

## Labor Relations: Court Upholds Hospital Nurses' Safe-Care Campaign.

In June, 2002 the US Circuit Court of Appeals for the District of Columbia Circuit ruled nurses had the right, as part of their union's negotiations with the hospital, to publicize a safe-care campaign.

The nurses could tell the media how hospital nursing-staff cutbacks in general can affect the quality of care, as long as the nurses did not make disparaging comments about the quality of care specifically at the hospital where they worked, which would be an unfair-labor practice by their union.

See *Labor Relations: Court Upholds Hospital Nurses' Union's Safe-Care Campaign*. Legal Eagle Eye Newsletter for the Nursing Profession (10)8, Aug. '02 p.5.

The US Supreme Court will not hear the hospital's appeal of the Court of Appeals' ruling. **Brockton Hospital v. National Labor Relations Board**, 123 S. Ct. 850, 71 USLW 3470, 171 L.R.R.M. (BNA) 2768, 2003 WL 95366 (U.S., January 13, 2003).

## Skilled Nursing: Ventilator-Dependent Residents, Inadequate Nursing Care.

In August, 2002 the US Circuit Court of Appeals for the Seventh Circuit upheld civil monetary penalties imposed on a nursing home for inadequate practices and procedures for monitoring ventilator patients by professional nurses as required by Centers for Medicare and Medicaid Services regulations. For example, no one had to check or did check after an aide suctioned a trachea, the ventilator was not turned back on and the patient died.

See *Skilled Nursing: Court Finds Immediate Jeopardy Existed To Health And Safety Of Ventilator-Dependent Patients, Upholds Substantial Civil Penalty Imposed By CMS*. Legal Eagle Eye Newsletter for the Nursing Profession (10)9, Sept. '02 p.7.

The US Supreme Court will not hear the nursing home's appeal of the Court of Appeals' ruling. **Fairfax Nursing Home, Inc., v. Department of Health and Human Services**, 123 S. Ct. 901, 71 USLW 3471, 2003 WL 98478 (U.S., January 13, 2003).

## Discrimination: Medication Errors Grounds For Dismissal, Especially When Narcotics Involved.

The US District Court for the District of Kansas threw out a nurse's case and exonerated her employer from charges of racial discrimination.

As a general rule, repeated medication errors by a nurse who fails or refuses to respond to instruction and corrective action are grounds for dismissal.

And when the employer has legitimate grounds for dismissal the employer has a defense to charges of discrimination, as a general rule.

The court indicated that a hospital has special legal responsibilities with narcotics and can demand the highest standards of its nurses who dispense narcotics, in the interests of safe and effective patient care and to prevent diversion and abuse by its nurses.

***When minority nurse complains of discrimination, the employer has to be able to show a legitimate non-discriminatory reason for how it treated the nurse.***

***Medication errors can be grounds for termination, and errors with narcotics are more serious than other offenses. The employer did not tolerate non-minority nurses any differently.***

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS  
January 13, 2003

Documentation of witnessing of narcotics wastage is especially important, that is, a nurse who is deficient in this area can be singled out for disciplinary action more severe than that handed out for less serious garden-variety medication errors.

The court was impressed with the fact the hospital carefully documented the alleged medication errors, corrective action, lack of response to corrective action and discipline meted out to all of its nurses for medication errors.

It appeared from this documentation that at least two non-minority nurses had also been terminated for essentially the same conduct, the court noted in throwing out this lawsuit. **Kelly-Koffi v. Wesley Medical Center**, \_\_ F. Supp. 2d \_\_, 2003 WL 141058 (D. Kan., January 13, 2003).