Fire Safety: CMS Adopts 2000 Version Of Life Safety Code.

On January 10, 2003 the Centers for Medicare and Medicaid Services (CMS) published a notice in the Federal Register making adherence to the 2000 version of the Life Safety Code a mandatory condition of participation for hospitals, long-term care facilities, intermediate care facilities for the mentally retarded, ambulatory surgery centers, hospices that provide inpatient services, religious non-medical health care institutions, critical access hospitals and programs of All-Inclusive Care for the Elderly.

CMS noted that the Joint Commission at this time still goes by the 1997 version of the Life Safety Code. However, CMS has indicated that CMS will go with the newer version of the Code nevertheless.

The new regulations take effect March 11, 2003. Compliance with various portions of the Code for various types of facilities will become necessary between September 11, 2003 and March 13, 2006.

We have placed CMS's January 10, 2003 Federal Register announcement on our website at http://www.nursinglaw.com/firesafety.pdf

FEDERAL REGISTER, January 10, 2003
Pages 1374 – 1388

Needlestick: HIV Is Nurse's Industrial Injury.

The New York Supreme Court, Appellate Division, has ruled that a dialysis nurse's needlestick is an industrial injury compensable under worker's compensation. Thus the nurse has no right to sue a co-worker, a physician who failed to take medical steps to prevent seroconversion. **Carman v. Abter, __ N.Y.S. 2d __, 2002 N.Y. Slip Op. 09557, 2002 WL 31839193 (N.Y. App., December 19, 2002).**

Arbitration: Court Validates An Alternative To Lawsuits For Resolution Of Nurses' Employment Disputes.

The US Federal Arbitration Act says there shall be specific enforcement of arbitration contracts.

That means either side can be court-ordered to participate in arbitration and to desist from pursuing a lawsuit in court to resolve a dispute that is covered by an arbitration contract.

At most the court will enter a judgment adopting the arbitrator's decision, even if one side refused to participate under the arbitrator's rules. A court will not rehear the evidence and make its own decision.

General principles of contract law apply to the formation of arbitration contracts.

A contract is unenforceable only if it is unconscionable. An unconscionable contract is one where there was no meaningful choice for one side, unequal bargaining power or oppressive one-sidedness.

The nurse understood the contract, had a meaningful choice and the bargaining was not one-sided.

SUPREME COURT OF ALABAMA
December 20, 2002

A registered nurse at a hospital was considered a supervisory employee and was not covered by a union collective bargaining agreement.

Several months before an incident where a patient died under questionable circumstances, over which the nurse was later terminated, the hospital inaugurated a dispute-resolution program for her and other supervisory employees.

All such employees had to attend a two-day in-service and then had to sign an arbitration agreement agreeing to arbitration as alternative to going to court to resolve employment disputes. The hospital also announced that all supervisory employees who elected to continue working at the hospital beyond a certain date would be bound by the arbitration agreement whether they signed it or not.

After the nurse was terminated over the patient's death she nevertheless sued the hospital in court for wrongful termination, breach of contract, defamation, invasion of privacy and intentional infliction of emotional distress.

The Supreme Court of Alabama did not go into the clinical circumstances of the patient's death or discuss whether the incident justified the nurse's termination.

Arbitration Upheld As Alternative Method of Dispute Resolution

The court ruled the hospital had the right to compel arbitration, that is, the nurse had no business filing the case in court. The US Federal Arbitration Act says that in any industry that affects interstate commerce arbitration agreements must be enforced, and healthcare is such an industry. The court found no unfairness in a hospital requiring supervisory employees to agree to arbitration of employment disputes as a condition of accepting or retaining employment. **Potts v. Baptist Health System, Inc., __ So. 2d __, 2002 WL 31845929 (Ala., December 20, 2002).**