

## Which is it: Assault or Battery?

### Avoiding Liability Bulletin - January 15, 2015

The words “assault” and “battery” are often used and often interchanged. However, in the eyes of the law, the two are very different. And, these two torts can, and do, occur in health care delivery.

In one of the early Bulletins, I discussed the torts of negligence and professional negligence.

These torts, if you recall, do not rest on the *intention* of the nurse to harm a patient but rather occurs due to a breach of the standard of care in a particular situation. In contrast, the intentional torts of assault and battery require intent; that is, they require purposeful conduct that interferes with another’s—e.g., the patient’s—interest and with a specific outcome in mind. (1)

Assault involves an individual’s interest in not being placed in fear of harmful or offensive contact. (2) There is no requirement of actual contact with the person. Rather, the harm or offense felt by the individual is fear, anxiety or fright, as examples, in addition to any physical injury that might occur. (3)

For an assault to be legally sufficient, the person who is fearful or anxious about a contact must be aware of the possibility of the harmful or offensive contact. As an example, a patient who is unconscious could not successfully allege an assault had taken place by a nurse because the patient was unaware of the potential harmful contact.

Words alone are not legally sufficient to satisfy the requirements of an assault. If words are accompanied by a show of force that would give a person reason to fear or expect immediate bodily harm, then an assault would take place. (4) For example, if a nurse in the ED department forcefully yells at an unruly family member, walks towards the family member quickly grasping a key, and shouts that if he does not calm down, he will be locked in a room by himself, an assault has arguably occurred.

In a health care setting, most assaults alleged are not criminal in nature. However, such assaults do take place in society at large, such as assault with a deadly weapon, aggravated assault, and assault with intent to commit rape.

An assault can occur without any other intentional tort. Nevertheless, it often is alleged with the tort of battery.

A battery is an intentional and wrongful physical contact with another person without that person’s consent that includes some injury or offensive touching. (5) The interest that is protected in a battery is the freedom from such a touching or physical touching. A battery can occur when the individual is actually touched or when any extension of his body is touched without permission or there is a wrongful contact (e.g., clothing).

In contrast to an assault, the individual does not need to be aware of the touching or contact. So, as an example, if a patient is operated on without his or her consent, a battery has occurred. Even though there is no injury to the patient as a result of the surgery (e.g., the ovaries of the patient were removed during a procedure for a D & C only), a battery has still taken place due to the invasion of the patient's right to provide consent and in the interest of the patient's right to be free from anxiety and humiliation that the battery took place. If there is injury to the patient, however, the physician would also be liable to the patient for that injury.

A battery can also be a violation of the criminal law, including aggravated battery.

Assault and battery allegations are fairly easy to avoid if you keep certain things in mind when working with patients and their families:

- Obtain consent from a patient before initiating any treatment. This may be evidenced by a consent form, when needed, or simply by asking the patient if you can take his blood pressure, change his bandage, or administer his medications;
- If a patient refuses treatment and there is no threat to his life or well-being, do not force treatment, notify those who need to be notified, and document the refusal and the notifications;
- Never threaten a patient or a family member in any way or act in a menacing manner toward the patient or family member;
- Never hold a patient down to force treatment or administer a medication;
- Never threaten to hit a patient or family member or actually do so; and
- Never make sexual advances toward a patient or a family member.

There are defenses available to you if a patient alleges you have assaulted him or her or committed a battery on the patient. These will be discussed in the next Bulletin.

## FOOTNOTES

1. Henry Campbell Black (1991). Blacks' Law Dictionary. 6th Edition. St. Paul, MN:  
West Publishing Company, 1036.

1. Id., at 75.
2. Id.
3. Id.
4. Id., at 104-105.

## GENERAL REFERENCE

Brent, Nancy J. (2001), "Other Torts And Civil Rights", *in* Nurses And The Law: A Guide To Principles And Applications. Nancy J. Brent (with three contributors) 2nd Edition. Philadelphia: W.B. Saunders Company, 114-115, 127-128.

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