

Nurse As Patient Advocate: Court Tones Down Scope Of Labor & Delivery Nurses' Responsibility.

The Court of Appeals of Minnesota began its discussion of the legal issues by pointing out that the hospital in question is not a tertiary care facility and is not well equipped to handle neonates with special medical needs.

Polyhydramnios

Increased Risk of Diaphragmatic Hernia

The court accepted the family's medical experts' opinions that excessive amniotic fluid late in pregnancy can present a heightened risk of diaphragmatic hernia in the neonate.

The court also acknowledged that the mother's obstetrician had been treating her for polyhydramnios and then the infant was correctly diagnosed with a diaphragmatic hernia about two hours after birth.

Nurses Acted Within Standard of Care

One of the labor and delivery nurses who assisted in the birth took the baby to the nursery, closely monitored his condition and reported back to the obstetrician he was having continuing respiratory problems. The hernia showed up on x-ray and the blood gases were not good, so the process was started to transfer him to the specialized children's hospital in a large city.

Nurses Did Not Fail To Advocate for Patient

The court rejected the family's allegation that the mother's polyhydramnios diagnosis put the responsibility on the labor and delivery nurses as patient advocates to assemble on their own a physician team including a neonatologist and anesthesiologist with the expertise to ventilate a neonate with a diaphragmatic hernia.

Nurses are required to substitute their own judgment only when the physician's action or inaction is obviously negligent or in cases when an obvious emergency exists. **Huisman v. Chambers**, 2008 WL 5136271 (Minn. App., December 9, 2008).

Arbitration: Arbitration Agreement Is Valid.

The nursing home decided to fight the deceased patient's probate estate's personal-injury civil-court lawsuit by arguing that the case should be decided out of court in arbitration.

The Court of Appeals of Mississippi ruled the case belongs in out-of-court arbitration under the rules of the American Health Lawyers Association and will not go before a jury in civil court.

Two years before admission to the nursing home the patient had signed a durable power of attorney for healthcare decisions giving his wife wide-ranging authority to execute legal documents in order to fulfill his healthcare needs.

COURT OF APPEALS OF MISSISSIPPI
December 16, 2008

Wife Had Authority to Sign

As a general rule a spouse or other family member has no authority to sign a contract for a spouse or other family member. In this case, however, the patient, before becoming incompetent, had signed a durable power of attorney for healthcare decisions naming his wife.

Agreement Was Valid

An arbitration agreement, like any other legal contract, is valid and binding only if the person who signed the contract fully understood and agreed to its terms.

This arbitration agreement was separate from the rest of the admissions papers, was explained to the wife and was offered to her as completely voluntary, that is, she could still admit her husband even if she refused to agree to arbitration in the event of a future dispute. **Bedford Health Properties v. Davis**, __ So. 2d __, 2008 WL 5220594 (Miss. App., December 16, 2008).

Arbitration: Nurses Are Not Protected By The Arbitration Agreement.

The elderly patient died unexpectedly only eleven days into what was expected to be a short-term recuperative stay at the nursing home.

The daughter, as probate administrator, filed a civil wrongful-death lawsuit in court against the nursing home's parent corporation and three nurses who had cared for the deceased.

No court has yet passed judgment on the underlying allegations of negligence. It has been determined, however, that the case belongs in arbitration, but only as far as the case pertains to the nursing home.

A clause could have been put in the nursing home's arbitration agreement stating that the agreement applies to the nursing home's employees as well as the nursing home itself.

Such language is commonly included in nursing home admission contracts, but happens to be absent in this particular case.

APPEALS COURT OF MASSACHUSETTS
December 18, 2008

The Appeals Court of Massachusetts ruled the nursing home's arbitration agreement was worded validly and the patient's signature was authentic, informed and voluntary.

However, the agreement was drafted in such a way that it only protected the nursing home from civil lawsuits and, therefore, does not apply to the nurses, who will have to defend a civil court lawsuit. **Constantino v. Frechette**, __ N.E. 2d __, 2008 WL 5235637 (Mass. App., December 18, 2008).