

# Discharge Instructions and Liability

written by Nancy Brent | August 1, 2017

## **Avoiding Liability Bulletin - August 1, 2017**

When a patient is discharged from a health care facility, the patient's discharge instructions are an essential part of his / her care. When those instructions are unclear or incomplete and a patient is injured or dies as a result, legal liability is a potential result, as the following case illustrates.<sup>1</sup>

Mr. Leblanc was injured in a fight either during the late evening or early morning hours in February. He had been kicked or hit in the stomach. He tried taking Maalox and a pain pill to no avail. He decided to go to the Emergency Department (ED) of a nearby hospital.

A triage nurse took LeBlanc's history and examined him before calling the ED doctor on call to inform him of her findings and recommendations. The nurse told the doctor she did not think his condition was emergent and the patient could wait to see a doctor during regular office hours, approximately four hours later.

The doctor agreed and prescribed Talwin for Mr. LeBlanc and instructed the nurse to tell the patient to see a doctor in the morning if he continued to experience pain.

Mr. LeBlanc went to a doctor's office the next morning, but he could not see him due to the doctor's full schedule, so he went back to the hospital ED. No physician was on duty at the ED so it was suggested that he see the doctor who was on call the night he initially came into the ED.

LeBlanc did go to the ED doctor's office, but was not seen again due to the number of patients at the office.

Mr. LeBlanc finally did see the ED doctor, 6 days after he went to the ED, and the doctor admitted him to the hospital. Leblanc died the next day to due bile peritonitis due to traumatic laceration of the liver and due to GI bleeding from an ulcer.

From the date he left the hospital until his admission, the patient had taken two unprescribed Darvon tablets every four hours, drank small amounts of fluid, but ate no food.

Leblanc's wife filed a professional negligence case against the hospital and the physician. The trial court entered a summary judgment in favor of the hospital and the physician. Mrs. Leblanc appealed that decision to the appellate court.

The appellate court's review focused on whether the defendants were in fact negligent and on what was the proximate cause of the death of Mr. Leblanc.

The court carefully evaluated the discharge instructions of the nurse when LeBlanc left the ED the first time he sought treatment. According to the court record, the nurse did not warn LeBlanc of any potential dangers or the consequences if he did not seek further treatment for his injury.

Her testimony was that she saw no need to advise the patient as to why he should see a doctor if the pain continued because she did not detect any evidence of internal injury or the need to investigate that issue further.

The appellate court opined that because LeBlanc did not receive such instruction, he may have been “lulled into thinking the pain would go away”.

Because there were fact questions that remained unanswered as to the cause of Mr. LeBlanc’s death and the negligence of the defendants, the appellate court reversed the summary judgment of the trial court and sent the case back to that court for trial on the merits of the case.

The case settled out of court.

This is an “old” case in the sense that in today’s world, ED doctors are on duty in the ED, although that may not always be the case in smaller, rural communities. Even so, the case is still “good law” for what it illustrates about discharge instructions.

**For the ED nurse and any nurse that provides discharge instructions to a patient, it is essential that the following guidelines be considered:**

1. Assess the patient’s learning ability as best you can, utilizing such factors as age, education, any medical training, family members who can be supportive and helpful with the discharge instructions;
2. If the patient’s language is not English, follow your facility policy for utilizing an interpreter when the instructions are given;
3. Provide written discharge instructions to the patient as to what is to be done upon discharge (i.e., see a doctor or nurse practitioner the next day, what medications are to be taken);
4. Go over the written discharge instructions orally with the patient and ask the patient to repeat them back to you (“teach back” method);
5. Document your instructions in the patient record along with whether an interpreter was used, identifying that person by name; and
6. Inform the ED physician of the instruction you gave the patient and document that communication.

## **FOOTNOTES**

1. Leblanc v. Northern Colfax County Hospital, 672 P. 2d 667 (1983).

THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS

ENCOURAGED TO SEEK SUCH ADVICE FROM A COMPETENT PROFESSIONAL.