

# Are There Limits to a Nurse's Duty to Advocate for Patients?

written by Nancy Brent | December 15, 2017

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In the following case<sup>1</sup>, an LPN and a charge nurse's attempted management of a patient centered on their respective duty to protect the patient.

Mr. Wright presented at the ED of a VA medical center in Washington State. He complained of knee pain that began about a week before when he fell at home. When he came to the ED, he was using a crutch and was able to ambulate without other assistance during the time he was at the hospital. Several tests were done and he was then discharged from the hospital later that day.<sup>1</sup> An LPN observed Mr. Wright walking in the facility and told him she would accompany him out of the hospital in a wheelchair when his ride arrived. However, Mr. Wright refused her offer several times.

Upon leaving the medical center, Mr. Wright fell and hit his head. He was re-admitted and a physician examined his head injury. The charge nurse, an RN, helped the physician with the examination. When the LPN learned of Mr. Wright's fall and injury, she became concerned that the blood thinner he was given during the tests he had might have had adversely affected him.

The LPN told the charge nurse about her concerns and that she believed Mr. Wright should have a CT scan and stay the night at the facility for observation. The charge nurse agreed and spoke with the doctor about this option. The physician reviewed Mr. Wright's medical record and decided to discharge him.

Mr. Wright died and a lawsuit was filed alleging that the nurses were negligent under the Federal Tort Claims Act because they did not do enough to meet their standard of care in attempting to keep Mr. Wright in the facility for observation. Because the nurses were employees of a VA hospital, the United States of America should be liable for his death.<sup>2</sup>

Specifically, the plaintiffs alleged that the LPN should have "insisted" Mr. Wright use a wheelchair to leave the hospital and should have "convinced" him to do so. The charge nurse's conduct was characterized as not doing enough when discussing with the doctor Mr. Wright's need to stay overnight.<sup>2</sup>

The United States filed a Motion for Summary Judgment, alleging that there was no dispute as to any material fact in the case and therefore it is entitled to a judgment in its favor as a matter of law.

In support of its Summary Judgment Motion, the United States of America raised the adequacy of

plaintiffs' expert testimony concerning the standard of care of the nurses in the case.

The United States District Court carefully reviewed the testimony of the nurse expert. It opined that although the expert stated that her opinion was based on her training, experience, and knowledge, no basis for the proposed standard of care was presented. In short, the Court held, the nurse expert's opinion was nothing more than a "bald" assertion.

Moreover, the Court continued, even taking the expert testimony as nothing more than an assertion, the LPN did everything she could to get Mr. Wright to use a wheelchair upon discharge. The LPN did everything that other ordinary, reasonable and prudent LPNs would do in the same or similar situation. Thus, she met her standard of care.

According to the Court, the charge nurse also met her standard of care and advocated for the patient when she discussed her concerns about Mr. Wright with the physician. It dismissed the expert witness' testimony that the charge nurse should have advocated "up the chain of command" for Mr. Wright rather than accept the physician's decision to discharge the patient. In the State of Washington, the Court concluded, that is not the law.

The Motion for Summary Judgment was granted and two Motions by the plaintiffs' were dismissed as moot.

This case has several principals to keep in mind in your everyday practice, but one that needs emphasizing: in most instances a nurse would be required to advocate for a patient by going up the chain of command. This case was based on the Federal Tort Claims Act and State of Washington law. Its holding that "...nurses do not owe a duty to patients that would place them in a position to second-guess the physician or to otherwise substitute their judgment in place of that provided by the physician"<sup>3</sup> cannot be seen as automatically applicable to a similar case in a different state.

*Other principles include:*

1. Advocating for patients is a legal and ethical duty;
2. Know your facility's policy about patient care concerns;
3. When you sincerely disagree with a physician's decision concerning a patient, adhere to the facility policy and take that concern as far as you can up the "chain of command";
4. Document your attempts to advocate for a patient in the patient's medical record and notify risk management;
5. If you fail to meet your standard of care when advocating for a patient, you may also be disciplined by your state board of nursing for unprofessional conduct as defined in your state nurse practice act; and
6. Being an expert witness in a case involving nursing conduct necessitates you base your opinion on requirements for expert witnesses in your state law or federal law.

## **FOOTNOTES**

1. Wright v. U.S., No. 2:15-CV-0305-TOR., United States District Court, E.D. Washington, June 14, 2017.
2. Id., at 2.
3. Id., at 3.

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