

## Delayed Neuro Consult: E.R. Staff Ruled Negligent.

The patient came to the emergency room complaining of a severe headache. Her headache improved and she was released from the hospital. About five hours later she returned to the emergency room with the same complaint of a severe headache.

She was at the hospital the second time for more than five more hours before anyone obtained a neurologist's consult for her. The neurologist determined she had had an intracranial hemorrhage. Some time later she began having seizures and had epilepsy surgery, but she is now seizure-free with medication.

The New York Supreme Court, Appellate Division, ruled it was a departure from the standard of care to make this patient wait five hours for a neuro consult after her return to the emergency room. However, there was no solid evidence the delay had anything to do with causing her seizure disorder, so the case was dismissed. Migliaccio v. Good Samaritan Hospital, 733 N.Y.S.2d 713 (N.Y. App., 2001).

## Home Health: Nurse Was An Employee.

The patient sued his home health nurse and the home health nursing agency. His lawsuit claimed his nurse negligently injected morphine into the downstream port leading to his body while attempting to refill his implanted morphine pump, causing an overdose.

Before getting to the question of the nurse's negligence the court had to decide if the nursing agency was a proper defendant. That is, if the nurse was an independent contractor referred by the agency, and not an employee of the agency, the agency should be let out of the lawsuit.

Although the agency referred to her as an independent contractor, supplied her an IRS Form 1099 rather than a W-2 and paid her from the operations account rather than the payroll account, she was an employee.

The Court of Appeal of Louisiana ruled the agency had the right to supervise and control the nurse's clinical performance. That made her an employee of the agency, not an independent contractor, and the agency was liable for her errors and omissions. Murray v. Option Care, 801 So. 2d 1203 (La. App., 2001).

## Patient Falls From Stretcher In E.R.: Patient Alert And Oriented, Side Rails Up, Lawsuit Dismissed.

After hearing testimony about what happened the local trial judge dismissed the case against the hospital. The Court of Appeals of Mississippi upheld the trial judge's ruling.

The patient came from a nursing home by ambulance at 4:55 a.m. with complaints that were unclear.

The nurse found her alert and oriented and placed her on a stretcher to wait for the physician to see her. The stretcher was set at its lowest level and the side rails were up. At 5:22 a.m. the nurse found the patient on the floor. Apparently she became disoriented and climbed over the side rails.

The patient sued for her minor injuries from the fall. The emergency room nurse was not negligent, the court ruled.

**No Basis For Restraints**

***A nurse can testify as an expert witness on the nursing standard of care, as a general rule.***

***However, the nursing expert the patient's lawyers hired had not worked in emergency care for several years and was not affiliated with an institution that provided emergency care.***

***The judge was correct not to allow the nurse to testify as an expert witness.***

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2001.

The medical center's policy correctly allowed restraints only when needed and favored less restrictive restraints until more restrictive measures were actually proven necessary.

**Patient's Nursing Expert Was Not Qualified For This Case**

The trial judge would not allow a nurse consultant with a masters in nursing to testify.

The Court of Appeals agreed the nurse consultant did not have sufficient professional experience in emergency-room nursing to qualify as an expert witness for this case. Judges conducting malpractice trials have a great deal of discretion whether to accept or reject a particular witness's qualifications. Stanton v. Delta Regional Medical Center, 802 So. 2d 142 (Miss. App., 2001).