

Post-Mortem Care: Court Rules Nurse Acted Appropriately.

The handling of a patient's remains post mortem can expose nurses and other healthcare providers to potential legal liability to the family of the deceased for reckless infliction of emotional distress.

A healthcare provider usually must go along with the family's wishes as to the handing of a loved one's remains.

However, the standard of care requires a nurse not to alter the remains of a deceased patient if the hospital has notified the medical examiner of the patient's death in the hospital.

The law sets the bar very high for the family to succeed with a lawsuit against a healthcare provider in this context.

The healthcare provider's conduct must have been extreme or outrageous, the provider must have known there was a high probability that the provider's conduct would cause severe emotional distress and the provider's conduct must have in fact caused severe emotional distress.

A healthcare provider is also not liable for an outcome which the provider in no way could anticipate, like what happened at the funeral home in this case.

APPELLATE COURT OF ILLINOIS
December 2, 2016

A two year-old died in the hospital from complications following surgery to replace the pacemaker in her heart.

The parents' lawsuit accused the treating physicians of malpractice.

The lawsuit also accused the nurse who performed post mortem care of reckless infliction of emotional distress upon the child's mother.

The Appellate Court of Illinois ruled in the hospital's favor in all respects.

Patient's Remains Sent to Funeral Home With Tubes in Place

The parents had asked the nurse to remove the plastic medical tubing inserted in the patient during surgery before the remains were sent to the funeral home, but instead the nurse taped the tubes in place externally and did not remove them.

After the body was unwrapped at the funeral home by the mother, female family members and other females involved in the Islamic washing ritual, a tube was pulled from the chest and blood spewed uncontrollably from the mouth.

Nurse Followed Instructions, Hospital's Protocol

The Court ruled the nurse acted appropriately even though she did not comply with the parents' expressed wishes.

The nurse was correct to follow her supervisor's instructions to comply with the hospital's protocol that, if the medical examiner had been notified of the patient's death in the hospital, the patient's remains were not to be altered pending a decision regarding an autopsy by the medical examiner or the family's private pathologist.

The family said right away they did not want an autopsy. The medical examiner also declined to do an autopsy, but the testimony at trial made it fairly clear the nurse did not learn that before the body was already in the morgue or at the funeral home and beyond the nurse's control.

There was no intent by the nurse to inflict emotional harm on the mother. Nothing in the nurse's conduct could be seen as extreme or outrageous. Nor could the nurse have foreseen that the mother would be handling the body at the funeral home or what would happen there. Eid v. Loyola, 2016 Il. App. (1st) 143967, __ N.E. 3d __, 2016 WL 7163763 (Ill. App., December 2, 2016).

Nurse Midwife: Physician Unqualified As To Negligence.

A patient sued claiming she was injured by negligent application by a certified registered nurse midwife of suprapubic pressure during her delivery.

A registered nurse who is certified by the State Board of Nursing as a nurse midwife is considered a specialist.

To testify against a specialist in malpractice litigation, an expert witness must have spent the preceding year in active clinical practice or in the instruction of students in the same field as the specialist.

The physician in this case is not qualified to testify as an expert on the standard of care for a certified registered nurse midwife.

COURT OF APPEALS OF ARIZONA
November 29, 2016

The Court of Appeals of Arizona dismissed the case on summary judgment without having to weigh the question of the defendant nurse's negligence.

State law in Arizona as in many US states restricts expert testimony in healthcare malpractice cases to experts who are currently involved in clinical practice or clinical education in the same field as the defendant healthcare provider against whom they propose to testify.

A physician, simply by virtue of being a physician, is not qualified and cannot testify on the standard of care for a nurse.

Without expert testimony from an expert whom the law regards as a true expert a patient's malpractice suit must be dismissed without further consideration of the merits of the case. St. George v. Plimpton, __ P.3d __, 2016 WL 6956630 (Ariz. App., November 29, 2016).