

## Diversion: Court Says MAR Is Not A Prescription, Nurse Acquitted.

A nurse was accused of falsifying the medication administration record at the nursing home where she worked, to cover up diversion of narcotics.

The nurse recorded that a certain resident was given three oxycodone tablets. However, according to the criminal indictment, she gave the resident only one and kept the other two pills for herself.

The criminal indictment went on to charge the nurse with making a false or forged prescription for a controlled substance in violation of state law.

In the nurse's defense a pharmacist testified that a medication administration record is not a "prescription" as the word is used in the legal sense.

The physician's order for the oxycodone was the prescription. The physician's order, the prescription, was genuine and it was correctly transcribed by the nurse into the patient's chart without any attempt at forgery.

Although the nurse's conduct could not be condoned, she was not guilty of the offense for which she was indicted and the Court of Appeals of Oregon had to order her acquittal. **State v. Evilsizer**, \_\_ P. 3d \_\_, 2013 WL 5561532 (Or. App., October 9, 2013).

## Lithium Toxicity: Nurse Practitioner Faulted In Patient's Death From MI.

**Although this is a Federal court case implicating the liability of the US Government, the law must be applied from the state where the alleged negligence occurred, Alaska.**

**Under Alaska law an expert witness in a malpractice case must be licensed in the same field as the defendant healthcare provider against whom the expert is put on the stand to testify.**

**The psychiatrist hired by the family for this case is an expert on the standard of care for treating psychiatric patients on lithium. There is no reason to question his competence or the validity of his testimony.**

**However, that being said, he is not licensed as a nurse practitioner and it was technically erroneous for the District Court to accept his testimony.**

UNITED STATES COURT OF APPEALS  
NINTH CIRCUIT  
September 23, 2013

The patient who took lithium for schizoaffective disorder was being followed by a nurse practitioner in a community mental health clinic.

The patient was taken to the clinic by the staff at the assisted living facility where she lived after they noticed leg buckling and jerky movements. The nurse practitioner suspected lithium toxicity and ordered lab tests, including a lithium level, and sent her to her physician to rule out other metabolic or neurological issues.

The lab never ran the lithium level. The physician got the lab results but never had reason to notice there was no lithium. The physician was never told why the patient was sent to him and assumed it was follow up for a respiratory infection.

Four days later the nurse practitioner saw the patient again but did not notice that the lithium was missing from the lab results. Because the jerky movements had ceased, the nurse practitioner was not concerned about the lithium and did not follow up further. Three weeks later the patient died from an MI related to lithium toxicity.

The US District Court in Alaska ruled the nurse practitioner was 80% at fault for the patient's death, the lab 15% and the assisted living facility 5%. The nurse practitioner should have followed up on the missing lithium level and should have been ordering routine lithium levels, the last one being more than eight months earlier.

The US Court of Appeals for the Ninth Circuit threw out the judgment on technical grounds and ordered a new trial. **Liebsack v. US**, \_\_ F. 3d \_\_, 2013 WL 5303246 (9th Cir., September 23, 2013).

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