

# Civil Rights: E.R. Nurse Withheld Pain Medication From Suspect Pending Police Interrogation.

The criminal suspect's civil rights lawsuit against the hospital was based upon a note penned on the suspect's emergency department trauma flow sheet by an emergency department nurse:

*MD aware of pt. c o pain. Informed by MD to wait until police are done speaking to pt. Det. Fry & Det. Anderson @ BS.*

For the record, the US District Court for the Southern District of Texas pointed to the nurse's sworn testimony that explained what her note meant:

*Medical doctor aware of patient complaint of pain. Informed by medical doctor to wait until police are done speaking to patient. Detective Fry and Detective Anderson at bedside.*

The patient had been rushed to the hospital after being shot by police storming into a local business establishment to interdict a hostage situation that developed after a botched armed robbery attempt.

When the suspect arrived at the hospital the police were still in the process of sorting out whether the suspect in custody was the only perpetrator involved, whether other perpetrators were still holed up in the crime scene or had fled, whether there were additional hostages still being held and other critical details of the situation that was still unfolding.

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***A suspect in police custody has an Eighth Amendment Constitutional right not to be subjected to cruel and unusual punishment.***

***Cruel and unusual punishment, among other things, includes deliberate indifference by medical caregivers to the suspect's serious medical needs.***

***Medical caregivers do not have to be jail or prison employees for the Eighth Amendment to apply to them, if they are treating a person who is in the custody of law enforcement.***

***Withholding or delaying necessary critical care, including pain medication for a patient in dire need, would be considered serious indifference and cruel and unusual punishment.***

***Orders from the police are not relevant to a nurse's legal responsibilities.***

UNITED STATES DISTRICT COURT  
TEXAS  
October 19, 2009

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## **Nurse Did Not Violate Patient's Rights Court Walks a Very Fine Line**

The Court was careful to point out that the nurse and her employer were spared from liability for violating the patient's Constitutional rights only because it apparently was the E.R. physician, not the police officers who were standing by, who ordered the morphine withheld so that the patient would remain lucid until the police had obtained the information they wanted.

### **Care Cannot Be Delayed or Withheld At the Behest of Law Enforcement**

It would have been wholly improper for the nurse, the Court said, if she had a physician's order for morphine for a patient who obviously needed it, to delay or withhold the morphine at the direction of law enforcement officers, whether the officers said they just wanted the patient to remain lucid to complete their questioning or were actually prolonging the patient's agony to try to coerce a confession.

Why the physician actually held up the morphine was not clear. He might have felt it necessary to evaluate his condition further, i.e., check the patient's level of consciousness, assess his respirations and/or get the CT results back first. The nurse might have been confused and misstated the rationale for holding up the morphine.

In any event, the Court ruled, despite what the nurse herself noted, the evidence was not conclusive that the nurse delayed or withheld a needed medical intervention at the direction of law enforcement. ***Gilbert v. French***, \_\_ F. Supp 2d. \_\_, 2009 WL 3378392 (S.D. Tex., October 19, 2009).