

Death Threats Voiced By Psych Patient Revealed To Target: No Breach Of Medical Confidentiality.

The Court of Appeals of Indiana recently ruled in favor of a mental health treatment facility whose staff made the choice to inform the attorney representing the person standing accused of murdering a patient's daughter, that the patient had voiced an intention to kill that person.

Medical confidentiality is described in the law as the physician-patient privilege.

It applies to all healthcare professionals, not just physicians. Its purpose is to inspire full and complete disclosure by the patient of all the information necessary for successful treatment.

However, medical confidentiality loses its usefulness to society if it is intended to shield the intention to commit a crime or the fact that a crime has been committed.

COURT OF APPEALS OF INDIANA, 1996.

The court dismissed the patient's lawsuit. The patient alleged the facility had breached its obligation of medical confidentiality and thus was guilty of malpractice for which the patient could recover damages in a civil suit. According to the court, however, the preservation of medical confidentiality is a less important social goal than the prevention of violent criminal acts by patients who have revealed to caregivers the intention to commit such acts. **Rocca vs. Southern Hills Counselling Center, Inc.**, 671 N.E. 2d 913 (Ind. App., 1996).

Psychiatric Detention: Nurse Ruled Not Liable.

A nurse has the legal authority to hold a person for involuntary psychiatric detention. By the same token, a nurse can be sued for misuse of that authority.

The legal standard for initiating a seventy-two hour psychiatric hold is that a state of facts must be known to the person initiating the hold, indicating that the detainee is mentally disordered and due to the mental disorder is a danger to himself or herself or to others, or is gravely disabled.

The person initiating a psychiatric hold must be able to point to specific facts which, taken together, point to a rational inference that these grounds exist to hold the person.

Each situation is decided on the basis of the objective facts existing at the time the detention was initiated.

Even when there are grounds to hold a person for psychiatric reasons, the law still requires a full court hearing before powerful anti-psychotic medications can be given to the person against his or her will. However, Ativan, when ordered by a physician to relieve agitation, can be given by a nurse without first going to court for authorization.

CALIFORNIA COURT OF APPEAL, 1996.

A person in need of mental health treatment can be held involuntarily for a short period of time, in most states for seventy-two hours, without a court order, pending a court order for a longer-term commitment for evaluation or treatment, transfer to another facility, or release back into the community.

When acting properly within the law, healthcare professionals who physically detain persons against their wishes for short-term mental health treatment are legally immune from civil suits for damages over their actions.

The downside is that if a healthcare professional acts improperly outside the scope of his or her legal authority, he or she can be sued for false imprisonment, assault and battery and negligent or intentional infliction of emotional distress, as were alleged in a recent case before the California Court of Appeal.

The key to avoiding liability is that a healthcare professional detaining a person for mental health reasons must be able to articulate specific facts justifying the person's detention, specific facts which the professional witnessed directly or which were obtained from reliable eyewitnesses.

The facts must point to the conclusion that the person's present condition fits the legal test for involuntary psychiatric detention, that is, the person has a mental illness and due to the mental illness presents a danger of harm to himself or herself or others, or is gravely disabled and unable to care for himself or herself, the court said.

The converse is that facts which cannot be competently verified, or abstract diagnostic labeling without objective foundation, will not support a mental health detention, and may lead to civil liability.

According to the court, a nurse can administer a short-acting tranquilizer like Ativan to a highly agitated involuntary detainee against his will, with a physician's order, but cannot administer longer-acting anti-psychotics against the patient's will without specific court authorization. **Heater vs. Southwood Psychiatric Center**, 49 Cal. Rptr. 2d 880 (Cal. App., 1996).