

HIV Contracted By Nursing Student Restraining Patient In ER: Hospital And School Ruled Liable For Damages.

A student at a commercial vocational school specializing in the training and placement of medical support personnel was placed in the emergency room of an acute care medical center as one of his clinical assignments. According to the Court of Appeal of Louisiana, it was his clinical instructor from the school who decided to place him in the ER.

Only a couple of hours into his first day in the ER, someone asked the student to help restrain a violent patient. The court noted it could not tell, but it did not matter; who had asked the student to do this. The court held both the school and the hospital liable for what was to happen.

The student had not been informed the patient was HIV positive and had AIDS. It also appeared the student had not been adequately trained in universal precautions. The patient's blood and saliva, from the patient's lacerated lip, were, as the court stated, "projected" into the student's

eyes and mouth while the patient was being restrained. Shortly after this incident, the student tested positive for HIV. He filed suit against the hospital and his school for damages for negligence.

The court upheld the student's right to sue for damages. The court assumed the student's training in universal bloodborne pathogen precautions and restraint techniques was inadequate, and believed it had not been a sensible decision to have placed the student in the ER or to have allowed him to become involved in restraining this particular patient.

The only defense raised by the hospital and nursing school was the contention the student was an employee, who, as an employee, could only file for worker's compensation for medical expenses and time loss as his exclusive legal remedy, rather than being able to sue. The court ruled he was not an employee, and could sue for damages. **Dustin vs. DHCI Home Health Services, Inc., 673 So. 2d 356 (La. App., 1996).**

Patient's HIV Status Disclosed To Outside Parties Without Consent: Patient May Sue, Court Rules.

A physician's surgical assistant became concerned when she learned of a patient's HIV positive status through review of the patient's chart and through direct discussions with the patient. The patient had friends in common with the surgical assistant's son; the son was a known IV drug abuser. The surgical assistant obtained permission from her supervisors to reveal the patient's HIV status, provided she not identify the patient by name. No authorization to reveal her HIV status was obtained from the patient; it was never discussed with her.

The surgical assistant revealed the patient's HIV status to three or four individuals, and apparently even identified the patient by name. The Supreme Court of Connecticut ruled that the patient had the right to sue the surgical assistant and her employer for damages for a direct violation of the state law which explicitly prohibits the disclosure of a patient's HIV status to outside parties without expressed informed consent from the patient.

Combating the AIDS epidemic by preventing the spread of HIV is an extremely important social policy objective, according to the court. This objective can be furthered by notifying those persons intimately associated with known HIV-positive persons of the acute need to take certain precautions.

However, maintaining the confidentiality of HIV test results and other information indicating an individual's HIV status is of paramount importance, the court ruled, because the legal assurance of such confidentiality is an essential factor in getting persons to come forward for HIV testing in the first place. Disclosure of HIV-status-related information requires the patient's informed consent. **"Jane Doe" vs. Marselle, 675 A. 2d 835 (Conn., 1996).**

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