

Sexual Assault: Court Rules Photos Of Other Psych Patients Are Confidential, Denies Access.

It is our editorial policy once we have covered a court opinion to follow up with any significant legal developments.

In our October, 2002 issue we covered a case handed down by the District Court of Appeal of Florida on September 4, 2002.

On November 6, 2002 that opinion was withdrawn and another opinion was substituted in its place.

The latter opinion in this case arrived at the same result as the former: A psychiatric patient suing a psychiatric facility has a very tough row to hoe when it comes to forcing the facility to reveal identifying information about the other patients.

The District Court of Appeal again came down strongly against allowing the patient's attorneys access to photos of the other patients who were on the same unit at the time of the alleged sexual assault against the patient/plaintiff, even with their names redacted from the photos.

The court was strongly against even permitting only the judge, court personnel, the lawyers and the patient to review the photos in the privacy of the judge's chambers, as even that could disclose a patient's identity to someone who did not need to know that the person had been hospitalized for mental illness.

The policy of strict medical confidentiality, especially with mental-health treatment, is meant to protect and thereby encourage people who need help to get help.

In the latter opinion, the court placed an added hurdle before the patient's quest for the other patients' photos. Her attorneys will also have to show that she had mental competence to testify in court at the time the alleged assault took place. **Cedars Healthcare Group, Ltd. v. Freeman**, __ So. 2d __, 2002 WL 31466407 (Fla. App., November 6, 2002).

Newborn Does Not Pass Stool: Nurses Ruled Not At Fault, Court Blames Physician For Negligent Phone Advice.

Following the hospital's protocol, the nurses noted almost every five hours that the newborn had not passed stool.

This information was charted on the form in the chart called the 24-Hour Newborn Care Note.

Hospital protocols required the newborn's nurses to notify a pediatrician after twenty-four hours if a newborn failed to pass stool.

This baby was discharged a few minutes less than twenty-four hours after birth.

The nurses never notified the pediatrician the baby had not passed stool.

However, the nurses were not required or expected to report that information to the pediatrician within the first twenty-four hours.

The pediatrician saw the baby at 9:00 p.m. but did not see him again the next day before he was discharged. If the pediatrician had seen him, all the pertinent nursing data was available in his chart.

CALIFORNIA COURT OF APPEAL
OPINION NOT OFFICIALLY PUBLISHED
November 6, 2002

A newborn was diagnosed with Hirschsprung's disease a few months after discharge from the hospital following a routine labor and delivery.

The California Court of Appeal, in an opinion not officially published, pointed out that mother and baby were discharged from the hospital ten minutes short of twenty-four hours after birth.

The baby did not pass stool during that time, a fact the hospital's newborn nurses charted at least every five hours.

The court also pointed out the nurse who discharged mother and baby from the hospital told the mother to contact the doctor if the baby still had not passed stool within a day.

The mother called the physician at least twice over the next five days. She told him the baby had not passed stool, was irritable and had a decreased appetite. The doctor did not have him brought in for an exam but instead told the mother over the phone to treat him with laxatives and over-the-counter medications for gas.

The mother finally brought the baby in six days after birth. He was diagnosed with an obstructed and perforated bowel. After months in the hospital he was diagnosed with Hirschsprung's disease.

Physician Ruled At Fault Nurses Ruled Not At Fault

The court ruled there was no deviation from the standard of care by the newborn nurses following hospital protocols in charting the newborn had not passed stool and in not reporting that fact to the physician. It had not been twenty-four hours and the information was in the chart if the physician had wanted to look at it.

The court believed the physician should have appreciated that the signs reported by the mother mandated a medical examination rather than simplistic advice over the phone. **Garcia v. San Antonio Community Hospital**, 2002 WL 31478236 (Cal. App., November 6, 2002).