LEGAL EAGLE EYE NEWSLETTER

July 2024 — *For the Nursing Profession* — Volume 32 Number 7

Nursing Expert: Suit Dismissed, No Opinion What Nurses Should Have Done Differently.

The ninety-one year-old patient was hospitalized for multiple rib fractures and a pneumothorax from a fall at home.

In the hospital he came down with pneumonia and was diagnosed with renal failure.

He was transferred to another hospital where he spent ten days in the ICU before he passed.

According to the chart from the ICU it was in the ICU that he sustained a hand laceration and an arm injury being reclined in a geri chair. It was those injuries for which the family sued the hospital.

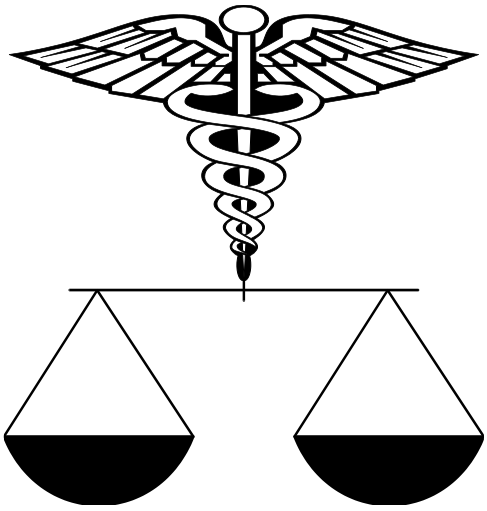
For their lawsuit the family retained a registered nurse as their expert to testify on the standard of care for the patient's nurses in the ICU.

The expert noted from the records that the patient's injuries occurred while he was receiving hands-on care from his nursing caregivers.

Based on that alone, the expert concluded the injuries to the patient were the result of negligence by the patient's nurses.

The hospital challenged the family's nursing expert's conclusions as insufficient to support a successful negligence case against the hospital.

It was argued that the expert failed to specify exactly what the nurses should have done differently to fulfill the legal standard of care and prevent the specific injuries to the patient.



It is not sufficient for the patient's family's nursing expert to opine in general terms that the patient's nurses departed from the standard of care.

It was clear from the medical chart that the patient sustained skin lacerations while being cared for by the nurses.

However, the family's nursing expert failed to specify exactly what the nurses should have done differently.

COURT OF APPEAL OF LOUISIANA
May 29, 2024

The Court of Appeal of Louisiana agreed with the hospital and dismissed the family's lawsuit.

To start with, a defendant healthcare provider does not have to disprove negligence or malpractice. It is sufficient to point out correctly that the patient or patient's family has not supported their case with competent evidence.

The family's evidence was a statement from a nursing expert simply that the hospital's nurses did not exercise reasonable care when the patient was injured. The expert did not identify what exactly the nurses should have done differently.

The expert conceded that this elderly patient's skin was highly vulnerable to injury. His skin could have been traumatized even during care fully in line with the applicable standard of care.

On this point the expert again failed to follow through with an explanation of what exactly the nurses should have done differently to protect a patient with vulnerability to skin tears or lacerations.

Photos of the injuries and entries from the chart showed only that the injuries occurred, which was not in dispute.

The mere fact of an injury to a patient is irrelevant without expert testimony explaining the standard of care and identifying a causative breach. **Gibson v. Hospital, __ So. 3d __, 2024 WL 2745026 (La. App., May 29, 2024).**

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Suboxone: Maternity Patient Drug Screened, Denied Epidural, Court Sees Discrimination.

When she checked into the hospital's maternity service the patient advised the nurse that she was taking Suboxone to control an addiction to illicitly obtained opioids.

The patient admitted she had abused opioids in the past, but insisted that her addiction was now under control with the Suboxone and she was no longer using anything but the Suboxone.

The nurse repeated the history of opioid abuse in report to the next nurse at shift change. During that shift a nurse midwife came into the patient's room and announced that the patient's urine screen was positive for cocaine and PCP.

The patient protested that she never authorized the urine screen, and, most importantly, she was not using those drugs.

Patient Was Denied Epidural Based on Drug Screen

The patient went on to have a very difficult and painful labor while her caregivers refused her many requests for an epidural, based on the drug screen.

All the while the nurses and the nurse midwife verbally berated their patient for being a drug-seeking drug addict.

After the birth, child protective services were called in. The caseworker required rescreening of the patient and a urine screen for the father. Both were clean except for the mother's Suboxone.

Hospital personnel apologized profusely to the mother and father.

Patient Has the Right To Sue For Disability Discrimination

The US Court of Appeals for the Second Circuit (New York) ruled the mother has the right to sue the hospital for disability discrimination.

Past substance abuse presently under control is considered a disability for purposes of disability discrimination law.

The patient's caregivers refused to get a second urine screen and treated the mother dismissively and less-than based on a false belief she was a drug addict seeking and using drugs. The patient can ask for damages for pain and emotional distress. **Costin v. Hospital, __ F. 4th __, 2024 WL 2947439 (2nd Cir., June 12, 2024).**

The maternity patient was taking Suboxone to control her previous addiction to opioids. She was not currently using illegal drugs or abusing illicitly procured prescription medication.

A former addict is considered an individual with a disability, if they are not using but only have a history of addictive abuse.

The legal definition of a disability includes a condition that would render an individual incapable of self care, without the medication the individual uses or could be using to mitigate the disabling nature of the condition that afflicts them.

Federal law outlaws discrimination against a qualified individual with a disability and requires a hospital to afford equal use of its services and facilities to a qualified individual with a disability.

A healthcare provider is not responsible for an unintended error in judgment as to the appropriateness of a particular treatment for a person with a particular medical condition that amounts to a disability.

However, that does not excuse intentionally withholding care on the basis of a particular disability.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
June 12, 2024

Drug Treatment Unit: Court Approves No-Cellphone Policy.

A new patient checking himself into the detox and drug treatment unit walked with his girlfriend right into the treatment area without stopping first at the reception desk.

A unit staff member confronted them and told them to go back to the front desk to check in and wait there. The patient became agitated and the situation escalated.

A hospital security guard arrived. By this time the prospective patient had his cell phone out and was recording the whole interaction. The security guard told him to stop recording. Then the security guard raised her hand to block the camera lens.

At this point the prospective patient punched the security guard.

A chemical dependency treatment facility has a strict legal duty to protect the identities of persons receiving chemical dependency treatment.

It is legitimate for the facility not only to prohibit cell phone use on the unit, but to prohibit cell phone possession altogether by patients and visitors.

APPELLATE COURT OF MARYLAND
June 5, 2024

The Appellate Court of Maryland upheld the prospective patient's criminal conviction for assaulting the hospital's security guard.

Any chemical dependency facility has the obligation to protect the identities of its patients by insisting that new patients and visitors stop at the entrance and relieve themselves of their cell phones.

The actual legal basis for upholding the conviction was that the perpetrator had no grounds to claim self defense, as the security guard never tried to harm him. **Keen v. State, 2024 WL 2843129 (Md. App., June 5, 2024).**

CNA Injured In Training: Lawsuit Dismissed By Court.

In individual enrolled in a CNA training program sponsored by a long-term care and rehab center.

After her classroom training at one facility she went to another for her clinical practice.

During the clinical portion of her training she was injured learning how to transfer a patient from a wheelchair to bed.

She sued the facility, alleging negligence by the registered nurse who supervised her clinical training.

The New York Supreme Court, Appellate Division, dismissed the case.

The fact an accident occurred did not prove anything, in and of itself.

The defendant facility offered one of several registered nurses on staff who could testify as an expert witness in the field of training CNA candidates in hands-on nursing practice. She testified there was no departure from the standard of care by her colleague.

The plaintiff offered an orthopedic physician as her expert, whom the Court refused to consider knowledgeable as an expert in training CNAs. **Gruberg v. Rehab Ctr., __ N.Y.S. 3d __, 2024 WL 3058157 (N.Y. App., June 20, 2024).**

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Intimate Relationship With Former Patient: Nurse's License Revoked By Board.

The Board of Registered Nursing has the authority to limit, suspend or revoke a nurse's license for unprofessional conduct.

Unprofessional conduct by a nurse as defined in the Nurse Practice Act does not expressly include a sexual relationship with a former patient with whom the nurse once had a professional relationship.

However, the psychologists' licensing statute does expressly define unprofessional conduct to include a sexual relationship with a current patient or with a former patient.

For a nurse who provided psychological assessment and counseling services to a patient, the Board can carry over the definition of unprofessional conduct in the psychologists' statute and apply it to a nurse

CALIFORNIA COURT OF APPEAL
May 30, 2024

A male registered nurse saw a female patient in an outpatient counseling center numerous times for five years.

When the time came for the professional relationship at the clinic to be broken off, the patient was still deeply depressed and feeling suicidal.

The nurse kept counseling the patient outside the clinic, according to his version of the story. Another version of the story would be that the professional relationship at the clinic was broken off so that the nurse could feel comfortable asking the patient out on dates with the expectation of an intimate personal relationship.

After the patient's suicide the nurse's care came under scrutiny by the Board of Registered Nursing. He flatly denied ever seeing the now-deceased patient outside the clinic, but emails on his computer at the clinic proved he was dating her.

Intimate Relationship
Current or Former Patient

The California Court of Appeal upheld the Board's license revocation.

An intimate relationship with a current or former patient is unprofessional conduct for a nurse. That is true even though not expressly set out in the nurse practice act.

There were also grave concerns about the competency of the nurse's care during the time the patient was still at the clinic. The issues were lack of competent suicide assessment and minimal reporting to a supervising physician. **Nurse v. Board, 2024 WL 2762549 (Cal. App., May 30, 2024).**

Failure To Update Credentials: Court Rules Employee Will Not Get Unemployment Benefits.

A nurse accepted a position in quality review with a written mutual agreement with her employer placed in her personnel file that she would complete a BSN or Master's program within five years of her hire date.

Several months before the five years were up, the nurse tendered her resignation, as she was not even enrolled and had no hope of fulfilling the educational goal agreed upon.

She was asked to stay on, and did so, until two weeks before the deadline, when she quit for good.

After quitting, however, she filed for unemployment benefits.

The unemployment commission turned down her claim, on the grounds that she quit voluntarily without just cause.

Further grounds for the denial of benefits were that her employer would have had just cause to terminate her if she had stayed on without completing the upgrade to her educational credentials the employer expected of her and she agreed upon at the time of her hiring five years before.

Appeals Court Rules
Nurse Ineligible For Unemployment

The Court of Appeals of Ohio turned down the nurse's appeal of the denial of unemployment benefits.

Quitting one's job in anticipation of being terminated by the employer for just cause is grounds for ineligibility for unemployment benefits.

An educational credential that is legitimately related to the job position in question, which an applicant does not possess, or which an existing employee does not obtain as required by the employer's policies or a mutual agreement with the employee, is just cause to deny employment.

The Court also emphasized the nurse should not have preemptively quit and assumed she would get unemployment, without making an effort to get an accommodation from her employer in the form of additional time to get her degree, or another position she would have been able to perform with her existing qualifications. **Kienow v. Dept., 2024 WL 3026916 (Ohio App., June 17, 2024).**

The nurse's employer would have had just cause to terminate the nurse if she had not quit her job.

When an employee quits to avoid being let go from the job, the legal import turns on whether the employer was about to fire the employee for just cause, or for a reason the employer had no just cause to use as a basis for termination.

An educational credential reasonably related to the job, which the applicant does not possess, can be a legitimate reason not to hire an individual.

A legitimate educational requirement that was to be completed after hiring, but was not completed when it was agreed to be completed, can be a legitimate reason for letting an existing employee go, without the employer facing liability for unemployment benefits or a wrongful termination suit.

A further problem with the nurse's case for unemployment benefits is that she made to effort to renegotiate the original agreement with her employer.

The nurse also made no effort to ask for a job with the same employer that she could have been given with her existing credentials in lieu of termination.

COURT OF APPEALS OF OHIO
June 17, 2024

Pregnant Workers Fairness Act: Abortion Is A Pregnancy Related Medical Condition.

The governments of seventeen US states filed suit in the Federal District Court for the Eastern District of Arkansas to challenge a regulation issued by the US Equal Employment Opportunity Commission (EEOC) to implement the US Pregnant Workers Fairness Act that was passed by the US Congress in 2022.

The focus of the suit was the EEOC regulation that includes abortion in the definition of a pregnancy or childbirth related medical condition for which reasonable accommodation must be given.

The state governments do not have standing to challenge the Equal Employment Opportunity Commission's (EEOC) interpretation of the Pregnant Workers Protection Act.

Therefore the Court has no jurisdiction to hear the suit.

The EEOC's interpretive regulation as to abortion will stand by default.

UNITED STATES DISTRICT COURT
ARKANSAS
June 14, 2024

The District Court ruled that the state governments do not have standing to bring their lawsuit in Federal court.

As the US Supreme Court reiterated in its recent decision upholding the Food and Drug Administration's approval of an abortion pill, standing is a bedrock principle of Federal constitutional law in the US.

When the organization or person who files a Federal lawsuit does not have a direct personal stake in the outcome of the suit, the suit must be dismissed.

When a suit is dismissed for lack of standing by the plaintiff who filed the suit, the law or regulation challenged stands by default unchanged. **Tennessee v. EEOC, 2024 WL 3012823 (E.D. Ark., June 14, 2024).**

Age Bias: Court Rejects Nurse's Hostile Work Environment Case.

After being referred to and investigated by the state agency for employee assistance to healthcare personnel, the nurse was terminated from her patient-care position in a nursing home.

In ruling to dismiss the nurse's discrimination lawsuit against her former employer, the US District Court for the Eastern District of Pennsylvania did not elaborate on the evidence as to her termination.

The Court only looked at the allegation the nurse raised of an age-related hostile work environment, and concluded the nurse had not stated a valid case.

One technical fault in the nurse's case is that her lawsuit papers fail to allege that she was over forty years of age at the time of the event in question.

Persons over forty are the only ones protected by the age discrimination laws.

Age related hostility by a younger employee toward an older employee is not recognized per se as age discrimination.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
June 18, 2024

The nurse alleged she was the oldest nurse on the unit where she worked. One day when another nurse was late she started using that nurse's medication cart, but when the other nurse arrived, she took back her medication cart and called the nurse in question " an old b****."

According to the Court, court case precedents have ruled consistently that an isolated incident of name-calling does not create a hostile work environment, even if the it was inappropriate and hurtful.

Only a serious and pervasive atmosphere of hostility fits the bill. **White v. Nursing Home, 2024 WL 3049577 (E.D. Penna., June 18, 2024).**

Mandatory Flu Vaccination: Court Turns Down Nurse's Religious Discrimination Case.

The first issues the Court considers are whether the employee seeking exemption to the employer's mandatory vaccination requirement has a sincerely held belief, and whether the belief applies to a religion.

The court does not attempt to judge the validity of anyone's beliefs. The court only looks at whether the belief is sincere.

The court can look at whether the employee has evidence of expressing their beliefs before the issue of mandatory vaccination arose, or whether the alleged belief seems to have been adopted along with an objection to something the employee does not want to do.

The employee may have to show prior attendance at religious observances in an organization with other members, formal doctrines and a hierarchy of clergy. A prior request for time off for a sabbath or holy day could be useful corroboration.

Finally comes the issue of undue hardship to the employer with a possibly infective unvaccinated worker.

Undue hardship is the usual stumbling block for employees' religious discrimination cases.

UNITED STATES DISTRICT COURT
NEW YORK
June 12, 2024

A registered nurse objected to the policy at the hospital that all employees obtain a flu vaccination.

She was eventually terminated based on her steadfast refusal to get a flu shot.

She claimed exemption on the basis of her religious beliefs. She informed her employer that she is an Israelite, whose faith is based upon teachings found in certain books of the Old Testament. According to those texts, healing is to be promoted only through contact with a higher power. Interventions derived from plants or animals are strictly off limits.

At this point in the legal analysis the US District Court for the Northern District of New York was convinced that the nurse had a sincerely held religious belief in a faith that qualifies as a religion.

The Court indicated it is not for the Court to judge the validity of any person's faith. The Court only looks for sincerity.

On the issue of sincerity there was no reason to believe the nurse conveniently joined a particular faith to fabricate a basis to object on religious grounds to something she did not want to be forced to do, that is, get a flu vaccination.

Instead, there was proof the nurse had participated in her faith's rites and observances before the vaccination issue came up, and had requested a day off when she was scheduled to work on her sabbath.

Undue Hardship

Even with an employee who has a sincerely held religious belief that forbids vaccinations, the most important point in the legal analysis was the hospital's claim of undue hardship if forced to accommodate the nurse's request to continue working with patients while unvaccinated.

The hospital pointed to US Centers for Disease Control statistics as to the prevalence of influenza, including the high percentage of sick individuals who will require medical care, or hospitalization, or will die from the disease.

It would be unreasonable, in the Court's judgment to force the hospital to ignore the facts as to the risk to its patients and other staff. **French v. Med. Ctr., 2024 WL 2958461 (W.D.N.Y., June 12, 2024).**

Sexual Assault Nurse vs Patient: No Connection To Nursing Care, Hospital Dismissed From Case.

A male nurse sexually assaulted an adult female patient under his care by touching her intimately after his nursing tasks were completed with her.

In the ensuing civil lawsuit, the jury ruled the damages for the former patient were $500,000 from the nurse.

The jury awarded no damages for the patient from the hospital because the hospital had been dismissed from the lawsuit by the judge before the jury deliberated on the issue of liability and damages against the nurse alone.

That development left the patient with an empty judgment against the nurse who presumably has little if any means to pay. Even if the nurse had liability insurance, it would not provide indemnity for damages awarded for an intentional criminal act.

The former patient appealed the dismissal of the hospital from the case.

Hospital Not Liable For Nurse's Sexual Misconduct

The Court of Appeals of Virginia looked at the specific facts of this case to rule that dismissal of the hospital was appropriate, while upholding liability and a damages award against the nurse.

This patient was in cardiac telemetry. Her care consisted of wearing a small electronic box connected to leads stuck to her body.

She was full self-care as to toileting and personal hygiene. The nurse had simply to take her blood pressure and check that the leads were recording, and then leave her basically alone.

It was after he completed his minimal patient care tasks that he committed the sexual assault.

The Court contrasted the facts of this case with a hypothetical but not uncommon patient care situation where a nurse would be expected to view or touch private areas of the patient for legitimate purposes, but let that permitted contact go astray into an inappropriate criminal act.

In that situation an assault would be a continuation of the nurse's duties and the employer could have to answer in a civil lawsuit. **H.C. v. Hospital, __ S.E. 2d __, 2024 WL 2819168 (Va. App., June 4, 2024).**

An employer is not liable in a civil lawsuit for a wrongful act committed by an employee outside the scope of the employee's duties for the employer.

The general rule says that sexually assaulting a patron of the employer's business is obviously not within the scope of an employee's job description, and therefore not something for which the employer can be held liable in a civil lawsuit.

However, the general rule is not so simple when applied to the relationship between a patient and a nursing caregiver employed to provide intimate personal care to the patient as part of the employer's services.

The actual tasks being performed by a nursing caregiver must be examined to determine whether or not intimate personal care was on the agenda.

If intimate care was not on the agenda, a departure from the agenda to commit an assault would be outside the scope of the nursing caregiver's duties.

If intimate care was on the agenda, and there was a departure from its accepted bounds toward conduct sexual in nature, the employer would be liable.

COURT OF APPEALS OF VIRGINIA
June 4, 2024

Arbitration: No Way To Know Who Obtained Resident Signature.

The eighty-five year-old patient was transferred directly to the nursing home from the hospital.

Her medical issues at the hospital were not made clear in the court record, except that despite her medical issues it was implicit she was competent to sign the nursing home's admissions papers herself, including a voluntary arbitration agreement.

After her passing, her family sued the nursing home in civil court for alleged negligent care.

The nursing home countered by pointing to the voluntary arbitration agreement the resident herself signed.

The nursing home insisted the family's case did not belong on the civil court's jury trial docket, but belonged in mandatory arbitration pursuant to the agreement.

The signature is illegible of the nursing home representative who obtained the resident's signature on the arbitration agreement.

Therefore, no one from the nursing home can be identified to come forward and testify it was explained before the resident signed.

COURT OF APPEALS OF OHIO
June 12, 2024

The Court of Appeals of Ohio ruled the family's case against the nursing home does not belong in arbitration, and the case will proceed to jury trial in civil court.

Unable to identify who obtained the resident's signature, the nursing home has no witness with actual knowledge to testify that the arbitration agreement was fully explained to the resident before she signed.

Although the arbitration agreement may have been worded in full compliance with the law, it is invalid unless it can be proven to have been intelligently agreed upon by the resident. **Martin v. Health, 2024 WL 2952619 (Ohio App., June 12, 2024).**

Workers Comp: CNA Helping Family Member, Not On Duty For Fall In Hospital Parking Garage.

A CNA's regular routine was to be picked up by her son and driven home every work day at 7:00 a.m. after her night shift at the hospital.

One day when the son came to get his mother he told her he was feeling ill. The mother had him park in the hospital's parking garage so she could walk him to the hospital's emergency department.

He was kept in the emergency department until 10:30 a.m. and then discharged home. While he and his mother were walking back from the emergency department to their parking spot, the mother tripped on a piece of metal protruding from the parking garage floor, fell and was injured.

The mother sued the hospital for negligence she alleged caused her injury in the parking garage.

The hospital tried to defend the case by arguing that the CNA, a hospital employee, is barred by the state's workers comp statute from suing her employer for an on the job injury.

Court Allows Employee's Legal Case To Go Forward

The Superior Court of New Jersey, Appellate Division, ruled the mother's case against her employer could go forward.

The rationale was that the mother was not performing services for the benefit of her employer at the time of her injury.

Instead, she was assisting a family member to obtain medical care from the hospital that happened to be the same hospital where she worked, at least until her shift ended that morning at 7:00 a.m.

She would not be entitled to workers comp even if she wanted it. If she were, it would be irrelevant whether the injury was caused by faulty maintenance, or whether she was negligent for not looking where she was walking.

She is entitled and has gone ahead to sue the hospital for damages. However, trip and fall cases are difficult to win.

As an aside, if she had stayed after hours for her own visit to the emergency room for a work-related condition, she would still have been on duty in the parking garage. **Barrett v. Med. Ctr., 2024 WL 2967278 (N.J. App., June 13, 2024).**

The general rule is that an employee is considered to be on the job while proceeding directly between the job and a parking area owned or controlled by the employer for employee use.

That is true for a nurse whose job is on a patient care floor and obviously not in the hospital's parking lot.

The import of the general rule is twofold:

An injury sustained going to or coming from employer -provided parking is covered by workers comp, for time loss, medical expenses and in some cases permanent disability ratings.

Workers comp is paid without regard to negligence by the employer or contributory negligence by the employee, so long as the injury was an unintended accident.

However, for an injury covered by workers comp an employee is barred from suing the employer or a coworker for negligence.

If the injury is not covered by workers comp, the employee is not barred from suing the employer.

The damages can be considerably more than what workers comp pays, but only if negligence by the employer is proven.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
June 13, 2024

FMLA: No Problem That Nurse Signed Form For The Physician.

The elderly mother of a city municipal employee suffered from osteoporosis and degenerative bone disease that meant she needed assistance with dressing, meal preparation and transportation.

The employee requested time off from his city job as needed to help his mother, citing his rights under the US Family and Medical Leave Act (FMLA).

The city insisted on verification of the mother's medical condition from her primary treating doctor.

The employee took his mother to an appointment with her doctor. He gave the form to the doctor's nurse that his employer gave him. The nurse filled out the form, left the room, spoke with the doctor, and signed his own name indicating he was signing on behalf of the doctor.

There is nothing wrong with a nurse completing a medical verification form and signing it for the physician.

That is true if the physician actually verified the information and gave permission for the nurse to sign.

UNITED STATES DISTRICT COURT
VIRGINIA
June 14, 2024

The US District Court for the Western District of Virginia ruled the nurse acted appropriately filling out the form himself and verifying with the doctor he could sign on her behalf. The doctor is not required to take the time just as a formality.

However, the employer can insist on verification by the doctor of the information on the form.

In that case the employer should ask the employee to get something from the doctor appearing to be more authentic as actually prepared by the doctor, rather than the employer going directly to the doctor. **Mook v. City, 2024 WL 2988285 (W.D. Va., June 14, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Mandatory Reporters Of Inflicted Injuries: Criminal Suspect Not Entitled To Confront The Reporter In Court.

State law in Arizona makes hospital caregivers mandatory reporters to law enforcement of injuries to patients that appear to be the result of a fight, assault, robbery or other violent action.

A physician's assistant was working in the hospital emergency department when a patient arrived with a broken nose she told the physician's assistant was caused by her boyfriend punching her.

Under pressure from her abuser, the victim signed a statement for the police that she hurt herself falling down. However, when called to testify at the boyfriend's trial, she recanted her false statement and told the truth, that he punched her.

The boyfriend was convicted of aggravated assault. He appealed arguing his Sixth Amendment Confrontation Clause rights were violated.

The Sixth Amendment gives a criminal defendant the right to confront his or her accusers. That means those giving evidence of criminal conduct must appear in person in court to present their evidence and to be cross examined by the accused or the accused's legal counsel.

Sixth Amendment Does Not Apply To Mandatory Reporters

The Court of Appeals of Arizona ruled that healthcare personnel who have a mandatory legal duty to report injuries that appear to have been inflicted by violence are not subject to the Sixth Amendment Confrontation Clause.

The accused's rights do not include being able to force a mandatory reporter to testify in court in person subject to cross-examination by the accused or the accused's legal counsel.

Caregivers report only what they see and hear. They do not gather or interpret the evidence. Caregivers can only say that an injury occurred, which does not go to prove the central question whether the accused on trial in fact committed a criminal act.

A parallel rationale is that caregivers acting as caregivers get histories and examine patients for the purpose of care and treatment, but in doing so they are not agents of law enforcement building a criminal case. **State v. Trinidad, __ P. 3d __, 2024 WL 2763363 (Ariz. App., May 30, 2024).**

Nurse As Patient Advocate: Physician Not Willing To Listen Does Not Affect Nurse's Liability.

The patient came to the hospital for a planned elective fundoplication surgery on her stomach and intestine to attempt to correct the problems with her hiatal hernia.

After the surgery the patient was not doing well with her recovery in the hospital. She was in great pain, was not able to eat and was vomiting or dry retching.

Nevertheless the surgeon went ahead with the plan to discharge the patient home the day after surgery. Five days later the patient died from sepsis related to surgical complications.

In the family's ensuing lawsuit against the surgeon, a resident physician, the hospital and the patient's nurse, the evidence was not altogether clear to what extent if any the patient's nurse had communicated the patient's unstable condition to the surgeon before the discharge occurred.

The surgeon testified that if the nurse had reported the patient's signs and symptoms he still would have discharged her.

That testimony did not break the chain of causation that started with the nurse's failure to report the patient's true condition.

The patient's family could still offer testimony that a reasonably competent physician would have listened to the nurse and delayed the patient's discharge.

APPELLATE COURT OF ILLINOIS
May 30, 2024

The Appellate Court of Illinois would not dismiss the hospital and the nurse based on the surgeon's testimony. The surgeon testified he would have discharged the patient anyway, and would not have kept her overnight for further observation, even if the nurse had fully reported the patient's signs and symptoms to him.

The Court refused to accept the logic that a nurse's legal exposure for failure to report and advocate for the patient is absolved by the physician saying the physician would not have listened to the nurse anyway, and the nurse's error or omission thus had no effect on the final outcome.

Instead, the Court ruled that the consequences of a nurse's failure to report can be judged by what a reasonably competent physician would have done after hearing what the nurse should have reported. **Belknap v. Physician, __ N.E. 3d __, 2024 WL 2789434 (Ill. App., May 30, 2024).**