

Emergency Trauma Care: Court Faults Nursing Assessment, Failure To Advocate.

During a rollover accident the patient was ejected from the bed of the pickup truck in which he was riding.

He was taken to the hospital by ambulance shortly after midnight. He was examined by the E.R. nurse and by the E.R. medical staff.

An hour and fifteen minutes after being discharged at 6:45 a.m. the patient collapsed and had to be taken back to the same E.R. He died in the hospital at 9:26 a.m. that same morning despite resuscitation efforts, allegedly from a broken neck which was not diagnosed earlier.

Lawsuit Alleges Negligent Nursing Care

The family's lawsuit filed in the US District Court for the District of Arizona alleged negligence by the medical staff at the hospital, a US Indian Health Service facility, and specifically on the part of the E.R. nurse.

As Federal employees the physicians and nurses in a Federal facility cannot be sued individually. Nevertheless the Court took the time to rule that the allegations pointed at the physicians were too vague to go forward, while the allegations pointed at the nurse stated valid grounds for a professional negligence lawsuit.

The E.R. nurse's assessment revealed complaints of pain of 8 and 9 on a scale of 1-10. The patient needed assistance walking to the bathroom, getting up from the commode and putting on a hospital gown.

The nurse reportedly never assessed for signs of spinal trauma before removing the restraints that had been applied to keep the patient's head and cervical spine immobile.

The nurse did not advocate on the patient's behalf for follow-up scans in the radiology department, for transfer to a higher-level trauma center, for a full medical workup before discharge or against his discharge from the hospital while he was still in considerable pain with a recent history and signs of serious injury.

Failing to advocate for the patient is considered a violation of the legal standard of care applicable to nurses.

The nurse's negligence led directly to the patient's discharge from the hospital with an undiagnosed cervical fracture and, ultimately, to his death, the Court ruled, valid grounds for a civil lawsuit seeking damages from the US government. **Mathis v. US**, 2011 WL 43522981 (D. Ariz., September 16, 2011).

Arbitration: Daughter Had No Authority To Sign For Incapacitated Father, Case Proceeds In Court.

After a seven-month stay in a long-term care facility ending with the patient's death the patient's daughter filed suit as personal representative of the patient's probate estate alleging negligence and violation of his statutory rights as a long-term care resident.

The legal issue at this time is the facility's argument that the case belongs in arbitration and is not appropriate for jury trial in civil court.

The Court of Appeals of Kentucky rejected the facility's call for arbitration on the basis that the arbitration agreement is not valid that was signed by the patient's daughter the day after the patient's admission.

The Court said that because the patient was mentally incapacitated at the time of his admission to long-term care it was legally impossible for him to

The patient could not have done anything to confer authority on his daughter to sign legal documents on his behalf.

He was mentally incapacitated at the time of admission to the nursing facility.

Being the adult daughter of an adult patient, in and of itself, does not create a relationship where the former is the agent for the latter in signing documents or handling legal affairs.

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have given his daughter permission to sign on his behalf.

The daughter simply placed her signature on the arbitration form as she was asked by the facility's personnel.

The daughter never told anyone or held herself out as having authority to sign on her father's behalf. She never claimed to be the court-appointed guardian or to have been named as his healthcare decision-making surrogate in a durable power of attorney.

In fact there was no court appointed guardian or durable power of attorney.

According to the Court, being an adult family member of an adult patient, in and of itself, does not provide a valid basis for signing legal documents on behalf of the family member. **Kin-dred v. Smith**, __ S.W. 3d __, 2011 WL 4409599 (Ky. App., September 23, 2011).