

# LEGAL EAGLE EYE NEWSLETTER

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## Emergency Department: Court Faults Nurses, Did Not Invoke The Chain Of Command.

The mother brought her six year-old son to the emergency department with a fever, vomiting, diarrhea, congestion, coughing and a sore throat.

Vital signs obtained by the emergency department nurses included abnormally fast resting heart and breathing rates and a temp of 99.1°.

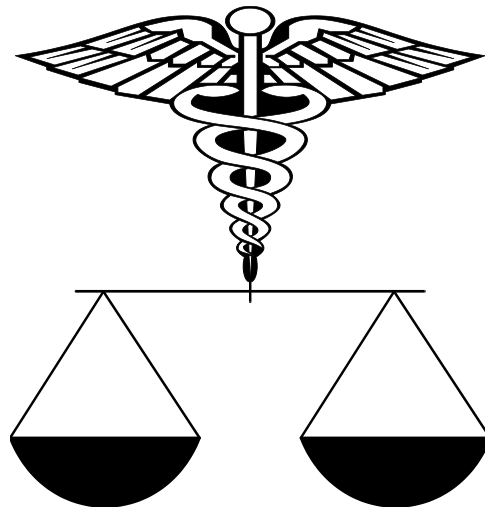
The child was vomiting in the emergency department. His throat was red. The blood test ordered by the physician showed an elevated white cell count and the chest x-ray revealed opacification in both lungs. His mother told the nurses he had a headache.

The emergency department physician diagnosed bacterial pneumonia and discharged the child with a prescription for an antibiotic and ibuprofen.

The child became unresponsive at home later that same day. His parents took him to a different hospital. At the hospital he began seizing. A CT showed abnormal intracranial signs. He was intubated and given IV fluids.

The child died in the hospital the next day from cerebellar tonsillar herniation due to brain swelling.

The Court of Appeals of Texas validated the parents' lawsuit against the first hospital based on a physician's expert opinion faulting the hospital's emergency nurses for failing to invoke the institutional chain of command.



***The legal standard of care requires nurses in the emergency department to invoke the institutional chain of command to obtain an order to admit a patient whose signs and symptoms dictate that discharge is not appropriate.***

***Failing to do so can render the nurses and the hospital legally responsible for further harm suffered by the patient.***

COURT OF APPEALS OF TEXAS  
December 21, 2016

Invoking the chain of command is a hospital nurse's legal duty as the patient's advocate when the physician makes a treatment decision that threatens the patient's health or safety.

How to invoke the chain of command must be defined ahead of time by nursing management and nurses must be instructed what steps a nurse is expected to take.

As a rule a staff nurse must go to the charge nurse, the charge nurse to the unit manager, the unit manager to the house supervisor, the house supervisor to the physician in question, then up the physicians' hierarchy all the way to the top until appropriate action is taken.

Nurses' failure at any level in the chain to advocate for the patient can expose the institution to liability apart from the physician's malpractice.

In this case the parents' expert concluded the data obtained in the emergency department pointed to an immediate need for the child to be in a hospital ICU receiving aggressive attention from infectious disease specialists and critical-care nurses, before multi-organ failure made his death inevitable.

The expert held the nurses partly to blame for not taking action in the face of the physician's wrong decision. **Hinojosa, 2016 WL 7383819 (Tex. App., December 21, 2016).**

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