

## Labor And Delivery: Nurses Did Not Report Decelerations To Ob/Gyn, Court Finds Nursing Negligence.

The jury awarded more than \$12,000,000 to the mother who suffered pelvic damage during delivery and to the infant who was born with severe cerebral palsy.

The Supreme Court of Colorado upheld Colorado's cap on malpractice damages, but ruled the lower court erred in computing just how it was to be applied to reduce the verdict.

### Nurses Failed To Notify Doctor Of Abnormal Fetal Monitor Tracings

The typical scenario in labor and delivery cases involving nursing negligence is that the nurses fail to notify the physician of monitor tracings that indicate the fetus is experiencing fetal distress from lack of oxygen.

In this case the nurses phoned the physician, who was nearby in the physician's lounge, and told her there were "mild to moderate variable decelerations" at 11:15 p.m.

At 11:24 p.m. there was a sharp decline in the fetus's condition, according to the court, based on the decelerations appearing from the monitor. The nurses repositioned the mother and gave her oxygen but did not phone the physician again for more than an hour.

At 12:45 a.m. the nurses did call the physician. She came in and immediately attempted a very difficult expedited vaginal delivery which severely injured the mother and did not promptly relieve the fetus's distress.

The court believed the nurses should have reported the decelerations seen shortly after 11:15 p.m. as evidence of fetal acidosis mandating a prompt cesarean section. They should have insisted the physician come to the delivery room to look at the monitor strips herself.

The physician testified she would have promptly ordered a cesarean at 11:24 p.m. if the nurses had informed her of the true seriousness of the situation. Garhart v. Columbia/Healthone, L.L.C., \_\_ P. 3d \_\_, 2004 WL 1433331 (Colo., June 28, 2004).

## Nurse's Duty To Advocate For Patient: Court Puts Roadblock In The Way Of Patient's Right To Sue.

Nurses have a legal responsibility to advocate for their patients. That is, when a nurse believes a physician is ignoring the correct treatment measures or is pursuing inappropriate measures, the nurse must take action.

Nurses are required to access the nursing chain of command, as the courts phrase it.

A staff nurse must go to the charge nurse. The charge nurse, if there is reason, must go to the unit manager, house nursing supervisor or director of nursing. Depending on the level of time urgency, the highest-level nursing officer available must approach the physician, if it appears necessary, then go over the physician's head within the medical chain of command until a suitable resolution is achieved.

***A nurse has the responsibility to access the nursing chain of command when the nurse has reason to question a physician's treatment decision.***

***However, for a patient to sue, the patient must have solid evidence that if the nurse had accessed the chain of command it would actually have affected the physician's treatment decisions for the better.***

DISTRICT COURT OF APPEAL  
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The courts are imposing liability on nurses for failing to advocate in this manner for their patients. The courts also expect healthcare institutions to have policies so that any nurse at any level in the hierarchy has his or her duties and authority clearly spelled out.

The District Court of Appeal of Florida, however, has severely limited a patient's right to sue.

The court affirmed a lower court judge's decision to direct the jury to return a verdict in favor of a hospital. The judge's rationale was that the patient's attorneys failed to prove that the nurses accessing the nursing chain of command would have affected the physician's treatment decisions for the better. McKeithan v. HCA Health Services of Florida, Inc., \_\_ So. 2d \_\_, 2004 WL 1462100 (Fla. App., June 30, 2004).