

## Research Studies: Subjects Have No Right To Sue When Project Is Discontinued.

**P**atients who had participated in a research project for lymphoma were “incidental, gratuitous beneficiaries” of the research, and, according to the U.S. District Court for the Southern District of Texas, they had no legal right to sue the cancer center over the research project’s discontinuation.

**Research is not treatment. No former or potential future patient-participant in a medical research project has the right to sue to stop a project’s discontinuation or to compel a new project.**

UNITED STATES DISTRICT COURT,  
TEXAS, 1996.

The court said it sympathized with the former participants’ feelings of profound frustration over the project’s discontinuation. They were given a drug which may have been a cancer cure but only for research, not for the patients’ benefit in receiving a potential cure, the court ruled.

Researchers may extend compassion to research subjects by allowing them the limited use of an experimental drug. However, the court said, scientific, administrative and fiscal concerns over the project’s management, and the core question of the drug’s efficacy, should not be clouded by the humanitarian impulses of those who carry on medical research. On top of that, the court said, it would be highly inappropriate to compound a difficult situation by opening the way for review of medical-research decisions in the courts.

The court ruled the participants’ disappointment was real, but did not result from the denial of any legally-recognized right, and thus they had no grounds to sue. **Spenceley vs. M.D. Anderson Cancer Center**, 938 F. Supp. 398 (S.D. Tex., 1996).

## Resuscitation Of No-Code Patient: Nurse’s Action Was Wrong, Court Says.

**Because a person has the right to die, a healthcare professional who has been trained to preserve life, and who has taken an oath to do so, is relieved of that duty and is required by a legal duty to accede to the patient’s express refusal of life-prolonging interventions.**

**Whether intentional or negligent, interference with the legal right to die is a breach of the legal duty to honor the wishes of the patient.**

**Unwanted life-saving treatment should not go undeterred. Where a patient clearly delimits the medical measures he or she is willing to undergo, and a healthcare provider disregards the patient’s instructions, the consequences should include paying any monetary damages which arise from the legal battery which has been inflicted upon the patient, as well as appropriate licensing sanctions against the healthcare professionals.**

**The difficult issue for the court is to assess the harm the patient has suffered and the amount of monetary damages to be awarded to the patient or the family.**

SUPREME COURT OF OHIO, 1996.

**T**he patient was admitted to the hospital for chest pains and fainting. His personal physician wrote a No Code order in the chart. The patient had witnessed his elderly wife die in agony after an emergency resuscitation, and did not want the same fate.

Three days later, while on a heart monitor, a nurse defibrillated the patient from ventricular tachycardia, and his personal physician started him on lidocaine. He came out of V-fib spontaneously two hours later, apparently from the lidocaine. The patient expressed his gratitude to the nurse and physician.

Two days later he had a stroke and was paralyzed on his right side. He spent two more months in the hospital, went home for a few months, went to a nursing home for a year, then died. But before he died a suit was filed against the hospital where the nurse resuscitated him. The suit was continued by the personal representative of the estate after his death.

The Supreme Court of Ohio ruled that the nurse acted wrongly in resuscitating this patient. It was her legal duty as a healthcare professional to follow the No Code order and allow the patient to expire.

However, the court soundly rejected the artful contention the attorneys had concocted to the effect that by saving the patient the nurse was responsible for his stroke. Having been resuscitated from a cardiac event, the patient had an unrelated CVA. No harm to the patient could be traced directly to the patient being defibrillated, so no legal damages were to be awarded for that, and the lawsuit was dismissed, despite the ruling the nurse was wrong for resuscitating the patient. **Anderson vs. St. Francis-St. George Hospital, Inc.**, 671 N.E. 2d 225 (Ohio, 1996).

(Editor’s Note: In other cases, awards of damages *have* been upheld, e.g. for extra medical expenses, pain and suffering to the deceased and agony to the family from a No Code order being ignored by a patient’s caregivers.)