

Premature Discharge, Discharge Plan Not Implemented: Court Blames Nurse For Multi-Million Dollar Verdict Against Health Plan.

The Court of Appeals of Texas recently approved a jury verdict of \$13,050,000 against a medical insurance plan for negligence by the plan's nurse reviewer/patient care coordinator and the patient's treating physician.

The verdict included \$3,050,000 actual damages to the family of the deceased patient and \$10,000,000 punitive damages.

Lawsuit for Wrongful Death

A short summary of the complex scenario would focus on the fact the patient never got his oxygen at home after discharge from a skilled nursing unit associated with an acute-care hospital.

The next day the family had to call 911 to get the paramedics to take him back to the hospital emergency room. In the E.R. his blood pressure was 91/54 and his O₂ saturation was 77%.

This was the physiologic insult the medical experts would later testify resulted in the family having to agree to a DNR order in his chart, stop his dialysis and other heroic measures and allow him to pass away in the hospital seven days later.

Premature Discharge From Skilled Nursing Care

There were two prongs to the family's allegation the patient was discharged prematurely from skilled nursing.

First, his care needs simply did not allow him to be sent home.

Alternatively, his care needs did not allow him to be sent home before all the details were in place for his home care. A nurse arranging a discharge for a patient who will absolutely require a high level of home care should know better than to send a patient home abruptly at 9:00 p.m. on a Friday night, the court said.

The nurse reviewer claimed she faxed the physician's order for oxygen at home to someone at the home service company, but none of the paperwork could be located after the fact.

A health plan or health insurance carrier is liable to a patient enrollee if the plan or carrier fails to exercise ordinary care when making health care decisions affecting the patient enrollee.

Failure to exercise ordinary care is the traditional common-law touchstone for negligence.

A health care treatment decision can mean, among other things, a determination whether certain medical services are actually provided by the health care plan or any decision which affects the quality of the diagnosis, care or treatment provided to the plan's insureds or enrollees.

The law treats this situation basically the same as a lawsuit for professional negligence or malpractice.

The patient must present expert testimony as to the legal standard of care for the nurse or physician alleged to have been negligent, violation of the standard of care and medical cause-and-effect linking the violation of the legal standard of care to harm suffered by the patient.

COURT OF APPEALS OF TEXAS
February 12, 2004

Home Oxygen Not Implemented

The court faulted the nurse reviewer for not seeing to it that the oxygen equipment was actually set up and ready in the home and that someone would meet the patient in his home to get it started.

This allegation went hand-in-hand with the allegation it was highly improper to fax off some paperwork and send a patient home by ambulance late on a Friday evening right before the weekend.

The court further faulted the nurse reviewer for the Friday p.m. discharge because any discharge nurse should anticipate that no one from her office or the home health contractor would be answering the phone over the weekend. She herself had her phone pager turned off.

Physiologic Insult – Death

The patient was eighty-three years-old. He had been in the hospital for severe anemia, congestive heart failure, chronic obstructive pulmonary disease and renal failure. He had a pacemaker and had had several strokes over the preceding nine years.

He was discharged from the hospital to the hospital's skilled nursing unit for physical therapy strength training. He was getting three liters of O₂ through a nasal cannula.

The physician's discharge orders noted he was not having symptoms of congestive heart failure and his emphysema had improved.

However, the physician's orders specifically stated he was not to be sent home unless and until his O₂, all his medications, physical therapy and skilled nursing visits had been arranged for his home.

The medical experts testified the episode that sent him back to the hospital worsened his depression and caused him basically to give up his struggle to improve and thus it was the legal cause of his death.

Cigna Healthcare of Texas, Inc. v. Pybas, ___ S.W. 3d ___, 2004 WL 253941 (Tex. App., February 12, 2004).