

Vomiting, Aspiration, Arrest: Court Clears Nurses Of Negligence In Patient's Death.

The patient was taken to the hospital following a serious motor vehicle accident. He had emergency surgery.

Five days after surgery he was transferred from the ICU to a post-surgery recovery unit and cleared by the physician to start a clear liquid diet. When he started to complain of nausea his nurses began giving prn IM injections of Phenergan at approximately four-hour intervals.

Nineteen hours after the last Phenergan shot he aspirated vomit. Two hours later he died of cardiopulmonary arrest.

The jury absolved the hospital's nurses from allegations of negligence. The Supreme Court of Mississippi upheld the jury's verdict in favor of the hospital.

Oxygen Mask

One of the patient's family's attorneys' theories of liability was that the patient was allowed to continue on a bi-level positive airway pressure mask despite the hazard of vomiting relative to his complaints of nausea as liquids were being started post-surgery.

However, the court accepted testimony that the nurses did appreciate the hazard and did switch him to an ordinary oxygen mask, then to nasal prongs, as they were treating him with the Phenergan for his ongoing complaints of nausea.

Phenergan

Another theory was that the nurses neglected for nineteen hours to continue giving the Phenergan.

However, the court accepted testimony that his nausea seemed to be under control and that is why the nurses properly discontinued the q 4 hour injections they had been giving

Report to Physician

Although it took the physician about forty-five minutes to respond and get the patient back to the ICU when the nurses paged him after the patient vomited, the court could find no indication of negligence on the part of the nurses. **Burr v. Mississippi Baptist Medical Center**, ___ So. 2d ___, 2005 WL 1498868 (June 16, 2005).

There has to be some passing reference to the fact the patient was injured in an automobile accident.

Beyond that it would be improper for the attorneys for either side even to suggest that the patient or his next of kin or his heirs might be getting a monetary settlement for the car accident as mitigation of the hospital's liability.

It would also be completely improper for anyone to suggest the automobile accident is partly to blame for what happened in the hospital. If a patient receives substandard medical care, the circumstances which necessitated such care in the first place, even an intentionally self-inflicted injury, are completely irrelevant.

The existence of Medicare is another such issue. The hospital's lawyers did not try to do it, but it would have been improper to argue that medical bills for treatment caused by medical negligence are not part of the damages in a malpractice suit because Medicare has paid or will pay.

SUPREME COURT OF MISSISSIPPI
June 16, 2005