

LEGAL EAGLE EYE NEWSLETTER

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PEG Feeding, Aspiration: Nurse's Late-Entry Progress Note Fails To Persuade The Jury.

The post-operative patient died in the hospital from a respiratory infection after aspirating material from a PEG tube feeding into her lungs.

The Court of Appeals of Louisiana approved the jury's award of \$478,000 to the family for the nurses' negligence lying the patient flat on her back while feeding her.

The Court looked at the evidence in the case which tended to support the jury's decision.

The last nursing progress note before the patient was fed at 6:00 p.m. was written at 7:15 a.m. and had the head of the bed elevated 20°.

The next nursing progress note was at 7:00 p.m. when surgical drains were removed and the dressings changed. It mentioned nothing about the elevation of the head of the bed.

The next progress note after that was at 7:15 p.m. when the patient began to complain that she could not breathe, and it also said nothing about the elevation of the head of the bed.

A family member was allowed to testify the patient told her right before she expired that they had laid her flat on her back during her last feeding.

The Court ruled the patient's statement qualified as a "dying declaration" which is exempt from the rule against hearsay.



The last nursing progress note, almost eleven hours before the tube feeding in question, had the head of the bed elevated only 20°.

There is no objective basis in the record for the hospital to claim the head of the bed was elevated to 30° as it should have been to prevent aspiration of nutrition into the patient's lungs.

COURT OF APPEAL OF LOUISIANA
November 17, 2010

Nurse Charted Defensively

The next evening the nurse who had fed the patient the evening before wrote a progress note, "*It was brought to my attention that spouse c/o pt being laid flat during feeding or during removal of drains ... Pt was fed c HOB 40° . There were 3 nurses in the room when drains were pulled. [names of three nurses] all witnessed that pt's HOB was elevated 30°... I do not know of any other nurses entering the room & laying pt.flat.*"

At trial, however, the nurse's late progress only served to provide the family's lawyers an avenue to attack her competence as a nurse and her credibility as a witness.

Two of the nurses expressly named in the note testified they were in the room when the drains were removed, but not when the patient was fed, and the third testified he was never in the room at all. The references to 40° when she was fed and 30° when the other nurses were in the room was a fatal inconsistency, in the Court's view.

The family's nursing expert testified it was below the standard of care to lay the patient flat during her feeding without the head elevated at least 30°. ***Welch v. Willis-Knighton, ___ So. 3d ___, 2010 WL 4629930 (La. App., November 17, 2010).***

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