

National Practitioner Data Bank: Court Discusses Nurse's Rights Following Malpractice Settlement.

After a woman died in the hospital from a uterine rupture shortly after delivering a stillborn baby, the husband and daughter sued the hospital, several physicians and the labor and delivery nurse.

The family's lawyer indicated in pre-trial settlement negotiations his expert witnesses would lay the blame solely on the labor and delivery nurse, for failing to notify the physicians immediately of a sharp drop in the patient's blood pressure accompanied by sudden loss of consciousness. The lawyer conveyed his clients' offer to settle for \$850,000 and to dismiss all the defendants in the case.

The hospital's legal counsel obtained the nurse's written consent to settle the claim for that figure. The consent to settle form included a clause stating that the settlement would be reported, as required by law, to the National Practitioner Data Bank and the state board of nursing.

Then the hospital promptly terminated the labor and delivery nurse for intentionally falsifying a patient's chart.

Two weeks later a lawyer hired by the nurse notified the hospital's insurer she was revoking her consent to settle, on grounds of mistake, duress and coercion.

Federal regulations (45 CFR 60.7) require any insurance company or self-insured facility to report to the National Practitioner Data Bank and the state licensing board any settlement of a malpractice claim or judgment against a physician, dentist or other health care practitioner.

(These regulations are on our website at <http://www.nursinglaw.com/607.pdf>.)

These regulations apply to settlements for malpractice committed by a nurse.

A nurse has the right to seek a state-court injunction delaying a report to the National Data Bank and state data bank and licensing board until the institution's internal quality review system has determined to the court's satisfaction that it was in fact the nurse's error or omission that necessitated the settlement.

CALIFORNIA COURT OF APPEAL
July 22, 2002

Court Injunction Sought To Block Reporting

The California Superior Court for San Diego County issued an injunction blocking the hospital and its insurer from reporting the settlement.

However, the injunction was to remain in effect only until the hospital's internal quality review process could investigate and determine to the court's satisfaction that there was an adequate rationale for seeing the settlement as necessary solely because of the labor and delivery nurse's errors and omissions just as the settlement was characterized in the settlement negotiations between the hospital's insurance company and the family's attorney.

In an opinion that has not been officially published, the California Court of Appeal endorsed this course of action.

The Court of Appeal was satisfied, based on an opinion from a former chair of a university medical school's ob/gyn department, that the nurse's negligence was the sole cause of the patient's avoidable death.

The Court of Appeal sent the case back to the Superior Court to dissolve the injunction so that the settlement could finally be reported to the authorities.

No Obligation To Provide Legal Counsel

The Court of Appeal agreed with the Superior Court that neither the hospital or its insurer had an obligation to provide legal counsel to defend the nurse from charges of professional negligence in the hospital's internal quality review processes. **Jinatongthai v. Tri-City Medical Center, 2002 WL 1608347 (Cal. App., July 22, 2002).**

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