

LEGAL EAGLE EYE NEWSLETTER

September 2010

For the Nursing Profession

Volume 18 Number 9

Patient's Fall: Nurse's Retraining After An Accident Is Not Proof Of Nursing Negligence.

A ninety-one year-old nursing home patient fell and broke her hip. The injury required surgery followed by an extended hospital stay.

The patient filed a personal injury lawsuit against the nursing home. The lawsuit was continued after her passing on behalf of the family by the administrator of her probate estate.

Deposition of the Patient's Nurse Ruled Not Appropriate

The lawyers representing the estate sought a court order requiring the nurse who was assigned to care for the patient when she fell to answer questions under oath in a deposition.

The lawyers' plan for the deposition was to question the nurse in detail specifically about the retraining she received after the incident from her supervisors how her actions at the time could have more effectively met her patient's safety needs.

The issues touched upon in the retraining the nurse received after the incident, the estate's lawyers believed, would identify deficits in the nurse's competency at the time of the incident which would tend to bolster the estate's claim of negligence.

The judge in the Civil Court, City of New York, New York ruled, however, that the lawyers' plan for the nurse's deposition was not appropriate.



The law seeks to encourage rather than discourage improvements based on adverse experiences.

After an accident an institution may find it in its clients' best interests to take precautionary measures to avoid similar incidents.

Subsequent remedial measures are not admissible in court to prove negligence.

CIVIL COURT
CITY OF NEW YORK, NEW YORK
August 10, 2010

A long-standing legal rule of evidence holds that so-called subsequent remedial measures taken after the fact are not admissible to prove negligence before the fact.

The US Supreme Court has ruled that precautions taken against future harm are not to be implied as an admission of guilt or liability.

One of the rationales behind this legal rule of evidence is not to penalize but instead to encourage individuals and organizations to look back candidly at injury-producing events and to implement safeguards to prevent the same or similar events from happening again in the future.

Such precautions taken afterward are not legitimate proof of negligence at the time of the event.

The caregiver in question may have exercised all the due care that the law requires, but in the light of new experience after an unexpected accident, and as a measure of caution, may adopt additional safeguards, the Court said.

It is not necessarily true that nursing skills that a supervisor might want to review afterward with a nurse were not possessed or used by the nurse at the critical moment in question. ***Alfieri v. Carmelite Nursing Home, Inc., ___ N.Y.S.2d ___, 2010 WL 3155936 (N.Y. City Civ. Ct., August 10, 2010).***

Inside this month's issue...

September 2010

New Subscriptions
See Page 3

Emergency Medical Treatment And Active Labor Act (EMTALA)
Combative Patient/Physical Restraint - Alzheimer's/Abuse
Fall Care Plan - Dementia/Elopement/Hypothermia/Death
Feeding Tube/Nursing Negligence - Hoyer Lift/Patient Dropped
Emergency Room/Dehydrated Pediatric Patient - Informed Consent
Neonatal Hypoglycemia - Skin Care/Nursing Documentation
Ativan Overdose - Freedom Of Speech - Shock - Head Injury
Unnecessary Medical Procedures/Nursing Liability - CDC/Vaccines