



Jeffrey v. Marietta Memorial Hospital: Ohio Court of Appeals Issues Notable Ruling Upholding Multi-Million Dollar Wrongful Death Jury Verdict

by Arthur E. Phelps, Jr. of Rendigs, Fry, Keily, & Dennis LLP. Reprinted with permission.

In a March 21, 2013 decision out of the Franklin County Court of Appeals, the Court affirmed a \$2 million jury verdict against several defendants, including Marietta Hospital, for the wrongful death of a 29 year old woman following laproscopic gynecological surgery. Plaintiff alleged, and the jury agreed, that Amanda Jeffrey's death from sepsis was a result of a bowel injury which occurred during laproscopic surgery performed on April 4, 2005 at Marietta Hospital. Mrs. Jeffrey died on April 9, 2005. Plaintiff's medical experts opined that the nurses at the hospital breached the applicable standard of care by not communicating to the attending physicians that a radiology study, a VQ scan, ordered on April 6, 2005, could not be performed because the patient was vomiting and could not lie still.

In returning its verdict, the jury completed interrogatories which asked them to identify in what respect there was a deviation

from standard of care by the hospital. The jury responded by stating that there were conflicting reports from the radiologist on an earlier radiology study - a KUB done on April 6, 2005, that was not communicated to the attending physician. Further, with respect to the unsuccessful VQ scan, the jury stated that information was again not communicated nor were alternatives suggested to the attending physician.

On appeal, Marietta attempted to overturn the verdict against it by arguing that the trial court should have granted a motion for JNOV after the trial pointing out that there was no expert testimony in the record stating that the failure to communicate the findings of the KUB was a deviation from standard of care. Plaintiff conceded in his appellate brief that this subject was not a focus of his

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

Tech Tip: Syncing your Google Calendar with the iPad Calendar App

By: Julie Koehne, Systems Librarian



Follow these steps to sync your Google Calendar with your iPad's Calendar App!

Step 1: Click on the Settings icon and select "Mail, Contacts, Calendars."

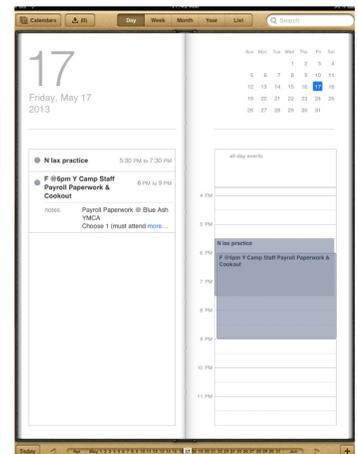
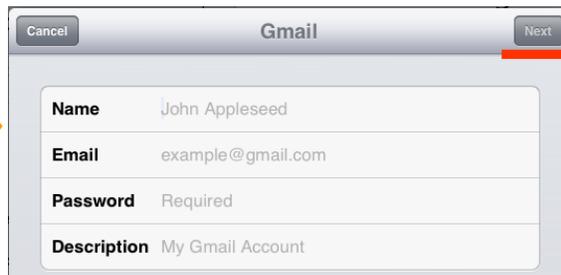
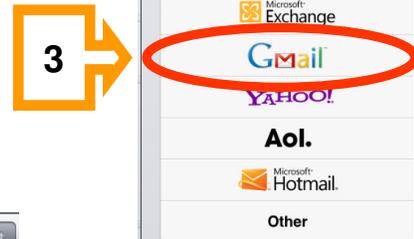
Step 2: Click on "Add Account."

Step 3: Select the type of account to sync, in this case select **Gmail**.

Step 4: Enter the email account information here so each time you open the App you will automatically be logged in, then click Next.

Step 5: Next determine what you would like to see from the Gmail account. Slide each switch on or off, then click Save.

You have now synced the iPad to the selected account. More than one account type may be synced. Open the Calendar App to view.



Free CLE

Free to subscribers; \$50 for non-subscribers

To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

Malingering

Presenter: Dr. Kenneth Manges

Tuesday, June 25

Noon-1pm

The program will focus on:

- What is Malingering?
- How to tell the truth from the lies.
- Tips and tricks forensic psychologists use to tell if someone is malingering.

1.0 hour of general CLE credit is pending in Ohio and Kentucky

Practical, Timely CLE from the American Law Institute: Discounted for Law Library Subscribers and County Staff

The Law Library is pleased to offer a new service to county officials and our subscribers. Your subscription* to the Hamilton County Law Library or status as a Hamilton County employee provides you with discounted (25% off) access to live webcasts and telephone seminars from ALI CLE, the American Law Institute's continuing legal education group.

To see the available programs, click on Subscriber Login in the upper right corner of the Law Library's website at <http://www.hamilton-co.org/cinlawlib>, and login as usual. Then click on ALI CLE Webcasts & Teleseminars. Use the calendar to learn about upcoming programs. Your 25% discount is applied

automatically when you click "add to cart." The program description has a link for the course's MCLE information. It shows each state's approval status for the course. The American Law Institute (ALI), founded in 1923, is the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. ALI CLE (formerly ALI-ABA) produces hundreds of programs of the highest caliber, in numerous areas of practice, each year. Practical and sophisticated, taught by prominent lawyers, judges, and legal academics in the U.S. and abroad, ALI CLE programs are consistently ranked by lawyers among the very best available.

Please ask us if you have questions about this new service. If you are a county employee who is not yet signed up for law library privileges, please come in or call and speak with a staff member.

*Discounted ALI CLE courses are available to county officials and to all of our subscribers at firms of fifty or fewer attorneys.

July Meeting of the Law Library's Board

The Hamilton County Law Library Resources Board is scheduled to meet at 1:00 p.m. on Tuesday, July 9, 2013 in the Robert S. Kraft Board Room in the Law Library. Meetings of the board are open to the public. Minutes of previous meetings are online at <http://www.hamilton-co.org/cinlawlib/about/trustees.html>.

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experts. The appellate court however declined to consider what appears to be a clear and valid basis to overturn the jury's verdict – the absence of expert medical testimony regarding this particular aspect of the case - because trial counsel failed to object to the jury's response to the interrogatory before the jury was discharged. Waiting to raise it in a post-trial motion was too late. The Court found that any objection to the interrogatory response was waived.

Regarding the jury's determination that matters pertaining to the failed VQ scan should have been handled differently, Marietta attempted to argue that the JNOV motion should have been granted because the record provided some "indirect evidence" in support of the fact that there was communication to an attending physician that the scan did not take place, and, to the extent the jury thought that the nurses should have suggested alternatives, Marietta argued that this would improperly involve the nurses in the practice of medicine. Under R.C. 4723.151(A), Ohio forbids nurses from "making medical diagnosis, prescribing medical measures, or otherwise practicing any branch of medicine or surgery."

The Appellate Court found, consistent with what one of plaintiff's expert testified to, that even though Ohio law prohibits a nurse from practicing medicine, a nurse nevertheless has a duty under appropriate circumstances to suggest alternative tests or treatments to a physician, which was not done in this case. As such, the Court found there to be an insufficient basis to overturn the jury's verdict against the hospital. The Court also

found that the evidence was too indirect to conclude that the attending physician indeed knew that the VQ scan had failed or that it was even attempted.

This case should serve to provide two important reminders – one to attorneys and the other to hospitals and the nurses they employ.

For defense attorneys, the lesson brought home in this case is that it is not enough to have the trial judge agree to propound interrogatories to the jury and then after the trial is over and the jury discharged, analyze their answers to see if a challenge to the verdict can be mounted in a post trial motion or on appeal. Counsel must analyze and raise objections to the verdict and any inconsistencies in the answers to the interrogatories before the jury is discharged or stand the risk of losing the ability to raise the issue in a post trial motion or on appeal.

For hospitals, this case challenges the long held belief that any allegation of nursing negligence which involves medical decision-making will fail given that medical decisions are to be made by doctors, not nurses. A nurse's failure to communicate to the attending physician that the carrying out of an order for an important test was unsuccessful or otherwise suggest alternative interventions, may be a breach of the nursing standard of care.

For more information, contact Ted Phelps at aphelps@rendigs.com

Renewing Books and Overdue Fines

Summer's here and it's vacation time! Don't forget about your library books while you're out of town. Please be aware that overdue fines are \$1.00 per day beginning the day after an item is due. Fines are capped at the cost of replacing and processing a new copy or its equivalent.

Sounds scary, but our library assistant Vanessa makes courtesy calls to remind patrons of upcoming due dates and to alert patrons to mounting fines. We'll renew items up to 3 times as long as no one else has a hold on the item.

Libraries charge overdue fines to encourage the prompt return of items so that other patrons can access them. Thanks for helping us by returning books on time!

If you have questions about borrowing or renewing books, just call 513.946.5300 or email us at

reference@cms.hamilton-co.org



Practice Areas and the Collection

The Law Library's reference staff is in the process of reviewing books and online resources to discard or update items that are outdated and to add material in areas that need strengthening. The areas under review for the rest of this year are:

- Immigration
- Federal
- Constitutional
- Environmental
- Law Practice Management

If you are interested in these topics and have any suggestions for us as we consider new books and online material, please contact ldixoncaldwell@cms.hamilton-co.org. We welcome your tips on the must-have titles in your field or areas of law practice management in which you would like additional resources.

How Do You Learn New Technology Skills?

YouTube videos? Books? Trial and error? Online tutorials? Law Librarian Mary Jenkins is considering the purchase of a system of online technology training modules that assists users with skills acquisition in a wide variety of applications from Adobe Acrobat to XML using video tutorials. If you have an interest in this, please contact Mary with your comments. It would help to determine more precisely what the need is and what product or approach would best meet it.

Court Rules

The Law Library offers access to Ohio counties' court rules, thanks to a cooperative project with other county law libraries. See <http://www.hamilton-co.org/cinlawlib/resources/courtrules.html> for the full list.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Elder Law

Attorney Dennison Keller is our next speaker in the *You and the Legal System* series for the public. Mr. Keller will discuss Elder Law on Friday, June 21 at noon at the Law Library.

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series: Ivan Tamarkin will discuss Landlord Tenant Issues on July 19.



Elder Law Resources

The Law Library offers a variety of print and online resources on Elder Law. If you have questions about access to any of these resources, just call us at 531.946.5300.

Books

Advising the elderly or disabled client
KF390.A4 F7513

Divorce in the golden years: estate planning, spousal support, and retirement issues for clients at midlife and beyond
KF535 .S49 2010

Anderson's Ohio elder law practice manual
KDO140 .L66 2013

Elder law and financial strategies: planning for later in life
KF390.A4 H96 2013

Elder law answer book
KF390.A4 F58 2010

Elder law handbook
KFO91.A3 E42 2010

Estate planning and recovery for elderly clients (in Ohio)
KFO91.A3 E78 2010

Everyday law for seniors
KF390.A4 F7535 2010

Guardianships
KFO106 .G82 2011

How to protect elders from harm
KF1257 .O727 2009

Ohio elder law
KF091 .A3 O365 2011

Ohio Elder Law Institute
KFO91.A3 E43 2011

Resolving legal and financial issues in elder care (in Ohio)
KFO91.A3 E43 2011

Online Resources-On-Site Access Only **CCH**

Medicare and Medicaid Guide Newsletter
Social Security Reporter

Online Resources-Remote Access **Aspen/Loislaw Elder Law Library**

Representing the Elderly Client
Elder Law Forms Manual
Elder Law Answer Book
Social Security & Medicare Answer book
Elder Law Portfolio Series
Elder Law Report

EBSCO

Complete Guide to Medicaid & Nursing Home Costs
Getting Your Affairs in Order
Living Trusts
Long-Term Care
Nolo's Guide to Social Security Disability
Retire Happy
Social Security, Medicare & Government Pensions
Social Security & Medicare Handbook

Helpful Links

CASS (Cincinnati Area Senior Services)-
<http://www.cassdelivers.org/>

Council on Aging of Southwest Ohio-
<http://www.help4seniors.org/>

Creative Aging Cincinnati-
<http://www.creativeagingcincinnati.org/>

Hamilton County Probate Court-
Info on guardianship, living wills etc.
<http://www.probatect.org/>

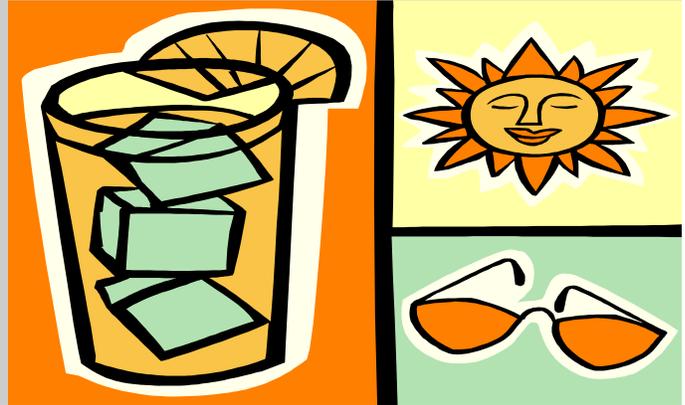
ProSeniors-
<http://www.proseniors.org/>

Upcoming Events:

June 21: You and the Legal System: Elder Law

June 25: Malingering CLE

July 19: You and the Legal system: Landlord Tenant Law



June 2013 Law Library Newsletter

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