

# LEGAL EAGLE EYE NEWSLETTER

June 2002

*For the Nursing Profession*

Volume 10 Number 6

## Sexual Assault: Court Blames The Nurses For Failing To Step In With The Patient.

After laser surgery for genital warts a patient was taken to the recovery room. The small recovery room for ambulatory surgery at the hospital had four beds quite close together separated by cloth curtains that could be drawn around each bed for privacy.

A male surgical resident physician, wearing the hospital's surgical scrubs and valid identification as a hospital employee, went into the curtained area where the patient was recovering. He sexually assaulted her with his fingers.

Several nurses and the unit nursing supervisor were very close by. The nurse specifically assigned to this patient was in the next curtained area assisting that patient's nurse and the nursing supervisor. They all were aware the resident had gone into the adjacent curtained area but paid no attention to what exactly he was doing.

The resident was not listed on the patient's chart as having any involvement with her case. Only as the resident was leaving did the nursing supervisor speak to him. Soon thereafter the patient complained to the nurses that he had sexually assaulted her.

### **Nurses' Inaction Leads to Liability**

The Court of Appeals of New York found grounds for a lawsuit against the hospital for the nurses' inaction.



***Nurses are not gatekeepers who stop and question physicians, ascertain the reasons for their presence or stand guard and monitor physicians' interactions with patients.***

***However, when a nurse happens to observe something which common sense says is potentially harmful to a patient it triggers a legal duty to step in and protect the patient.***

COURT OF APPEALS OF  
NEW YORK, 2002.

### **Female Staff To Be Present During Examinations**

A male physician can be disciplined for examining a female patient without female staff present and can be sued in civil court and prosecuted in criminal court for a sexual assault.

A female nurse also has the responsibility, if she knows a male physician is not following protocol in this regard, to go into the room to see what is going on, the court ruled in this case. If the nurse fails to act and the patient suffers harm, the nurse and her employer can be legally liable.

### **Nurse's Responsibility to Intervene**

When nurses observe something unusual going on or sense something is not right, they have to step in, find out what is going on and take measures to protect their patients, the court said.

For example, a male physician has no business being alone with a female patient, so what is he doing? What was this particular resident doing in the recovery room? Why was he with this patient so long?

A nurse could have prevented what happened, the court believed, if the nurses had paid more attention, noticed something was wrong and one of them had stepped in by the patient's bed.

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