

A NURSE'S DILEMMA: CRIMINAL SANCTIONS IN THE HOSPITAL SETTING

On October 25, 2001, two nurses from Toronto's Hospital for Sick Children were charged with criminal negligence causing the death of a ten-year-old child who was under their care for pain management of a non-life threatening leg injury. The laying of these charges followed an inquest into the child's death which heard testimony that the nurses failed to adequately monitor for the potential deadly effects of the pain medication (morphine) she was on. The inquest returned a finding of "homicide", a term that signifies the killing of one person by another but that otherwise attaches no criminal liability to any party.

Charging nurses with criminal offences when their patients die in hospital leads to at least two negative consequences. The first is the extent to which charging the individual masks the systemic causes for so many of these medical mistakes in the first place. If the public is satisfied with blaming these deaths on individual error, cracks in the health care system that compromise patient safety will remain unchecked, and therefore without remedy.

The second is that, patient safety is not the only issue. With patient care challenged daily by scarce resources and increasing demand, nurses may find it difficult to avoid behaviour that could lead to criminal charges. And when medical errors do occur, nurses will be forced to decide between their patients' well being and their own exposure to possible criminal liability.

The law has no answer for this dilemma. While this newest case will renew the debate over health care in this country, the legal outcome of this unfortunate incident will hopefully clarify how legal liability will be apportioned between the individual and the system when patients die in Canadian hospitals.

*by Theodora Theodonis, Student-at-law,
Tremayne-Lloyd Parters*

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