

Organ Transplantation: Patient Rejected For Psychiatric Illnesses, Hospital Did Not Commit Disability Discrimination.

Two registered nurses who served on the hospital's organ-transplant selection committee were among the defendants recently named in a disability-discrimination lawsuit filed on behalf of an unsuccessful applicant for a kidney transplant.

ADA Does Apply To Decisions Allocating Transplant Organs

The US District Court for the District of Nebraska did validate the underlying legal premise of the patient's lawsuit.

The Americans With Disability Act says that hospitals, as places of public accommodation, cannot discriminate on the basis of a patient's disability in rendering patient care.

However, in this case the committee's decision was based on legitimate medical reasons and thus was not discriminatory, the court ruled.

Legitimate Medical Reasons

The patient had been institutionalized in a psychiatric developmental center for sixteen

years before he applied for a transplant. His assessment for transplant suitability included a comprehensive psychiatric evaluation which produced a current diagnosis of delusional disorder, persecutory type, on top of a history of paranoid schizophrenia.

The committee was given a medical report saying that transplantation was contraindicated as not in the best interests of this patient or the transplant system. The transplant procedure is complex and intrusive and requires long-standing adherence to immunosuppressive agents and cooperation with a whole gamut of professionals who treat people recovering from transplants.

The court endorsed the committee's decision that it would be highly dubious to expect essential close cooperation and strict medication compliance from a patient with this patient's chronic psychiatric illnesses. **McElroy v. Nebraska Medical Center**, 2007 WL 4180695 (D. Neb., November 21, 2007).

Identity Theft: Stolen Personal Information Must Have Been Taken From Office Medical Chart.

The Court of Appeals of Ohio ruled that a patient did have grounds to sue her obstetrician because personal information was apparently stolen from her office chart by another patient in the same office.

The patient learned that an imposter had used her name and employment information to open a residential service account with the phone company.

Upon further investigation, when the patient was able to identify the imposter, she believed she had seen her in her obstetrician's office.

It was possible, even plausible that the imposter could have been put in the same examination room after the patient while the patient's chart was still carelessly lying around for anyone entering the room to see.

The pivotal evidence in this case is that the imposter, also a patient in the physician's office, gave out the same work phone number incorrectly noted in the patient's chart while using the patient's stolen identity.

That could have happened only if the imposter actually looked in the patient's chart.

The physician was not able to prove that her office staff was not negligent.

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The patient, however, had no solid evidence that proved when or how the imposter actually looked at her chart.

The obstetrician's lawyers pointed out that the patient never brought in an expert witness for her lawsuit to testify on professional standards for handling office charts in a busy outpatient practice to prevent identity theft by one patient from another.

The court was at a loss to render an opinion pointing to or setting professional standards in this area.

There was undeniable proof, nevertheless, that one piece of information that could only have come from the patient's office medical chart came into the possession of another patient. **Hurchanik v. Swayze**, 2007 WL 4099511 (Ohio App., November 19, 2007).