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Delays After Triage Can Bolster ED Negligence Claims

The exact amount of time patients waited after arriving at the emergency department (ED) becomes a central issue in many malpractice claims.

"Triage mistakes may be life-threatening," says **Carolyn Dolan**, JD, MSN, FNP-BC, PCPNP-BC.

Dolan has reviewed multiple cases in which triage mistakes led to a bad outcome and litigation. In one case, a primary care physician sent a patient to the ED for a stroke workup. The "quick look" nurse assigned the man a level one acuity.

Minutes later, the triage nurse changed the severity code to level four and sent the patient to the urgent care department. This set into motion a chain of events that contributed to the patient's delay in receiving a stroke workup.[1]

A triage nurse's failure to notify the emergency physician (EP) of significant patient data, resulting in treatment delays, "may constitute or contribute to negligence," says Dolan, former president of the American Association of Nurse Attorneys. For example, this can happen if ED nurses triage a child with perceived minor trauma (such as a bump on the head) at a low acuity level. "The wait time becomes extensive, and the child slips into a coma. The actual etiology was blunt trauma, producing a severe brain injury of an epidural hematoma," Dolan says.

Triage nurses face liability if patients are not reassessed at regular intervals while waiting to be seen, says Mark Kadzielski, JD, a partner at BakerHostetler in Los Angeles. Triage nurses likely are aware of their obligation to patients waiting to be seen, Kadzielski says.

Triage nurses might be unaware of patients who were sent back for evaluation, but return to the ED waiting room for some reason. This can happen if an ED provider admits the patient for observation or telemetry, but no beds are available.

"The patient has now graduated from triage, but comes back to the waiting room," Kadzielski observes. The triage nurse does not check on that patient since from the triage nurse's perspective that patient has been taken care of.

"We've checked all the boxes and done everything right, but the patient is still sitting in the waiting room. That's where the liability is," Kadzielski notes.

If this patient leaves without anyone seeing him or her, there is potential legal exposure for the ED providers and the hospital.

According to Kadzielski, in an ideal situation, the ED chart should show that someone checked the person at regular intervals. Documentation should note how nurses realized the patient had left without being seen shortly after the last assessment. Finally, there should be an indication efforts were made to locate the patient.

"The question is: Whose obligation is it to check on that patient for all the hours they spend waiting for a bed?" Kadzielski asks.

If it is unclear, the EP might assume it is the triage nurse's responsibility because the patient is in the ED waiting room. The triage nurses might assume it is the EP's responsibility, since the patient has been evaluated. "From a nursing standpoint, it may not be a triage nurse's technical job responsibility. But it's got to be someone's responsibility," Kadzielski stresses.

Clarification on this important point may prevent finger-pointing during litigation.

"A well-written [ED] policy addressing who is responsible for monitoring admitted patients temporarily located in the waiting room or elsewhere goes a long way to avoiding liability claims," Kadzielski adds.

REFERENCE

1. *Barnes v. Greater Baltimore MedicalCenter, Inc.* Court of Special Appeals of Maryland. No. 0789, Sept. Term, 2011. Decided March 21, 2013.