

Patient Photographed Without Consent: Court Says Patient's Privacy Rights Were Violated.

A pharmacy intern used his cell phone to photograph a classmate on a hospital patient-care floor. In the photograph background was a patient being attended by a group of medical interns and other hospital staff.

The patient's nurse insisted the pharmacy intern delete the photo from his cell phone on the grounds that photographing a patient is a violation of patient confidentiality. The intern immediately deleted the photo.

The pharmacy intern was ordered by his supervisors to apologize to the patient's nurse in writing and to review his course materials on patient confidentiality and the US Health Insurance Portability and Accountability Act (HIPAA). That, he was told, would clear the incident from his record.

The pharmacy intern who took the photo was told the incident would be cleared up by a written apology to the patient's nurse and review of the course materials on patients' privacy rights.

Then he was terminated from his internship with a failing grade and has been unable to obtain his degree.

His own rights seem to have been violated by the punishment meted out.

UNITED STATES DISTRICT COURT
TEXAS
February 21, 2008

However, the intern was failed in the course and suspended from the program. He has not been able to complete his training elsewhere.

The US District Court for the Southern District of Texas said the nurse was right to insist that the photo be deleted from the intern's cell phone. It does not matter if the patient is the subject in the foreground or part of the background or if the photo was taken with no intent to infringe on the patient's rights. Photographing a hospital patient without the patient's consent is a violation of the patient's right to medical confidentiality.

The court nevertheless did see a problem with the severity of the punishment meted out to the intern for this offense. **Strango v. Hammond, 2008 WL 501322 (S.D. Tex., February 21, 2008).**