

## Statute Of Limitations: Court Says Hospital Was Not Guilty Of Fraudulent Concealment.

The patient died in the hospital in 2000 two days after sustaining serious head injuries in a pedestrian *versus* motor vehicle accident for which she was treated in the hospital's emergency department, surgery department and ICU.

In the emergency department a nurse gave the patient four separate doses of Versed without a physician's order, totaling 10 mg, three shortly before the patient went into cardiac and respiratory arrest and one only minutes afterward.

The patient's adult daughter came to the hospital and was told by a physician she was in a coma due to her injuries.

A month after the death the daughter contacted an attorney who gave her a copy of the hospital chart, including the nurse's notes about the Versed. The attorney and client agreed it was simply a motor vehicle case and they settled with the car's driver.

The hospital's risk management committee met over the incident. Concern was voiced about the Versed, but the decision was to circulate a memo internally and not to contact the daughter. The emergency department physician director dissented and was later fired. The hospital CEO expressly told the director of nursing to keep any discipline of the nurse below the threshold that would trigger a report.

In 2007 the emergency department physician director's attorney contacted the daughter for permission to access the mother's chart for use in his client's wrongful termination lawsuit against the hospital, that is, to try to prove his client was in the right to protest the decision not to alert the daughter about the Versed.

At that point the daughter contacted another attorney who nine months later sued the hospital for malpractice relative to the emergency department nurse's giving Versed without a physician's order to a critically injured head trauma patient.

The Appellate Court of Illinois ruled the hospital was not guilty of fraudulent concealment. The statute of limitations was not extended by the hospital's actions and the lawsuit had to be dismissed. **Harris v. Advocate**, 2015 IL App (1st) 141773-U (November 19, 2015).

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***The statute of limitations for filing a medical malpractice lawsuit can be extended if the defendant healthcare provider has fraudulently concealed the true facts giving rise to a claim from the person entitled to bring such a claim.***

***State laws differ. In Illinois the deadline is extended up to five years after the true facts are discovered by the party entitled to sue.***

***Fraudulent concealment occurs only when a healthcare provider commits an affirmative act intended to mislead or deceive.***

***Providers have no duty to interpret the facts for a patient or representative and opine whether improper treatment was given.***

***The hospital had no duty to suggest to the coroner that the Versed was a factor in the death.***

***The risk management committee circulated its privileged findings internally and had no duty to share them with the family.***

***Even if the nurse was reported and censured it is highly doubtful the daughter would have known.***

***The daughter did see her mother's full chart less than two months after she died.***

APPELLATE COURT OF ILLINOIS  
November 19, 2015

## Driving Under The Influence: Nursing License Restored.

A nurse was involved in a motor vehicle accident on her way to work the day shift at the county corrections center.

An officer found her car basically on top of a parked car. Her clothing was on inside out and backwards and she appeared confused and unable to understand what the officer was saying to her.

The officer found a bottle of Soma muscle-relaxant pills on the front seat of her vehicle. The label showed it had been filled the day before for 90 pills, but the officer counted only 37 pills in the bottle.

The nurse later testified she usually took one and was supposed to take only one pill in the morning but took two that day because her back was really hurting.

The nurse pled guilty to driving while intoxicated. The State Board revoked her nursing license.

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***A first offense for driving while intoxicated is not a crime involving moral turpitude and is not reasonably related to the individual's ability to practice as a nurse.***

MISSOURI COURT OF APPEALS  
November 17, 2015

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The Missouri Court of Appeals ordered her nursing license restored.

The Court looked for guidance to court precedents from other jurisdictions which have had to consider the issue.

The consensus among the states is that a first offense, as opposed to repeated offenses, of driving while intoxicated is not grounds to revoke a nursing license. A first offense is not considered a crime involving moral turpitude. The Court also saw no problem with the fact the nurse did not report her guilty plea on her nursing license renewal application.

The Court did not consider, while the Board did, the question of the nurse's fitness to work if she had reached her place of employment in her condition. **Owens v. State Board**, \_\_ S.W. 3d \_\_, 2015 WL 7252554 (Mo. App., November 17, 2015).