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Heroin Overdose Death: Court Rules Hospital Emergency Department Was Not At Fault.

A young woman was discharged into the custody of a police officer after treatment in the hospital's emergency department for a heroin overdose.

The officer took her to the county juvenile detention facility. No nurse was on duty at the facility during the night. When she stopped breathing and became unresponsive several hours into her incarceration staff called 911.

Paramedics brought the patient back to the hospital but she died within several hours. The medical examiner established the cause of death as heroin toxicity.

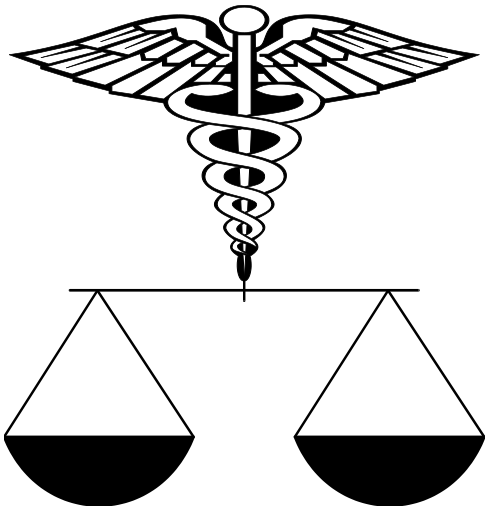
Treatment at the Hospital

Under the direction of the emergency department physician the patient was given Narcan/naloxone and Ativan/lorazepam as treatment for a heroin overdose. She was at the hospital about an hour and forty minutes.

Hospital Discharge Instructions

The emergency department nurse manager could recall during her pretrial deposition testimony that she personally went over the discharge instructions with this patient and the police officer who was taking her into custody.

However, the nurse manager could not specifically recall exactly what she said to the patient before allowing her to leave the department.



The fact the hospital did not have a policy at the time specifically for the care of post-naloxone patients in the emergency department did not cause this patient's death.

It was only speculation that keeping this patient a few minutes longer or monitoring her more closely would have prevented the tragic outcome of her case.

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Nevertheless, the printed discharge instructions that the nurse manager showed and explained to the patient and the police officer were a matter of record in the patient's chart.

The discharge instructions were titled "Heroin Abuse and Withdrawal." The instructions indicated that respiratory depression progressing to cessation of breathing and death were possible complications after heroin use.

Shallow breathing was identified as a sign to watch for that the patient was still affected by having taken heroin.

The patient was told to return or to be returned to the emergency department if the signs of a heroin overdose reappeared after she left the hospital.

The nurse had made a note on the copy in the file that the patient herself had verbalized an understanding of the discharge instructions.

Court Discounts Family's Medical Expert's Opinions

For the case against the hospital the family's lawyers hired a physician as their medical expert.

However, his testimony was not accepted by the US District Court for the District of New Mexico and the Court affirmed a summary judgment of dismissal in favor of the hospital.

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Heroin Overdose Death: Hospital Emergency Department Ruled Not At Fault (Continued).

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First and foremost the family's medical expert stated, erroneously in the Court's judgment, that the hospital should be held liable for failing to have a policy for treatment of emergency department heroin overdose cases.

It was only speculation, the patient's expert had to admit, that having a policy for treatment of heroin overdose cases would have had any real effect on this patient's outcome.

Keeping this patient a specific number of minutes longer per a hospital policy would not necessarily have changed the outcome.

20/20 hindsight is not the legal standard for judging the reasonableness of a healthcare provider's judgment and actions under the circumstances that existed at the time of the provider's interaction with the patient.

Hospital's New Policy For Heroin Overdose Cases

In her pretrial deposition, in addition to her testimony about her personal interaction with this patient as a nursing caregiver, the emergency department nurse manager testified that after this incident the hospital adopted a new protocol for the care of post-naloxone patients in the emergency department.

After this incident the hospital adopted a new protocol for the care of post-naloxone patients in the emergency department.

Post-naloxone patients are now to be kept at least two hours for observation and must attain and maintain at least 90% O_2 saturation on room air for at least thirty minutes before discharge.

However, it is only speculation that having such a policy before the fact would have saved this patient's life, and speculation is not sufficient grounds to hold a healthcare provider liable in a negligence lawsuit.

In addition, the law cannot look upon a subsequent remedial measure as a statement of the standard of care before the fact.

There was no problem with the nurse's discharge instructions.

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Such patients are now to be kept in the emergency department for observation for at least two hours. They must also attain and maintain an O_2 saturation of at least 90% on room air for at least thirty minutes before they can be discharged.

Subsequent Remedial Measures Are Not Proof of Negligence

A centuries-old principle of the common law disallows as evidence of negligence so-called subsequent remedial measures taken after the fact.

The policy of the law has been for ages not to allow fear of potential implications in a civil negligence lawsuit to inhibit beneficial changes being made after the fact of an adverse incident.

In this case, in the context of a summary judgment hearing, the Court did consider the fact the hospital changed its ways after the fact, evidence that would not have been brought before a jury in a civil trial.

The Court considered that evidence only to point out that it was basically not relevant. Even if the new post-naloxone protocol was a correct statement of the standard of care, it would still be pure speculation to conclude that not keeping and monitoring this patient nineteen minutes longer was the cause of her death.

Discharge Instructions Ruled Adequate

The bottom line was that the nurse manager's discharge instructions fully informed the patient and the officer of the potential risks and what to look for. It was not the hospital's fault the patient did not return or was not promptly returned to the hospital. **Bevan v. Valencia, 2017 WL 4797788 (D. N.M., October 24, 2017).**

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