LEGAL EAGLE EYE NEWSLETTER

November 2024 *For the Nursing Profession* Volume 32 Number 11

Skin Care: No Liability Without Medical Opinion Ruling Out Medical Comorbidities.

The ninety year-old resident came to the nursing home with diagnoses of Alzheimer's dementia, heart failure, hypertension, peripheral vascular disease, arthritis and pneumonia.

She was assessed by the nursing staff as significantly impaired cognitively and was found to be incontinent of bowel and bladder.

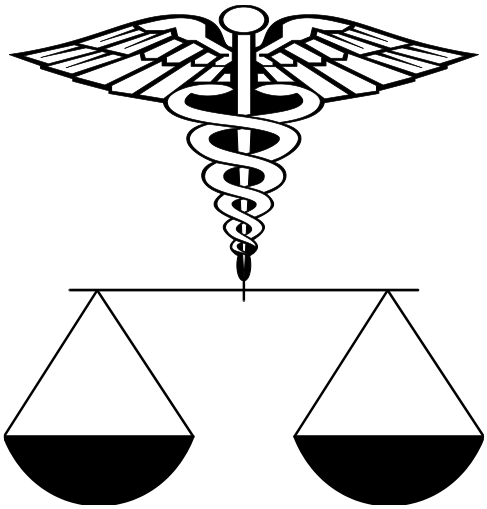
During her stay in the nursing home she developed pressure sores on her lower back and buttocks that progressed to Stage IV pressure ulcers along with unstageable wounds on her coccyx and sacrum.

In the ensuing lawsuit the family's nursing expert was able to offer an expert opinion that the wound assessment and care provided at the nursing home fell below the accepted standard of care.

However, the family's nursing expert expressly disclaimed being able to provide an expert opinion linking the significant lapses in the patient's skin care to the development and progression of her skin lesions.

The family's lawyers argued to the trial judge that it would be common knowledge that lapses in skin care standards by a patient's nursing caregivers would naturally lead to breakdown of skin integrity.

The trial judge disagreed, and granted summary judgment to the nursing home for failure of proof by the patient's family.



The patient in a healthcare negligence case must provide testimony from an acceptable expert witness as to the relevant standard of care, the defendant healthcare provider's breach of the standard of care and a causal connection between the provider's breach of the standard of care and the harm alleged to have befallen the patient.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
October 23, 2024

The Superior Court of New Jersey, Appellate Division, agreed with dismissal of the family's lawsuit.

Evaluation of the patient's medical issues as comorbidities affecting the ability of nursing caregivers effectively to stem the progression of skin integrity breakdown is a subject for a medical expert.

No such medical expert having been offered in support of the family's case, the case against the nursing home had to be dismissed.

It would not be within the scope of nursing diagnosis to correctly gauge the significance of comorbidities, and certainly not a matter within the everyday common sense of lay persons on a jury.

The Court pointed to the statutory definition of the scope of nursing practice, which sets the limits of nursing diagnosis.

Nursing professional practice involves diagnosing and treating human responses to physical and emotional health problems through care supportive of wellbeing and provision of medical care prescribed by a licensed physician.

Nursing diagnosis includes identification and discrimination between physical and psychosocial signs and symptoms essential to formulation and execution of a nursing care regimen within the scope of nursing practice. **Polimeda v. Nursing Center, 2024 WL 4553359 (N.J. App., October 23, 2024).**

Inside this month's issue...

November 2024

New Subscriptions
See Page 3

Recovering Alcoholic: Court Turns Down Nurse's Disability Discrimination Lawsuit.

A nurse who is a recovering alcoholic filed a lawsuit alleging disability discrimination by her employer in the fact she has not been promoted to the next level in the hospital's clinical advancement track.

She still works for that same employer despite her lack of success with advancement.

The hospital's human resources process requires nurses at Clinical Level III who are interested in advancement to Clinical Level IV to apply for advancement and then renew their application and supporting documentation after two years if advancement has not been achieved.

Nurses at Clinical Level III who did not succeed at being offered advancement, who do not reapply for advancement, are automatically demoted to Clinical Level II with corresponding reduction in pay.

The California Court of Appeal noted at the outset of its legal analysis that approximately one-hundred other nurses were demoted for failure to attain advancement followed by failure to reapply for advancement with an acceptable application package.

The Court also noted that the issue of the nurse being a recovering alcoholic only came up twice during her tenure, before the present lawsuit.

She admitted when she interviewed successfully for hiring in 2018 that a gap in her employment history in 2004 was related to substance abuse treatment.

The only other incident was when a coworker in the break room teased her about whether she drank "potato juice," a joking reference to vodka.

The Court could find no evidence that the nurse's protected legal status as a recovered substance abuser, by law a person with a disability, had anything to do with her inability to advance.

It was a legitimate non-discriminatory factor that the nurse failed to follow the hospital's legitimate expectation that she follow the rules to apply for clinical advancement or face the same consequences as anyone else, disabled or not. **Nurse v. Med. Ctr., 2024 WL 4540239 (Cal. App., October 22, 2024).**

An employee is considered a qualified individual with a disability if a former pattern of substance abuse has been followed with efforts at rehabilitation that have resulted in a meaningful period of sobriety.

Like any other disabled person, a recovered substance abuser is a member of a legally protected class.

Adverse employment action affecting the recovered employee can be considered disability discrimination if the employee was qualified for their position and was fully meeting their employer's legitimate expectations.

In this case it was a legitimate expectation that a nurse who wished to take advantage of opportunities for advancement follow the same process as everyone else to reapply for advancement.

There was no differential treatment involved in this nurse facing the same consequence, demotion to the next lower rung on the ladder, for not reapplying for advancement to the next level above the nurse.

There is no evidence the nurse's prior alcohol problem itself had any bearing on her employment.

CALIFORNIA COURT OF APPEAL
October 22,, 2024

Nursing Home Residents' Bill Of Rights: No Need To Sue Nurse Practitioner.

The deceased resident's family's lawsuit against the nursing home looked like it would devolve into a battle of the experts.

The issues included the adequacy of the skin care assessments and wound care provided in the nursing home, with due deference to the resident's clinical condition which might have made his skin care issues unavoidable.

Before reaching the underlying substantive issues, the nursing home petitioned for dismissal on the grounds the family had not made the nurse practitioner a defendant in the lawsuit, who had provided care.

Nor had the family alleged or offered evidence the nurse practitioner was a nursing home employee as opposed to an independent contractor.

The state's Nursing Home Residents' Bill of Rights gives residents the right to safe and effective nursing care.

It is not necessary in order to fix liability on the nursing home to include the individual caregiver as a defendant in the lawsuit.

COURT OF APPEALS OF OHIO
October 10, 2024

The Court of Appeals of Ohio ruled the family's argument irrelevant.

The nurse practitioner did not have to be sued as an individual defendant.

State law imposes a duty on the nursing home itself to provide safe and effective care. Negligence does not have to proven by a particular caregiver, nor must that caregiver be proven to be a nursing home employee for whom the nursing home is vicariously liable. **Orac v. Nursing Home, 2024 WL 4457153 (Ohio App., October 10, 2024).**

Patient Held Involuntarily By Private Hospital: Court Sees No Violation Of Constitutional Rights.

After an argument with his fiancé the patient ingested a large number of his prescribed blood pressure pills in an apparent attempt at self harm.

The fiancé called an ambulance that took him to the emergency department of a nearby private hospital.

At the hospital his fiancé was not allowed to see him. His personal property was taken away and he was placed in an area of the hospital separate from the emergency department and kept there against his will.

Several police officers were present in the emergency room as the events transpired, but they did not participate in his admission or detention at the hospital.

The patient had a difficult time at the hospital. He was initially treated with IV Ativan when he apparently went into alcohol withdrawal and started experiencing delirium tremens. Then he was given IV Depakote which caused an allergic reaction that placed him in the medical ICU for an extended period.

Eventually he was released from the hospital with no permanent complications.

He sued the hospital for violation of his Constitutional rights in Arizona state court. When served with the court papers, the hospital had the case removed to US Federal District Court in Arizona.

As a rule a citizen's Constitutional rights can be violated only by the actions of a governmental agency or authority or a private party acting under color of governmental authority.

A private party who inappropriately restrains a citizen's liberty in a manner that would be a Constitutional rights violation by the police or other governmental authority, does not commit a violation of the citizen's rights.

Common law false imprisonment or assault and battery may occur and provide grounds for a civil lawsuit, but that is not a violation of Constitutional rights.

There are situations where private parties fulfill traditionally governmental roles, but the court must parse the facts of the individual case to see if one or more such exceptions exists to the general rules.

UNITES STATES DISTRICT COURT
ARIZONA
October 11, 2024

The District Court ruled for dismissal of the patient's allegations his Constitutional rights were violated.

The Court found none of the exceptions present to the rule that exempts a lawsuit against a private party from the rule that a private party cannot violate another private party's Constitutional rights.

Public Function

When a private individual or corporation takes over a traditional public function, the private individual or corporation is deemed to be acting in the place of the government and can, in that capacity, violate someone's Constitutional rights.

Treating mental health patients, even those who might qualify for involuntary commitment by a court, is not a traditional governmental action.

Joint Action

When a private party acts in concert with a governmental authority, like the police, the private party is essentially no longer a private party and can violate someone's Constitutional rights.

Governmental Compulsion

When a private party has been compelled by the government to submit to involvement with a private individual or corporation, the private individual or corporation is considered engaged in governmental action.

Governmental Nexus

This somewhat nebulous concept allows the court to look for a nexus or intertwined concerted action between a private party and an agency of governmental authority. **Douglass v. Hospital, 2024 WL 4475093 (D. Arizona, October 11, 2024).**

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

Published monthly, twelve times per year.

Print edition mailed First Class Mail

Electronic edition distributed by email file attachment to our subscribers.

E. Kenneth Snyder, BSN, JD
Editor/Publisher

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

kensnyder@nursinglaw.com
www.nursinglaw.com

Chemical Sensitivity: Hospital May Terminate Nurse For The Nurse's Own Safety.

Over the course of several years the hospital attempted to work around a nurse's fragrance allergy and sensitivity to chemical agents routinely present in many healthcare institutional environments.

An effort was made to reduce exposure to fragrances worn into the facility by patients and visitors from outside and by the nurse's coworkers. The effort included seeing that the nurse's work station was adequately ventilated.

Unfortunately episodes of serious reactions could not be eliminated entirely.

When the nurse had a reaction it went far beyond a mere annoyance.

The nurse usually had to be taken from her work station to the emergency room possibly after a coworker nurse or physician administered one of the epi pens that the nurse kept on hand.

One episode involved vapors from the bleach used on the floors inexplicably wafting its way into the nurse's work station through the ventilation system.

The final straw occurred when a lab technician unthinkingly sprayed perfume into the air to cover up an unpleasant odor.

That sent the nurse into outright anaphylactic shock for which she was taken to the emergency room unconscious as an emergency patient for epinephrine and an IV for fluid replacement.

Court Sees No Disability Discrimination

The US District Court for the District of New Hampshire rejected the nurse's argument that her former employer was guilty of paternalism for removing her from the workplace based on her employer's concern for her safety.

An employer is not required to provide an accommodation that imposes an undue hardship on the employer.

An undue hardship is present when an accommodation, an unreasonable accommodation, imposes an unacceptable safety hazard to patients, other staff or the employee in question.

The hospital does not have to accommodate the nurse by continuing to try to make the best of her untenable situation. **Remillard v. Hospital, 2024 WL 4349851 (D. N.H., September 30, 2024).**

The nurse insisted her employer accommodate her disability by declaring itself a fragrance-free facility and implementing policies to enforce a fragrance-free environment.

The nurse's argument was that a comparable oncology center in the local area had successfully implemented a fragrance-free policy.

The hospital countered that a categorical requirement for a fragrance-free environment is unreasonable as an accommodation to an employee's disability.

This Court is not able based on the evidence in this case to rule on that point one way or the other.

An accommodation requested by a disabled employee as a reasonable accommodation is not reasonable if it imposes an undue hardship on the employer.

Undue hardship includes a demonstrable threat to the health or safety of patients, staff or the disabled employee requesting the accommodation.

There is ample proof even with everything the employer did here, a serious an unavoidable threat to the nurse will continue if she is permitted to stay on at the hospital.

UNITED STATES DISTRICT COURT
NEW HAMPSHIRE
September 30, 2024

FMLA: Court Sees No Interference With Employee's Rights.

A management-level nurse began to feel that her previous good relationship with her own supervisor was becoming strained after she returned to work from FMLA medical leave.

She came under closer scrutiny than before. In particular she was confronted about hours she claimed she worked at home rather than on-site.

The ensuing investigation resulted in the nurse's termination for billing work hours at home that she did not actually work, according to management.

The nurse sued her former employer for interference with her FMLA rights.

For a lawsuit alleging interference with rights under the US Family and Medical Leave Act (FMLA), it is not enough that an employee took leave and later faced adverse employer action.

The employee must prove that taking FMLA leave was the motivation for the employer's adverse action.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
October 15, 2024

The US Court of Appeals for the Third Circuit (Pennsylvania) found two grounds to dismiss the case against the hospital.

The nurse took FMLA leave in October and was terminated the following March following the hours-worked investigation. Afterward does not equal because of, especially with a long time lag.

The person at the hospital who recommended the nurse's termination over alleged fraudulently billed hours apparently did not know that the nurse had taken FMLA leave, and therefore could not have made the decision based on the fact that FMLA leave was taken. **Coleman v. Hospital, 2024 WL 4490602 (3rd Cir., October 15, 2024).**

Nursing Home Administrator: No Relevance Except As To Diversity Jurisdiction.

The deceased resident's family sued the corporation that owned and operated the nursing home located in Pennsylvania, alleging negligence in the resident's care.

The case was filed in Pennsylvania state court. It alleged that the family are residents of Pennsylvania and the corporate defendant is a Pennsylvania corporation.

However, the corporation went to the US District Court for the Eastern District of Pennsylvania with proof the corporation is actually an Ohio corporation lawfully doing business in Pennsylvania. On that basis the Pennsylvania Federal Court took over diversity jurisdiction.

Diversity of state citizenship between the parties on opposite sides of a civil lawsuit gives a Federal District Court jurisdiction, even if the case does not involve interpretation or application of Federal law.

The Federal District Court has the option not to accept a person or corporation as a party to the case whose presence has no bearing on the outcome, but whose addition was meant only to defeat diversity jurisdiction.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
October 22, 2024

The Pennsylvania Federal Court ruled the family cannot add the nursing home administrator, a citizen of Pennsylvania, as a defendant.

That was seen by the Court as nothing but a blatant tactical maneuver to force the case back to state court in Pennsylvania, with no actual effect on the outcome. **Etter v. Rehab, 2024 WL 4543198 (E.D. Penna., October 22, 2024).**

Nurse Whistleblower: Law Does Not Protect Disagreement With One's Supervisor.

Would-be whistleblowers must make themselves aware of what state law does and what state law does not protect from employer retaliation.

In this case the common law in Michigan recognizes an exception to the common law rule of employment at will, that covers a situation where an employee's discipline or termination would violate the state's public policy.

Public policy favors patients receiving safe and effective care from nursing caregivers.

However, a state statute, not the older common law, governs what happens when a healthcare employee faces repercussions for blowing the whistle on objectionable practices by the employee's employer.

The state statue only protects healthcare whistleblowers who report illegal conduct by their healthcare employer to a public agency or authority.

Inadequate nurse staffing is a violation of the law, but the violation must be reported to a public agency or authority for the reporter to be legally protected as a healthcare whistleblower.

Complaining to a supervisor is not enough.

COURT OF APPEALS OF MICHIGAN
October 10, 2024

An LPN believed it was unsafe and a violation of state regulations to have one nurse in addition to herself and two nursing assistants assigned to forty-one patients in a nursing home.

While the other nurse was on lunch break, which left only one nurse, herself, on the floor, she went and complained to the charge nurse.

The charge nurse openly accused the nurse of insubordination for complaining, and told her she could go home if she liked as soon as the other nurse returned from break.

The nurse chose to go home. Later that afternoon she was terminated by the charge nurse for patient abandonment.

Months afterward the nurse tried to apply for hiring at another nursing home under the same corporate umbrella, but was turned down after she admitted being fired from the company's other facility.

No Whistleblower Protection

The Court of Appeals of Michigan ruled the fired nurse was not entitled to legal protection under the rubric of the state's healthcare whistleblower protection statute.

The Court acknowledged that Michigan does not adhere to the common law rule of employment at will when the circumstances of an employee's discipline or termination point to a violation of public policy by the employer.

However, the Court had to rule against the nurse in this case because the Michigan whistleblower statute that applies specifically to healthcare employees requires the healthcare employee to report what is believed to be illegal employer conduct to a public authority or agency.

In this case there was illegal nursing short-staffing, but the nurse only complained about it to her charge nurse and never contacted a state regulatory agency or authority with her allegation.

That fact made the nurse ineligible for consideration as a whistleblower and allowed her termination to stand without recompense. **Hadden v. Rehab, 2024 WL 4471093 (Mich. App., October 10, 2024).**

Worker's Comp: Assault By Coworker Is Not Compensable.

Two nursing assistants were supposed to be working together conducting COVID testing at an elementary school.

Apparently the victim-to-be bumped into the other, who then picked up a folding chair and struck the victim. The victim called the police and an ambulance and was taken to an emergency room.

Their stories are not consistent. The victim claimed there was an unresolved verbal altercation between the two earlier that day. The other claimed there was no prior problematic interaction.

Worker's compensation benefits are available to an employee who sustains an injury arising out of and in the course of the employee's employment.

An assault by a coworker on the job does not arise out of or in the course of the employee's employment.

As in this case, an assault on the job by a coworker arises out of personal animosity between two individuals who happen to be working in the same place at the same time. It has nothing directly to do with doing the job itself.

NEW YORK SUPREME COURT
APPELLATE DIVISION
October 10, 2024

The New York Supreme Court, Appellate Division, ruled that the injured employee's employer was not liable to pay worker's compensation benefits, as the injury was a private matter that did not arise out of and in the course of the employee's employment with the employer. **Lebeau v. Employer, __ N.Y.S.3d __, 2024 WL 4453990 (N.Y. App., October 10, 2024).**

Expert Witnesses: CRNA Accepted As Expert As To CRNA Defendant.

The patient sued her Certified Registered Nurse Anesthetist (CRNA), her physician anesthesiologist and their medical group for negligence in her care.

Before reaching the question whether negligence was committed, the defendants petitioned for dismissal on the basis that the patient did not provide an affidavit of merit from an acceptable expert witness.

The patient must provide an affidavit of merit from an acceptable expert at the commencement of a healthcare negligence case, before the case can proceed to the questions of negligence and damages.

At the commencement of a lawsuit for healthcare negligence the patient or the patient's family's representative must provide an affidavit of merit from an acceptable expert witness attesting to reasonable grounds for the lawsuit.

The affidavit must come from a provider in the same field as the defendant, who has recent relevant practice experience in the same field as the defendant.

SUPERIOR COURT OF DELAWARE
October 15, 2024

The Superior Court of Delaware allowed the patient's lawsuit to proceed against the CRNA and the medical group, but not against the anesthesiologist.

The Court ruled a CRNA with the necessary recent credentials is an acceptable expert to testify against a CRNA.

However, medical anesthesiology is a different field of practice, in which a CRNA is not an expert.

The patient was given thirty days to obtain an acceptable physician expert for her case against the anesthesiologist. **Cross v. CRNA, 2024 WL 4503673 (Del. Super., October 15, 2024).**

Patient Slips On Water On Floor: Nurse Created The Hazard.

A nurse was in the patient's room with the patient, when the sound of gunshots came from the hallway.

The nurse immediately ran out of the room to see what was going on. In the process the nurse knocked the patient's water pitcher down and spilled its contents on the floor.

The patient got himself out of bed to go over and close the door to his room, but in the process slipped and fell on the water on the floor from his spilled water pitcher.

In slip and fall cases on commercial premises, allegedly caused by a puddle of liquid on the floor, the alleged victim must prove the owner of the premises had actual or constructive notice of the hazard before the victim slipped and fell.

Even when the victim's story is accepted that they did in fact slip and fall, their case can go uncompensated without actual proof the owner of the premises knew or should have known about the hazard.

NEW YORK SUPREME COURT
APPELLATE DIVISION
October 16, 2024

The New York Supreme Court, Appellate Division, ruled it would dispense with the usual rules for slip and fall cases on commercial premises.

This injured patient, a hospital patron, did not have to prove actual or constructive notice of the hazard on the hospital's part.

The nurse, an employee and agent of the hospital, created the hazard through her own actions. **Malaspina v. Med. Ctr., __ N.Y.S.3d __, 2024 WL 4498269 (N.Y. App., October 16, 2024).**

Long COVID: Court Agrees With Employer, Nurse Able To Return To Work Without Restrictions.

An emergency room registered nurse came down with COVID and went on worker's comp in October 2020.

After a series of developments including a physician's independent medical exam required by the employer, the nurse was declared fully able to return to work in September 2021.

In October 2024 the Commonwealth Court of Pennsylvania turned down the nurse's claim of continuing disability from long COVID and upheld his removal from the worker's compensation rolls in 2021.

Video Surveillance

As in many disability disputes between employers and employees in a broad range of industries, in this case the hospital obtained surreptitious video surveillance of the nurse while he was off work suffering from the effects of COVID-19.

The video footage was obtained in advance of the physician's independent medical examination.

The physician would have the video footage available as evidence in addition to the physical medical findings to render an opinion as to the extent of the employee's disability, if any.

According to the court record, the surreptitious video recording showed the nurse, while allegedly disabled from his employment due to COVID, out and about driving his car and patronizing a restaurant, McDonalds, a department store and a drug store.

He was also video recorded stacking logs next to his driveway, using a leaf blower on and around his property and washing his windows outside.

The Court sided with the physician who performed the independent examination that the symptoms reported by the nurse were entirely subjective and were not corroborated by the objective findings.

The Court ruled that the nurse's own physician's opinions could be discounted due to the fact that physician was not fully aware of all the circumstances and relied only on the patient's subjective complaints. **Petitioner v. Hospital, 2024 WL 4523871 (Penna. Commwlth., October 18, 2024).**

It was appropriate for the employer to enter into evidence the nurse's social media posts posted at the outbreak of the COVID-19 pandemic.

The nurse's social media posts consistently downplayed the susceptibility of healthcare personnel to COVID and the extent to which an otherwise healthy healthcare worker could be rendered indisposed by the virus.

According to the nurse himself, COVID was a joke, there was less than one-percent chance of a healthy individual getting it and the pandemic was a panic created by the media.

The other evidence for the hospital was the opinion of the physician who performed an independent medical examination.

Cardinal signs of long COVID are cognitive changes manifested by speech impairment, impairment of balance, motor weakness and dizziness.

The nurse in this case had no difficulty hearing or speaking clearly, could stand and walk without dizziness or balance issues and had full range of motion and strength in his extremities.

COMMONWEALTH COURT OF PENNSYLVANIA
October 18, 2024

HIPAA: No Basis To Sue Nurse For Alleged Violation.

An adult relative sued a nurse and other parties claiming a child's right to medical confidentiality was violated by the nurse.

The adult relative claimed that the nurse included a progress note in the child's file as to information the adult had expressed in an interview between the adult and a social worker at the facility.

The US Health Insurance Portability and Accountability Act (HIPAA) was enacted by the US Congress to provide comprehensive protection to patients' confidential healthcare information.

However, in drafting the Act the US Congress nowhere included a right for private parties to sue their healthcare providers who are guilty of a violation of their patient's right to medical confidentiality as provided by the Act.

UNITED STATES DISTRICT COURT
OREGON
October 21, 2024

The US District Court for the District of Oregon found two major flaws in the lawsuit against the nurse, either one of which would mandate dismissal.

It was not clear from the lawsuit papers filed by the adult what the adult's relationship was with the child except that the two apparently were related.

As a rule, an adult, even a parent, does not have a right to sue on a child's behalf unless the adult has been formally declared a legal guardian or guardian *ad litem* for the child.

Even if the adult had standing to sue, the case against the nurse was void, as the US HIPAA does not contemplate civil lawsuits by private parties against their caregivers. **Henderson v. Nurse, 2024 WL 4533803 (D. Oregon, October 21, 2024).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Shaken Baby Syndrome: Texas Inmate's Conviction Overturned Based On New Scientific Understanding Of Syndrome.

At the time of this writing, a Mr. Roberson, a Texas death row inmate, has his legal situation and his very life hanging in a precarious balance being closely followed by the media.

He was sentenced to death for murder of an infant through shaken baby syndrome.

The Other Texas Shaken Baby Case

An entirely separate case involves a now-former Texas inmate, a Mr. Roark, who was granted a writ of *habeas corpus* by the Court of Criminal Appeals of Texas on October 9, 2024 and is now freed from the balance of a thirty-five year prison sentence pending a new trial.

The gist of the legal theory of the case that sent him to prison in 2001 was that a specific cluster of clinical findings in a very young infant can have no other explanation than violent shaking at the hands of a caregiver.

The supposed logic was that a caregiver having exclusive close access to the infant, and a cluster of findings turning up afterward, leaves no doubt the caregiver murdered the infant by shaking.

New Scientific Evidence Accepted In *Habeas Corpus* Proceeding

An accidental short distance fall could cause the same injuries the infant was diagnosed with.

The force necessary to cause the injuries seen in this case would have broken the infant's neck. The suspect could not have shaken the baby hard enough.

Retinal hemorrhage can be caused by other factors besides shaking.

An infant can appear neurologically normal for several days after the onset of occult bleeding from a chronic subdural hematoma.

Delayed onset of neurological signs would leave open the possibility that what caused the subdural hematoma occurred days before the suspect had the infant in his presence, not necessarily right before he brought the infant to the hospital.

Blood on the brain could have been related to a nosebleed that started spontaneously. **Ex parte Roark, __ S.W.3d __, 2024 WL 4446858 (Tex. Crim. App., October 9, 2024).**

Narcan: Court Says Administration In Hospital Does Not Necessarily Imply Narcotics Overdose.

In a convoluted case, the mother of the deceased patient sued a law firm for legal malpractice.

The lawsuit alleged malpractice by the lawyers who drew up court papers for the mother to use in suing the hospital, papers that failed to mention an alleged narcotics overdose in the hospital as a factor in her son's demise in the hospital.

Apparently the lawyers were willing to draw up the papers for the mother, without handling the case themselves, because the evidence overwhelmingly pointed to no liability by the hospital caregivers, and no verdict and no fee for the lawyers.

In a legal malpractice case, the client or former client must prove that the lawyer's handling of the case fell below the accepted professional standard of care, and that the case which the lawyer bungled was in fact meritorious.

A patient in cardiac or respiratory distress may be given Narcan just in case narcotics are a factor contributing to the patient's situation, as Narcan itself does no harm.

In subsequent litigation, the deployment of Narcan by healthcare providers does not necessarily imply a narcotics overdose occurred or that an overdose was a factor in the patient's untimely demise.

NEW YORK SUPREME COURT
APPELLATE DIVISION
October 23, 2024

The New York Supreme Court, Appellate Division, ruled for dismissal of the case in favor of the lawyers.

One important point for the Court was that the administration of Narcan in the hospital shortly before the patient's death did not in any way prove or imply that a narcotics overdose occurred as a factor in the patient's death.

Narcan can be used by healthcare providers just in case it is an overdose but not necessarily because an overdose is in progress, according to the Court.

The lawyers also brought up the fact that the patient had an long and extensive history of opioid abuse which rendered him homebound and bedridden.

The point was he had a very high tolerance for narcotic medication that made an overdose very unlikely. **Mother v. Lawyer, __ N.Y.S.3d __, 2024 WL 4549102 (N.Y. App., October 23, 2024).**