

# LEGAL EAGLE EYE NEWSLETTER

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## Nursing Negligence: Court Upholds Labor Arbitrator's Reinstatement Of ICU Nurse.

The law imposes a significant responsibility on hospitals to ensure that patients will receive safe and competent nursing care. At times this legal responsibility can require removal of a nurse from patient-care responsibilities who has demonstrated unacceptably poor professional judgment.

At the same time, when a collective bargaining agreement calls for disputes between a hospital and its nurses to be settled by arbitration, the law strongly favors enforcement of the arbitrator's decision to reinstate an employee whom the hospital terminated for problems with patient care.

Trying to balance these competing values was the issue before the U.S. Circuit Court of Appeals for the Sixth Circuit in a recent case.

A nurse committed the same medication error twice with the same cardiac patient in the ICU, adding dobutamine to a pre-mixed IV dopamine solution. A supervisor caught it the first time after the nurse had started giving it. The second time the nurse and a co-worker caught the error before the medication was started. The nurse was given a written reprimand.

The incident which directly resulted in termination occurred nine months later. The nurse called a code for a criti-



***Even highly skilled professionals err on occasion. A labor agreement with its nurses can require a hospital to retain a nurse guilty of some isolated acts of carelessness.***

***On the other hand, a hospital should not retain a nurse who makes life-threatening errors frequently. A labor contract requiring a hospital to do so would violate public policy.***

UNITED STATES COURT OF APPEALS,  
SIXTH CIRCUIT, 1999.

cally ill cardiac patient who went into arrest in the ICU shortly after a transvenous pacemaker was inserted.

During the code she apparently tried to defibrillate the patient without calling out for others participating in the code to stand clear of the patient to avoid receiving a strong electric shock from the defibrillator.

The defibrillator was actually set on pacer mode rather than defibrillation mode and had not charged for defibrillation. No one was shocked.

Another nurse reminded the nurse in question to switch the device to defibrillation mode. Either the nurse in question or the physician switched it to defibrillate, and then the physician properly and successfully defibrillated the patient.

The nurse was suspended from duty pending investigation of the incident, then fired. The reason given was a clear lack of good nursing judgment and lack of knowledge of essential equipment on the unit which jeopardized the lives and safety of a patient and fellow hospital employees.

The nurse filed a grievance which was pursued by her union.

In accordance with the collective bargaining agreement, the situation  
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