LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

September 2003 Volume 11 Number 9

Transient Ischemic Attacks: Court Faults Nurses, Did Not Report To Physician.

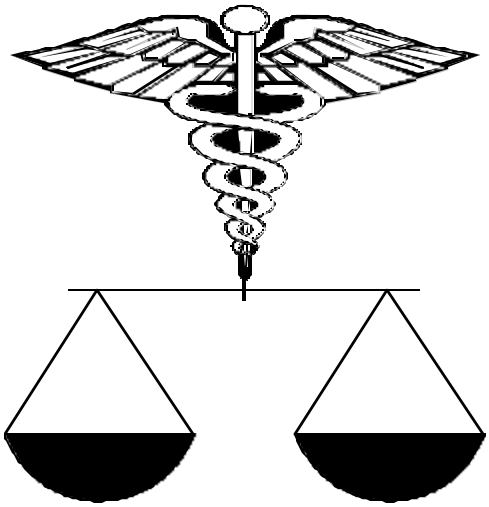
The deceased was a resident at the long-term care center from 1990 until her death from a stroke in March, 1999. In July, 1998 she began showing signs of transient ischemic attacks during which she would be confused and unable to verbalize.

TIA's Charted, No Follow-Up

These episodes were described at regular intervals in the nursing progress notes in her chart. However, the nurses did not notify the physician of this major change in the patient's health status or take steps to refer her for a neurological work-up.

One day in March, 1999 the staff discovered she was having difficulty talking and was crying. The staff reported this to the nurse on duty. As they had been doing, the nurse charted that her speech was slurred, her face was drooping on the left, her left eye was closed and she was anxious and crying. There was no other immediate response by the nurse.

A nurse finally did call a physician at 4:30 a.m. the next morning. He told the nurse to wait for her own physician to see her. He was called at 8:00 a.m., came in at 9:00 a.m. and diagnosed that a cerebrovascular accident had just occurred. He sent her to the hospital where she died two weeks later.



Transient ischemic attacks are regarded as the early warning system for a stroke.

Statistical studies have shown that about one-third of patients with transient ischemic attacks will have a permanent stroke, usually within a matter of months.

Ideally treatment is most effective before the permanent stroke occurs.

SUPREME COURT OF WYOMING
August 1, 2003

Transient Ischemic Attacks Aggressive Medical Intervention

The family sued the long-term care facility, both physicians and two staff nurses. The Supreme Court of Wyoming faulted the care they gave and faulted the local judge for dismissing the family's lawsuit against them. A civil jury in the local county court will decide if neglecting medical follow-up of the patient's transient ischemic attacks, likely a result of cerebral arterial vasospasm, contributed to some degree to the full-blown cerebrovascular accident from which she died.

The court ruled a nurse's legal standard of care is not just to notice and chart signs of transient ischemic episodes. The nurse must report such episodes to a physician. Beyond that the court would have liked to have seen the nurses independently taking steps to get a full neurological work-up.

The court ruled it is not necessary to prove conclusively that timely and aggressive follow-up would have prevented a stroke in a patient having transient ischemic episodes. It is only necessary to prove the patient lost some chance of avoiding a stroke. **McMackin v. Johnson County Healthcare Center, 2003 WY 91, __ P. 3d __, 2003 WL 21771691 (Wyo., August 1, 2003).**

Inside this month's issue ...

Improper Transfer Technique: Court Finds Nursing Negligence.

A diabetic patient went to the hospital for amputation of her left leg necessitated by non-healing ulcers. After ten days in acute care post-surgery she was transferred to skilled rehab.

In a transfer from the toilet to a wheelchair on the skilled rehab unit her right leg was lacerated. The laceration was slow to heal but they were able to discharge her. Nevertheless her right leg also eventually had to be amputated.

She sued the hospital alleging that nursing negligence in the transfer on the skilled rehab unit was the underlying cause of her second amputation.

The Court of Appeals of Michigan supported the jury's finding of nursing negligence and had serious legal questions about the application of a new state statute in Michigan that puts a cap on pain and suffering awards in malpractice cases.

Proper Transfer Technique Defined

First the nurse must assess the patient's ability to assist in the transfer. How strong is the patient's remaining limb or the limb that will serve as the pivot for the transfer maneuver?

More importantly, how well does the patient understand the patient teaching that has been done concerning the patient's own participation in the maneuver?

Next, for the safety of a fragile recent amputee, two nurses or nursing personnel must be present and a transfer belt must be used, the court believed.

It is also of the utmost importance that the caregiver most directly assisting the patient position himself or herself properly directly in front of the patient so that the patient's knee or knees can be positioned between the caregiver's knees so that the sit-up, pivot and sit-down portions of the maneuver can be done safely.

Again the court stressed that a pivot cannot begin unless and until the nurse is sure that the patient teaching has been effective and the patient can and will effectively participate. Otherwise a straight two-person lift must be done. **Wiley v. Henry Ford Cottage Hospital, __ N.W. 2d __, 2003 WL 21568688 (Mich. App., July 10, 2003).**

The applicable standard of care is the skill and care ordinarily possessed and exercised by a practitioner of the profession in the same or a similar practice setting.

Expert testimony is necessary to establish the standard of care for a particular clinical scenario.

An ordinary lay person on the jury is not equipped by common knowledge and experience to judge the skill or competence of a nurse or determine whether it meets the standards of practice in the nurse's professional community.

A nurse testifying as an expert on nursing standards in a nursing malpractice case cannot testify what he or she would have done in the specific clinical scenario.

Even if the nurse is an expert on nursing care in general and in a specific nursing specialty area, what the expert would have done is completely irrelevant.

A nursing expert must testify what nurses in general would do in the specific situation in question and how the defendant nurse's failure to act as other nurses would do injured this particular patient.

COURT OF APPEALS OF MICHIGAN
July 10, 2003

Sexual Assault: Nurse Practitioner Accepted As Expert Witness.

The New York Supreme Court, Appellate Division, refused to overturn a conviction for child sexual assault on the grounds the prosecution's medical expert, a licensed nurse practitioner, was not competent to give a medical opinion in court.

The admissibility and limitations of expert testimony are controlled by the sound discretion of the trial judge.

The trial judge has the primary responsibility of determining whether an expert possesses adequate skill, training, education, knowledge or experience.

An expert's competency can be derived from formal training or from observation and actual experience.

Expert medical testimony need not come from a licensed doctor. A nurse practitioner can also render a medical opinion.

NEW YORK SUPREME COURT
APPELLATE DIVISION
July 24, 2003

Although the child, ten years old at the time of trial, testified herself as to what happened, the prosecutor also had the nurse practitioner testify there was medical evidence of a sexual assault.

The court noted she had considerable experience as a nurse practitioner in pediatric and adolescent gynecology. Her nurse practitioner's license gave her authority to make medical diagnoses. **People v. Munroe, __ N.Y.S.2d __, 2003 N.Y. Slip Op. 16136, 2003 WL 21709674 (N.Y. App., July 24, 2003).**

Last Will And Testament: Court Looks At Nurses' Notes To Decide Issue Of Mental Capacity.

An elderly lady was admitted to the hospital from her home, then sent to skilled nursing for rehab, then to an assisted living home, then back to the hospital and then back to assisted living.

She had chronic kidney problems that required dialysis. Sometimes her mental status deteriorated into confusion right around her dialysis appointments. At some point she suffered a stroke which also seemed to affect her cognitive status.

Over the course of a few weeks she spoke with an attorney several times on the phone for him to draw up her last will and testament. She had had a lifelong rift with one of her siblings and chose not to give anything in her will to the now-deceased sibling's children. She also wanted to give substantial sums to charity rather than to her other two siblings and their children.

The attorney mailed her will to her at the assisted living home. The social worker got a second witness from the staff and the resident signed her last will and testament in her room at the home.

When she died the children of her estranged sibling contested the will. The Supreme Court of South Dakota upheld the will as valid.

Any adult over the age of eighteen who is of sound mind may make a last will and testament.

One has sound mind, for the purpose of making a last will and testament, if he or she is able to comprehend the nature and extent of his or her property, the persons who are the natural objects of his or her bounty and the disposition that he or she desires to make of such property.

Soundness of mind does not necessarily imply the same degree of intellectual vigor one had in youth or that which is enjoyed by persons in perfect health.

Physical weakness is not determinative of soundness of mind.

It is not necessary that a person desiring to make a will should have sufficient capacity to make contracts or engage in complex and intricate business matters.

SUPREME COURT OF SOUTH DAKOTA
July 23, 2003

Court Looks To Nurses' Notes To Determine Mental Capacity

If the lady did not have sufficient mental capacity when she signed her will her will could be declared invalid. A one-third share of her property would go to each sibling or the share would be split up by the children of a deceased sibling.

If the will was valid, the nieces and nephews in question would get nothing.

The estranged relatives did not know the deceased well enough to testify about her mental capacity, as is often the case. Either way, those who stand to profit from the court's resolution of a will contest are often barred from testifying.

The nurses at the assisted living home had been careful in their nursing progress notes to document periods of complete lucidity and periods of significant confusion. The court looked for the nursing notes most closely contemporaneous to the date and time of the will's signing, which did not seem to show any mental confusion.

The court also noted the nurses in the skilled rehab facility moved her into the Alzheimer's section on a physician's orders, then moved her out on their own initiative based on their nursing judgment that her bouts of confusion around her dialysis appointments were not Alzheimer's.

Nurses have no strict legal obligation to the heirs to see that a patient is mentally competent at the time a will is signed. The court did comment it might be a good idea to request a physician's or psychiatrist's consult if the nurses have any concerns.

Baun v. Estate of Kramlich, __ N.W. 2d __, 2003 21710588 (S. Dak., July 23, 2003).

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Disability Discrimination: Court Turns Down Nurse's Claim.

A surgical scrub nurse sustained an on-the-job injury to her left hand and was given six months medical leave.

When she did not report back to the hospital's human relations department at the end of the six months she was deemed to have resigned and was terminated from hospital employment.

The nurse sued the hospital for disability discrimination. Her lawsuit said that her hand injury prevented her from returning to her job as a scrub nurse in the operating room but that she was qualified for other positions in the O.R. such as circulating nurse and for other nursing positions in the hospital. She claimed the hospital did not make reasonable accommodation to her disability. The Court of Appeal of California, in an unpublished opinion, dismissed her case.

Was She Disabled?

The first question in a disability discrimination case is whether the employee or former employee has a disability as disability is defined by law. If the employee is not disabled the employee cannot sue for disability discrimination.

A person who can work, who can do many jobs in a certain field but not one particular job in that field, is not disabled under disability discrimination law.

Reasonable Accommodation

Even if the employee has become genuinely disabled it is the employee's responsibility to initiate a request for reasonable accommodation. The employee must offer a report from the employee's healthcare provider detailing the employee's medical restrictions, the medical basis for the restrictions and the parameters of what the employee still can do.

It is not the employer's responsibility to seek out employees who do not return from medical leave and to try to find out why and what sort of accommodation they may require. An employer can go ahead and terminate an employee who stays out beyond a medical leave without contacting the employer with an explanation, the court said **Sarosdy v. Columbia/HCA Healthcare Corp., 2003 WL 21791358 (Cal. App., August 4, 2003).**

It is the employee's responsibility to request an appropriate accommodation when it becomes clear to the employee that he or she is unlikely to be able to return to his or her former duties.

It is the employee's responsibility to understand his or her own physical and mental condition well enough to present the employer at the earliest opportunity with a concise list of restrictions which must be met to accommodate the employee.

It is the employee's responsibility to get a statement from the employee's healthcare provider as to the nature, extent and medical reasons for the employee's restrictions.

An employer is permitted to set a deadline, or the collective bargaining agreement can set a deadline for an employee to report back from medical leave, after which the employee will be considered to have voluntarily resigned. If the employee has become disabled and needs accommodation to return to work the employee has to come forward with that information.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
August 4, 2003

Shared Computed Drive: Court Denies Nurse Manager's Defamation Suit.

An operating room scheduler found a memo on the hospital's shared computer memory drive in which the chief nursing officer made accusations of unprofessionalism about the surgical nurse manager and did not recommend her for promotion. The scheduler copied the file to a disc and it was widely circulated within the hospital.

The nurse manager sued and obtained a $1.5 million jury verdict. The Court of Appeals of Texas threw out the verdict.

To be defamatory a statement must be false and must subject a person to public hatred, contempt or ridicule or impeach the person's honesty, integrity or virtue.

Opinions are not statements of fact and are not considered defamatory.

On top of that, the authorship of the computer file cannot be proven conclusively.

COURT OF APPEALS OF TEXAS
July 10, 2003

Accusations of un-professionalism are statements of opinion; statements of opinion are not defamatory. There is a legal privilege for supervisors to share their opinions about those they supervise.

On top of that, the court did not believe the amateurish computer experts the nurse manager's lawyers hired could determine definitely who first created the computer file. **Columbia Valley Reg. Med. Ctr. v. Bannert, __ S.W. 3d __, 2003 WL 21543156 (Tex. App., July 10, 2003).**

Threats Of Violence: Nurse Exonerated, Defendant Convicted.

A man with a long history of threatening behavior toward an estranged female companion was caught weaving in and out of traffic in his car. His blood alcohol was .316.

Because he verbalized a desire to harm himself he was sent for a seventy-two hour mental health hold. He told the intake nurse in some detail of his intention to kill his girlfriend, knowing full well the nurse had a legal duty to see that his threat would be communicated to her.

The psych nurse who interviewed the defendant told him she had to report his homicidal threats to the victim and to the police.

The defendant's actions and statements beyond that point imply that he wanted his victim to be told.

He was using the nurse, the psychiatrist and the police to do his dirty business for him. His conviction and prison sentence will stand.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
July 29, 2003

The Court of Appeal of California, in an unpublished opinion, ruled the nurse acted properly under these trying circumstances reporting his threatening statements to the psychiatrist and the police.

His statements were not confidential, as there was no expectation of privacy, and even so there is an exception to medical confidentiality for a provider's duty to see that a threat of violence is communicated to the victim. **People v. Guzman, 2003 WL 21744326 (Cal. App., July 29, 2003).**

HMO: Federal Court Allows State-Court Malpractice Suit For Damages Over Nurse's Patient-Care Decision.

When a member of a health maintenance organization sues to recover benefits that are due or to clarify or enforce the member's right to benefits under the plan, the lawsuit will be strictly limited to those issues and must be filed in Federal District Court.

On the other hand, when a member of a health maintenance organization sues for professional malpractice over the treatment decisions made by the organization's case review personnel, the lawsuit can include claims for common-law non-economic damages and will be heard by a civil jury in the local county court.

The health maintenance organization's approval nurse made a medical treatment decision to approve outpatient IV antibiotics administered in the patient's home rather than allowing the patient to stay or be re-admitted to the hospital.

The case belongs before a civil jury in state court and the full range of damages are potentially available.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
July 30, 2003

The patient's hand became infected. His physicians at first thought it was cellulitis, then changed their diagnosis to osteomyelitis, a more serious condition. He was admitted to the hospital for an aggressive course of IV antibiotic therapy.

Shortly after admission, however, the approval nurse employed by the patient's health maintenance organization decided he did not need to be in the hospital and had him discharged with approval for IV antibiotic therapy in his home.

The patient came back for outpatient surgery to drain, irrigate and debride the infected hand. He had several more similar procedures before the middle finger had to be amputated.

He sued his health maintenance organization over the approval nurse's decision to have his IV therapy done outpatient rather than inpatient. The US Circuit Court of Appeals for the Eleventh Circuit threw the case out of Federal court without passing judgment whether the approval nurse's decision was negligent.

Benefit Allocation Decisions
versus
Patient Care Decisions

The courts are moving away from the hard and fast rule that patients cannot sue their HMO's for compensation beyond the value of the medical services they may have been wrongly denied.

This court ruled the approval nurse was not simply specifying what was and was not covered by this patient's health plan. She was making a basic patient-care decision and she would have to answer for that decision before a civil jury in state court. Common-law damages for pain and suffering, loss of earning capacity, permanent disfigurement, etc., which often lead to large verdicts, would be available to this patient if he could prove the nurse made a negligent patient-care decision. **Land v. CIGNA Healthcare of Florida, __ F. 3d __, 2003 WL 21751247 (11th Cir., July 30, 2003).**

Anatomical Gifts: Court Faults Nurses' Explanation Of What Will Be Taken.

Three nurses at the hospital apparently gave the adult children inaccurate and conflicting explanations of what would happen if they signed a consent form for anatomical donations from their father who had just died of a heart attack.

The one nurse who could be identified from his signature as a witness on the organ-donation papers became a defendant in the lawsuit, along with the hospital and the local organ transplant association.

Eyes, Leg Bones To Be Harvested

The nurses somehow gave the family the impression that the eyes would be slit to remove the corneas but the eyes would not be removed from the body. They also got the impression just two to four inches of shin bone would be taken.

In fact, the eyes were removed. One whole tibia and the associated fascia lata were also taken. The transplant association's standard form allowed all of both leg bones and fascia lata to be taken from the iliac crest to the distal tibia.

The family checked the box on the form "NO" to indicate no organs or other tissues could be taken, and none were.

Nurse, Hospital Required To Prove Absence of Negligence / Good Faith

The Uniform Anatomical Gift Act is in effect in all fifty states and the District of Columbia. The Missouri Court of Appeals ruled the transplant association fulfilled its legal duties under the Act by adhering to its standard practices after being given its standard consent form signed by eligible surviving family members and dismissed the case against the association.

The identified nurse and the nurses' employer, however, were kept on as defendants in the case. They would have to convince the jury they were not negligent for what the family was told and convince the jury not to believe the family would not have consented to the donations if they knew what was actually going to happen.

Schembre v. Mid-American Transplant Association, __ S.W. 3d __, 2003 WL 21692986 (Mo. App., July 22, 2003).

The traditional rule of the common law was that the corpse is strictly the property of the surviving family. Any unauthorized invasion of the sanctity of the remains by medical personnel was grounds for the family to file a civil lawsuit.

The Uniform Anatomical Gift Act (UAGA), originally drafted in 1968, was meant to facilitate donation of much-needed anatomical materials after death.

However, the UAGA still requires that the donor, during his or her lifetime, or the family, post mortem, give informed consent for harvesting of eyes, bone, organs and other tissues.

Without consent that is truly informed consent the donation is invalid and the family can still sue for common-law damages.

Nurses and other personnel who obtain informed consent from the family must be able to prove they acted without negligence and in good faith.

Three different nurses apparently gave the family conflicting versions of just what the harvesting process entailed.

MISSOURI COURT OF APPEALS
July 22, 2003

Arbitration: Court Nixes Out-Of-State Forum For Hearing Of Nursing Home Abuse Case.

The District Court of Appeal of Florida acknowledged there is a strong public policy behind enforcing arbitration clauses in nursing home admission contracts.

When there is an arbitration clause, a civil claim against a nursing home seeking damages for alleged abuse of a resident must be decided by an arbitrator rather than a jury, as a general rule.

It is proper for the court to put further court proceedings on hold and order both sides to submit to binding arbitration.

That being said, however, the court ruled that an arbitration clause calling for arbitration to take place in another state is illegal and unenforceable in a nursing home admissions contract. It is normally allowed in common, garden-variety commercial contracts. **Northport Health Services v. Estate of Raidoja, __ So. 2d __, 2003 WL 21713988 (Fla. App., July 25, 2003).**

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Clinic Nurse Found Negligent: Arbitrator's Ruling Upheld.

It was the third time the patient had come back to the clinic with intense pain following lithotriptic treatment for kidney stones a few days earlier

As it was just after closing time at the clinic, the nurse told the patient he would probably have to go to the emergency room at a nearby hospital. The clinic receptionist then let him drive himself to the emergency room. She and the patient both misinterpreted what the nurse was saying.

In fact, the nurse could have found a physician at the clinic, phoned a physician for a narcotic order or at least got someone to drive him to the nearby hospital E.R., that is, if the nurse had not already said something about him having to leave.

The patient's health plan requires arbitration of negligence claims.

The arbitrator found the HMO negligent, ruled in the patient's favor and awarded $2,700 in damages.

The arbitrator's award is binding on both sides.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
July 30, 2003

The Court of Appeal of California, in an unpublished opinion, upheld the mandatory arbitration clause in the patient's health plan and the arbitrator's award of $2,700 for pain and suffering, $1 per second for the extra forty-five minutes it took the patient to get an analgesic med at the nearby hospital. A $750,000 jury verdict for pain and suffering in a case the patient's lawyer argued was comparable was not a controlling precedent, the court said. **Ash v. Kaiser Foundation Health Plan, Inc., 2003 WL 21751207 (Cal. App., July 30, 2003).**

Nursing Home Negligence: Court Upholds Arbitration Clause In Admission Papers.

The arbitration clause in the nursing home admission contract is valid. The lower court should have stopped court proceedings and ordered binding arbitration of the family's case against the nursing home.

The nursing home admission agreement required the nursing home to provide appropriate care to the resident. The dispute is about whether or not the nursing home provided appropriate care.

It does not matter that the family is making a claim for negligence rather than breach of contract. There is still a strong interrelationship between the admission contract and the issues in this case.

The resident's fifty year-old son had previously been designated as the her surrogate decision-maker for healthcare decisions.

He could sign on her behalf. It is not important that he did not read the agreement before signing it, or that there was fine print or that it was a pre-printed form drawn up by the nursing home's lawyers.

DISTRICT COURT OF APPEAL
OF FLORIDA
July 30, 2003

The District Court of Appeal of Florida recently ruled valid the arbitration clause in a nursing home's admission contract over the objections of the resident's surviving family members who filed a civil lawsuit for damages against the nursing home alleging substandard care.

That is, the Court of Appeal ruled the local judge was in error setting the case on track for a civil jury trial instead of stopping further court proceedings and ordering binding arbitration. The Court of Appeal did not comment on the underlying allegations of substandard care.

Resident's Surrogate Did Not Read Before Signing

The court noted the resident's fifty year-old son had a college education and had taught school for eleven years. He already had been acting as her duly-appointed healthcare decision-making surrogate. He had no physical or mental incapacity that prevented him from understanding what he was doing.

His signing the admission papers without reading them did not invalidate the nursing-home admission agreement as a whole or the arbitration clause.

Arbitration Clause Was Optional

The arbitration clause was highlighted in bold type and designated as optional. That is, the nursing home did not insist on people agreeing to arbitration as a condition of getting themselves or their relatives admitted. There was a box on the form for an X to cancel the arbitration clause if the person signing did not want it.

The court pointed out this was praiseworthy but not mandatory. That is, it is permissible for a nursing home to insist on someone signing an arbitration clause at the time of admission, the court said.

There is also nothing wrong with a nursing home admission contract being a pre-printed legal form drawn up by the home's lawyers, the court pointed out. **Consolidate Resources Healthcare Fund I, Ltd. v. Fenelus, __ So. 2d __, 2003 WL 21750370 (Fla. App., July 30, 2003).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Emergency Room: Adolescent Psych Patient Elopes, Nurse Not Faulted.

A fifteen year-old girl unexpectedly became depressed, irrational and anxious. She was hyper and could not sleep. She had been an excellent student without any previous social, disciplinary or substance abuse problems.

Her parents took her to their family physician. He thought she might be bipolar or have some type of acute psychosis that needed to be evaluated at a hospital. However, the family physician did not believe there were legal grounds for involuntary commitment and he was not a designated mental health professional who had legal authority to commit her even if he wanted to. He prescribed sleeping pills and sent her home with her parents.

When the girl refused to take the sleeping pills and ran away to a friend's house the family physician arranged for her to get a mental health exam at a local acute-care hospital.

In the hospital emergency room the girl was seen by a social worker and a nurse. They took a history from her and her parents. They had the girl, not her parents, sign a consent form for voluntary outpatient treatment.

The girl was left alone in an exam room for a few minutes while the nurse tended to another E. R. patient who needed a stat IV. When the nurse returned to the exam room the girl had vanished and she has not been seen since.

Over the Age of Legal Consent Nurse Could, Had To Let Her Leave

The Court of Appeals of Washington, in an unpublished opinion, did not look at whether the nurse was checking on her often enough or was actually watching her on the video monitor. That was all irrelevant to the parents' lawsuit.

State law defines the age at which an adolescent can consent or refuse to consent to medical care. In Washington that age is thirteen.

The evidence supported the nurse's assessment that the girl's symptoms would not legally justify an involuntary mental-health hold. She was a voluntary patient with full legal capacity to consent to treatment, refuse to consent or to consent and then change her mind. There was no way to fault the nurse for letting her leave. **Nash v. Sisters of Providence in Washington, 2003 WL 21791593 (Wash. App., August 5, 2003).**

Pediatric Intensive Care Unit: Parents Caused Disturbance, Ejected. Court Says No To Lawsuit.

The baby was born with a congenital diaphragmatic hernia. He was placed in the hospital's neonatal intensive care unit for several months and then was discharged home.

The infant was re-admitted with ongoing problems to the pediatric intensive care unit where he remained several more months until he died.

According to the US Circuit Court of Appeals for the Seventh Circuit, over the entire course of the child's hospitalizations the parents were abusive toward caregivers and disruptive of the child's care. For example, the mother once ordered the speech and swallowing therapist out and began bottle-feeding the baby, despite the risk of aspiration, and called the nurse a "bitch" when she tried to stop her.

The hospital has every right to insist that visiting family members observe a sense of decorum, even when they are dissatisfied with the care accorded to a loved one.

When family members refuse to act responsibly, as the parents did here, the hospital has the right and the obligation to quell any disturbance by requiring the parents to leave.

UNTED STATES COURT OF APPEALS
SEVENTH CIRCUIT
August 1, 2003

The parents were ejected by a security guard on a physician's orders, then readmitted only for half-hour visits with a security guard present.

After the infant's death the parents sued for intentional infliction of emotional distress. The Federal District and Circuit Courts threw out their case.

A hospital has the legal right and the legal duty to provide a safe environment for its patients.

When family members refuse to act responsibly, even if they are expressing dissatisfaction with the care being afforded a loved one, they can be ejected by hospital personnel and barred from re-entering the premises except on terms set by the hospital. **Franciski v. University of Chicago Hospitals, __ F. 3d __, 2003 WL 21770808 (7th Cir., August 1, 2003).**