Patient Falls, Bleeds To Death: Court Finds Nursing Negligence.

The seventy-one year-old patient was admitted to the hospital for treatment of thrombotic thrombocytopenic purpura.

His physicians implanted a Quinton catheter in his right internal jugular vein.

The patient's nurses assessed him as a high risk for falling due to his age, his poor physical condition and his medications.

The hospital's nursing protocols called for a bed alarm for any high-fall-risk patient. This patient had a bed alarm but it was not turned on on the night in question.

The patient was given a sedative at bedtime to help him sleep. Then at 1:20 a.m. he was given a laxative because he had been having constipation.

The US Court of Appeals for the Fifth Circuit (Texas) wondered why a nurse would wake a patient during the middle of the night to give him a laxative which can act quickly and cause cramping. Apparently the laxative was supposed to have been given earlier but was not given due to an oversight by the patient's nurses.

The nursing progress note when the laxative was given stated that the patient was to be closely watched.

However, no one checked on the patient until 4:40 a.m. when he was found on the floor in the bathroom in a pool of blood with his pajama bottoms down.

The Quinton catheter had been removed and was on the table at the foot of the patient's hospital bed.

The patient was pronounced dead at 4:45 a.m., having bled out through the opening in his jugular from which he had removed the catheter.

Nursing Negligence

No Bed Alarm / Patient Not Monitored

The Court found nursing negligence in the simple fact that the bed alarm was not activated. This patient was one who the nurses should have anticipated might try to get up out of bed on his own and have considerable trouble if he did so.

If a nurse had come to the room when the alarm sounded when the patient first got up, pressure on the neck could have stopped the bleeding and the patient could have survived. The nurses also should have been checking on the patient frequently. **Smith v. Christus, 2012 WL 5489397 (5th Cir., November 13, 2012).**

In light of the patient's condition, a bed alarm and frequent monitoring by the nurses were absolute necessities.

The patient had a Quinton catheter in his neck for medical treatment of his TTP. It was on the table in his room after the patient was found during the night in a pool of blood on the bathroom floor with his pajama bottoms down.

If the bed alarm had been turned on a nurse could have responded in time to have prevented him from bleeding to death.

The patient was elderly and debilitated and had a high risk for falling.

He had a low platelet count which made him a high risk for bleeding.

Due to his age and the sedative medication he had been given he was the type of patient who could wake up and become confused during the night.

He had also been given a laxative in addition to the sleep aid .

That meant the nurses should have expected he might have to get out of bed during the night, and have to get up in a hurry, which would tend to increase his chances of falling.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
November 13, 2012

Wrongful Life: Court Allows Suit To Go Forward.

The husband and wife both come from Ashkenazi Jewish heritage, people who are at special risk for certain genetic disorders in their children.

Because of the special risk, the wife was given blood tests which determined that she is a carrier of the genetic factor that causes familial dysautonomia, one of the many genetic risks facing children of persons from her particular ethnic group.

The wife was nevertheless twice informed that her blood tests were normal on later prenatal visits to the clinic.

A few months after birth the child was diagnosed with familial dysautonomia. After learning about the positive prenatal test result the couple filed a lawsuit against the clinic, several physicians, a nurse practitioner and the hospital system that is the clinic's corporate parent.

The parents have the right to sue for wrongful life, that is, for being denied the opportunity to make their own informed decision whether to terminate the pregnancy of a child sure to be born with substantial genetic abnormalities.

SUPERIOR COURT OF PENNSYLVANIA
November 14, 2012

The Superior Court of Pennsylvania ruled the parents had the right to go forward with their lawsuit claiming that they would have had an abortion rather than bring a child into the world destined to endure a lifetime of extreme and debilitating suffering and ultimately suffer a premature death.

The Court acknowledged that wrongful birth or wrongful life lawsuits, which are currently allowed in many states, are a controversial subject. The Court went on to rule that a statute passed by the Pennsylvania legislature to disallow such lawsuits is unconstitutional for technical legal reasons. **Sernovitz v. Dershaw, __ A. 3d __, 2012 WL 5503973 (Pa. Super., November 14, 2012).**

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Flu Vaccine: Court Throws Out Lawsuit Against School Nurse.

A fifth-grader was given the H1-N1 vaccine by the school nurse despite the fact he presented to the nurse a signed permission slip from his mother indicating that his mother did not consent to him receiving the vaccine.

Most of the children were given the vaccine by nasal mist. Because this child had asthma the nurse elected to give the vaccine by injection. Being asthmatic, the child faced grave risks to his health if he got the flu, but at the same time, due to his asthma, nasal-mist administration of the vaccine was not suitable for him.

It was not clear from the court record whether the school nurse interpreted the mother's withholding of consent as pertaining only to the nasal mist which most of the children were getting which was not appropriate for her asthmatic child, or if the mother did not want her child to be vaccinated in any manner whatsoever, but the nurse went ahead anyway.

Even if the school nurse went ahead over the mother's refusal to consent to this necessary and minimally-invasive procedure, the facts do not plausibly amount to a violation of the mother's or the child's Constitutional rights.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
November 2, 2012

The US Court of Appeals for the Eighth Circuit (Missouri) threw out the mother's lawsuit which alleged violation of hers and her son's Constitutional rights.

The Court noted that a lawsuit for violation of a citizen's Constitutional rights requires unconscionable behavior by a governmental official and this nurse's exercise of her own judgment did not fit that bill. **B.A.B. Jr. v. Bd. of Educ. of St. Louis, __ F. 3d __, 2012 WL 5373367 (8th Cir., November 2, 2012).**

Fall, Fatal Head Injury: Court Finds Nursing Negligence.

The family's nursing expert stated that this patient represented a very high fall risk, particularly after the administration of Ativan, which has potential side effects of dizziness, drowsiness, disorientation and unsteadiness.

After the patient was found to have sustained a second fall, in the hospital, in addition to the one he sustained at home, there was no documentation to be found in the chart to support the care that had been given to the patient on the med/surg floor.

Failure to accurately and intelligently assess and document a patient's health status, including signs, symptoms and responses to nursing care, is a breach of the standard of care.

The nursing documentation does not contain a fall assessment of this patient after he arrived on the med/surg floor. An assessment at that time would have included the administration of Ativan, which would not have been part of the initial fall assessment in the E.R.

The failure to conduct a second fall assessment on the med/surg floor taking into account the effects of his medication is a breach of the standard of care.

COURT OF APPEALS OF TEXAS
November 14, 2012

The ninety year-old patient was brought to the emergency room after experiencing a temporary loss of consciousness after a fall at home.

A head CT scan in the E.R. showed no evidence of intracranial head trauma.

The patient was given IV morphine and IV Ativan, admitted to the hospital and transferred to a med/surg floor.

About an hour after arrival on the med/surg floor the patient fell again. Because he was not being closely monitored by the nurses the fall could only be estimated to have occurred sometime between 3:30 a.m. and 4:30 a.m.

A second head CT showed a right frontal subarachnoid hemorrhage and frontal scalp hematoma. He was sent by ambulance to a trauma center and placed on life support but soon died.

Nursing Negligence
No Nursing Assessment After Morphine / Ativan

The Court of Appeals of Texas ruled the family's expert witnesses, a physician board-certified in geriatric medicine and an RN with a background in hospital care of elderly patients, correctly formulated the applicable standard of care.

The physician laid the groundwork by pointing out that morphine and Ativan can lead to falls in frail elderly patients through lowering of the blood pressure and clouding of their mental faculties.

The standard of care requires close monitoring by hospital staff after giving such medications to frail elderly patients. There was no medical or nursing documentation of the need for close monitoring by a nurse or assignment of a sitter. In fact, the patient was simply left alone in his room.

The family's nursing expert's opinion was that a second nursing assessment was required after the patient arrived from the E.R. on the med/surg floor.

The second assessment would have taken into account that the he had just been given two IV medications which could increase his already considerable fall risk. The second assessment would have led to fall precautions such as close monitoring or assignment of a sitter. **Peterson Reg. Med. Ctr. v. O'Connell, __ S.W. 3d __, 2012 WL 5503895 (Tex. App., November 14, 2012).**

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Fall: No Evidence For Case Against Nurses.

The day after gastric bypass surgery two nurses transferred the patient from his bed to the reclining chair in his hospital room.

After placing the patient in the chair, one of the nurses attempted to recline the chair from the fully upright position backward to a more relaxed position that would be more comfortable for the patient. Instead of reclining back to the first position the chair abruptly dropped all the way back to the fully flat supine position.

The patient sued claiming his back was injured. The Court of Appeal of Louisiana ruled the patient did not have evidence for his case.

The patient did not come forward with any evidence that the standard of care for nurses caring for a post-surgery patient requires the nurses to check the mechanical functioning of a chair before attempting to place the patient in the chair. That is, although a medical facility has certain legal duties toward its patients, this particular task is not necessarily a nursing function. **Blood v. Southwest Med. Ctr., __ So. 3d __, 2012 WL 5417296 (La. App., November 7, 2012).**

Fall: No Evidence For Case Against Nurses.

The patient was in the hospital receiving care for alcohol abuse.

He slept most of his second day in the hospital. The next day shortly after he awoke he fell out of bed and injured his hip.

The patient sued claiming that his nurses' negligence caused his fall. Specifically he alleged the nurses did not latch the side rail, failed to inspect the side rail to ascertain that it was properly latched and placed the call button in an awkward position for him to be able to reach.

The US District Court for the Northern District of Texas ruled the patient did not have evidence for his case.

Having just awoken right before he fell, the patient had no direct proof that any of the factual assertions raised in his lawsuit were in fact true.

The basic fact that he fell out of bed, in and of itself, did not prove that his nurses departed from the standard of care in the care given to him or that such a departure caused him to fall. **Quile v. Hill-Rom Co., 2012 WL 5439904 (N.D. Tex., November 7, 2012).**

Medical Confidentiality: HIPAA Prevents Patient's Caregivers From Speaking With Attorneys.

The family sued the nursing home where the patient had lived, alleging that nursing negligence resulted in an infected decubitus ulcer from which the patient died.

The nursing home's lawyers wanted to interview medical and nursing personnel from two acute care hospitals where the patient had been transferred for wound-care management and treatment.

To speak with a patient's caregivers the nursing home's lawyers realized they needed either a signed authorization from the executor of the deceased patient's probate estate, or a qualified protective order from the court which would allow them to interview the patient's caregivers and at the same time set the permissible parameters for such communication.

No healthcare provider may disclose protected healthcare information unless there is written authorization from the patient or the patient's legal representative, a proper court order or a properly drawn up subpoena.

Healthcare information refers to information, oral or recorded, in any form or medium that relates to a past, present or future healthcare condition.

COURT OF APPEALS OF GEORGIA
November 16, 2012

The Court of Appeals of Georgia acknowledged that the US Health Insurance Portability and Accountability Act (HIPAA) strictly forbids caregivers from disclosing confidential information, including medical charts and records, or even from speaking directly with anyone about the patient unless there is strict compliance with Act's legal requirements.

In this case the Court ruled that the proposed qualified protective order drawn up by the nursing home's lawyers was too vague. It did not protect the patient's privacy by preventing the lawyers from delving into subject areas that might give them ammunition for their case but were not strictly related to the management and treatment of her infected decubitus. **Tender Loving Care v. Ehrlich, __ S.E. 2d __, 2012 WL 5857431 (Ga. App., November 16, 2012).**

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