

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Nurse Switched Patient's Medication: Court Says Patient Can Sue For Battery.

Before coming in for her MRI the patient phoned the hospital and spoke with a nurse. The patient explained she had a painful back condition that would not allow her to lie still during her MRI and she would need medication. She told the nurse she would accept only Demerol or morphine for pain control.

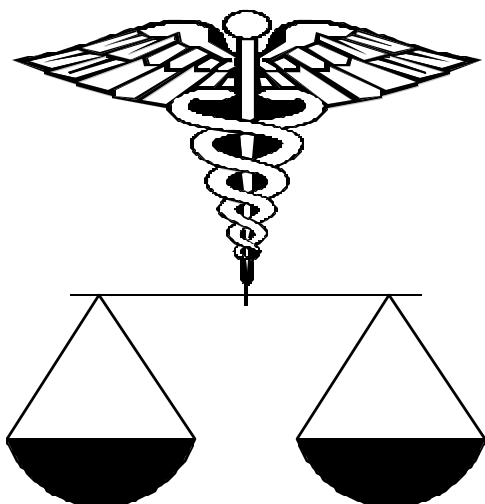
The nurse assured her only Demerol or morphine would be used and the patient came in for her MRI.

When she got to the hospital the nurse assigned to care for her told her fentanyl would be used and explained it was similar to Demerol and morphine.

An argument ensued in which the patient, the Supreme Court of Arizona pointed out, expressly told her nurse three times she would not accept anything but Demerol or morphine and insisted the nurse contact her physician to discuss her medication.

The nurse told her her medication had been changed to morphine. With this reassurance from the nurse the patient agreed to go ahead.

Then the nurse deliberately turned around and gave the fentanyl. It led to serious complications including severe headache, projectile vomiting, breathing difficulties, post-traumatic stress disorder and vocal cord dysfunction.



***A nurse is legally liable to a patient for common law civil battery when the nurse performs a medical intervention upon the patient without the patient's consent.***

***Consent to be given an injection of one medication is not considered consent to be given another medication substituted by the nurse against the patient's express wishes.***

SUPREME COURT OF ARIZONA

June 16, 2003

### **Patient's Lawsuit for Civil Battery**

The patient sued the medical imaging corporation, the nurse's employer who gave the fentanyl, for common law civil battery and lack of informed consent. The court ruled that informed consent was not the issue, but the nurse did commit a civil battery for which the patient could sue.

With some exceptions, true emergencies and court-ordered treatment, any medical intervention performed upon a patient without the patient's express consent is considered a common-law battery. Battery is a wrongful act for which the patient can file a civil lawsuit for damages.

Patient consent is a defense to a patient's lawsuit for battery, but only to the extent the healthcare provider has stayed strictly within the parameters of the consent the patient has given.

Consent to an injection or to an injection of a drug in a particular class of medications does not extend to an injection of a different drug which the patient has expressly rejected.

The court did not go into the issue whether the physician actually did or did not approve the nurse's substitution of the medication. **Duncan v. Scottsdale Medical Imaging, Ltd.**, 70 P. 3d 435, 2003 WL 21382470 (Ariz., June 16, 2003).

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