LEGAL EAGLE EYE NEWSLETTER

*For the Nursing Profession*

September 2005 Volume 13 Number 9

# Acute Myocardial Infarction, Ischemia: Court Faults Hospital's Emergency Room Nurses.

The thirty-eight year-old patient came to the hospital's emergency room at 3:45 a.m. complaining of a cough and chest pains.

At 3:52 a.m. she was seen by the triage nurse. The nurse made note of the fact she smoked a pack of cigarettes a day, but the nurse failed to note there was a positive family history of coronary artery disease.

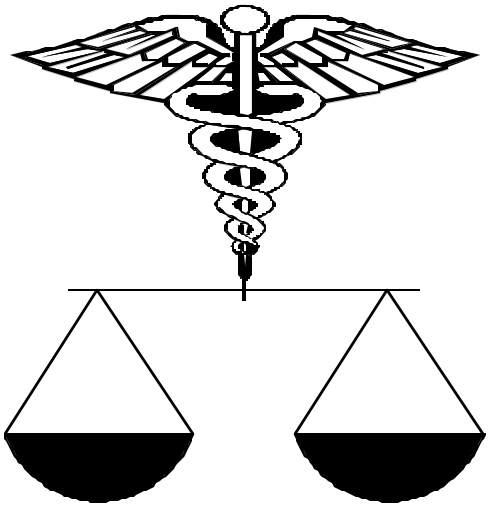
The patient was seen thirty minutes later by a treating nurse who assessed her but did not place her on a cardiac monitor.

The E.R. physician saw her at 5:07 a.m. and ordered an EKG and cardiac enzymes. The EKG, done at 5:26 a.m., was read by the same E.R. physician as "worrisome" just before he turned her care over to the day-shift physician coming on duty.

A nitroglycerine drip was started at 5:40 a.m. By 6:15 a.m. it had reduced the patient's reported chest pain from level eight out of ten to level one out of ten.

At 7:00 a.m. the day-shift treating nurse came on duty.

At 7:31 a.m. a second EKG was done. Blood for new lab tests was drawn at 8:40 a.m. The EKG showed marked ST segment elevation in the lateral leads compared to the earlier EKG.



***The standard of care for emergency room nursing is to be able quickly to recognize patients with signs and symptoms of acute myocardial infarction, and to take action.***

***The medical goal is to administer thrombolytic drugs or perform a coronary angioplasty within sixty minutes to minimize long-term ischemic damage to the heart.***

COURT OF APPEALS OF TEXAS
August 3, 2005

The second set of lab tests showed cardiac enzymes markedly elevated.

The patient was sent for a CT scan without a cardiac monitor and without being accompanied by a registered nurse certified in advanced cardiac life support. She vomited twice between 9:10 a.m. and 10:30 a.m. for which she got IV Phenergan with a saline bolus.

A cardiologist happened to be reviewing EKG's in the E.R and at 11:10 a.m. decided he better see this patient. He got her into the cardiac cath lab at 12:05 p.m. for an angiogram which revealed 100% occlusion of the left anterior descending coronary artery.

Even after a balloon angioplasty the patient now has significantly impaired cardiac function and may require a transplant.

**Nursing Negligence**

The Court of Appeals of Texas started its analysis of the allegations raised in the patient's suit against the hospital and the physicians by looking at the accepted national standard of care for emergency room nurses dealing with patients with signs and symptoms of acute myocardial infarction.

A hospital is required to have a clinical pathway which nurses must be

*(Continued on page 5)*

## Inside this month's issue ...

**September 2005**
**New Subscriptions**
**See Page 3**

# Family And Medical Leave Act: Nurse Ruled Not Eligible.

A licensed practical nurse sued her employer because she was terminated when she requested maternity leave.

Her lawsuit alleged her employer violated the US Family and Medical Leave Act (FMLA).

***Only an eligible employee has rights under the Family and Medical Leave Act.***

***The FMLA defines an eligible employee as one who has been employed for at least twelve months by the employer and has put in at least 1,200 hours of service with such employer in the previous twelve months.***

UNITED STATES DISTRICT COURT
KANSAS
July 29, 2005

The US District Court for the District of Kansas pointed out she had only worked
for her employer from April 12, 2003 until she was terminated February 18, 2004. She did not have twelve months seniority and was not covered by the FMLA.

However, the court did point out that the courts have not ruled definitively whether an employee can give notice *before* becoming eligible for FMLA leave about his or her intention to take leave *after* becoming eligible and thereby come to have rights that are presently protected by the FMLA. The nurse did not try that so her attorneys could not raise that argument later in court; it was a moot point the court could not properly rule upon in this case. **Kolarik v. Alterra Healthcare Corp., 2005 WL 1842752 (D. Kan., July 29, 2005).**

# Fetal Bleeding: Court Puts Blame On L&D, Neonatal Nurses.

In a complex medical and nursing malpractice case, the Court of Appeals of North Carolina assigned some measure of blame to the labor and delivery nurses and to the neonatal nurse practitioners.

While trying to attach a fetal scalp monitor, after disconnecting the external fetal monitor, the ob/gyn physician's glove came out of the cervix showing fresh blood.

At that point, according to the expert testimony accepted by the court, the nurses should have realized the baby would need a blood transfusion and should have ordered the blood right then that would be needed later.

In the court's judgment, the nurses should not have waited until more than an hour later, after the fetal heart rate had crashed and an emergency caesarian had been done and the baby had been born unresponsive. **Pope v. Cumberland County Hosp. System, 615 S.E. 2d 715 (N.C. App., July 19, 2005).**

# Online Edition Available.

The online edition of our newsletter is available to paying subscribers at no additional cost beyond the basic subscription price.

If you are interested in receiving our newsletter online in addition to your print copy in the mail, please send us an email at info@nursinglaw.com. Identify yourself by name and postal mailing address.

Each month we will email the Internet link to the online edition, usually about ten days before the monthly print copies go out in the mail.

Please update your email if you have requested the online edition but are not receiving it.

# Hyperthermia: Nursing Home Administrator's Name Placed On Disqualification List.

In early April the nursing home administrator spoke with the maintenance person about switching over from the heating to the cooling system in the building.

The weather was unusually hot, even for St. Louis, Missouri, during the first week of April. The administrator set up a "hydration cart" to see that juice and other fluids were available for the residents. She put the social services director in charge of the hydration cart and left for the weekend.

Two residents died from hyperthermia over the weekend.

***Neglect is the failure to provide, by those responsible for the care, custody and control of a resident in a facility, the services which are reasonable and necessary to maintain the physical and mental health of the resident, when such failure presents either an imminent danger to the health, safety or welfare of the resident or a substantial probability that death or serious injury would result.***

MISSOURI COURT OF APPEALS
August 9, 2005

The Missouri Court of Appeals ruled the administrator was guilty of neglect and would be disqualified from future employment caring for vulnerable adults. **Johnson v. Dept. of Health & Senior Services, __ S. W. 3d __, 2005 WL 1869071 (Mo. App., August 9, 2005).**

# Suicidal Verbalizations: Crisis Line Nurse's Actions Ruled Proper, Lawsuit Dismissed.

A nurse was answering the crisis line for her employer, a medical center in New York.

Just after midnight an individual called from Florida who had recently moved to Florida from New York. Her after-midnight call to county social services where she had lived in New York was picked up by the local police department and then relayed to the medical center's crisis line because the caller said she was having a mental-health crisis and needed help.

The caller told the crisis-line nurse, "I wish I were dead," or "I want to die," according to the court record in the US District Court for the Southern District of New York.

The nurse used Caller ID to trace the call to Florida and promptly called the local police in Pinellas County. The police went to the caller's home and took her to a hospital where she was held involuntarily for approximately twenty-nine hours.

When the patient returned home her cat's food and water were gone and her cat was dead. She sued the medical center in New York for humiliation, fear, anguish, mental suffering and emotional distress.

***For a healthcare provider to be sued for professional malpractice there must be a departure from good and accepted medical practice as well as evidence that such departure caused injury to the patient.***

***The crisis line nurse took the patient's statement, "I wish I were dead," at face value and started the process to have her taken to a hospital for an involuntary mental-health hold.***

***There is no negligence if a nurse does not understand, as the patient claimed in her lawsuit after the fact, that that statement was just a figure of speech and was not to be taken literally.***

***There is no defamation in relaying to law enforcement authorities that a patient has expressed suicidal ideation. It is true she said she wished she were dead. Truth is a complete defense to charges of defamation.***

UNITED STATES DISTRICT COURT
NEW YORK
July 12, 2005

**No Professional Negligence**

The court ruled it was not negligence for the nurse as a healthcare professional to take this patient's statements at face value as suicide threats. The caller was apparently trying to reach caregivers she had seen in the past for mental-health issues because she was having a crisis and needed immediate help.

**No Defamation / Slander**

The crisis line nurse did not slander the patient and was not liable for defamation for telling the Florida police that she had expressed suicidal ideations.

First, it was completely true the patient had said what she said.

Second, as the court phrased it, our society has advanced beyond the point where reporting that an individual is experiencing a mental-health crisis is considered humiliating or degrading.

**No False Imprisonment**

The court pointed out that it was the decision of the police in Florida to take the patient into custody. The nurse in New York had no part in or control over that.

However, under these circumstances the law provides immunity from civil lawsuits for healthcare and law-enforcement personnel who act in good faith in the belief that a true mental-health emergency requires a person to be taken into custody for involuntary mental health evaluation.

The court also threw out the remaining allegations trespass, invasion of privacy, violation of civil rights, etc., and ruled in the nurse's favor. **Matthews v. Malkus, __ F. Supp. 2d __, 2005 WL 1661039 (S.D.N.Y., July 12, 2005).**

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# Patient Consent: Nurse Kept Trying To Start IV After Patient Objected, Medical Battery Allegations Dismissed By Court.

While the patient was hospitalized, the patient's physician ordered an intravenous antibiotic.

The nurse assigned to her care began attempting to start an IV line necessary to administer the prescribed drug.

After several unsuccessful attempts to insert the IV in the patient's forearm, the nurse began examining the left hand to find a possible IV site.

At this point the patient became upset. She told the nurse she was left-handed and did not want an IV in her left hand. The patient asked the nurse to stop altogether attempting to start the IV pending a consultation with her physician whether an oral antibiotic might be used instead.

Over the patient's objections the nurse made several more unsuccessful attempts to start the IV line in the patient's left hand, then phoned the physician, who prescribed an oral antibiotic.

The patient sued the hospital over the multiple needle sticks in her left hand. In addition to the pain she experienced she claimed a neurological injury to her hand as a result of the nurse's actions.

**Medical Battery**

The Court of Appeals of Georgia reviewed the legal definition of medical battery in the context of a patient voicing an objection to treatment while treatment is in progress.

The court said a healthcare professional is not obligated instantly to stop an ongoing exam or treatment if doing so would be detrimental to the patient's life or health in the professional's medical judgment. A lawsuit for medical battery arising from these circumstances requires expert testimony, not offered in this case, that it would have been feasible and advisable for the nurse to stop and phone the physician re the issue of an oral as opposed to IV antibiotic. **King v. Dodge County Hosp. Authority, __ S.E. 2d __, 2005 WL 1514990 (Ga. App., June 27, 2005).**

***Even after consent has been given, the patient can withdraw consent and expose a medical professional to a suit for assault and battery if the professional continues treatment.***

***The patient must use language which must be clear and must leave no room for doubt in the mind of a reasonable person that in view of all the circumstances consent to treatment has been withdrawn.***

***In addition, when medical treatments or examinations have been started with the patient's consent and are proceeding in a manner requiring the healthcare professional to be in contact with the patient's body, and consent to the ongoing treatment is revoked, it must be medically feasible for the professional to desist in the treatment or examination at that point without cessation being detrimental to the patient's life or health from a medical viewpoint.***

***The second part has to be proven with expert testimony.***

COURT OF APPEALS OF GEORGIA
June 27, 2005

# Emergency Room: Triage, Treatment Times Are Relevant, Not Confidential.

The parents filed a lawsuit against the hospital claiming that their daughter's wrongful death was caused by delay in examining and treating her in the hospital's emergency room.

As yet there has been no court ruling on the wrongful death allegations.

**Other Patients' Arrival, Triage, Treatment Times Are Relevant**

The issue at this time is whether the hospital will have to disclose to the parents' attorneys the arrival times, triage times, triage acuity designations and treatment times of all the other sixty-two patients who were in the emergency room between the time the daughter arrived and the time she died.

***As a general rule the medical records of other patients are confidential and may not be accessed in a patient's malpractice suit.***

APPELLATE COURT OF ILLINOIS
August 17, 2005

The Appellate Court of Illinois ruled there is no violation of other patients' right to confidentiality if this patient's family's lawyers have access to data about their arrival times, triage times, acuity designations and the times they were seen and treated by a physician.

The Appellate Court let stand the lower court's ruling that disclosure of any more personal medical information about the other patients such as their medical diagnoses and nature of treatment actually rendered would violate their rights. **Tomczak v. Ingalls Memorial Hosp., __ N.E. 2d __, 2005 WL 1981051 (Ill. App., August 17, 2005).**

# Acute Myocardial Infarction: Court Faults Hospital's Emergency Room Nurses (Continued.)

*(Continued from page 1)*

trained to follow.

The overriding rationale is for all caregivers involved to recognize the importance of limiting the time the heart muscle is denied adequate oxygen. The phrase "time means muscle" well explains the goal of care for these patients.

A hospital's acute myocardial infarction clinical pathway protocol should only allow a maximum of sixty minutes before the medical decision to administer thrombolytic drugs or to go for a coronary angioplasty, the court said.

The protocol should require an EKG within ten to twenty minutes after a patient arrives in the emergency room with signs and symptoms of a possible acute myocardial infarction.

According to the court, the legal standard of care require emergency-room triage and treatment nurses to be able quickly to recognize possible acute myocardial infarction patients and to ensure there is no delay getting an EKG and initiating physician management of the patient's course of treatment.

**Emergency Triage Nurse**

The court had no trouble finding fault with the triage nurse in this case for failing to recognize the patient's symptoms of acute myocardial infarction as well as risk factors for coronary artery disease from her history. The court said the triage nurse should have taken her to a cardiac monitor bed and obtained an EKG no later than twenty minutes after her arrival in the emergency department.

**Emergency Treating Nurse**

The court also had no trouble finding fault with the treating nurses in the emergency room for the significant delays that occurred in getting the EKG, getting the lab results and notifying the physician.

If the triage nurse has dropped the ball in recognizing a possible acute myocardial infarction case, the emergency-room treating nurse must follow through and get an EKG and summon the physician as quickly as possible.

***The care a patient receives in a hospital does not occur in a vacuum, but rather is a collaborative effort involving doctors, nurses and other health care providers.***

***There was at least a seven-hour delay before this patient received cardiology care.***

***The court believes a delay is a delay. More than one person or department may be responsible.***

***The patient's nursing expert's opinion pointed to specific errors and omissions by the hospital's nursing staff that breached the legal standard of care for nurses and pointed out how that delayed the patient from receiving necessary cardiology care.***

***The patient's two medical experts established that the delay which occurred while the patient was sent for unnecessary chest x-rays and a CT scan caused permanent and severe compromise of her cardiac output function with a future heart transplant highly likely.***

***There is a clear pathophysiologic basis for cause and effect linking the delay in cardiology care and the injuries for which the patient is suing.***

COURT OF APPEALS OF TEXAS
August 3, 2005

**Nurse's Duty To Advocate For Patient**

The court accepted the patient's nursing expert's opinion that the nurses in this case failed to carry out their duty to advocate for their patient.

When the patient was not receiving timely attention from the emergency room physician and a cardiologist was not being called in on the case, the nurses had the legal duty to access the nursing chain of command to obtain the appropriate results.

The first step before advocating for a patient, however, is competent ongoing nursing assessment of the true nature of the patient's medical situation.

According to the court, the nurses should have recognized the cardiac significance of the patient's initial reports of pain and the action of nitroglycerine in relieving that pain as indicative of an acute cardiac emergency.

Serial EKG's must be read by the nurse looking for ST segment elevation, according to the court.

A nurse must see to it that cardiac enzymes are ordered and then look at, evaluate and appreciate the significance of the results in terms of the overall goal of reducing ischemia by prompt initiation of thrombolytics or cardiac catheterization.

**Expert Witness Reports / Testimony**

The court pointed out that complex scenarios like this case can involve allegations of interconnecting nursing and medical negligence.

Expert nursing testimony is needed to set forth the general nursing standard of care and to point out a specific breach or breaches of the nursing standard of care by the nurses in the case. Expert medical testimony is needed on the conduct of the physicians and to show medical cause and effect linking nursing negligence to the harm suffered by the patient.

Each of the expert witnesses' reports or testimony will not necessarily support the patient's whole case. Thus the expert opinions are to be considered not individually but taken together. **Hillcrest Baptist Medical Center v. Wade, __ S.W. 3d __, 2005 WL 1837004 (Tex. App., August 3, 2005).**

# Long-Term Care: CMS Proposal Would Require Influenza, Pneumococcal Immunizations.

On August 15, 2005 the Centers for Medicare and Medicaid Services (CMS) published a proposed new regulation in the Federal Register which, if adopted, will increase immunization rates in Medicare and Medicaid participating long term care (LTC) facilities by requiring LTC facilities to offer each resident immunization against influenza annually, as well as lifetime immunization against pneumococcal disease.

**The proposed new regulation is not mandatory at this time.**

In general, and US Federal agency intending to adopt a new regulation must first publish the new regulation in the Federal Register and invite and consider public comments before adopting the regulation in final mandatory form.

The public comment period for this proposed regulation was set to expire August 30, 2005.

We will continue to monitor the Federal Register for new developments in this area after the public comment period has expired.

We have placed the full text of CMS's August 15, 2005 Federal Register announcement on our website at http://www.nursinglaw.com/LTCvaccines.pdf

CMS's announcement contains a lengthy discussion of the clinical rationale developed by CMS and by the CDC for requiring these immunizations in the long-term care population as well as the cost-benefit analysis.

PART 483--REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Sec. 483.25 Quality of care.

* * * * *

(n) Influenza and pneumococcal immunizations--

(1) Influenza. The facility must ensure that--

(i) Each resident is offered an influenza immunization between October 1 through March 31 annually, unless the immunization is medically contraindicated or the resident has already been immunized during this time period; and

(ii) The resident or the resident's legal representative must be provided the opportunity to refuse immunization. If the resident or the resident's legal representative refuses immunization, the facility must ensure the resident or the resident's legal representative receives appropriate education and consultation regarding the benefits of influenza immunization.

(iii) The resident's immunization status is documented in the resident's medical record, including but not limited to; that the resident received an influenza immunization, or immunization was medically contraindicated, or immunization was refused. If the immunization was refused, documentation must include that the resident or the resident's legal representative received appropriate education and consultation regarding the benefits of influenza immunization.

(2) Pneumococcal disease. The facility must ensure that--

(i) Each resident is offered a pneumococcal immunization, unless the immunization is medically contraindicated or the resident has already been immunized; and

(ii) The resident or the resident's legal representative must be provided the opportunity to refuse immunization. If the resident or the resident's legal representative refuses immunization, the facility must ensure the resident or the resident's legal representative receives appropriate education and consultation regarding the benefits of pneumococcal immunization.

(iii) The resident's immunization status is documented in the resident's medical record, including but not limited to; that the resident received pneumococcal immunization, or immunization was medically contraindicated, or immunization was refused. If the immunization was refused, documentation must include that the resident or the resident's legal representative received appropriate education and consultation regarding the benefits of pneumococcal immunization.

(iv) Exception. As an alternative, based on an assessment and practitioner recommendation, a second pneumococcal shot may be given after 5 years following the first pneumococcal immunization if the vaccine was administered before age 65, unless medically contraindicated or the resident or the resident's legal representative refuses the second shot.

FEDERAL REGISTER August 15, 2005
Pages 47759-47771

# Urinary Catheterization: No Violation Of Inmate's Rights.

Nurses in correctional facilities are frequently being named as defendants in inmates' lawsuits alleging violation of the Eighth Amendment Constitutional right to be free from cruel and unusual punishment.

The courts say that deliberate indifference by a correctional-facility healthcare provider to an inmate's serious medical needs is a violation of the inmate's constitutional rights.

In a recent case a nurse put in a urinary catheter covered with numbing medication, with the inmate's consent, per a physician's order, to obtain a urine sample to rule out self-inflicted injury to the urethra as the source of the inmate's hematuria before medical treatment for a kidney condition would be considered.

The US Circuit Court of Appeals for the Tenth Circuit could find no basis to fault the nurse and dismissed the inmate's case. **Flemming v. Corrections Corp. of America, 2005 WL 1706972 (10th Cir., July 22, 2005).**

# Pitocin, Hyperstimulation Of The Uterus: Court Holds Nurse Negligent But Not Liable.

The nurse started the pitocin at 11:45 a. m. per the physician's orders. The fetal heart rate stayed in the 130's with no decelerations for the next three hours.

The physician inserted an internal uterine pressure catheter at 2:45 p.m. which quickly showed hyperstimulation of the uterus. The nurse continued the pitocin drip until her shift ended at 3:15 p.m.

The p.m. shift nurse actually increased the pitocin despite evidence of uterine hyperstimulation. The baby was born with hypoxic injuries at approximately 11:00 p.m.

***There are three issues necessary for the day-shift nurse to remain as one of the defendants in this case:***

***A nurse-patient relationship did exist.***

***Her conduct did fall below the standard of care.***

***However, there is no evidence her negligence caused the baby to be born with hypoxic ischemic injuries at 11:00 p.m.***

APPEALS COURT OF MASSACHUSETTS
August 11, 2005

The Appeals Court of Massachusetts accepted expert medical testimony that uterine hyperstimulation is associated with fetal heart-rate deceleration, which is associated with fetal hypoxia. However, there was no cause and effect linking that to the day shift nurse's negligence and she was dismissed. **Barker v. Yarosz, 2005 WL 1924208 (Mass. App., August 11, 2005).**

# Nursing Home Care: Court Finds Nursing Facility Violated Federal Regulations.

***Federal regulations for skin care require a long-term care facility to ensure that a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.***

***If a new pressure sore does develop or an existing pressure sore does progress, that does not necessarily prove a violation of Federal regulations.***

***The focus is not to look at the outcome with 20/20 hindsight. The focus is whether necessary treatment was provided to promote healing, to prevent infection and to prevent new sores from developing.***

***Federal regulations also require a facility to ensure that each resident receives adequate supervision and assistance devices to prevent accidents.***

***Again, looking at the outcome with 20/20 hindsight is not the proper focus.***

***The focus is whether the facility to steps to reduce the risk of accidental injury to the resident to the greatest degree practicable.***

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
August 4, 2005

The long-term care facility argued in its defense that state surveyors had imposed sanctions for violations of Federal regulations based upon erroneous interpretation of those Federal regulations.

The US Circuit Court of Appeals for the Sixth Circuit, in an opinion that will not be published in the Federal Reporter, agreed with the facility that Federal regulations do not impose a strict-liability standard, notwithstanding language in the regulations that facilities are required to ensure that skin breakdown and accidental injuries do not occur.

The presence or absence of an adverse outcome does not determine whether a violation of Federal standards occurred. The focus instead is on the quality of care.

**Pressure Sores**

One particular resident had pressure sores. A resident having pressure sores in and of itself does not constitute a violation of Federal regulations.

However, he was observed sitting restrained in his wheelchair for extended periods without protective padding. He was also seen lying in urine-soaked bed linens for more that two hours, with urine contaminating a pressure sore. The court ruled that is substandard care and that it does violate Federal regulations.

**Waist Restraint**

Another resident was found with a waist restraint wrapped around her chest and tied to a non-movable part of the bed frame. That could have led to injury to the resident, the court believed.

No actual injury occurred to this resident. However, her care was still held to be substandard in that the facility failed in its duty to provide adequate supervision and assistance devices to prevent accidents.

There was a reasonable probability of an accident, the court said, and that probability would support the surveyors' decision to cite the facility. **Clermont Nursing & Convalescent Center v. Leavitt, 2005 WL 1869652 (6th Cir., August 4, 2005).**

LEGAL EAGLE EYE NEWSLETTER
*For the Nursing Profession*

# CDC: Proposed New Vaccine Information Materials For Hepatitis A, Interim Vaccination Materials For Influenza.

On July 28, 2005 the US Centers for Disease Control and Prevention (CDC) issued proposed new vaccine information materials for hepatitis A and trivalent influenza vaccines.

In addition, to ensure that influenza vaccine information materials are available at the beginning of the upcoming influenza vaccination season, the CDC's notice includes interim vaccine information materials covering influenza vaccines for use pending issuance of final influenza materials following completion of the formal NCVIA development process.

The CDC will accept public comments on the proposed new vaccination information materials until September 26, 2005. In general, any Federal agency must publish any proposed new regulations in the Federal Register and accept public comments for at least thirty days before issuing new regulations in final binding form.

Nevertheless, the CDC has said that the interim influenza vaccination information materials

Vaccine Information Statements are information sheets produced by the CDC that explain to vaccine recipients, their parents, or their legal representatives both the benefits and risks of a vaccine. Federal law requires that Vaccination Information Statements be handed out before each dose whenever certain vaccinations are given.

The CDC maintains a website containing the current versions of all of the required Vaccination Information Statements for Anthrax, DTaP, Hepatitis, Hib, Influenza, JE, MMR, Meningococcal, PPV23, PCV7, Polio, Rabies, Smallpox, Td, Typhoid, Varicella and Yellow Fever vaccines.

The statements are available as text-only and as printable PDF files in English and many foreign languages and as digital audio files.

The CDC's website is http://www.cdc.gov/nip/publications/VIS/

FEDERAL REGISTER July 28, 2005
Pages 43694-43699

# Mid-Forceps Delivery: Court Refuses To Blame Nurses Who Did Not Oppose Doctor's Decision.

The ob/gyn physician went ahead with a mid-forceps delivery to expedite the birth rather than allowing labor to continue in favor of a vaginal delivery.

At the time the baby was at a plus-two station, i.e., the head was not yet visible during contractions.

The ob/gyn used the forceps to rotate the baby 180° and then to extract the baby. The baby suffered a paralyzing cervical spine injury.

The Court of Appeals of North Carolina ruled that the hospital was not liable in the baby's malpractice lawsuit for the nurses' not disobeying the physician and not taking steps to have the physician's decision to go ahead with mid-forceps delivery overruled through the nursing chain of command.

***A nurse is not liable in a civil lawsuit for failing to disobey a doctor's order unless the doctor's order was obviously negligent.***

***The duty to disobey the doctor, and to activate the nursing chain of command to have the doctor's decision overruled, does not extend to situations where there is a difference of medical opinion between the nurse and the doctor.***

COURT OF APPEALS OF
NORTH CAROLINA
July 19, 2005

According to the court, the decision to proceed with a mid-forceps delivery is a complex medical judgment based on balancing the risks of using the forceps versus the risk of compromising the fetus's oxygenation status by delaying delivery.

It is only when a physician's decision is obviously wrong and will obviously lead to direct and immediate harm to the patient that the nurse faces liability herself or himself if she or he does not challenge the doctor's decision and then activate the nursing chain of command to have the decision overruled by higher medical authority within the hospital. This was not such a situation, the court said. 20/20 hindsight is not the standard. **Daniels v. Durham Co. Hosp., 615 S.E. 2d 60 (N.C. App., July 19, 2005).**