

Defamation: Court Sees Grounds For Nurse's Lawsuit.

A nurse manager learned that a patient with a known sulfa allergy was given multiple doses of a sulfa-based antibiotic.

She had the patient transferred to another hospital for immediate medical care.

The nurse informed the director of nursing and the hospital CEO what she had done. The CEO told her to check on the patient's status at the other hospital.

The nurse manager called the other hospital, took the patient's chart home with her to study it and went to see the patient at the other hospital the next day.

She was suspended that same day and fired less than a week later.

Coworkers were told she was fired for violating the US Health Insurance Portability and Accountability Act (HIPAA), a law which protects patient medical confidentiality, and the same thing was relayed to the unemployment office after the hospital received notice of her claim.

The nurse manager sued for defamation, alleging she was actually fired for the negative attention her investigation could possibly draw to the hospital.

Falsely telling another person that a nurse has committed a violation of HIPAA, an important healthcare law, would amount to defamation for which the nurse has the right to sue.

UNITED STATES DISTRICT COURT
KENTUCKY
October 7, 2014

The US District Court for the Western District of Kentucky agreed a nurse can sue over a false accusation that the nurse violated an important healthcare law.

The Court said that derogatory information from an employer to a legal authority like the unemployment office about a former employee is privileged, but only if it is genuinely thought to be true. A deliberately false statement is considered malicious and is grounds for a civil suit for defamation. MacGlashan v. ABS, 2014 WL 4999199 (W.D. Ky., October 7, 2014).

Gastric Bypass: Patient Did Not Give Informed Consent.

The patient's primary care physician referred her to the bariatric surgery department at a US Government medical facility.

At the facility the patient accepted a recommendation that she try a behavioral modification program that emphasized exercise, dietary modification and other lifestyle changes. After five months in the program her weight had dropped 30 lbs and her Body Mass Index (BMI) had dropped from 40 to 33.59.

Then it was recommended she have gastric bypass surgery, specifically a Roux en Y procedure. She had the surgery. Afterward she had major problems with fluid build-up in her abdomen and intra-abdominal adhesions which necessitated several additional surgeries.

The preoperative nurse and the anesthesiologist recorded the patient's Body Mass Index as 33.59, which meant she was not a suitable candidate for the risky Roux en Y gastric bypass surgery she had that day.

UNITED STATES DISTRICT COURT
HAWAII
October 14, 2014

The US District Court for the District of Hawaii saw grounds for a lawsuit against the US Government for lack of informed consent.

According to the patient's medical expert, the patient had the right to be informed that Roux en Y involves significant risks for the very same complications she experienced and that it is only appropriate for patients with a BMI greater than 40, or greater than 35 with a weight-related disease, who are not responding to behavioral modification measures. That is, she consented without being told the surgery was not right for her. Mettias v. US, 2014 WL 5149199 (D. Hawaii, October 14, 2014).

Public Health Report: Nurse's Opinion Not Admissible In Court.

As required by law in New Jersey, an emergency department nurse completed an animal bite report for the local board of health as to a dog-bite victim she treated at the hospital.

The nurse recorded what the victim told her about the incident, that it occurred after the victim pulled a toy out of the dog's mouth, which the nurse classified as a provoked attack.

The victim lost her civil lawsuit against the dog's owner, on the grounds that the dog was not a vicious animal and bit the victim only because the victim provoked the dog, according to the nurse.

It is proper for a nurse to testify as to what a patient told the nurse about how a particular injury occurred. That falls under an exception to the hearsay rule.

However, the nurse is not an expert witness in the field of animal behavior and her opinion on that issue was not admissible.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
October 14, 2014

The Superior Court of New Jersey ruled a nurse can be called to court to testify what a patient specifically told the nurse about the circumstances of an incident in which an injury occurred.

However, even though the public-health report the nurse was required by law to complete and file required the nurse to check off whether the animal bite was provoked, vicious or playful, the nurse was not an expert and should not have been expected to state her opinion in court on the issue of what made the dog attack. Aiges v. Fuccillo, 2014 WL 5114378 (N.J. Super., October 14, 2014).