

Failure To Provide For A Functionally Impaired Person, Failure To Report Child Abuse: Court Upholds Nurses' Criminal Indictments.

Two nurses were indicted on criminal charges of failure to provide for a functionally impaired person, a felony, and failure to report child abuse, a misdemeanor, after the death of a fourteen year-old lifelong mentally handicapped quadriplegic cerebral palsy victim who lived in utterly deplorable conditions in her parents' home.

One of the nurses was the case manager responsible for reviewing the child's care on a semiannual basis. The other nurse was the supervisor for the home-care personnel who were supposed to care for the child on a daily basis.

At autopsy the child weighed only 28 lbs and had bedsores all over her body, some filled with feces and dirt, lice in her hair and eyebrows, an impacted rectum and a dilated colon, thick dry secretions on her tongue and pneumonia in both lungs.

The Court of Appeals of Ohio upheld both nurses' indictments. The nurses argued in their defense, erroneously in the Court's judgment, that being charged with both offenses was unconstitutional double jeopardy.

Failure to Provide For A Functionally Impaired Person

No caretaker may knowingly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in physical harm to the functionally impaired person.

Failure to Report Child Abuse

A registered nurse, visiting nurse or other healthcare professional who is acting in an official or professional capacity shall make a report to the public children's service agency or a municipal or county peace officer if it is known or there is reasonable cause to suspect that a child under the age of eighteen or mentally retarded, developmentally disabled or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering physical or mental injury or a condition which reasonably indicates abuse or neglect. State v. Kilby, 2013 WL 6410239 (Ohio App., December 6, 2013). State v. Williams, 2013 WL 6410305 (Ohio App., December 6, 2013).

Post-Surgery Emergency Room Visit: Court Sees EMTALA Violation, Validates Patient's Lawsuit.

Five days after surgical implantation of a spinal cord stimulator the patient awoke at home in severe pain. He could not stand due to weakness in his legs and soon could not move his right leg at all.

Paramedics were called and he was taken by ambulance to the E.R. at a hospital in his hometown, which was not the same hospital where the spinal surgery was done.

The triage nurse's assessment was that there could be serious complications if he did not get immediate medical attention.

He was given pain medication. He got a CT scan in a side-lying position because he could not lie still on his back due to his pain. A radiologist who was not aware of that detail read the CT as normal.

Although the patient remained symptomatic, the E.R. nurse during the night and the nurse on duty the next day failed to perform any neurological assessments.

His vital signs, including the severity of his pain, were worse at the time of transfer than at the time of admission to the E.R.

His condition was not stabilized and he was not appropriate for transfer.

COURT OF APPEALS OF GEORGIA
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Pain medications were continued until the early afternoon, when the E.R. physician phoned the surgeon at the hospital where the surgery was done, told the surgeon the patient was stable, got the surgeon to agree to accept a transfer and sent the patient away in an ambulance. The patient was irreversibly paralyzed when he arrived.

The Court of Appeals of Georgia saw grounds for a lawsuit for damages for violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA).

The patient was not given appropriate medical screening exams by the E.R. physician and nurses for his emergency medical condition and was inappropriately transferred to another hospital in unstabilized condition. Quinney v. Phoebe Putney, __ S.E. 2d __, 2013 WL 6097929 (Ga. App., November 21, 2013).