

## Family Member Hurt: No Grounds To Sue Hospital, Court Says.

An elderly patient was practicing rising from her wheelchair with a walker in the hospital's physical therapy department.

Her daughter who often attended her physical therapy sessions was standing close by.

The physical therapist was at the patient's side and had a firm grip on the gait belt cinched around the patient's waist. After a few steps the patient appeared to lose her balance and began to lean to one side. The therapist started to lower the patient gently to the floor with the gait belt.

The daughter, however, ran over and threw herself on the floor under her mother in an apparent attempt to cushion her mother's fall. The patient came down on top of her as did the wheelchair.

The daughter claimed she sustained a back injury and sued the hospital for negligence.

The District Court of Appeal of Florida dismissed the case. Even if the hospital was negligent, the reason the daughter was injured was her own poor judgment which led to misguided action which compromised her own safety. Menendez v. West Gables Rehab., \_\_\_ So. 3d \_\_\_, 2013 WL 5225563 (Fla. App., September 18, 2013).

## Skin Care: No Logical Basis For Expert's Opinion, Court Says.

The elderly nursing home patient developed pressure ulcers on her coccyx and left heel.

She had to be admitted to the hospital for surgical treatment of the coccyx lesion when it reached Stage IV and became badly necrotic. She went back to the nursing home and then was discharged to her granddaughter's home for hospice care until she passed away.

Her death certificate listed the cause of death as vascular dementia.

After her passing her family sued the nursing home for alleged negligent mismanagement of her skin care. The lawsuit was backed by an affidavit from a physician stating she died from her Stage IV coccyx ulcer.

The Court of Appeal of California ruled that a physician or other expert witness does not have *carte blanche* to express just any opinion whatsoever that happens to fall within the scope of his or her professional area.

Even if the nursing home was negligent, the Court could see no logical cause-and-effect link between the patient's skin ulcer and her death. Graham v. Superior Court, 2013 WL 4766838 (Cal. App., September 5, 2013).

## Sleeping On The Job: Court Sees Grounds To Terminate Nurse For Willful Misconduct.

During a sixteen-hour shift at the hospital a nurse informed another nurse that she was not feeling well and was going to take her break.

Two fifteen minute breaks and one forty-five minute break, taken more or less at the nurse's discretion, were allowed by the hospital for a nurse working a twelve-hour or longer shift.

Hospital policy nevertheless prohibited nurses from sleeping during breaks in their work shifts.

Some time after the nurse left for her break the nursing supervisor had to go around the unit looking for her to perform a nursing assessment for a patient.

A nurse co-worker told the supervisor that the nurse was on her break and that she would send her to the nursing supervisor when she returned.

***The nurse admitted she did not clock out at the end of her shift because she had fallen asleep in the doctors' lounge and did not wake up until after her shift was over.***

***If the nurse really was sick and unable to continue her shift she should have notified the nursing supervisor and could have received treatment in the employee health clinic or in the E.R.***

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The nurse was not seen or heard from again until the start of her shift the next day. The nurse was terminated.

The Commonwealth Court of Pennsylvania ruled the hospital had grounds to fire the nurse for willful misconduct.

The nurse laid down to rest but fell asleep and stayed asleep until after her shift was over and then left the hospital premises without clocking out.

That was a direct violation of the hospital's policies that nurses were not allowed to sleep on or off duty at the hospital and had to get permission from a supervisor to leave the unit and not complete the work shift.

The nurse did not tell her nursing supervisor she was sick, take any medication or seek medical help. McGinnis v. Unemployment Board, 2013 WL 5310008 (Pa. Cmwlth., September 13, 2103).