

I was recently involved in a medical malpractice case that went against the physician. Remember, most malpractice cases are brought against a physician in reality bad outcomes, as no one in the medical profession attempts to do the wrong thing to anyone. In this particular case, however, lack of communication and common sense led to a favorable plaintiff's verdict.

67 yo male underwent an elective bowel resection for a malignancy. Preoperatively, the patient explained to the surgeon, his nurse, and the preop staff that he did NOT want a nasogastric tube (NGT) placed due to his underlying fear. In fact, the patients' brother died as a result of a misplaced NGT. Furthermore, it was written down and documented by several individuals.

The surgery went well and postoperatively he developed a distended abdomen, but was still on liquids and passing flatus. An NGT was ordered by the surgeon and refused by the patient on 3 separate occasions. On the afternoon of the 4th postoperative day, the surgeon took it upon himself to place the NGT, however the patient vomited in his presence, and the surgeon did not verify the placement. In fact, the surgeon placed the tube, left the floor at the same time a rapid response was called by the nurse. After transfer to the ICU and intubation, the stat chest X-ray revealed the tip of the NGT in the right main stem bronchus, which was rapidly replaced.

Unfortunately, after many other medical problems related to the inadvertent placement of the NGT into the lung, the patient never fully recovered and died from post surgical complication.

There is no way for any of us dealing with complex medical issues to avoid a legal action taken against us. However, communication needs to be of paramount importance when dealing with patients and their families.

Why would a surgeon do a procedure on his patient if/when it was clear he or she did not want it performed?

In this case, the defense claimed that the placement the NG tube was an "emergency" procedure and that the surgeon had the duty to treat his patient and not worry about the consent. Moreover, the surgeon testified that the patient gave verbal consent immediately prior to placement, although the nurse present could not corroborate his testimony.

Why is the placement of an NGT an emergency if a patient has not vomited, previously not received anti-nausea medication, tolerating a clear diet, and passing flatus?

It is clear that in the case of an emergency, or if the patient cannot give consent, it is incumbent on the provider to attempt to contact the family or power of attorney. In

this particular case, the family was very attentive and readily available but no attempt was made, nor were they notified until ICU transfer and intubation.

And finally, when a routine procedure is performed, the individual has a fiduciary duty to ensure the procedure was done correctly and be available if or when a patient demonstrates sign or symptoms of decompensating.

This particular case was preventable and avoidable.

And the jury agreed.