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Cardiorespiratory Arrest: Court Faults Expert's Conclusions, Dismisses Case.

After an otherwise routine cholecystectomy the patient was still having pain. He was returned to the operating room the next day for an endoscopic retrograde cholangiopancreatography (ERCP) to determine if he had a stone in his common bile duct as the physicians suspected.

Thirty-five minutes into the procedure, while the patient was getting IV Demerol for pain and Versed for conscious sedation, he went into sudden cardiorespiratory arrest. He was intubated and resuscitated but experienced anoxic encephalopathy.

He expired five days later. The widow and daughter sued the physician, his medical group and the hospital for negligence. The suit alleged the physician doing the ERCP and the hospital's nurses did not properly monitor the patient during the procedure or respond in a timely and competent manner at the moment of his arrest.

Together the defendants' attorneys filed objections to the lawsuit on the grounds that the family's attorneys had not filed an expert witness report as required by state law. A physician's report was on file, to be sure, but the defendants claimed the report was defective and therefore they were entitled to dismissal of the case.

An expert's report must detail the specific conduct of the defendant that is being called into question.

An expert's report must convince the court the plaintiff patient has proof of all the elements of a negligence case.

A report is inadequate that merely states the expert's conclusions without identifying the factual basis.

COURT OF APPEALS OF TEXAS
October 9, 2002

Expert's Report Was Conclusory

The Court of Appeals of Texas agreed with the lower court judge that the expert's report was defective and ruled that the case should be dismissed.

The court acknowledged the report put forth a valid recitation of the standard of care for physicians and nurses caring for a patient intraoperatively.

There must be constant careful surveillance of a conscious sedated patient, with blood pressure and pulse taken at frequent intervals and EKG and pulse oximetry constantly monitored. The physician and nurses must be trained in recognition and treatment of complications that can arise during conscious sedation. At a minimum at least the physician should be certified to treat cardiac and/or pulmonary arrest in accordance with ACLS guidelines.

That being said, however, the court still found the expert's report wanting. A recitation of the standard of care and a conclusory statement the patient was not properly monitored is not enough. There was nothing specific in the report stating how the physician and the nurses should have recognized the signs of impending arrest any sooner or how they should have reacted differently when he went into arrest.

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