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Definition Of Family Member: Court Sets Limits On Patients' Life-Partners' Rights.

Mindful of the Court of Appeals of Washington's December, 2008 unpublished ruling on visitation rights of patients' domestic partners, the US District Court for the Southern District of Florida recently handed down a decision which sets limits on those rights.

See *Definition Of Family Member: Court Allows Suit Against Critical Care Nurse Who Excluded Life-Partner From Room*. Legal Eagle Eye Newsletter for the Nursing Profession (17)1, Jan. 09 p.8.

In the 2008 case from Washington the nurse would not allow the patient's life-partner into the room at times when blood relatives were being allowed to visit, simply because the nurse felt that a life-partner did not appropriately fit the definition of a family member.

Medical Justification

In the recent Florida case the court stated that patients' treatment needs take precedence when deciding whether or not to allow visitation in a patient's ICU room.

Even if a life-partner is a family member, a hospital still has no unequivocal legal duty to allow visitation any time a family member wants. The patient was in acute crisis in critical care. Her caregivers could exclude any and all bystanders from the ICU who might get in the way, the court said.



The doctors obtained the life-partner's consent to a brain monitor, then advised her thirty minutes later that surgery was no longer an option.

The life partner was allowed to visit as the last rites were being administered.

There is no basis for a lawsuit against the hospital for intentional infliction of emotional distress.

UNITED STATES DISTRICT COURT
FLORIDA
October 2, 2009

In the 2008 case from Washington, unlike the recent Florida case, there were times when the ICU patient had no critical-care interventions immediately underway and the nurse was allowing blood relatives, but not her life-partner, into the ICU room.

Healthcare Surrogate

In the recent Florida case the hospital fully respected the life-partner's status as the patient's healthcare decision maker, once she corroborated her status by phoning for a copy of the patient's durable power of attorney to be faxed to the hospital. She was kept fully informed what was going on and was allowed to communicate her decisions, from the waiting area.

Hospitals must follow state law. Florida does not recognize a life-partner *per se* as a surrogate decision maker, unlike a husband, wife, parent, adult sibling or adult child who would have healthcare decision-making authority by default if a living will or durable power of attorney did not exist.

A life-partner, however, like any competent adult, can be named by the patient as surrogate decision-maker in a living will or durable power of attorney, and that decision by the patient absolutely must be respected. Langbehn v. Public Health Trust, __ F. Supp. 2d __, 2009 WL 3247185 (S.D. Fla., October 2, 2009).

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