

LEGAL EAGLE EYE NEWSLETTER

July 2017

For the Nursing Profession

Volume 25 Number 7

Nurse As Patient Advocate: Court Sees No Basis To Impose Liability On The Hospital.

The patient came to the hospital for evaluation of knee pain from a fall at home a week earlier.

He came in with a crutch but was nevertheless able to ambulate independently without a problem the whole time he was at the hospital undergoing various tests that lasted most of the day.

While he was sitting waiting for his ride home a nurse informed him she was going to help him out of the hospital in a wheelchair once his ride arrived.

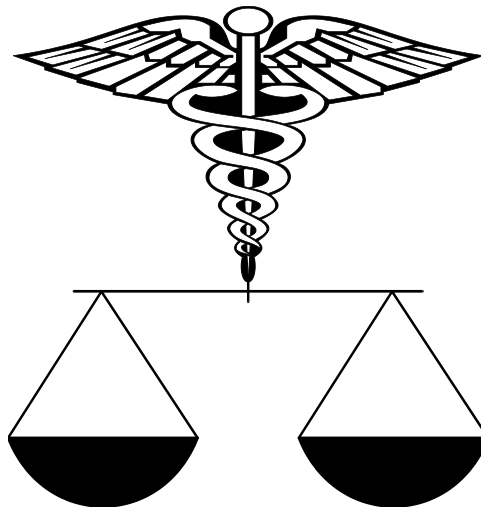
When he started walking out of the building on his own the same nurse twice offered to wheel him out in a wheelchair. The patient refused the nurse's offers of help.

Just outside the hospital the patient fell and hit his head. He was taken back into the hospital and was readmitted for evaluation of his head injury.

Later that day when the physician was ready to discharge the patient the nurse caring for him at that time went to her charge nurse with her concerns about sending him home without a CT.

The charge nurse spoke with the physician about the possible need for a CT scan and/or the need to keep the patient overnight for further observation, but the physician sent him home.

The patient sued the hospital claiming the nurses failed in their legal duty to advocate for him as their patient.



Before the patient fell a nurse twice offered to help him out of the hospital in a wheelchair.

Before he was discharged again after evaluation of his head injury another nurse went to her charge nurse with concerns about sending him home without a CT. The charge nurse spoke with the physician, but the physician sent him home.

UNITED STATES DISTRICT COURT
WASHINGTON
June 14, 2017

The US District Court for the Eastern District of Washington dismissed the patient's lawsuit.

As to the first nurse, who at least twice offered to help the patient out of the building in a wheelchair, the patient's nursing expert testified it was the nurse's duty not just to offer to help but to insist and keep on insisting until the patient accepted the nurse's help.

The Court ruled, however, that the nurse did all that the law expected.

As to the second nurse, who was the patient's nurse during his head-injury evaluation, the Court also saw no breach of the nurse's duty to advocate for the patient.

The nurse was uncomfortable with the physician's intention to discharge a head-injury patient without a CT. She voiced her concerns to her charge nurse. That met her legal duty as a staff nurse to advocate for her patient.

The charge nurse, in turn, met her legal duty by going to the physician directly and expressing her concern that a recent head-injury patient should get a CT scan and be kept for observation.

The physician declined the charge nurse's advice. The Court ruled that at that juncture the nurses were not expected or permitted to intervene further. ***Wright v. US*, 2017 WL 2590339 (E.D. Wash., June 14, 2017).**

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Nurse As Patient Advocate: Information Makes The Case.

The thirty-six year-old mother arrived at the hospital by ambulance in the middle of the third trimester of her third pregnancy.

She had been vomiting and experiencing fever and abdominal pain and was having mild contractions.

The emergency physician ordered various tests. The sonogram was normal. The MRI showed placenta accreta but no placental abruption.

The physician deemed the mother's condition serious but he did not see it as an emergency. He believed the mother and child would benefit from a higher level of care than the hospital could offer. After contacting a physician at another hospital 159 miles away who concurred with the transfer and agreed to accept the patient the emergency physician ordered her transferred by ambulance.

Unfortunately the mother's condition bottomed out while the ambulance was stuck in a massive traffic jam very close to the destination hospital.

By the time they finally got to the hospital the mother was in full cardiac arrest with a placental abruption. The mother died at the hospital and the baby was delivered stillborn by cesarean.

Nurses' Duty to Advocate for Patient

The Supreme Court of Texas ruled that the patient's family's lawsuit as it stands now does not have sufficient proof the nurses at the first hospital could and should have advocated effectively against the patient's transfer to the second hospital.

However, the Court did not dismiss the case. The family's nursing expert was given time to supplement her opinion if she can find any information the nurses knew about and should have brought to the physician's attention that would have convinced him keep the patient at the hospital.

It was not sufficient for the family's nursing expert simply to say that the nurses should have advocated for further testing and evaluation and for keeping the patient at the hospital. The Court saw no reason for the physician to have listened to the nurses unless they were armed with relevant information to make their case. **Co-lumbia v. Zamarripa**, __ S.W.3d __, 2017 WL 2492003 (Tex., June 9, 2017).

Nurses are not expected simply to express disagreement with the patient's physician without facts to make their case.

To advocate effectively for a patient a nurse is expected to convey relevant information to the physician about the patient's condition that will persuade the physician to take a course of action more appropriate to the patient's needs.

In this case the patient's family's nursing expert needs to explain more fully her allegations that the hospital's nurses failed to advocate for the patient.

To make out a case against the hospital the family's nursing expert must show there was information about the patient about which the physician was unaware about which the nurses were aware which the nurses neglected to bring to the physician's attention.

It is not sufficient for the expert simply to say after the fact that the nurses should have advocated for more tests and protested against transferring the patient. That would amount to trying to reason backward from the bad result to a conclusion that negligence was committed.

SUPREME COURT OF TEXAS
June 9, 2017

Labor & Delivery: Nurse Followed Physician's Orders.

The on-call physician in the patient's obstetrician's office told her to go to the hospital when she phoned early in the a.m. to report cramping but no bleeding.

At 5:50 a.m. the night nurse admitted her to the hospital's labor and delivery unit, took vital signs and got a brief history. The nurse phoned the obstetrician at 6:00 a.m. and got and carried out orders for lab tests, an IV and fetal monitoring.

The night nurse watched the fetal monitor and checked the mother until the day nurse came in at 7:00 a.m.

Later that morning the fetal heart rate spiked, the day nurse called the obstetrician and an emergency c-section was done, but not before the uterus had ruptured.

The patient's medical expert has no basis to say that the night nurse should have insisted the obstetrician come to the hospital to perform a physical examination of the patient upon admission, or that the nurse should have gone up the nursing chain of command until another obstetrician agreed to do so.

APPEALS COURT OF MASSACHUSETTS
June 9, 2017

The night nurse was dismissed from the case by the medical review panel. The Appeals Court of Massachusetts agreed with the panel that the patient's expert obstetrician's opinion provided no basis to keep the night nurse in the case.

The night nurse followed the physician's routine orders which seemed to be appropriate at the time. To do her duty as advocate for her patient she was not expected to substitute her own medical judgment for the physician's as to whether the patient needed closer attention from a physician. **Jennison v. Ambrosini**, 2017 WL 2491709 (Mass. App., June 9, 2017).