

Police Sought Access To Patient: US Appeals Court Rules Nurse's Actions Were Appropriate.

We first reported this story June 2007: *Police Wanted Access To Patient: Court Finds Nurse's Actions Were Appropriate*, Legal Eagle Eye Newsletter for the Nursing Profession (15)6, Jun. '07 p. 5.

The US Court of Appeals for the Seventh Circuit has affirmed the Federal District Court ruling that the nurse acted appropriately. That is, the nurse's civil-rights lawsuit is on solid ground against the deputy sheriff who arrested her at the hospital without legal justification.

Officers Tried to Serve a Protective Order In Hospital Med/Surg Unit

Around midnight two deputies came to the ICU to hand-deliver an emergency protective order to a sixty year-old male patient. They announced their purpose and asked to speak to the patient's nurse.

The nurse pointed out the patient's room. When the deputy inquired about the patient's condition the nurse said it would be best to call the doctor before the deputies went in to see the patient. The nurse was concerned the patient could stroke or experience other serious complications if confronted by a very stressful stimulus.

The deputy asked the nurse to call her supervisor. The nurse phoned the on-call physician who told her to tell the deputy the patient was not going anywhere and to

Obstruction of a peace officer is a criminal offense. By definition it requires physical resistance intended to obstruct the officer in the execution of his or her lawful duties.

Obstruction of service of legal process is also a crime. "Service" means hand delivery of official legal papers. "Legal process" means court summonses, subpoenas, protective orders, etc.

This likewise requires overt physical action meant to impede, hinder, interrupt, prevent or delay the process server in the performance of lawful duty.

The nurse refused to give the officer permission to enter the patient's room, but permission was not hers to give or to withhold. She did not obstruct the officer.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
April 1, 2008

come back in the morning when the physician would be at the hospital making her rounds. The physician also suggested the nurse call the nursing supervisor at home.

The deputy started getting agitated. He took away the phone while the nurse was speaking with her nursing supervisor and became even more agitated when the nursing supervisor likewise told him to come back at 8:00 a.m.

The nurse walked away to prepare an IV at the nurses station for another patient. The deputy went in and arrested her for obstructing service of process and obstructing a peace officer.

She was taken out of the hospital in handcuffs.

Nurse Sued Deputy Her Constitutional Rights Were Violated

In the US an arrest requires a warrant or probable cause. There was no way, the courts ruled, the deputy could have thought the nurse's actions amounted to either of the offenses for which he arrested her. Thus there was no probable cause and her arrest violated her Constitutional rights.

The nurse told the deputy where the patient was located and did nothing to hinder him from contacting the patient. When the deputy asked she told him it was not advisable for him to have any contact with the patient and she got two responsible caregivers to back her up, still leaving the deputy free to do what he felt he had to do. Shipman v. Hamilton, __ F. 3d __, 2008 WL 852144 (7th Cir., April 1, 2008).

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