LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Emotional Distress: Court Dismisses Family Members' Suit Over Dangling Teddy Bear.

When the pediatric patient left her room for ear surgery a nurse came in to make the bed. A teddy bear was dangling near the floor from a necklace attached to the bed rail. The nurse moved it to the trapeze bar above the bed so the patient would be able to see the teddy bear when she came back from surgery.

The patient's father and uncle sued the hospital alleging as African-Americans they were upset by the image of lynching the dangling teddy bear evoked for them. They did express their concerns to the patient's nurse but did not allow her to take the teddy bear down.

The Court of Appeals of Iowa noted for the record it was not the Court's place to devalue the truth or the power of the family members' emotional reaction, pointing to a 2010 US Supreme Court opinion which made mention that there were at least 3,446 reported lynchings of African-Americans in the US between 1882 and 1968.

The Court also noted for the record that the family did not claim in the lawsuit that the nurse did it intentionally to offend them or even had any actual knowledge whatsoever what their reaction would be.

Nevertheless, the Court dismissed the case.

The law allows persons other than the patient to sue for their own emotional distress over what happens in the course of the patient's care, but only very close relatives of the patient and in a very narrow range of circumstances.

The law limits family members' right to sue for their own emotional distress to highly charged situations involving issues of the patient's life and death.

Insensitivity over the reporting of a loved one's demise to family members or the handling of a loved one's remains might be one such situation. Another highly charged situation might be the delivery of a child, particularly where complications such as fetal demise are involved.

According to the Court, routine pediatric ear surgery is not a highly charged life and death patient-care situation. It went smoothly with no specific medical complications.

This did not qualify as an exception to the general rule that persons other than the patient cannot sue for their own emotional distress. **McNeal v. Northwest Iowa Hosp., __ N.W. 2d __, 2012 WL 1066500 (Iowa App., March 28, 2012).**

Racial Epithets: Court Allows Nurse To Sue Employer For Racially Hostile Work Environment.

The US District Court for the Eastern District of Pennsylvania noted for the record that a minority employee, as a general rule, has a difficult burden of proof in a lawsuit alleging a racially hostile work environment.

The minority employee must prove the existence of intentional discrimination because of race that is so severe and pervasive as to alter the terms and conditions of employment.

As a general rule, offhand remarks and isolated incidents are considered insufficient evidence by the courts to support a lawsuit for a racially hostile work environment.

However, in the case of a registered nurse working as an admitting nurse in home health, the Court ruled that even minimal use of certain racially charged words is enough.

The "N-word" is steeped in historical racial animus that instantly separates African-Americans from others.

The alleged use of the "N-word" by the nurse's supervisor three times and another slur used once, combined with another racially discriminatory remark, can be seen as sufficiently severe and pervasive as to create a racially hostile work environment.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
March 30, 2012

The nurse's supervisor expressly used the "N-word" three times, used another highly charged and offensive racial slur once and made a further remark in which she referred disparaging to African-Americans as lazy.

Taken in totality, this would be considered grounds for a civil rights case alleging a racially hostile work environment, the Court said.

The nurse's supervisor countered with allegations that the nurse falsified her mileage reimbursement records and allegedly failed to take a particular patient's blood pressure but nevertheless documented a blood pressure in the chart after the fact. It was during a performance review over these very issues, however, that the racial epithets were spoken several times. **Williams v. Mercy Health, 2012 WL 1071214 (E.D. Pa., March 30, 2012).**

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