LEGAL EAGLE EYE NEWSLETTER

January 2013 *For the Nursing Profession* Volume 21 Number 1

Operating Room: Surgical Error Blamed, In Part, On Circulating Nurse's Negligence.

The fifteen year-old patient was scheduled for surgery on the right side of his brain to remove a right temporal lobe lesion that was believed to be causing his epileptic seizures.

The surgery began with the surgeon making an incision on the left side, opening the skull, penetrating the dura and removing significant portions of the left amygdala, hippocampus and other left-side brain tissue before it was discovered that they were working on the wrong side.

The left-side wound was closed, the right side was opened and the procedure went ahead on the right, correct side.

The error in the O.R. was revealed to the parents shortly after the surgery, but only as if it was a minor and inconsequential gaffe.

The patient recuperated, left the hospital, returned to his regular activities and graduated from high school before his parents could no longer deny he was not all right. After a thorough neurological assessment he had to be placed in an assisted living facility for brain damaged individuals.

When the full magnitude of the consequences came to light a lawsuit was filed which resulted in a $11 million judgment which was affirmed by the Supreme Court of Arkansas.

A circulating nurse has a legal duty to see that surgery does not take place on the wrong side of the body.

The preoperative documents failed to identify on which side the surgery was to be done.

It was below the standard of care for the circulating nurse not to notice that fact and not to seek out the correct information.

SUPREME COURT OF ARKANSAS
December 13, 2012

Surgical Error Blamed, In Part, On Circulating Nurse's Negligence

The Court accepted the testimony of the family's nursing expert that a circulating nurse has a fundamental responsibility as a member of the surgical team to make sure that surgery is done on the correct anatomical site, especially when it is brain surgery.

The circulating nurse is supposed to understand imposing terms like selective amygdala hippocampectomy and know the basics of how it is supposed to be done.

Hospital policy called for the surgeon, the anesthesiologist, the circulating nurse and the scrub nurse or tech to take a "timeout" prior to starting a surgical case for final verification of the correct anatomical site.

The circulating nurse should have available three essential documents, the surgical consent form, the preoperative history and the O.R. schedule.

The full extent of the error, that is, a full list of the parts of the brain that were removed from the healthy side, should have been documented by the circulating nurse, and failure to do so was a factor that adversely affected the patient's later medical course, the patient's nursing expert said. **Proassurance v. Metheny, __ S.W. 3d __, 2012 WL 6204231 (Ark., December 13, 2012).**

Inside this month's issue...

January 2013

Operating Room/Circulating Nurse - Nursing Home Admission
Labor & Delivery Nursing/Pitocin/Fetal Monitor
Labor & Delivery Nursing/High Risk Patient/Fetal Monitor
Medication Error/Nursing Negligence - Correctional Nursing
Age Discrimination - Race Discrimination/Minority Nurses
Skilled Nursing/Blood Draws/PT/INR/Reporting To Physician
Flu Immunization/Public Health Emergency - Nursing Assessment
Nurse Practitioner/Pre-Signed Prescriptions - Threat Of Violence

New Subscriptions See Page 3

Labor & Delivery, Pitocin, Fetal Monitors: Court Finds Evidence Of Nursing Negligence.

The mother was admitted to the labor and delivery unit at 10:10 p.m. for induction of labor.

The baby was delivered vaginally at 5:27 p.m. the next afternoon with the umbilical cord around her neck. She did not start breathing on her own for almost seven minutes and then began having seizures.

A pediatric neuroradiologist, who performed ultrasound scans on the child's brain and who would later submit an expert report for the family in their lawsuit against the hospital, related the child's problems to asphyxia consistent with bradycardic events prior to her delivery.

The Court of Appeals of Texas accepted reports prepared by the family's experts, an ob/gyn physician, a labor and delivery nurse and the pediatric neuroradiologist which pointed directly at the negligence of the labor and delivery nurses.

Family's Medical Expert

When Cytotec has been used for cervical ripening followed by IV Pitocin for induction of labor, the labor and delivery nurses have the responsibility to maintain readable tracings of the fetal heart tones and the maternal contraction patterns. The nurses should not start or continue Pitocin when there are non-reassuring fetal heart tracings, when the contractions cannot be monitored or with uterine hyperstimulation. The physician must be notified of non-reassuring fetal heart tracings.

Family's Nursing Expert

When Pitocin is in use the nurse must see to it that the equipment that monitors uterine contractions is recording the mother's contractions, the family's nursing expert said.

Review of the fetal heart monitor tracings showed several lengthy intervals of non-reassuring heart rates. The records further revealed that a nurse increased the Pitocin even with late decelerations with decreased variability, until it was eventually decreased and then stopped a few hours before birth by a different nurse, but then restarted again until the birth with ominous tracings showing on the monitor. **Abilene Reg. Med. Ctr. v. Allen, __ S.W. 3d __, 2012 5951982 (Tex. App., November 29, 2012).**

The patient's nursing expert explained that the Pitocin drip is usually controlled by the labor and delivery nurse.

It is increased to increase contractions and decreased or stopped altogether if the contractions get too strong, too long or too close together.

The Pitocin is to be adjusted based on whether the baby's fetal heart tracings are reassuring or non-reassuring. It is only increased if the tracings are reassuring.

The nursing expert's review of the chart revealed that the tocotransducer which identifies the beginning and end of each of the mother's contractions was not working for the first three hours after the mother was admitted to the labor and delivery unit.

There were also numerous intervals evident from the fetal monitor tracings of non-reassuring tones that should have been but were not reported.

If the physician had been notified of the non-reassuring tones a cesarean could have been done early on to save the child from brain damage.

COURT OF APPEALS OF TEXAS
November 29, 2012

Labor & Delivery: Nurses Ruled Not Negligent.

The patient was admitted to the hospital through the E.R. for what were at the time believed to be labor pains.

She was thirty-one years old and thirty-three weeks pregnant and was considered high-risk due to obesity, insulin-dependent diabetes, four previous cesareans and having given birth to very large twins.

The labor and delivery nurse immediately started a fetal heart monitor and a tocodynamometer and performed a vaginal exam which showed no dilation of the cervix. The patient's ob/gyn who had delivered her other children likewise found no dilation and gave orders for monitoring her blood sugars and giving insulin.

Later that morning the patient's abdominal pain increased and so the nurse paged her physician. The nurse was getting no heart tones on the monitor so she asked another nurse to keep checking for a fetal heartbeat while she kept paging the physician. A few minutes later the physician called and said he was on his way. The nurse documented all this in the chart.

The physician was there within minutes and delivered the baby by cesarean, but there had been a complete uterine rupture and separation of the placenta.

The labor and delivery nurse's assessment was correct that the mother was not actually in labor.

When the fetal heart tone was lost a nurse promptly began trying to reach the physician while another nurse kept trying to get a fetal heartbeat.

COURT OF APPEALS OF MISSISSIPPI
December 11, 2012

The Court of Appeals of Mississippi ruled there was no deviation from the standard of care by the patient's labor and delivery nurses. **Norris v. Southwest Miss. Reg. Med. Ctr., __ So. 3d __, 2012 6118005 (Miss. App., December 11, 2012).**

Nursing Home Admission: Daughter-In-Law Had No Authority To Sign, Arbitration Agreement Void.

The patient was transported by ambulance from the hospital to a nursing facility and was met there by his daughter-in-law.

The daughter-in-law signed the facility's admission contract because the patient was quite confused at the time and was not lucid enough to sign any papers.

The daughter-in-law also signed an arbitration agreement separate from the admission contract. The arbitration agreement stipulated that all legal claims including negligence, malpractice and violation of the resident's rights, but not non-payment of nursing home fees, would not be decided in a court of law but would be resolved through binding arbitration.

The patient fell in the nursing home and then passed away four months later. After his death his daughter as personal representative of his probate estate sued the nursing facility for negligence.

The nursing facility petitioned the court to dismiss the lawsuit so the case could be decided by arbitration as stipulated in the arbitration agreement signed by the patient's daughter-in-law.

The Court of Appeals of Ohio ruled the case did not belong in arbitration but should stay on the jury trial docket of the local county court of common pleas.

The patient's daughter-in-law informed the nursing facility staff that she did not have power of attorney to act on the patient's behalf, but the nursing facility disregarded that fact and told her that it would not admit the patient if she did not sign all the forms, including the arbitration agreement.

Under these circumstances there is no evidence the nursing facility acted in good faith having reason to believe that the daughter-in-law had authority to enter into a legally binding contract on the patient's behalf.

The nursing facility's demand that she sign the forms lest her father-in-law be denied admission for necessary rehabilitation did not create any apparent authority for her to bind the patient to a contract.

COURT OF APPEALS OF OHIO
December 10, 2012

The law strongly favors alternative methods of dispute resolution such as arbitration rather than jury trials in civil court to resolve claims and disputes, but only if both sides have agreed.

An agreement to arbitrate is basically a civil contract. For a contract is to be binding both parties must have the capacity and the authority to enter into the contract.

The patient did not have the capacity to enter into a binding contract on his own behalf because he was quite confused.

The daughter-in-law had no actual authority to sign a contract as her father-in-law's agent. There was nothing to support the nursing facility's argument that the patient somehow communicated to the facility that he wanted his daughter-in-law to sign for him or even had the mental capacity to make such a communication.

A year earlier he had signed a durable power of attorney naming his son as his attorney in fact. The son was the spouse of the daughter-in-law who signed the arbitration agreement, but that fact was irrelevant.

The nursing facility, the Court said, made no good faith effort to determine who was authorized to sign or to request that that person discuss the arbitration agreement and make the decision whether or not to sign.

The patient did sign at least one more admission contract upon readmission after a subsequent hospitalization, when he apparently was lucid enough to do so, but the arbitration agreement was not included. **Koch v. Keystone Pointe Health & Rehab, 2012 WL 6098358 (Ohio App., December 10, 2012).**

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Medication Error: Court Upholds Verdict For Nursing Negligence.

The eighty year-old nursing home resident suffered from Parkinson's disease, dementia and the aftereffects of a stroke at age seventy-four.

She had no history whatsoever of diabetes or hypoglycemia.

She was found unresponsive in her room in the middle of the morning and was rushed to the hospital where her blood glucose was discovered to be 12.

The patient was diagnosed with encephalopathy due to hypoglycemia which the physicians suspected came from oral ingestion of anti-diabetic medication.

The patient came out of her coma but never regained her semi-independent functioning and died within fifteen months. The jury awarded the family $1,250,000 as punitive damages, $400,000 for her pain and suffering and $554,000 attorney fees and costs. The US Court of Appeals for the Sixth Circuit (Ohio) upheld the verdict.

Disturbing Conditions At The Nursing Home

Two former employees of the nursing home described disturbing conditions at the facility, including disorganized medication carts, pre-pouring of medications and falsification of medical records.

There were only two LPNs assigned for the care of eighty residents. The LPNs were often rushed and as a result of their haste regularly engaged in the practice of pre-pouring medications. The medication cart was "a mess" most of the time. The wrong pills were in the medication trays. The nurses would borrow medication from one resident and give it to another. At the time of her death more than fifty of this resident's pills were found to be missing.

A supervisor altered records to cover up a medication error. Staff and supervisors routinely filled in "holes" in residents' medication administration records retroactively at the end of the month.

In the Court's judgment, the whole situation went beyond simple negligence and justified the jury's decision to award punitive damages for conscious and malicious disregard of the resident's well established legal right to a safe environment free from significant medication errors. **Freudeman v. Landing, __ F. 3d __, 2012 WL 6600356 (6th Cir., December 19, 2012).**

Two physicians testified that in their opinion, to a reasonable degree of medical probability, the nursing facility erroneously administered anti-diabetic medication to the deceased, which caused a severe drop in her blood sugar.

Two other physicians, the nursing facility's experts, could only speculate that malnutrition or a urinary tract infection could have caused the problem.

The physicians' testimony, taken along with the testimony of two former nursing home employees as to the chaotic conditions at the facility, supports the jury's verdict against the facility.

The nursing facility had complete control of the anti-diabetic medication at the facility that was being taken by residents who used such medication, that is, none of the four residents who administered their own medications were on such medication.

It is not a realistic explanation that anti-diabetic medication was given to this resident by a third party. Even if that did happen it would amount to lax supervision of the residents' environment which itself would be negligence.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
December 19, 2012

Correctional Nursing: Court Says Nurse Was Deliberately Indifferent.

When the inmate was booked into the jail his medical history included the fact he was being treated by a local specialist for autoimmune chronic hepatitis, esophageal varices, anemia, jaundice and splenomegaly.

Early in the a.m. the day after being booked he vomited a large puddle of blood in his cell. He explained to a jail officer that he had gastric ulcers for which he took numerous medications and that he had had twenty-seven units of blood transfusions during the previous month.

The officer phoned one of the jail nurses at home and explained the situation. She told the officer to give him some liquid antacid. He threw up lots more blood again. When she was phoned again the nurse told the officer to give him a Phenergan suppository. When they phoned her again the nurse finally decided to come in to the jail. She had the inmate moved to medical solitary and continued the suppositories. The next day the inmate died from a massive gastrointestinal hemorrhage.

The nurse violated the inmate's Constitutional rights through deliberate indifference to his serious medical needs.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
December 12, 2012

The US Court of Appeals for the Fifth Circuit (Texas) placed blame on the nurse for failing at least to alert the physician and for not sending the inmate to the hospital due to the seriousness of his condition.

Deputies working for the county sheriff who was responsible for the jail did all they were expected to do and the jail physician was never informed by the nurse what was actually going on with this inmate. **Bolin v. Wichita County, 2012 WL 6194359 (5th Cir., December 12, 2012).**

Age Bias: Court Sees Grounds For CNA's Lawsuit.

An Hispanic CNA in her mid-fifties had consistently positive performance reviews and was rewarded with pay raises for more than sixteen years and was recognized for her service by being selected for the Resident Care Specialist Leadership Council at the nursing home.

Then a new director of nursing took over. A few months later the CNA was suspended and then fired over an incident involving alleged substandard care of a total-care patient.

The CNA sued for race and age discrimination.

A discriminatory motive can be seen in the DON's derogatory remarks about the CNA's age.

These remarks raise serious questions whether the patient-care incident was merely a pretext to move the CNA out because of her age.

UNITED STATES DISTRICT COURT
COLORADO
December 17, 2012

The US District Court for the District of Colorado found evidence to support the allegations of age discrimination.

As soon as she came on board as interim DON the person who would eventually become the new permanent DON started making remarks to the CNA pointing out that she was the oldest CNA in the facility and was "as old as the woodworks," asking her when she was going to retire, telling her that she was too old for her job and telling her that she was "like an old penny that keeps coming back."

As interim DON she also reportedly threatened the CNA that she was going to be watching her closely and would fire her as soon as she became permanent DON. The CNA was told this well before the occurrence of the patient-care incident that was used ostensibly to justify her firing. **Alfonso v. SCC Pueblo, 2012 WL 6568468 (D. Colo., December 17, 2012).**

Race Discrimination: Nurses Did Not Prove Their Case.

The alleged victims contend that the Court can infer racial bias from the fact that their employer did not respond to their complaints as they would have liked.

The fact that someone disagrees with you or declines to take your advice, without anything more, does not suggest that they are discriminating against you.

All of the supervisors' criticisms used non-racial language and there was nothing in the context to suggest the criticisms were racially motivated.

Perhaps their supervisors' criticisms were unfair, but there is no evidence that the criticisms were motivated by race.

The civil rights laws protect against discrimination, not personal animosity or juvenile behavior.

Over a two-year period the alleged victims made numerous complaints to management, some involving racial issues and others involving general workplace disputes.

The complaints were investigated. Action was taken on some of them and declined as to others. The alleged "harassment" was only negative feedback about lack of teamwork.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
November 21, 2012

After complaining about various aspects of their working conditions over a span of several years, two minority nurses sued their employer for race discrimination.

The lawsuit alleged they were victims of discrimination as well as victims of retaliation for their complaints about what they considered to be discrimination.

The US Court of Appeals for the Seventh Circuit (Illinois) dismissed their case.

More Favorable Treatment Alleged For Non-Minority Nurses

The two African-American nurses, before filing their lawsuit, had delivered a written petition to human resources at the hospital complaining that Filipino nurses were being given easier assignments, more training and more leadership opportunities.

These allegations were apparently investigated by human resources and dismissed as unfounded.

The Court said that these allegations, if they could be proven, would certainly be adequate grounds for a civil rights lawsuit. However, a lawsuit cannot be based simply on vague assertions and innuendo.

For a successful discrimination lawsuit the alleged victim must identify a specific person or persons who were treated more favorably, specify the manner in which they were treated more favorably and show that they were similar to the victim in all relevant respects except for not being a racial minority. There was no specific person or persons identified for purposes of comparison in the nurses' lawsuit.

Alleged Harassment Was Not Racially Motivated

The two nurses were criticized and given negative performance evaluations for lack of teamwork. One of them was called a "trouble maker," a "cry baby" and a "spoiled child" in one particular meeting with a supervisor and had to leave the meeting in tears.

Even if all this was true, the Court was not able to find any discriminatory racial motivation behind the nurses' supervisors' actions, which is a necessary element for them to be able to go forward with a civil rights lawsuit against their employer. **Brown v. Advocate, __ F. 3d __, 2012 WL 5870725 (7th Cir., November 21, 2012).**

Skilled Nursing: Court Finds Substandard Procedures, Upholds Civil Monetary Penalty.

After the death of a seventy-eight year-old patient who had been on Coumadin for a blood clot in her leg, survey inspectors decided that the facility's procedures for laboratory work were out of compliance with Federal standards.

A civil monetary penalty was levied of $3050 per day for more than half a year, the period of time during which the facility's procedures were deemed out of compliance, more than $587,000, which was upheld by the US Court of Appeals for the Fourth Circuit (North Carolina).

Resident's Death Sparks Investigation

A nurse saw and charted swelling in the patient's lower leg and reported it to the patient's physician. He ordered a Doppler test which found a blood clot. The physician ordered 10 mg of Coumadin plus Lovenox daily and daily PT/INR tests.

The care plan was "badly mishandled" according to the Court and the PT/INR testing did not begin for over a month. The first result showed a critically high Coumadin level.

After the same result two days later the physician scaled back the Coumadin to 6 mg. The order for a follow up PT/INR was not properly transcribed and the PT/INR was delayed two more days until another nurse caught the mistake.

The blood sample was sent back by the lab as too small to test so a nurse tried to draw another the next day. The patient refused the blood draw, which was her right, but any such refusal has to be reported promptly to the physician, which was not done.

The nurse did see and charted unusual bruising around the breast and shoulder, possible signs of a Coumadin overdose, but that also was not reported to the physician as it should have been.

Finally a sample was drawn which showed a critically high Coumadin level and the patient was sent to the hospital. The hospital administered one dose of Vitamin K, but the family then decided to decline further treatment and the patient passed away the next day. **Universal Healthcare v. Sebelius, 2012 WL 6217619 (4th Cir., December 14, 2012).**

A skilled nursing facility is required by Federal regulations to ensure that each resident's drug regimen is free from drugs given in excessive doses, for excessive duration or without adequate monitoring in the presence of adverse consequences which indicate the dose should be reduced or discontinued.

A skilled nursing facility must have a system in place to ensure that labs are drawn when ordered, drawn correctly, processed correctly and the results reported to the patients' physicians.

Residents on anticoagulant therapy require not only lab tests but also protocols for monitoring and observation by direct caregivers.

Special instructions for Coumadin should be placed in care plans that any subtle signs of injury should be recorded.

At this facility there was a systematic failure to anticipate and plan for the risk of bleeding, to monitor for adverse reactions and to instruct rank-and-file staff on touching and handling residents on Coumadin.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
December 14, 2012

Flu Immunization: Public Health Emergency, Nurse Cannot Be Sued.

In 2009 in response to an outbreak of H1N1 influenza the US Secretary of Health and Human Services made a formal declaration that a public health emergency existed and recommended administration of a specific antiviral vaccination.

The Secretary's authority came from the US Public Readiness and Emergency Preparedness (PREP) Act of 2005.

The Governor of New York then issued an executive order authorizing state and local authorities to take steps to distribute and administer the vaccine.

A local county health department held a vaccination clinic in a local school where a nurse gave a kindergartener the flu vaccine without either parent's consent.

The child's mother sued the county health department for negligence and civil battery. The New York Supreme Court, Appellate Division, dismissed the case.

Continued on page 7.

The US Public Readiness and Emergency Preparedness Act protects licensed health professionals who are authorized to administer or dispense countermeasures in response to a public health or bioterrorism emergency.

The Act does not detract from a licensed healthcare professional's legal immunity when a countermeasure is administered without consent.

As a Federal law the Act takes precedence over any state statute or rule of the common law that goes contrary.

NEW YORK SUPREME COURT
APPELLATE DIVISION
November 21, 2012

Flu Immunization: Public Health Emergency, Nurse Cannot Be Sued.

Continued from page 6.

Legal Immunity
Healthcare Professionals
Countermeasures in a Declared
Public Health Emergency

The PREP Act states that a covered person shall be immune from suit and liability under Federal and state law with respect to all claims for loss caused by, arising out of, relating to or resulting from the administration of a covered countermeasure to an individual.

The definition of a covered person includes licensed health professionals or other individuals who are licensed by the state in which the countermeasure was prescribed and authorized to administer and dispense such countermeasures.

The only exception to the broad sweep of immunity granted to covered persons with respect to administration of countermeasures is for death or serious injury caused by willful misconduct.

Congress also enacted the Countermeasures Injury Compensation Program creating an administrative agency to handle claims for certain injuries stemming from countermeasures taken in response to the declaration of a public-health emergency, which was intended to be the exclusive legal remedy for persons with such claims.

Lack of Consent Does Not Create
Basis for Legal Action

The Court was not persuaded that an exception should be read into the PREP Act, as argued by the mother in her lawsuit, for situations involving a duly declared public health emergency where a countermeasure is administered without informed consent. A healthcare provider could be held liable if an immunization was given without consent under normal, everyday circumstances.

The Act itself and supporting Federal regulations and an Executive Order from the President make no mention of any intent by Federal lawmakers for the courts to read in such an exception. **Parker v. St. Lawrence County Public Health Department, __ N.Y.S.2d __, 2012 WL 5869773 (N.Y. App., November 21, 2012).**

Nursing Assessment: Damages Awarded For Negligence.

There was no error by the judge who assigned fault 100% to the night nurse and held the agency that supplied her to the hospital 100% liable for the $1.4 million judgment.

The day nurse, the hospital and the treating physician were properly dismissed from the lawsuit.

There was no evidence the day nurse breached the standard of care in her nursing assessments or her nursing care of the patient.

There was nothing wrong with the treating physician's initial diagnosis and plan of care for the patient.

The patient was already irreversibly paralyzed by the time the hospital's resident was alerted to the patient's condition by the night charge nurse. The medical review panel criticized him for delay in obtaining the diagnostic scans, but even if the scans were done and the neurosurgeon came in and operated earlier the outcome would not have changed.

When the treating physician was finally contacted during the night by the resident at the hospital, there was likewise nothing he could have done at that point that would have changed the outcome.

COURT OF APPEAL OF LOUISIANA
December 5, 2012

The patient was an insulin-dependent diabetic with a history of drug abuse.

During the night he was admitted to the hospital suffering from abdominal pain, back pain and vomiting which had caused severe dehydration.

The diagnosis was diabetic ketoacidosis which his physician intended to treat by gradually restoring hydration and correcting his blood sugars through careful insulin management.

At 9:00 a.m. the physician determined that his condition was improving and ordered his IV hydration, antibiotics and blood sugar testing continued.

The day nurse performed two head-to-toe assessments of the patient. She charted that the abdomen was soft, that there were active bowel sounds and that the patient was voiding yellow urine. He had equal range of motion in his upper and lower extremities, equal and strong extremity strength and a steady gait.

Night Nurse's Assessments
Significant Findings Not Reported

At 7:00 p.m. the night nurse who was an agency nurse took over the patient's care. Right away the patient's wife informed the nurse that his legs were numb and that one leg had flopped out of the bed. The nurse told the wife this was caused by his fever. The nurse did not report this to the charge nurse or to a physician.

At 8:15 p.m. the night nurse did her first head-to-toe assessment. She charted that the abdomen was firm and strength was weak in all the extremities. There was no charting as to weakness being equal or unequal and her note for sensation was "unable to assess." There was no report to the charge nurse or to a physician.

At 3:40 a.m. the patient told the nurse he could not move his legs at all. He had not voided since 1:30 p.m. the previous afternoon, so the nurse inserted a Foley and obtained a large amount of dark urine.

Finally the nurse notified the charge nurse who called in a resident. By this time the patient was irreversibly paraplegic from an epidural abscess in the thoracic spine which could not be corrected surgically. The Court of Appeal of Louisiana approved a $1.4 million judgment. **Johnson v. Ray, __ So. 3d __, 2012 WL 6055584 (La. App., December 5, 2012).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Stolen Prescription Form: Nurse Practitioner Implicated In Narcotic-Overdose Death.

A physician and a nurse practitioner employed in a Federally-funded community health clinic were originally named as defendants in a wrongful-death lawsuit arising out of the death of the nurse practitioner's daughter's friend from acute fentanyl poisoning.

The deceased was found dead with a partially dissolved 1600 mcg Actiq lozenge in her mouth. Post-mortem toxicology also found Xanax in her system.

The Actiq lozenge was apparently the last of six obtained by the deceased from a community pharmacy using a prescription form signed in blank by the physician and given to the nurse practitioner and then stolen by the deceased or given to the deceased by the nurse practitioner's daughter.

The daughter was charged with criminal offenses in connection with the death but died herself before her case went to court.

The investigation revealed that the deceased had previously come into possession of three other blank prescription forms from the same clinic signed by the same doctor and had used them to get drugs before she met her end.

The US District Court for the Middle District of Georgia ruled the physician and the nurse practitioner were negligent because their conduct in signing and handling blank prescription forms violated the clear letter of state law.

Civil liability was appropriate because it is foreseeable that illegally pre-signed prescription forms can be stolen, passed on, forged and used to obtain controlled substances to be used in an illicit manner which can cause a person's death.

However, the physician and nurse practitioner were employees of a Federally funded community health clinic. Under Federal law the US Government has had to step in as the defendant and try to defend their actions as they cannot be sued individually even if they were negligent and their negligence caused harm, a legal technicality not available to caregivers in the private sector or in many state-run healthcare settings.

The Government's argument will be that the nurse practitioner's daughter's criminal act supplying the form to her friend was an intervening cause that relieves the Government from liability, but the Court has not yet ruled on that issue.
Eaton v. US, 2012 WL 6203002 (M.D. Ga., December 12, 2012).

Threat Of Violence: Nurse's Termination Upheld, Allegations Of Sexual Harassment Dismissed.

A nurse was fired after she made a remark to one coworker that was interpreted as a threat to shoot another coworker over a remark he made to her about her husband leaving her.

After being fired she sued the hospital for sexual harassment and for retaliation for reporting sexual harassment. The sexual harassment, she said, involved the coworker whom she later threatened being a little too friendly, smiling and staring at her too much and making one vulgar sexually-oriented remark to her.

The US Court of Appeals for the Tenth Circuit (Oklahoma) dismissed the nurse's case.

A lawsuit for a sexually hostile work environment can only be based on conduct that permeates the workplace with intimidation, ridicule and insult.

The reason given by the hospital for the nurse's termination, that she made a threat of violence against a fellow employee, was not a pretext to cover up a plot to fire her for her complaint about sexual harassment.

The nurse told a coworker that she owned a gun and knew how to use it and said that what her coworker said to her was the kind of thing that gets people shot.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
December 19, 2012

Garden-variety boorish, immature, juvenile and annoying behavior is not uncommon in the American workplace and does not give grounds for a lawsuit for sexual harassment, the Court said.

Another important factor was that the nurse was the perpetrator's supervisor, not the other way around.

The most important factor in the Court's mind was that the hospital had legitimate, non-discriminatory and non-retaliatory grounds to terminate the nurse, her threat of violence against a coworker.

She reportedly told a coworker she owned a .357 magnum handgun and knew how to use it and stated that the kind of remark another coworker voiced to her about her marriage was the kind of thing that gets people shot.
Gaff v. St. Mary's Reg. Med. Ctr., 2012 WL 6604579 (10th Cir., December 19, 2012).