

Emergency Room: Court Reviews Hospital's Security

A patient was waiting to be seen in the emergency room. A teenage boy arrived in the emergency room with his mother. After they all had sat in the waiting area for a period of time the boy went up and began hitting the patient on the arm and shoulder, without provocation and for no apparent reason. The patient's son-in-law was with her. He went to her aid and ended the attack.

As a general rule a business owner has the legal obligation to take reasonably steps to protect patrons from foreseeable criminal acts by third parties.

A hospital emergency room sometimes serves intoxicated and violent individuals. Domestic violence and other disputes can spill over into the emergency room.

The hospital has security officers on duty.

COURT OF APPEALS OF INDIANA
November 9, 2004

The Court of Appeals of Indiana dismissed the lawsuit which the injured patient filed against the hospital.

A hospital's potential liability in such a situation is based on foreseeability. Hospitals do have the obligation to provide adequate security to protect patients and other patrons from persons who pose an appreciable threat, such as other patients or patrons who are violent, intoxicated or involved in ongoing disputes with others.

When something completely unforeseen and unforeseeable happens, however, the hospital is not responsible. Lane v. St. Joseph's Regional Medical Center, ___ N.E. 2d ___, 2004 WL 2521402 (Ind. App., November 9, 2004).

Informed Consent: Court OK's Use Of Medications In Life-Threatening Emergency.

Normally the parents give informed consent in very general terms to any and all treatments and procedures performed under the direction of the treating physicians.

It would be very unusual for parents to insist that each and every medication to be given be discussed with them specifically.

If that does happen, it is the caregiver's responsibility, in this case the nurse's responsibility, to see that the parents' wishes are noted in the chart.

The point, however, is not that the medications will be withheld from the child, but that the physician will need to communicate with the parents. The physician will have to allay their concerns and get their approval or start the paperwork for refusal of consent and a court-ordered guardianship to protect the child's best interests.

In a life-threatening emergency the parents' non-consent goes out the window, even if it turns out the medications given may have caused complications.

COURT OF APPEAL OF CALIFORNIA
November 12, 2004

The six-month old child suffered from a seizure disorder which was being controlled with twice-daily doses of phenobarbital at home.

The child developed a rash and a swollen abdomen and stopped eating. His mother stopped giving the phenobarbital. Three days later he was back in the hospital. Based on what the mother stated, the admitting physician discontinued the phenobarbital and ordered Ativan prn for seizures lasting longer than two minutes.

**Mother Told Caregivers
Not To Give Medications
Without Her Specific Consent**

At the hospital the child experienced uncontrollable seizures. His caregivers had to make difficult decisions regarding his care. He went into cardiac arrest which caused severe brain damage leading to a permanent vegetative state.

In the parents' lawsuit their pharmacology expert testified it was the combination of the Ativan along with Versed, ketamine and phenobarbital which caused respiratory failure leading to the arrest.

The parents testified they had said not to give any phenobarbital and had said they wanted all the child's medications discussed with them beforehand. In their lawsuit they claimed lack of informed consent for the child's treatment with his medications. The jury threw out the claim of lack of parental consent. The Court of Appeal of California agreed.

Life-Threatening Emergency

There was a discrepancy in the testimony between the child's mother and the nurse over what exactly the mother said.

The court sidestepped that issue. The court found that a true life-threatening emergency did exist when the child seized in the hospital. At that point it would not have been fruitful or prudent for the child's doctors or nurses to give or to withhold medications based upon the mother's wishes, the court decided. Piedra v. Dugan, ___ Cal. Rptr. 3d ___, 2004 WL 2569355 (Cal. App., November 12, 2004).