LEGAL EAGLE EYE NEWSLETTER

January 2025 *For the Nursing Profession* Volume 33 Number 1

Informed Consent: Patient Said Nurse Gave Her Standard Form To Sign, No Explanation.

The patient underwent a series of major gynecological surgeries that were difficult in their own right, and left her with significant residual complications.

The patient sued her surgeon, alleging malpractice in the manner the surgeries were carried out.

The patient also claimed damages for lack of informed consent, as she allegedly was not informed of the risks, benefits and alternatives each time one of the surgeries was done.

In support of her case the patient pointed to the fact the hospital's standard surgical consent form was simply handed to her by a hospital nurse who did nothing more than tell the patient to sign.

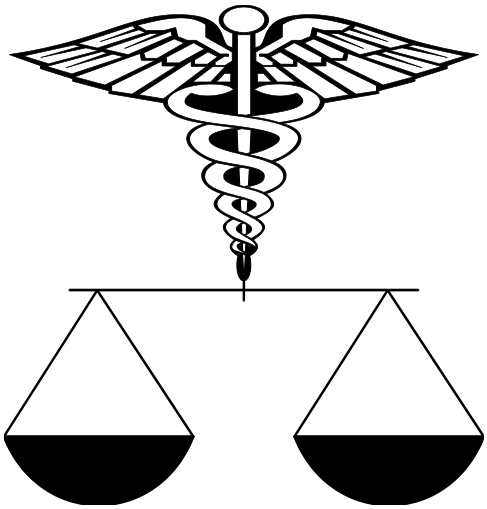
According to the patient, the nurse offered nothing by way of discussion or instruction as to the risks, benefits and potential complications of the surgical procedures themselves.

The hospital nurse simply told the patient to sign the standard consent form on the dotted line.

Court Rejects Case Based Lack of Informed Consent

The Court of Appeal of Louisiana dismissed the patient's allegation of lack of informed consent.

The duty to inform the patient of the risks and benefits rests with the physician, and not the nurse, for the patient's consent to be truly informed consent.



If the consent form was drafted in conformance with state law, and the patient signed it, a legal presumption exists that the patient consented.

To get around a signature on a standard surgical consent form, the patient must convince the court, not that the patient did not consent, but that a reasonable person in the patient's situation would not have consented.

COURT OF APPEAL OF LOUISIANA
December 11, 2024

The evidence was that the surgeon did in fact fully discuss the risks and benefits of all the surgeries with the patient and did in fact obtain her permission and consent.

The Court also ruled that the surgeon was not guilty of medical malpractice for the way the surgeries were carried out.

It was not relevant that the surgeon did not participate in the signing of the surgical consent form.

Getting the form signed is a basic task that can be delegated to a nurse or other caregiver.

Louisiana, like many state jurisdictions, has enacted legislation with a view toward minimizing suits against healthcare providers for lack of informed consent where the facts would not support a case that the provider was negligent.

The state statutes protect health care providers who have obtained a patient's signature on a standard informed consent form that was drafted in conformance with state statutory parameters.

If there is a signed consent form, the patient can win a case based on lack of informed consent only by meeting the burden of proof, not that the patient did not actually consent, but that a reasonable person in the patient's shoes would not have consented. That is a very difficult burden of proof for any patient to meet in court. **Lachney v. Gates, __ So. 3d __, 2024 WL 5063345 (La. App., December 11, 2024).**

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Nurse As Patient Advocate: Drop In Hemoglobin Should Have Prompted Nurses To Act.

The adult patient died at home from excessive bleeding almost two weeks after a tonsillectomy in the hospital, a week after having been discharged from the hospital.

All of the critical evidence was disputed by the experts on both sides, both as to what actually happened and the medical import and indications one way or another of what happened.

The Court of Appeals of Texas sifted through the complex medical evidence and the conflicting expert opinions interpreting the evidence, and found two basic instances of nursing negligence that supported the verdict in favor of the surviving spouse.

Drop in Hemoglobin Value

In the ICU the patient's hemoglobin dropped from 14 to 7.7 and remained that low when the patient went from the ICU to a medical/surgical floor.

Nurses are expected to recognize the significance of lab values that point to a common complication of the procedure their patient has just had.

The nurses had the duty to advocate, by first going to their charge nurse, and then up the designated chain of command, until an appropriate person took appropriate action to help the patient.

Order for Interventional Radiology Consult Still Open at Discharge

A consult with interventional radiology had been ordered by one of the physicians but was never carried out before the patient was discharged home.

According to the family's nursing expert, nurses have the responsibility before a pending hospital discharge to review the medical chart for any orders that are still outstanding, and to follow up if any such orders are found.

One of the family's medical experts was able to make a compelling case that the interventional radiologist, if the patient were seen, would have diagnosed a pseudoaneurysm just waiting to cause the fatal bleeding in the throat that occurred later at home, in time to forestall the condition and save the patient's life. **Hospital v. Cabrera, 2024 WL 5065557 (Tex. App., December 11, 2024).**

At the time of discharge from the hospital it is a nursing responsibility to review the patient's chart and reconcile any outstanding physicians' orders that have not been carried out.

The nurses are the last line of defense to insure that something important has not been missed that needs attention before the patient leaves.

Nurses have the duty to advocate for the patient if it appears something should have been done.

The nurses cannot assume that an open physician's order was not carried out because of an affirmative decision by a physician or other practitioner not to carry out the order.

Here the patient's family's experts testified to the jury's satisfaction that if the nurses had spoken up, and the open order for an interventional radiology scan of the patient's neck had been done, the emerging pseudoaneurysm would have been found and corrected surgically in time to save the patient's life.

The family's nursing expert testified as to the nurses' duty to advocate, and a medical expert explained the consequences.

COURT OF APPEALS OF TEXAS
December 11, 2024

Informed Consent: Nurse Midwives Ruled Not Liable.

A pregnant woman described in the court record as "of advanced maternal age" with a history of multiple miscarriages, came to the midwives' clinic at forty weeks to plan for delivery there with the midwives.

She returned to the midwives' clinic two weeks later, at forty-two weeks, hoping to deliver there.

Things went well for about two hours. Then the fetal heart rate dropped from 120-130 to 60-70.

The midwives became concerned, not only with the drop in the heartrate, but that they could be reading the mother's heartrate and there was no fetal heartbeat.

The mother was taken to the hospital where she delivered a stillborn fetus.

For a successful case based on lack of informed consent, the patient must prove not only that a significant risk was not explained, but that that risk was the factor that ultimately harmed the patient.

Here the evidence was inconclusive that a viable delivery would have occurred if the delivery was attempted in a hospital.

SUPREME COURT OF ALASKA
December 6, 2024

The Supreme Court of Alaska dismissed the mother's allegations of lack of informed consent.

Even if the midwives ignored their legal duty, as articulated by the mother's nurse midwife expert witness, to inform her of the risks of attempting delivery outside a hospital, it could not be proven that attempting delivery outside a hospital was the actual cause of the stillbirth, given all the significant contributing factors.

It was inconclusive that the ultimate outcome would have changed. **Goodwin v. Midwifery, __ P. 3d __, 2024 WL 4998438 (Alaska, December 6, 2024).**

Involuntary Psychiatric Medication: Rights Of Patient's Unborn Child Must Be Considered.

The New York Supreme Court, Queens County, ruled that the evidence is conclusive that involuntary medication of the involuntarily committed pregnant mental health patient with haloperidol is in the best interests of the patient.

At the same time the Court ruled that the evidence is lacking that involuntary medication of the patient's fetus with haloperidol at thirty-three weeks is in the best interests of the fetus.

Therefore, the Court ruled that the pregnant mother cannot and will not be medicated involuntarily with haloperidol.

Mother Meets the Legal Parameters For Involuntary Medication

The mother was committed on the grounds that she has a mental illness and does not understand that she has a mental illness and is not able, due to her mental illness, to understand and assent to treatment for her mental illness that is necessary for her own safety and wellbeing.

The Court agreed with the expert psychiatric medical testimony offered by the State in favor of continued involuntary custody and involuntary medication, that the patient is incapable of making her own decisions as far as mental health treatment is concerned.

Therefore, the Court has the authority to make her decisions for her.

It is clear the patient herself fits the legal criteria for involuntary administration of haloperidol for her psychotic illness.

However, the patient is thirty-three weeks pregnant, and the decision to medicate her with an antipsychotic medication necessarily implicates medicating her unborn child.

The mother does not have the mental capacity to consent or refuse consent on behalf of her unborn child.

However, the Court has authority to determine whether the proposed medication when given to the fetus will be in the best interests of the fetus.

The medical literature suggests possible side effects to an unborn fetus from haloperidol being given to the pregnant mother.

The evidence is not conclusive that the medication will not harm the fetus.

NEW YORK SUPREME COURT
QUEENS COUNTY
December 2, 2024

Unborn Fetus Not Proven to Meet The Legal Parameters For Involuntary Medication

Any involuntary medication requires the caregiver seeking to medicate involuntarily to meet its legal burden of proof that the specific medication and dosage proposed is in the patient's best interests and is not unduly harmful.

Problematic for the caregivers in this case was the inability of the psychiatrists who testified in favor of the mother being involuntarily medicated, to testify unequivocally as to the safety of haloperidol for an unborn fetus.

It was not clear from the record who supplied the material to the Court, but the Court had access to specific published medical studies suggesting that haloperidol given to an expectant mother can lead to low muscle tone, restlessness, sleeplessness, trouble eating, tremors and dehydration in the newborn.

The Court also was given literature suggesting that haloperidol given to an expectant mother can lead to dependence and withdrawal in the newborn.

Again, the mother's legal representative was not required to prove that haloperidol is or could be toxic to the mother's unborn child.

The burden of proof was on the State to prove otherwise, that the medication was safe, and the State failed to meet that burden through its chosen psychiatric experts' testimony, which legally mandated a ruling by the Court in the mother's favor. **Matter of Patient X, __ N.Y.S. 3d __, 2024 WL 4984252 (N.Y. Super., December 2, 2024).**

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Noncompetition Agreement: Court Finds CRNA Not Liable.

The Court of Appeals of Indiana handed down a recent decision that contains a very thorough discussion of the law of noncompetition agreements in professional services contracts.

Specifically the case concerned a contract signed by a Certified Registered Nurse Anesthetist (CRNA) at the time of her hiring, agreeing not to compete with her employer for two years in a designated geographical area when and if she left that employer for another or a startup.

Oddly, by the time the former employer's case against the CRNA for breach of the noncompetition agreement was filed in court, the CRNA had already left the new employer.

The case was moot. The only viable legal remedy provided by the noncompetition agreement was a court injunction to cease and desist.

Damages were out of the question because the noncompetition agreement did not directly contemplate an award of damages for breach of contract.

Noncompetition Agreements Must Be Proven Valid By The Former Employer

To be valid, a noncompetition agreement must be drafted to protect trade secrets, confidential information or business relationships from being used by a competitor after the employee in question no longer works for the initial employer.

The competitor may be a person or corporation for whom the former employer goes to work, or a new business founded by the former employee after leaving.

In this regard, the law favors the right of employees to change jobs and former employees to start their own entrepreneurial ventures without restriction from an overly-broad noncompetition agreement.

The agreement must have an end date that generally must not exceed one or two years. After that no holds are barred.

The agreement must also pertain to a defined geographic area where the employer can demonstrate an existing business presence, as opposed to a future business presence in a prospective business location not yet obtained and being exploited. **Health v. Jenkins, 2024 WL 5165711 (Ind. App., December 19, 2024).**

Employee noncompetition agreements are disfavored by the law.

A former employer seeking to enforce a noncompetition agreement against a former employee has the burden of proof that the agreement is appropriate.

That is the opposite of the approach taken by the courts to most breach of contract cases, where a signed contract is presumed valid.

For a valid noncompetition agreement, the agreement must be designed to protect existing business interests of the employer as to confidential or proprietary business information or relationships.

In this case the CRNA did more than provide anesthesia services to her former employer's patients, a skill that is not unique to her and readily transferrable.

The CRNA in this case also worked to establish and maintain relationships with physicians' surgical practices that were an important asset to her former employer's business as a hospital.

Those relationships belonged to her former employer, and the CRNA theoretically could have been ordered to cease and desist from using those relationships with a competitor.

COURT OF APPEALS OF INDIANA
December 19, 2024

Nursing License Lapsed: Court Sees No Disability Discrimination.

A registered nurse who was over forty years old, and male, and still receiving ongoing medical treatment for injuries from a serious motor vehicle accident, sued his former employer for discrimination over his termination.

If a registered nurse's license was not current on the day the nurse was fired, the nurse cannot be considered a qualified individual with a disability for purposes of an employment discrimination lawsuit.

The nurse's excuses are not relevant, nor is the fact the license was renewed later retroactive to the date the nurse was fired.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
December 13, 2024

The US District Court for the Eastern District of Pennsylvania dismissed his case. The former employer, although not required to do so, had made every effort to help him renew his nursing license on time, but the license was still expired on the day he was formally terminated.

The nurse himself had also neglected to apply for a waiver of his continuing education requirement due to his disabling injuries from the car accident.

Qualified Individual With a Disability Valid License Is Required.

The Court pointed to the inflexible rule applied by the courts that valid current professional licensure is a requirement for a professional employee to be considered a qualified individual with a disability at the time of adverse employment action.

In this case the Court considered all of the excuses offered by the nurse, but in the end ruled in favor of the former employer who refused to employ an unlicensed RN. **Wiker v. Health, 2024 WL 5109419 (E.D. Penna., December 13, 2024).**

Discrimination: Harassment On The Job Must Relate To Race.

An Hispanic nurse had two prongs to her lawsuit against her former employer alleging discrimination on the basis of her Hispanic national origin.

One prong of the case was the behavior of a certain physician, who routinely shouted at the nurses and called them idiots and morons and at least once threw a chart and a vial of blood at them.

The other prong of the case was the behavior of nurse coworkers who were assigned to precept the nurse in question when she transferred to another specialty within the surgery department.

The nurse coworkers berated the victim with blatant derogatory references to her Hispanic origin and Hispanic culture.

An employee seeking to sue an employer or former employer for discrimination must show that harassment or differential treatment was in some way related to the alleged victim's race, color, religion, national origin, age, disability, etc.

Mistreatment not based on a protected characteristic is not considered grounds to sue for discrimination.

UNITED STATES DISTRICT COURT
ILLINOIS
December 9, 2024

The US District Court for the Northern District of Illinois dismissed the allegations of harassment by the physician. The allegations will stand as to the harassment by the nurse's nurse coworkers.

The physician's acting out, although very problematic, could not be proven to have any direct tie to the nurse's Hispanic national origin. The physician never said anything racially offensive, and acted out the same toward all the nurses without regard to their race or national origin. **Torres v. Med. Ctr., 2024 WL 5040839 (N.D. Ill., December 9, 2024).**

Breast Milk Pumping: Court Says Circulating Nurse's Rights Not Violated, Suit Dismissed.

The US Patient Protection and Affordable Care Act of 2010 amended the US Fair Labor Standards Act (FLSA).

The FLSA now requires employers to provide reasonable break time for employees to express breast milk, and a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which can be used by the employee to express breast milk.

The FLSA does not require an employer to pay an employee for the break time used to express milk.

Although it is important that a mother be able to express milk at about the same times every day, the FLSA does not require the employer to provide breaks at the same times each day.

The realities of the particular workplace must be taken into account when determining if the employer has made a reasonable effort to accommodate the employee's needs.

A hospital surgical department is a prime example of a hectic workplace where considerable give and take is required by the employee as well as the employer in allowing workplace breaks.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
December 9, 2024

A nurse who worked as a circulating nurse and as a scrub nurse in a surgical center was fired following an error her supervisors deemed inexcusable negligence in mixing a lidocaine solution for injection that was requesting by the surgeon during a procedure.

The nurse countered her termination by suing her former employer for allegedly violating her rights as a new mother to express breast milk on the job at the hospital.

The lawsuit pointed to a specific incident that occurred a month before the error with the lidocaine in the operating room.

On that day the surgical department, not uncommonly a hectic and stressful place to work, was particularly chaotic due to last-minute changes in patients, rooms, supplies and equipment.

In the midst of an unusually difficult day the nurse in question insisted she be relieved and leave the operating room to express milk exactly at her regular time.

That caused the surgeon to yell at her and her nursing supervisor to criticize her.

Nevertheless, she was relieved and did go out to take care of her business.

Court Sees No Violation of Rights

The US District Court for the Eastern District of Pennsylvania noted that the nurse was able almost every day to take breaks at the same time twice daily.

She was given exclusive use of a conference room, and when that room was in use she could privately use a room adjacent to a manager's office.

The rooms made available were usually free from inadvertent intrusions, but she was not entitled to lock herself in the rooms for absolute privacy.

The Court pointed out that a surgical center is an unusually hectic place to work. Scheduling demands can legitimately take precedence over a mother's preferred schedule to express milk.

An ironclad grant of specific times to express milk is not a right guaranteed by law. The employer is simply required to be reasonable in this regard. **Walls v. Surgical Center, __ F. Supp. 3rd __, 2024 WL 5047856 (E.D. Penna., December 9, 2024).**

Prosecution, False Arrest: Nurse Unable To Sue DEA Investigator.

An Advance Practice Nurse who owned and operated a family health care clinic, was charged by an agent of the US Drug Enforcement Administration (DEA) with writing hundreds prescriptions illegally for controlled substances used for weight loss.

The nurse's criminal trial ended in an acquittal on all charges. The Indiana Nursing Board revoked her license, and refused to give it back after acquittal on the criminal charges, until a state court in Indiana ordered her license restored.

After resolution of the case in her favor, the nurse sued the DEA agent, the DEA and the US government for false arrest and malicious prosecution.

A person who is arrested or prosecuted without probable cause has the right to sue for violation of their rights.

However, the question of probable cause hinges on the information available when the arrest and prosecution occurred, not whether the charges were finally thrown out in the accused's favor.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
December 5, 2024

The US Court of Appeals for the Seventh Circuit (Indiana) ruled that the DEA agent did not lack probable cause to instigate an investigation.

Once initiated, the prosecution apparently bogged down over confusion as to which medications the Indiana nursing regulations allowed an advance practice nurse to prescribe.

It was also not proven that the nurse could not legally use the supervising physician's DEA number. **Lynch v. US, 2024 WL 4986852 (7th Cir., December 5, 2024).**

Workplace Discipline: Supervisor's Remarks Tend To Prove Race Bias.

The Caucasian supervisor for an African-American CNA once remarked that she did not like the CNA's hair extensions, a style popular with African-American women, because they made her look too "ghetto."

Then an incident occurred in the parking lot of the nursing home where they worked, involving a Caucasian, a Hispanic and the African-American CNA.

The Hispanic and the African-American were written up for workplace violence and the African-American was fired. Nothing happened to the Caucasian.

As a rule, an isolated offhand remark with a racial overtone by a supervisor does not create a hostile work environment.

Uneven discipline of a minority for the same offense as a non-minority may be evidence, but it is not conclusive proof that racial bias was to blame.

UNITED STATES DISTRICT COURT
NEW YORK
November 25, 2024

The US District Court for the Southern District of New York upheld the African-American CNA's case of racial discrimination against her former employer.

The remark about her hair extensions, which carried a subtle but real racial overtone, would not be enough to create a racially hostile work environment.

The differential disciplinary treatment handed down to the two CNAs was not conclusively discriminatory, but it was a close case.

However, taken together, the biased remark and the unequal discipline, did add up to grounds for the African-American to sue. **Snowden v. County, 2024 WL 4882700 (S.D. N.Y., November 25, 2024).**

Arbitration: CMS Regulations Do Not Determine Validity Of The Agreement.

The arbitration panel ruled in favor of the long term care facility, on the legal technicality that any healthcare negligence case in Pennsylvania must be supported by a certificate of merit filed along with the court case.

The resident's son, now acting as the personal representative of the deceased resident's probate estate, filed suit to annul the underlying arbitration agreement on the grounds it violated Federal regulations that require an arbitration agreement to be explained to the resident and the resident's representative.

Federal regulations for long term care require a facility, if an agreement is sought for binding arbitration of disputes, to explain the terms of the agreement fully to the resident and the resident's representative, in a way that can be understood by them.

However, violation of the regulations does not render the arbitration agreement void or unenforceable.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
December 2, 2024

The US Court of Appeals for the Third Circuit (Pennsylvania) ruled that Federal regulations for long term care do require an arbitration agreement to be fully explained.

However, Federal regulations do not carry the authority to determine the validity of an agreement between a resident and the resident's long term care provider, and CMS has expressly disclaimed it.

Other legal remedies may be available, but the legal reasoning behind this case is flawed. **Williams v. Health, 2024 WL 4927258 (3rd Cir., December 2, 2024).**

Americans With Disabilities Act: Employee Protected From Employer Retaliation.

A caregiving employee working in an addiction treatment facility was terminated the next day after she took a day off for medical evaluation of her gastroesophageal reflux disease.

The reason given her was violation of the facility's policy against workplace violence.

Three weeks earlier she had been involved in a verbal argument with a coworker.

Months earlier she had confessed to a supervisor that she owned a gun.

There was no evidence the employee had brandished her gun or mentioned her gun or made a threat with her gun or had had any physical contact when she argued with her coworker weeks before the day she was fired.

Yet she was fired the day after her medical appointment.

Court Sees Evidence Of Employer Retaliation

The US District Court for the Eastern District of Pennsylvania went over the legal parameters for a medical condition to be considered a disability for purposes of disability discrimination.

The Court went on to say that this employee, disabled or not, still had a case of employer retaliation in violation of the disability discrimination laws for being fired in retaliation for attending to a medical condition.

It was inescapable that being fired the day after a medical appointment for a legitimate medical need was an act of retaliation for taking the time off for the medical appointment.

A disability is generally a medical condition that significantly impairs a person's ability to engage in a basic activity of life.

It was not clear that this employee's gastroesophageal reflux disease was a disability, but that did not influence the Court's decision that employer retaliation had taken place, given the almost instantaneous reaction to fire the employee as soon as she was back at work. **Scott v. Center, 2024 WL 5188042 (E.D. Penna., December 20, 2024).**

Discrimination and retaliation are two separate legal concepts.

An employee may have a case of employer retaliation for the employee having exercised the employee's rights, without having a case of disability discrimination.

Disability discrimination requires fundamentally that the employee has a disability as disability is defined by law for purposes of disability discrimination.

A short term condition that resolves without complications likely will not be seen by a court as a disability.

Retaliation, on the other hand, does not necessarily require that the employee's condition that sparked retaliation by the employer was an actual disability as defined by law.

Retaliation must be proven by the employee to have been caused by the employer's reaction to the employee's condition.

The most obvious way to prove causation is so-called temporal proximity.

An employee disciplined or fired shortly after asserting a protected right is likely to be seen as a victim of retaliation.

A long delay means the proof is likely insufficient.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
December 20, 2024

Arbitration: Patient Signed Power Of Attorney With "X."

When the patient was admitted to the nursing home, his daughter signed all the admission paperwork as the responsible party, including an arbitration agreement that would apply to future legal controversies over the patient's care.

After the patient died a year later, the same daughter, now administrator of the probate estate, sued the nursing home for negligence.

The nursing home countered by petitioning for arbitration rather than jury trial.

The Court can order arbitration instead of a civil jury trial only if there is a valid arbitration agreement in existence.

The validity of an arbitration agreement signed by someone other than the patient hinges on the validity of the power of attorney the patient executed in favor of that chosen person.

This patient signed the power of attorney with an X, but his signature can be corroborated by two witnesses who also signed the power of attorney and by a notary who notarized it.

COURT OF APPEALS OF ARKANSAS
December 4, 2024

The Court of Appeals of Arkansas ruled the daughter had authority under a valid power of attorney and had agreed to arbitration on the patient's behalf.

The resident signed the power of attorney simply with an X. The Court ruled that such a signature is presumed valid if signed in the presence and under the direction of a notary public whose seal on the document ostensibly shows that the identity of the signer and intent to sign voluntarily have been verified. **Care Center v. Marshall, 2024 WL 4964743 (Ark. App., December 4, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Emergency Room: Hospital Obtained Patient's Insurance Information.

The Supreme Court of Idaho recently ruled against a medical collection agency's lawsuit to collect payment from a former hospital patient for the emergency department bill.

There was no doubt the patient received services from the emergency physician's medical group in the hospital's emergency department and agreed to pay for those services.

However, the Court took the view that by obtaining the patient's health insurance information, an implied contractual promise was created to submit the bill to the patient's health insurance before attempting to collect the bill or arranging for a collection agency to do so.

The Court did not find it relevant that the patient's insurance information was obtained by a representative of the hospital, while the bill in question was owed to the emergency department physician's corporation.

It was necessary to submit the bill to the insurance before suing to collect. **Medical Recovery v. Melanese, __ P. 3d __, 2024 WL 5162952 (Idaho, December 19, 2024).**

HIV Screening: New Recommendations In Draft Form From CDC.

On December 3, 2024 the US Centers for Disease Control and Prevention (CDC) announced the availability in draft form of a guidance document titled *Revised Recommendations for HIV Testing of Adults, Adolescents and Pregnant Women in Health Care Settings*.

According to the CDC, the number of persons living with HIV in the US has increased since 2006, when the last recommendations were published, to the present, but the incidence of new cases declined markedly during that period.

There are now improved retroviral treatments being used, improved pre-exposure prophylaxis, improved post-exposure prophylaxis and improved self-testing which improves testing, diagnosis and treatment.

We have downloaded the new draft recommendations as they are to be found on the CDC's website and posted them on our website.

http://www.nursinglaw.com/CDC120324.pdf

FEDERAL REGISTER December 3, 2024
Pages 95793 - 95794

Patient Claims Given Defective Walker: Court Sees Grounds For Disability Discrimination Suit.

An individual arrived at the hospital and requested a walker she needed to be able to use the restroom before going about her business at the hospital.

The record in the US District Court for the Southern District of Ohio is sketchy as to the individual's reason for being there, inpatient or outpatient care or visitation.

Those details were probably omitted because they were irrelevant. The patron was a business invitee on the premises for some purpose connected with the hospital.

Not omitted from the Court's analysis was the fact the individual was not receiving medical care at the moment when she arrived and asked to use the restroom.

Therefore any claim against the hospital for the walker being defective, or the hospital's refusal to provide a fully functional walker, is legally not in the realm of medical or healthcare malpractice.

A hospital is expressly defined as a place of public accommodation by US Federal law, even if the hospital is privately owned and operated.

A hospital must provide reasonable accommodation to a patron's known disability, like mobility issues.

A hospital cannot deny a disabled patron the ability to receive services on the same basis as a non-disabled person.

UNITED STATES DISTRICT COURT
OHIO
December 16, 2024

A hospital is a place of public accommodation.

A place of public accommodation is required to provide reasonable accommodation to the needs of a disabled patron so that the disabled patron can participate in the services of the place of public accommodation on the same basis as a person who is not disabled.

The word "public" may be confusing, in that privately owned and operated business premises open to the public are considered places of public accommodation.

It is important at this stage in the litigation to note that the Court has only ruled that the lawsuit raises a valid legal theory of disability discrimination.

Proof still must be tendered that the walker was in fact defective and that the alleged defect caused the plaintiff's fall. **Byrnes v. Hospital, 2024 WL 5116559 (S.D. Ohio, December 16, 2024).**