LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Psychiatric Patient Tased: Hospital Can Be Liable.

The patient who admitted himself was diagnosed with paranoid schizophrenia, bipolar disorder, delusions and other mental illnesses.

When he became agitated he was given medication pursuant to the physician's orders, but he still did not calm down. Several hospital staff together tried unsuccessfully to place him in restraints. Then hospital security was called.

Hospital security officers subdued the patient in the hallway by three times using a Taser. Then they helped put him in four-point restraints. He soon became unresponsive and died.

The warning label on the Taser cautioned against its use on a physiologically or metabolically compromised individual. The US District Court for the Southern Division of Ohio pointed out that warning would apply to a person on heavy doses of medication to control psychotic agitation. The Court questioned the decision of the psych unit nurse manager to bring in hospital security to subdue this patient even though that actually was allowed by the hospital's policies. **Brinson v. Univ. Hosp., 2011 WL 2492960 (S.D. Ohio, June 22, 2011).**

Psychiatric Patient Assaulted: Aides' Firings Upheld.

Two psychiatric aides were fired after a physical altercation with a patient. The Superior Court of New Jersey, Appellate Division, ruled the facility had grounds to fire them.

The problem started when the night-shift aides were not able to convince the patient to get out of bed at 6:00 a.m. Unit policy for this situation was to allow a patient to stay in bed and let the day shift try to wake the patient 7:00 a.m.

Hospital policy also required an aide to back away from any physical altercation with a patient and, when a patient acted out, to report to the nurse and obtain guidance rather than going ahead on the aide's own initiative. The rationale was to favor de-escalation over confrontation as a treatment tool and to protect patient safety.

Aides were allowed to defend themselves physically, but only as a last resort when retreat was not possible. The patient apparently did lash out when the aides would not leave him alone, but failing to report to the nurse, engaging and then retaliating against the patient was wholly inappropriate, the Court said. **Matter of Okafor, 2011 WL 2535158 (N.J. App., June 15, 2011).**

E.R.: Nurses Found Negligent But No Proof They Were Responsible For The Patient's Injuries.

The E.R. physician diagnosed the patient with a tension headache or possibly a migraine and sent him home.

The next day when she got home from work the patient's wife found him vomiting and unable to walk. She phoned an ambulance which took him to a different hospital where he was diagnosed with a cerebral hemorrhage.

The patient had several surgeries with post-surgical complications. He is now brain-injured and blind.

The patient's settlement with the hospital was for $1,000,000 plus the right to sue the E.R. physician's practice group for $1,000,000 more than the $3,000,000 which it already paid by way of settlement of the claim which was valued at $5,000,000. The E.R. physician defended that lawsuit by arguing the E.R. nurses were to blame.

It was a critical piece of information that the patient was referred to the emergency room by his own personal physician for his persistent headaches accompanied by vomiting,

He did not come to the E.R. on his own just because he had a headache.

He should not have been placed in the waiting room for minor ailments and left there two hours.

NEW YORK SUPREME COURT
APPELLATE DIVISION
June 30, 2011

The New York Supreme Court, Appellate Division, believed the E.R. nurses were negligent. A nursing expert opined that the E.R. nurses improperly placed the patient in a waiting room for those with only minor injuries.

In addition, critical information, that the patient was sent to the E.R. by his own physician and did not come in on his own, was nowhere to be found in the nurse's triage note and was not conveyed to the E.R. physician before he misdiagnosed it as a simple headache.

However, there was no evidence the E.R. physician would have ordered a CT and correctly diagnosed the patient if he had been told how the patient got there, the Court said, expert testimony on all aspects being necessary in a malpractice case. **Caruso v. Northeast Emergency Medical, __ N.Y.S.2d __, 2011 WL 2568466 (N.Y. App., June 30, 2011).**

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