

Experimental Surgery: Court Says Physician, Not Hospital's Nurses Must Obtain Patient's Consent.

Assuming the hospital has not agreed with the Food and Drug Administration that the hospital and its staff will participate in a medical experiment, the hospital and its nurses will not be ruled liable to a patient in a civil lawsuit for lack of informed consent when a surgeon implants surgical hardware that has not been approved by the FDA, the Supreme Court of Tennessee recently ruled.

It is not the hospital's or its nurses' responsibility to obtain the patient's informed consent for surgery.

It is not their responsibility to supply information to the patient about the hardware the surgeon intends to implant.

It is not their responsibility to warn the patient that the hardware the surgeon intends to use has been disapproved by the FDA and that the surgery would therefore be considered experimental.

SUPREME COURT OF TENNESSEE, 2000.

Even though the surgeon essentially was performing experimental surgery at the hospital, the court saw no reason to depart from the general rule that it is strictly the physician's responsibility to obtain fully informed consent from the patient. ***Bryant v. HCA Health Services of No. Tennessee, Inc.***, 15 S.W. 3d 804 (Tenn., 2000).

Artificial Nutrition: Family Disagreed, But Court Refuses To Fault Nursing Home.

There is no need to see this as a case of wrongful prolongation of life, as some courts phrase it.

Under the circumstances the family has no right to sue the nursing facility for following the physicians' orders and keeping the patient alive.

The family had the right to go to court to challenge the physicians' orders to put in and continue the nasogastric tube and feed the patient a sufficient caloric diet rather than just water.

The family also could have moved the patient to another nursing facility that would have agreed not to feed her and let her die.

Instead, the family kept the patient at the same nursing facility and kept changing physicians, while each new physician kept ordering artificial nutrition continued against the family's wishes.

A court procedure is available for a substituted decision-maker to get court approval for a patient to be allowed to die naturally, to be used when there is a dispute over what is to be done with the patient.

COURT OF APPEALS OF INDIANA, 2000.

When the patient suffered a stroke that left her one side paralyzed and had to enter the nursing home she signed a living will. Her living will told her doctors not to take extraordinary measures to prolong her life if she became afflicted with a terminal illness and had no reasonable possibility of recovery.

She also signed a power of attorney in favor of her son. However, the Court of Appeals of Indiana pointed out it was not a standard durable power of attorney for healthcare decisions and contained no specific provisions regarding the patient's health care. Later at the nursing home she signed a Do Not Resuscitate form that said she did not wish to be given cardiopulmonary resuscitation in the event she stopped breathing.

Eighteen months after the first stroke she had another stroke and became comatose. Her physician and her son agreed at the hospital to give her only IV saline and return her to the nursing home to expire. However, at the nursing home the nurses noted signs of discomfort, that is, she pulled her foot away from a needle stick, and they saw her open her eyes.

The nurses got the doctor to order a nasogastric tube and started feeding her sufficient calories to keep her alive indefinitely. The family objected and changed physicians three times, but the physicians kept feeding her for twenty weeks, until she became obviously terminal and was allowed to pass away.

The family sued the nursing home for wrongful prolongation of life. The court refused to validate their lawsuit. Caregivers can go along with a substituted decision-maker and let a patient pass away. Or they can prolong the patient's life if they think it is appropriate, and it is up to the substituted decision-maker to transfer the patient or go to court for a court order defining what is to be done, the court ruled. ***Estate of Taylor v. Muncie Medical Investors, L.P.***, 727 N.E. 2d 466 (Ind. App., 2000).