LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

September 2002 Volume 10 Number 9

Advanced Practice: Court Says Nurse Midwife Complied With Standard Of Care.

The patient's pregnancy was being followed by a nurse midwife employed by the patient's HMO.

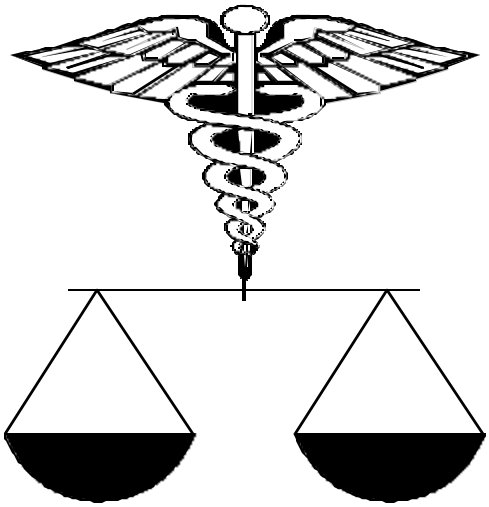
Because of her age (thirty-seven) the patient had an amniocentesis at a university hospital, at the nurse midwife's suggestion. All the testing indicated a normal healthy fetus.

Eighteen days later the patient began having a vaginal discharge while doing housework. She phoned the nurse midwife. Based on the patient's description of the discharge the nurse midwife advise2d her to rest. She told her she did not have to come to the hospital, but should call back again if she was still concerned.

Twelve days later the patient began bleeding and phoned the physician at the university hospital. He told her to go to the nearest hospital. There premature rupture of the amniotic membrane was diagnosed. Labor was induced but the fetus was born dead.

The couple sued their HMO for the death of their child. The jury ruled in favor of the HMO and exonerated the nurse midwife from negligence. The Supreme Court of Connecticut upheld the jury's decision.

The central point of contention was how the trial judge instructed the jury on the legal standard of care.



A nurse midwife employed by a health maintenance organization is held to the prevailing standard of care that is recognized as acceptable and appropriate for a reasonably prudent nurse midwife engaged in the practice of obstetrics and gynecology.

A nurse midwife is not judged by the standard of care for ob/gyn physicians.

SUPREME COURT OF CONNECTICUT
July 30, 2002

Advanced Practice Standard of Care

Rejecting the long-standing common-law rule, the court decided that advanced nursing practice is legally distinct from the practice of medicine.

When the clinical judgment and actions of a nurse with advanced standing are called into question in a civil malpractice lawsuit, the nurse is to be judged by the accepted standards for nurses with comparable standing in the nurse's specific field of clinical expertise, not by the standards for physicians practicing in the field, the court ruled.

Nurse Midwife as Expert Witness

The court accepted the nurse midwife's testimony as an expert witness in her own defense. She testified that a thick milky vaginal discharge is not consistent with release of amniotic fluid. Were it a clear watery discharge, the nurse midwife indicated the standard of care would be to send the patient to the hospital immediately, but that is not what happened in this case.

The court accepted the opinion of an ob/gyn physician that the nurse midwife was correct, without going into what a physician might have done differently. **Ali v. Community Health Care Plan, Inc., 261 Conn. 143, 801 A. 2d. 775, 2002 WL 1608344 (July 30, 2002).**

Inside this month's issue ...

September 2002

Worker's Compensation: Aide's Knee Popped Or Gave Way At Work, Court Sees It As A Compensable Industrial Injury.

A nurse's aide with nineteen years experience at the hospital was walking around a patient's bed while making the bed and felt a pop in her right knee. Later that same day, while carrying hospital bed linens up a flight of stairs she felt another pop in the same knee.

She called in absent the next day, spoke with the charge nurse and was told to go to the emergency room. There were discrepancies between the aide's statements to the charge nurse, the E.R. notes and the incident report as to what, if anything, she was carrying up the stairs when her knee went out the second time.

The aide's worker's compensation claim was denied. She filed an appeal. The Missouri Court of Appeals ruled in her favor, approving her compensation.

Court Expands Definition Of Industrial Injury

For a patient-care worker, an on-the-job injury does not necessarily have to involve an accident, that is, there does not have to be a fall, loss of balance, slip or unusual twisting or straining immediately prior to the moment when symptoms of injury are first noticed.

The only important factor is whether the injury happened in the course of employment, not whether there was some sudden, unexpected trauma that precipitated the injury, the court said.

According to the court, it is not necessary for the employee's job duties to create an increased risk of harm beyond what people are exposed to in everyday life.

It is not relevant, according to the court, that walking, walking up stairs, carrying relatively light items up stairs, walking around beds and making beds are activities of everyday life off the job, if an employee first experiences symptoms of injury while doing one of those things on the job. **Bennett v. Columbia Health Care, __ S.W. 3d __, 2002 WL 1790865 (Mo. App., August 6, 2002).**

An on-the-job knee injury does not have to be immediately preceded by a sudden unusual event such as tripping or slipping or by some unusual strain on the knee caused by bending, twisting or kneeling.

The law of worker's compensation is shifting away from the requirement that a worker suffer from a sudden accident.

The law now looks only to see if the injury itself arose out of and in the course of employment.

Although not immediately preceded or accompanied by an unforeseen and unusual event, an on-the-job injury is compensable when it is an unexpected result of the performance of the usual and customary duties of an employee which leads to a physical breakdown or a change in pathology.

Walking on level surfaces and up stairs are an integral part of this employee's job activities, in which she was engaged at the time her knee popped or gave way. It is not relevant that walking is also a part of everyday non-working life.

MISSOURI COURT OF APPEALS
August 6, 2002

EMTALA: Court Puts Burden On Patient To Show Disparate Care.

A patient came to the hospital's emergency room on a referral from a medical clinic. His problems were listed as urinary retention, edema in his legs, high blood pressure and pain.

At the hospital he was seen ahead of other patients. Nurses took his vital signs, drew blood, inspected the Foley catheter that was inserted at the clinic, arranged for a chest x-ray and had him seen by the physician. The physician diagnosed bronchial pneumonia, wrote a prescription and sent him home. He died the next afternoon.

The key to the Emergency Medical Treatment And Active Labor Act (EMTALA) is for the patient to show that the screening and stabilization in the emergency room was different from that afforded to other patients.

A hospital does not have to delve into its own emergency screening and stabilization protocols in court to prove there was no disparate treatment.

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT
August 7, 2002

The US Court of Appeals for the First Circuit upheld dismissal of the case based simply on the hospital's president's affidavit that there was no deviation in this patient's case from the standard treatment the hospital offers to other persons in the E.R. in the same condition.

The patient's attorneys made no effort to obtain the hospital's E.R. protocols or to prove a higher level of care was appropriate and within the hospital's capabilities. **Guadalupe v. Agosto, __ F. 3d. __, 2002 WL 1772941 (1st Cir., August 7, 2002).**

National Practitioner Data Bank: Court Discusses Nurse's Rights Following Malpractice Settlement.

After a woman died in the hospital from a uterine rupture shortly after delivering a stillborn baby, the husband and daughter sued the hospital, several physicians and the labor and delivery nurse.

The family's lawyer indicated in pretrial settlement negotiations his expert witnesses would lay the blame solely on the labor and delivery nurse, for failing to notify the physicians immediately of a sharp drop in the patient's blood pressure accompanied by sudden loss of consciousness. The lawyer conveyed his clients' offer to settle for $850,000 and to dismiss all the defendants in the case.

The hospital's legal counsel obtained the nurse's written consent to settle the claim for that figure. The consent to settle form included a clause stating that the settlement would be reported, as required by law, to the National Practitioner Data Bank and the state board of nursing.

Then the hospital promptly terminated the labor and delivery nurse for intentionally falsifying a patient's chart.

Two weeks later a lawyer hired by the nurse notified the hospital's insurer she was revoking her consent to settle, on grounds of mistake, duress and coercion.

Federal regulations (45 CFR 60.7) require any insurance company or self-insured facility to report to the National Practitioner Data Bank and the state licensing board any settlement of a malpractice claim or judgment against a physician, dentist or other health care practitioner.

(These regulations are on our website at http://www.nursinglaw.com/607.pdf.)

These regulations apply to settlements for malpractice committed by a nurse.

A nurse has the right to seek a state-court injunction delaying a report to the National Data Bank and state data bank and licensing board until the institution's internal quality review system has determined to the court's satisfaction that it was in fact the nurse's error or omission that necessitated the settlement.

CALIFORNIA COURT OF APPEAL
OPINION NOT OFFICIALLY PUBLISHED
July 22, 2002

Court Injunction Sought To Block Reporting

The California Superior Court for San Diego County issued an injunction blocking the hospital and its insurer from reporting the settlement.

However, the injunction was to remain in effect only until the hospital's internal quality review process could investigate and determine to the court's satisfaction that there was an adequate rationale for seeing the settlement as necessary solely because of the labor and delivery nurse's errors and omissions just as the settlement was characterized in the settlement negotiations between the hospital's insurance company and the family's attorney.

In an opinion that has not been officially published, the California Court of Appeal endorsed this course of action.

The Court of Appeal was satisfied, based on an opinion from a former chair of a university medical school's ob/gyn department, that the nurse's negligence was the sole cause of the patient's avoidable death.

The Court of Appeal sent the case back to the Superior Court to dissolve the injunction so that the settlement could finally be reported to the authorities.

No Obligation To Provide Legal Counsel

The Court of Appeal agreed with the Superior Court that neither the hospital or its insurer had an obligation to provide legal counsel to defend the nurse from charges of professional negligence in the hospital's internal quality review processes. **Jinatongthai v. Tri-City Medical Center, 2002 WL 1608347 (Cal. App., July 22, 2002).**

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Hearing-Impaired Patient: Court Rules Hospital Complied With The ADA And Rehabilitation Act.

A hearing-impaired patient filed a disability discrimination suit against the public hospital where he had a five-year history of receiving medical care. The US District Court for the Southern District of New York threw out the lawsuit.

Americans With Disabilities Act
Rehabilitation Act

Hospitals must provide appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills where necessary to afford such persons an equal opportunity to benefit from hospital services. The court cited the relevant statutes and regulations in its opinion.

It is not required that a hospital provide services which produce the same result or level of achievement for handicapped and non-handicapped persons, so long as the hospital provides handicapped persons equal opportunity to obtain the same result or gain the same benefit in the most integrated setting appropriate to the person's needs, the court said.

Deliberate Indifference

The legal standard for a civil lawsuit for disability discrimination by a hearing-impaired individual against a healthcare provider is that a person with authority to accommodate the individual's need for auxiliary aids to permit meaningful participation in the individual's own health care was deliberately indifferent to the individual's needs.

In this case the court ruled that a one-day delay in getting an interpreter after the patient asked for one is not deliberate indifference. As long as the patient's needs can be accommodated in a meaningful manner, the use of an interpreter who is not certified or whom the patient does not like is not deliberate indifference.

Having the patient communicate with doctors and nurses with handwritten notes is not deliberate indifference, if the patient's medical needs can be met in this fashion, the court ruled. **Alvarez v. New York City Health & Hospitals Corporation, 2002 WL 1585637 (S.D.N.Y., July 17, 2002).**

For disability discrimination claims against hospitals by hearing-impaired individuals, the ADA and the Rehabilitation Act are basically the same.

To succeed with a civil lawsuit for damages, a hearing-impaired individual must demonstrate discriminatory intent amounting to deliberate indifference by a person at the hospital with authority to address the issue of accommodation.

The patient was given a TTY when he first came to the emergency room to enable him to phone patient relations to ask for a sign-language interpreter.

The patient has to ask for an interpreter. It does not matter that the patient would prefer not to have to ask for an interpreter.

The hospital had a policy of assigning interpreters upon request. A delay of one day is not deliberate indifference.

The interpreter was not certified, but that is not important as long as the interpreter is qualified to assist the patient in getting his medical needs met.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
July 17, 2002

HMO Telephone Triage: No Legal Duty To Preserve Nurses' Logs.

It was a complicated case alleging medical malpractice by a physician in the management of a patient's prenatal care leading to stillbirth of a previously viable and healthy fetus. The patient's lawyers also sued the patient's health maintenance organization (HMO) alleging the HMO was negligent for not preserving the log books containing the handwritten notes of the HMO's telephone triage nurses who had acted as intermediaries between the patient and her physician.

There was no allegation of professional malpractice against the HMO's nurses. It was only that when their log books were requested during the litigation, five years after the events in question, the patient's lawyers were told they had been destroyed in the ordinary course of business six months after they were created.

The HMO did not take on a contractual responsibility to preserve the triage nurses' notes indefinitely, beyond the point where they had any relevance to the patient's medical care.

There was no indication the notes would prove anything against the physician.

APPELLATE COURT OF ILLINOIS
August 8, 2002

The Appellate Court of Illinois dismissed the suit against the HMO, finding no spoliation of the evidence. The court said the HMO had no contractual obligation to a member to preserve the nurses' phone triage logs indefinitely in anticipation that the member might later sue a physician. **Thornton v. Shah, __ N.E. 2d __, 2002 WL 1822126 (Ill. App., August 8, 2002).**

Neonatal Nurse Practitioner: Court Defines Standard Of Care For Nurse Specialists.

An infant was born at 26 to 27 weeks gestation weighing approximately 900 grams. He was placed in the hospital's neonatal intensive care unit.

In the neonatal ICU an umbilical arterial catheter was inserted, among other reasons, to monitor arterial blood gases.

The baby's nurse was a neonatal nurse practitioner. She drew blood from the arterial catheter and repositioned the infant. Twenty minutes later it was discovered that the umbilical catheter had become dislodged, causing the infant to bleed profusely from his umbilical artery. Before it was discovered he had lost about half his blood. No cardiac or respiratory alarm sounded to alert anyone there was a problem with the infant.

According to the Supreme Court of Michigan, there is a dispute about what really happened after this point.

The nurse testified she immediately applied pressure to stop the bleeding and summoned the neonatologist who pushed 20 cc of Plasmanate. The neonatologist testified he did not recall the event.

The nurse testified she then paged the resident on duty in the neonatal ICU who pushed another 10 cc of Plasmanate and 20 cc of packed red cells.

The infant was transferred to a children's hospital three days later. A cranial ultrasound showed there had been intracranial bleeding which was responsible for cerebral palsy and mild retardation.

The jury awarded $2.4 million. The trial judge ordered the damages reduced to $475,000 or in the alternative a new trial. After that issue went up on appeal the trial judge threw out the jury's verdict entirely. Then the Court of Appeals reinstated the original $2.4 million jury verdict against the hospital. See *Umbilical Arterial Catheter: Nurse Faulted, Dislodged Catheter While Drawing Blood.* Legal Eagle Eye Newsletter for the Nursing Profession (9)4, Apr '01 p. 4.

On July 25, 2002 the Supreme Court of Michigan threw out the jury's verdict and ordered a new trial.

When a lawsuit alleges negligence on a hospital's neonatal intensive care unit, the court does not evaluate the case against some sort of standard of care for a hospital's neonatal intensive care unit.

Instead, the court has to evaluate the alleged errors or omissions that have been identified for specific actors against the standards of care for their professions, be they, as in this case, neonatologists, resident physicians, respiratory therapists or nurses.

Physicians are judged by different standards of care depending on whether they are general practitioners or specialists.

Nurses are not judged by the standard of care for physicians. However, there is a comparable distinction between nurses with basic general skills and nurse specialists with advanced practice standing.

The standard of care for a neonatal nurse practitioner is the level of skill and care ordinarily possessed and exercised by practitioners in the same specialty practicing in the same or similar practice settings.

SUPREME COURT OF MICHIGAN
July 25, 2002

Cause and Effect Disputed

The hospital and the other defendants had argued, regardless of whether the nurse was negligent for the umbilical catheter bleeding, there was no evidence linking that event to the intracranial bleeding that led directly to the infant's cerebral palsy.

The defendants also argued that intracranial bleeding leading to cerebral palsy is a not-uncommon occurrence with premature infants, irrespective of any negligence in the infant's care.

Standard Of Care

The Supreme Court of Michigan ruled the verdict was the product of an incorrect rendering of the legal standard of care in the trial judge's instructions to the jury.

There is no general standard of care for a hospital's neonatal intensive care unit, the Supreme Court said. Instead, the errors or omissions of individual actors must be identified and weighed against the standards of care in their professions.

Nurse Practitioners

Nurse practitioners do not practice medicine. They are not judged by the standard of care for general practice physicians or physicians who specialize in the same area of medicine in which the nurse practices, the court ruled.

Instead, nurse practitioners and other nurse clinical specialists are judged by the prevailing standard of care for nurse practitioners or nurse specialists with the same education, experience and certifications practicing in the same field of expertise in the same or similar practice settings.

The court did not make it entirely clear how the clinical judgment or actions would have been different under the circumstances for a nurse practitioner, other specialty nurse, general staff nurse, neonatologist, general practice physician, resident physician or another professional working in the neonatal ICU. The court seemed to be looking for a reason to reverse the verdict and give the defendants another opportunity to defend successfully. **Cox v. Board of Hospital Managers, __ N.W. 2d __, 2002 WL 1722063 (Mich., July 25, 2002).**

Nursing Negligence: Court Finds Nurse's Report Insufficient.

The lawsuit alleged nursing negligence in the care of a post-surgical patient. While still not fully recovered from general anesthesia the patient fell out of bed, allegedly because the nurses failed to put the bed rails up and/or to failed to restraint the patient. The Appellate Court of Illinois thew out the case.

The court pointed to the state's healing arts malpractice statute, similar to medical malpractice statutes in other states, which requires an affidavit of merit to be filed with the court. The affidavit of merit must be backed by an opinion from a physician that there has been negligence that harmed the patient.

The courts generally deem nurses qualified to testify on the issue nursing negligence. But it is still necessary, this court ruled, for a plaintiff to comply strictly with the state statute if the statute calls for a physician's opinion. **Giegoldt v. Condell Medical Center, 767 N.E. 2d 497 (Ill. App., April 4, 2002).**

Visitor Gets Power Of Attorney: Hospital Not Responsible.

The Court of Appeal of Louisiana ruled that a hospital has no legal liability to other family members when a patient's grandson visits in the ICU, gets his grandfather to sign a power of attorney and then uses the power of attorney to empty the grandfather's bank accounts. **Randall v. Chalmette Medical Center, Inc., 809 So. 2d 1129 (La. App., May 22, 2002).**

L & D: Nurses Responsible For Delayed Cesarean.

It was her first child. The patient was the only patient in the labor and delivery room that afternoon. She began to experience pain different from the labor pains she had been having that morning. It was intense, like someone had stuck a knife in her and twisted it, she said.

Only after the patient's husband, mother and father each went to the nurse's station and complained vehemently that nothing was being done did one of the nurses check on the patient and realize something was seriously wrong.

The nurse paged the physician and reported that the fetal heart rate was only 60 to 70. Apparently it was the first time the nurses had noticed that fact.

The physician was in her car and began racing to the hospital. She phoned ahead from her car to make arrangements for an emergency cesarean. During the procedure it was noted the mother's uterus had ruptured in three places.

The Supreme Court of Virginia faulted the nurses for significant neurological damage to the infant the experts believed could be traced to the interval from thirty minutes after the extreme pains began until thirty minutes before the cesarean was actually started. **Howerton v. Mary Immaculate Hospital, Inc., 563 N.E. 2d 671, 2002 WL 1269344 (Va., June 7, 2002).**

When a woman in labor has pains of a different type, character and intensity than labor pains, the nurses must evaluate hers and the fetus's status, anticipating that optimally it takes another 30 minutes to get an emergency cesarean underway.

SUPREME COURT OF VIRGINIA
June 7, 2002

Employee Handbook: Court Throws Out Nurse's Breach Of Contract Suit.

Over the course of nineteen years a nurse worked her way up from labor and delivery nurse to patient care manager at one of the parent corporation's facilities.

She was given informal assurance by the corporate director of women's health she was on track for promotion to patient care manager at the corporate level for all the subsidiary facilities. When the position was formally posted as open, however, the corporate director and another executive decided her management style was too one-sided, inconsistent with the new corporate style of shared governance.

She did not get the position and sued for breach of contract. The Court of Appeals of Wisconsin dismissed her case.

Misplaced Reliance On Employee Handbook

The court noted there were factors distinguishing this case from the modern trend toward the courts seeing employers' handbooks as creating binding contracts.

First, the employee handbook stated expressly it was only a guide to the employer's policies and was not a contract.

Second, in the handbook the employer expressly reserved the right to formulate and to change its policies unilaterally at any time for any reason.

Third, there was no requirement that the employee agree to be bound by the provisions of the handbook to retain employment. The employee in this case made no mutual contractual promise to her employer to abide by the employee handbook, such mutuality being one of the legal hallmarks when a binding contract exists.

Fourth, the handbook talked about promotion and transfer only in general terms, but did not promise anyone anything. **Tremlett v. Aurora Health Care Inc., 2002 WL 1424224 (Wis. App., July 2, 2002).**

Skilled Nursing: Court Finds Immediate Jeopardy Existed To Health And Safety Of Ventilator-Dependent Residents, Upholds Substantial Civil Penalty Imposed By CMS.

A respirator patient died in a skilled nursing facility after an episode of respiratory distress. Two respiratory therapists responded to the incident. One of them turned off the ventilator because the alarm was sounding. Then they directly oxygenated the patient. When they left the room, however, they neglected to turn the ventilator back on.

Two months after the incident the facility wrote up a new policy for nursing assessment of ventilator patients after they are stabilized following an episode of respiratory distress.

The policy stated the patient's nurse will check the patient and chart q 15 minutes x 4 for a total of one hour, encompassing the following: vital signs, respiratory status, oxygen saturation, lung sounds, ventilator settings, level of consciousness, odor, color and consistency of secretions and comfort level.

During the first six weeks the new policy was in effect five respiratory-distress episodes occurred. One more resident died shortly after the first episode and another died three weeks after the second.

The state department of public health surveyed the facility nine weeks after the new policy went into effect. The survey concluded that a state of immediate jeopardy to the health and safety of residents had existed for a period of 105 days. A civil monetary penalty of $3050 per day was imposed for that period. A state of less serious jeopardy existed from the time of the survey until the department was satisfied that compliance had been achieved. A penalty of $50 per day was imposed for that period.

The total civil monetary penalty was in excess of $320,000. The US Court of Appeals for the Seventh Circuit upheld the penalty as appropriate under the circumstances.

Skilled nursing facilities can be assessed civil monetary penalties for violations of Medicare regulations.

A penalty of $3050 to $10,000 per day can be imposed for deficiencies that constitute immediate jeopardy to a resident or for repeated deficiencies.

A penalty of $50 to $3000 per day can be imposed for deficiencies that do not constitute immediate jeopardy but either caused actual harm or have the potential for causing more than minimal harm.

Section 483.25(k) says in general that residents with special needs must receive proper treatment and care for certain special services such as tracheostomy care, tracheal suctioning and respiratory care.

The state surveyors were correct to require a policy be implemented for comprehensive follow-up nursing assessment of ventilator patients after episodes of respiratory distress.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
August 15, 2002

Centers for Medicare & Medicaid Services (formerly Healthcare Financing Administration) regulations at 42 CFR Section 483.25 contain general statements about the quality of care in long-term care facilities. Sub-section 483.25(k) pertains to residents with special needs.

(We have placed Section 483.25 on our website at http://www.nursinglaw.com/48325.pdf.)

Policy For Nursing Assessment After Respiratory Distress

The court ruled the Illinois Department of Public Health was correct to interpret the regulations to require a skilled nursing facility to have a policy mandating close, comprehensive nursing assessment of ventilator patients following episodes of respiratory distress.

The facility was deficient for not having such a policy before the first resident's death, and for not following the policy after it was written, leading to two more deaths and three more close calls before the state survey team intervened.

The court also found fault with the facility for not seeing to physician follow-up for signs of respiratory or systemic infection and for failure to require sterile technique when a trache is cleaned or replaced by skilled nursing staff following an episode of distress.

Potential versus Actual Harm

Although the last three episodes did not involve actual harm to the residents, the court nevertheless sided with the state surveyors' judgment call that these incidents were evidence of an overall state of actual, immediate jeopardy to the health and safety of the facility's residents, and upheld the imposition of the higher-level penalty for the whole time from the first death to the state survey. **Fairfax Nursing Home, Inc. v. US Dept. of Health & Human Services, __ F. 3d __, 2002 WL 1869592 (7th Cir., August 15, 2002).**

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

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

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. The court believed the hearing officer who heard the testimony 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).**