

High-Risk Ob/Gyn Patient Denied Care For Refusing HIV Test: Nurse Not Liable.

The patient was a recent immigrant from Nigeria. After arriving in the U.S., she married a U.S. citizen who himself was an African immigrant, and became pregnant. She phoned a physician referral service in the Atlanta area for prenatal care and was referred to the ob/gyn specialty clinic in question which employed osteopathic and medical physicians an ultrasound technician and a state-certified nurse midwife.

The clinic had a firm policy, promulgated by its physician medical director, that all women patients whom it considered high-risk for HIV would have to be tested to continue to receive prenatal, perinatal or other ob/gyn care at the clinic. Among the factors leading to consideration as high-risk for HIV was emigration from a high-risk country such as Nigeria.

The patient refused to answer questions on a written questionnaire about whether she had ever been tested for HIV, about her and her husband's emigration from Africa and about her husband's other known sexual partners. She stated she believed that knowledge of her own HIV-positive status would cause her to die from AIDS.

At her next visit, the patient was told directly by the nurse midwife who had begun to see her for prenatal care that she could not continue receiving care unless she and her husband consented to HIV testing. She refused and did not return. After numerous phone calls by the husband complaining about his wife's treatment, suit was filed against the clinic, the physician director and the nurse midwife.

The U.S. District Court in Georgia ruled that unless racial or national origin discrimination could be demonstrated, apart from the concern over the patient's potential HIV status, there was no basis for this suit. **Atakpa vs. Perimeter Ob-Gyn Associates, P.C.**, 912 F. Supp. 1566 (N.D. Ga., 1994).

The patient, a recent immigrant from Nigeria, was considered at high risk for HIV infection under policies established for the clinic by its physician director.

The patient was informed by her certified nurse midwife, who was employed at the clinic, that as a high-risk patient she could not continue to receive prenatal or perinatal care at the clinic, unless she and her husband both consented to HIV testing.

The court upheld the right of the nurse midwife who was providing most of her prenatal care and the medical doctor who ran the clinic, to implement a policy to deny care to patients legitimately considered high-risk for HIV who refused HIV testing.

However, the court left it open for the patient and her husband to present any evidence they believed existed that the clinic had discriminated against them on the basis of national origin or race. If the problem with the patient's potential HIV status proved a mere pretext for such bias, the suit would be allowed to go forward.

UNITED STATES DISTRICT COURT
GEORGIA, 1994.

HIV-Positive Surgical Patient May Sue For Disability Discrimination, Court Rules.

The U.S. District Court in Pennsylvania has interpreted the Americans With Disabilities Act to permit an HIV-positive surgical patient to sue for disability discrimination under the set of circumstances presented in a recent case.

The patient was scheduled for surgery to remove surgical hardware from one of his legs. The hardware had previously been implanted for injuries from an automobile accident which had necessitated, among other things, below-the-knee amputations of both legs.

The immediate problem was a diagnosis of osteomyelitis, for which an orthopedist decided to perform surgery to take out the hardware which was determined to be causing the problem. Because the patient was HIV-positive, the surgeon insisted on delaying the surgery until the hospital secured special protective suits for himself and the rest of the surgical team. According to the court, these special protective suits were in excess of then-current recommendations from the Centers for Disease Control for adequate protection of operating room personnel performing surgery on known HIV-positive patients.

In fact, the surgeon conditioned his willingness to perform the surgery on the hospital providing protective gear in excess of the CDC's recommendations. The court ruled that in doing so, the surgeon committed a violation of the Americans With Disabilities Act, insofar as the Act prohibits any "place of public accommodation" from discriminating against disabled individuals on the basis of their disabilities.

A healthcare provider or facility is a place of public accommodation, and an HIV-positive patient is a disabled individual, as the Americans With Disabilities Act is to be interpreted, according to the court. **Sharrow vs. Bailey**, 910 F. Supp. 187 (M.D. Pa., 1995).