

## L&D: Case Dismissed, No Proof Of Cause And Effect.

The Court of Appeals of Texas was willing to accept a physician's written report that was based on retrospective review of the monitor strips and the nursing and medical progress notes. His opinion was that the nurses were negligent. They failed to appreciate non-reassuring fetal heart rate patterns on the monitor strip and did not notify the physician.

**Nurses must watch the monitor strip for non-reassuring patterns, must notify the physician immediately when a non-reassuring pattern is detected and must carefully chart their observations, the vital signs and any medications being given.**

**With a non-reassuring fetal heart rate and contraction pattern it is a medical judgment whether to induce labor, do a cesarean or wait.**

COURT OF APPEALS OF TEXAS, 2001.

Nevertheless, the court ruled there was insufficient evidence for the lawsuit to go forward as a medical malpractice action.

In medical malpractice litigation there is a strict requirement for proof of negligence by caregivers, harm to the patient and a cause-and-effect link between the negligence and the harm.

In this case, the court said, there was no proof that the physicians not inducing labor twenty-four hours after the patient's membranes ruptured, but waiting thirty-six hours, in and of itself had any effect on the baby. Gonzales v. El Paso Hospital District, 68 S.W. 3d 712 (Tex. App., 2001).

## Battery, False Imprisonment: Patient Given Haldol, Taken To Nursing Home.

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**A common-law civil battery occurs when a person's body is so much as touched by another person without consent.**

**Any medical intervention that involves touching the patient must be authorized by the patient or the patient can sue for battery.**

**To avoid liability for battery there must be consent from the patient or from someone who can consent on the patient's behalf.**

**Even though a niece generally cannot consent on a patient's behalf, this patient had established a pattern of allowing her niece to give consent on her behalf.**

**To determine if a detention amounts to common-law false imprisonment, the court must look at the totality of the circumstances to see if the defendant's actions were objectively reasonable.**

**In this case the patient was out of control and was not acting competently or reasonably in refusing necessary care.**

**It was not unreasonable to medicate this patient in her condition and take her to a nursing home.**

COURT OF APPEALS OF MISSISSIPPI, 2001.

The court looked at several factors which supported the jury's decision in favor of the patient's caregivers.

### **Niece Had Given Consent Before**

From her very first visit to the doctor in his office the patient had indicated her niece was the one to be contacted in case of an emergency.

When she was admitted to the hospital and while in the hospital the patient's consent forms were signed by the niece for the patient. The patient at no time expressed disagreement to her hospitalization or to any of the procedures that were done with consent expressed by the niece until the last dose of Haldol prior to her discharge to a nursing home.

*On the other hand, the court pointed out for legal purposes it would have been safer to seek out and get consent from a close family member other than a niece.*

*By law a spouse, child, parent or sibling is deemed to have authority to give medical consent, while a niece is not mentioned in the medical consent statute.*

### **Patient Must Be Mentally Competent To Refuse Treatment**

A competent adult has the right to refuse medical care, even care that is necessary for survival. A competent adult would be expected to become agitated if held and treated against his or her wishes.

It was a judgment call, but the court saw this patient's agitation and combativeness as evidence of unsoundness of mind, giving her caregivers the right and the duty to override her expressed wishes.

The court said the patient's placement in the nursing home was reasonable under the circumstances.

*It would have been a safer course of action to keep her in the hospital and get a court order appointing the niece as the legal guardian with authority to decide what to do or for the court order to specify what was in the patient's best interests.*

Marchbanks v. Borum, 806 So. 2d 278 (Miss. App., 2001).