

## Jury Duty: Malpractice Defense Verdict Thrown Out Over Nurse's Juror Misconduct.

The diabetic patient filed a malpractice lawsuit against the radiologist who read an x-ray ordered by his primary-care physician. The suit alleged the radiologist misread the image as normal and thereby delayed the patient's referral to an orthopedist for treatment of Charcot foot.

### Home Health Nurse Served on the Jury

During jury selection at the beginning of the trial an LPN called up for jury duty was questioned by the judge and assured the judge that nothing in her nursing experience would bias her in favor of one side or the other. She had extensive experience with diabetic patients, she told the judge, but had never cared for anyone with Charcot foot. She promised not to substitute her own nursing experience and training in place of the testimony of the witnesses in the trial.

After all the testimony was in but before actual jury deliberations began the LPN was elected by the other members of the jury as jury foreperson.

After the jury ruled in favor of the radiologist the patient's lawyers were able to obtain a sworn affidavit from one of the jurors about the nurse's misconduct during jury deliberations.

During a trial those involved in the case and their lawyers are strictly forbidden from communicating with the jurors outside the courtroom.

After the trial, however, they are permitted to obtain feedback from the jurors as to the factors that influenced the jury's decision.

According to the fellow juror, after being chosen as jury foreperson the LPN took charge of the deliberations and eagerly shared her experiences and opinions as to the proper care of diabetic patients.

She was sure the patient must have had prior foot problems, must have had a podiatrist and must not have been following his podiatrist's directions as most diabetics do not follow their doctors' instructions. In her opinion, the problem with Charcot foot would have come about anyway regardless of any delay caused by the radiologist's mistake.

The Supreme Court of Oklahoma ordered a new trial for the patient's case on grounds it is prejudicial misconduct for a juror to violate his or her promises not to bring extraneous assumptions to the jury's attention or to override the testimony in the case. Ledbetter v. Howard, \_\_ P. 3d \_\_, 2012 WL 1473418 (Okla., April 24, 2012).

## Patient's Fall: No Cane, Walker Or Assistance Offered To Unsteady Patient, No Expert Required.

The patient was admitted to the hospital's inpatient psychiatric unit for what was described in the court record as a recurring nervous condition.

The patient had difficulty standing and walking. Her husband, however, was told not to bring her walker or her cane with her to the hospital because the hospital would provide everything she needed, including those items.

Her psychiatrist, after admitting his patient, specifically informed the nurses the patient had difficulty standing.

That same evening just after she walked out of her hospital room to go to the dining room on the unit for supper she had to stand against the wall to keep from falling. While standing there she reportedly told the nurses she was about to fall, but the nurses did not offer her a wheelchair, walker, cane or assistance.

***Expert testimony is not required on the question of whether to offer a cane to an unsteady elderly patient with obvious balance and mobility problems.***

***The nurses' decision not to provide the patient a cane or walker or other assistance did not require a medical assessment, physician's orders, specialized nursing clinical judgment or other specialized skill.***

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The patient fell and was injured.

After the patient sued, the hospital asked for dismissal on the grounds that there was no paperwork in the court file that the patient's lawyers had had the medical records reviewed by an expert and obtained a commitment from the expert to testify on the patient's behalf as required by North Carolina law for healthcare malpractice cases.

The Court of Appeals of North Carolina ruled the case should not be dismissed on that basis.

According to the Court, no expert opinion is required to establish that an elderly person who uses a cane or walker for balance problems will most likely fall and be injured if not provided with a cane, walker, wheelchair or assistance from her caregivers. Horsley v. Halifax Reg. Hosp., \_\_ S.E. 2d \_\_, 2012 WL 1512507 (N.C. App., May 1, 2012).