

Sexual Assault, Nurse vs. Patient: Court Clears Hospital, Nursing Agency From Civil Liability

While being treated for depression in the hospital the patient was restrained in bed. A nurse allegedly injected her with morphine and then sexually assaulted her in her bed in her hospital room.

The nurse was the employee of a nursing agency and had worked at the hospital on a regular basis for six months before the alleged incident. Both the nursing agency and the hospital were named as defendants in the patient's lawsuit.

The nurse himself died thirteen months after the alleged incident, before the patient's civil lawsuit was filed.

Foreseeability Is the Key to Liability

The Court of Appeals of Ohio dismissed the patient's lawsuit because the patient was not able to prove that the nursing agency or the hospital had any solid reason to anticipate that the nurse could or would sexually assault a patient.

The nurse's nursing license was verified by the nursing agency and by the hospital and the agency and the hospital obtained the required criminal background checks which disclosed no prior criminal history.

The nurse had worked in the hospital on a regular basis for six months without any performance issues and without any patient complaints.

The patient's civil lawsuit against the hospital and the nursing agency hinges on proof that the nurse's alleged sexual assault upon a patient was foreseeable.

Only if the employer had grounds to anticipate the employee's misconduct, and unreasonably failed to take action in the face of a known risk of harm to a patient, would liability be imposed on the employer for the employee's misconduct.

The nursing agency verified the nurse's license and obtained the required criminal background check.

The hospital also verified with the state board that the nurse's license was in good standing and got another criminal background check.

The nurse had worked at the hospital for six months without any performance issues or patient complaints.

COURT OF APPEALS OF OHIO
March 26, 2013

The best evidence the patient's attorneys could come up with was an affidavit from a local citizen stating that the nurse in question had sexually assaulted her during a party at a neighbor's home.

This alleged incident took place before the alleged sexual assault on the patient in the hospital.

The local citizen said she reported it to the local police, but no criminal charges were ever filed. She also claimed she called the hospital after she discovered that the nurse in question worked there. According to her affidavit, she spoke with someone who was going to inform the head of nursing about what she had to say. She also claimed that she reported the incident to the state board of nursing.

The Court ruled that the affidavit was not sufficient evidence to be able to rule against the hospital in the patient's lawsuit.

The credibility of the citizen's affidavit was questionable.

More importantly, no criminal charges were filed against the nurse in question by the local police. Nor was any action taken by the state board in response to the alleged prior victim's complaint.

Even if the hospital had followed up with the local police after the local citizen called the hospital, her complaint would have been treated by the police as confidential and would not have been disclosed to the hospital. Formal criminal charges, on the other hand, are a matter of public record. Basically the same was true of her complaint to the state board of nursing. ***Rossi v. Moore, 2013 WL 1458898 (Ohio App., March 26, 2013).***

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