Mental Health: Court Says Patient May Participate In Care Planning Through An Advocate.

At the urging of a group of public interest lawyers, the Supreme Court of Connecticut reviewed the legal rights of a patient receiving mental health treatment.

The patient in question already had been ruled incompetent to manage her own affairs due to chronic mental illness and already had a court appointed guardian managing her affairs.

The issue came up when her care providers stopped letting her guardian participate in care planning sessions at the state long-term psychiatric care facility where she resided as a voluntary patient.

The court started from the general proposition that mental health patients are guaranteed the right to humane and dignified treatment under a treatment plan tailored to the patient's specific disorder with active patient participation in planning for the patient's own care and treatment.

Implicit in a patient's right to active participation is the right of a disabled patient to have an advocate help the patient to participate meaningfully in the care-planning process, the court ruled. **Phoebe G. v. Solnit, 743 A. 2d 606 (Conn., 1999).**

The patient, as a person who suffers from mental illness, may not be able to advocate effectively on her own behalf in the care planning process.

Therefore, she is entitled to the help of an advocate to secure her legal rights.

SUPREME COURT OF CONNECTICUT, 1999.

Family And Medical Leave Act: Day Off For Stress Is Not A Serious Health Condition, No Legal Rights Under Act.

The Family and Medical Leave Act (FMLA) defines a serious health condition as an illness, injury, impairment or physical or mental condition that involves inpatient treatment in a hospital or continuing treatment by a healthcare provider.

Federal regulations interpret the FMLA more specifically:

A serious health condition by definition must involve a period of incapacity, that is, inability to work or perform other daily activities due to the health condition and treatment lasting more than three consecutive calendar days and any subsequent treatment or incapacity for the same condition.

Treatment must come from a physician, nurse or physician's assistant or from a provider such as a physical therapist carrying out a physician's orders. Treatment must occur on two or more occasions.

A chronic health condition may cause episodic rather than continuous incapacity.

UNITED STATES DISTRICT COURT, TEXAS, 1999.

A respiratory therapist working in a pilot nursing program in the hospital's cardiovascular intensive care unit became ill and left for the day.

She was fired for abandoning her patients and for taking an unexcused absence in violation of the hospital's established policies. She sued the hospital for retaliation.

If she was exercising her right to medical leave under the U.S. Family and Medical Leave Act (FMLA) the hospital had no right to fire her and firing her would be illegal retaliation.

If the FMLA did not apply to her situation she would have no legal protection for what she did and the hospital would be within its rights to fire her.

To qualify for medical leave under the FMLA an employee must need to take leave for a serious health condition.

A health condition which by law is not a serious health condition does not qualify the employee for leave and an employee's election to take time off for a non-serious health condition is not protected by the FMLA from repercussions.

The U.S. District Court for the Eastern District of Texas ruled for the hospital. Even if she truly did experience a level of stress severe enough she needed to leave and take the day off, that still is not a serious health condition as defined by law.

The court said there was no evidence she was unable to perform the functions of her job or her regular life functions. Her doctor had advised her to apply for transfer out of the pilot program but never told her she should quit or even take time off.

As a general rule, to qualify for medical leave that is protected by law the employee must be incapacitated more than three days, must need medical care and must receive care from a qualified health-care provider. **Cole v. Sisters of Charity of the Incarnate World, 79 F. Supp. 2d 668 (E.D. Tex., 1999).**