

Sexual Harassment: Employer Must Protect Female Caregivers From Male Patient, Court Rules.

Female caregivers at a facility for developmentally disabled adolescents and adults complained to management they were being accosted and fondled by a certain seventeen-year-old resident. He stood over six feet tall and weighed over two hundred pounds, but had the functional capacity of a two to five year old child.

The definition of sexual harassment includes being subjected to physical conduct of a sexual nature which is made explicitly or implicitly a necessary condition of an individual's employment, leading to an intimidating, hostile or offensive working environment.

UNITED STATES COURT OF APPEALS,
EIGHTH CIRCUIT (MINNESOTA), 1997.

Managers at the facility were wrong for not heeding the female caregivers complaints, the U.S. Circuit Court of Appeals for the Eighth Circuit (Minnesota) ruled. The resident was unable to control his impulses due to profound mental retardation. However, the facility could not wash its hands of responsibility, and could be held responsible in a suit for sexual harassment.

The facility should have done a sexual-ity assessment. According to the court, such an assessment would have prompted the facility to assign male caregivers who would not be taken as sexual objects and to bring in caregivers of either gender capable of physically restraining this resident. ***Crist vs. Focus Homes, Inc.***, 122 F. 3d 1107 (8th Cir., 1997).

Nurse Taking Phone Call: Court Holds Nurses Negligent For Faulty Assessment And Advice.

The nurse who took the patient's phone call, and her nursing supervisor, failed to assess the patient's situation correctly and failed to give the patient correct advice.

The nurse told the patient it was not necessary for her to return to the emergency room to be seen, but to wait and see if her bleeding would stop.

When the bleeding did not stop, the patient phoned her physician. He also told her she did not have to come in to the emergency room.

The patient finally did come in, but by then her uterus had already ruptured. Her child was born by cesarean, but had severe brain damage from anoxia.

The nurse and her nursing supervisor were negligent for how the patient's phone call was handled.

The physician was also negligent. However, the physician's negligence did not relieve the hospital of legal responsibility for the nurses' conduct. The patient herself was also negligent to some extent.

COURT OF APPEALS OF OHIO, 1996.

The patient was pregnant with her fourth child. She had carried three other pregnancies to full term, but each of them had been delivered by cesarean. She came to the emergency room believing she was in labor, but was reassured she was not. Six days later she came back in the morning to the same hospital's emergency room believing she was in labor, and was again reassured. The same afternoon she came back to the emergency room, was examined this time and was again reassured she was not in labor.

When the patient got home she began to experience vaginal bleeding. She phoned the women's care center at another hospital and spoke with a nurse. The nurse, before giving any specific advice, spoke with her nursing supervisor. The nurse and her supervisor agreed it was not necessary for the patient to return to the emergency room and told her to stay home and wait for the bleeding to stop.

The patient phoned her physician and got the same advice. Later that day, however, the patient went to the emergency room anyway. It was found during cesarean delivery of her child that her uterus had ruptured along an old incision line from a previous cesarean. The child had already experienced serious brain damage from lack of oxygen.

The nurse and her supervisor were negligent, in the opinion of the Court of Appeals of Ohio. They failed to make a correct assessment. They believed the patient was only having some minor spotting from the vaginal exam. They did not listen to her description of her complaints or explore the full history of the situation. The nurses' advice to remain home and wait and see was completely incorrect, the court believed. This negligence was a direct cause of the child being born with brain damage. ***McCrystal vs. Trumbull Memorial Hospital***, 684 N.E. 2d 721 (Ohio App., 1996).