EMTALA: Nurses Did Not Stabilize Patient (Cont.)

At 3:30 a.m. the nurses phoned the ob/gyn physician who had been providing the patient's prenatal care. The nurses related the patient's complaints, said nothing about a urinalysis and said they were giving water and cranberry juice for a urinary tract infection.

They told the physician they could not get fetal heart rates with the monitor because the patient was agitated and frequently changed positions, but said they had obtained a fetal heart rate using a hand-held Doppler.

The nurses said she was dilated one and one-half centimeters.

The patient was not seen by a doctor before she left at 4:00 a.m. The testimony was in dispute whether the nurses called the ob/gyn physician again before the patient left. It was also disputed whether the patient was sent home or left on her own. The patient testified she decided to go home, but only because it seemed the nurses were not going to do anything for her if she stayed at the hospital.

At home the patient's pain got worse, she started bleeding heavily, her abdomen began tightening and she started vomiting.

She came back to the emergency room at 8:30 a.m. Physical examination by one of the same two night nurses revealed her abdomen had become hardened. They phoned the ob/gyn physician and he ordered an ultrasound. The ultrasound revealed the fetus had died.

The Court's Ruling

The court said there were symptoms the nurses should have seen as signs of possible placental abruption which required stabilizing the patient (seeing to it she had a cesarean) before sending her home or letting her leave. Even if it was only a urinary tract infection, the court said the patient was not stabilized and should not have been sent home.

The court also saw grounds for common law malpractice claims under state law against the hospital as the nurses' employer and against the ob/gyn physician. **Williamson v. Roth, 120 F. Supp. 2d 1327 (M.D. Fla., 2000).**

Snake Phobia: Not A Disability For Disability Discrimination, Court Rules.

A switchboard operator at a state hospital refused to continue working and took an extended leave after a snake was seen in her work area.

When she came back to work she was offered a lower-paying nurse's aide position, which she refused. She then sued the hospital for disability discrimination.

A disability is a physical or mental impairment that substantially limits one or more major life activities.

Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing and working.

Inability to work in a broad class of jobs is a dsability. Inability to work at one particular job is not a disability and will not justify a disability discrimination suit.

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT, 2000.

The first issue to decide in any disability discrimination case is whether or not the employee's condition is a disability as disability is defined by law. There must be a disability before reasonable accommodation becomes an issue.

The US Circuit Court of Appeals for the Eighth Circuit ruled that this employee's phobia was not a disability. The court accepted the switchboard operator's genuine feeling that she could no longer perform that job, but inability to perform just one particular job for whatever reason is not a legal disability. **Anderson v. North Dakota State Hospital, 232 F. 3d 634 (8th Cir., 2000).**

Agency Nurses: Client Controls The Workplace, Client Is Nurse's Employer For Discrimination Claims.

Two jail nurses wanted to sue the state department of corrections for sexual harassment by the prison superintendent.

The prison system responded by asking the US District Court for the Western District of Missouri to dismiss the lawsuit on a technicality, that is, they said the nurses were independent contractors as far as the prison system was concerned, not employees of the prison system.

Title VII of the US Civil Rights Act prohibits discrimination by employers. Sexual harassment is considered a form of employment discrimination.

Because the prison superintendent controlled their work environment, the prison system is considered the nurses' employer.

The superintendent also had the authority to suspend the prison's contract with the nurses' agency, giving him a large measure of control over their jobs.

UNITED STATES DISTRICT COURT, MISSOURI, 2000.

The court upheld the nurses' suit. For sexual harassment law, agency nurses are considered employees of the client institution, even if technically they are agency employees or independent contractors for income tax or worker's compensation. **Hunt v. State of Missouri Dept. of Corrections, 119 F. Supp. 2d 996 (W.D. Mo., 2000).**