

## Raced-Based Patient Requests: Court Sees Grounds For Suit.

A patient was admitted to the emergency room with shortness of breath caused by a collapsed lung.

When he was stabilized to the point he could speak the patient told the student nurse who was caring for him that he did not want any black people caring for him.

The student nurse left the room and told her preceptor, an RN who supervised the student nurses. The RN told the student nurse to notify the charge nurse and to write a note in the patient's chart.

The student nurse later testified she could not recall the name of the charge nurse to whom she allegedly spoke or what the charge nurse said. However, her chart note was preserved for all time stating that the patient had said he did not want any black people caring for him.

An African-American respiratory therapist came to treat the patient shortly after he was moved from the emergency department to a med/surg floor.

The patient's med/surg nurse came to the patient's room when the patient objected to the African-American respiratory therapist. The nurse asked the therapist if someone else could come and give the patient his breathing treatment. No one else was available at 12:49 a.m. so the respiratory therapist typed a progress note in the chart that care was refused because of her race and left the floor.

The same nurse called the same respiratory therapist back later that same night. When the patient objected again the nurse decided the breathing treatment would have to wait until after a.m. shift change.

The US District Court for the Eastern District of Michigan ruled the respiratory therapist had grounds to sue the hospital for race discrimination.

The lawsuit was based on the student nurse placing a progress note in the chart about a race-based preference which could have been taken as a directive other staff were to follow, the night nurse's exclusion of the therapist based on the patient's racial preference and the hospital's lack of policies, procedures and training for direct care personnel on the appropriate response to a patient voicing a racial preference for caregivers. **McCrary v. Oakwood**, 2016 WL 1046890 (E.D. Mich., March 16, 2016).

***The hospital should have realized it was likely to have, as it had in the past, patients who would request or object to care based on a hospital employee's race.***

***The hospital had no written policy in force instructing its employees to reject racial preferences expressed by its patients as to their caregivers.***

***Nor did the hospital conduct any training or otherwise advise its employees how to handle such race-based caregiver requests. The hospital's equal-employment policy is not sufficient for this purpose.***

***It is not a sufficient defense for the hospital to claim that it could not immediately address this particular situation when it arose because the staff member tasked with handling such requests works only the day shift.***

***The legal principle behind this case is not in conflict with a recent case which turned down an African-American nurse's right to sue when a patient refused to be cared for by African-American nurses.***

***Although deeply offended, that nurse was not directly affected because she was not assigned to that patient.***

UNITED STATES DISTRICT COURT  
MICHIGAN  
March 16, 2016

## Confidentiality: Court Throws Out Lawsuit Against Nurse.

A thirteen year-old girl was sexually assaulted by an older boy at a marijuana-smoking session in a hotel room.

The incident came to light the next day when she and her twelve year-old friend were caught shoplifting pregnancy tests at a local drug store.

Her parents took her to the hospital emergency room and then to the police station to report the details of the assault.

At school the next week her classmates began teasing her. Gossip spread all over the small town.

On behalf of the girl her parents sued the hospital and the emergency department nurse who did the rape kit, alleging that the nurse must have told her daughter and the nurse's daughter spread the news.

***The US Health Insurance Portability and Accountability Act (HIPAA) does not provide legal grounds for a private party to sue another private party or corporation for disclosure of confidential medical information.***

SUPREME COURT OF MISSISSIPPI  
March 10, 2016

The Supreme Court of Mississippi dismissed the lawsuit.

The US Health Insurance Portability and Accountability Act (HIPAA) protects patients' confidential medical information. However, enforcement is through administrative sanctions against providers guilty of violations. HIPAA does not give private parties the right to sue.

The victim theoretically could sue the hospital or the nurse for common-law negligence for divulging her confidential information, but only if the victim could prove the nurse was the source by positively ruling out all other individuals who could have started the gossip, a virtually impossible task. **Doe v. Rankin**, \_\_ So. 3d \_\_, 2016 WL 916628 (Miss., March 10, 2016).