

## Medication Error: Court Sees Basis For Liability, Punitive Damages.

While in the hospital the patient was mistakenly injected by a nurse with insulin that was not prescribed for him.

When the nurse realized the error she phoned the attending physician who told the nurse to check the blood glucose level every two hours and to phone her at home if it dropped below 120.

The physician called the hospital that night and learned that the blood glucose was 132 at 8:15 p.m. and 107 at 10:15 p.m. and ordered the blood glucoses discontinued until the next morning.

At 6:15 a.m. the blood glucose was 15. The patient soon died.

### Nurse's Medication Error

The patient's daughter reportedly warned the nurse that the patient was not diabetic and did not use insulin but the nurse reportedly went ahead with the injection without making any effort to double-check the patient's identity or to verify that the medication was ordered for him.

If the daughter's statements were true the nurse's conduct could "transcend mere carelessness" as the New York Supreme Court, Appellate Division phrased it and "demonstrate reckless indifference to the deceased's medical needs" so as to justify punitive damages from the nurse.

### Nurse's Previous Medication Error

It came to light during the preliminary discovery phase of the lawsuit that the same nurse had put ear drops in a patient's eyes two months before this incident, another blatant medication error that was revealed when the family's attorneys obtained a copy of the report prepared by the Federal investigators who responded to the incident in question.

The Court was particularly concerned with the lack of any systematic methodology at the hospital to identify and correct a risk of further errors by a staff member who had committed a blatant and egregious error in the past.

### Documentation Was Back-Dated

The Court was also very concerned about the fact that the erroneous injection was not documented in the deceased patient's chart as a medication error until four months after the fact. There was no satisfactory explanation offered by the hospital to account for the delay.

***After this incident Federal inspectors found that the hospital had no methodology in place to identify patterns of repeated medication errors by specific staff members, had not discussed trends for medication errors at quarterly quality assurance meetings and thereby failed to insure that its patients were free of significant medication errors as required by state and Federal regulations.***

***A medical facility's failure to provide appropriate safety precautions and staff training may constitute a basis for awarding a patient punitive damages if it is shown to amount to conscious disregard for patient safety.***

***Punitive damages are added to ordinary compensatory damages and in many cases far exceed the amount of the compensatory damages awarded.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
January 12, 2012

Willful failure to disclose pertinent medical information which a patient or patient's representative has the right to receive can be grounds for punitive damages, the Court went on to say.

The Court also found it problematic that the physician did not come to the hospital to see the patient and the Court felt the physician erred by ordering the glucose testing discontinued during the night until the next morning. Marsh v. Arnot Ogden Med. Ctr., \_\_ N.Y.S. 2d \_\_, 2012 WL 87957 (N.Y. App., January 12, 2012).

## IV: No Nursing Negligence Found.

A registered nurse inserted a butterfly needle in a vein in the patient's right arm just above the elbow to give IV adenosine for an outpatient myocardial perfusion study.

The patient sued the clinic for negligence by the nurse which allegedly caused a median nerve injury in the arm which has been causing her constant pain in the arm, shoulder and fingers.

***The patient's experts, a nurse and a neurologist, were unable to show how the nurse's technique used to insert the IV needle departed from the standard of care.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
January 17, 2012

The New York Supreme Court, Appellate Division, dismissed the patient's lawsuit.

The nurse allegedly failed to explain to the patient what she was doing and failed to follow up when the patient complained of pain. Even if that amounted to less than optimal nursing practice the Court could not see how it could have caused any injury to the patient.

### Bad Outcome Reported By Patient Does Not Prove Negligence

The Court ruled that the patient's experts, an RN and a neurologist, had come up with opinions which were conclusory and thus insufficient to support a malpractice lawsuit. That is, the experts stated essentially that the nurse must have done something wrong merely because the patient reported pain afterward.

From the nurse's careful documentation of the process she used to insert the short, small needle into a superficial vein there was no logical explanation how a median nerve injury could have occurred, as the hospital's experts pointed out from their review of the chart. Barrett v. Hudson Valley Cardiovascular, \_\_ N.Y.S. 2d \_\_, 2012 WL 149642 (N.Y. App., January 17, 2012).