



# To avoid suit over patient violence, assess and improve security – and document it

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Legal action from a hospital resident attacked and injured by a patient is a reminder that health care employers have a legal duty to protect their workers. By documenting good-faith efforts to do so, clinics and other facilities can protect themselves, too.

After a resident working at Pennsylvania Hospital in Philadelphia was attacked in February, the resident and her husband charged the hospital, its Trustees, and Allied Universal Security Service, a security firm retained by the hospital, with "gross and corporate negligence" as well as "negligent hiring, training and supervision," among other charges. The resident has also charged the patient with assault and battery.

### Failure to protect

The civil complaint filed by "Dr. A and Dr. B," in this case the victim and her husband, in Philadelphia Common Pleas Court maintains that Pennsylvania Hospital and its co-defendants had a duty "to provide Dr. A [with] a safe environment in which she could practice medicine per her residency guidelines," including "sufficiently trained and available security personnel at Pennsylvania Hospital who could timely and effectively respond to, prevent or mitigate such assaults, a duty which the corporate defendants failed to fulfill."

The complaint further alleges that there have been attacks in the past at the hospital that "go largely unreported due to a culture of concealment perpetuated by personal fear, fear of repercussions, deficient reporting protocols, or even sheer embarrassment."

The "negligent hiring, training and supervision" charge has many particulars, including "failure to provide adequate safety precautions and protection to medical residents," "failure to adopt adequate procedures and protocols to prevent or minimize the risk of attacks by patients upon medical personnel," and "failure to adopt appropriate policies and procedures to protect the safety and well-being of medical personnel in the position of Dr. A from attacks from patients like" the alleged assailant.

### Are you ready?

Health care workers toil in one of the most dangerous professions in America in terms of workplace violence (*PBN 5/27/13*). But that doesn't exempt health care employers, including practices, from their requirement under the Occupational Health and Safety Act to maintain a safe workplace for their employees, and the Occupational Health and Safety Administration (OSHA) can come calling to inspect yours at any time to see if it is (*PBN 2/12/18*).

Anna L. Schroeder, an associate with Eastman & Smith Ltd. in Toledo, Ohio, cites Section 5(a) of the Act, which "imposes upon all employers the duty to provide a workplace 'free from recognized hazards that are causing or are likely to cause death or serious physical harm to . . . employees.'"

OSHA has guidance on health care worker health and safety and is constantly updating it, particularly in terms of the COVID-19 epidemic (*PBN 6/21/21*); its Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers is one of the relevant documents in this case (see *resource, below*). The guidelines call for a "written program for workplace violence prevention," a "worksite analysis," "records review É to identify patterns of assaults or near misses," incident investigation protocols and other measures.

Marief Smith, a labor and employment attorney at Hall Booth Smith P.C. in Columbus, Ga., notes that anyone can ask for OSHA to inspect their facility. In fact, in her practice "we had a situation where there had been some management issues, an instance where one could call for an inspection."

It might not be out of the question to ask for an OSHA inspection as a form of risk assessment, to see if your place is up to snuff.

Smith also reminds you that some states have their own standards for protecting health care workers from violence. For example, in Connecticut, Public Act No. 11-175 requires that "each health care employer shall establish and convene an ongoing workplace safety committee" and has specific record-keeping and law enforcement reporting requirements for all violent incidents.

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"If you're in one of those states, certainly that would be step one," Smith says. "Would the employer be able to show they implemented and followed these prevention guidelines?"

Whatever the standards by which you assess and address your security, make sure you have documentary evidence of all the steps you took in order to protect your practice from legal trouble.

**Respond to past incidents**

A risk assessment evidence trail is especially important if you've had a previous incident, as Dr. A's and Dr. B's complaint alleges of Pennsylvania Hospital.

"A key element the plaintiff must prove when suing an organization for injury is that the incident which caused the injury was foreseeable or could have been predicted to occur," says Drew Neckar, president and principal consultant with Security Advisors Consulting Group in Strum, Wisc. "While it is difficult to argue that workplace violence is not foreseeable for any health care organization, having experienced similar past incidents increases the difficulty of making this argument and therefore increases the risk of successful litigation."

Smith agrees. Previous safety incidents "are things a jury, or a judge if it's a bench trial, will consider — whether the employer was on notice," she says. "That's one of the biggest questions in these types of liability cases. Maybe it's a patient with behavioral issues and that possibly wasn't flagged in the charts, or it was but there was not somebody in place who knows how to deescalate situations that might arise."

Also, the presence of patients with a recorded tendency toward violent behavior would ramp up your need for security measures, says Christopher J. Kutner, a partner in the health services practice group at Rivkin Radler LLP in Uniondale, N.Y. In the Pennsylvania Hospital case, the complaint scores the hospital for "failure to properly triage [the alleged assailant] by investigating his background sufficiently to understand if there was a history of violence, agitation, psychosis and/or arrest warrant."

"Obviously, with a psych ward, we're dealing with patients that may be mentally unstable and precautions need to be implemented that you wouldn't have in a grocery store," Kutner says.

Dr. A's and Dr. B's complaint mentions the absence of equipment, such as surveillance cameras and "emergency panic button or other emergency notification device[s]," as well as lack of training and protocols relevant to violent incidents. An effort to address such shortfalls would help an employer facing similar charges, Kutner says.

"It's like colleges have the blue light system, so if a student on the grounds is in distress they can get to one of the phones," Kutner says. "You can't have eyes on every particular spot in a facility at one time, but you can have something like that, and the capability to respond quickly. Then you have some kind of defense."

**Don't forget post-incident**

Schroeder says you should be mindful of other legal obligations that can follow a violent incident beyond safety measure remediation, and which may vary based on the circumstances of the incident.

"Employers should be aware that victims of domestic or dating violence, stalking or sexual assault have the right to take leave under the Family Medical Leave Act (FMLA) and some state laws," Schroeder says. "In addition, depending on the particular circumstance, these victims may also be protected from adverse employment decisions or employer retaliation under Title VII of the Civil Rights Act of 1964, and they may be entitled to accommodations for a related disability under the Americans with Disabilities Act [ADA]."

**Resource**

- OSHA, "Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers": [www.osha.gov/sites/default/files/publications/osha3148.pdf](http://www.osha.gov/sites/default/files/publications/osha3148.pdf)



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