

Negligent Home Care Nurse Charged With Manslaughter

Home care nurses; including those who provide Medicare-certified home health services, hospice and palliative care, and private duty services; are vulnerable to professional liability claims, according to “Nurse Professional Liability Exposure Claim Report: 4th Edition,” which was issued by Nurses Service Organization and CNA. The report says that malpractice claims against home care nurses are likely to be based on:

- Failure to communicate pertinent health information with providers and/or patient/family members
- Failure to monitor
- Documentation deficiencies, including failure to document or falsifying documentation

Below is an example of not only malpractice claims, but criminal charges of second-degree manslaughter related to culpable negligence, child neglect, and endangerment against a home care nurse due to the unexpected death of a minor patient. The nurse allegedly failed to notice or take appropriate action when the patient died under his watch.

According to the criminal complaint, the patient’s death was discovered when the night nurse arrived at the end of the nurse’s day shift. The nurse’s written log noted that the patient was “stable and awake” at the change of shifts, but prosecutors claimed that the patient had been dead for several hours.

The nurse’s negligence likely began when he failed to appropriately monitor the patient’s pulse oximeter earlier in the day. The nurse told investigators that he noticed that the device stopped working around noon. Instead of following an internal policy and procedure that required immediate contact with the home medical equipment company and an on-call nurse, the nurse allegedly took the device off and left it off even though he noticed that the boy’s foot was cold at the time. According to investigators, a second device used to measure oxygen levels was never taken out of the patient’s emergency bag.

The night nurse, who had cared for the patient since he was six months old, told police that there were several physical signs that the patient had already passed away when she arrived, including stiffness, blue lips, and an abnormally low temperature.

The negligent nurse told investigators that he estimated that the alarm on the patient's ventilator may have sounded as many as ten times during the day while he was with the patient. However, the data extracted from the ventilator showed that the alarm sounded at least ninety-three times during the day on the nurse's shift. Each time the alarm went off, the nurse had to manually deactivate it.

A doctor made a home visit to the patient several days before his death. The note from this visit said that the patient "overall" was doing "beautifully."

This heartbreaking case is an excellent example of malpractice based on a failure to monitor the patient. Providers of services to patients in their homes got a "pass" from liability for many years, but that time has certainly passed.

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