

Sexual Assault: Court Sees No Liability, Male Nurse Screened Before Hiring.

A patient sued a hospital after a male nurse sexually assaulted her while she was still sedated following a surgical procedure. The lawsuit alleged negligent hiring and supervision.

The hospital countered the lawsuit by showing it had procedures in place for background screening of nurse applicants and that its procedures complied with acceptable hospital practices.

In this case it is pure speculation that a more thorough background check would have revealed a propensity toward sexual misconduct.

Speculation will not support a negligence lawsuit.

NEW YORK SUPREME COURT
APPELLATE DIVISION
November 17, 2005

In a short opinion the New York Supreme Court, Appellate Division, did not go into detail on the requirements for background checks on nursing applicants.

However, the court did reaffirm the principle that to sue a healthcare employer over a sexual assault a patient must have actual proof that a background check was not done, or was done deficiently, and that a proper background check would have turned up a prior incident showing a propensity toward sexual misconduct.

The court did rule that a nursing manager who is responsible for assessing nursing credentials is not responsible for background checks or verification of past employment. Those functions can be carried out by a hospital's human resources department. **Travis v. United Health Services Hospitals**, __ N.Y.S.2d __, 2005 WL 3073198 (N.Y. App., November 17, 2005).