

## Vomitus Aspiration: Nurse Cleared Of Negligence In Patient's Death Post-Op.

The twenty-six year-old patient was hospitalized for orthopedic surgery. His surgery went smoothly. He was transferred from post-anesthesia to the orthopedic floor. He was on a patient-controlled anesthesia morphine pump. He vomited during the night after surgery and the physician started him on Phenergan for the nausea. The Court of Appeals of Tennessee noted that morphine and Phenergan are commonly used post-surgery medications which alone or in combination can depress respiratory function.

He vomited during the morning hours and was given more Phenergan. He had nothing liquid, semi-solid or solid to eat all day. In the early evening he was given a cheeseburger after he refused the meal on his hospital tray and was fine until 1:00 a.m.

### Patient Vomits / Nursing Assessment

When the patient vomited at 1:00 a.m. a family member summoned the nurse. The nurse and family member cleaned the patient and changed his linens and gown. The nurse noted he was able to sit up in bed and carry on a normal conversation. He did not appear to have breathing difficulty or suppression of mental function.

At 4:00 a.m. the nurse checked him again. He was sleeping soundly and had only used a small amount of morphine in the previous three hours compared to the 7:00 p.m. to 1:00 a.m. interval. There was no indication of any breathing difficulty.

At 5:45 a.m. an aide found him in respiratory distress and the nurse called a code. Coffee-ground emesis came out of his mouth. He died at about 6:30 a.m.

Although the autopsy concluded in retrospect he had aspirated vomitus at 1:00 a.m., the court could find no deficit in the nursing care by the night nurse. To justify a finding of negligence a bad outcome is not enough, there must be some departure from the recognized standard of care. That was absent in this case. **Smith v. State**, 2005 WL 589818 (Tenn. App., March 14, 2005).

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***The patient's family's nursing expert's testimony did not reflect the prevailing standard of care for a nurse caring for a patient post-operatively.***

***There was no indication from the facts contained in the medical record that the nurse should have suctioned the patient's lungs after the 1:00 a.m. vomiting episode and then attempted to obtain a new airway by getting a tracheotomy.***

***It was a nursing judgment call whether the nurse should have listened to the patient's lungs with a stethoscope after he vomited. There is no good reason to discount the assessment the nurse did at the time concerning the patient's respiratory status.***

***There was also no reason to believe the nurses had earlier acted improperly in carrying out the physician's routine post-op orders to advance the patient from a liquid to semi-solid to solid diet, that is, there was no breach of the standard of care by the nurses which could reasonably be seen as the cause of the 1:00 a.m. vomiting episode.***

COURT OF APPEALS OF TENNESSEE  
March 14, 2005

## Confidentiality: Nurse Fired, Reported Drug Dependency Patient To Local Police.

A nurse was working the night shift on an acute-care hospital's chemical dependency unit when one of the patients approached her at the nurses' station demanding methadone. He threatened to kill her, but then walked away.

The nurse locked herself in the nurses' station and called hospital security and the house nursing supervisor.

The next time she worked the night shift on the chemical dependency unit, more than a month later, she realized the same patient was on the unit. Although he was sleeping at the time, she phoned the police, reported the prior incident, identified the patient by his full name and said she wanted to file a criminal complaint.

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***For drug and alcohol treatment, patient confidentiality rules prohibit so much as mentioning that the person was getting treatment.***

***An exceptions exists only when there is an immediate threat.***

UNITED STATES DISTRICT COURT  
NEW YORK  
March 1, 2005

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The US District Court for the Southern District of New York upheld her firing.

There was no immediate threat of harm, the court said, when she revealed to police the patient's identity as a patient. Thus she violated the law as well as hospital policies which called for her to turn it over to hospital security to deal with the problem. **Yarde v. Good Samaritan Hosp.**, \_\_\_ F. Supp. 2d \_\_\_, 2005 WL 589028 (S.D.N.Y., March 1, 2005).