LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Bed Rail Strikes Patient's Arm: Expert Admits It Was Impossible.

A patient sued the hospital claiming that the bed rail fell and struck her arm on three separate occasions while she was trying to change the position of the bed.

The judge did not let the patient's expert witness testify before the jury without first listening to the expert's intended testimony in the judge's chambers.

In the judge's chambers the hospital's lawyers pointed out that the controls are located in the bed rail, according to the patient's own statement. Confronted with that information the patient's expert witness had to admit the patient's story was physically impossible. The Superior Court of Pennsylvania dismissed the case.

The patient also filed a products liability claim against the bed manufacturer which was also dismissed. **Kelly v. St. Mary Hospital, 778 A. 2d 1224 (Pa. Super., 2001).**

Employee Keeps Money Collected At Work: Court Reverses Verdict.

A unit secretary usually took charge of collecting money for co-workers for weddings, baby showers, funerals, etc.

After taking up one such collection she called in sick for eight days. When she returned she was suspended, as it appeared no one ever got the money. She sued her employer. Her psychiatrist stated she suffered from major depression and became almost suicidal over the incident. The jury awarded a $65,000 verdict.

The Superior Court of New Jersey, Appellate Division, reversed the verdict. The judge's jury instructions begged the question whether there was an implied employment contract. The judge polled the jury whether the employer broke the contract, but without telling the jury they first had to find an implied contract existed before they could consider breach of contract. **Wade v. Kessler Institute, 778 A. 2d 580 (N.J. App., 2001).**

Disability Discrimination: Court Says Nurse With Back Injury, Lifting Restrictions Is Not Disabled.

A nurse injured her back working in the hospital's trauma center. She returned to work without any medical restrictions following a diskectomy, but then began to have problems with lower back and leg pain. Her physician put her on a forty-pound lifting restriction.

The hospital had a seventy-five pound lifting requirement for staff nurses. The hospital would not let her work as a staff nurse, but encouraged her to apply for other available positions for which she was qualified.

The nurse quit and sued the hospital for disability discrimination. The US Circuit Court of Appeals for the Eighth Circuit pointed out she held several positions with nursing agencies before her case actually got to court.

The inability to do one particular job or a narrow range of jobs is not a disability as it is defined for purposes of our disability discrimination laws.

Being unable to meet the staff-nurse lifting requirement at one hospital or at a number of hospitals is not considered a disability.

It gives a nurse no right to sue her employer for disability discrimination.

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT, 2001.

The Circuit Court dismissed her case. The court ruled she was not disabled as disability is defined for purposes of disability discrimination law.

The courts apply a general rule that a physical impairment that limits the ability to do one particular job or a narrow range of jobs is legally not a disability.

The fact the hospital was able to offer her other jobs that did not exceed her limitations and the fact she was able to take several agency nursing positions proved that her impairment only affected her ability to do a narrow range of jobs at most.

The nurse was not disabled. Thus there was no reason to go into the issue of reasonable accommodation. **Brunko v. Mercy Hospital, 260 F. 3d 939 (8th Cir., 2001).**