

Mental Health Staff Can't Sue if Injured by Patient

BY JANE SALODOF MACNEIL
Senior Editor

SANTA FE, N.M. — Patients who attack mental health professionals in hospital settings are rarely prosecuted and usually cannot be sued for civil damages, Ralph J. Slovenko, Ph.D., advised at the annual meeting of the American College of Forensic Psychiatry.

"More often than not there is almost a wooden response from prosecutors in cas-

es where a patient has been involuntarily committed or is in a prison facility," said Dr. Slovenko, a professor of law and psychiatry at Wayne State University in Detroit.

No national reporting system keeps track of violent attacks in psychiatric hospitals or nonpsychiatric hospitals, Dr. Slovenko said, but a several indicators suggest violence against clinical and nonclinical staff is extensive.

He quoted U.S. Department of Justice

National Crime Victimization data as ranking mental health professionals seventh in a list of occupations most at risk of violent crimes in the workplace. Mental health custodial workers also placed in the top 10.

"In U.S. public-sector hospitals, the risk of injury to staff is higher than the risk of injury from all causes combined in construction, agriculture, mining, manufacturing, and transportation," he said.

About half of the forensic psychiatrists

at the meeting raised their hands when he asked whether they had been attacked in hospital settings. Roughly a quarter of the audience indicated that patients had attacked them outside of hospitals.

Authorities usually take the position that it would be inconsistent to prosecute a person who has already been hospitalized for reason of mental illness, Dr. Slovenko said. He cited a Colorado ruling that a person found insane cannot be deemed sane if that person were not released from the hospital before the attack.

Even in cases in which a nurse is battered against a wall and severely injured, hospitals are reluctant to file a complaint, he added, "Particularly private hospitals; they feel their reputation will be besmirched."

In one case in which authorities did try to use a disorderly conduct statute against a patient, Dr. Slovenko said a New Jersey court ruled that it did not apply. The court held that to convict a mentally ill person for displaying symptoms of mental illness in the hospital where he was being treated for that illness could not be justified constitutionally or morally.

Pennsylvania authorities prosecuted a patient for "tearing up his room and causing a disturbance" in another case cited by Dr. Slovenko. The man then sued the hospital "for failure to prevent him from getting himself in such trouble." The courts found for the hospital on "the well-known principle that one cannot benefit from his own wrongful act, and therefore he could not have action for damages."

A hospital can be held responsible for the premature release of a violent patient, Dr. Slovenko said. It also is responsible for the safety of staff, patients, and visitors on its premises. A New York court did not hold a hospital liable when a discharged patient returned and killed a psychologist, however, because the hospital had a large security force that the patient managed to evade.

"When we have attacks in hospitals, overcrowding or understaffing is no defense," Dr. Slovenko said, noting that the presence of security guards has been shown to reduce the frequency of attacks.

Workers' compensation often is the only claim open to the mental health worker injured in an attack, Dr. Slovenko concluded. The situation is analogous to "the Fireman's Rule" in tort law, he said. A firefighter is expected to face danger as part of his job. For this, he is entitled to pay and workers' compensation. He cannot sue the owner of a burning building for injuries sustained in firefighting.

"The same idea applies when a patient injures a member of the staff or others," Dr. Slovenko advised. "You are limited to [workers'] compensation." ■

Take our temperature.

Which ads are hot?

Check our pulse.

Which ads make your heart beat faster?

Make your diagnosis.

Give medical journal ads from 2006 a thorough online examination, and help enhance the quality of healthcare advertising.

Point, click & vote at www.docvote.com

The Association of Medical Publications 