

## Wrong Drug Given By Nurse: Court Allows Patient To Sue.

***Giving a medication to a patient to which the patient has not consented can amount to a battery for which the patient can sue a healthcare provider.***

***Battery is the common-law legal term for an action which results in harmful or offensive physical contact with another.***

***Fraud involves a knowingly false misrepresentation intended to be relied upon by another to his or her detriment.***

***Intentional infliction of emotional distress must be an intentional act and must involve conduct that is extreme or outrageous by community standards.***

***There must be actual proof that the victim indeed suffered severe emotional distress as a result of the perpetrator's action.***

UNITED STATES DISTRICT COURT  
ARIZONA  
May 16, 2016

## Neonatal Nursing: Court Accepts Nurse's Testimony.

The parents testified that when they phoned the hospital four hours after the newborn's and mother's discharge a nurse told them to put the baby on a windowsill in the sunlight which would help with his jaundice.

When they called again the next day a nurse at the hospital told them to call their pediatrician. The baby was soon admitted to another hospital for bacterial meningitis.

The parents' nursing expert testified it would be a violation of the standard of care for the nurse who took the first phone call from the parents not to have told them to phone their pediatrician or to bring the baby back to the hospital at that time.

The Appellate Court of Illinois backed the trial judge's decision to allow a nurse from the first hospital to testify. According to hospital records she was the labor and delivery nurse who had discharged the mother and baby and was still on duty when they called back.

The Court's decision was unusual and fortunate for the hospital to allow the nurse to testify as to what she would have done, without any chart note as to what the nurse actually said or did in response to the parents' call. **First Bankers v. Memorial**, 2016 WL 1733516 (Ill. App., April 29, 2016).

A patient sued the hospital after she learned at the time of her discharge that she had been given IM Toradol by a nurse at a physician's direction after the patient herself requested and agreed to be given diclofenac. She claimed she never consented to being given Toradol.

The patient's own understanding was that having an allergy to acetaminophen and being on isoniazid contraindicated Toradol for her. She claimed the Toradol caused emotional distress, anxiety, insomnia, forgetfulness and acute chest pain.

For her lawsuit the patient's legal allegations included battery, fraud and misrepresentation and intentional infliction of emotional distress.

In its ruling the US District Court for the District of Arizona explained the necessary elements of each of the legal theories raised in the patient's lawsuit.

Then the Court dismissed the patient's lawsuit, but without prejudice. The patient has permission to re-file the lawsuit if she can come up with evidence of the necessary elements she needs to prove her case.

The patient also claimed the hospital violated her Constitutional rights. However, it was not legally possible for this hospital, owned and operated by a private-sector corporation, to violate her Constitutional rights because the corporation is not a governmental agency. The same is also true as to the allegation that the hospital violated her religious beliefs, again because this hospital is a private company. **Nakawagi v. Tenet**, 2016 WL 2851439 (D. Ariz., May 16, 2016).

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