

Advanced Nursing Practice: Nurse Can Be Liable For Patient's Violent Acting Out.

The Supreme Court of Utah has revisited a ruling we reported in April 2012: *Medications: Court Says Nurse Practitioner Can Be Liable For Homicide By Her Patient*. Legal Eagle Eye Newsletter for the Nursing Profession (20)4.

It was a lawsuit against an advanced practice nurse practitioner and her supervising physician on behalf of children whose mother was shot and killed by their father while he was taking a combination of Concerta, Valium, doxepin, Paxil, pregnenolone and testosterone prescribed by the nurse practitioner.

The Court ruled in 2012 that the circumstances did justify a lawsuit against the nurse practitioner.

Most recently the Court ruled the nurse practitioner's supervising physician is not liable. The Court put responsibility squarely on the nurse practitioner.

Nurse Practice Act

Places Responsibility on Nurse

The Court noted that the Nurse Practice Act requires advanced practice nurse practitioners to practice in accordance with a plan of consultation with a designated supervising physician.

That requirement of the Act can logically only be interpreted to place the responsibility on the nurse practitioner to seek out guidance from the physician.

The Act does not place responsibility on the physician to undertake prescription-by-prescription review of all of the medication orders written by a nurse practitioner whom the physician supervises.

The Act thus does not fix legal liability on the physician for the consequences of an ill-advised prescription order absent a request from the nurse practitioner for the consulting physician to consult with the nurse practitioner on the individual case.

The responsibility for requesting consultation on an individual case rests with the nurse practitioner, as does civil liability in the event that a negligently devised individual or combination of medications results in foreseeable consequences to an innocent victim or victims. **B.R. v. Rodier**, ___ P. 3d ___, 2015 WL 122251 (Utah, January 9, 2015).

The requirement of the Nurse Practice Act for consultation with a physician by an advanced practice nurse practitioner with prescription authority places the burden on the nurse practitioner to seek guidance from the physician.

It does not make sense to place responsibility on the consulting physician to step in and review each and every prescription for controlled substances written by the nurse practitioner.

In effect that would mean the nurse practitioner has no prescription authority apart from the physician's own authority. That would run counter to the logic of the Nurse Practice Act which grants prescription authority to advanced practice nurses who qualify under the Act.

The consulting physician in this case was not responsible for checking on this patient's medication regimen, absent an inquiry from the nurse practitioner, and therefore cannot be held liable in a civil suit for the consequences to the family of an apparently ill-advised cocktail of medications with foreseeable behavioral side effects.

SUPREME COURT OF UTAH
January 9, 2015

HIV Testing: Court Lets Patient's Case Go Forward.

A patient filed suit against a US government funded health clinic after a nurse sent his blood to the lab for HIV testing, then reported the positive test result to the local county health department and forwarded the patient's medical records to the county health department, all without the patient's consent.

Under state law a healthcare provider cannot order or perform an HIV test without the patient's consent.

Nevertheless, when there is a positive HIV test result the healthcare provider has no choice but to report it to the local county health department.

If the county follows up with a request for copies of the patient's medical records, the healthcare provider must comply.

UNITED STATES DISTRICT COURT
ARIZONA
January 20, 2015

The US District Court for the District of Arizona agreed with the patient that he has the right to sue for an HIV test being conducted without his consent.

He will get his day in court to try to convince the judge or jury he should be awarded legal damages for emotional harm from not being ready to accept the implications of his diagnosis.

However, he cannot sue the clinic or the nurse for breach of medical confidentiality or invasion of privacy.

According to the Court, a healthcare provider has no discretion in the matter but must report any positive HIV test result to the local county health department.

If the local county health department requests copies of the patient's medical records, the healthcare provider must comply and is not liable for breach of medical confidentiality for doing so. **Robles v. US**, 2015 WL 249380 (D. Ariz., January 20, 2015).