

## Nursing Expert: Court Disallows Testimony, Dismisses Case.

After surgery to remove a brain tumor the patient contracted meningitis and died in the hospital's intensive care unit.

The family's wrongful death lawsuit alleged nursing negligence was a contributory factor in the patient's death.

The family's medical expert, a neurologist, criticized the medical care he received, but did not believe the ICU nurses were guilty of any errors or omissions.

The family's nursing expert stated the patient should have been restrained and had an O<sub>2</sub> sat monitor. The nurses should also have seen him sleeping without distress as an alarming sign after his previous restlessness and confusion and done a full nursing neurological assessment.

### Hospital Dismissed From Case

The Court of Appeals of Kentucky, in an unpublished opinion, noted she had no experience in neuro intensive care and had never been certified in neuroscience nursing.

In fact, her employment as an RN had been sporadic and her license had been suspended. Hall v. Caritas Health Services, Inc., 2003 WL 1786644 (Ky. App., April 4, 2003).

## AMA: Court Questions If Patient Was Fully Advised, Nurses Had Not Put Panic Labs On Chart.

**Contributory negligence and assumption of risk are common-law defenses to civil negligence which apply to some extent in medical malpractice cases.**

**When a patient leaves the hospital against the advice given by doctors and nurses it can be considered contributory negligence or assumption of risk by the patient.**

**If the patient has complications, then turns around and sues the hospital, the patient is allowed to question the competency the advice given by the doctors or nurses before the patient made the decision to leave against such advice.**

**In this case the deceased's lab results indicating PANIC LEVELS EXCEEDED were not placed on his chart by the nurses so that the physician could competently advise him.**

SUPREME COURT OF ALABAMA  
April 11, 2003

The Supreme Court of Alabama acknowledged it was a complicated case, legally and medically.

The local judge exonerated the hospital's emergency room physicians and nurses from negligence. The deceased patient's personal representative appealed. On appeal the Supreme Court of Alabama reversed the judge and ordered a jury trial.

The jury reached the same conclusion, that is, no negligence, and the personal representative appealed again.

While expressing strong misgivings about the care the deceased received the Supreme Court of Alabama upheld the jury, the second time around, based on the legal system's strong policy favoring the finality of a verdict of a civil jury that has heard the evidence first-hand.

### Panic Lab Values Not Noted In Chart

For a patient to be ruled at fault for leaving against medical advice, and the patient's caregivers to be ruled not liable based on the patient's own contributory negligence or assumption of risk, the medical advice against which the patient left has to have been competent advice.

A blanket statement in the hospital's AMA form, that the patient could die after leaving, might not be adequate, the court felt, if there was more direct evidence about the patient's condition the patient was not given, due to negligent mishandling of critical information by the institution's medical, nursing or laboratory personnel. Lyons v. Walker Regional Medical Center, Inc., \_\_ So. 2d \_\_, 2003 WL 1861023 (Ala., April 11, 2003).

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