

Bariatric Surgery: Patient Not A Candidate, No Informed Consent, Damages Awarded.

The US District Court for the District of Hawai'i recently ordered a judgment of \$4.25 million paid to the patient in a case we first reported in November, 2014. See *Gastric Bypass: Patient Did Not Give Informed Consent*, (22)11, Nov. '14 p 5.

Negligence and

Lack of Informed Consent

The Court ruled the US government facility where the patient had and then suffered problems after Roux En Y gastric bypass surgery was negligent for offering the patient the surgery despite the fact she did not meet the eligibility criteria.

The facility also failed to give the patient sufficient information as to the risks of the procedure for her to have been able to have given truly informed consent.

A nurse who served as Bariatric Nurse Coordinator was assigned much of the blame for her role in promoting the surgery to military dependent family members and then taking a significant part in screening candidates and approving patients for the gastric bypass surgery program.

Risk/Benefit Analysis for Each Patient

The benefit of gastric bypass is significant weight loss for an obese patient.

The main risks are complications from a permanently altered digestive system that requires lifelong dietary restrictions, nutritional supplements and medical follow-up and a significant probability that all the lost weight will be gained back.

Obese patients for whom continued non-surgical weight loss is judged to have a low chance for success, as demonstrated by actual motivated but failed medically supervised weight-loss attempts, can be considered as candidates, but only if well informed and highly motivated for surgery.

The next basic criterion for the risk/benefit analysis to point a particular patient toward gastric bypass surgery is a body mass index over 40 or 35 to 40 with certain defined obesity-related health issues.

The patient in this case simply did not meet the strict criteria. The elective procedure was inappropriate for her and should not have been offered. ***Mettias v. US*, 2015 WL 1931082 (D. Hawai'i, April 21, 2015).**

This patient was never urged to try a meaningful non-surgical alternative. She was not appropriate for gastric bypass surgery.

The hospital's Bariatric Nurse Coordinator got the patient into the program.

She and the bariatric surgery program's physician director were aiming for Center of Excellence status for their facility, which required an increase in the number of bariatric surgery patients in their program.

The program had adopted patient-screening guidelines promulgated by the National Institutes of Health, American Society of Metabolic and Bariatric Surgeons, Society of American Gastrointestinal and Endoscopic Surgeons and other organizations.

The guidelines restrict surgical eligibility to patients with a body mass index over 40 when entering the program, or 35 to 40 with obesity related issues.

To be deemed appropriate a patient must also have tried at least one medically supervised weight loss program, have made a realistic effort with sincere motivation and have failed.

UNITED STATES DISTRICT COURT
HAWAII
April 21, 2015

PEG Tube: Court Lets Family's Case Go Forward.

During hospitalization following a stroke the elderly patient had a percutaneous endoscopic gastrostomic (PEG) tube surgically inserted through the abdominal wall into his stomach in order to provide nutrition.

From the hospital the patient was transferred to an extended care nursing facility. There while in an agitated state the patient pulled out his PEG tube. It was reinserted about eight hours later.

After the tube was reinserted by the LPN who was caring for him, gastric contents and nutritional material outside the stomach in the abdomen caused a massive infection which resulted in the patient's death.

It appears from the chart that an LPN reinserted the PEG tube.

The family's expert witness is an RN. That is not a fatal flaw in the family's legal case.

COURT OF APPEALS OF MICHIGAN
April 7, 2015

There has been no definitive ruling on the issue of nursing negligence as the cause of the patient's death. Before getting to the ultimate issue the nursing facility's lawyers launched a flanking attack directed at the qualifications of the family's expert.

The Court of Appeals of Michigan ruled in the family's favor that the family's expert witness, an RN, is qualified to give an opinion as to the negligence of an LPN. Thus the case is not subject to dismissal for failure to file an expert's report as required by law in Michigan as in most states.

The Court looked at the definitions of nursing practice in the state's LPN and RN nurse practice acts and found them to be substantially similar.

The Court also pointed out that due to more extensive education and training, RNs are authorized by law to supervise LPNs. ***Jones v. Botsford*, __ N.W. 2d __, 2015 WL 1541005 (Mich. App., April 7, 2015).**