

## Bone Spur In Foot: Court Says Nurse Has Occupational Disease.

A licensed practical nurse worked at the hospital for seven years before she began having pain in her right foot. Her podiatrist diagnosed a bone spur on her right heel which he related to walking up and down the hospital hallways caring for patients.

The state worker's compensation board awarded compensation, but the hospital appealed. The New York Supreme Court, Appellate Division, ruled in the nurse's favor.

According to the court, an occupational disease is a condition which derives from the very nature of the employment. The podiatrist who performed the independent medical examination for the worker's compensation department believed the bone spur was aggravated by being on her feet all day walking on hard floors, a distinct feature of a staff nurse's job in a hospital. Al-drich v. St. Joseph's Hospital, \_\_ N.Y.S.2d \_\_, 2003 N.Y. Slip Op. 14368, 2003 WL 21196531 (N.Y. App., May 22, 2003).

## H&P, Operative Report Backdated: But No Nursing Negligence, Says Nursing Expert.

The nursing expert hired by the attorneys representing the family of the deceased testified it was highly irregular to find the admitting history and physical and the operative report dictated and dated by the physician more than three weeks after surgery, that is, a few days after the patient had died in the ICU.

However, as to the nursing care the deceased received, there was nothing to suggest it was below the standard of care and nothing to suggest it contributed to her death. On this basis the Court of Appeal of California, in an unpublished opinion, ruled that there was no basis for a lawsuit against the hospital.

Although it can raise serious suspicions, there is no misconduct *per se* when a physician dictates after the fact, the court pointed out. Ross v. Redding Medical Center, 2003 WL 21246105 (Cal. App., May 29, 2003).

## Labor Relations: Charge Nurses In Nursing Home Are Supervisors, Not Part Of The Bargaining Unit.

A nursing home refused to recognize the union as the proper legal representative of the caregiving employees. The union filed an unfair labor practice charge with the NLRB.

The US Circuit Court of Appeals for the Ninth Circuit sided with the nursing home, in an opinion not selected for publication. As a general rule, a bargaining unit that contains rank-and-file workers as well as the supervisors who supervise the rank-and-file is an illegal bargaining unit which the employer has no duty to recognize as the employees' agent for collective bargaining purposes.

Charge nurses in hospitals are more or less the same as staff nurses, the court pointed out, and are not considered supervisors under US labor law.

Not so in a nursing home. Charge

***Nursing home charge nurses use independent professional judgment to make patient-care decisions and to delegate care tasks to aides whom they direct, supervise, counsel, correct and discipline.***

***Charge nurses are supervisors and do not belong in a bargaining unit with the rank-and-file aides in a nursing home.***

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nurses in nursing homes use their independent professional judgment to offer correction and discipline to certified nurse's aides. Directing, supervising, correcting and disciplining aides is a responsibility for which charge nurses themselves are responsible to the director of nursing in a nursing home.

Charge nurses assess nursing home patients and make sophisticated judgments regarding their care. For labor-relations law the important point is that most of that care is actually performed by others acting at the charge nurses' direction, rather than by the charge nurses themselves, making them supervisors rather than rank-and-file employees. Evergreen New Hope Health & Rehabilitation Center v. N.L.R.B., 2003 WL 21259895 (9th Cir., May 27, 2003)