

Horseplay In O.R.: Employee/Patient Has Right To Sue For Assault, Court Says.

A patient was admitted to the hospital for a tonsillectomy to be performed in the very same surgical department where he worked as a surgical tech.

As a joke, two of his co-workers, both registered nurses, painted his fingernails and toenails with pink nail polish, wrote “Barb was here” and “Kris was here” on each of his feet and wrapped his thumb with tape, while he was under anesthesia either right before or during the actual procedure.

Afterward the surgical tech sued the hospital and the co-workers involved in the incident for civil assault and intentional infliction of emotional distress.

The Court of Appeals of Texas ruled there were grounds for his lawsuit.

Assault in the Hospital Is Not a Healthcare Liability Case

The Court rejected the argument that this was a healthcare malpractice case which required the patient to obtain expert testimony outlining a departure by the defendants from the standard of care or face dismissal of his lawsuit.

According to the Court, not every legal case which arises out of events in a health care setting is a health care liability case, even if the persons allegedly responsible were caregivers acting within the course of their employment in a healthcare facility when the events occurred.

The best analogy would be a sexual assault by a physician or other health care professional during the course of treatment. The professional standard of care for the treatment being rendered is not relevant and expert testimony is not needed for the victim to succeed in court.

Assault as the basis for a civil lawsuit is intentional physical contact which is known or reasonably should be known will be regarded by the victim as offensive or provocative.

The surgical tech alleged in his lawsuit that as a direct result of the intentional physical violation of his bodily integrity by his co-workers while he was unconscious he suffered humiliation and continued to feel extreme embarrassment afterward because of the negative impact that homophobic innuendo had on his work environment. **Drewery v. Adventist Health**, ___ S.W. 3d ___, 2011 WL 1991763 (Tex. App., May 20, 2011).