

Patient Falls Getting Out Of Bed: Court Affirms Ruling Of No Nursing Negligence.

A seventy-four year-old patient was admitted to the hospital for treatment of a urinary tract infection.

While in the hospital he fell in his room and sustained a head injury involving a skin laceration and subdural hematoma. At the request of his family he was transferred to another hospital.

Nursing Negligence Alleged

Almost a year later the patient sued the hospital and his treating physician. The lawsuit alleged nursing negligence by the p.m. shift nurse who cared for him the evening he fell.

The judge directed the jury to return a verdict that no negligence was attributable to the nurse and then the judge dismissed the hospital from the case. After being allowed to deliberate, the jury returned a verdict of no negligence by the physician either. The Supreme Court of Illinois affirmed the judgment in all respects.

Fall-Risk Assessment

The patient had had a stroke and was partially paralyzed on one side. That impaired his ability to walk independently. He could not speak but could understand others and could respond with physical gestures.

He was categorized as having impairments that increased his risk of falling.

Close Nursing Observation

His nurse had all four bed rails up. His nurse twice caught him trying to get out of bed through the bed rails. Twice she cautioned him not to do try it again and he seemed to understand.

Physician Notified

No Posey / Ativan Ordered

After the third time she caught the patient trying to get out of bed the nurse phoned the treating physician. She reported what happened and noted also that the patient appeared to be getting agitated.

The physician expressly rejected the nurse's suggestion of a Posey vest on the grounds it would likely make the patient become even more agitated. He ordered a small h.s. dose of Ativan for agitation and for sleep and more Ativan prn that night.

The trial judge correctly rejected the patient's medical witness, a board-certified internist, as an expert on the legal standard of care for nurses.

Physicians generally have no first-hand knowledge of nursing practice except for observations of nurses in patient-care settings.

A physician who is not a nurse is no more qualified to offer expert testimony as to the standard of care for nurses than a nurse would be to offer an opinion as to the physician's medical standard of care, even though nurses stand shoulder to shoulder with physicians and observe medical procedures every day.

A situation which can give rise to allegations of nursing negligence occurs when a nurse fails to activate the institutional chain of command when a physician refuses to respond to a significant development. It is unlikely that any physician would be familiar with the policies and procedures involved in handling such a situation.

A physician is not a nurse and does not have direct knowledge of the nursing standard of care.

SUPREME COURT OF ILLINOIS
February 5, 2004

The nurse gave him one milligram of Ativan h.s. Although she expected him to sleep at least two hours she checked or had an aide check on him every half hour.

Five minutes after the nurse looked in and saw him sleeping, two hours after the Ativan, a technician heard a noise, went to the room and found him on the floor bleeding from a fresh head injury.

Board-Certified Internist

Rejected As Expert

On Nursing Standard Of Care

The patient's medical witness testified the patient's nurse should have initiated the hospital's nursing chain of command as advocate for her patient to have the treating physician's decision overruled not to order a Posey vest.

The internist also stated that the nurse should have had a sitter placed in the room for one-on-one supervision unless and until the Posey could be implemented, or should have placed him in the hallway where he could be constantly observed.

The trial judge allowed the physician to testify, over the hospital's objections, but then at the close of the case directed the jury to return a verdict of no negligence by the nurse.

Essentially the judge found that the physician did not have the qualifications to testify as an expert witness on nursing standards and practices.

Without his testimony there was no evidence of nursing negligence and no basis upon which the jury could even deliberate upon the issue of nursing negligence.

The court pointed to numerous case precedents stating that physicians, unless they happen to have credentials in nursing, are not qualified as experts in nursing theory or practice just because they are physicians.

The court said it was ironic for a physician to set himself up as an expert on the issue of a nurse's duty to go over a physician's head within the institutional chain of command. *Sullivan v. Edward Hosp.*, ___ N.E.2d ___, 2004 WL 228956 (Ill., February 5, 2004).