

No Assistance To Ambulate: Court Cannot Find The Nurse Was Negligent.

The patient had a history of chest pains and shortness of breath.

Before she could be operated on for spinal stenosis she had to have a cardiac assessment on the treadmill.

Before her cardiac assessment a nurse had to assess her fitness for the cardiac assessment itself.

There was no express hospital policy for this situation and no specific physician's orders.

That made it a question of nursing judgment.

Proving an error in nursing judgment requires expert testimony on the nursing standard of care for the specific situation, breach of the standard by the nurse in question and proof that the nurse's negligence was what harmed the patient.

SUPREME COURT OF
RHODE ISLAND, 2002.

The nurse competently assessed her and found she was fit for the cardiac stress test, which was not for three hours. The nurse suggested the patient to the hospital cafeteria for lunch. The patient did not need or request assistance. She walked to the cafeteria and ate without incident.

On the way back she fell in the corridor for no apparent reason. She sued the hospital claiming the nurse was negligent.

The Supreme Court of Rhode Island noted the patient had no expert testimony that the nurse's judgment departed from professional nursing standards. The court dismissed the case. **MacTavish v. Rhode Island Hospital**, 795 A. 2d 1119 (R.I., 2002).

Patient Refuses To Leave The Hospital: Court Orders Him Moved To An Adult Home.

Hospitals have a legal duty not to permit their facilities to be diverted to purposes for which hospitals are not intended.

The very purpose of an acute care hospital is in jeopardy when a patient who no longer requires acute-care services refuses to leave, thereby preventing truly needy patients from using the space to receive inpatient care.

It would be pointless for the hospital to sue this patient for the money his intransigence is costing.

To limit the hospital to a pointless collection lawsuit for the hospital's substantial losses would be inequitable.

To evict a patient from the hospital who does require a certain level of professional care is a drastic step, but the patient's unreasonable conduct is equally drastic.

Assuming the hospital has complied with all the statutory and administrative guidelines for properly discharging a patient, a court should grant a mandatory injunction requiring the patient to leave or allowing the patient to be removed.

NEW YORK SUPREME COURT,
KINGS COUNTY, 2002.

The patient had quadraparesis and non-insulin-dependent diabetes.

He was admitted to an acute care hospital after his home care was abandoned by the local visiting nurses association.

The visiting nurses refused to provide care to him because of violent, threatening and harassing behavior toward all of the home health attendants who had treated or attempted to treat him.

Ten days into his hospital stay his medical evaluation was that he was stable and no longer needed acute hospital care. He was ordered discharged.

He appealed his discharge notice to the local board that considers such issues on behalf of Medicaid patients.

The board saw to an independent medical evaluation, which supported the discharge order.

The hospital found him a placement in an adult home. The patient refused to go to the adult home.

The hospital filed suit against the patient seeking a mandatory injunction requiring him to leave the hospital voluntarily, or in the alternative granting the hospital legal authorization to have him transported to the adult home.

The New York Supreme Court, Kings County, issued the mandatory injunction.

Mandatory Injunction Ruled Appropriate

The court pointed out that a mandatory injunction is rarely issued. It is a drastic legal remedy that is used only when compelling circumstances require it.

However, when someone is continuing to engage in unlawful conduct that is likely to continue indefinitely, the one who is adversely affected by the conduct has the right to a mandatory injunction.

The court pointed out only in New Jersey and North Carolina are there legal case precedents where a hospital has been forced to go to court in this particular situation.

Those precedents support what the New York court did in this case. **Wyckoff Heights Medical Center v. Rodriguez**, 741 N.Y.S.2d 400 (N.Y. Super., 2002).