

Aide Sues Former Patient, Refuses To Drop Lawsuit: Court Finds Grounds For Hospital To Fire Her.

An individual had worked for the hospital for seven years in various nursing assistant and technician positions before she was assaulted by a patient in the rehabilitation unit who was recovering from head trauma.

She was injured and went on workers' compensation leave.

Slightly less than one year after being assaulted, after the patient had been discharged from the hospital, she filed a civil personal injury lawsuit against him for assault, battery and sexual battery.

When her supervisors learned of the lawsuit they wrote her a letter demanding that she dismiss the lawsuit, or be considered to have resigned from her position at the hospital. She refused to dismiss the lawsuit, lost her position and sued the hospital for wrongful termination.

Employee At-Will

According to the employee handbook she was an employee at-will. She had no employment contract or union collective bargaining agreement. By definition, a common-law employee at-will can quit or be terminated at any time for any reason.

The courts have softened the common-law rule somewhat. An employee at-will cannot be terminated in retaliation for exercising a legal right if the legal right is clearly supported by public policy.

No Public Policy Allows

Hospital Employees To Sue Patients

The Court of Appeal of California conceded that access to the courts is a fundamental right. At the same time employers have the general legal right to insist that employees refrain from suing customers, clients or patients.

The court said no public policy exists that a hospital cannot insist an employee, as a condition of remaining an employee, not sue the hospital's current or former patients. **Jersey v. John Muir Medical Center**, 118 Cal. Rptr. 2d 807 (Cal. App., 2002).

Nowhere in the Constitution or our statute laws does it say that an employer cannot insist, as a condition of accepting employment, that employees not sue the employer's customers, clients or patients.

It was not clear whether the patient who attacked the nursing assistant was in full possession of his faculties when he did it.

However, it is not important whether the nursing assistant had valid grounds for a civil lawsuit against the former patient.

A hospital has the right to define its mission as incompatible with its staff suing a patient for conduct that may have been due the injuries for which the patient was being treated.

The nursing assistant was an employee at-will, as stated in the employee handbook. She did not have an employment contract and was not under a collective bargaining agreement. There is no public policy against a hospital firing an employee at-will for suing a former patient.

CALIFORNIA COURT OF APPEAL, 2002.

Quality Review: Waiting Time Measurements Not Admissible In Malpractice Litigation.

The case was full of complex medical issues. The jury ruled the doctors and nurses did not negligently misinterpret the fetal monitor readings or unreasonably delay the cesarean. The Court of Appeals of Kentucky agreed.

The hospital had done studies tracking patients' waiting times as they moved through the process of receiving care in various hospital departments, including labor and delivery.

After physicians reviewed the waiting-time studies they threw them away.

The waiting-time studies were discarded in the ordinary course of business, before the events in this case transpired. That is not relevant and no sinister motive can be inferred.

COURT OF APPEALS OF KENTUCKY, 2001.

The court also noted that internal quality review documents are generally not relevant or admissible in malpractice litigation, or even subject to pre-trial discovery demands from the patient's lawyer.

In this case the court ruled it proved nothing that the hospital had destroyed an internal quality assurance report regarding patients' waiting times in various hospital departments, as it was prepared, reviewed and then destroyed in the ordinary course of business. **Welsh v. Galen of Virginia, Inc.**, 71 S.W. 3d 105 (Ky. App., 2001).