LEGAL EAGLE EYE NEWSLETTER

February 2025 For the Nursing Profession Volume 33 Number 2

Emergency Room: Nurses Found Drugs In Patient's Pocket, Rights Not Violated.

The patient was brought to the emergency department in a private vehicle at about 3:00 a.m. with life-threatening gunshot wounds to his neck and jaw.

The victim was conscious, but the only thing he could say to the nurses was that he could not breathe.

The nurses needed to identify the patient by name and birth date so they could enter him into the hospital system and determine if he had a prior medical history there such as known medication allergies.

The nurses began looking through his clothes for his identification. In his pants pocket they found a wad of cash, some pills and a bag of marijuana.

The incriminating contents of the victim's pockets were turned over by one of the nurses to the police officer who had been standing by outside the exam room.

Nurses Were Following Protocol

Hospital protocols for uncommunicative gunshot victims required that they be searched for their identification, particularly their date of birth, under which past hospital charts were indexed.

In searching the patient's clothing for his identification, the nurses followed hospital protocols with no intention of their own or orders from the police to search for incriminating evidence on his person.

In undressing him they were following the protocol for a full body exam for other gunshot wounds or other injuries.

The government cannot use private individuals to get around the law on probable cause and search warrants.

However, there is no violation of the suspect's rights when the results of a private individual's search of the suspect's person, property, papers or dwelling are turned over with no prior understanding with law enforcement.

UNITED STATES DISTRICT COURT
MISSISSIPPI
January 2, 2025

The US District Court for the Northern District of Mississippi ruled the contents of the suspect's pocket will not be suppressed from evidence at trial on charges of possession with intent to distribute narcotics.

The legal analysis starts with the general proposition that an individual's Constitutional rights protect the individual only from the actions of government agents.

A private individual, acting only as a private individual, cannot violate another person's Constitutional rights.

To claim such a violation, the defendant here would have to prove there was a prior arrangement between the hospital and the police department.

The arrangement would have to be for the hospital to direct its employees to search patients without a search warrant on behalf of the police department, in situations where the police department did not have probable cause or otherwise could not get a search warrant, or at least did not have a search warrant to justify a search.

To make the existence of such an arrangement difficult to prove, the courts have added an extra requirement that the private party who has a preexisting arrangement to act on behalf of the police must be getting compensation to do so.

The nurses were private parties doing their job and had no prior connection to the police. **US v. Defendant, 2025 WL 20427 (N.D. Miss., January 2, 2025).**

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EMTALA: Patient Complained Other E.R. Patients Were Getting More Attention Than She.

Dissatisfied with the level of attention she received during her visit to the hospital's emergency department, the former patient sued the hospital for violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA).

When asked in her pretrial deposition to explain her case, the former patient testified that other patients seemed to be getting the results of their x-rays and lab tests more quickly than she.

She also objected that her encounter with the hospital began with the emergency room staff looking at the paperwork from the emergency medical technicians who transported her to the hospital, before they started examinations of their own.

She was not pleased with the time it took for her to be given pain medication.

She did not believe that her visit to the emergency department should have taken over ten hours from initial nursing triage to discharge with instructions to follow up with an orthopedist.

Court Finds No EMTALA Violation

The US District Court for the District of Puerto Rico did not find legal relevance in the patient's case against the hospital as she articulated it.

First the Court went over the detailed documentation created by hospital caregivers for this patient's visit. The Court could find nothing remiss.

More relevant from a legal standpoint, there was no evidence offered by the patient that her care, whether competent or not, deviated from the medical screening examination and necessary stabilization that the hospital afforded to other individuals with the same presenting signs and symptoms of lower extremity fracture from a fall at home.

The patient's subjective experience of being ignored or slighted in the emergency department compared to how others seemed to be being treated has nothing to do with creating a valid EMTALA case.

The Court was compelled to dismiss the patient's case against the hospital for lack of an EMTALA violation. **Patient v. Health, 2024 WL 5277220 (D. Puerto Rico, December 26, 2024).**

An appropriate medical screening examination is one of the core obligations imposed by the Emergency Medical Treatment and Active Labor Act (EMTALA) on a hospital that has an emergency department.

An appropriate medical screening examination in this context is one that is the same in all respects to the medical screening examination furnished to other patients with the same presenting signs and symptoms as the patient whose care is under scrutiny.

It is not relevant in a particular patient's EMTALA legal case whether other persons in the emergency department were triaged or seen by a physician more quickly, or had their labs and medical tests ordered and done more quickly or received their test results more quickly.

The only relevant factor is how the medical screening of the patient in question compared to the medical screening of other persons with the same presenting signs and symptoms, according to the exact wording of the EMTALA.

There was nothing remiss in how this patient's case was handled.

UNITED STATES DISTRICT COURT
PUERTO RICO
December 26, 2024

Patient Dropped: Aide To Be Tried For Misdemeanor.

A state-tested nursing assistant attempted to turn a resident under her care, by herself with no help, even though the nursing assistant knew the written care plan with which she had been provided a copy called for two persons for turning this patient.

The resident ended up on the floor with both femurs fractured.

The incident was reported to the state department of health. Their investigation was turned over to the state attorney general. The attorney general filed criminal charges in the local municipal court.

However, criminal charges were not filed until more than two years after the incident. The municipal court judge dismissed the charges because of that delay.

State law makes it a misdemeanor for an employee of a care facility to commit abuse, gross neglect or neglect of a resident.

It is a defense if the employee acted in good faith after being ordered to commit the act by a person with supervisory authority.

COURT OF APPEALS OF OHIO
January 10, 2025

On the State's appeal of the municipal court's decision, the Court of Appeals of Ohio reinstated the criminal charges.

Inexcusable delay in filing criminal charges normally is grounds for the charges to be dismissed.

However, in this case the incident was fully investigated, to the point that the original witness statements which had been lost had been supplemented with new witness statements from the same witnesses.

In the final analysis, the assistant's ability to defend herself was not prejudiced by the delay and there were no good grounds to dismiss the charges against her.

The assistant will stand trial on the charge of gross neglect. **State v. Nursing Assistant, 2025 WL 65728 (Ohio App., January 10, 2025).**

Discrimination: Nurse Practitioner Could Not Point Court To Similar Victim For Comparison.

Trouble began for the nurse practitioner when a capped narcotic syringe was found on her desk in her office.

Her clinical role in the hospital's pain management clinic was to give trigger point injections of narcotics to alleviate pain directly in the affected areas of the bodies of her pain management clients.

After a time she moved from the pain clinic to the mental health clinic where she continued to be certified and continued to give trigger point injections.

It was not clear how or why the syringe ended up on her office desk or how long it had been there before it was found during a routine safety inspection.

Her supervising physician took the incident as unprofessional conduct and grounds for a personal plan of correction.

The physician also began to scrutinize the nurse practitioner's clinical work more closely than before.

He turned up incidents he considered practice beyond the nurse practitioner's scope of practice as defined by the institution's practice guidelines.

Problematically, the physician continued and twice renewed the nurse practitioner's personal plan of correction, without giving her a cogent explanation for that action or how or when she could be cleared to practice without restrictions.

Differential discipline of a minority employee compared to one or more non-minority employees is considered discrimination.

That is true even if the discipline meted out to the minority employee ostensibly is justified by the seriousness of the offense committed by the minority.

The courts are very strict as to the degree of similarity that must be found between an alleged victim of employment discrimination, and another employee or employees pointed out for comparison, and not disciplined as harshly for the same offense.

They must have the same position, the same expectations from their employer, the same supervisor judging their job performance, and commit the same offense or one of the same seriousness.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA
January 23, 2025

The nurse was eventually terminated for failing to fulfill her personal plan of correction. She sued for race discrimination. The US District Court for the District of Columbia dismissed her case.

Nurse Practitioner Did Not Identify Suitable Comparators

For her discrimination lawsuit, the nurse practitioner offered for comparison with her situation the situations of a Caucasian resident physician, and staff nurses whose race she never specified.

The Court was not persuaded. The Caucasian resident physician was a resident physician, not a nurse practitioner. The physician had a different role at the hospital and practiced under different clinical guidelines than those for a nurse practitioner.

It would not necessarily be unprofessional conduct for a physician to leave a capped narcotic syringe on her desk.

At least, for legal purposes, if the nurse practitioner wanted the Court to consider that unprofessional conduct for a physician comparable to her own, the nurse practitioner had to prove that.

The resident physician's alleged offense was misdiagnosis of a patient, not an error with narcotics.

As to the staff nurses who allegedly failed to waste narcotics properly, the nurse practitioner never alleged or proved that they were non-minorities.

It also went unproven how discrepancies with narcotics by staff nurses are equivalent to such an error by a nurse practitioner. **Nurse v. McDonough, 2025 WL 275606 (D. D.C., January 23, 2025).**

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Employment Contract: Court Will Not Enforce Penalty Clause Against Nurse Who Quit Job.

When hired in September 2015 by the hospital the nurse signed a contract referred to as a Resident/Graduate Nurse Program Employment Agreement.

The agreement was for the nurse to begin her employment in February 2016 and continue to work at the hospital for at least three years until February 2019.

The agreement further called for the nurse to pay the hospital $20,000 if she terminated her employment at any time during the life of the agreement, before its expiration in February 2019.

The nurse quit in March 2018. She refused to pay the $20,000 penalty contemplated by her contract. The hospital sued her for that sum.

The Court of Appeals of Texas ruled the $20,000 payment clause was an unenforceable contractual penalty. The nurse has no further financial obligation to her former employer.

Court Rules Liquidated Damage Clause Is An Unenforceable Penalty

The Court could find to basis for the argument that the hospital suffered any demonstrable harm, let alone $20,000 worth of harm due to this particular nurse quitting her job how and when she did.

That being the case, the $20,000 payment contemplated in the contract was a penalty clause, not a liquidated damages clause, which the Court ruled was unenforceable under general principles of contract law.

There is nothing wrong with a contract specifying an exact dollar amount as the liquidated damages one side will suffer as a result of breach of contract by the other side to the contract.

However, the amount of liquidated damages specified in the contract must bear a fair and objective relationship to the harm that actually will be suffered by the party due to the breach of contract, or it is an unenforceable penalty.

It was clear that the nurse knowingly and freely agreed to pay $20,000 if she elected to quit. Nevertheless she was not obligated to pay what she agreed to pay. **Garcia v. Hospital, 2024 WL 5251994 (Tex. App., December 31, 2024).**

Under general principles of contract law, a party who breaks a contract is liable to the other party for the damages the other party sustains as a result of the breach.

The law refers to the damages for breach of contract as liquidated damages.

Liquidated damages depend on an objective assessment and translation into a specific dollar amount of the actual harm one side will sustain as a result of the other side's breach of contract.

A contract can stipulate a specific amount of liquidated damages in advance, prior to actual breach of the contract, as the dollar amount of the damages one side or the other will see as a result of breach of contract.

A specific amount of liquidated damages set out in advance in a contract must correspond to the actual harm that will be suffered as a result of breach of contract by one party to the contract.

In contrast, a specified amount of liquidated damages that does not correspond to the actual harm suffered due to breach of contract is a penalty and is not enforceable.

COURT OF APPEALS OF TEXAS
December 31, 2024

Discrimination: Minority Must Show That Bias Was Directed Personally.

A minority nurses aide was terminated while she was not working, but was in the process of trying to transfer within her institution, when no position that was deemed suitable for her or that she considered acceptable could be found.

The nurses aide filed a civil rights complaint and then a civil lawsuit against her former employer.

The gist of her case was that white applicants for internal transfers got their transfers just for the asking, while minorities were required to interview.

It is not enough for a discrimination case to allege that minorities were treated less favorably than non-minorities in the workplace.

A minority employee must show that he or she was personally treated less favorably than a certain identified non-minority or non-minorities.

Or the minority can prove that he or she endured employer retaliation for complaining about discrimination toward others.

UNITED STATES DISTRICT COURT
MISSOURI
January 21, 2025

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

The problem with her case was she could not specifically identify a non-minority who got a specific position she wanted without having to interview, while she had to interview and was turned down on the basis of her interview, an interview not expected of her non-minority counterpart. **Hill v. Services, 2025 WL 252458 (E.D. Mo., January 21, 2025).**

FMLA: Employee Not Eligible, Not Able To Claim Retaliation.

A nurse worked as a flight nurse for a medical flight transport contractor despite her diagnosis of reflex sympathetic dystrophy.

She got into hot water with her supervisor when vital signs and monitor data were deleted from the computer system for a critically ill patient being transported by air. Rather than admit her mistake and agree to a plan of correction, the nurse tried to hide the mistake or blame it on others. She was fired, not for the error itself, but for her dismissive attitude toward the plan of correction.

The fired nurse sued for retaliation by her employer for using medical leave she believed was guaranteed by the US Family and Medical Leave Act (FMLA).

The nurse discussed with her supervisor how to use Family and Medical Leave Act (FMLA) leave for her medical appointments in her ongoing battle with reflex sympathetic dystrophy.

Nevertheless, her employer had fewer than 100 employees, so she was never eligible and never had FMLA rights.

UNITED STATES DISTRICT COURT
TEXAS
January 13, 2025

The US District Court for the Southern District of Texas acknowledged that the nurse's supervisor discussed use with her of FMLA medical leave for her medical appointments.

However, that did not foreclose her employer from insisting later on that there could be no retaliation for using FMLA rights that the nurse never actually had.

The employer did not have one hundred employees on site. The employer was not subject to the FMLA and its employees had no FMLA rights to begin with. **Ramirez v. Health, 2025 WL 83377 (S.D. Tex., January 13, 2025).**

Associational Disability: Court Says Nurse Has Pleaded A Valid Case Of Discrimination.

The US Americans With Disabilities Act (ADA) prohibits employer discrimination against a qualified individual with a disability.

The ADA also prohibits associational discrimination.

Associational disability discrimination means an employer is prohibited by the ADA from discriminating against a non-disabled employee who is closely associated with a disabled individual such as a disabled spouse or disabled family member.

The ADA requires an employer to make reasonable accommodation to the needs of a non-disabled employee in regard to the non-disabled employee taking care of the disabled individual with whom they are associated.

Typically such reasonable accommodation means letting the employee stay home when their disabled person needs them, or giving an employee time off to take their disabled person to medical appointments, as far as the employer's legitimate business necessity will allow.

It is necessary that the employee make the employer aware of the reason accommodation is needed.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
January 2, 2025

A nurse sued the hospital where she had worked and the agency that placed her there.

The lawsuit alleged associational disability discrimination and race discrimination. The nurse is African-American and was taking care of her grandmother who suffered from ovarian cancer.

Who Was the Nurse's Employer?

The first legal hurdle for the nurse to overcome was to convince the US District Court for the Western District of Pennsylvania that the hospital where she had worked as well as the agency that placed her there were both her employer.

The nurse was nominally the common law employee of her nursing agency. The agency paid her wages and billed the hospital for her services nominally as an independent contractor.

The catch is that the Americans With Disabilities Act and the US Civil Rights Act prohibit discrimination in the workplace only by employers toward their employees. The nurse had to be a hospital employee to be eligible to sue the hospital.

The Court found this to be a case of joint or shared employment. Both the hospital and her agency were her employer.

The hospital, not her agency, was responsible for the working conditions at the hospital, including giving her her job assignments and maintaining the overall milieu in which she worked.

When one entity is responsible for supervision and control of a worker, and the worker's working conditions, who is nominally another entity's common-law employer, both are the employer.

Associational Disability Discrimination Recognized By Court

The Court was satisfied the nurse could show a pattern of conduct by the nurse's supervisors at the hospital in scrutinizing more closely her requests for absences for her grandmother's care.

Specific nurses whom the nurse could identify were Caucasian and did not have to explain a request for time off based on the existence and the needs of a disabled family member. **Sitter v. Health, 2025 WL 19026 (W.D. Penna., January 2, 2025).**

Post Surgical Care: No Apparent Negligence By Patient's Nurse.

For her lawsuit the patient complained of a number of alleged deficiencies in her care by her nurses in a rehab facility.

Her complaints centered on an incident in which she received direct hands on care in her bed, during which a dislocation of her hip occurred that had just been repaired in the hospital days earlier.

The patient's complaints started with the fact that her nurse rolled her on her side to clean her backside.

The nurse poked, pushed and prodded her hip where she had recently had her surgery and kept pushing and prodding with more and more pressure.

When the patient asked the nurse to stop, the nurse continued with more pressure to her hip.

The nurse reportedly told the patient to shut up and be quiet while they were trying to clean her. During that time the patient continued to insist the nurse stop.

While the nurse was working a loud "pop" was heard which seemed to startle the nurse.

The patient's pain at this point was so unbearable she passed out and lost consciousness.

She came to as an x-ray technician was obtaining a bedside x-ray. The technician told her they were doing an x-ray of her stomach.

After the incident a dislocated hip was diagnosed by the physicians.

Court Unable to Find Nursing Negligence

The Supreme Court of Alabama was constrained not to depart from the general requirement in a healthcare malpractice case that negligence must be proven by competent expert testimony that identifies the standard of care for the medical intervention in question, a breach of the standard of care and a causal connect between the breach and harm to the patient.

The Court was not convinced that non-professional jurors would be able to judge the actions of the nurse correctly on the basis of their own common knowledge and everyday experience.

The Court had no choice but to dismiss the case for want of an expert opinion. **Callens v. Hospital, __ So. 3d __, 2025 WL 63982 (Ala., January 10, 2025).**

The rehab facility defended the patient's lawsuit with an affidavit from a registered nurse expressing an expert opinion as to the applicable standard of care.

The facility's nurse expert first outlined her extensive experience working in post-surgical rehab herself and overseeing and supervising such care rendered by non-licensed nurses aides.

The nurse expert's opinion, based on review of the patient's medical chart and in light of her education, training and years of professional experience, was that the care provided to this resident during the incident in question was reasonable and appropriate and met the applicable standard of care.

Filing that expert opinion in support of the rehab facility's motion for summary judgment put the burden on the patient to respond with evidence of negligence.

The patient's response was that it was an apparent departure from the standard of care and proof of causation of her injury for a nurse to push and prod the hip area only days after hip surgery, while the patient insisted the nurse stop.

The Court does not agree that a departure from the standard of care by the nurse is apparent.

SUPREME COURT OF ALABAMA
January 10, 2025

Food Aspiration, Choking, Death: Case Fails, No Acceptable Expert.

The elderly patient was in the rehab facility for evaluation of dysphagia following a cerebral infarct.

Almost two months into his stay his repeat evaluation found improvement in his swallowing difficulties.

It was appropriate at that time to advance him to a diet with minced texture, moist foods and thick liquids. However, he choked the next say and his diet was changed to regular solids and thin liquids.

A week later a nurse brought his lunch to his room and left him alone. He choked, became unresponsive and died.

Solid pieces of meat and vegetables were found on autopsy to have been aspirated into his lungs.

A board certified internal medicine physician is not an expert on the standard of care for a nurse in a rehab facility.

SUPERIOR COURT OF CONNECTICUT
January 14, 2025

Notwithstanding a compelling case of fault by the patient's nurse, the Superior Court of Connecticut was constrained to dismiss the family's wrongful death lawsuit against the rehab facility.

The family's medical expert's opinion letter for the lawsuit was written by a board certified internist physician.

The medical cause of death was beyond question, but medical cause and legal cause are not equivalent concepts.

The legal cause of death, if it could be proven with expert testimony, would be a breach of the standard of care by the nurse who brought the patient his lunch and left him unsupervised, despite his choking history and dysphagia diagnosis.

Unfortunately for the family, their medical expert was not an expert on the standard of care for a nurse caring for a dysphagia patient post infarct in a rehab setting. **Story v. Hospital, 2025 WL 251620 (Conn. Super., January 14, 2025).**

Deaf Patient And Family: Court Turns Down Lawsuit To Block Future Discrimination.

The deaf patient and her husband were given the full benefit of a in-person American Sign Language (ASL) interpreters for two days when she was hospitalized for the birth of their first child.

Not so later on when she had to be hospitalized for more than a week for two separate gallbladder surgeries.

During that admission she repeatedly asked for in-person ASL interpretation. She was not provided an ASL interpreter. That was particularly problematic when the surgeons had to try to explain why the first gallbladder surgery had to be repeated with a second procedure.

Instead of in-person ASL interpretation, she was expected to rely on Remote Video Interpretation. That was difficult because the internet connection frequently froze up, and the screen was too small, and the screen was often positioned where she could not see it from her hospital bed.

There were also handwritten notes exchanged with caregivers. At times the husband, who can sign, but is not a trained professional interpreter, was reluctantly forced to step in.

Court Refuses an Injunction Against Future Discrimination

The US District Court for the Eastern District of Tennessee turned down the patient's and husband's lawsuit for an injunction against future discrimination.

The courts set the bar very high for patients and family suing over deafness discrimination issues.

The problem here was that the patient and her husband had no actual proof how their needs as deaf persons would or would not be met when they returned to the hospital again in the future.

The Court accepted that they would return to the same hospital in the future. They were planning another baby and their ob/gyn practiced only at that hospital.

However, unlike a hypothetical architectural barrier that has not been corrected for the benefit of a disabled person who will return to the hospital, discriminatory conduct by caregivers at a future time is not a given thing. **Tirey v. Med. Ctr., 2025 WL 62248 (E.D. Tenn., January 8, 2025).**

The patient and her husband, both deaf, want a court injunction prohibiting discriminatory treatment when they return to the same hospital where alleged discrimination occurred during the last visit.

The likelihood is good they will return to the same hospital in the future, which is a necessary predicate to a court injunction against future discrimination.

The patient does not like the hospital for the way her needs as a deaf person were handled in the past.

However, the hospital is the only hospital in the local community where her obstetrician practices.

The next required predicate for a successful lawsuit is proof that discrimination is likely to occur during a future encounter.

That predicate is a stumbling block for this case.

The courts distinguish physical barriers that impair the rights of disabled persons, which have not yet been remedied, from conduct by caregivers which may or may not be repeated during a future encounter.

There is no proof how caregivers will respond in the future to requests for live ASL interpretation.

UNITED STATES DISTRICT COURT
TENNESSEE
January 8, 2025

Nursing Home Negligence: Administrator Is Not An Expert On Standard Of Care.

A former resident's son, acting as personal representative of his late father's probate estate, sued the nursing home where the father had resided, alleging professional negligence in his care.

The lawsuit focused on bedsores that began and progressed allegedly due to incompetent assessment, monitoring and wound care by the nurses.

For the lawsuit, the son's lawyers furnished a detailed opinion from a licensed nursing home administrator. The administrator reviewed the chart from the nursing home and highlighted numerous instances of alleged substandard care.

The nursing home administrator's CV establishes unmistakably his qualifications and experience on the business side of things, but not the medical side.

He is not a similar health care professional. He is not similar to the nurses whose competence is being called into question.

SUPERIOR COURT OF CONNECTICUT
December 30, 2024

The Superior Court of Connecticut dismissed the lawsuit out of hand. A nursing home administrator simply is not an acceptable expert witness against nurses who provide direct patient care in nursing home settings.

The Court had nothing but praise for the administrator's qualifications as an administrator and business consultant to the nursing home industry.

However, the law requires a healthcare negligence case to be supported by an opinion from a similar healthcare professional, in this case similar to the nursing professionals whose competence is being questioned. **Facey v. Healthcare, 2024 WL 5246489 (Conn. Super., December 30, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

COVID: OSHA Drops Emergency Temporary Standard For Workers In Healthcare Settings.

On January 15, 2025 the US Occupational Safety and Health Administration (OSHA) dropped the Emergency Temporary Standard as to healthcare workers' exposure to COVID-19 that was adopted in June 2021 pursuant to an Executive Order from the President in January 2021.

Termination of the Emergency Temporary Standard takes effect immediately on January 15, 2025.

The rationale is that OSHA has determined that the COVID-19 emergency has passed.

Occupational exposure among healthcare workers to COVID-19 can now take its place among general workplace rules that regulate occupational exposure of healthcare workers to various pathogens.

We have posted OSHA's January 15, 2025 announcement from the Federal Register online at http://www.nursinglaw.com/OSHA011525.pdf

FEDERAL REGISTER January 15, 2025
Pages 3665 - 3667

Medical Records Not Furnished, Statute Ran Out: Patient Has No Right To Sue Hospital.

The hospital's former patient contacted several attorneys to explore the possibility of suing the hospital for malpractice.

To sue for malpractice, none of the attorneys could proceed without reviewing the patient's hospital records, and none of the attorneys could get the hospital to turn over the records.

The former patient tried herself to obtain the records, but she was also unsuccessful.

The statute of limitations for medical malpractice ran out without the attorneys or the patient herself being able to get the records.

The Supreme Court of Mississippi dismissed the former patient's lawsuit which was filed, not for malpractice, but for alleged unlawful withholding of her medical records.

The Court acknowledged that the US Health Insurance Portability and Accountability Act (HIPAA) grants patients access to their records, but HIPAA does not allow private parties to sue their providers. **Hospital v. Boykin, __ So. 3d __, 2023 WL 12017042 (Miss., January 23, 2025).**

Sexual Assault Nurse Examiner: Hearsay From Victim Is Admissible In Criminal Trial.

A male individual was charged with and convicted of ongoing predatory sexual abuse of an eleven year-old female child.

He appealed his conviction on the grounds that he was convicted, based not on the courtroom testimony of the eleven year-old herself, but based on the testimony of the sexual assault nurse examiner who worked with the child after the perpetrator was caught.

His appeals focused on the definition and application of the hearsay rule. Hearsay is generally not admissible in court because there is no way to corroborate in court that the other party's second-hand statements being related in court by another are accurate and trustworthy.

There is also the Constitution right of a criminal defendant to confront the accuser, who is the outside party.

Hearsay is defined in the law books as an out of court statement offered in evidence to prove the truth of the matter asserted.

A major exception to the rule that hearsay is inadmissible allows admission of hearsay statements to healthcare providers for the purpose of medical diagnosis and treatment.

That includes a sexual assault victim's statements to a nurse examiner.

APPELLATE COURT OF ILLINOIS
January 22, 2025

However, the rules of evidence carve out a major exception to the hearsay rule for admissibility of statements to healthcare providers for the purpose of medical diagnosis and treatment.

Made in the course of seeking medical care, such statements are considered to have a situational guarantee of truth.

The Appellate Court of Illinois ruled that a victim's statements to a sexual assault nurse examiner fall within the exception to the hearsay rule.

In this context the exception to the rule is to be broadly applied. The nurse can relate the victim's anatomical details of the actual physical trauma and the situation or situations where assault occurred.

Also relevant to healthcare, and the law, is the identification of the perpetrator and his relationship to the victim. **People v. Defendant, 2025 WL 263395 (Ill. App., January 22, 2025).**