LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
September 2009 Volume 17 Number 9

Pneumonia, Respiratory Failure, Death: Court Says Nurses Failed To Advocate For Patient.

The fifty-seven year-old patient resided in a nursing home before being sent to the hospital where he died with pneumonia.

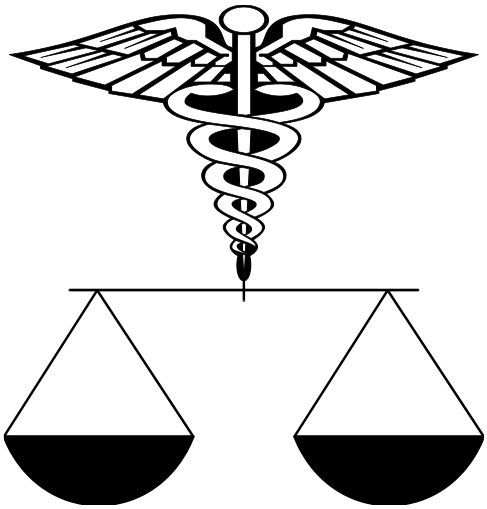
His medical diagnoses included schizophrenia, vascular dementia, diabetes, hypertension and chronic airway obstruction.

At the nursing home he came down with a cough, cold and bronchitis. He was given cough syrup. The nurses noted he needed a chest x-ray.

As his condition worsened the nursing progress notes began to reflect that the patient likely had pneumonia. His temperature stayed in the 102+ range, he had decreased energy and endurance, lost his appetite and was not taking in adequate fluids. He continued to receive cough syrup and Levaquin.

After a month he finally he had to be sent to the hospital E.R. in an ambulance. At the hospital his oxygen saturation was found to be only 88%. He was diagnosed with acute respiratory failure, septic shock, disseminated intravascular coagulation and bibasilar aspiration pneumonia. He was intubated in the ICU but soon died.

His family sued the nursing home, his attending physician and two nurses who were responsible for his care. The Court of Appeals of Texas ruled there were grounds for the lawsuit.



The nurses should have appreciated the patient's susceptibility to pneumonia, recognized that he had pneumonia and realized the danger if his condition went untreated.

As his persistent cough worsened the nurses did not check his O_2 sat or advocate with the physician for repeat chest x-rays or for review of his antibiotic medication.

COURT OF APPEALS OF TEXAS
August 21, 2009

The Court of Appeals endorsed the following statement of the relevant nursing standard of care:

In addition to their responsibilities for nursing care, nurses are obligated to evaluate the patient appropriately and present the collected data to the patient's physicians.

Nurses serve as advocates on behalf of their patients in their patients' interactions with hospitals, nursing homes and physicians.

If nurses feel the patient's physician's response to their concerns reported by phone is inadequate, nurses are obligated to insist upon the physician seeing the patient in person.

If the physician refuses, nurses are obligated to institute their facility's nursing chain of command policy, appealing to the charge nurse, then to the nursing supervisor or other physicians.

Nurses have an independent professional responsibility to their patients to ensure that they are cared for, not ignored and treated appropriately for their medical conditions.

In this case the nurses should have seen to it that pneumonia, respiratory distress, septic shock and other possibilities were either medically ruled out or medically treated, which would have prevented this patient's death. **Nexion Health v. Taylor, __ S.W. 3d __, 2009 WL 2569450 (Tex. App., August 21, 2009).**

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Fall: Court Sees Deviations From Nursing Standards.

The eighty-four year-old patient was admitted to the nursing home directly from the hospital.

Her hospital discharge summary informed the nursing home staff that she had a history of falling and being injured, as well as osteoporosis, dizziness of unknown etiology, gait disturbance and chronic anemia. The discharge summary further noted that the patient had very poor physical stamina and needed assistance with bathing, dressing, walking and toileting.

The patient fell at least three times at the nursing home. The last fall reportedly happened when she was trying to transfer by herself from her wheelchair to the toilet. This time she fractured her hip and had to be taken back to the hospital.

After she got back from the hospital she developed bedsores on her buttocks, one of which progressed to a Stage II decubitus which sent her back to the hospital where sepsis was diagnosed. She was sent back to the nursing home, then to another nursing home where she died.

Nursing Care Faulted

The patient's family's nursing expert's opinion was that the nursing home had a perfectly adequate fall-prevention care plan in the chart.

The problem, in the expert's opinion, was there was basically no documentation that the plan was being implemented.

It was well known this patient needed assistance with basic ADL's. However, she apparently was consistently not getting the help she needed, right up to the event that started her terminal downward spiral.

There was likewise no documentation in the chart of the fall-care plan being evaluated and re-evaluated as part of the ongoing nursing process.

Nurse Accepted As Expert Witness

The Superior Court of New Jersey, Appellate Division, declined to follow the traditional rule, which is now being questioned across the US, that a nurse cannot testify about medical cause-and-effect. The court said it is within a nurse's sphere of competence to testify that predictable sequelae can come from a broken hip from a fall caused by substandard nursing care. **Detloff v. Absecon Manor, 2009 WL 2366048 (N.J. App., August 4, 2009).**

The patient's family's expert on nursing standards is a registered nurse who specializes in wound care and nursing administration.

Her expert opinion will stand up in court with respect to the nursing standard of care for this patient and departures by the facility's nurses from the standard of care.

The law does distinguish between nursing diagnosis and medical diagnosis. Nurses, as a general rule, are not permitted to make medical diagnoses in clinical practice or in court.

However, the allegations in this case do not have to be proven with a physician's testimony.

The patient fell due to failure to follow the nursing standard of care for implementing, evaluating, re-evaluating and documenting fall precautions.

As a result of falling the patient fractured her hip.

Post-injury immobility contributed to the development of a bedsores, one of which progressed to a Stage II decubitus that led to sepsis.

A nurse is qualified to testify in this case on the issue of cause and effect.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
August 4, 2009

Dementia Patient Scalded, Was Left Unattended In Hot Shower.

A jury in the Circuit Court, Manatee County, Florida reportedly awarded $4,522,617.61 to the widow of a seventy-six year-old resident of a nursing facility.

The deceased sustained second and third degree burns over his lower body after he was left alone in the shower. The judge allowed the jury to see photos of the patient's burns during the trial.

On top of inadequate supervision by the facility's care-giving staff, it came out in court that the facility had been issued a warning beforehand by government inspectors that the building's hot-water thermostat needed to be adjusted because the water in the showers was too hot.

Most of the damages, all but several thousand dollars, were not for the patient's pain and suffering during the month before he expired, but for the widow's own emotional pain over the tragic loss of her companion of sixty years. **Eisenwinter v. Palmetto Guest Home, 2009 WL 2385333 (Cir. Ct. Manatee Co., Florida, April 28, 2009).**

Dehydration: Verdict Against Nursing Home.

A sixty-one year-old patient who had had a stroke in 1984 died from dehydration and kidney failure two days after being removed from a nursing home.

His family moved him out because of concern over a bloody rash, urine-soaked bedding and his room being in disarray.

The family's lawsuit filed in the Court of Common Pleas, Franklin County, Ohio resulted in a $6,500,000 verdict for negligence by the nursing home staff in failing to appreciate a stroke patient's need for assistance from his caregivers to take in enough fluids to maintain adequate hydration. **Southard v. Whetstone Gardens, 2009 WL 2501842 (Ct. Comm. Pl., Franklin Co., Ohio, April 23, 2009).**

EMTALA: Uninsured Psych Patient Was Not A Victim Of "Patient Dumping," County Hospital Not Liable For His Suicide After Discharge.

The patient's brother-in-law persuaded him to go to the E.R. at a private psychiatric facility after neighbors intervened to stop an apparent suicide attempt by carbon monoxide poisoning.

Although the patient voluntarily asked to be admitted, the facility formally initiated an involuntary hold. After 72 hours it was determined he was gravely disabled by a major depressive disorder and needed long-term treatment in a secure setting.

The private facility got the OK from a staff psychiatrist at the county public hospital to transfer him there by ambulance.

County Hospital's Emergency Screening Fulfilled EMTALA Requirements

Any patient arriving by ambulance at the county public hospital was considered a fresh emergency case.

The patient was assessed at length by an experienced psych nurse, a therapist and a staff psychiatrist. Their consensus was that he was not gravely disabled, was not suicidal, was not a danger to self or others and did not meet the legal criteria for or need involuntary psychiatric treatment.

He was discharged in the care of a family member. A few days later he shot himself in a motel room.

Three months after the patient's death the county hospital's chief psychiatrist circulated an email to all personnel that the hospital was changing its practices.

The hospital was no longer going to be the "admission hospital of choice for those with no insurance. Adults with no insurance should be referred to other hospitals unless [there was a] clinical reason to admit [to the hospital] or there are no beds at any of the contracted hospitals."

No matter how questionable that was in light of the spirit or the letter of the US Emergency Medical Treatment and Active Labor Act (EMTALA), there is no proof it impacted the screening and care that this patient received months earlier in the county hospital's E.R.

CALIFORNIA COURT OF APPEAL
July 29, 2009

The California Court of Appeal applauded the thoroughness with which the patient was assessed at the county hospital.

For a hospital to be liable under the US Emergency Medical Treatment and Active Labor Act (EMTALA) there must be evidence that the patient's emergency medical screening was less adequate than that given to other patients presenting with the same signs and symptoms. 20/20 hindsight is not the legal standard.

Insurance Information

It is not illegal *per se* for personnel in an emergency room to inquire or to make notes in the chart about a patient's insurance status. That information was not gathered in the exam done by the county hospital's psych nurse, the first person who saw him, but was apparently transcribed into the chart by an admissions clerk from the copy of the patient's private hospital chart that came with him in the ambulance.

Federal regulations state that a hospital may not *delay* providing an appropriate medical screening examination in order to inquire about a patient's insurance status or method of payment.

This patient's care was not affected in any way by his lack of insurance. He got the same medical screening examination as any other similar patient, the court ruled, until the interdisciplinary team discharged him under a legitimate belief held at the time that he did not need further care. **Jace v. Contra Costa County, 2009 WL 2248472 (Cal. App., July 29, 2009).**

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Emergency Room: Nursing Care Found To Be Below The Standard Of Care.

The patient's lawsuit alleged negligence by the emergency room nurses at the hospital where he was taken after a motor vehicle accident.

The patient crashed his sports car into a wall at the local racetrack at a speed of 50-70 mph, but was able to remove himself and walk away from the wreck. He was transported still fully conscious to the E.R.

The triage nurse noted that his complaint of pain was 5 on a scale of 1 to 10. The triage nurse reportedly felt it unnecessary to perform a full chest, abdomen and neurological exam because his chief complaint related to lower back pain.

The emergency room physician's diagnosis was lower back muscle spasms, most likely an aggravation of a pre-existing lower back problem. The patient was given an injection of Toradol and prescriptions were written for Percocet, Flexeril and Motrin.

No Nursing Assessment Of Patient's Response To Pain Medication

The US District Court for the Northern District of West Virginia agreed with the patient's expert witness, a board-certified emergency physician, that it was below the standard of care for the nurses not to have reassessed the patient's reaction to the Toradol injection. Continued or increased pain after receiving medication should have alerted the nurses that something more serious than low back spasms was going on. The patient was reportedly still in a lot of pain when he was discharged.

The patient claimed the nurse took his BP more than once and it was much higher the second time. According to the court, the nursing flow sheets for vital signs and other assessment and reassessment of the patient were left completely blank.

After several days in extreme pain which did not respond to the Percocet prescription, the patient was taken from home by ambulance to another hospital where he was treated for rib and vertebral fractures which were completely missed by the first hospital's nurses and physician. **Ramonas v. West Virginia Univ. Hosp., 2009 WL 2450463 (N.D.W.Va., August 7, 2009).**

The patient's expert witness identified several failings by the E.R. nurses to adhere to the standard of care:

Failing to take additional vital signs prior to discharge;

Failing to assess the patient's pain level;

Failing to evaluate the patient's reaction to pain medication;

Failing to properly note that the patient was not ambulatory at discharge;

Failing to properly chart and/or communicate their data to the E.R. physician.

The nurses also made a poor decision during triage not to do a full examination of the chest and abdomen which did not seem to pertain to his chief complaint of lower back pain.

After taking vital signs on arrival, which apparently were within normal limits, no more vital signs were taken. The nursing flow sheets are completely blank for vital signs.

The patient was taken to another hospital days later and treated for previously undiagnosed rib and vertebral fractures.

UNITED STATES DISTRICT COURT
WEST VIRGINIA
August 7, 2009

Labor & Delivery: Nurses Faulted, Kept Patient's Legs Flexed.

The patient sued the hospital claiming that her nurse midwife and the three registered nurses who assisted the midwife kept her legs in an extreme hyperflexed position for too long a time without any medical reason, resulting in hip, back and leg injuries.

The patient reportedly was in severe pain afterward and had to ambulate on crutches until her injuries resolved.

According to the record in the Appeals Court of Massachusetts, the patient's caregivers were employing the McRoberts maneuver to facilitate her delivery.

Use of the McRoberts maneuver was not necessary in the first place during this patient's delivery, according to the patient's nursing expert, and even if it was necessary it was continued for too long without respite. The nurse midwife is responsible for supervising and directing the nurses assisting in the delivery. **O'Hare v. Bastarache, 2009 WL 2461240 (Mass. App., August 13, 2009).**

Care must be taken when performing the McRoberts or other maneuvers used to facilitate delivery to avoid prolonged and overly aggressive pressure on the legs in the hyperflexed position.

The fibrocartilaginous articular surfaces of the symphysis pubis and surrounding ligaments can be unduly stretched and undue pressure can be exerted on the mother's legs, hips, abdomen and back.

APPEALS COURT OF MASSACHUSETTS
August 13, 2009

Confidentiality: Patient Data Downloaded By Whistleblower Nurse.

The Court of Appeals of Texas ruled that a nurse's former employer, a hospital, was not entitled to a court injunction requiring the nurse to account for and return approximately 3,000 pages of patient-chart face sheets and other demographic data she obtained by downloading her office computer's entire hard drive onto a portable storage device.

She copied the data after being informed her employment had been terminated as of her return date from a scheduled two-week vacation because she told her supervisor she was going to file a written report with state officials about patient-care violations she had witnessed.

Nurses have a duty to report what they believe to be violations of the law by a hospital, that is, patient abuse, neglect and other unprofessional conduct.

An employer cannot retaliate against an employee who acts in good faith as a whistleblower.

COURT OF APPEALS OF TEXAS
August 7, 2009

Prior to the court hearing date the nurse had not divulged the data to anyone but hers and the hospital's attorneys. She told the judge it was her intention to release the data only to state and Federal inspectors, and only if requested.

The court upheld the nurse's conduct over objections based on medical confidentiality. The court's rationale was to validate the intent and purpose of the state's whistleblower law. The law not only permits but requires nurses to report abuse, neglect and other illegal and wrongful acts. **Westlake Surgical v. Turner, 2009 WL 2410276 (Tex. App., August 7, 2009).**

Discrimination: Larger Males Had To Restrain Psych Patients, Court Sees No Gender Bias.

In order for the male staff members to present a prima facie case of gender discrimination under Title VII, they must prove that they:

(1) Are members of a protected class;

(2) Were performing their jobs to their employer's legitimate expectations;

(3) Suffered adverse employment action(s); and

(4) Were treated less favorably than at least one similarly-situated female colleague.

There is no question that, as male caregivers, they are members of a protected class. They also were performing their jobs in accord with their employer's legitimate expectations.

However, they have failed to identify even one female colleague who was treated more favorably.

They have failed to demonstrate that men were required to respond to dangerous situations while women were spared such responsibilities. Perhaps if women were never called to respond to dangerous emergency situations and men were always called, these two men might have a case.

UNITED STATES DISTRICT COURT
INDIANA
July 22, 2009

Two male employees at a state mental hospital complained to management that they were being singled out to respond to emergencies involving bodily restraint of psychiatric patients.

One of the males, an LPN, is 6' 2" tall and weighs 310 lbs.; the other, a psychiatric attendant, is 6' 4" and 275 lbs.

They objected not only to being exposed to hazardous duty more frequently than their female coworkers but also to being required to come off their breaks immediately for emergencies requiring physical restraint, while female staff members were not necessarily required to come off their breaks for that purpose.

They sued for gender discrimination under Title VII of the US Civil Rights Act. The US District Court for the Southern District of Indiana ruled they did not have a case.

Male Caregivers Are Covered By Anti-Discrimination Laws

The laws against gender discrimination, originally enacted to combat discrimination against women, do apply to male caregivers in the healthcare field.

However, the evidence was lacking in this particular case that these employees were treated differently because of their male gender, all other things being equal.

That is, to prove their case they would have had to identify at least one female staff member whose job description, level of experience, physical strength and other relevant characteristics were basically the same as theirs who was not singled out for emergency-restraint duty, presumably only because of her female gender.

Retaliation Is A Separate Issue

The attendants also claimed retaliation because they complained to the US Equal Employment Opportunity Commission. Even if an employee's bias complaint is not valid, retaliation is strictly forbidden.

However, they also failed to convince the court that strict enforcement of certain workplace rules, before only laxly observed, was actually intended as retaliation. **Keller v. Indiana Family and Social Services Admin., __ F. Supp. 2d __, 2009 WL 2222857 (S.D. Ind., July 22, 2009).**

PACU vs. PICU: Court Faults Physicians, Not Nurses.

The events occurred after the infant's third surgery, at age ten months, for correction of her congenital gastroschisis.

Infant Was Sent To The Post Anesthesia Care Unit Not The Pediatric Intensive Care Unit

After her first two surgeries at this hospital the infant was sent to the pediatric intensive care unit.

This time she was sent to the post anesthesia care unit. The nurse notified the physician her patient's hands and feet were cool and bluish and her heart rate was increased. The PACU nurse basically did nothing further for an hour. Then a physician came in and decided to transfer her to a private room on the pediatric floor.

The infant got inadequate post-operative monitoring from the nurse in the post anesthesia care unit.

When she was transferred to a room on the pediatric floor the nurse within minutes picked up on the fact she was seizing and notified the physicians, albeit too late to avert profound brain damage.

UNITED STATES DISTRICT COURT
SOUTH DAKOTA

The US District Court for the District of South Dakota ruled that the hospital, as the employer of the PACU and pediatric floor nurses, was not at fault.

The court expressly faulted the underlying medical decision to send the patient to the PACU rather than the PICU. The surgeon and the anesthesiologist will have to sort out the blame for that decision when they stand trial before a civil jury in the patient's lawsuit. **Vearrier v. Karl, 2009 WL 2524581 (D.S.D., August 14, 2009).**

Scalpel Blade: No Presumption Of Negligence By Hospital Staff.

The scalpel blade came off the handle during surgery while the orthopedic surgeon was using it to create posterior and anteriolateral portals inside the patient's right shoulder.

When the surgeon noticed the scalpel handle no longer had a blade on it he went back and found it by enlarging the incision a few millimeters with another scalpel.

The surgeon told the circulating nurse to write an incident report. Those involved in the case stated for the report the handle was inspected, the blade was attached in the usual manner and there was no indication of a problem until the blade came off.

The Superior Court of New Jersey, Appellate Division, ruled there was no legal basis to presume that the surgeon or the perioperative staff were guilty of negligence. The patient elected to sue only the hospital and not to sue the manufacturers of the scalpel handles used at the hospital, a significant omission in the court's opinion. **Valente v. Christ Hosp., 2009 WL 2365991 (N.J. App., August 4, 2009).**

FDA: New Regs For Adverse Event Reporting In Electronic Format.

On August 21, 2009 the US Food and Drug Administration published proposed new regulations, not yet mandatory at this time, which, if formally adopted, will require user facilities and others to report adverse events associated with FDA -regulated medical devices by using the FDA's specified electronic format.

We have placed the FDA's Federal Register announcement on our website at www.nursinglaw.com/FDA082109.pdf.

The regulations pertaining to user facilities begin on page 13 of the PDF document, Federal Register page 42215.

FEDERAL REGISTER August 21, 2009
Pages 42203—42217.

Ruptured Spleen: Nurse Faulted For Failing To Report To Physician.

The patient was struck in the abdomen by a heavy object while working on a construction site.

It took almost two weeks for him to go to an emergency room. He was admitted with a diagnosis of a ruptured spleen.

A general surgeon wrote an order for hemoglobin and hematocrit levels to be obtained every six hours and for the surgery department to be contacted if the hemoglobin fell below 9.

Nurse to Report Abnormal Lab Values

The patient's nurse reportedly failed to contact the surgeon to report that the second hemoglobin so obtained was below 9.

The nurse also continued to administer heparin even though a low hemoglobin in a patient diagnosed with a ruptured spleen should have been seen as an indication of internal bleeding which required prompt correction by the surgical department.

The patient had a myocardial infarction the next morning, then died right after another infarction a few days later.

A jury in the Circuit Court, Wayne County, Michigan awarded the widow $875,000 of which 80% was allocated to the hospital for payment. **Overbay v. Botsford General Hosp., 2009 WL 2414354 (Cir. Ct. Wayne Co., Michigan, April 3, 2009).**

Ulcer: Nurses Did Not Advocate For The Patient.

The elderly nursing home patient was known to have a bleeding peptic ulcer. Her nurses checked and found blood in her stools and also were aware that her lab results had come back with low hemoglobin, hematocrit and red blood cells.

The Court of Appeals of Texas said the nurses should have advocated for a gastroenterologist's consult. Nevertheless the evidence was inconclusive that that would have made any difference in the eventual outcome. **Dews v. Palo Pinto Nursing Ctr., 2009 WL 2384902 (Tex. App., June 11, 2009).**

Heparin: Nurse Started Infusion Too Soon After Epidural.

The patient came to the hospital for an emergency surgical procedure to remove a blood clot from his right leg which was done with an epidural anesthetic.

Then he was transferred to the post-anesthesia care unit where the anesthesiologist removed the epidural catheter that had been used to infuse the anesthetic.

Twelve minutes later the PACU nurse started IV heparin. The heparin was reportedly continued for more than twenty-four hours until the patient was found to have become quadriplegic.

The paralysis was caused by bleeding into the epidural space which was blamed on the heparin being started prematurely.

None of the caregivers disputed, after the fact, that it was an error for the nurse to start the heparin less than one hour after the epidural catheter was removed.

There was a basic breakdown in communication.

CIRCUIT COURT, OAKLAND COUNTY
MICHIGAN
March 6, 2009

The fifty-four year-old patient is now permanently paralyzed. The $1,900,000 settlement of the patient's lawsuit filed in the Circuit Court, Oakland County, Michigan was reported on condition that the names of the patient, caregivers and hospital remain confidential.

During settlement negotiations, it was reported, there was no dispute that it was an error to start the heparin less than an hour after discontinuance of the epidural catheter. The defendants reportedly did dispute among themselves whether the orders should have specified that or the nurse should have known. **Confidential v. Confidential, 2009 WL 2501799 (Cir. Ct. Oakland Co., Michigan, March 6, 2009).**

Compartment Syndrome: Big Verdict For Negligent Nursing Care.

The patient obtained a jury verdict of $14,891,123.02 in the Circuit Court, Cook County, Illinois as damages for muscle loss and tissue damage in her lower leg from compartment syndrome which developed after knee surgery.

The case reportedly involved an almost total failure of the nursing process in the patient's post-operative care.

The nurses were faulted for failing to examine the patient and assess her pain and pulse, tension, temperature, capillary refill, color, movement, flexion and extension in the affected lower extremity.

In addition to the legal duty to conduct adequate ongoing assessments for signs and symptoms of compartment syndrome, the nurses had the duty to communicate changes in their patient's condition to the physicians involved in her care and to utilize the nursing chain of command to advocate for timely medical intervention on their patient's behalf.

The nursing process requires assessment, planning, intervention, evaluation and re-evaluation.

That should have included a complete head-to-toe neurovascular exam and assessment and communication of the results to the physicians.

CIRCUIT COURT, COOK COUNTY
ILLINOIS

The hospital's defense was reportedly hampered by the inability to produce critical evidence in court, nursing progress notes, critical-care flow sheets and neurovascular assessment flow sheets, for reasons which were not explained. **Richner v. VHS Acquisitions, 2009 WL 2385493 (Cir. Ct. Cook Co., Illinois, April 2, 2009).**

Compartment Syndrome: Nurses Ruled Not Liable.

The patient came in for what was supposed to be a routine same-day orthopedic procedure, a radial osteotomy with lengthening of the radius and tricortical iliac bone grafting on the left forearm.

The orthopedic surgeon casted the arm and transferred the patient to the recovery room. However, because the patient's pain was not subsiding with the usual post-operative analgesics the patient was admitted to the hospital overnight.

In the hospital an anesthesiologist started the patient on a patient-controlled analgesic morphine pump. Even that did not seem to control the pain, so another anesthesiologist gave a 10 mg bolus and reset the dosage available for patient self-administration to a higher level.

The hospital's nurses were not responsible for assessing the patient's cast or for determining why the patient was experiencing such a high level of pain post-operatively.

CIRCUIT COURT, DEKALB COUNTY
GEORGIA
May 30, 2008

The patient was discharged the next morning but had to return to the hospital's emergency room later the same day. The emergency physician conferred with the orthopedist about replacing the plaster cast with a split cast, but, on the orthopedist's recommendation, that was not done.

Months later the patient was diagnosed with compartment syndrome.

The jury in the Circuit Court, DeKalb County, Georgia found the orthopedist 100% at fault.

The orthopedist was kept fully aware of the post-operative course. It was not the hospital's nurses' responsibility, in the jury's judgment, to evaluate the cast and make recommendations to the doctor. **Murray v. Jove, 2008 WL 6690072 (Cir. Ct. DeKalb Co., Georgia, May 30, 2008).**

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Patient Falls: Jury Finds No Liability.

The seventy-eight year-old patient was a day resident at an adult day care center.

Due to unsteadiness on his feet his care plan for ambulation called for two-person assistance with a gait belt.

He was using his walker to shuffle slowly to the restroom. He was being assisted by two nurses aides, one of whom had a hand on the gait belt that was snugly fastened around his waist.

When he got to the bathroom door he started coughing. He asked one of the aides to go and get him his inhaler which he needed because he had COPD.

One aide left his side momentarily to grab his inhaler. She came back and stood behind him as he was entering the bathroom. The other aide took her had off the gait belt momentarily to hold the bathroom door open for him.

Just at that moment the patient's legs gave out. He fell and broke his hip.

The jury in the Circuit Court, Manitowoc County, Wisconsin was unable to find the facility liable for negligence and awarded no damages. **Kohlwey v. Injured Patients Fund, 2009 WL 2431344 (Cir. Ct. Manitowoc Co., Wisconsin, January 9, 2009).**

Discrimination: Disabled Employee Could Not Return To Work.

The Superior Court of New Jersey, Appellate Division, dismissed a nurse's disability discrimination lawsuit against her former employer, the hospital where she had worked in the ICU before sustaining an off-the-job back injury.

The hospital gave the nurse all the time off to which she was entitled under the US Family and Medical Leave Act (FMLA).

After her FMLA leave eligibility was used up she asked for additional time off as reasonable accommodation for her disability.

Because it was her doctor's opinion that her disabling back injury would never allow her to return to work in the ICU, the court ruled she was not entitled to additional time off under the rubric of reasonable accommodation.

Time off for healing is a reasonable accommodation to a disability only if it will enable an employee who is otherwise qualified to return to his or her job to return to the job at a later point in time. **Potash v. Hunterdon Med. Ctr., __ A. 2d __, 2009 WL 2253167 (N.J. App., July 30, 2009).**

Language Barrier: Patient Can Sue For Lack Of Informed Consent, Substandard Post-Op Care.

The patient's sigmoid colon was perforated during a colonoscopy and polypectomy.

She had to return the next day for bowel resection and a colostomy. Then she had three more surgeries, to close the colostomy, to reopen the colostomy and resect the anastomosis and then finally to close the colostomy again.

There was no solid proof of medical malpractice during the colonoscopy.

However, the Superior Court of New Jersey, Appellate Division, ruled the patient had grounds to sue for lack of informed consent. She understood very little English and could read no English, yet she was asked to sign and did sign a consent form in English that ostensibly informed her that perforation of the bowel is a known complication of a colonoscopy procedure.

The patient was asked to sign and did sign a consent form in English even though she had no understanding whatsoever of what it meant.

After the procedure when she complained of pain caused by complications from the procedure her doctor and the nurses paid no attention to her and she was discharged home without further examination.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
August 11, 2009

Before any invasive procedure it is necessary for the patient to be given enough information about the risks and alternatives to be able to make an informed decision whether or not to give his or her caregivers permission to go ahead.

Her doctor and the nurses easily could have asked a family member to translate while they explained to her the planned procedure and the known risks to which she would be exposed.

The also court found fault with the patient's care afterward. Because of the language barrier her physician and the nurses paid no attention to her complaints of abdominal pain, again with no effort being made to have a family member or someone else translate what the patient was trying to communicate. **Ho v. Kluger, __ A. 2d __, 2009 WL 2431591 (N.J. App., August 11, 2009).**