

## Gratuitous Act: Court Says Hospital Can Be Liable.

An E.R. nurse whose elderly patient was being admitted to the hospital called in the hospital's patient-care representative to assist her patient with his dogs that were still at his home.

Due to faulty communication with the patient, county animal control was notified of the situation rather than the Humane Society. Animal control officers went to the home, took the dogs to the pound and the dogs were eventually euthanized.

**One who undertakes to do an act or to perform a service for another has the duty to exercise care, and is liable for harm resulting from the failure to do so, even though the undertaking was purely voluntary or completely gratuitous and there was no obligation to do such an act or to perform such service or any payment exchanged for the promise.**

**When one undertakes an act he or she has no duty to perform and someone relies upon that undertaking, the act must be performed with reasonable care.**

COURT OF APPEALS OF GEORGIA  
July 11, 2012

The Court of Appeals of Georgia saw grounds for a lawsuit against the hospital.

A hospital is under no legal obligation whatsoever to see to a patient's dogs.

However, when the patient care representative gratuitously took on that responsibility, the hospital placed a legal duty upon itself to carry out that responsibility competently and in accordance with the patient's wishes. Greenway v. Northside Hosp., \_\_\_ S.E. 2d \_\_\_, 2012 WL 2819420 (Ga. App., July 11, 2012).

## Coumadin: Nurses Did Not Perform PT/INR Tests, Civil Monetary Penalty Upheld.

**The resident's overall plan of care included a note that PT/INR monitoring no less frequently than monthly had been ordered by the resident's physician.**

**Even if there was no order from the physician for monthly PT/INR testing, the professional standard of care for the nurses would expect the nurses to know that that testing needs to be done with any patient on Coumadin and would expect them to inquire with the physician about such an order.**

**There is no unauthorized practice of medicine involved when nurses contact the physician for orders the nurses know are most likely indicated for a particular patient.**

**The nurses were right to fax the October PT/INR result to the physician.**

**However, it was below the professional standard of care for the nurses to wait for a response and not follow up when no response was received back from the physician one way or the other whether changes needed to be made in the Coumadin or other medication dosages.**

UNITED STATES COURT OF APPEALS  
EIGHTH CIRCUIT  
July 17, 2012

The patient in a skilled nursing facility was a seventy-eight year-old woman with hypertension and a medical history of cancer and strokes.

She was taking Coumadin to help prevent blood clots and another stroke.

State survey inspectors found when they reviewed her chart that a PT/INR test was done in late October and a fax was sent to the physician with the result, but there was no response from the physician.

In late December a nurse noticed small bruises on the patient's thigh and in mid-January a nurse found extensive bruising under her armpit. Eight days later the resident picked at a scab until it began to bleed, her vital signs began to deteriorate and she had to be taken to the E.R.

A PT/INR test in the hospital in late January revealed an abnormally high level. It was the only PT/INR test done since late October the prior year.

The facility was cited for violation of Federal regulations found at 42 C.F.R. Section 483.25. The catch-all language of that section requires nursing facilities to provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

Federal regulations require nursing facility residents to receive competent professional nursing care which, in this case, meant that this resident's nurses should have performed the PT/INR at least monthly per the physician's orders incorporated in the care plan and also assessed the patient for bruising and bleeding as signs of excessively compromised clotting.

According to the Court, the nurses' failure to do frequent PT/INR testing rose to the level of immediate jeopardy as defined in Federal regulations, justifying the highest possible civil monetary penalty.

The nurses' omission was likely to cause serious injury or harm to a resident. The fact that no serious harm actually materialized to the resident in question was beside the point, the Court said. Greenbrier Nursing v. US Dept. of Health & Human Svcs., \_\_\_ F. 3d \_\_\_, 2012 WL 2891270 (8th Cir., July 17, 2012).