



**Danny Duke, as survivor and personal representative of the estate of
Darcy Duke, deceased, v. Carlos Rodriguez, M.D. and University Hospital**

Points of law to consider about informed consent:

- A competent individual has the categorical authority to refuse even lifesaving treatment.
- A physician who treats a patient despite the patient's refusal is civilly and criminally liable for assault and battery.
- A person is presumed to be competent unless the evidence shows otherwise.

Mrs. Duke died of respiratory failure on July 24, 2015. Her breathing tube became dislodged that day and she and Mr. Duke refused, for more than four hours, to allow the medical personnel to reinsert it. After she finally consented to the re-intubation, an emergency room physician performed the procedure. Several minutes later however, Mrs. Duke coded and she was pronounced dead at 6:30 a.m.

The plaintiff argues that Dr. Rodriguez should have gone to the hospital and re-intubated Mrs. Duke despite her wishes.

During the trial, Dr. Rodriguez established that he would not have performed the re-intubation without the patient's consent, even if he had gone to the hospital that morning. Nurse McKay, one of the ICU nurses who cared for Mrs. Duke throughout the morning, testified that patients' breathing tubes frequently become dislodged and the emergency room physician would have been called to perform the re-intubation the moment Mrs. Duke signed the consent form.

Dr. Bone was the medical expert for the Dukes. He stated that Dr. Rodriguez's conduct fell below the standard of care because: (1) Mrs. Duke was not competent to refuse intubation, (2) the situation was an emergency and Mrs. Duke's consent was therefore implied, (3) Dr. Rodriguez had a duty to re-intubate Mrs. Duke, (4) Dr. Rodriguez should have gone to Mrs. Duke's bedside to assess her competency instead of relying on the nurses to make that determination; and (5) a timely intubation would have saved Mrs. Duke's life. According to Dr. Bone, "Mrs. Duke was in no position to judge appropriate therapy for herself and to make a rational decision."

Nurse McKay, three other ICU nurses, and Dr. Franks, the emergency room physician who eventually re-intubated Mrs. Duke, testified that the entire period of Mrs. Duke's extubation, she was awake, alert, oriented, and asking appropriate questions. In nurse McKay's chart notes at 4:00 a.m. it was written that Mrs. Duke "was informed of and understood the risk of death if the tube is not timely reinserted."

Based on what you have learned about informed consent, how would you rule in this case?

Teacher Information



Informed Consent Lawsuit

1. After students discuss the Duke v. Rodriguez case, have them take a stand by asking the students who would rule in favor of Mr. Duke to stand on one side of the room, and then have the students who would rule in favor of Dr. Rodriguez to stand on the other side of the room. (Hopefully, you will have students on each side.)

2. Read the following outcome to students:

This case was an actual lawsuit. Based on the testimony of the plaintiff's expert witness, Dr. Bone, the jury returned a verdict against Dr. Rodriguez and the hospital and awarded damages, for which the hospital was 45% liable and Dr. Rodriguez was 55% liable, of more than \$1,000,000. The jury found that Mrs. Duke refused to be re-intubated but that she was not competent to make that decision.

3. Now, ask students if any of them would like to switch sides. Allow them to move to the other side of the room if they choose to.

4. Read the following to the students:

This case went to the third district court of appeals. The appellate court ruled that the trial court should have stricken Dr. Bone's expert testimony and directed a verdict in favor of Dr. Rodriguez because the evidence fails to show either that Mrs. Duke was incompetent to refuse re-intubation or that the extubation constituted an "emergency" as defined by law. Dr. Bone was not able to determine whether the medications and extubation *actually* affected Mrs. Duke's ability to understand the consequences of her refusal to be re-intubated, he merely *assumed* that they did. For those reasons, the court of appeals overturned the jury decision.

5. One last time, ask students if any of them would like to switch sides and move to the other side of the room.

At this point, all students should move to the side of the room in favor of Dr. Rodriguez. If they do not wish to change sides, ask them why.

Further discussion – Do healthcare workers always agree with the laws that govern the practice of medicine? How do