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Drunk patient lawsuit highlights hospital risk management issues

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A recent court ruling should motivate hospital risk managers to conduct a careful periodic review of their facility's procedures and legal obligations when it comes to treating intoxicated patients.

In a June ruling, the New York State Court of Appeals — the state's highest court — upheld a lower court's dismissal of a 2007 lawsuit that had accused Poughkeepsie-based St. Francis Hospital and Health Centers of medical malpractice and negligence for failing to prevent a patient from leaving the hospital in December 2006 while he was still intoxicated.



The patient, Kevin Kowalski, later wandered onto a nearby highway and was struck by a car, leaving him paralyzed below the neck. Throughout the case, Mr. Kowalski contended that even though he decided on his own to leave the hospital, the hospital should have prevented him from doing so based on his level of inebriation.

The appeals court ultimately rejected the lawsuit under the state's Mental Hygiene Law that, as do similar statutes in most states, neither permits nor requires health care providers to forcibly detain patients admitted voluntarily for treatment unless they pose a threat to themselves or others, or are unable to make informed decisions about their treatment. Still, legal experts say *Kowalski* highlights many of the legal risks inherent to treating and discharging intoxicated patients.

“The real value of this case for a hospital is that it gives them some guidance and some comfort in knowing what their obligations and duties are when presented with an intoxicated patient who says he wants to leave,” said Jeffrey Araten, a New York-based partner at Wilson Elser Moskowitz Edelman & Dicker L.L.P., which represented St. Francis Hospital.

“Barring specific circumstances, hospitals can't lock someone up or restrain them just on the basis of that person being intoxicated,” Mr. Araten said. “Intoxication is not in and of itself enough to warrant involuntarily confining a patient.”

Perhaps the most salient lesson for risk managers and medical staff from *Kowalski* is the imperative nature of detailed, real-time record-keeping of all interactions with an intoxicated patient from the time they are admitted to the time they are discharged.

“First and foremost, documentation is the most important thing any doctor or hospital staff can do to protect themselves,” said Marshal Endick, Wilson Elser's lead attorney in *Kowalski*.

“Document what was done in terms of treatment, what was told to the patient, how the patient was evaluated and any advice not to leave that was given to the patient.”

“In this case, we relied very heavily on the documented physical observations of the patient, that he was able to walk and answer questions,” said Judy Selmecki, a New York-based associate at Wilson Elser. “Those kinds of notes were immensely helpful to us.”

Health care legal experts also said *Kowalski* underscores the value of reviewing records of any prior admissions. Although staff members at St. Francis admitted that they did not consult records of Mr. Kowalski's prior visit to the hospital — during which he had presented as a suicide risk and was placed under continuous watch — the appeals court noted that nothing in that record would presumably have altered the treatment he received during the subsequent visit.

“If this had been an emergency room situation, the value of that omission of prior information becomes much more significant to a plaintiff,” said Pamela Popp, executive vice president and chief risk officer at Western Litigation Inc. in Denver. “In a perfect world, we would check for prior records every time someone is admitted, whether it's voluntary or a medical emergency, but there's a lot of challenge in the volume and time it takes to determine what information is readily available.”

Finally, experts said *Kowalski* should be an impetus for hospital risk managers and medical staff to ensure that their organization has a formalized set of policies outlining procedures to manage the admission, treatment and discharge of intoxicated or otherwise cognitively impaired patients in accordance with state and federal laws, as well as additional requirements set forth by their accrediting entity.

“There are certain agencies that mandate that you do review those policies every so often,” said Cynthia Green, a Sarasota, Fla.-based clinical risk consultant at Hub International Inc. “For instance, if you're accredited by the Joint Commission, you're required to review your policies every two or three years. Other hospitals have decided on their own that it's important to review their policies on an annual basis. That's probably the most appropriate approach if it's a patient safety or clinical policy.”
