

# **Criminal Patient Care in the ED**

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As an ED nurse, you understand what the ED nurse in the following case<sup>1</sup> went through when a patient came to the ED after being shot by the police and what was at stake insofar as protecting the patient's treatment rights.

The male was rushed to the ED after he was shot by police who "stormed" into a local restaurant in response to an attempted armed robbery that did not go as planned. A hostage situation followed. During the police effort to have the hostage released, one of the males who was believed to be one of the robbers tried to flee, shots were fired in an attempt to stop him from running away, and he was hit twice, once in each shoulder. The police took the male suspect to the ED for treatment.

Upon admission at 10:28 p.m., the male suspect rated his pain level an "8" on a pain scale of 1- 10. Several doctors tended to him but none prescribed pain medication. A CT scan was done to try and identify bullet fragments and whether the suspect had a punctured chest cavity.<sup>2</sup> Upon return to the ED, his bandages were changed and ice packs were applied to both shoulders.

Two other police officers involved in the incident arrived at the hospital and sent the two policemen that brought the suspect to the ED back to the scene of the attempted robbery and shooting because additional hostages had not yet exited the restaurant and there was a question if other robbery suspects were still there.

At about the time of the arrival of the two additional police officers (11:25 p.m.), a nurse in the ED made a notation on her flow sheet indicating that the MD was aware of the patient's complaint of pain and that she was informed by the MD to wait until the police were done speaking with the patient. The nurse also documented that the two police officers were at the patient's bedside.

Additional basic treatment was provided to the suspect in the ED. More questioning by the police took place during which the patient complained of pain. After all questioning was concluded, the patient was given Morphine by one of the ED nurses at 12:58 p.m. Shortly after 1:30 p.m., the patient had surgery and remained in the hospital for 3 days after which he was released into police custody.

The suspect filed a civil rights action under Section 1983 of the Civil Rights Act of 1871, a federal law, alleging that the administration of the morphine sulfate was intentionally delayed by law enforcement and attending health care providers in order to facilitate police questioning.<sup>3</sup> After carefully reviewing the applicable federal law and case decisions concerning the suspect's medical treatment rights while in police custody at the hospital, the federal district court held that the suspect's treatment rights were

not violated.

The Court clearly listed the right to medical treatment of a suspect in police custody which, the Court underlined, is similar to that of an inmate. Those rights include the Constitutional right to be free from cruel and unusual punishment under the 8<sup>th</sup> Amendment to the Constitution. Moreover, those providing care and treatment cannot be “deliberately indifference” to a suspect’s serious medical needs. And, the suspect has a right to adequate medical care, not the best care.

In this case, the Court continued, there was no evidence that the health care providers displayed “deliberate indifference” to his medical needs. In fact, the suspect was provided care throughout his stay in the ED until he was taken for surgery. Furthermore, testimony from the physicians indicated that a delay in administering any kind of medication was necessary in order to assess the patient’s overall condition and to determine his neurological and vascular status in view of the surgery he was going to undergo.

Most importantly, the Court emphasized the nurse’s testimony in her deposition that she had never taken instructions from a police officer on how to treat a patient.<sup>4</sup> It would have been unacceptable, the Court opined, if a nurse had an order to administer morphine for a patient and the nurse was told by law enforcement to withhold the medication regardless of the law enforcement officer’s intentions underlying the reason for the command.

This case reveals the importance of:

1. Always remember that as a nurse you are a professional and accountable health care provider and not an agent of law enforcement;
2. You must always provide appropriate care to an individual regardless of his or her status as a suspect or non-suspect;
3. You must always demonstrate your accountability and responsibilities under your state nurse practice act and nursing codes of ethics; and
4. The withholding of needed medical or nursing treatment to an individual in police custody under Section 1983 requires that such a person is “acting under color of state law” (meaning the conduct of a state or local official). This requirement may be applicable to you if you are alleged to have carried out a law enforcement command, if you work in a public or governmental facility’s ED, if as a nurse in a private facility you act jointly with law enforcement to withhold treatment, or your facility has a contract with law enforcement to provide care to suspects or inmates.

## **FOOTNOTES**

1. Gilbert v. French, 665 Fed. Supp. 743 (Dist. Court, S.D. Texas), 2009.

2. Id., at 751.

3. Id., at 748

4. Id., at 751 and Footnote 71.

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