LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

September 2008 Volume 16 Number 9

Labor & Delivery: Nurses Failed To Report Changes, Substantial Verdict For The Infant.

The jury in the Circuit Court, Broward County, Florida returned a $35,206,000 verdict against the nurses, the hospital and the physicians, to be paid to the family of a quadriplegic child born in the hospital with profound hypoxic ischemic brain damage.

The mother had delivered two premature infants vaginally before this pregnancy. This time in a pre-natal office visit her ob/gyn noticed the fetus had a persistent unusually rapid heart rate. The ob/gyn admitted the mother to the hospital and started betamethasone to ripen fetal lung maturity in anticipation of a possible premature delivery.

At the hospital the mother was having pre-term labor contractions for three days. All the time the fetal heart rate was stable, albeit faster than normal.

At 10:00 p.m. on the fourth hospital day the fetal tachycardia that was present all along accelerated to 175 to 185 and was accompanied by late decelerations and loss of variability.

Despite these significant changes, the nurses did not contact the physician until 5:15 a.m. the next morning.

The baby was delivered by emergency cesarean more than two hours after the nurses notified the physician the monitor tracings were showing a serious problem with fetal oxygenation.

Fetal tachycardia was first detected in the ob/gyn's office and persisted during several days of pre-term labor.

At 10:00 p.m. on the third hospital day the tachycardia came with late decelerations and loss of variability.

The nurses did not notify the physician until 5:15 a.m. the next morning.

CIRCUIT COURT
BROWARD COUNTY, FLORIDA
June 13, 2008

The family's nursing expert witnesses faulted the nurses for allowing the labor to continue overnight before the physician was notified about the ominous data the nurses were getting from the monitor strips.

The medical experts went on to fault the physician and the hospital for two more hours delay in accomplishing the cesarean delivery after the physician was notified.

The physicians and nurses were aware of the mother's history of two pre-term deliveries. She was definitely considered a high-risk ob/gyn patient this time, the experts pointed out at trial.

The jury reportedly accepted testimony from the family's medical experts that the most appropriate course this time would have been a planned cesarean no later than forty-eight hours after the betamethasone was started to ripen fetal lung maturity. That course should have begun when fetal tachycardia was first detected in the ob/gyn's office.

A physician-expert in fetal pathology testified the baby's brain injuries were caused by oxygen deprivation which started twenty-four hours before birth. The expert based this conclusion on the monitor strips, ultrasounds while the mother was in labor and placental pathology tests.

Brown v. North Broward Hosp. Dist., 2008 WL 2901893 (Cir. Ct. Broward Co., Florida, June 13, 2008).

Inside this month's issue ...

September 2008

New Subscriptions
See Page 3

PACU: Court Says Special Level Of Attention Is Required With Morbidly Obese Patients.

After an obstetric procedure seven months earlier the patient had been unresponsive for nineteen minutes in the PACU before regaining consciousness.

This time another obstetric procedure went according to plan and she was transferred to the PACU with steady blood pressure and pulse. Over the next ninety minutes the patient's nurses recorded eleven instances of dyspnea and shallow breathing before a nurse started her on a ventilator and called the physicians.

Five minutes after she went on the ventilator she began seizing. A brain scan the next morning revealed no evidence of a stroke, infarct or intracranial mass.

The final diagnosis was ischemic hypoxic encephalopathy related to oxygen deprivation which occurred in the post-anesthesia unit during that critical ninety minute period before the patient went on the ventilator.

She was transferred to another hospital in an unresponsive state and from there to a long-term care facility.

The patient's husband sued the hospital on her behalf.

Morbidly Obese Patient
Special Attention to Respiration

The Court of Appeals of Texas began its discussion by pointing out that the patient stood 4' 11'' tall and weighed 207 lbs, which translates to a body mass index of 41.6. That is, by objective criteria the patient was morbidly obese.

According to the medical experts' opinions endorsed by the court, hypoventilation and respiratory arrest are possible complications with morbidly obese patients recovering from general anesthesia.

Post-anesthesia nurses share responsibility with the patient's anesthesiologist and/or the physician who is directly supervising the post-anesthesia service. The nurses must watch the patient's respiratory effort closely and immediately report any difficulty to the physician. **Gelman v. Cuellar, __ S.W. 3d __, 2008 WL 3522098 (Tex. App., August 14, 2008).**

The standard of care is correctly stated in the patient's medical expert's opinion.

A morbidly obese patient's respiratory effort must be observed continuously in post-anesthesia recovery.

A morbidly obese patient's abdominal girth and chest size depress respiratory effort. Furthermore, the drugs given intra-operatively can accumulate in adipose tissue and result in prolonged awakening and delayed restoration of normal physiologic functioning following a surgical procedure.

The anesthesiologist and PACU nurse share responsibility for the patient's care. The anesthesiologist should formulate a plan for an obese patient and communicate the plan to the nurses.

The patient should be monitored with a pulse oximeter, EKG and blood pressure cuff.

The patient should be checked for oxygenation, ventilation, circulation and level of consciousness. It can also be helpful to elevate the head of the bed to allow gravity to assist in lung expansion and secretion clearance.

COURT OF APPEALS OF TEXAS
August 14, 2008

Discharged Patient Drives Under The Influence: Court Vindicates Nurse's Response.

The patient was discharged after being given 4 mg of Dilaudid for an outpatient medical procedure at the hospital.

Even though he was instructed not to drive until the effects of the Diladid had worn off a nurse saw the patient leaving the hospital parking lot driving a semi tractor-trailer truck.

The nurse phoned the police and reported the patient was driving while still under the effects of a powerful narcotic. A patrol car spotted him and pulled him over. A standard roadside horizontal-gaze nystagmus test gave grounds to take the driver to the station for a urine sample that confirmed he could be held for driving illegally.

The caller identified himself to the police as a nurse from the hospital and explained that the patient had driven away still under the influence of a powerful narcotic medication, even though he had been told not to drive.

The nurse's explanation of the potentially dangerous effects of Dilaudid on a person's ability to drive gave the police grounds to pull him over.

COURT OF APPEALS OF OHIO
August 1, 2008

The Court of Appeals of Ohio upheld the patient's detention and arrest. Based on the nurse's phone conversation with the police dispatcher the patrol officers had reasonable suspicion to pull him over for field sobriety testing which revealed signs of intoxication and gave them probable cause to get him off the road. **State v. Cummings, 2008 WL 2940817 (Ohio App., August 1, 2008).**

Antibiotics: Nurse Did Advise Patient Of Side Effects.

The Court of Appeals of Indiana ruled the physicians did not commit malpractice and did not fail to obtain the patient's informed consent for treatment.

The patient developed ototoxicity after a lengthy course of gentamicin and vancomycin for a lower extremity laceration that had progressed to osteomyelitis before she entered the hospital.

Nurse Provided Product Information Had Patient Sign Consent Forms

The physicians testified it was their standard practice to explain the unusual risk of ototoxicity associated with these antibiotics. The patient testified that never happened with her.

Nevertheless, before the antibiotics were started a hospital nurse handed the patient printed product-information materials for the two antibiotics and obtained her signature on standard consent forms indicating she had been advised of the potential side effects and, aware of the risks and benefits, was electing to go ahead with the antibiotics. **Caldwell v. Anekwe, 2008 WL 3497829 (Ind. App., August 14, 2008).**

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Patient Abuse: Court Expands The Definition Of Sexual Exploitation Of A Vulnerable Adult.

Sexual exploitation is defined as any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or the dependent adult.

A dependent adult is a person over eighteen who is unable to protect his or her own interests or unable to perform or obtain services adequate to meet essential human needs, as a result of a physical or mental condition which requires assistance from another.

A caretaker is a person who has the responsibility for the protection, care or custody of a dependent adult as a result of assuming that responsibility voluntarily or by contract, employment or court order.

SUPREME COURT OF IOWA
August 15, 2008

A ninety year-old male patient in a long-term care facility suffered from a number of health issues including depression, according to the court record in the Supreme Court of Iowa.

Over time he developed a romantic attachment to a female CNA who took care of him. He began acting out trying to touch, embrace and fondle her. The CNA reported him to her supervisor. Her supervisor reassigned her and told her to stay away from him.

CNA Is Caught In The Act Of Allowing the Resident to Fondle Her

After being told to stay away from the resident the CNA was caught in the resident's room by two other CNA's in the act of allowing the resident to fondle her, apparently for her own pleasure rather than his. She abruptly told him to stop, but apparently only because she had just been caught in the act by other staff members.

She was fired and reported to the state for sexual exploitation of a vulnerable adult.

The state Department of Human Services and the state Supreme Court did not accept the argument that sexual exploitation occurs only when the caregiver touches a dependent adult sexually.

Allowing oneself to be touched sexually by a dependent adult also fits the definition of sexual exploitation, the court ruled. **Smith v. Dept. of Human Services, __ N.W. 2d __, 2008 WL 3551228 (Iowa, August 15, 2008).**

Confidentiality: Court OK's Aide's Firing, Copied Patients' Records For Her Legal Case.

A forty-nine year-old African-American nurses aide filed formal accusations of discrimination against her employer, a nursing home, with the US Equal Employment Opportunity Commission (EEOC) after she was disciplined for alleged errors in charting for her patients.

For her case the aide photocopied and sent the local office of the EEOC copies of pages from other patients' charts. She wanted to show that other aides, younger than she and non-minorities, had committed the same charting errors with their patients but were not disciplined.

After she filed her accusations with the EEOC the aide was kept on staff and worked more than a year before management at the facility first learned that she had copied materials from the charts.

When management learned she had done that they reported the aide to the state Department of Health and terminated her employment.

Violation of Medical Confidentiality
Misappropriation of Residents' Personal Property

The state Department of Health concluded its own investigation and issued a decision that the aide was guilty of patient abuse, that is, she misappropriated personal property belonging to a resident, the information in the residents' charts being considered their personal property.

The aide sued the nursing home, not for discrimination but for retaliation.

The US Court of Appeals for the Tenth Circuit agreed in general terms that an employee cannot be targeted for retaliation for filing accusations of discrimination with the EEOC. It is totally irrelevant on the issue of employer retaliation whether or not the employee's underlying accusations of discrimination are valid.

Retaliation was not the issue in this case, the court ruled. The nursing home had a legitimate reason for terminating the aide, violation of medical confidentiality.

Vaughn v. Epworth Villa, __ F. 3d __, 2008 WL 3843340 (10th Cir., August 19, 2008).

The US anti-discrimination laws do not protect a healthcare employee who copies patients' confidential medical records for use in the employee's legal case.

The employee did not have consent from the patients.

The employee did not even try to white out the patients' names to conceal their identities.

The employee could have prepared a written statement as to the charting errors she believed the patients' charts revealed were committed by younger, non-minority co-workers who were not disciplined like she was.

The employee's discrimination claim against her employer was pending with the EEOC for over a year before her employer learned she had violated patient confidentiality and fired her for that reason.

Whether or not her underlying discrimination claim was valid, her employer had a legitimate, non-discriminatory reason, in fact a legal duty, to fire her.

Her employer's motivation for firing her was not retaliation for accusing her supervisors of discrimination.

UNITED STATES COURT OF APPEAL
TENTH CIRCUIT
August 19, 2008

Nurse As Attesting Witness: Signing Must Occur In The Nurse's Presence.

The seventy-two year-old patient was brought to the E.R. by paramedics after she took two hundred assorted pills in an apparent suicide attempt. The paramedics were called by her ex-husband with whom she still resided.

At the hospital the E.R. physician intubated her, then removed the tube and allowed her to expire after the ex-husband stated he was the person named in her advance directive and knew that she would not want to be kept alive. The physician had him sign a substitute decision-maker's consent form prior to the extubation.

Afterward the patient's children sued the E.R. physician, the hospital and the E.R. nurse for malpractice for not making a full-scale effort to resuscitate the patient.

The Supreme Court of Nevada ruled the consent form was not legally sufficient to allow the extubation because there were not two attesting witnesses as required by state law. **Estate of Maxey v. Darden, 187 P. 3d 144 (Nev., July 3, 2008).**

Consent for withdrawal of life support requires two witnesses to attest to the signature of the patient's substitute decision-maker.

The nurse charted that life support was withdrawn per the ex-husband's request.

However, the nurse's chart note does not qualify her as an attesting witness. Her chart note failed to state that she was in the substitute decision-maker's presence when he signed and actually saw him sign the document.

SUPREME COURT OF NEVADA
July 3, 2008

Morphine Toxicity: Nurses Did Not Follow Orders, Hospital Ruled Liable.

The fifty-five year-old patient had minor surgery to repair an old incisional hernia. Patient-controlled analgesia (1 mg. morphine q 10 minutes) was started and she was transferred to a med/surg floor.

At the point of transfer her physician reportedly got a BP of 110/60. He wrote orders for frequent BP checks by the med/surg nurses and for a physician to be notified if the systolic dropped below 100.

The patient, on a morphine PCA, had BP's consistently below 100 systolic, but, contrary to the physician's orders, a physician was not contacted until the next day, after she was already unresponsive.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA
January 17, 2008

The first BP on the med/surg floor was 90/60, obtained by the same nurse who signed off on the doctor's transfer orders. The nursing care flow sheets documented low BP's the rest of the day. The next a.m. a nurse phoned a physician to report the patient was unresponsive except to painful stimuli. The PCA was stopped and the patient was sent to the ICU for two days until she died from multi-organ failure.

The medical experts testified the patient's caregivers should have realized a person with compromised liver function does not metabolize a narcotic effectively and should have been more vigilant.

The jury in the Court of Common Pleas, Philadelphia County, Pennsylvania awarded the family $1,200,000. **Soto v. Penna. Hosp., 2008 WL 2663122 (Ct. Com. Pl., Philadelphia Co., Pennsylvania, January 17, 2008).**

Lap Sponge Left Inside Patient: Nurses Must Prove Absence Of Negligence.

The Appellate Court of Illinois pointed out that leaving a surgical sponge in a patient's body is *prima facie* evidence of negligence.

There was no doubt a laparotomy sponge was left inside. It was found in an x-ray and removed in a second surgery after the patient continued to have abdominal pain following discharge from the hospital after abdominal surgery.

The court ruled the patient does not need an expert witness when a caregiver's negligence is obvious to the common knowledge of lay persons. It was irrelevant to the outcome of the case that the operative nursing notes all stated that all three sponge counts were done correctly. **Willaby v. Bendersky, __ N.E. 2d __, 2008 WL 2550708 (Ill. App., June 25, 2008).**

FMLA: No Duty To Extend Leave, Court Says.

A nurse was entitled and was given twelve weeks of unpaid Family and Medical Leave Act (FMLA) leave for mental health treatment after she self-medicated on the job with Xanax and continued working her shift while under the influence.

The US District Court for the Northern District of Ohio ruled the hospital had no duty to extend her leave beyond twelve weeks, as employee assistance had determined she was still mentally unstable and not fit to return to work.

The court cautioned that any leave extensions that might be granted must be granted fairly and evenhandedly or the hospital can face charges of discrimination. **Kleinmark v. CHS-Lake Erie, 2008 WL 2740817 (N.D. Ohio, July 10, 2008).**

Patient Suicide: Nurses And Physician Ruled Not Liable.

The jury in the Superior Court, Sacramento County, California rejected the family's psychiatric expert's opinion that it was below the standard of care not to have had the patient on continuous line-of-sight observation right before she hanged herself on the psych unit with her t-shirt.

The charge nurse could have ordered continuous observation if it was necessary in her judgment, but did she not do so.

The hospital's medical expert in psychiatry testified that fifteen-minute safety checks were sufficient.

The charge nurse spoke with the patient right before she killed herself and the patient denied suicidal ideation.

SUPERIOR COURT
SACRAMENTO COUNTY, CALIFORNIA
June 3, 2008

The social worker who had spent a lot of time working with the patient the day before agreed that the patient did not seem to be a significant suicide risk.

The patient had agreed to voluntary admission after she was found standing on a riverbank and brought to the hospital. She had apparently balked at her original plan to jump in and drown herself. It looked like she had made the choice not to harm herself but instead wanted help.

The patient's psychiatrist diagnosed a somatoform disorder and depression. He was not faulted for not starting anti-depressant or anti-psychotic medications. The patient's pregnancy test was positive when she came to the hospital and further medical evaluation was needed. It was not certain she would have taken the medications voluntarily if the were offered, with her significant history of non-compliance. **Bauer v. Treat, 2008 WL 2663180 (Sup. Ct. Sacramento Co., California, June 3, 2008).**

Emergency Room: Personnel Failed To Diagnose Staph Infection, $3,000,000 Settlement For Pediatric Patient.

The case was filed in the Superior Court, Orange County, California. Settlement of the case in court-ordered mediation was reported on condition that the identities of those involved remain confidential.

The patient was four years old at the time of the incident and is now six.

Septic shock from a cephalosporin-sensitive Staph infection led to amputation of both feet and portions of both hands, which, it was alleged, could have been prevented with a single IM dose of antibiotic.

Nursing Negligence

The evidence assembled on behalf of the patient and her family faulted the E.R. nurse in two respects.

First, the E.R. nurse failed to recognize signs of a systemic bacterial infection which required laboratory follow-up.

Second, given the seriousness of the patient's illness, the E.R. nurse failed to advocate for the patient to be seen by a physician rather than just having a physician's assistant send the patient home with instructions for the parents to take her to a children's clinic.

The lawsuit alleged the nurse should have recognized the following as signs of systemic infection:

Fever 103.1°F;
Petechial skin rash;
Pustular rash in the mouth;
Diminished capillary refill;
Elevated heart rate;
Low O_2 saturation;
Lethargy.

The E.R. nurse reportedly charted a petechial rash, then crossed that out and wrote pustular. Either way, the rash required a physician's evaluation and laboratory tests, it was alleged, which were not done. The nurse did triage the patient as urgent.

The child was simply sent home with instructions to her parents to follow up at a pediatric clinic but without specific information where to go for that follow-up and without instructions on fever control, the lawsuit also alleged. **Confidential v. Confidential, 2008 WL 3166820 (Sup. Ct. Orange Co., California, January, 2008).**

Home Health: Nurse's MVA Is Covered By Worker's Comp.

A home health nurse was involved in a motor vehicle accident on the way from her own home to the home of her first client of the day.

The Commonwealth Court of Pennsylvania ruled she was entitled to benefits.

Nurse Was Traveling for Employer
Nurse Was Not Commuting to Work

As a general rule, an employee is not covered by workers' compensation while commuting to and from work at the employer's premises.

An exception to the general rule, however, covers employees while they travel for the benefit of their employer's business.

It is was not relevant, the court said, that the nurse was not reimbursed for her mileage going to her first appointment of the day and returning to her home after her last appointment, only for mileage traveling between patients' homes. It was also not relevant that she got work from more than one home health agency and was also in real estate. **Jamison v. Workers' Comp. Appeal Board, __ A. 2d __, 2008 WL 3834955 (Pa. Cmwlth., August 19, 2008).**

Arbitration: No Delegation Of Power Of Attorney.

The Court of Appeals of Tennessee ruled the nursing home was not protected from a civil lawsuit over the circumstances of the resident's death.

The arbitration agreement was never signed by anyone with authority to sign and was invalid for that reason.

The daughter who signed was not the same daughter named by the resident in her power of attorney and she had no authority to delegate authority to her sister. **Jones v. Kindred Healthcare, 2008 WL 3861980 (Tenn. App., August 20, 2008).**

Arbitration: Resident Was Not Incompetent.

The Court of Appeals of Tennessee ruled the nursing home was not protected from a civil lawsuit over the circumstances of the resident's death.

The arbitration agreement was signed by the daughter at the time of admission. However, the daughter did not have power of attorney from her mother to sign legal documents. The mother was not mentally incompetent, so the issue of surrogate decision-maker was irrelevant. **Ricketts v. Christian Care Center, 2008 WL 3833660 (Tenn. App., August 15, 2008).**

Arbitration: Resident Was Incompetent.

The Court of Appeals of Mississippi ruled the nursing home was protected from a civil lawsuit over the circumstances of the resident's death.

The arbitration agreement was signed by the son at the time of admission after the patient's physician had diagnosed Alzheimer's dementia and depression. The patient was not competent to sign a legal contract. The son was an appropriate surrogate healthcare decision maker. **Covenant Health v. Moulds, 2008 WL 3843820 (Miss. App., August 19, 2008).**

Sign Language Interpreters: US Court Says Hospital Discriminated Against Deaf Patient.

The US District Court for the Middle District of Georgia ruled that a hearing-impaired patient has the right to sue the hospital for violation of her rights as a disabled person guaranteed by the Americans With Disabilities Act.

ASL Is Patient's Primary Method of Communication

The fifty-four year old patient was not born deaf but has been deaf since age three. She can use her voice to speak but most of what she vocalizes is not intelligible to the hearing population at large. She has some ability to read lips.

She can also read and write handwritten messages. However, according to the court, because of differences in vocabulary and syntax between American Sign Language (ASL) and English, handwritten messages are far from an ideal alternative to ASL for discussion of complex subjects.

Factual Backdrop to Disability Discrimination Claim

The patient's ob/gyn scheduled her to come to the hospital for non-emergency outpatient surgery to repair a problem with her bladder.

During the surgery her intestine was perforated, leading to septic shock which landed her in intensive care for almost six weeks. Her treatment in intensive care became the focus of her lawsuit.

Invasive Procedure Not Explained to Patient

Two days into her stay in intensive care it became necessary, as the court phrased it, to insert a tube down the patient's throat. A nurse phoned one of the patient's two adult hearing children, highly skilled in ASL, to come to the hospital.

However, the nurses went ahead with the tube before the son arrived at the hospital and without any attempt, however ineffective, to explain to the patient what was going on.

The patient claimed in court she thought the nurses were just going to give her some medication and really had no idea what the nurses were doing to her.

Discrimination against hearing-impaired individuals by healthcare facilities was outlawed in general terms by the Americans With Disabilities Act.

Federal regulations now spell out facilities' specific responsibilities.

Healthcare facilities must furnish appropriate auxiliary aids and services where necessary to afford an individual with a hearing disability an equal opportunity to participate in, and enjoy the benefits of, services provided by the facility to hearing individuals.

In determining what type of auxiliary aid and service is necessary a healthcare facility must give primary consideration to the requests of the disabled individual.

The phrase "auxiliary aids and services" includes qualified interpreters, note-takers, transcription services, written materials, handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, TDD's, videotext displays or other methods of making aurally delivered materials available to individuals with hearing impairments.

UNITED STATES DISTRICT COURT
GEORGIA
July 31, 2008

Family Members Are Not Appropriate If The Patient Has Requested An Interpreter

As far as the patient's rights were concerned it was a moot point whether or not the nurses waited until the son arrived at the hospital to go ahead with the tube, according to the court's reading of the pertinent Federal regulations.

A hearing-impaired patient has the right to request a qualified sign-language interpreter, even if family members are competent and available on-site to interpret for the patient.

The family had requested an interpreter but the first time anyone paid any attention was when the son's complaint about the tube incident landed on the risk manager's desk. It still took weeks to locate someone with some knowledge of ASL who was not a certified interpreter. Then it took about another week for the hospital to sign on a certified interpreter.

Patient May Request Certified Interpreter

The court made the point that a hearing-impaired patient has the right to request a certified interpreter, not just someone who happens to have some ability to interpret ASL who is not actually certified.

Compensatory Damages

Even if the patient's rights have been violated by a single episode or by an overall course of discriminatory conduct, the patient is not entitled to compensation unless the patient can show intentional discrimination or bad faith.

That is, for the patient to be entitled to compensation, a person at the healthcare facility with authority to take appropriate action, such as a supervisor, must have been aware of the patient's disability and the patient's needs, must have had an opportunity to accommodate the patient's needs and must have nevertheless acted or failed to act out of deliberate indifference.

Compensation can be awarded to the patient for emotional distress. Additional compensation is appropriate if an adverse medical outcome can be traced to violation of the patient's rights, which was not the situation here. **Boyer v. Tift County. Hosp., 2008 WL 2986283 (M.D. Ga., July 31, 2008).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Fire Safety: Nursing Homes Must Have Sprinkler Systems By 2013, CMS Says.

Long-term care facilities must install sprinkler systems on or before August 13, 2013 in compliance with the 1999 edition of the National Fire Prevention Association's (NFPA) *Standard for the Installation of Sprinkler Systems* and maintain them in compliance with NFPA's 1998 publication *Standard for the Inspection, Testing and Maintenance of Water-Based Fire Prevention Systems.*

Many states' licensing laws and/or building codes already require sprinkler systems.

We have placed CMS's eighteen-page August 13, 2008 Federal Register announcement on our website at http://www.nursinglaw.com/firesafety2008.pdf. The new regulations appear at the very end of the document on Federal Register pages 47091-47092.

FEDERAL REGISTER August 13, 2008
Pages 47075 – 47092.

Resident Dies, Is Buried, Next Of Kin Not Notified: Court Says Family Can Sue Nursing Home.

The Court of Appeal of Louisiana ruled that a nursing home was at fault for making no effort to contact the next of kin before going ahead with burial of a long-term resident who died at age ninety-three.

The nursing home administrator knew who the family was; the family lived in the same small town where the nursing home was located.

The family was awarded $4,813.37 for disinterment and reburial of the resident in a manner more consistent with her own wishes.

The Court of Appeal ordered the nursing home to pay an additional $5,000 for the family's mental anguish and emotional distress. The family had asked for $25,000, too much in the appeals judge's opinion while the jury erred awarding only $2,500. **Rayford v. Willow Ridge, __ So. 2d __, 2008 WL 3394662 (La. App., August 13, 2008).**

Gender-Based Shift Assignments: Federal Court Upholds Male CNA's Sex-Discrimination Lawsuit.

A male CNA was hired for the night shift and began working the night shift in a nursing home.

He was also working a second job during the day as a waiter.

His supervisors abruptly reassigned him to a day position. His shift differential for night work was gone. He was told he had to quit his second job during the day and he could no longer pick up extra hours on p.m. and days-off night shifts.

The nursing home started a new policy, he was told, prohibiting male caregivers from working second and third shifts, fearing a heightened risk of sexual assaults by male caregivers upon female residents during the late hours.

The CNA tried it for a while, then quit and sued for gender discrimination.

The nursing home adopted a new policy not to allow male caregivers to work p.m. or night shifts.

The nursing home's new policy is discriminatory on its face and violates Title VII of the US Civil Right Act.

The CNA has a legitimate right to sue for being cast in the role of a potential sexual predator simply on the basis of his male gender.

UNITED STATES DISTRICT COURT
OKLAHOMA
August 1, 2008

The US District Court for the Western District of Oklahoma ruled the CNA had a valid lawsuit.

The nursing home created a hostile work environment by labeling the CNA as a potential sexual predator based on nothing more than his male gender. His response, quitting, was not really quitting; he was forced out by the hostile environment at the facility.

Discrimination caused real consequences, loss of his second job, his night shift differential, his extra hours and ultimately his job as a CNA.

Even though this particular factual scenario is not illegal under the state anti-discrimination law in Oklahoma, it is clearly outlawed by Federal law, the court ruled. **Bair v. Colonial Plaza, 2008 WL 3154686 (W.D. Olka., August 1, 2008).**