

## Toradol Injection: Court Finds No Nursing Negligence Caused Medical Complications.

In the February, 2001 issue of our newsletter we reported the Court of Appeals of Wisconsin ruled a hospital nurse was not responsible for medical complications following an IM Toradol injection in a patient's thigh, *Toradol Injection: Court Finds No Nursing Negligence Caused Medical Complications*, Legal Eagle Eye Newsletter for the Nursing Profession, (9)2, Feb. 2001, p. 1.

The Supreme Court of Wisconsin recently ruled in favor of the nurse by upholding the Court of Appeals.

***A nurse testified as an expert witness that IM Toradol has the potential to cause discomfort or injury at the injection site even when the injection is given properly in all respects.***

***Nurses and other healthcare providers are liable for negligence only when there is specific proof their conduct fell below the standard of care.***

***The mere fact there were complications does not prove negligence.***

SUPREME COURT OF WISCONSIN, 2001.

The patient's lawyers used this case to argue the law in Wisconsin should be changed to allow medical malpractice to be proven to a reasonable *probability* rather than a reasonable *certainty*. The Supreme Court of Wisconsin was not persuaded to make that change in the law. **Nommensen v. American Continental Insurance Company**, 629 N.W. 2d 301 (Wis., 2001).

## Restraints: Patient Able To Untie Wrist/Vest Restraints, Court Can Find No Evidence Of Nursing Negligence.

***Hospital nurses are not automatically liable for nursing malpractice just because a patient falls.***

***In a nursing malpractice case there must be evidence the nurse's conduct fell below the legal standard of care. In addition, there must be proof the nurse's negligent conduct was the cause of harm to the patient, for the patient's lawsuit to succeed.***

***In other words, an expert witness familiar with the legal standard of care for nurses must be able to testify specifically what the nurse should have done differently and specifically how that would have prevented the fall.***

***What were the nurses in this case supposed to have done? Should they have restrained the patient more securely, monitored him more closely, or what?***

***The patient's family's expert witness only said in general terms that the nurses breached the legal standard of care. That is not specific enough to hold the nurses guilty of negligence.***

SUPREME COURT OF TEXAS, 2001.

In the February, 2000 issue of our newsletter we reported the Court of Appeals of Texas ruled the nurses were negligent who were caring for a brain injury patient in a rehab facility, *Patient Able To Untie Vest/Wrist Restraints: Court Lets Suit For Negligence Go Forward*, Legal Eagle Eye Newsletter for the Nursing Profession, (8)2, Feb. 2000, p. 7.

The Supreme Court of Texas recently ruled in favor of the nurses by reversing the Court of Appeals.

The patient apparently untied his own wrist and vest restraints and fell and re-injured his head while trying to get out of bed by himself.

His nurses knew he could and would try to untie his restraints. The nursing notes indicated he was being checked at least every hour while restrained in bed.

There was a progress note stating his wrist and vest restraints were securely tied to his bed. The note was written ten minutes before he was found on the floor. When he was found the restraints were on him but were untied from the bed.

The patient's family's expert witness, a rehab physician, stated he could not understand how the patient was able to untie the restraints if the restraints were securely tied in the first place. The physician went on to give an opinion the nurses were negligent.

***What Did the Nurses Do Wrong?***

The important question for the Supreme Court of Texas was what the nurses should have done differently.

What more were they supposed to do, or what were they supposed to do differently than restrain him securely and check on him often while he was in restraints? The Supreme Court of Texas ruled the expert witness was off base to state the nurses were negligent without having specific answers to those questions. **American Transitional Care Centers of Texas, Inc. v. Palacios**, 46 S.W. 3d 873 (Tex., 2001).