# Slip And Fall: Hospital Visitor Can Sue.

A visitor was injured in a slip and fall accident in a hospital corridor while she was bringing a patient's young son to visit his mother in the hospital.

***Three nurses responded immediately when the visitor fell. One of the nurses remarked that a nurse must have spilled the water on the floor while going from room to room filling patients' water pitchers.***

***Even if that was not the case, the spilled water on the floor was in plain view from the nurses station.***

***Either way, hospital employees apparently were aware of the hazard and the need to take action before the accident happened.***

COURT OF APPEALS OF MISSISSIPPI
December 16, 2011

The Court of Appeals of Mississippi rejected the hospital's legal argument that there is a lesser degree of responsibility owed by a hospital to a visitor than the duty of care owed to a patient.

There is no logical reason for such a rule and the courts in other jurisdictions that have ruled on this specific question have treated visitors exactly the same as actual patients in premises-liability cases, the Court pointed out.

**Nurse Admitted Liability**

The strongest evidence against the hospital, the Court said, was an offhand remark the visitor overheard from one of the nurses who came to help her when she fell, to the effect that another nurse must have been the one who spilled the water on the floor.

Statements by hospital employees are not hearsay and can be used in court against a hospital to prove liability. **Wilson v. Baptist Memorial, __ So. 3d __, 2011 WL 6157659 (Miss. App., December 13, 2011).**

# Long-Term Care: Court OK's Civil Monetary Penalty For Violations Of Federal Standards.

State survey inspectors found numerous instances of non-compliance with Federal Medicare regulations at a long-term care facility and imposed a civil monetary penalty which was upheld by the US Court of Appeals for the Tenth Circuit.

***These violations placed the facility's residents in immediate jeopardy, the most serious negative rating a facility can be given.***

***The civil monetary penalty was $6,500 per day until the jeopardy was corrected.***

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
December 16, 2011

**Failure to Consult With Physician After Significant Change In Physical, Mental or Psychosocial Status**

Several of the facility's diabetic residents had blood sugars recorded in their charts in the 20-40 mg/dl range.

It was recorded that one was convulsing and had cold and clammy skin. Another was lethargic, twitching, mumbling and staring blankly. Another was groggy and unable to walk. Yet another was cool, clammy, sweaty and slow to react.

The Centers for Medicare & Medicaid Services (CMS) Review Board accepted testimony from its own nursing expert that a blood sugar below 60 mg/dl with additional signs of low blood sugar is a significant change in status that triggers the duty to consult with the resident's physician. CMS's expert went on to state that a blood sugar below 60 mg/dl can cause seizures, coma and death.

CMS conceded that the 60 mg/dl parameter is not expressly stated in any Federal statute or regulation. However, each of the residents had orders to call the physician if the blood sugar was below 60 mg/dl and, on the whole, it is a reasonable interpretation of the regulations defining when a diabetic resident's physician must be contacted, the Court said.

**Residents' Right to Be Free Of Significant Medication Errors**

One of the residents came to the facility with conflicting hospital discharge orders for the Tegretol she was to receive. That is, one note said 200 mg/day and another said 400 mg/day.

Instead of phoning the hospital or the physician for clarification someone at the nursing home simply transcribed the larger order into the chart. The patient received the larger dose for forty-three days until the error was discovered and corrected.

A medication error is significant, for purposes of compliance with Federal regulations, if it has the potential for serious consequences. It is not relevant whether the resident could have or actually did pull through without complications.

Another resident had a similar problem with her insulin. The hospital discharge form noted she had been getting 55 units in the morning and 40 at night before hospitalization and also said that her current medications included 20 units in the morning and 10 at night.

The nurse who transcribed the orders decided the lower numbers must be correct and that was how the patient was medicated until the problem was discovered. A nurse practitioner eventually changed the p.m. dose to 30 units, meaning that neither the larger or the smaller dose was what the patient actually should have been getting.

Again the ambiguity in the hospital discharge paperwork required a nurse to seek clarification from the hospital or the physician rather than making an assumption that has no factual basis.

The Court ruled this was a significant medication error as the word significant is used in the regulations, significant in that it revealed a substandard nursing practice that held the potential for serious jeopardy to residents' health and safety.

Actual harm is not required to find that immediate jeopardy exists if noncompliance at the facility is likely to cause serious injury, harm, impairment or death to a resident, the Court pointed out. **Life Care Center v. Secretary of HHS, 2011 WL 6275916 (6th Cir., December 16, 2011).**