

Elopement Attempt: Court Says Psych Patients Have Special Legal Relationship With Hospitals.

The police brought the patient to the hospital after an apparent suicide attempt with an overdose of Valium.

Suicide precautions were ordered the first day, but discontinued on the second day.

For a patient not assessed to be a current acute suicide risk, safety precautions included hourly checks during the day, half-hourly checks at night and environmental rounds q shift for special hazards.

Elopement Risk

The Court of Appeals of Wisconsin looked carefully at the events leading up to the patient's elopement attempt in which she fell trying to climb down a bedsheet from a third-floor window and was badly injured.

The Court of Appeals overturned the dismissal of the case by a judge in a lower court and ruled there was sufficient evidence for the judge to have submitted the case to a civil jury to decide the issues of negligence and damages.

The nurses and the psychiatrist noted that the patient's affect was volatile and that her behavior was uncooperative but they were correct that there was no longer an appreciable suicide risk, the court believed.

Ordinarily the law does not allow one to sue another for the consequences of one's own negligence.

It is different when an involuntary psychiatric patient who is a known elopement risk is injured while trying to escape.

A psychiatric facility has a special legal relationship with patients who are under the facility's custody and control.

If the facility can foresee that the patient likely will try to elope and fails to take reasonable measures to stop the patient from eloping, the facility is guilty of negligence.

It is not relevant that the patient was also guilty of negligence trying to carry out a certain plan of escape.

The patient's own negligence does not diminish the facility's responsibility for what happens to the patient while trying to elope.

COURT OF APPEALS OF WISCONSIN, 2001.

However, the court believed the nurse should have been alerted to an elopement risk, as opposed to a suicide risk, when the patient put on her shoes and went to the nurses station asking to have her personal possessions returned, then looked in her purse for phone numbers on slips of paper and began making calls.

Voluntary versus Involuntary Status

At the time in question the patient technically was a voluntary admission. The psychiatrist was going to offer her the option of continuing her stay as a voluntary patient, or the facility would get a court order to keep her involuntarily.

The court said at this point the patient was essentially an involuntary patient. She was under the custody and control of the facility and was entitled to have all reasonable and necessary precautions taken for her safety, to prevent self-harm and to prevent elopement.

Safe Place

The patient escaped by removing the window air conditioning unit in the next room. The patient in that room told her it was loose. The hospital should have discovered it and seen the risk it posed in a psychiatric facility, the court said.

JCAHO Surveys

The Court of Appeals did uphold the lower court judge's ruling that JCAHO survey documents are legally privileged and do not have to be turned over to the plaintiff's attorney in a malpractice case. These documents are basically the same as internal peer review and quality control and enjoy the same legal privilege. **Hofflander v. St. Catherine's Hospital, 635 N.W. 2d 13 (Wis. App., 2001).**

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E. Kenneth Snyder, BSN, RN, JD

Editor/Publisher

PO Box 4592

Seattle, WA 98194-0592

Phone (206) 440-5860

Fax (206) 440-5862

kensnyder@nursinglaw.com

www.nursinglaw.com

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