

Could Your Conduct be Seen as Outrageous and Extreme?

Avoiding Liability Bulletin - June 15, 2013

The tort of intentional infliction of emotional distress is not a common tort . When it “stands alone” as the only allegation in a lawsuit, it is not favored by courts. 1 Moreover, the conduct alleged to have occurred by the defendant must be outrageous, something that would offend a person of ordinary sensibilities. An injured plaintiff must prove that this tort occurred by clear and convincing evidence. The patient or family member’s interest that is violated when intentional infliction of emotional distress is experienced is peace of mind. 2

Even with these specific elements, as a nurse you are not immune from allegations that your conduct in a particular situation with a patient or a family member may have exceeded the bounds of common decency.

Interestingly, this tort does not require physical symptoms to occur as a result of your outrageous and extreme behavior, but physical consequences, such as an ulcer or an unrelenting headache, can also be experienced by another that are directly related to your conduct.

Another key element of this tort is that of a special relationship between the person who causes the emotional distress and the one who experiences it. Clearly, the presence of a nurse-patient relationship satisfies this component.

There are many situations in the delivery of health care that could result in this intentional tort. As an example, let’s say that you are the nurse assigned to a patient who shares with you a particularly disturbing experience that he or she experienced. Rather than use this information to help the patient work through the feelings associated with this past experience, you use it to use it in a way that exacerbates the emotional distress of the patient. In other words, the patient’s distress is increased due to your conduct.

Or, what if you are a nurse in a long-term care facility and did not get along with one of the residents. The resident complained about you regularly to the DON and rarely cooperated with you surrounding her required care. To “get back” at the resident, you tell her that you just received a call from the police that her daughter has died as a result of a car accident. 3

In a reported case, a couple sued a male nurse who worked in labor and delivery. The wife needed a C-Section and the couple told the hospital and the doctor that their religious beliefs did not allow a male to see the wife naked nor could she be touched by a male. The doctor informed the staff and assured the couple this would not happen, but a male nurse did observe the pregnant patient naked and he did touch her during the provision of care. The couple sued the male nurse and the hospital for intentional infliction of emotional distress and a violation of the state’s Right of Conscience Act. Although dismissed at the trial level, the state appellate court reversed the

dismissal and remanded the case back to the trial court for a hearing. 4

In yet another reported case, a nurse handed a mother her deceased fetus' body so that photographs could be taken. 5

Although these examples are "extreme and outrageous", lesser examples may exist. In order to avoid being involved in a lawsuit that alleges such conduct on your part, some points to consider include:

- Never speak "off the cuff" to a patient, family or significant others of the patient. Always think before speaking or acting;
- Respect a patient's religious beliefs and follow their requirements;
- If an injury or death to a patient occurs, keep in mind that the family or significant others are vulnerable and should be treated with increased empathy and support; and
- If you do not get along with a patient or his or her family members, seek help from your nurse manager, including asking that you not be assigned to that patient.

FOOTNOTES

1. Dan Dobbs (2001). The Law Of Torts . Volume II. St. Paul, MN: West Group, 824ith regular updates).
2. Id.
3. Intentional Infliction of Emotional Distress. Merrick's Law Group, P.A. (Accessed June 15, 2013).
4. Cohen v. Smith , 648 N.E. 2d 329 (1995).
5. Brown v. Philadelphia College , 674 A. 2d 1130 (1996).

GENERAL REFERENCE

Nancy J. Brent (2001), "Intentional Torts", in Nurses And The Law: A Guide To Principles And Applications . 2nd Edition. Philadelphia: W.B. Saunders Company, 112-113.

THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK SUCH ADVICE FROM A COMPETENT PROFESSIONAL.

Author:

Nancy Brent