LEGAL EAGLE EYE NEWSLETTER

August 2024 *For the Nursing Profession* Volume 32 Number 8

Unreasonable Accommodation: Nurse Needed To Sit, Undue Hardship To Employer.

A registered nurse applied, was interviewed and was offered a position in a mental health crisis facility, on condition he could pass a physical exam.

A prospective employer is not categorically barred by Federal law from taking a prospective employee's disability into consideration in the hiring process.

However, the employer must follow the steps laid down by Federal law. The employer may interview an applicant for the required education, job experience and other relevant credentials, but may not so much as ask whether the applicant has a disability or will need accommodation.

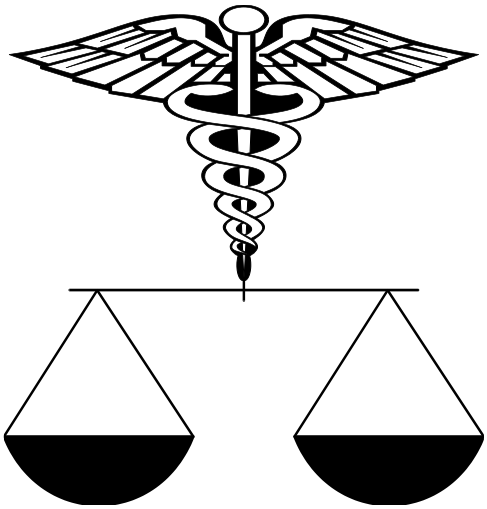
Only after employment has been offered may the employer require a physical examination relevant to the job requirements, and during that exam have the examiner observe or inquire as to a disability.

During this nurse's physical exam he revealed he had a serious leg injury that required him to be able to sit when he needed to.

With that information having been properly obtained, his offer of employment was taken back.

The US Equal Employment Opportunity Commission sued on his behalf for disability discrimination.

The US District Court for the Western District of Washington upheld the jury's verdict that the mental health crisis facility was not guilty of disability discrimination.



The jury heard evidence that most of the time the nurse sitting down while on the job would not be a problem for the facility.

However, there were times when a high level of physical fitness was required of all facility staff to be able to respond to a patient in crisis who needed to be physically restrained.

UNITED STATES DISTRICT COURT
WASHINGTON
July 22, 2024

The jury had several questions to answer in sequence. The first questions the jury answered were that the nurse did have a disability and the nurse was denied employment on the basis of his disability.

That was not the end of the jury's decision making. Remaining was the ultimate question whether the accommodation of being able to sit down when he needed imposed an undue hardship on the employer and was not a reasonable accommodation. The jury answered that being able to sit when he needed was not a reasonable accommodation under the circumstances.

Physical Restraint Had Been Necessary

From a legal standpoint it was important that the employer did not claim that there was only a possibility of having to intervene and physically restrain a patient acting out.

The evidence was that there had been a number of real incidents where staff, including nurses, intervened physically, medicated a patient and held the patient down until the medication took effect.

The possibility of comparable future incidents was real, not speculative.

Employment discrimination cases are routinely lost by employers who try to point to physical job requirements such as heavy lifting that employees actually doing the job in question have never actually had to fulfill. **EEOC v. Mental Health, 2024 WL 3497343 (W.D. Wash., July 22, 2024).**

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August 2024

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Statute Of Limitations: Did Statute Start To Run When Widow Given Patient's Records?

An elderly individual was admitted to the hospital from a nursing home and died in the hospital the next day.

His final hospital discharge summary listed a host of medical problems including septic shock, urinary tract infection, gram-negative bacteremia, acute kidney injury, lactic acidosis, metabolic acidosis, respiratory failure requiring intubation and metabolic encephalopathy. He had had to be sent to a different nursing facility for a time for management of combative behaviors related to his dementia.

The death certificate pointed to septic shock from a urinary tract infection.

Widow Requested a Copy of the Chart

Soon after his passing the widow and a daughter who is a nurse requested a copy of the chart from the nursing home.

They got the chart three months later and went to see a lawyer with the chart a month after that.

The lawyer eventually filed a lawsuit, but did so after Mississippi's two-year statute of limitations had ostensibly lapsed.

Court Lets Case Go Forward

The Supreme Court of Mississippi ruled the case must go to trial to determine if the jury believes the widow's anticipated testimony that she requested a copy of the chart only out of curiosity as to what transpired in her late husband's final time.

She testified in a pretrial deposition that she had no reason to suspect negligence by the nursing home, but was motivated only by curiosity and a need for closure when she requested the chart.

The Court ruled that a demand for a copy of the chart by a former patient or patient's family could, but does not necessarily mean, they believe that negligence or other wrongdoing occurred, which would militate against being able to rely on the discovery rule later on if there was a problem with an untimely court filing.

Healthcare providers have an obligation to provide records to duly authorized parties, whose time to file a potential lawsuit could be curtailed by a prompt response to a records request. **McNinch v. Rehab Ctr., __ So. 3d __, 2024 WL 3195975 (Miss., June 27, 2024).**

When the statute of limitations begins to run for a healthcare malpractice case depends on the interpretation and application of the discovery rule according to local law and case precedents.

The statute of limitations begins to run not when negligence occurs, but when the patient or family discover they have grounds for a legal claim for negligence.

Negligence might be apparent immediately, or the discovery rule might delay the start of the statute of limitations for years if local law does not set an outside time limit on application of the discovery rule.

Whether the discovery rule is applicable must be decided by the court on a case by case basis.

Receipt of the patient's records by the patient or the family is not arbitrarily the date the statute of limitations starts.

If negligence was suspected but due diligence was not exercised in demanding the medical records, the discovery rule provides no salvation to the case.

The family may only be interested in obtaining closure on the question what happened in their loved one's final time.

SUPREME COURT OF MISSISSIPPI
June 27, 2024

Unresponsive Patient: Nurses' Assumptions Not Correct.

The adult patient was admitted to the hospital for treatment of complications of her Type I diabetes.

The patient also had a history of abuse and addiction to opioid medications.

Her nurse found her unresponsive in bed. An empty syringe was still connected to her IV line. The nurse could not identify the medication that was in the syringe and apparently had just been administered.

The nurse assumed the syringe had contained a narcotic which the patient somehow self-administered, given her history of opioid abuse.

Narcan was administered based on the nurse's assumption as to the reason for the patient's unresponsiveness. The Narcan had no effect. No blood glucose was obtained.

The autopsy revealed no opioid, opiate or illicit drugs in her system.

It was assumed, with tragic consequences, that the patient was unresponsive from a narcotic overdose.

No blood glucose was obtained for an unresponsive patient known to suffer from Type I diabetes.

SUPREME COURT OF NEW JERSEY
July 11, 2024

The Supreme Court of New Jersey ruled the family had grounds for a lawsuit against the hospital for the nurses' negligence. The Court upheld dismissal of the attending physician from the case.

The only issue for the Court was the hospital's argument that the family's nursing expert did not fit New Jersey's definition of a healthcare provider similar to the defendant who could provide an affidavit of merit with an expert opinion sufficient to carry the case forward.

After a technical discussion the Court validated the family's nursing expert. **Moschella v. Med. Ctr., __ A. 3d __, 2024 WL 3363894 (N.J., July 11, 2024).**

Psych Commitment: Mental Illness, Paranoia, Patient Can Care For Self, Not Gravely Disabled.

The first issue with which the Court of Appeals of Indiana had to grapple was the question of mootness.

Even though the former patient had completed her ninety-day commitment and been discharged before the case came to court, the Court ruled the issue of the propriety of her commitment should not be dismissed as moot.

Instead, that issue should be considered and ruled upon in the interest of providing a precedent for future cases.

It was also true that a ruling that the patient's commitment had been unwarranted and inappropriate would tend to carry weight for her personally if her history was sought to be held against her in a future commitment proceeding.

The patient also possessed a certificate she wished to maintain as a behavioral technician which she used off and on to work as a caregiver in a facility for autistic children.

Grave Disability Means Likelihood of Harm

When the Court got to the basic substantive issue, the Court ruled that the individual's involuntary commitment was not justified and should not have occurred.

The Court ruled the evidence was insufficient to establish grave disability, as that is defined by law.

Denial of a mental illness and refusal to take medications, in and of themselves, do not render a person gravely disabled for purposes of involuntary mental health commitment.

Impaired judgment, idiosyncratic or bizarre behavior and paranoid delusions, in and of themselves, similarly do add up to grave disability.

Grave disability requires proof that the individual is in danger of harm coming to themselves as a result of impaired judgment due to a mental illness.

Grave disability means an inability to provide independently for food, shelter, clothing and other essential needs, due to impairment of judgment from a mental illness.

Involuntary commitment entails loss of personal freedom, a social value the legal system must protect.

COURT OF APPEALS OF INDIANA
July 19, 2024

The professionals who examined the individual and her family members had ample anecdotal evidence of bizarre behavior and paranoid delusions.

The individual also refused to back down from her denial that she had a mental illness and refused to take medication.

On the other hand, the individual was able to live independently in an apartment. She had access to food and did obtain sufficient food from food banks. She was never assessed during a medical exam to be malnourished or dehydrated.

She was able independently to manage her own personal hygiene, that is, she showered regularly. She successfully and independently attended to her activities of daily living in her personal dwelling.

The Court pointed out that an involuntary mental health commitment order must be supported by clear and convincing evidence that the individual is mentally ill and is likely to experience harm as a result of impairment of judgment or functioning due to the mental illness.

Clear and convincing evidence is legal jargon for the highest, most stringent burden of proof recognized by the law.

The individual in this case led an unusual lifestyle, to be sure, and acted in unusual ways, but there was no history of harm from an inability to care for herself caused by her mental illness.

There was further no basis to predict that she would experience harm if she were left on her own to fend for herself as she had been doing. **Commitment of A.B., __ N.E. 3d __, 2024 WL 3465154 (Ind. App., July19, 2024).**

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Diversion: Nurse Questioned, Searched By Private Security. No Violation Of Nurse's Rights.

Gross irregularities as to narcotics checked out from the medication dispensing equipment led hospital human resources to ask hospital security to focus on a specific nurse.

Hospital security confronted the nurse, detained him, questioned him, opened his locker and searched a backpack taken out of the locker.

Loads of stolen drugs were found. The nurse and the evidence were turned over to the local police.

The nurse was indicted on Federal charges of tampering with a consumer product. His legal counsel sought to quash the indictment by requesting a hearing to suppress the nurse's statements and the evidence seized on grounds of violation of his Miranda rights and a warrantless search.

The hearing judge ruled the statements and evidence will not be suppressed.

Hospital Is A Private Entity

The guarantees in the Fourth and Fifth Amendments to the US Constitution protect criminal suspects only from the actions of governmental agents and agencies.

A private party who is not acting under orders from or at the behest of law enforcement or with an intent to assist law enforcement is not subject to the Fourth and Fifth Amendments.

The US District Court for the District of Connecticut looked at the factors that distinguish state action from private action, and ruled that the actions of the hospital's security guards in this case were the actions of purely private persons acting as purely private persons employed by a private corporation.

This ruling must be taken with a grain of salt. Many healthcare facilities are public agencies or municipal corporations. Any employee, even non-security personnel, is considered a governmental agent in the context of interrogation or search.

Many public institutions have had their security guards deputized as police officers to be able to make arrests on the premises, but must also fully protect citizens' rights. **US v. Nurse, __ F. Supp. 3d __, 2024 WL 3408766 (D. Conn., July 15, 2024).**

The hospital is a private corporation.

The hospital's protective services officers detained the nurse, questioned him without a Miranda warning, searched his belongings and his locker, found stolen medications and turned him over to the local police.

That does not mean that the hospital's protective service was exercising a public function traditionally reserved to police officers.

The hospital's protective service security officers are not sworn police officers.

They have no authority to arrest anyone.

They do not conduct criminal investigations.

They contact the local police department if a criminal investigation appears to be warranted.

They to not wear police uniforms.

They are employed by the hospital and not by a government agency.

The exclusionary rule as to incriminating evidence illegally obtained by the police does not apply to statements or evidence obtained by a private party who is not a police officer and is not acting on orders or at the behest of actual law enforcement.

UNITED STATES DISTRICT COURT
CONNECTICUT
July 15, 2024

Patient v. Nursing Assistant Sexual Harassment: Court Sees Grounds For Lawsuit.

A nursing assistant complained to her supervisors repeatedly that a particular resident whom she was required to care for often groped her and exposed himself.

The nursing assistant was eventually terminated, she would later claim in her lawsuit, over a series of verbal and written complaints to management about neglect and physical abuse of residents by other nursing assistants.

She sued her former employer for sex discrimination by forcing her to accept harassment from the resident and for violating her rights as a whistleblower.

The resident who sexually harassed the nursing assistant caring for him is not an employee or agent of the long term care facility.

However, his misconduct is not the focus of the nursing assistant's case.

She is suing for the mental anguish and emotional distress she alleges was caused by her supervisors' failure to take action in response to her complaints.

UNITED STATES DISTRICT COURT
OHIO
July 19, 2024

The US District Court for the Southern District of Ohio found the evidence inconclusive as to whistleblower retaliation.

However, although a nursing facility is not responsible for a resident's acting out, the nursing home can be liable itself to an employee for ignoring an employee's complaint about a resident's acting out and forcing the employee to continue working with a problematic individual resident who acts out. **Dillingham v. Nursing Home, 2024 WL 3470646 (S.D. Ohio, July 19, 2024).**

Sleeping On Duty: Tech's Firing Was Not Age Or Race Discrimination.

A fifty-eight year-old African American woman who worked as a cardiac telemetry technician was fired for sleeping on the job.

She sued for alleged age and race discrimination by her supervisor who was a sixty-one year-old Caucasian woman.

An employee can claim employment discrimination by pointing to a non-minority or younger person treated less harshly for the same misconduct.

An employer can defend against an allegation of discrimination by pointing to a non-minority or younger person who was treated basically the same for the same misconduct.

UNITED STATES DISTRICT COURT
ILLINOIS
July 16, 2024

The US District Court for the Northern District of Illinois dismissed the case.

Being awake and vigilant at all times is an essential requirement for a cardiac telemetry technician. Sleeping on duty is a legitimate non-discriminatory reason to terminate a cardiac telemetry technician.

An alleged victim of discrimination has the option to identify a non-minority or younger person who was treated less harshly for the same misconduct, and thereby qualify as a victim of discrimination even if the punishment fit the crime.

In fact, a Caucasian telemetry tech two years younger was due to be fired for sleeping on the job the same day as the alleged victim, but quit voluntarily. The Court saw that as a conclusive rebuttal to a charge of discrimination.

It was also proven that her supervisor genuinely believed she slept on the job. The Court needed no further proof to rule out discriminatory intent. **Thompson v. Med. Ctr., 2024 WL 3426804 (N.D. Ill., July 16, 2024).**

Racially Hostile Environment: Court Sees No Indication Race Was A Factor In The Incident.

There is no evidence that the way the minority nurse was treated by her coworkers or supervisors was related to her race.

The alleged victim herself may have injected race into the incident that immediately preceded her decision to leave her job.

To prove racial discrimination stemming from a racially hostile work environment, the victim must prove:

The victim was subjected to unwanted harassment,

The harassment was based on the victim's race,

The harassment was so severe or pervasive as to alter the terms and conditions of the victim's employment, and created a hostile or abusive work environment, and

There is a basis for employer liability.

The harassment must be physically threatening or humiliating, as opposed to merely offensive.

There is no evidence the alleged victim's conduct during the confrontational incident had anything whatsoever to do with the alleged victim's race, and the same is true as to the employer's handing of the incident afterward.

UNITED STATES DISTRICT COURT
INDIANA
July 12, 2024

An African-American nurse approached a Caucasian nurse coworker at the nurses station, in front of other nurses and a resident and the resident's family.

The African-American nurse openly accused her nurse coworker of poor judgment not sending a particular resident to the hospital the previous evening, but instead waiting until that morning to do so.

The two got into a heated verbal argument that was broken up by the charge nurse. That was the only time the two had ever exchanged words.

The incident was investigated by an African-American nurse manager. She decided to issue a written reprimand to the Caucasian nurse that would go in her personnel file, and only a verbal warning to the African-American nurse.

The verbal warning had no actual effect on the African-American nurse's job, despite her subjective feeling she worked in a racially hostile environment.

Nevertheless the African-American nurse quit over a racially hostile work environment she claimed was shown by the incident and the facility's handling of it.

Court Sees No Racially Hostile Work Environment

According to the United States District Court for the Northern District of Indiana, an occurrence of a workplace incident that happens to involve a minority and a non-minority does not necessarily imply that the minority's race was a factor.

The Court looked carefully at the record of the incident in question. The Court conceded that the Caucasian nurse may have acted inappropriately.

However, the Court could find no direct reference to the African-American nurse's race in any of the Caucasian nurse's dealings with her.

The other major flaw in the African-American nurse's lawsuit was that she quit her job rather than being fired as a potentially discriminatory action by her employer. Quitting may be equivalent to being fired, but not in this case with only minimal to no evidence of actual racial animosity. **Johnson v. Senior, 2024 WL 3395758 (N.D. Ind., July 12, 2024).**

Labor & Delivery: Court Accepts Expert Opinion Faulting Nurses' Failure To Monitor, Advocate.

At age eighteen months an MRI performed on the baby confirmed diagnoses of intracerebral hemorrhage, hypoxic ischemic encephalopathy and encephalomalacia, all related to oxygen deprivation immediately prior to birth.

In the parents' lawsuit on behalf of the child the hospital has challenged the credentials and the adequacy of the parents' expert witness, an ob/gyn physician.

The Court of Appeals of Texas was not persuaded a physician is not an expert on the standard of care for nurses, if the physician has experience working with nurses in the relevant practice area.

The Court walked through the report filed by the parents' attorney outlining the steps where the nurses' care fell short.

Fetal monitoring starts at the very beginning, before any medication is given to the mother that would tend to depress the mother's blood pressure.

Fetal monitoring begins with the nurses' responsibility to insure that the leads are properly installed and verified to be working from the outset.

Nurses are required to understand it is their duty to advocate for the patient, by reporting signs of fetal distress that point to the possible need for a cesarean, and must advocate.

The institution must have policies, and educate the nurses, what to do in a situation where nurses should realize they need to pursue the nursing chain of command to obtain a needed result.

Advocating for a cesarean is not the practice of medicine, and nurses cannot be absolved from fault for failing to advocate because that would amount to the practice of medicine.

Ordering a cesarean is the practice of medicine. Nurses cannot order a cesarean or be faulted for failing to order a cesarean.

After the cesarean delivery it was a nursing responsibility to advocate for blood gasses, given the newborn's appearance that pointed to inadequate oxygenation while still in the womb. **Pediatrics v. Health, 2024 WL 3503072 (Tex. App., July 23, 2024).**

The basic premise of the parents' lawsuit on behalf of the infant is that the nurses should have closely monitored the fetal heart rate data for signs of fetal distress.

Once fetal distress was recognized, the nurses had a legal duty to report the signs of fetal distress to the physician so that an emergency cesarean could have been performed sooner rather than later.

There was a delay of about four hours between the time the nurses did or should have recognized signs of fetal distress, and when the cesarean was started.

Four hours of compromised oxygenation can be readily linked to the hypoxic brain injuries suffered by the fetus prior to delivery.

The patient's expert must be able to identify the standard of care and show a breach of the standard of care by the patient's caregivers.

The most important aspect of a successful malpractice case, however, is the cause and effect link between the caregivers' breach of the standard of care and harm to the patient.

Causation is very apparent in this case.

COURT OF APPEALS OF TEXAS
July 23, 2024

Patient Fall: No Proof Of Standard Of Care, Breach.

A nurse woke the patient from sedation following her colonoscopy and asked her to stand and transfer to a wheelchair.

The patient ended up on the floor.

For her lawsuit against the hospital the patient had two letters she said were written by nurses, who opined that the care the patient received did not meet the standard of care for a nurse.

The patient's case against the hospital is based on a lengthy recital of what she went through trying to get out of bed and ending up on the floor.

Absent from the patient's evidence is any identification of the specific measures required of the patient's nurse by the standard of care.

Nor is it identified how the nurse departed from the standard of care, and how that resulted in the patient falling to the floor.

COURT OF APPEALS OF WASHINGTON
July 22, 2024

The Court of Appeals of Washington dismissed the former patient's case.

First of all, there were technical deficiencies in the patient's expert witness reports. To be considered by a court, the expert witness must sign under oath and include a curriculum vitae.

On a more substantive level, the patient's case seemed to rest on the supposition that the happening of an adverse event in a healthcare setting necessarily implies negligence by caregivers that does not need to be proven with evidence.

On the contrary, the patient, through her alleged experts, never identified what exactly the nurse was supposed to do, and did not do, and how that caused her to end up on the floor. **Collins v. Med. Ctr., 2024 WL 3495814 (Wash. App., July 22, 2024).**

Invasion Of Privacy: Nurse's Version Accepted By The Jury.

The patient was seen by a nurse in the hospital's emergency room.

She was asked for a urine sample. The lab report came back in about a half hour as positive for a urinary tract infection. The patient was given an antibiotic by the nurse and was discharged home.

In the patient's ensuing lawsuit against the hospital, two entirely different versions of events surfaced, in the patient's testimony and the nurse's testimony.

Patient's Version of Events

According to the patient, she came to the emergency department with her two children and her cousin. There were also six to ten other people whom she did not know sitting in the waiting area.

The patient's nurse sent her urine sample to the lab. A half hour later the nurse had the lab results, which she blurted out within earshot of her family members and the other persons present.

The lab result showed she had a urinary tract infection. The nurse gave her an antibiotic and sent her home.

Nurse's Version of Events

The nurse got the result back from the lab, and then approached the patient with the paperwork. She gestured to get the patient's attention, then pointed with her finger to the note on the lab report as to the urinary tract infection.

Nothing was communicated to the family, verbally or on paper. There were no persons other than the family present.

Court Validates Jury's Verdict

The Court of Appeal of Louisiana agreed with the patient in principle that if events transpired as she claimed, the hospital, as the nurse's employer, would have to answer in a civil lawsuit for common-law invasion of the patient's right to privacy.

However, the jury did not believe the patient's version of events and did believe the nurse's. The jury's verdict is basically the last word on whom to believe as to the facts of the case.

There was an issue that an unredacted copy of the incident report, as opposed to a redacted copy, was not demanded by the patient's lawyer until the trial was in progress, technically too late in the Court's view. **Cameron v. Med. Ctr., __ So. 3d __, 2024 WL 3434183 (La. App., July 17, 2024).**

Patients' right to medical confidentiality is guaranteed by the US Health Insurance Portability and Accountability Act (HIPAA).

That being said, HIPAA's requirements as to hospitals and other institutions are enforced as administrative compliance matters.

HIPAA does not give a patient or family member the right to sue for a violation by a healthcare provider.

Instead, the fallback position for redress of breaches of patient medical confidentiality is the common-law right of action for invasion of privacy.

Invasion of privacy gives the victim the right to sue for an unreasonable public disclosure of private facts, be they medical issues or other things.

It is difficult to place a dollar value on a person's humiliation, mental anguish or emotional distress.

A victim may have actual damages in the form of expenses for counseling for emotional trauma related to the incident.

Without undergoing professional counseling for the consequences of a breach of medical confidentiality it may be difficult not to see an incident as only an annoyance for which monetary damages would be nominal at most.

COURT OF APPEAL OF LOUISIANA
July 17, 2024

Defective Wheel Chair: Not Guilty Of Spoliation Of The Evidence.

The patient fell to the floor and was injured when the armrest on the wheelchair broke loose as she was being transferred from the wheelchair to her bed.

The hospital was put on notice by the patient's legal representative that a negligence claim should be expected as to the allegedly defective wheelchair.

The wheelchair was taken out of circulation and kept in the administrator's office, but was not examined by a forensic expert.

When a decision was made to retire and replace the hospital's entire fleet of wheelchairs, the wheelchair in question was removed from the administrator's office and discarded with the rest.

Spoliation of the evidence requires proof of bad faith by the party who disposed of the evidence in question.

There must also be proof that disposing of the evidence had some effect on the legal position of the opponent of the party who disposed of the evidence.

SUPERIOR COURT OF CONNECTICUT
July 3, 2024

The Superior Court of Connecticut ruled the injured party could not sue the hospital for spoliation of the evidence as to the lost wheelchair.

However, her case for negligence stays alive as to faulty maintenance of the wheelchair and negligence in the hospital employee's transfer technique.

The former patient does not need the actual wheelchair to prove her case. She can testify, and the aide who was helping her, now a former employee of the hospital, is more than willing to testify as to the basic facts of what happened.

The victim's legal case has not been affected by the wheelchair having gone missing. **Capeles v. Hospital, 2024 WL 3342441 (Conn. App., July 3, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Antibiotic-Resistant Bacteria: Court Throws Out Nurses' Suit Against FDA.

Two hospital nurses, several patients and several environment groups joined in a lawsuit against the US Food and Drug Administration (FDA) challenging the FDA's widespread approval of antibiotics used with cattle and poultry.

The gist of the lawsuit as explained in the nurses' testimony is that widespread use of antibiotics in animal husbandry is causing emergence of antibiotic-resistant bacteria that are making it more difficult for hospital nurses to do their jobs and compromising patient safety.

The US District Court for the District of Maryland dismissed the case on the grounds that the nurses, patients and organizations do not have standing to challenge the FDA's actions.

Federal courts in the US are bound by the US Constitution only to hear and decide matters that amount to cases or controversies, where the parties have direct personal involvement in the issues, as opposed to having taken a position on a broad question of social policy. **Alliance v. FDA, 2024 WL 3424040 (D. Maryland, July 15, 2024).**

Voting Rights: Court Upholds Caregivers' Right To Assist Disabled Persons.

The Ohio affiliate of the League of Women Voters filed a lawsuit in Federal District Court to invalidate an Ohio state statute that allows only certain family members to assist a disabled person with absentee ballot voting.

Anyone else assisting a disabled person with an absentee ballot could be guilty of a felony.

Included in the persons bringing the lawsuit are members of the League who work directly with disabled persons in professional care settings, who could conceivably be convicted of a felony for helping a disabled client or patient to vote.

The US District Court for the Northern District of Ohio ruled the persons who filed the lawsuit do have standing to file a lawsuit in Federal Court.

The Court went on to rule that the Ohio statute at issue is in conflict with the US Voting Rights Act and is therefore void. The Voting Rights Act is a Federal law that gives every person the right to assistance from any person of their choice with absentee ballot voting. **League v. Larose, __ F. Supp. 3d __, 2024 WL 3495332 (N.D. Ohio, July 22, 2024).**

Medicare/Medicaid: CMS Proposes Complex Set Of New Conditions Of Participation.

On July 22, 2024 the US Centers for Medicare and Medicaid Services (CMS) published a complex notice of proposed new conditions of participation.

The notice begins with 386 pages devoted to the rationales for the individual proposed changes, followed by 8 pages at the tail end of the notice setting forth the actual proposed changes.

The changes proposed are not mandatory at this time. CMS is a US Federal agency whose regulatory changes must be published in the Federal Register for public comment. Public comments will be considered until September 9, 2024.

We are highlighting excerpts from the changes and where they can be found.

Hospitals - Condition of Participation: Quality Assessment and Performance Improvement Program. FR page 59578 PDF page 393.

On July 22, 2024 the US Centers for Medicare & Medicaid Services (CMS) published a 396 page notice in the US Federal Register containing proposed new conditions of participation for Medicare and Medicaid.

The notice is available at https://www.govinfo.gov/content/pkg/FR-2024-07-22/pdf/2024-15087.pdf

The regulations begin on Federal Register page 59573 or PDF page 388.

FEDERAL REGISTER July 22, 2024
Pages 59186 - 59581

Hospitals - Condition of Participation: Discharge Planning. Transfer Protocols. Requirements for Post Acute Care Services. Managed Care Organizations. Freedom to Choose. FR page 59578 PDF page 393.

Hospitals - Condition of Participation: Emergency Services. Protocols. Provisions. Drugs, Blood, Blood Products and Biologicals. Equipment and Supplies. Staff Training. FR page 59579 PDF page 394.

Hospitals - Condition of Participation: Obstetric Services. Organization and Staffing. Labor and Delivery Rooms/Suites. Delivery of Service. Staff Training. FR page 59579 PDF page 394.

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