LEGAL EAGLE EYE NEWSLETTER

June 2024 *For the Nursing Profession* Volume 32 Number 6

Discrimination: Court Turns Down Nurse's Case For Failure To Accommodate Disability.

A registered nurse injured her shoulder lifting a patient while working in a nursing home. She was initially cleared by her doctor to return to work with a lifting restriction, then cleared for full duty.

After two years on the job she enrolled in a master's degree program that would rule out the weekday afternoon shifts she had been working.

The facility offered her Saturday and Sunday sixteen hour shifts, but she insisted on 11:00 a.m. to 7:00 p.m. every other Friday and Saturday. The facility declined those hours and eventually terminated her after she stopped reporting for work when her master's program began.

The nurse sued for disability discrimination, claiming the former employer failed to accommodate her disability, the old shoulder injury.

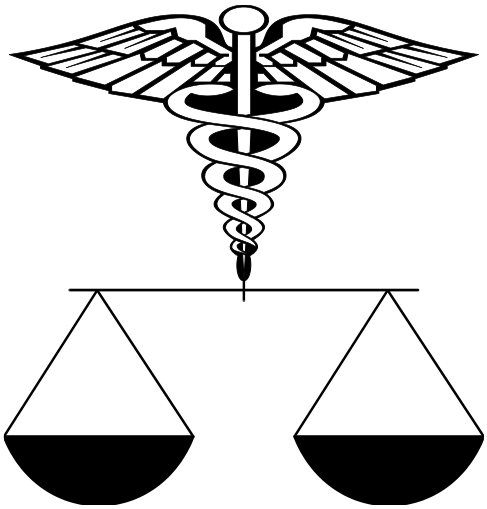
Court Turns Down Disability Discrimination Case

The US District Court for the Eastern District of Arkansas dismissed her case.

The starting point in disability discrimination is the question whether the victim or alleged victim has a disability.

A temporary condition which is expected to resolve fully or which has fully resolved is generally not regarded as a disability.

A disability is a physical or mental condition that severely limits a major life activity.



The first step in an employment disability discrimination case is for the victim to establish they have a disability, as disability is defined by law.

Only then does the inquiry go forward as to whether the employer discriminated, failed to accommodate or failed to participate in an interactive communication process to identify the employee's needs.

UNITED STATES DISTRICT COURT
ARKANSAS
May 17, 2024

The next question is whether the employer treated the victim adversely because of a disability, it having been established that the victim has a disability.

At this point in the legal analysis the employer can come forward with a legitimate, non-discriminatory reason for the adverse action. The burden of proof is on the employer to rebut an inference of discrimination from adverse treatment of a disabled employee.

The courts generally will accept business necessity or undue hardship, as articulated by the employer, as a legitimate, non-discriminatory justification.

In this case it was not realistic for the employer to carve out and work around a special set of convenient working hours allowed for one particular employee. Everyone either worked the standard shifts five days a week or two sixteens on the weekends, and that was that.

Still the employee can allege that the employer failed to initiate and participate in an interactive communication process with the employee as to the possibility of reasonable accommodation.

The employer's responsibility to communicate is mandatory when an employee communicates the existence of a disability affecting their job, even if the result is inevitable that no accommodation will be possible. **Duvall v. Nursing, 2024 WL 2262257 (E.D. Ark., May 17, 2024).**

Inside this month's issue...

June 2024

New Subscriptions See Page 3

Pressure Sores: Court Accepts RN As Expert Witness, Standard Of Care And Causation.

In a recent case the Appellate Court of Maryland flatly refused to follow the general rule that severely limited a registered nurse's ability to testify as an expert for the patient in malpractice litigation.

The general rule is that a registered nurse can identify a failure to follow the nursing standard of care for a particular clinical situation, but a registered nurse cannot make a medical diagnosis of the patient's skin lesions or offer an opinion that development or progression of such lesions was proximately caused by the failure to follow the nursing standard of care.

The rationale for the general rule is that medical diagnosis is beyond the scope of a registered nurse's practice and potentially problematic as illegal unauthorized practice of medicine.

Nursing Diagnosis Is Within Nurse's Scope of Practice

In this case, the patient's family's nursing expert stayed within the bounds of nursing diagnosis as currently defined in the nursing literature.

Potential for alteration of skin integrity and alteration or breakdown of skin integrity reflect nursing rather than medical diagnoses.

It is within a nurse's scope of practice as a nurses to assess the patient for data pointing to nursing diagnoses and to form a care plan with specific nursing interventions that are appropriate and necessary for nursing care of the patient with the nursing diagnoses.

It is further within a nurse's scope of practice to recognize and testify as to the consequences to be expected as to alteration of skin integrity if specific nursing interventions based on the nursing plan of care are not followed.

In this case the Court's decision was backed up by the fact the nurse had extensive experience treating post-acute patients for skin integrity issues.

Doubtless the nurse knew what she was talking about, regardless of the technical distinctions between medical and nursing diagnosis and prognosis. **Robinson v. Healthcare, __ A. 3d __, 2024 WL 1759147 (Md. App., April 24, 2024).**

A negligence lawsuit filed against a skilled nursing facility alleging harm from pressure sores may be supported by an opinion from a registered nurse that the facility's breach of the standard of care proximately caused the patient's pressure sore injury.

Courts have traditionally disqualified nurses from testifying in malpractice litigation beyond the question whether the applicable standard of nursing care was followed.

The rationale was that nurses are not qualified and are not permitted by law to make or opine as to medical diagnoses.

However, nurses are permitted by law to make nursing diagnoses.

Nursing diagnoses such as potential for alteration of skin integrity, alteration of skin integrity and pain are well within a registered nurse's competence and scope of practice and highly relevant in litigation.

The nurse in this case qualified with sixteen years direct hands-on and managerial experience in skilled nursing environments and close familiarity with the Federal standards set forth in the Medicare conditions of participation.

APPELLATE COURT OF MARYLAND
April 24, 2024

Fall Prevention: Court Says Nurse Can Contradict Doctor's Opinion.

In a recent case the New York Supreme Court, Appellate Division, ruled that a registered nurse's opinion as to fall risk mitigation should not have been disregarded by the lower court simply because she is a nurse rather than a medical doctor.

The Court did not elaborate on the facts. The Court focused instead on the legal issue whether a nurse's opinion can contradict a physician's opinion in a case that arose in a practice setting where nurses have relevant knowledge and experience.

Both the physician's and the nurse's opinions will be heard by the jury at trial, with the jury to make the final call.

The trial court disregarded the family's nursing expert's opinion because she is not a medical doctor.

However, the standard of care to be applied to this case clearly falls within the knowledge and expertise of a registered nurse.

The family's nursing expert's opinion is entitled to consideration.

NEW YORK SUPREME COURT
APPELLATE DIVISION
May 9, 2024

At the nursing home, patient assessments were performed by registered nurses and evaluated by a care team that included registered nurses.

The nurse in question had her BSN, was licensed as a registered nurse in the local jurisdiction New York and had worked as a nurse for forty years.

She had more than fifteen years experience directly on point, doing fall risk assessments of elderly nursing home dementia patients.

She was fully qualified to form an expert opinion on the standard of care for a high fall risk elderly Alzheimer's patient. **Rodriguez v. Geriatric, __ N.Y.S. 3d __, 2024 WL 2061348 (N.Y. App., May 9, 2024).**

Newborn Left At The Hospital: Court Sees No Abuse Or Neglect.

The Division of Child Protection was contacted shortly after the birth of the newborn, while mother and baby were still at the hospital.

The problem was that both mother and newborn tested positive for THC.

The mother indicated she would cooperate with the investigation. She was discharged two days after the birth, but the infant was kept at the hospital.

The mother never returned for the infant and never contacted the hospital or the authorities about the child. The address and phone number she gave the investigators were phony.

Eventually the mother was located by law enforcement and charged with child abuse and neglect.

The Supreme Court of New Jersey dismissed the charges.

The mother knew the newborn would be well cared for by the hospital and would be given an appropriate placement by the authorities as a foster or adopted child.

There was no intent by the mother to harm the child or to let the child's needs go unmet due to neglect on her part. **Child Protection v. B.P., __ A. 3d __, 2024 WL 2279858 (N.J., May 21, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924

Published monthly, twelve times per year.

Print edition mailed First Class Mail

Electronic edition distributed by email file attachment to our subscribers.

E. Kenneth Snyder, BSN, JD
Editor/Publisher

PO Box 1342
Sedona AZ 86339-1342
(206) 718-0861

kensnyder@nursinglaw.com
www.nursinglaw.com

Involuntary Psych Commitment: Actual Injury Not Necessary To Find Danger To Others.

The mental health involuntary commitment statute does not require a finding that actual physical injury was inflicted.

All that is required by the statute for involuntary commitment on grounds of threat to others is a mental illness that caused a recent overt act that caused harm or created a reasonable apprehension of harm.

The patient's argument is not well taken that his groping and attempted groping of female nursing staff and exposing himself to them on the unit was simply offensive, but did not cause any actual physical pain or bodily injury.

There was a reasonable expectation of future harm by the staff on the unit that justified his involuntary hold.

COURT OF APPEALS OF WASHINGTON
April 29, 2024

An individual was found unresponsive in a coffee shop and was taken by the police to a downtown hospital emergency room.

His labs were positive for opioids, methamphetamines and benzodiazepines, and there was a cervical compression fracture he could not explain.

In the emergency department he mumbled incoherently, exposed himself and expressed suicidal ideation.

He was held for a mental health evaluation pending a fourteen day hold for a more complete workup.

Court Approves Fourteen Day Hold

In his defense the patient admitted he had groped a nursing student and a nurse and had exposed himself to female staff.

He admitted his behavior in the emergency room and on the mental health unit was offensive, but contended that it did not justify commitment because he did not cause pain or actual injury to anyone.

The Court of Appeals of Washington disagreed and ordered him held involuntarily. By law the baseline test for danger to others as a result of mental illness is at least one overt act that would cause a reasonable apprehension of harm in the mind of a reasonable person.

A diagnosis of mental illness requires a professional opinion, but no special qualifications are required on the issue of reasonable apprehension of harm. **Detention of M.F., 2024 WL 1856563 (Wash. App., April 29, 2024).**

Electronic Signature: Employee Did Agree To Arbitration, Court To Refer Dispute To Arbitrator.

When she came on board as a clinical nurse supervisor, a minority nurse electronically signed an arbitration agreement as to any future legal disputes with her employer.

The US District Court for the Eastern District of Michigan ruled, over the nurse's steadfast objection, that there was a valid arbitration agreement.

The arbitration agreement contained express language that it covered complaints of racial discrimination or a racially hostile work environment in violation of the US Civil Rights Act and Michigan's antidiscrimination statute.

An employee has the right to file a complaint with the US Equal Employment Opportunity Commission and/or the corresponding state agency and to file a civil lawsuit in Federal or state court.

An employee also has the right to waive those rights and elect instead to have the matter heard in an arbitration hearing.

Electronic Signature Validated

The nurse was only able to state that she did not recall signing an arbitration agreement, and most likely would not have done so if one was offered to her.

Her former employer, however, was able to have its information technology people testify with screenshots showing that the arbitration agreement was included with the packet of online documents the nurse reviewed and agreed to electronically during the onboarding process.

To access the onboarding documents a newly hired nurse had to log on and create an online username and password of the nurse's own choosing, which it was shown the nurse did in this case.

To constitute legal acceptance of the arbitration agreement all that was necessary was a click on one isolated check box where the newly hired employee agreed to all the terms and conditions of employment, required and optional.

That was sufficient in the Court's judgment to bind the nurse to arbitration of her discrimination and hostile work environment claims against her former employer. **Hardaway v. Healthcare, 2024 WL 2271826 (E.D. Mich., May 20, 2024).**

Arbitration of a legal dispute can only be required of a party if the party agreed to arbitration.

A party cannot be forced into arbitration of a legal dispute unless they actually agreed to arbitration.

The court in which a civil lawsuit has been filed must confirm that both sides agreed to arbitration before the court can decline jurisdiction and refer the matter out to arbitration.

When one party to a civil case wants arbitration and the other party does not, Federal law requires the party opposing arbitration to come forward with evidence that they did not agree to arbitration.

There is a big difference between a statement that one does not remember signing an arbitration agreement, and a statement that one positively remembers that they did not.

Usually that would require some sort of signed documentation to the effect that that they were presented with an arbitration agreement and declined to sign.

In this day and age, an electronic signature that can be authenticated will suffice in place of a traditional paper document.

UNITED STATES DISTRICT COURT
MICHIGAN
May 20, 2024

Limitation: Statute Does Not Start Until Employee Harassment Stops.

A jury in California recently awarded a former hospital phlebotomist $1.4 million in damages from the hospital plus $1 million for her attorneys in her lawsuit claiming age related harassment at her job.

The legal issue raised by the hospital in its appeal of the jury's verdict was that the statute of limitations started and ran out before a formal complaint was filed.

Harassment of the employee based on her age began with a new supervisor in 2011 and continued unabated until the same supervisor had the employee fired in 2017 at age seventy-two.

The employee filed a complaint with the state agency in 2018, which had to be filed within one year of the objectionable treatment she was complaining about.

Through the supervisor's ongoing harassment of the employee the hospital committed a continuous course of unlawful conduct which began in 2011 and did not end until the supervisor got her fired in 2017.

The employee's complaint that was filed in 2018 applies to the entire course of her former supervisor's harassment going back to 2011, not just harassment only one year before the complaint was filed in 2018.

CALIFORNIA COURT OF APPEAL
May 17, 2024

The California Court of Appeal upheld the entire jury verdict awarding damages for harassment going back to 2011.

The harassment of this employee by her supervisor was a continuous and discrete event over a long period including time before the law's ostensible one-year look-back limitation. **Hoglund v. Mem. Hosp., __ Cal. Rptr. 3d __, 2024 WL 2236593 (Cal. App., May 17, 2024).**

Last Chance Agreement: Court Lacks Jurisdiction To Mitigate Board's Terms.

A registered nurse tested positive for cannabis in a pre-employment urine drug screen. Her offer of employment was rescinded and she was reported to the State Board of Nursing.

The Board, after an investigation, offered the nurse a last-chance agreement, which the nurse accepted in lieu of her license being revoked.

On probation for one year, the nurse could be contacted at 5:30 a.m. on any given day and told it was her day to report for a drug screen at the drug screen lab before the lab's close of business that day.

Any failure to report was grounds to suspend her license and start over a new one-year probation with no nursing license.

The lower court had no jurisdiction to consider mitigating factors offered by the nurse for why she missed her drug screen.

The Board of Nursing has the authority to require strict adherence to a last-chance agreement accepted by a licensee.

MISSOURI COURT OF APPEALS
April 24, 2024

The nurse missed a drug screen. The Board suspended her license. The nurse got a court order from the county circuit court ordering the Board to reinstate her license with the original terms of her probation.

The Missouri Court of Appeals reversed the county circuit court and ruled the Board of Nursing could suspend the nurse's license pending drug screening for a new one year period of strict compliance.

The county circuit court had no authority to apply mitigating factors, like the nurse allegedly being overwhelmed that day with a mortgage application, her son's school enrollment and unfinished household chores. **Williams v. State Board, __ S.W. 3d __, 2024 WL 1759104 (Mo. App., April 24, 2024).**

Voluntary vs. Involuntary Resignation: Court Weighs The Factors, Rules Nurse Quit.

Coerced involuntary resignation has the same legal force and effect as an outright termination for purposes of the laws that protect employees from discrimination and from reprisals for whistleblowing.

A threat to impose a performance improvement plan or threat of other personnel disciplinary action may or may not justify an employee's decision to resign their employment.

The pivotal factor is whether the threatened action was justified by the employee's misconduct.

Resignation in the face of a threat to impose consequences that are not justified by employee misconduct would be the same as an outright wrongful termination.

Resignation in the face of unpleasant developments in the workplace the employee simply chose not to face up to is considered a voluntary resignation which cuts off the right to sue for wrongful discharge, for all intents and purposes.

The employee has the burden of proof that threatened or actual disciplinary action was not justified by the employee's own misconduct.

UNITED STATES COURT OF APPEALS
FEDERAL CIRCUIT
May 10, 2024

An ob/gyn nurse practitioner still in her initial one-year probationary period at the clinic was notified by her supervisor of several complaints from her by former patients.

The nurse was notified in writing that her supervisor would be pursuing disciplinary action and was drawing up a performance improvement plan.

The following Monday the nurse came to the clinic before it opened, left her keys and ID badge on her desk, departed the premises and never returned. About two weeks later she mailed a letter of resignation effective a week after the letter's date.

A month later she wrote a letter to the clinic system's legal counsel insisting that her supervisor essentially terminated her and did so unjustly, one of many other illegal personnel practices.

Her separation from the health system was left intact by the administrative review process which overruled her claim to legal protection under the whistleblower protection statutes.

Appeals Court Sees Voluntary Resignation

The US Court of Appeals for the Federal Circuit ruled the nurse practitioner's resignation was not forced or coerced, but was truly voluntary.

A voluntary resignation in the face of developments a former employee chose not to face will not support a case of wrongful discharge based on constructive discharge rather than outright termination.

Only if the employee was forced to resign in the face of unjust accusations, or was tricked into resigning by misleading information as to the employee's options, does the employee's separation carry the same effect as an outright termination for further legal action against the employer.

The important legal point is that a former employee alleging to have been forced out by the threat of disciplinary action has the burden of proof that the disciplinary action was not justified. The former employer does not have to prove otherwise. **Swick v. Board, 2024 WL 2105531 (Fed. Cir., May 10, 2024).**

Disability: Nurse's Admission Of Disability Calls For Inquiry As To Reasonable Accommodation.

A registered nurse injured her rotator cuff while performing direct patient care. Afterward she was removed from direct patient care and given a sedentary position.

In that position she suffered another injury on the job, which was not specified in the court record.

Her medical provider informed her employer that she was completely and permanently disabled from her then-current position, the sedentary position.

At that point the employer abandoned any effort to accommodate her within the healthcare system.

To be able to claim disability discrimination in employment, the person must be a qualified individual with a disability.

A qualified individual with a disability is one who, with or without reasonable accommodation, can fulfill the essential functions of the employment position the individual holds or desires.

UNITED STATES DISTRICT COURT
ARIZONA
May 16, 2024

The US District Court for the District of Arizona ruled it was wrong for the employer to interpret the nurse's admission of total and permanent disability as basically a resignation from the workforce.

Instead, her statement should have been taken as an indication the nurse could no longer do her current job, but would be open to the process of finding another position that was compatible with her disability, so that she could be a qualified individual with a disability. **Hammack v. Becerra, 2024 WL 2246354 (D. Ariz., May 16, 2024).**

Skin Lesions: Lack Of Documentation Only A Prima Facie Negligence Case.

After the patient's passing, his probate estate sued the hospital alleging that negligent skin care led to decubitus ulcers, which eventually led to his demise.

As a general rule, a prima facia case of caregiver negligence can be made out from a review of the treatment records that reveal less than consistent real-time documentation of skin integrity assessments, care planning and actual follow-through with the interventions required by the care plan.

That was true in this case, but simply proving negligent care was only part of the whole story.

The patient's family's expert witness made out a prima facie case of negligence from the fact the patient's chart revealed major lapses in the documentation as to what skin care protocol was ordered and whether it was being followed.

However, the expert's opinion is pure speculation that the decubitus ulcers traceable to caregivers' errors and omissions led to his passing with pneumonia secondary to renal disease and hypertension.

NEW YORK SUPREME COURT
APPELLATE DIVISION
May 16, 2024

The New York Supreme Court, Appellate Division, dismissed the family's case, notwithstanding sufficient proof of caregiver negligence from the spotty charting.

It was pure speculation, that has no place in a court of law, that the deceased's passing was the result of negligent skin care, for which the expert failed to set forth a satisfactory explanation for that conclusion. **Bradley v. Hospital, __ N.Y.S. 3d __, 2024 WL 2194118 (N.Y. App., May 16, 2024).**

Shooting At The Hospital: Workers Comp Applied, No Lawsuit By Estate.

A deranged individual gained access to the hospital by putting on a white lab coat to pose as a physician.

He went to a patient care unit on an upper floor, took out a firearm hidden under the lab coat and began firing. He wounded a number of caregiving staff, killed a resident physician, and then took his own life.

The resident physician's estate sued the hospital for negligence and wrongful death. The hospital defended on the grounds that an injury to an employee on the job comes under workers compensation, and cannot be the basis for a civil lawsuit against the employee's employer.

An injury or death on the job is presumed to be covered by workers comp, which bars a civil lawsuit against the employer.

An assault stemming from an outside connection between the perpetrator and the victim is not job related.

Workers comp is not available for an assault on the job not stemming from the job and there is no bar against suing the employer.

COURT OF APPEALS OF NEW YORK
May 16, 2024

The Court of Appeals of New York ruled this is a workers compensation case and a civil suit is not permissible against the hospital as the resident's employer.

Victim and perpetrator were complete strangers with no prior connection. It was a simple case of an employee succumbing to a hazard on the job.

The law presumes that an injury at work comes under workers compensation. An employee or the family who wants to sue the employer must prove otherwise. **Timperio v. Hospital, __ N.E. 3d __, 2024 WL 2192769 (N.Y., May 16, 2024).**

EMTALA: Court Says Cursory Medical Screening Of Patient Is No Screening At All.

Ten days after orthopedic surgery to implant a spine stimulation device, the patient was taken by ambulance to a different hospital than the one where the surgery was performed.

He had been back to the first hospital three days earlier, one week after the procedure, complaining of severe pain. The electronic leads to the stimulator were disconnected and he was sent home.

An ambulance was called to transport him from home to the second hospital, ten days after surgery, because he could not move his legs.

He arrived in the emergency department at 10:30 p.m. He was seen and evaluated by a graduate nurse at 12:51 a.m., and then by a physician at 1:44 a.m.

The physician's note stated that antibiotics were indicated and x-rays should be done, but neither was ordered or done.

At 7:30 a.m. an MRI was ordered, but not done until the following morning. The MRI showed spinal complications. Surgery was done after another day's delay.

The patient now has permanent paralysis in his lower extremities.

Court Sees EMTALA Violation Allows Case to Go Forward

The US District Court for the Northern District of Mississippi upheld the patient's EMTALA case against the second hospital.

The patient did not have to muster proof as to the hospital's written protocols and actual practice with patients ten days post spinal surgery with complaints of lower extremity pain, weakness or paralysis, for comparison with the patient's own experience with the hospital.

The Court ruled that the screening in this case was so cursory and drawn out as to be basically no medical screening at all.

No emergency medical screening of a patient for whom a medical screening examination was required by the EMTALA is a clear violation of the EMTALA.

No medical screening means no actual proof is needed for comparison with hospital rules and practices, a stumbling block for other court cases with ostensibly meritorious facts. **Ellis v. Hospital, 2024 WL 2194850 (N.D. Miss., May 15, 2024).**

The US Emergency Medical Treatment and Active Labor Act (EMTALA) was meant to outlaw differential treatment of uninsured or indigent emergency room patients.

The courts have ruled that the EMTALA does not establish a Federal standard of care for emergency medical screenings in hospital emergency rooms.

The EMTALA addresses differential treatment. Hospitals must give every emergency patient the same emergency medical screening and stabilizing treatment as the hospital's other emergency patients with the same signs and symptoms.

A patient suing a hospital for an EMTALA violation must allege differential treatment by the hospital's emergency room.

The patient must outline for comparison with the patient's experience the hospital's emergency medical screening examination for other emergency patients with the same complaints as the patient's.

An exception exists when the patient's screening was so minimal, superficial or dismissive that it was no medical screening at all.

UNITED STATES DISTRICT COURT
MISSISSIPPI
May 15, 2024

Statute Of Limitations: Facts Fully Known Same Day As Treatment.

The patient came to the emergency department for an allergic reaction that was not identified in the court record.

A request was voiced for an epinephrine shot, but none was given.

Six months later the patient filed a notice with the hospital of her intent to sue the hospital.

More than two years after that a civil lawsuit was filed.

The accrual date, when the statute of limitations starts to run for a healthcare malpractice claim, is defined by the discovery rule.

A healthcare malpractice claim accrues on the date the patient discovered or should have discovered an act of failure to act by a provider, that would put a reasonable person on notice to investigate whether an injury to the patient might be the result of fault by the healthcare provider.

COURT OF APPEALS OF ARIZONA
May 23, 2024

The Court of Appeals of Arizona dismissed the case based on the expiration of the statute of limitations.

The statute of limitations began to run when the patient knew the facts for her case, that an epinephrine shot was requested and not given. That was the very day she was in the emergency room.

The patient was wrong to argue that the statute of limitations only starts when a healthcare provider replies negatively to a patient's notice of intent to sue.

It was also not relevant when the patient was first able to form the conclusion that malpractice may have occurred. **Montgomery v. Hospital, 2024 WL 2374469 (Ariz. App., May 23, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Minimum Staffing Standards For Long Term Care: Final Rule Published By CMS.

On May 10, 2024 the US Centers for Medicare & Medicaid Services (CMS) officially published in the US Federal Register the final rule for minimum nursing staffing requirements for long term care.

We have placed the entire 125 page announcement from the Federal Register on our website at http://www.nursinglaw.com/CMS051024.pdf

The new regulations begin on PDF page 120, or Federal Register page 40995, following an extensive review of the analysis that supports the new requirements.

On page one of the Federal Register announcement CMS indicates that the regulations take effect on June 21, 2024.

However, CMS then goes on to state that specific requirements based on specific regulations must be implemented on a schedule that extends from August 8, 2024 through May 10, 2028.

FEDERAL REGISTER May 10, 2024
Pages 40876 - 41000

Medicare: Updated List Of Items For Face To Face Encounter, Prior Authorization.

On May 13, 2024 the US Centers for Medicare & Medicaid Services (CMS) published updated lists of items that require a face-to-face encounter between provider and patient and/or prior authorization to qualify for Medicare reimbursement.

We have placed the entire eight page announcement from the Federal Register on our website at http://www.nursinglaw.com/CMS051324.pdf

The effective dates are August 12, 2024 in some parts of the US and November 12, 2024 in other parts of the US, as explained by CMS on the first page of the announcement.

The rationale behind the face-to-face and prior authorization requirements, according the CMS, is to scrutinize purchase or rental of items that exceed certain dollar thresholds calculated by CMS, which have had to be adjusted upward this year to account for inflation.

FEDERAL REGISTER May 13, 2024
Pages 41324 - 41331

Nepotism: Court Sees Disparate Impact On Minority, With Or Without Discriminatory Intent.

A male nurse who is a Catholic who was born in India complained of discrimination, a hostile work environment and retaliation for reporting patient-care violations at his job as a clinical nurse in a hospital.

The situation eventually resulted in a lawsuit against the hospital after the nurse was fired from his job.

The US District Court for the Eastern District of Pennsylvania looked carefully at the allegations in his lawsuit.

The Court dismissed all of the allegations of the lawsuit, save for the nurse's allegation of nepotism in hiring and staffing by hospital management.

The hospital had a strict policy against hiring and staffing decisions that gave preferential treatment to relatives of existing hospital employees, a policy which apparently was not being enforced.

The US Civil Rights Act recognizes claims for disparate impact.

Disparate impact can occur even when an employer engages in an employment practice that on its face is neutral as to race, gender or age factors.

The employer's practice can nonetheless be discriminatory if it has a real impact on minorities and is not justified as serving a legitimate business goal.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
April 26, 2024

The Court could find no intent to treat less favorably persons of color, persons from other nations or persons from the Catholic faith through non-enforcement of the hospital's policy against nepotism .

However, lack of discriminatory intent was not relevant, the Court ruled.

Preferential hiring or advancement of relatives of persons who as relatives of each other would tend to have the same demographic traits, like color, ethnicity and religion, could restrict persons outside that demographic group from equal consideration in hiring and promotion decisions.

Civil rights law refer to this as disparate impact, the situation where persons with protected characteristics suffer differential treatment from the employer's practices, even with no one's actual intent to discriminate. **Painadath v. Hospital, 2024 WL 1836500 (E.D. Penna., April 26, 2024).**