

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

A former patient filed a civil lawsuit against an acute-care hospital claiming that during her stay on the hospital's psych unit she was sexually assaulted at least twice by at least two male patients.

The District Court of Appeal of Florida was not called upon to rule on the validity of the patient's underlying claim that the hospital was negligent for failing to protect her from dangerous fellow patients. It is already well established that failing to protect a patient from sexual assault by fellow patients who are known to be dangerous is grounds for a negligence lawsuit against a hospital.

## Photographs of Other Patients Sought

While still in the pre-trial discovery stage of the litigation the patient's attorneys demanded the hospital turn over photos of all male hospital patients who were present at any time in the psychiatric unit at any time during the three-day interval when the patient claimed the sexual assaults occurred.

The hospital's attorneys filed a formal objection to the patient's request for the photos. The patient's attorneys countered by filing a motion to compel discovery, on the grounds the patient needed to be able to identify her assailants to prove her case.

**Clinical psychiatric records are confidential.**

**The reason for confidentiality is to enable a person suffering from a mental, emotional or behavioral disorder to seek services and treatment without being needlessly exposed to public scrutiny.**

**It is clearly in society's advantage to encourage people experiencing problems to obtain such assistance.**

**Medical confidentiality applies to photographs of the other patients who were in the facility when the plaintiff patient was sexually assaulted.**

**Even if the other patients' names are withheld, the photos could lead to inadvertent discovery of their identities.**

**Unless the victim can show the court a compelling need for the photos, the privacy rights of the other patients must prevail.**

DISTRICT COURT OF APPEAL  
OF FLORIDA  
September 4, 2002

The lower court sided with the patient. The District Court of Appeal of Florida sided with the hospital and quashed the lower court's order for the hospital to turn over the photos.

## No Compelling Reason Seen To Violate Medical Confidentiality

The law highly values and strongly guards the confidentiality of patients' medical records, particularly records of mental health treatment.

Medical confidentiality is not absolute. If a patient/plaintiff has a compelling need for access to other patients' records to prove the patient's civil case against a healthcare provider a court theoretically can grant access to confidential records.

Courts rarely allow it. Patients usually can find other ways to corroborate their cases. Witnesses may come forward voluntarily. Patients can testify from their own recollections and can submit their own treatment records.

## Patient Not Required To Identify Her Assailants

The most telling point for the court was that this patient did not have to identify her assailants to prove her civil case. If the jury believed her testimony, that and the medical evidence would hold the facility liable. There was no compelling need for the patients' photos, the court ruled.

## Confidentiality Extends To Patient Photos

The court ruled that medical confidentiality applies to photos of patients even when their names are omitted. **Cedars Healthcare Group, Ltd. v. Freeman, \_\_\_ So. 2d \_\_\_, 2002 WL 2009940 (Fla. App., September 4, 2002).**

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