

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Child Abuse, Neglect: Suit Dismissed Over Child's Vaccination Over Parents' Objections.

The parents brought their young son to the hospital emergency department and reported that he had burned his toes and feet in a fire pit in their back yard.

The next morning when it was time for surgery to debride the wounds and perform skin grafts, the parents refused to allow a tetanus shot, even though they had signed general consent forms for treatment and surgery.

A physician and the nurse manager then told the parents that the surgery had to be postponed to accommodate a more urgent patient, but in fact they were stalling while the physician contacted the police to report suspected child abuse and neglect.

The police called family and child services who went before a juvenile court judge who signed a court order for the boy's tetanus vaccination.

The judge signed the order based on information how the boy's feet had been burned, that the parents were refusing a tetanus shot and that the boy apparently had never received any other immunizations in his lifetime.

A staff nurse went in with armed hospital security officers and a deputy sheriff, handed the parents the judge's order and minutes later the tetanus shot was given with no interference from the parents who were allowed to stay.



***The parents have no legal claim against the hospital.***

***The nurse manager worked with the physician to delay the child's surgery until a court order could be obtained for him to receive a tetanus shot over the parents' objections, while telling the parents the delay was due to another patient with a more urgent case.***

UNITED STATES DISTRICT COURT  
GEORGIA  
May 30, 2014

Soon after surgery was performed, family and child services took legal custody of the child and removed him from the hospital to a location which was not disclosed to the parents. The parents eventually got the child back after agreeing to parenting classes and supervision.

### **Parents' Civil Rights Lawsuit Dismissed**

The US District Court for the Middle District of Georgia dismissed the civil rights lawsuit the parents filed against the hospital on their own behalf and on behalf of their son.

The Court expressly exonerated the hospital's nurse manager for the subterfuge involved in telling the parents that the boy's surgery was being delayed due to a more pressing case, while in fact the proper authorities were being contacted for a court order.

The nurse manager also assured the parents that the hospital's CEO would be contacting them that day or the next, which was not exactly true, and then refused to provide further information about the hospital's complaint process.

The nurse manager also asked the deputy to check the father's ID card which seemed altered, which was also no grounds for him to sue.

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Packing Left In Surgical Wound/*Res Ipsa Loquitur*

## Sexual Assault: Hospital Ruled Not Liable.

A patient was sexually assaulted by a hospital employee while she was recovering from anesthesia and was still heavily sedated.

The patient sued, claiming that the hospital had a legal duty to protect a highly vulnerable patient from a criminal act by a hospital employee or other persons who were allowed access to her.

The patient's lawsuit also alleged a legal duty not to allow a person with a history of sexual assault or other violent conduct to have access to patients.

Further, the hospital was required to have policies and procedures in place for assaults and other misconduct toward patients to be reported and investigated and for records to be maintained of such reports and investigations.

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***There simply is no evidence of any sexual assault or other violent conduct by this perpetrator prior to the assault on this patient.***

***Nor is there any evidence the hospital did not have or did not carry out policies and procedures for reporting, investigating and maintain records of such incidents that actually did occur.***

UNITED STATES DISTRICT COURT  
ALABAMA  
June 3, 2014

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The US District Court for the Middle District of Alabama said that the allegations in the patient's lawsuit were a valid, albeit only theoretical statement of the hospital's legal responsibilities owed to her.

There was no evidence the hospital did know or should have known from his background or history that this individual posed a known risk of harm to vulnerable patients. The patient's case had to be dismissed. Willett v. US, \_\_\_ F. Supp. 2d \_\_\_, 2014 WL 2504575 (M.D. Ala., June 3, 2014).

## Breakdown On Duty: Aide's Disability Discrimination Case Dismissed.

An emergency department tech asked for and was denied a fifteen minute break. A few minutes later he suffered what he called a breakdown due to stress and anxiety and was found on the floor of an exam room curled up crying and hyperventilating.

He was allowed to go home and then allowed to go out on medical leave. While he was on leave it was learned he made comments about "going postal" on the job and that co-workers feared for their safety.

When it was time to return to work he was told he could not come back to the E.D. but could come back as a clerk in medical records. On his first day in medical records he started complaining and had to be terminated for disrespectful, intimidating and threatening behavior.

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***The hospital was not required to restore the tech to his previous position in the emergency department.***

***An investigation while he was out on leave revealed that his behavior made that an inappropriate placement for him.***

UNITED STATES DISTRICT COURT  
GEORGIA  
June 16, 2014

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The US District Court for the Northern District of Georgia turned down the tech's disability discrimination case he based on his history of cerebral palsy and hydrocephalus. His disruptive and threatening behavior, not his medical history, was the reason for his termination.

His Family and Medical Leave Act right to reinstatement to his previous position was not violated. The hospital had good reasons not to offer him that job back. Carlson v. Wellstar, 2014 WL 2711924 (N.D. Ga., June 16, 2014).

## Child Abuse, Neglect: Child Vaccinated Over Parents' Objections (Cont).

*Continued from page one.*

The Court also found no fault with the hospital for fact that a nurse vaccinated the child pursuant to a valid court order from the local juvenile court judge who had legal jurisdiction over the issue.

A nurse came into the room accompanied by two armed hospital security officers and a local deputy sheriff, told the parents that the child was going to be given a tetanus shot whether or not they agreed and told them they could leave the hospital if they did not want to remain in the room, or they could stay with their child.

After a twenty-five minute delay another nurse took the child to another room where he was vaccinated in his parent's presence.

The parents had no grounds to argue with hospital administration or hospital staff about the court order.

Any disagreement with the court order for the child's vaccination should have been brought by the parents to the attention of the juvenile court judge, or the appropriate legal appeals process should have been taken up by the parents to reverse the judge's ruling, the Court said.

### **Admissions Process Medicaid Application**

The hospital had already accepted the child for treatment, had decided to perform surgery and had begun treatment before the admissions director asked the father to fill out a Medicaid application form.

The Court dismissed the allegations in the parents lawsuit about being asked to apply for Medicaid. They had objected because it would involve divulging information about them and releasing confidential medical information about their son.

### **Other Defendants Dismissed**

The Court also dismissed the lawsuit as it applied to the physician, the deputy sheriff, the juvenile court judge, an assistant state attorney general and the child protective services caseworkers involved in the case. Cross v. Doctors Hosp., 2014 WL 2440544 (M.D. Ga., May 30, 2014).