

Nurse As Attesting Witness: Signing Must Occur In The Nurse's Presence.

The seventy-two year-old patient was brought to the E.R. by paramedics after she took two hundred assorted pills in an apparent suicide attempt. The paramedics were called by her ex-husband with whom she still resided.

At the hospital the E.R. physician intubated her, then removed the tube and allowed her to expire after the ex-husband stated he was the person named in her advance directive and knew that she would not want to be kept alive. The physician had him sign a substitute decision-maker's consent form prior to the extubation.

Afterward the patient's children sued the E.R. physician, the hospital and the E.R. nurse for malpractice for not making a full-scale effort to resuscitate the patient.

The Supreme Court of Nevada ruled the consent form was not legally sufficient to allow the extubation because there were not two attesting witnesses as required by state law. **Estate of Maxey v. Darden**, 187 P. 3d 144 (Nev., July 3, 2008).

Consent for withdrawal of life support requires two witnesses to attest to the signature of the patient's substitute decision-maker.

The nurse charted that life support was withdrawn per the ex-husband's request.

However, the nurse's chart note does not qualify her as an attesting witness. Her chart note failed to state that she was in the substitute decision-maker's presence when he signed and actually saw him sign the document.

SUPREME COURT OF NEVADA
July 3, 2008
