

LEGAL EAGLE EYE NEWSLETTER

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Terrorist Threat: Nurse Broke Psych Patient's Confidentiality By Phoning Secret Service.

In her report the day nurse warned the p.m. nurse to watch carefully a certain psych patient of Middle-Eastern descent who had been verbalizing threats about the US President and government facilities and property.

The patient was being held involuntarily on a locked psychiatric unit, but he had phone privileges.

That evening he got on the phone and began speaking in an agitated tone in English and in Arabic about himself and his friends killing the President and blowing up petroleum facilities on the Texas Gulf coast.

The nurse phoned a nursing supervisor and the assistant hospital administrator at their homes, then phoned the US Secret Service. She told an agent what the patient was saying and then apparently went on to elaborate on his psychiatric issues and the fact he was being held for involuntary treatment.

The next day the hospital administrator found out what happened. After conferring with the hospital's attorney he terminated the nurse for violation of patient confidentiality. She sued.

The US Court of Appeals for the Fifth Circuit ruled the nurse had inexcusably violated the patient's rights and the hospital's policy, notwithstanding her own right to freedom of speech.



The nurse had the right to speak up on a sensitive subject of public concern.

The hospital had the right to protect the patient's right to medical confidentiality.

Under the circumstances, the hospital's and patient's rights are paramount.

The nurse should have gone through proper channels.

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

December 18, 2006

Hospital's Patient-Confidentiality Policy

The hospital's policy was put there to protect the patient's right to confidentiality. The policy allowed confidential information to be released to outside parties by a hospital employee (other than the hospital administrator) only with the patient's express written consent.

The hospital administrator, and only the hospital administrator, could authorize release of confidential information without the patient's express consent, if, after consultation with legal counsel, it was deemed to be required by law.

Nurse Must Not Go Outside Chain of Command

The nurse conferred with a nursing supervisor and with the assistant administrator, but that did not amount to compliance with hospital policy, the court said.

A proper balance can be achieved between patients' rights, hospitals' liability concerns and the right of the public to speak out on subjects of public concern only if hospital employees follow established hospital confidentiality policies in these sensitive situations, the court ruled.

The nurse should have contacted the administrator, per hospital policy, and left it to the administrator to decide what to do.

Davis v. Allen Parish Service District, 2006 WL 3780540 (5th Cir., December 18, 2006).

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