

Family Member Faints, Injured In E.R.: Court Says A Bystander Cannot Sue.

According to the court record, the emergency room doctor and nurse asked the mother to read to her three year-old from a children's book the hospital provided, to relax the child so the doctor could stitch the child's wound in the suture room adjacent to the emergency room.

The mother glanced over at what the doctor was doing. She became dizzy and nauseous. She got up from a stool she was sitting on. The nurse told her to take the stool and go to the other side of the room and sit down. The mother did not do as the nurse advised. She fainted, fell to the floor and suffered a skull fracture.

The Superior Court of Delaware ruled against the mother's malpractice lawsuit. A hospital has no legal liability to a bystander observing a medical procedure even if the bystander is helping to calm the patient. Other states' courts have ruled the same way in this not-uncommon scenario, the Delaware court pointed out. Kananen v. Dupont Institute, 796 A. 2d 1 (Del. Super., 2000).

Mental Illness And Type II Diabetes: Patient Does Not Require Involuntary Treatment.

The US Supreme Court has ruled that a person with mental illness can be held involuntarily only if the person is a danger to self or others or is completely unable to provide for his or her own basic needs.

Basic needs are those things immediately necessary to sustain life.

To hold a person involuntarily there must be clear and convincing evidence that the person otherwise probably would not survive in the near future.

This patient is not managing his non-insulin-dependent diabetes optimally on his own with diet, exercise and medication. However, he has always sought medical care when he has had an acute need.

Complications are expected from his diabetes, but that is not grounds to lock him up right now.

COURT OF APPEALS OF OREGON, 2002.

The Court of Appeals of Oregon acknowledged the concerns of a staff nurse at the county psychiatric hospital, but then ruled there were no grounds to continue holding the patient for involuntary mental health treatment.

Nurse's Testimony Discounted

The nurse testified the man denied having a mental illness and denied having diabetes. The nurse believed he would not be able to control his diabetes on his own. He did not use insulin but had to watch his diet, exercise and take oral medication daily to control his blood sugar level. He would not do any of it on his own while not in a structured mental-health setting.

Psychiatrists had diagnosed the man as schizophrenic with paranoid delusions. Medical doctors had diagnosed him with hypercholesterolemia, hypertriglyceridemia and non-insulin-dependent diabetes.

The medical doctors backed off from saying the patient's diabetes posed an immediate threat to his life. Blindness, limb amputations and damage to organ systems were a strong possibility in the future, but there was nothing bad happening now.

The court pointed out that a dire and immediate threat to survival is required to hold a patient involuntarily on grounds of being unable to provide for basic needs, given the strong value we place on individual liberty and freedom of choice.

Less than optimal management of non-insulin-dependent diabetes is not grounds to hold a mental patient, the court ruled. State v. Nguyen, 43 P. 3d 1218 (Or. App., 2002).

LEGAL EAGLE EYE NEWSLETTER

For the Nursing Profession

ISSN 1085-4924

© 2008 Legal Eagle Eye Newsletter

Indexed in
Cumulative Index to Nursing & Allied
Health Literature™

Published monthly, twelve times per year.
Mailed First Class Mail at Seattle, WA.

E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
PO Box 4592
Seattle, WA 98194-0592
Phone (206) 440-5860
Fax (206) 440-5862
kensnyder@nursinglaw.com
www.nursinglaw.com

Circle one: \$155 one year	\$85 six months	Phone toll free
Check enclosed _____	Bill me _____	Credit card _____
1-877-985-0977		
Visa/MC/AmEx/Disc No. _____		
Signature _____ Expiration Date _____		
Name _____		
Organization _____		
Address _____		
City/State/Zip _____		
Mail to:		
Legal Eagle		
PO Box 4592		
Seattle WA		
98194-0592		