty of any owner of commercial premises to keep the floors reasonably safe from liquids on the floor that can cause patrons to slip and fall.

Technically the present ruling only says that this injured party can sue the nursing facility without a medical expert. However, the Court offered an aside that the facility might prevail in the long run.

Only after the visitor slipped and fell did staff know the bag was leaking. It is unclear how he will prove facility staff should have been aware of the hazard any sooner. **SNF v. Hudson, __ S.W. 3d __, 2020 WL 1528052 (Tex. App, March 31, 2020).**

Nursing Home Litigation: Court Sees No Private Right Of Action.

Federal regulations for nursing facilities state in general terms:

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychological well-being, in accordance with the comprehensive assessment and plan of care. 42 CFR §483.25

Nevertheless a nursing home resident has no right to file a lawsuit against a nursing home for failing to maintain his highest practicable level of physical, mental and psychological wellbeing, the US District Court for the Northern District of Indiana ruled recently.

It was not clear from the court record what exactly happened to the resident.

The legal point is that Federal nursing home regulations are the standards by which state and Federal regulators evaluate nursing facilities for Medicaid and Medicare compliance, and only that.

The regulations do not create private rights of action for residents to file lawsuits. Federal laws only create private rights of action when they expressly state that they do. **Talevski v. Health, 2020 WL 1472132 (N.D. Ind., March 26, 2020).**

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Forced Psychiatric Medication: Court Sees Grounds For Patient's Civil Assault And Battery Lawsuit.

Assault and battery can be grounds for a civil lawsuit by a patient against a healthcare provider.

Assault occurs when one person places another in fear of imminent harmful or offensive bodily contact.

Battery consists of harmful or offensive bodily contact with another person without the person's consent.

An assault can occur when a nurse threatens to call in more nurses to force a patient to take an oral medication the patient does not want, without a court order for involuntary medication of the patient.

A battery can occur when a nurse gives medication to a patient under protest and duress, without the protection of a valid court order for involuntary medication.

UNITED STATES DISTRICT COURT
NEW YORK
March 30, 2020

A caseworker called the police about a client on rent subsidy assistance who she said threatened her when she visited him in his apartment.

Based on what the caseworker told them the police came and took the man to a hospital for a mental health evaluation.

However, no mental health evaluation was actually performed until a subsequent readmission after he had been held almost a day and then discharged.

His first time in the hospital security guards made him strip, put on a gown and squat to dislodge any contraband he might have hidden inside his body. Then the guards strapped him to a bed.

The patient was ignored when he insisted he had no intention to harm himself and when he demanded access to his inhaler for his shortness of breath.

A physician came in and ordered oral mental health medication for him, still without a mental health evaluation.

A nurse told the patient he had to take the pills ordered by the physician, or she would go to her supervisor and get more nurses to come in and force him to take the pills and then manually sweep his mouth to make sure he swallowed.

Court Sees Assault And Battery By the Nurse

The US District Court for the Southern District of New York saw grounds for a civil lawsuit for assault and battery for the actions of the nurse and others. **Vivar v. Hospital, 2020 WL 1505654 (S.D. N.Y., March 30, 2020).**

Discrimination: Hospital Did Not Have A Racially Hostile Work Environment, Court Says.

An African-American operating room tech was fired after incidents his superiors saw as unacceptable episodes of insubordination.

The tech was written up for failing several times to answer pages on the walkie-talkie communicator he carried on his person on the job and for being away from his unit during his work shift.

The final episode was when he flat-out refused to work in the location where his supervisor sent him and then yelled at the supervisor, threatened him and angrily punched the wall behind him.

After his termination the tech sued the hospital claiming he was fired in retaliation for complaining about a racially hostile work environment at the hospital.

Specifically, a nurse once called him a "boy" and called others "boy." The "N-word" was scratched into the paint inside an elevator and two swastikas were drawn on the wall in a storage room. They were painted over, but only after several months had gone by after he complained.

No Racially Hostile Work Environment

The US Court of Appeals for the Fifth Circuit (Texas) decided on balance the deficiencies in the tech's work performance were the legitimate non-discriminatory reasons for his termination, aside from his complaints.

Not all offensive words and deeds add up to a racially hostile work environment, according to the Court.

A racially hostile work environment is one where persistent, pervasive, hostile, abusive and physically threatening conditions actually affect the victim's ability to do his or her job.

Coworkers' isolated or infrequent racially charged remarks generally do not create a racially hostile environment, even if the victim is actually offended.

However, a supervisor or manager only once addressing a subordinate with the "N-word" or even uttering the "N-word" in the workplace can be considered evidence of a racially hostile environment for which a minority employee may be able to sue. **Collier v. Hospital, __ Fed. Appx. __, 2020 WL 1815729 (5th Cir., April 9, 2020).**

In many cases alleging employment discrimination the court must sort out whether the employee's work performance gave the employer legitimate non-discriminatory grounds for disciplinary action, or whether the employee was a victim of discrimination.

A racially hostile work environment is one form of discrimination.

A racially hostile work environment exists where persistent, pervasive, hostile, abusive and physically threatening conditions adversely affect the victim's ability to do his or her job.

In this case a nurse once called the African-American technician "boy." The "N-word" was scratched into the paint inside an elevator and two swastikas were drawn on the wall in a storeroom. They were painted over, but months after the victim complained.

The victim himself admitted these things did not affect his ability to do his job.

There was no racially hostile work environment at this hospital.

The alleged victim was fired legitimately for substandard performance.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
April 9, 2020

Unused Meds: Court Says No Law Was Broken, No Whistleblower Protection.

The nursing director for a dialysis facility had a contentious relationship with corporate management that led up to her termination over frequent no-call absences from the facility and failures to complete her required paperwork.

In her lawsuit over her termination she claimed she was a whistleblower with legal protection from employer retaliation for complaining about and refusing to participate in an illegal activity.

That is, she had expressed objections to a management proposal to begin using rather than simply discarding medications that were originally prescribed for patients who had died.

The issue is not the appropriateness of using leftover meds that were prescribed for now-deceased patients.

The issue is whether the nursing director who disagreed with doing that disagreed with something that violates the letter of the law.

UNITED STATES DISTRICT COURT
LOUISIANA
April 9, 2020

The US District Court for the Western District of Louisiana ruled the former nursing director was not a whistleblower and had no legal protection from termination.

Her court documents cited a specific state statute she claimed she protested that her former employer was going to violate.

However, in the statue the Court could find no express prohibition against reuse of deceased patients' medications, assuming the medications were prescribed and administered correctly in other respects.

If the employer is not planning to or actually violating the law, disagreement with the employer does not make an employee a whistleblower. **Lindsey v. Medical, 2020 WL 1817849 (W.D. La., April 9, 2020).**

ADHD/Depression: Court Turns Down Nurse's Disability Discrimination Lawsuit.

A nurse who had been working the night shift full time in a nursing home requested a transfer to a part time day shift.

Her reason was that working full time nights was too difficult for her due to her attention deficit/hyperactivity disorder and major depression.

The shift change was approved, but with the proviso that the nursing home's policy would be followed that all shift and schedule changes did not take effect until the beginning of the next calendar month.

The nurse insisted she had to get off the night shift immediately. She began calling in sick for her night shifts and was fired for excessive absenteeism.

A mental health condition that might otherwise be disabling that can be controlled with medication is not considered a disability for purposes of disability discrimination law.

UNITED STATES DISTRICT COURT
KENTUCKY
March 31, 2020

The US District Court for the Western District of Kentucky turned down her disability discrimination lawsuit.

Documentation from the nurse's physician indicated that the mental health medications she needed did control her symptoms and did enable her to work.

However, she could not get her medications at the time when she was fired for absenteeism. There was a problem with her prescription drug coverage and her physician's office had run out of the free samples they were giving her.

The Court went along with accepted legal precedents that a mental health condition that can be controlled by medication is not a disability, even if it is not actually being controlled. **Koch v. Healthcare, 2020 WL 1542340 (W.D. Ky., March 31, 2020).**

Injury On The Job: Court Gives Nurse Benefit Of The Doubt, Awards Workers Compensation.

To claim workers compensation the claimant must establish that an injury occurred accidentally while the claimant was performing employment services.

In this case the nurse claimed she felt a pop in her knee while helping a patient who had problems standing up while transferring from a chair to the bedside commode. The patient collapsed and his full weight bore on the nurse.

The fact of the injury must be supported by objective findings.

An MRI months later revealed meniscus damage in the knee, although that said nothing about how, where or when it happened.

It was undeniable the nurse had pre-existing degenerative joint disease in the knee.

However, non-disabling pre-existing generative joint disease does not disqualify a claimant from being awarded workers compensation benefits if an injury on the job aggravated or accelerated or combined with the pre-existing condition to produce a disabling condition for which compensation is being sought.

COURT OF APPEALS OF ARKANSAS
April 8, 2020

For her workers compensation case a nurse claimed that she felt a pop in her knee while standing firmly on the floor keeping a patient from going down to the floor who had collapsed during transfer from a chair to the bedside commode.

Days later she was seen by a physician in an outpatient clinic and then went to the hospital's own emergency room.

Over the next few months she was seen by orthopedic specialists, had an MRI that confirmed significant meniscus and ligament damage and underwent arthroscopic surgery.

Nurse Did Not Report Injury When It Occurred

The nurse's employer's workers compensation insurance carrier denied her claim on the basis that she did not report her injury to her superiors right away when it happened, which left open the possibility the injury did not actually happen on the job as she claimed.

Any injury on the job was supposed to be reported to the charge nurse right away. Although the charge nurse was still there when the incident happened, the injured nurse did not start feeling pain until the charge nurse had left for the day.

For any injury on the job the hospital also expected an incident report the same day, which the nurse did not fill out. When the nurse told her nursing supervisor and human resources five days later, she was told it was too late for an incident report.

Court Gives Nurse Benefit of the Doubt

The Court of Appeals of Arkansas ruled that failure to report an injury promptly or to file an incident report does not invalidate a worker's compensation claim, it only makes it harder to prove. The Court excused this nurse because her testimony was credible as to her injury and the delay in telling her superiors about it.

Having a pre-existing condition does not invalidate a claim, if there is medical evidence to prove that an on the job injury caused a non-disabling pre-existing condition to progress to a disabling condition that limited the ability to work. **Hospital v. Herring, 2020 Ark. App 221, 2020 WL 1697513 (Ark. App., April 8, 2020).**

Central Line Removal: Court Validates Nurse's Actions Based On Nurse's Own Assessment.

The patient was to be discharged to a rehabilitation facility after six days in the hospital with diagnoses that included severe gallbladder inflammation, diabetes, coronary artery disease, a partially collapsed lung and COPD.

In preparation for the patient's transport to her new placement the nurse who had cared for her daily during her six day hospitalization was to carry out the physician's order to discontinue her central line.

Having cared for the patient for six days the nurse knew it was very hard for the patient to breathe unless she sat up. For that reason the nurse had the head of the bed raised at a 45° degree angle instead of the usual flat supine position for the central line removal.

About a minute after the nurse pulled out the line the patient started gasping for breath and became unresponsive. She was taken to the ICU. Unfortunately she suffered permanent anoxic brain damage during the whole process.

After nineteen more days in the hospital another nurse, in preparation for discharge, removed the replacement central line from the ICU in the flat supine position without difficulty or complications.

Lawsuit Dismissed
Nurse Used Nursing Judgment

The Court of Appeals of Mississippi ruled the first nurse did not violate the standard of care by taking into consideration her own assessment of the patient and modifying the procedure accordingly.

It is within the standard of care for a nurse to use the nurse's own judgment based on the nurse's own current assessment of the patient to modify the usual way of carrying out an intervention, as the hospital's experts testified and the patient's family's experts had to concede.

It was irrelevant to the standard of care for the nurse at the time of the first central line removal that nineteen days later another nurse was able to remove the replacement central line without difficulty or complications with the patient flat on her back in the supine position, the Court also ruled. **Sumrall v. Hospital, 2020 WL 1873970 (Miss. App., April 14, 2020).**

In general terms the standard of care for removal of a central line requires the nurse or physician to:

Educate the patient about the procedure;

Place the patient in a supine position in bed;

Instruct the patient to hold his or her breath and bear down with the Valsalva maneuver;

Place pressure on the removal site with gauze; and

Remove the catheter and continue to hold pressure for five minutes.

However, it is also within the standard of care for the nurse or physician not to place the patient in the supine position if the caregiver's assessment indicates that the patient is not able to tolerate lying flat on his or her back.

The nurse in this case had been caring for this patient for six days.

The nurse knew the patient's COPD, pneumonia and partially collapsed lung made it very difficult for her to lie flat on her back.

Notwithstanding the catastrophic outcome, the nurse did not violate the standard of care going ahead with the head at a 45° angle, and the hospital is not liable.

COURT OF APPEALS OF MISSISSIPPI
April 14, 2020

Confidentiality: Patient's Remark To Other Patient Is Not Confidential.

A patient was committed involuntarily for mental health treatment in a state psychiatric facility in 2016.

A counselor in the facility overheard a casual conversation between the patient and another patient in which the patient described a homicide he had committed.

Although it was years ago the patient told the other patient he was still disturbed by memories of what he did and still feared he could be arrested and incarcerated.

The counselor fully documented in the patient's chart what he overheard. He also notified the police. The police recognized the details as an unsolved homicide from 1991. They arrested the patient and charged him with murder.

Any statement by a patient to a healthcare professional for purposes of mental health treatment is strictly confidential, even if the patient admits to having committed a crime.

An offhand remark to another patient, even while the patient is hospitalized for mental health treatment, is not confidential.

SUPERIOR COURT OF PENNSYLVANIA
April 7, 2020

The Superior Court of Pennsylvania ruled the patient's statements are not protected by mental health treatment confidentiality and can be used against him in a criminal prosecution for murder.

Although the patient's statements during his conversation with the other patient could have been and were easily overheard by a mental health professional, and were made while the patient was in the hospital, the patient's statements to the other patient were not made for purposes of mental health treatment. **Commonwealth v. Defendant, __ A. 3d __, 2020 WL 1684047 (Penna. Super., April 7, 2020).**

Racist Comments: Minority Physician Was Brunt Of Nurses' Derision.

A physician born in India who was practicing at a hospital in the US had a difficult time working with his physician colleagues and the hospital's nurses.

Hospital medical management forced him into a three-week respite for inpatient mental health evaluation and treatment.

Eventually the hospital fired him, pointing to substandard medical practice and problematic interpersonal interactions with other physicians and the nurses.

Another physician at the hospital complained to management about nurses' racist slurs to and about the minority physician.

That other physician was fired, but then sued and obtained a million dollar jury verdict from the hospital.

However, that does not prove that the minority physician himself was fired as retaliation and not because of problems with his medical practice and relations with coworkers.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
April 3, 2020

The US Court of Appeals for the Eighth Circuit (North Dakota) turned down his wrongful termination lawsuit.

The Court accepted the general premise that the minority physician would have had the right to sue the hospital if he was fired for complaining about offensive racist comments the nurses reportedly did make toward him and behind his back.

However, the proof was lacking that his firing was the actual result of any complaint by the physician himself, apart from the problems he himself was causing. **Bharadwaj v. Hospital, __ F. 3d __, 2020 WL 1647197 (8th Cir., April 3, 2020).**

Allergic Reaction To Medication: Patient Failed To Prove Violation Of Standard Of Care.

A patient who came to the emergency room with complaints of shortness of breath was admitted to the hospital for treatment.

An old chart at the hospital from a previous hospitalization at the hospital contained records from another hospital about an allergic reaction to a specific antibiotic at the other hospital.

Nevertheless this time the same antibiotic was given to him IV after the hospital admitted him. He reportedly had an exacerbation of his respiratory symptoms which made him angry and caused him to leave the hospital AMA.

The patient's expert's opinion fails to define the standard of care, fails to explain how the standard of care was violated and fails to link the alleged violation to harm to the patient.

COURT OF APPEALS OF TEXAS
April 8, 2020

Because the patient did not have an acceptable expert opinion for his case the Court of Appeals of Texas dismissed the patient's lawsuit against the hospital.

It was not sufficient for the patient's medical expert to rely on hindsight alone to say that the hospital did not have a system for surveillance of patient's medications to insure that patients did not receive medications to which they had sensitivities.

Instead, the expert needed to set out in detail exactly what is expected of a hospital in this regard and point out exactly how this hospital's procedures did not live up to what was expected in this patient's care.

The expert also failed to show that this patient's symptoms during his medication reaction were symptoms that can be linked to the antibiotic in question by reference to reported case histories. **Welch v. Med. Ctr., 2020 WL 1696086 (Tex. App., April 8, 2020).**

Bogus In-Service Class: Court Turns Down Defamation Lawsuit.

An outside company was hired by the hospital to teach a Pediatric Advanced Life Support certification in-service to the hospital's E.R. nurses.

After the class the nursing manager complained to the company rep that the instructor had too many students in the class, did not show the video and used far less than the allotted time for the class.

The company rep had to inform the nursing manager that the way the instructor conducted the class did not meet American Heart Association standards and the certifications of the nurses were not valid.

The hospital sent an email to its nurses who had taken the advanced life support class telling them that their certification was not being recognized by the American Heart Association because of major deficiencies in the way the instructor taught the class.

COURT OF APPEALS OF MICHIGAN
April 16, 2020

The Court of Appeals of Michigan turned down the instructor's defamation lawsuit against the hospital after he was suspended from teaching for one year.

The hospital's email to its nurses was incorrect to state that all of this instructor's certifications from all of his classes at other institutions were being invalidated.

The Court ruled that that statement was harmless. It was disseminated only to this hospital's nurses and was not incorrect as far as they were concerned.

The instructor had no proof the hospital had any malicious motive toward him beyond a purely legitimate interest in its nurses being certified by a valid in-service class taught by a competent instructor. **Bishop v. Hospital, 2020 WL 1896757 (Mich. App., April 16, 2020).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

False Claims Act: Minimum Data Set Forms Inaccurate.

A CNA who had been fired from a nursing home filed suit against her former employer under the US False Claims Act.

The suit alleged that substandard care in general at the facility violated the Federal mandate that nursing facilities promote and enhance residents' quality of life. It was fraud against the government to accept Medicare or Medicaid reimbursement for care that did not promote or enhance quality of life, it was further alleged.

The US District Court for the Eastern District of Pennsylvania ruled that vague allegations of understaffing, nursing assistants performing nursing tasks, residents not being bathed often and call bells not being answered promptly are too imprecise for a Fair Claims Act lawsuit.

However, the suit also alleged in very specific terms that seven residents' Minimum Data Sets contained inaccurate assessment data.

The Court ruled that specific inaccurate data points being used to substantiate reimbursement eligibility are the type of evidence that will support a False Claims Act suit. **US v. Health, 2020 WL 1875608 (E.D. Penna., April 15, 2020).**

False Claims Act: Case Managers Were LPNs, Not RNs.

An RN who had worked for an agency that processes state Medicaid reimbursements filed a lawsuit under the US False Claims Act.

The lawsuit claimed the agency defrauded the Medicaid program by placing licensed practical nurses in case manager positions instead of registered nurses.

The US Court of Appeals for the Fifth Circuit (Mississippi) agreed in general terms with the lawsuit that a healthcare provider violates the Fair Claims Act by accepting payment for services that do not meet Federal or state standards or that breach the provider's contract with the state Medicaid authority.

However, the Court was not persuaded that it was a violation of any express provision of Federal or Mississippi state law to use licensed practical nurses in case manager positions for processing of Medicaid health insurance claims.

Nor could the Court find exact language in the Medicaid provider contract that required case manager positions to be filled by registered nurses. **US v. Health, __ Fed. Appx. __, 2020 WL 1887791 (5th Cir., April 15, 2020).**

Deaf Patient: Patient Who Will Return For Care Has Standing To Contest Future Discrimination.

The Americans With Disabilities Act (ADA) allows certain deaf patients to sue a hospital or other healthcare provider for a court injunction to prevent future discrimination.

A deaf patient who qualifies can petition the court to outline in the court's injunction the accommodations the provider must honor in future interactions with the patient.

However, a major stumbling block to deaf patients' access to the courts for such injunctions has been the ADA's requirement that it must be virtually certain that that same deaf patient will return to the same healthcare provider for further care in the immediate future.

Otherwise the deaf patient's legal rights are limited by the ADA to monetary damages for harm caused by discrimination that has already occurred.

A deaf patient, even one who has been a victim of discrimination in the past, generally cannot use the Americans With Disabilities Act to obtain a court order directing what a healthcare provider must do for the deaf patient in the future.

The exception is a deaf patient who can show he or she is virtually certain to return to the same provider for care in the near future.

UNITED STATES DISTRICT COURT
LOUISIANA
April 17, 2020

Obstetric Patient Will Return For Care

The US District Court for the Middle District of Louisiana saw that a deaf patient who gave birth at the hospital has nowhere else to go for follow-up care for herself and her newborn.

Therefore she has legal standing to file for an injunction to set the terms of the hospital's future interactions with her *vis a vis* her deafness.

In her lawsuit the patient objected that no live ASL interpreter was provided during her hospitalization.

However, at this time the Court has ruled for her only on the preliminary question whether she has standing to sue, not yet on the ultimate question of the accommodations she will get, which may or may not include an interpreter. **King v. Hospital, 2020 WL 1908030 (M.D. La., April 17, 2020).**