

Ventilator Patient: Family Saw Patient In Distress, But Cannot Sue.

The twenty-two month old patient was born with severe physical impairments and was on a ventilator 24 hours a day with around-the-clock nursing care.

The nurse on duty did not know what to do when the alarm sounded, so she phoned the mother at work. The mother rushed home, found her daughter in severe respiratory distress and called paramedics. The daughter was taken to the hospital where she recovered fully.

It would place an unacceptable burden on the treatment of patients to leave medical providers open to a broad array of possible claims.

Family members of patients could allege a broad range of physical and emotional damages from observing the care of patients.

NEW YORK SUPREME COURT
APPELLATE DIVISION
June 14, 2004

The New York Supreme Court, Appellate Division, ruled the mother could not sue for alleged aggravation of her own diabetic condition stemming from her own stress over what happened to her daughter.

The daughter was the patient, not the mother. The nurse's legal duty of care was owed to the patient, not to the mother.

The court did not approve of the nurse's actions, but the court was not willing to open up a new Pandora's box of possible liability lawsuits by family members against healthcare providers. ***Shaw v. QC-Medi New York, Inc.***, 2004 N.Y. Slip Op. 04951, 2004 WL 1327813 (N.Y. App., June 14, 2004).

Labor & Delivery Nursing: Court Rules Nurse, Doctor Did Not Violate EMTALA.

As long as the hospital screens the patient in a manner consistent with the screening that any other obstetric patient in the care of a private physician would receive, there is no violation of the EMTALA.

The evidence is undisputed that the labor and delivery nurse performed exactly the type of screening that would have been given to any other outpatient in this patient's condition according to the only policy that applied to her case.

If anything, she received superior care in labor and delivery as the nurse promptly summoned her physician to perform an in-person exam. According to the hospital, her wait time was less than ninety-four percent of the women who come to the emergency room to have their labor checked.

Hospitals are allowed to tailor their standard screening to the signs and symptoms of the patient. Patients with different symptoms do not have to get identical screenings just to satisfy the EMTALA.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
June 18, 2004

The US Circuit Court of Appeals for the Eleventh Circuit could find nothing wrong with how the hospital cared for the patient and ruled for dismissal of her lawsuit under the Emergency Medical Treatment and Active Labor Act (EMTALA).

The patient was twenty-two weeks pregnant with triplets. Her personal physician sent her to the hospital for a labor check after she called about cramping and a mucous discharged she feared meant the onset of premature labor.

Seen By Nurse in Labor & Delivery

She was admitted as an outpatient in the labor and delivery unit. A labor and delivery nurse took her vital signs and medical history, listened for the fetal heart beats, examined her abdomen and placed her on a monitor for uterine contractions and left her on it for an hour.

The nurse also paged the patient's own physician to come in and see her. He came in and did a visual exam of the cervix, cultured the cervix and did an ultrasound. He decided it was only a convulsive episode and not labor and discharged her, reminding her to keep her appointment the next day with her ob/gyn.

The next day she went into pre-term labor. Her ob/gyn testified, however, that the previous day she was not in labor.

No EMTALA Violation

The EMTALA requires every patient who presents (in the E.R. or an outpatient department) with a possibly emergent condition or active labor to be screened for an emergency and/or active labor in the same way any other similar patient would be screened, and to be offered necessary stabilizing care if an emergency or active labor does exist.

Hospitals are not required to have written screening policies covering every medical contingency that might present in the emergency room. ***Nolen v. Boca Raton Community Hosp., Inc.***, ___ F.3d ___, 2004 WL 1367490 (11th Cir., June 18, 2004).