

Hearing Impaired Patient: Disability Discrimination (Continued).

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The type of auxiliary aid or service necessary to ensure effective communication with a person with a sensory disability will vary with the method of communication used by the individual patient, the nature, length and complexity of the communication and the context in which it is taking place.

In determining what are appropriate auxiliary aids, hospitals must give primary consideration to the requests of individuals with sensory disabilities, according to current Federal regulations.

However, in determining whether grounds exist for a civil lawsuit against the hospital by the disabled person, failure to provide an interpreter on request is not necessarily deliberate indifference to the rights of a disabled patient.

The Court pointed to another case precedent where hospital personnel reportedly laughed at the parents when they specifically requested an ASL interpreter for their deaf child, an example of true deliberate indifference by caregivers that was grounds for a lawsuit. **McCullum v. Orlando Regional**, __ F. 3d __, 2014 WL 4942272 (11th Cir., October 3, 2014).

Psychiatric Nursing: Court Reviews Legal Issues In Patient Restraint, Forced Medication.

Assault can be grounds for a civil lawsuit even when the assault is not followed by a battery.

Battery is the intentional touching of another person in a harmful or offensive way without consent.

Assault occurs when the perpetrator's actions cause fear or apprehension that harmful or offensive bodily contact will occur.

This patient may have suffered an assault when a nurse approached him while he was being held down by other staff members, brandishing a needle containing the Haldol the patient had said he did not want to be given.

A nurse would know that that action could cause fear and apprehension in the patient.

UNITED STATES DISTRICT COURT
NEW JERSEY
October 15, 2014

In a pre-trial hearing the US District Court for the District of New Jersey declined to grant a summary judgment of dismissal of a civil suit filed against the charge nurse and others in a psychiatric facility where an involuntarily committed patient was physically restrained and medicated with IM Haldol against his wishes.

Excessive Force

Physical restraint can only be used with a psychiatric patient to protect the physical safety of the patient, other patients or facility employees.

The patient claimed he did not become agitated until after staff were assembled to restrain him. He claimed that was done only after he refused a prn oral dose of Haldol recommended by the charge nurse.

Being agitated or having issues with meds is not grounds to physically restrain a patient, absent a genuine safety issue.

Failure to Provide Medical Care

There was also a question whether the charge nurse responded quickly and appropriately by seeking emergency medical care or at least an orthopedic consult once it appeared the patient's ankle had been fractured during the restraint, a duty the charge nurse had to fulfill regardless of the circumstances leading up to the incident.

If the charge nurse was remiss in her response, that could be malpractice and also a violation of the patient's civil rights as a person in involuntary governmental detention. **Bullock v. Cabasa**, 2014 WL 5286613 (D.N.J., October 15, 2015).

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924

© 2014 Legal Eagle Eye Newsletter

Published monthly, twelve times per year.

Print edition mailed First Class Mail
at Seattle, WA.

Electronic edition distributed by email file
attachment to our subscribers.

E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
PO Box 4592
Seattle, WA 98194-0592
Phone (206) 440-5860
Fax (206) 440-5862
kensnyder@nursinglaw.com
www.nursinglaw.com

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