

Delay In Transfer To Another Hospital: Nurse Ruled Not Guilty Of Negligence.

The patient came to the emergency room believing she was in labor. She was in her twenty-sixth week and it was her first pregnancy. The physician examined her. He found her cervix was not dilated, but believed premature labor had in fact started.

The hospital was not equipped to handle a premature infant born in the twenty-sixth week, so the physician decided to transfer the patient to an urban medical center with appropriate facilities, some ninety miles away.

An ambulance was called. It arrived fifty minutes later. The patient was put on board twenty minutes later and it took an additional thirty-some minutes before the ambulance left, with the nurse along.

Half way into the trip, the patient's water broke. The nurse examined her and found her cervix dilated six centimeters and the baby's head was visibly emerging. The nurse decided to redirect the ambulance to the nearest hospital, where the baby was delivered. A neonatal transport team came from the hospital which was the original destination and took the newborn the rest of the way. The child was blind and profoundly retarded. The family sued the first hospital, alleging the nurse was negligent for delaying the original transfer.

The Court of Appeals of Ohio upheld the trial judge's decision to dismiss the lawsuit. A physician neonatologist who came in from Arizona testified the fifty-some minutes delay from when the ambulance arrived until when it left was beneath the standard of care for the nurse, but the court elected to disregard the testimony.

According to the court, there is no legal standard of care for nurses or physicians mandating a specific maximum number of minutes for a patient's transfer to another facility to be effected. Nurses and physicians are guided by their best professional judgment. **Blodgett vs. Kahn**, 681 N. E. 2d 452 (Ohio App., 1996).

Failure To Clarify Physician's Orders: \$16 Million Verdict Awarded Against Hospital For Nurses' Negligence.

A nurse gave pitocin to a patient in labor. Her uterus quickly ruptured and her son was born with severe neurological injuries.

The obstetrician claimed he never ordered pitocin. The jury returned a verdict saying the obstetrician was not guilty of negligence.

The jury awarded substantial damages against the hospital for its nurses' negligence.

One nurse gave a videotaped deposition before trial saying there had been no order for pitocin, but that the physician's routine orders were to be followed. She testified she told the nurse coming on duty at the change of shift the physician's routine orders were to be followed. She testified she did not tell anyone that pitocin had been ordered.

The second nurse testified in her pre-trial video deposition that the first nurse told her pitocin was ordered, so she gave pitocin.

The two depositions were played back-to-back to the jury to demonstrate the nurses were obviously confused about the orders.

COURT OF APPEALS OF TEXAS, 1997.

The hospital's attorneys objected vigorously during the trial that the patient's attorneys were trying to embarrass the hospital and prejudice the jury against the hospital by playing back pre-trial videotaped depositions of the nurses who had cared for the patient.

The depositions were dramatic proof the nurses were confused about the physician's orders. The jury was led to conclude it was negligence by the hospital's nursing staff that caused a nurse to give pitocin to a patient on the labor and delivery unit, even though it had not been ordered by the patient's obstetrician. The jury absolved the obstetrician from blame.

The Court of Appeals of Texas ruled that the nurses' conflicting deposition testimony amounted to an admission by the hospital itself that the nurses did not know what the physician's orders were. Putting conflicting statements by two different agents of the same party into evidence is a perfectly acceptable trial tactic, the court ruled. It is specifically contemplated and expressly allowed by the rules of evidence.

Although it was highly detrimental to the hospital's defense, according to the court it was not improper to show the depositions to the jury and it offered no basis upon which an appeal could stand.

The court also upheld the trial judge's decision to let the jury watch an eleven-minute videotape showing the child's pediatrician attempting to direct the child to walk forward, walk backward, draw on a piece of paper, stack blocks, give a doll a bottle and talk, to demonstrate graphically the profound limitations in the child's motor control and functional abilities.

This video also had a major effect on the jury. The jury returned a verdict in excess of \$16 million, of which \$10 million was to provide a lifetime of special care services for the child. **Parkway Hospital, Inc. vs. Lee**, 946 S.W. 2d 580 (Tex. App., 1997).