

Patient Leaving Hospital Floor To Smoke Cigarette Restrained By Security Guard: Court Upholds Lawsuit Against Hospital.

A former hospital patient filed suit against the hospital for a broken thumb the patient sustained when he was forcibly removed from an elevator by a hospital security guard who was trying to prevent the patient from leaving the floor where his room was located to go out and smoke a cigarette.

The patient had just had neck fusion surgery at the hospital and had been warned about the dangers of walking and of smoking right after surgery.

Mentally competent adult hospital patients have the right to decline treatment, including the right to ignore warnings about the dangers of getting out of bed, walking and smoking after surgery.

NEW YORK SUPREME COURT,
APPELLATE DIVISION, 2000.

The New York Supreme Court, Appellate Division, could find no legal justification for the security guard's actions.

The guard would have been legally justified if the patient was trying to commit suicide or intended to inflict serious injury upon himself or if it was some other sort of emergency, the court said. The court also said the security guard might have had legal justification to detain the patient if a physician had ordered the patient restrained for his own benefit. Wood v. Strong Memorial Hospital of the University of Rochester, 709 N.Y.S.2d 779 (N.Y. App., 2000).

Retaliation: Court Throws Out Nurse's Suit, Complained HIV Infection Control Policy Is Racist.

Based on a 1990 memorandum from the state department of health, the hospital's infection control policy stated that Haitians were to be considered at high risk for having HIV and AIDS. In 1996 a nurse of Haitian descent who worked at the hospital complained that the policy was based on an incorrect stereotype not supported by scientific data and therefore was racist. The hospital followed up and in 1997 deleted the reference to Haitians.

However, the nurse was demoted from her charge nurse position. She resigned and sued for retaliation.

The nurse's protest was aimed at the hospital's policy toward patients.

Title VII of the Civil Rights Act deals only with employment discrimination and only protects employees from retaliation who complain about discriminatory employment practices.

UNITED STATES DISTRICT COURT,
NEW YORK, 2000.

The U.S. District Court for the Eastern District of New York dismissed the nurse's lawsuit.

This discriminatory policy was not directed at the nurse or at other employees of the hospital. The court said the civil rights laws prohibit employer retaliation, but that applies only to employees who are victims of discrimination and employees who complain about other employees being victims of discrimination. Taneus v. Brookhaven Memorial Hospital Medical Center, 99 F. Supp. 2d 262 (E.D.N.Y., 2000).

Neonatal ICU: Lawsuit Alleges Nurse Decannulated Premature Baby.

An infant was born twelve-weeks premature and was immediately intubated, connected to a ventilator and sent to the hospital's neonatal intensive care unit (NICU). His condition improved and he came off the ventilator.

When he needed to go back on the ventilator the neonatologist did a tracheotomy. That night a second-year resident in the NICU became concerned about fluid buildup and ordered the neonatal intensive care nurse to weigh the infant.

After being weighed the infant went into respiratory distress and a code had to be called. During the code the physicians had to try three times to reinsert the tracheotomy tube, which delayed resuscitating the infant. A month after the incident a second neonatologist wrote a medical note that the infant had apparently been decannulated in the NICU just before the code incident.

The child grew up profoundly mentally retarded. That could have been caused by thirteen documented minutes of oxygen deprivation from the time the code was called until his tracheostomy tube was successfully reinserted.

The parents sued the hospital when the child was five years old. The lawsuit alleged the NICU nurse was negligent for dislodging the cannula by not disconnecting the O₂ line before moving the infant to the scale. The lawsuit claimed the nurse instead should have disconnected the O₂ line and manually ventilated the infant while he was being weighed.

The jury sided with the NICU nurse. The Appellate Court of Illinois let the jury's verdict stand. Nursing expert witnesses testified that not disconnecting the line was not negligent, and medical experts told the court there were many other explanations for the child's retardation. Harris Trust & Savings Bank v. Abraham-Zwirn, 731 N.E. 2d 410 (Ill. App., 2000).