

## Adverse Patient-Care Incident: Nurse's Own Notes Ordered To Be Given To Patient's Attorneys.

***For the attorney-client privilege to apply to an oral or written statement:***

***The statement must be made to an attorney, who is acting in the attorney's legal capacity, for the purpose of obtaining legal advice or legal representation; and***

***The statement must originate in confidence that it will not be disclosed; and***

***The statement must have been kept confidential by the attorney.***

***The attorney work-product privilege is different from the attorney-client privilege.***

***The attorney work-product privilege is designed to protect documents and other communications which could reveal the attorney's ideas about legal strategies to prepare and present the client's case in the best way as the client's legal advocate in the adversarial legal arena.***

***The nurse's written notes were prepared by the nurse well before any attorney-client relationship even existed and reflect only her own ideas about legal defense strategy.***

APPELLATE COURT OF ILLINOIS  
June 30, 2006

This was the timing of events in a recent case decided by the Appellate Court of Illinois:

April 12, 2003 patient admitted to the hospital with severe injuries from a skydiving accident.

April 14 – 15, 2003 nurse worked 12 hour shift. Patient experienced change in condition, no longer able to move extremities, which, if permanent, nurse believed would amount to a bad outcome that could result in a lawsuit.

April 15, 2003 nurse wrote down 2 1/2 pages of notes, recollections of what she observed, what she heard the doctors saying, so that she would better be able to defend herself in a lawsuit if one occurred.

October 14, 2003 patient filed suit.

January 16, 2004 patient's attorneys demanded copies from hospital of all witness statements.

February 9, 2005 nurse gave her notes to the hospital's attorney.

February 15, 2005 hospital's attorney told the court of the existence of the nurse's notes in his possession.

May 13, 2005 hospital ordered to turn over nurse's notes to patient's attorney.

### ***Nurse's Notes Not Protected By Attorney-Client Privilege***

#### ***Attorney Work-Product Privilege***

The nurse's notes were not prepared at the direction of her attorney or because a lawsuit had been filed or because her attorney advised her that a lawsuit would be filed. The nurse's belief that a lawsuit could result from the incident, in the court's judgement, was not enough to keep the nurse's personal notes confidential.

The attorney-client relationship between the nurse and the hospital's attorney did not exist until after the notes had been written. The nurse's notes were not addressed to the attorney and were not created for the purpose of obtaining legal advice or legal representation from the attorney. ***Cangelosi v. Capasso, \_\_ N.E. 2d \_\_, 2006 WL 1875368 (Ill. App., June 30, 2006).***