

# LEGAL EAGLE EYE NEWSLETTER

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## No Designated Driver: Court Refuses To Place Liability Burden On Discharge Nurses.

The Supreme Court of Arkansas has considered a case from the Court of Appeals of Arkansas we covered in our August, 2004 newsletter. See *No Designated Driver: Case Should Have Been Cancelled*. Legal Eagle Eye Newsletter for the Nursing Profession, (12)8, Aug. '04 page 2.

The patient died in a one-car crash shortly after an outpatient colonoscopy done under heavy sedation.

His family sued the clinic for negligence for going ahead and then letting him drive home by himself.

It is still correct, according to the Supreme Court of Arkansas, that an outpatient procedure involving patient sedation should not be started if there is no designated driver for later.

If there is no designated driver available for a patient at the time of admission for a day surgery case involving heavy sedation, the procedure should be rescheduled and the patient should be informed that for his or her own safety transportation arrangements will be absolutely essential.

Further, an outpatient facility must have rules in place requiring its medical and nursing personnel not to go forward with any ambulatory medical procedure involving sedation unless there is transportation for later.



***A day-surgery procedure involving patient sedation should not be started unless the patient has someone to drive him home.***

***Nurses are allowed to rely on what the patient says if the patient says someone will be driving him home.***

***If the patient insists on driving home afterward he is leaving against medical advice.***

SUPREME COURT OF ARKANSAS  
March 24, 2005

However, the court ruled that doctors and nurses may rely on the patient saying at the time of admission that someone will be picking him up and if the patient says so sedation can start.

**Patient Left Against Medical Advice No Right or Duty To Stop Him**

The court agreed with the family that a patient recovering from sedation cannot be discharged without transportation. However, when a patient insists on driving himself the patient technically is not being discharged but is leaving against medical advice.

When a patient leaves against medical advice nurses and doctors have no legal right to restrain the patient physically or to keep his clothes or his car keys. There is no legal duty beyond strongly advising the patient against a highly unsafe course of conduct.

The nurses do not have to call a taxi, call the police, put him up in a hotel, admit him to the hospital or personally try to drive him home when the patient insists upon leaving against medical advice. That, the court ruled, would be too great a liability burden for the courts to place upon the healthcare community. Patients have some responsibility for their own safety. Young v. Gastro-Intestinal Center, Inc., \_\_\_ S.W. 3d \_\_\_, 2005 WL 675751 (Ark., March 24, 2005).

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