

## Emergency Room: Patient Falls From Bed, Nursing Negligence Found.

The patient appeared to suffer a seizure while she was in a store Christmas shopping with her husband and was taken by ambulance to the hospital.

While lying on a bed in the emergency department the patient had another seizure. Her husband was sitting on a chair in the room and went to help her, but he was unable to keep her from falling on the floor, landing on her face and sustaining facial bone fractures.

***The patient apparently had a second seizure while lying on a bed in the emergency department and fell to the floor, the bed rails not having been raised by the E.R. nurse.***

DANE COUNTY CIRCUIT COURT  
WISCONSIN  
February 24, 2012

The jury in the Circuit Court, Dane County, Wisconsin reportedly accepted testimony from two experts, one a physician/expert in emergency medicine and the other a nurse/expert in emergency nursing standards, who testified on the patient's behalf.

According to the patient's experts, it is a shared emergency medicine and emergency nursing responsibility to implement seizure precautions for a patient in whom seizure activity should be anticipated. Seizure precautions include raising the bed rails on both sides of the bed, the patient's experts said.

The nurse apparently left one side rail down when she exited the patient's room to care for another patient elsewhere.

The physician came into the room to discuss the results of the CT scan with the patient and her husband, and then reportedly exited the room himself without recognizing the need to raise or have someone raise the other bed rail. ***Shedivy v. Meriter Hosp.***, 10CV-5270 (Circuit Ct., Dane Co., Wisconsin, February 24, 2012).

## Outpatient Appointments: Jury Faults Clinic's Nurse, Procedures.

The patient went to see her primary care physician after she awoke with severe leg and back pain. She had been seeing the same physician for a lumbar disc syndrome for more than two years.

While she was there her physician reportedly phoned a neurology clinic and spoke with the on-call physician, then told the patient to get an appointment to see the neurologist the next day, but if there was a significant increase in her pain she should go to the emergency room instead.

The patient phoned the neurology clinic the next day and said that her physician had spoken with a doctor there the previous day who wanted her seen that day, the day she was calling.

A nurse told her it would take at least three weeks to get an appointment and someone would call her back. The patient kept calling back and finally was given an appointment the following day.

The next day when she awoke she discovered she had a foot-drop. When she went to her appointment she told the physician it had started during the night before.

### **Jury Awards Damages**

The jury agreed with the patient that the nurse in the neurology clinic should not have discounted the patient's need for an appointment that same day, given that a physician in the clinic had recommended that to the patient's physician. The clinic should have had a procedure to screen incoming calls for details that pointed to an immediate need to be seen, the jury was told by the patient's expert witnesses.

At the same time the jury found the patient herself 49% at fault for not going to the E.R. as she was told.

The Court of Appeals of Tennessee ordered a new trial of the case. Even if the nurses mishandled the patient's legitimate request for a same-day appointment the evidence was equivocal at best that an appointment that same day would have made a real difference in the eventual outcome. ***Kellon v. Lee***, 2012 WL 1825221 (Tenn. App., May 21, 2012).

## Service Animal: Hospital Must Accommodate Visitor's Disability.

A family member came to visit her mother who was a patient in the hospital. The visitor had with her a dog on a leash wearing a blue cape with two patches reading "Service Dog."

A security guard stopped her and insisted she register her dog before entering the hospital. She refused, stating that her dog was a service animal and was fully vaccinated and she had no legal obligation to register the animal.

The security guard detained her at the door while he summoned his supervisor. The supervisor allowed the visitor to enter the hospital. She returned several more times later the same week and was allowed to come in with her dog without incident.

***A hospital is a place of public accommodation which the US Americans With Disabilities Act says must allow patrons to enter with their service animals.***

UNITED STATES DISTRICT COURT  
ARIZONA  
May 15, 2012

The US District Court for the District of Arizona dismissed the disability discrimination lawsuit the visitor filed against the hospital.

The Court noted that a Federal regulation (28 C.F.R. § 36.104) defines the term "service animal" for purposes of the Americans With Disabilities Act. It was not clear that this dog met the strict legal definition by being trained to do work or perform tasks for a disabled individual.

Leaving that issue aside, the basis for the Court's ruling was that a brief detention while straightening out the issues was not sufficient grounds for a lawsuit against the hospital. Because the hospital let her back in several more times without incident there was no reason to expect further problems requiring an injunction from the Court. ***O'Connor v. Scottsdale Healthcare***, 2012 WL 1717934 (D. Ariz., May 15, 2012).