Attorney/Client Privilege: Nurse Not In Hospital's Control Group, Interview Ruled Not Confidential.

A patient committed suicide the day following discharge from the hospital. A day or two later the discharge nurse was interviewed by the hospital's in-house legal counsel about the particulars of the patient's treatment. The in-house counsel took handwritten notes.

The deceased's family sued the hospital and the physicians for negligence. The nurse herself was not named as a defendant in the family's lawsuit.

In the pre-trial discovery stage of the litigation the discharge nurse was compelled to give a deposition. During the deposition she was asked if she had given a statement regarding the circumstances of the patient's treatment. She testified she had spoken with the hospital's in-house counsel.

Before she could testify exactly what she told the hospital's legal counsel about the patient, the hospital's legal counsel stopped the deposition and went to court for an order to quash this line of questioning on grounds of attorney–client privilege and attorney work-product privilege.

No Assumption That Statements To Hospital's Attorney Are Confidential

The US District Court for Northern District of Illinois noted there are differences around the US on this point of law. In Illinois statements by an employee to corporate legal counsel are confidential only if the employee is in the corporate control group, i.e., an officer or high-level manager, which the nurse was not.

The upshot is that a nurse cannot assume that an employer's lawyer is acting as the nurse's lawyer and should have independent legal advice whether a statement to the employer's lawyer could be used against the nurse in court. **Valenti v. Rigolin, 2002 WL 31415770 (N.D. Ill., October 25, 2002).**

Race Discrimination: Court Dismisses Suit Against Nurse At Kidney Dialysis Facility.

An African-American patient sued the dialysis clinic because she was placed on a machine in the fourth row while the machines being used in the first three rows at the clinic were occupied by Caucasian patients.

In general, any person participating in any program that receives financial assistance from the Federal government is protected against race discrimination. Such programs include healthcare facilities that participate in Medicare, Medicaid or receive other Federal funding.

Every state also has laws against discrimination.

The first step is for the minority patient to prove that he or she was treated differently than non-minorities.

That does not prove discrimination in and of itself.

The healthcare facility can defend against the charges by showing a legitimate, non-discriminatory reason why the minority patient was treated as he or she was. If there was a legitimate reason the charge of discrimination will not be sustained.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
October 25, 2002

An African-American patient had been receiving regular dialysis treatments at the clinic for more than four years.

She called the clinic at 6:30 a.m. on a Saturday and told the nurse on duty she would not be able to make her appointment that morning because the state-funded transportation service she relied upon had not come to pick her up.

The a.m. nurse told her to come in during the 4:00 p.m. to 8:00 p.m. shift, the only time there was anything available that day.

She came in at 3:45 p.m. and was allowed to start her four-hour treatment then instead of waiting until 4:00 p.m.

However, she disputed being escorted to a dialysis machine in the last row while Caucasian patients were seated at available machines in the first three rows. The p.m. nurse on duty, whom the patient would later sue for race discrimination, was adamant that that was where she was going to have to sit.

Court Sees No Race Discrimination

The US District Court for the Eastern District of Louisiana acknowledged the nurse treated this patient differently than the white patients, but concluded nevertheless there was no race discrimination.

The court accepted the nurse's testimony that the white patients in the first three rows were themselves regulars on the p.m. shift and regularly were placed on their own particular machines. The unused machines in the first three rows at the time were on "heat-clean" mode and unavailable for use by anyone.

The court also noted that the Saturday p.m. nurse was charge nurse on the busy unit besides having to care for patients of her own.

That could account for her undiplomatic attitude toward one particular patient without racial bias necessarily having been a factor. **Jackson v. Waguespack, 2002 WL 31427316 (E.D. La., October 25, 2002).**