LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Blood Products: New Guidance Document From FDA Re West Nile Virus.

On October 25, 2002 the US Food and Drug Administration issued a document titled "Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection."

Because of the immediate threat posed by the West Nile Virus the FDA did not seek public comments before issuing this new directive.

This new directive is too complex to summarize in our newsletter. The full text is available on our website at http://www.nursinglaw.com/westnilevirus.pdf. Click this article if you are reading our online edition and you will be linked. Or go to the FDA's website at http://www.fda.gov/cber/gdlns/wnvguid.pdf.

The FDA's guidelines are not copyrighted and can be freely re-printed and re-distributed.

Aide Lifts Resident Without Assistance: Court Finds Cause For Termination.

The New York Supreme Court, Appellate Division, ruled that the state Commissioner of Labor's office acted correctly in denying unemployment benefits to CNA terminated from his employment in a nursing home.

As a general rule, persons who are terminated from their employment for cause are not entitled to unemployment.

According to the court, the aide attempted to transfer a resident from the toilet to a wheelchair with a Sarah Lift after being instructed there was a strict policy that that maneuver was to be done only with two staff members.

Failure to adhere to the employer's policies is cause for termination, the court said, especially in healthcare settings where failure to adhere to prescribed safety procedures can jeopardize the safety of a patient. **Martin v. Commissioner of Labor, __ N.Y.S.2d __, 2002 N.Y. Slip Op. 08025, 2002 WL 31478932 (N.Y. App., November 7, 2002).**

Occupational Injury: Aide's Physician Restricted Her From Lifting, No Employer Retaliation Found.

The Appellate Court of Connecticut pointed out the nursing home had a written policy in effect against the assignment of nursing assistants to permanent light duty.

Due to an on-the-job injury an aide's physician imposed permanent restrictions against heavy lifting and stated she was only able to do light duty.

The nursing home, adhering to its written policy that had been in effect throughout the aide's employment, terminated her.

The aide had filed for worker's compensation and had been awarded compensation for time loss and partial permanent disability. That was not the issue.

The issue was employer retaliation.

As a general rule an employer cannot retaliate against an employee for being injured on the job and filing a worker's compensation claim.

On the other hand, an employer may have legitimate, non-retaliatory reasons for dismissing an employee, like restrictions on lifting patients, lifting being an essential function of an aide's job in a nursing home.

APPELLATE COURT OF CONNECTICUT
October 29, 2002

The Appellate Court of Connecticut ruled against the aide on the retaliation issue.

It is not retaliation to refuse to provide an injured employee with light duty, assuming the employer has had an established a policy on that issue and has been applying the policy uniformly to all employees, whether or not they have stated they intend to apply, have applied and/or have received worker's compensation benefits.

Inability to perform the essential functions of the position is a legitimate, non-retaliatory basis for action, the court ruled, even if the inability to perform is documented by a physician as the result of an on-the-job injury. **Barrett v. Hebrew Home and Hospital, Inc., __ A. 2d __, 2002 WL 31379928 (Conn. App., October 29, 2002).**