

## Disability Discrimination: No Basis For E.R. Patient's Suit, Court Says.

The patient came to the hospital's E.R. complaining of abdominal pain.

He was seen by the triage nurse within minutes of arrival. He reported his pain was 9/10 and the nurse obtained and charted a history of pancreatitis and peptic ulcer disease.

Soon after being led to an exam room to which he ambulated without assistance he was asked to put on a hospital gown. He refused. Over the course of the next few hours he remained hostile and combative. Hospital security was called.

The E.R. physician got him to take off his shirt for an IV and a CT, but the CT had to be cancelled when the patient refused to swallow the oral contrast medium.

The nursing supervisor finally convinced him to change into the hospital gown, but he soon changed his mind, put his shirt and jacket back on and left AMA.

The patient sued the hospital for disability discrimination. He claimed his disability was an unusual sensitivity to cold which prevented him from changing into a hospital gown and the hospital thus discriminated against him by trying to get him to change into the gown.

The hospital countered the lawsuit with testimony from the E.R. nurses that it was standard policy to have all patients change into a hospital gown to be examined and that the patient was offered a total of three warmed blankets.

### **The Patient Was Not Disabled**

The US District Court for the Eastern District of California ruled that both sides' testimony was beside the point. The Court dismissed the case on the grounds that the patient failed to prove he had a disability as disability is defined by the US Americans With Disabilities Act (ADA).

### **Places of Public Accommodation Americans With Disabilities Act**

The Court took the occasion to outline a hospital's legal responsibilities under the ADA, a hospital being a place of public accommodation covered by the ADA.

The first point is that the definition of disability is interpreted by the courts in favor of inclusion rather than exclusion. Nevertheless, disability has its own meaning under the ADA and the common dictionary definition is not the answer.

***The patient has not proven that he was disabled within the meaning of the Americans With Disabilities Act.***

UNITED STATES DISTRICT COURT  
CALIFORNIA  
August 12, 2011

### **Definition of Disability**

Disability is a physical or mental impairment that substantially limits one or more major life activities.

A physical or mental impairment is any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting the body's neurological or musculoskeletal systems, special sense, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic, lymphatic or endocrine organs or skin, or any mental or psychological disorder such as mental retardation, organic brain syndrome, mental or emotional illness or a specific learning disability.

Federal regulations expand the ADA's basic definition of disability to include contagious and non-contagious diseases, orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV (symptomatic or non-symptomatic), tuberculosis, drug addiction and alcoholism.

### **Disability Discrimination Failure to Make**

#### **Reasonable Accommodation**

Discrimination includes failure to make reasonable modifications in policies, practices or procedures when such modifications are necessary to afford services to individuals with disabilities, unless the facility can demonstrate that making such modifications would fundamentally alter the nature of such services.

It is discriminatory to deny an individual or class of individuals the opportunity to participate in or benefit from the facility's services.

The first question for the Court still is, however, whether the person has a disability. ***Tater-Alexander v. Amerjan*, 2011 WL 3568026 (E.D. Cal., August 12, 2011).**

## E.R.: Intoxicated Patient Turned Away, Nurses Seen Responsible.

The nurse practitioner who was the senior nurse on duty in the hospital's E.R. received a phone call at 2:15 a.m. in the doctor's lounge from one of the nurses. The nurse was in the parking lot with police officers who had an intoxicated individual in the back seat of their patrol car and wanted to know what to do.

Without going out to check on the man the nurse practitioner reportedly just told the nurse she knew of no other cure for drunkenness except to sleep it off. The best they could do was have him come in and start an IV, but that would really not help. The police took him to the jail.

At 10:10 a.m. they brought him back. This time he was dead from cardiac arrest.

***It is common knowledge that alcohol poisoning can lead to serious injury or death if it is severe enough.***

***The patient, at a bare minimum, should have been admitted for blood alcohol tests to determine the seriousness of his intoxication.***

UNITED STATES DISTRICT COURT  
MISSISSIPPI  
August 16, 2011

The US District Court for the Northern District of Mississippi believed there were strong grounds for a lawsuit by the family implicating both nurses for negligence.

The issue for the Court at this time was trying to sort out which experts to allow to testify in the trial. One side's experts claimed the deceased would have been saved by competent E.R. care. The other side claimed he was so intoxicated at the point he was brought to the hospital that nothing could have been done to save him. Neither side's case will be easy to prove definitively with the evidence available. ***Flax v. Quitman County Hosp.*, 2011 WL 3585870 (N.D. Miss., August 16, 2011).**