

## Sexual Misconduct: Minor Patient's Acting Out Put Staff On Notice Of Potential For Abuse.

A recent case from the Superior Court, Los Angeles County, California, if widely followed elsewhere, will turn upside-down the traditional legal rules for assessing healthcare facilities' legal responsibilities and liability exposures in cases of sexual abuse of vulnerable patients by caregivers employed in the facilities.

The case was reported with the stipulation that the names of the patient and the private psychiatric hospital are to remain confidential. Not confidential, however, is the fact the lawsuit resulted in a settlement totaling \$1,250,000, that is, \$900,000 for the abused thirteen year-old female patient and \$350,000 for her mother for her own mental anguish and emotional distress.

### Facility Was Placed On Notice By Patient's Sexual Acting Out

In this case the patient's and her mother's attorney was prepared to argue that the private psychiatric facility was so preoccupied with increasing patient census to maximize profits that it neglected to take the precaution of conducting full background checks on male staff hired to supervise adolescent female psych patients.

However, there was no real proof of any deficiency in the background or work record of the male staff person in question.

***In civil cases alleging sexual abuse by a caregiver in a healthcare setting, the threshold legal question has always been whether the facility had reason to anticipate that the perpetrator could and would abuse a vulnerable patient.***

***If the facility fulfilled its legal duty by fully investigating the caregiver's background and employment history and by closely tracking his behavior with vulnerable patients, and never found cause for alarm, the facility would not be held liable for the caregiver's conduct the first time an incident of abuse occurred.***

***That is not to say that the caregiver himself would not face the full range of civil and criminal consequences, whether it was part of a pattern or simply a first offense that his employer with reasonable diligence would not have anticipated.***

SUPERIOR COURT  
LOS ANGELES COUNTY, CALIFORNIA  
May 30, 2007

Instead, the facility's liability in this case stemmed from the sexual acting out of the adolescent female patient.

Her mother placed her in the facility because she was acting out promiscuously with boys basically her own age. In the facility she was diagnosed with depression and other psychiatric problems that made her vulnerable to sexual manipulation.

She repeatedly verbalized that she intended to have sex with the specific patient supervisor in question. No one seemed to pay any serious attention to her verbalizations. Then one day he alone was permitted to accompany her to what was described as a remote area of the facility where they engaged in sex in a bathroom.

The incident did not come to light until two weeks after the patient was discharged when she mentioned it to an adult who called and reported it to the police.

The staff member himself was arrested, convicted of a lewd act with a minor and sentenced to three years in prison.

The facility's legal counsel was prepared to go forward with the traditional defense argument in these cases that the facility had no reason, and the patient's legal counsel could point to no evidence, why the perpetrator should have been suspected, before the fact, of any propensity to act inappropriately.

Yet the facility agreed to settle on the basis it was the victim's, not the perpetrator's conduct which put the facility on notice of a potential problem, turning the traditional rules upside down. Unnamed Patient v. Unnamed Private Psychiatric Hospital, 2007 WL 1765189 (Sup. Ct. Los Angeles Co., California, May 30, 2007).