

## Sexual Assault: Expert Testimony Is Required.

After she was already home the afternoon following knee surgery the same morning the patient realized she had been sexually assaulted in the hospital while still under the affects of anesthesia.

The patient sued the hospital. In her lawsuit she was only able to allege in general terms that an unidentified hospital employee raped her while she was a patient in the hospital.

The California Court of Appeal dismissed her case because she did not have an expert witness to testify.

As to the perpetrator, if he could be identified, there would be no question of civil liability, with no expert required.

As to the hospital, however, the Court ruled the patient's case required expert testimony as to the legal standard of care for screening, hiring, training and supervising personnel who have access to vulnerable hospital patients.

It was possible the hospital did everything the law requires as to screening, hiring, training and supervising its employees, and an employee nevertheless went outside the normal course and scope of the employee's duties and injured an innocent party. If that was true, the hospital would not be liable. **Regan v. Osteen**, 2015 WL 294726 (Cal. App., January 22, 2015).

## Sexual Assault: Court Accepts Nurse As Expert Witness.

**All hospital staff have the responsibility to recognize, intervene and then report any inappropriate behavior or medical practice observed which violates a patient's rights.**

**When the patient reported the incident to a female nurse before leaving the hospital, the standard of care required that nurse to address the patient's complaint at that time.**

**The hospital's procedures should have called for the nurse to report the incident up the chain of command to assess whether further immediate action was indicated to protect patient safety.**

**There should have been documentation of the patient's outcry to the nurse afterward and what was done as follow-up for resolution of the situation.**

COURT OF APPEALS OF TEXAS  
February 18, 2015

The Court of Appeals of Texas ruled that the patient's nurse expert is competent to give an opinion in support of a sexual assault lawsuit against a hospital.

The nurse expert has twenty-plus years experience in emergency department nursing and currently supervises a team of eight nurses in an emergency department.

The patient's lawsuit alleged the patient was sexually molested by a male registered nurse while she was being evaluated as a patient in the emergency room for acute stomach pain.

### Indications of Sexual Abuse

#### No Action Taken By Hospital Staff

Apparently a nurse saw the patient in the exam room with her breasts exposed, an abnormal situation which should have triggered action by that nurse.

The patient complained to a female nurse before she left the hospital, but that also triggered no meaningful response.

The Court agreed with the patient's expert that a hospital patient is entitled to a safe environment free from fears of predatory behavior by staff members. A hospital must set up policies and procedures which define the specific steps hospital staff are required to follow when indications of sexual abuse are observed.

The Court cautioned that the expert's report was not clear how the specific lapses by hospital nurses in this case other than the perpetrator himself caused what happened to the victim, but gave the patient's expert extra time to amend her opinion. **Hernandez v. Christus**, \_\_ S.W. 3d \_\_, 2015 WL 704721 (Tex. App., February 18, 2015).

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