

SHORTS



ON LONG TERM CARE

for the North Carolina LTC Community from Poyner Spruill LLP

Midnight's Requiem See You at the Rainbow Bridge

My aunt Millie named her Midnight. I called her my Princess of the Night because, like most cats, she loved to roam at night and she was black as black can be. She came into my life just over five years ago when I first returned to North Carolina, and my life, both personal and professional, was at its lowest. One day, like an angel disguised in a black ball of scruffy fur, she showed up at my doorstep where I was living in Nash County. She had one ear torn, weighing all of 5 pounds, and was hungry. I gave her some milk and picked her up to find that she had a mass the size of a softball under her belly. Unemployed at the time and thus counting pennies and over the objections of my more fiscally responsible family, I took her to the vet.

They found she had been spayed and the incision had become infected, so they had to do surgery. Four hundred dollars later, and cut from stem to stern, Midnight came home with me to heal, and to heal me, and she never left. When we moved to Raleigh and I returned to Poyner Spruill, she came with me. She never left my side. She was the most beautiful, solid-black sleek cat you ever saw, with piercing green eyes. And she was smart. She would sit on her haunches before crossing any street, look



both ways, and then confidently cross the road. She would meow once when she wanted to go outside, and then again with "the look" if I didn't let her out fast enough. She did everything in her own way and in her own time.

She taught me many things, including that I was supposed to get up every morning at 5 a.m. sharp and feed her and begin my day. A daily, punctual soft paw on my cheek and a lick of the tongue eventually allowed me to throw away my alarm clock.

She endured all my moods, my moves, my new house, and the adoption of two brothers, both shelter rescues – Hachi, my Korean Jindo, and a recently new brother, a Corgi-Chihuahua mix named Skidmore (aka "Little Bit"), and she never complained.

She also taught me to let those I love live life their own way. She liked to wander the neighborhood, and everyone knew her. My friends said, "Keep her in the house where she's safe," but she

by Ken Burgess



was a free spirit and I had to let her fly. She liked to walk when I walked the dogs but fussed all the way, probably because her short little legs couldn't keep up. So she'd go a hundred yards or so and then lay down with a look that said, "I'll catch you on the flip side." And she would, always waiting to accompany us on the last hundred yards back home. She'd roam in the evenings but was always home by 9 p.m., tapping her little paw on the window by the door to say, "Hey, somebody let me in; I'm back."

When I was sick, she hovered. When I was away, she endured. When I was home, she stayed close by, and she always kept the boys in check, letting them know she allowed them in our home but after all, she was Midnight, the Princess of the Night.

On February 3, just after the big snow, she calmly went out for a morning walk but didn't come home at 9 p.m. I panicked. She didn't come home the next day at 9 p.m. either. We searched and called and searched, but no Midnight. Then I prayed, "If it's her time, just don't let her suffer or die alone in the cold – that's all I ask." Two days later, while I was home with an awful flu, waiting for a client's deal to break and two cases to settle, I went to the door again as I had every half hour for three days, to call for her. And there, in the pouring rain, I saw her struggling to get across the street, to come home.

I scooped her up and rushed her to the vet, where they tried heroically to save her. She lasted nearly all day, but at 5 p.m. I got the call from Dr. Leone and the incredible staff at Banfield Animal Hospital in Knightdale who take care of my brood – Midnight had tried hard but couldn't hang on.

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p.s.

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Finger-Stick to Infection: Minimizing Risk for Your Residents and Facility



by Jessica Lewis

How often do you think of diabetic testing as putting your residents at risk for acquiring a blood borne illness. Do your infection control policy and protocol contemplate safe and proper procedures for carrying out proper testing and medication administration for residents with diabetes? One of the many bases for issuing a survey citation to a skilled nursing facility is F Tag 441 – Infection Control. In particular, many facilities face citations at the immediate jeopardy level for mishandling blood glucose testing, including failure to change lancets or clean glucometers between patients, both simple and critical infection control measures in which to train your staff.

Facilities must have infection control programs in place. See 42 CFR § 483.65(a). Without proper infection control practices, blood glucose testing carries the potential for exposing residents (and staff) to blood borne pathogens, such as the hepatitis B virus. It should go without saying that needles, syringes, and even lancets used to obtain finger-stick capillary blood samples should never be reused. Additionally, if a glucometer must be used for more than one patient, the glucometer must be cleaned and disinfected in between patients. Not only is this expected by CMS when it comes time to survey a facility, but it is and has been clearly recommended by the CDC.

In its publication entitled *Blood Glucose Monitoring and the Risk of Viral Hepatitis: Recommended Infection-Control and Safe Injection Practices to Prevent Patient-to-Patient Transmission of Blood borne Pathogens*, the CDC issued several additional recommendations that should also be part of your facility's diabetic infection control policy and staff training, including but not limited to:

- Assigning multidose insulin vials to individual patients and so labeling the vials
- Preparing insulin in a centralized medication area
- Disposing of sharps, including lancets, at the point of use (resident's room) in a sharps container



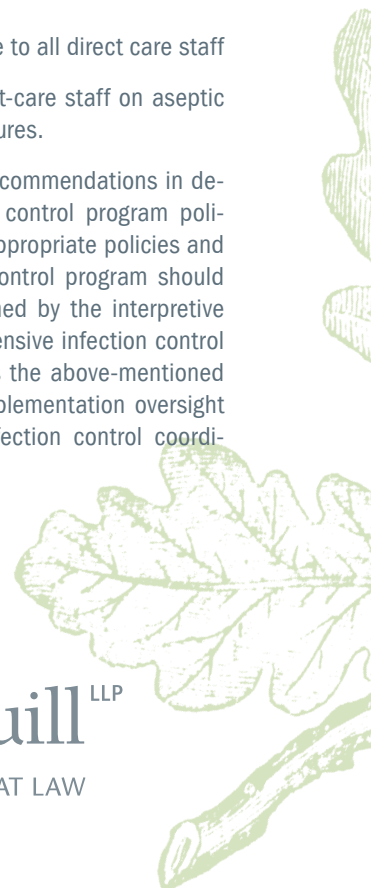
- Decontaminating surfaces, such as glucometers, that are used among multiple patients after each use and any time contamination with blood/body fluids is suspected
- Keeping medication carts and clean supplies out of resident rooms, and refraining from using on another resident supplies and medications inadvertently taken to one resident's bedside during blood glucose monitoring
- Wearing gloves during blood glucose monitoring and administration of insulin, changing gloves and washing hands in between residents, and properly disposing of gloves
- Implementing monitoring activities to identify residents with blood borne infections
- Offering of the hepatitis B vaccine to all direct care staff
- Training and observation of direct-care staff on aseptic technique and reporting of exposures.

You should be sure to use the CDC recommendations in developing your own facility's infection control program policies and procedures. In addition to appropriate policies and procedures, your facility's infection control program should incorporate the other elements outlined by the interpretive guidelines for F Tag 441 – a comprehensive infection control and prevention program that includes the above-mentioned policies and procedures, program implementation oversight activities (including a designated infection control coordi-



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nator), facility surveillance, education and training, reporting, antibiotic-use review, and adequate documentation of these efforts.

During a survey, under F Tag 441 the surveyors will evaluate whether your facility has an infection prevention and control program in place, uses that program to collect and analyze data; uses that data to implement a plan to prevent infections, evaluates staff practices for consistency with proper infection control practices; and appropriately prohibits contact between direct staff who have communicable diseases/open lesions and residents. Specifically, the interpretive guidelines instruct surveyors to observe whether glucometers are cleaned and disinfected appropriately after each use in resident care and whether single-use items such as lancets are properly disposed of after one use. The guidelines for F Tag 441 specifically note that contaminated glucose monitoring devices, among other things, can indirectly transmit infection between residents, and that either disinfection or single-use disposables are necessary to prevent transmission. The guidelines even provide as a specific example of immediate jeopardy the failure to take the standard precautions by disinfecting glucometers after each use and using new lancets on residents during blood sugar testing, thereby potentially exposing residents to the spread of blood borne infections.

Thus, in developing your policies and procedures, training and educating staff, and performing oversight and surveillance activities in accordance with your facility infection control program, don't overlook your residents with diabetes or practices related to blood glucose monitoring. Even more importantly, make sure that you are observing your direct-care staff periodically to ensure that they have not overlooked the risk of failing to use appropriate infection control practices in blood glucose monitoring.

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Ken's Quote of the Month

"Saying it's better to be young than old is like saying the view from the bottom of the hill is better than from the top of the mountain."

Iva Lee Burgess, my Grandma

Midnight's Requiem (cont. from page 1)

I used to laugh at people who got all weepy over departed pets until it was my departed pet, my Midnight. I'll never make that mistake again. We learn life's lessons in unexpected ways, and I learned many, many lessons from that little black ball of loving fur. For one, I was reminded that God does answer prayers, because I believe Midnight went away to die as pets do, but my prayer that she not die alone, cold, in the rain, and afraid was answered. And I believe she fought to come home one last time—not for her comfort but for mine—and she made it. She made it.

A dear friend, also a pet lover, sent me a poem called "The Rainbow Bridge" that talks about pets who have passed on waiting for their beloved humans, wagging their tails when they see us coming at life's end, rushing into our arms, all tongues and kisses. I loved that poem.

We buried Midnight on a cold, rainy Saturday on our family farm in Nash County, where I first found her. That's as it should be – she loved to roam the country. You'll think me silly for all this emotional rambling about a cat, and that's okay. Midnight taught me that it doesn't really matter where you learn about unconditional love, or about being there when you are needed, or whether love comes in human form or on four legs, but only that you learn about it, experience it, and return it. She also taught me about loyalty and the simple pleasure of being loved and sharing what you have with others (even two annoying doggy brothers). She taught me about loss and letting go, and the place grief holds among our memories, and healing. And she taught me about courage and determination as she dragged her sick body across a rain-flooded street, not for herself but to make me feel better.

Few people have taught me as much about life as this graceful black beauty, so I thought it only fitting that I give her the kind of tribute she deserves. I hope you know someone in your life, or some cat, or dog, or bird that touches you the way this little black ball of fur with the incredible green eyes touched me.

So to my little Midnight, my Princess of the Night, thank you. I'll see you at the Rainbow Bridge (with treats).

Ken Burgess advises clients on a wide variety of legal planning issues arising in the SNF and assisted living setting, as well as other aspects of long term care. He may be reached at 919.783.2917 or kburgess@poynerspruill.com.



The Newest Addition to Our Health Care Group

Poyner Spruill welcomes its 10th full-time attorney, Kim Licata, to our experienced Health Care group. Kim joins us with previous legal experience as in-house counsel for a physician staffing company and as an attorney in large law firms in the Southeast. At Poyner Spruill, Kim will work on a variety of health care matters, with a focus on counseling long term care providers, physicians, hospitals, and e-Health companies on the ever-changing health care laws and rules. Kim devotes much of her practice to aiding retirement communities, skilled nursing facilities, and other long term care providers in operational, litigation, and compliance matters from policy development and implementation to risk management.

Kim earned her bachelor of arts degree in American government and philosophy from the University of Virginia in May 1993. While excelling as an Echols Scholar at the University of Virginia and graduating with her undergraduate degree in three years, Kim switched her ACC loyalties to the Tar Heels of the University of North Carolina, where she received her law degree in May 1996. While in law school, Kim was active in the *North Carolina Law Review* and enjoyed being a Chancellors' Scholar, which gave her the opportunity to work with and be mentored by several outstanding professors.

After law school Kim practiced health care law and public sector litigation at Dickstein Shapiro LLP in the District of Columbia until 1998, when she moved to the Research Triangle Park in North Carolina to join the Health Care group of Womble Carlyle Sandridge & Rice PLLC. Kim's legal experience includes administrative and regulatory advice, medical malpractice and product liability litigation defense, and general business and litigation counseling. She delights in working with clients and keeping clients and colleagues updated on the legal intricacies applicable to providers and companies in the health care world. You'll be able to see Kim's work in both our award-winning newsletters and in presentations to our clients and health care companies in our region.



In addition to having spent time as a law firm attorney, Kim gained insight into corporate decision making and executive management pressures when she joined Sterling Healthcare as a senior vice president and general counsel. Kim's responsibilities as the sole in-house counsel for the physician staffing company included management of all legal representation (for the company and its numerous subsidiaries from bankruptcy and corporate issues to risk management and medical malpractice defense), oversight of hospital and physician contracting, and corporate adherence to federal and state laws and regulations. Prior to the company's relocation to Florida, Kim worked with a new turn-around team and investors to begin the company's successful sale.

Kim participates in school and community activities in Chapel Hill and time-permitting, enjoys a good book, traveling, and photography. We are thrilled to have Kim join our health care team and look forward to your working with her.

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POYNER SPRUILL IS GOING GREEN — In an effort to be more environmentally conscious, we also issue *Shorts* by email. To sign up for an email subscription to *Shorts*, please send an email request to alerts@poyners.com with *Shorts* in the subject line. Save a tree!

P.S.

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