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# Nursing Documentation: Lack Of Chart Note Stumbling Block To Favorable Legal Ruling.

In preparation for an endoscopic ultrasound at an ambulatory surgery center a nurse attempted to start an IV by inserting a 22 gauge angiocatheter into the back of the patient's hand.

The patient reported pain immediately. The nurse stopped, left the room visibly upset and returned with a supervisor who successfully started an IV line in the antecubital space.

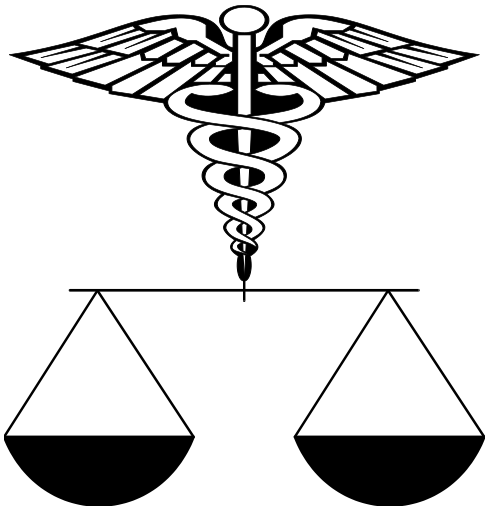
Pain continued for the patient and later she developed swelling, bruising and loss of strength in the wrist. Her orthopedist related her signs and symptoms to irritation of the superficial radial nerve in the failed IV insertion.

The patient sued. The surgery center opposed the lawsuit with an affidavit from the nurse and asked the court for a summary judgment in its favor.

**Lack of Nursing Documentation Stumbling Block to Favorable Ruling**

The New York Supreme Court, Appellate Division, noted that a healthcare facility may be able to get a summary judgment of dismissal with affidavits from the involved caregivers describing the facts in specific detail and stating that the care they provided did not deviate from the standard of care.

That can mean caregivers winning a malpractice lawsuit outright without the burden and expense of a trial, notwithstanding a bad clinical outcome.



***The nurse's affidavit stated that she complied with the facility's protocols and procedures. In her opinion the first IV insertion was attempted correctly in all respects.***

***However, the nurse never documented the failed IV insertion in the chart. She has no recollection of it or any other basis for her opinion.***

NEW YORK SUPREME COURT
APPELLATE DIVISION
May 7, 2015

However, the nurse in this case did not document the aborted IV insertion attempt in the patient's chart.

With the nurse having no specific recollection of the incident, and having no documentation upon which to rely, the Court could see no basis for her affidavit that the failed IV insertion was attempted correctly in all respects in her opinion as a registered nurse.

The Court was left with the pretrial depositions of the patient and her husband as the only real evidence how the failed IV insertion happened. Nevertheless, their recollections of the facts are not conclusive evidence the nurse was negligent. A jury will decide that issue after weighing all the evidence.

**Absence of Documentation No Proof Incident Did Not Occur**

When pressed in her own pretrial deposition the nurse shifted gears and testified that if the failed IV insertion attempt had happened at all as the patient and her husband alleged, then she would have documented it in the chart.

The fact she did not document it, she went on to argue, cast doubt on whether it ever really happened. The Court refused to consider the argument that something a caregiver does not document did not happen. **Weeks v. St. Peter's Hosp., __ N.Y.S.3d __, 2015 WL 2095746 (N.Y. App., May 7, 2015).**

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