

OREGON LAW UPDATE

Care Providers Beware: Could You Be Liable for Employee Abuse of Patients?

case in point...

From the desk of Jeffrey D. Eberhard: Private businesses that provide health care to the elderly and incapacitated (i.e., private ambulance companies, retirement homes, hospice, etc.) can be liable for triple damages if their employees abuse their patients. However, a private health care provider can only be liable for such abuse if the private company “permits” its employees to abuse an elderly or incapacitated person. Read on to find out what it takes to “permit” abuse according to the Oregon Court of Appeals.

Claims Pointer: In 1995, the Oregon legislature created a cause of action, pursuant to ORS 124.100, in favor of “vulnerable persons,” such as the elderly, disabled, and incapacitated (unconscious), against a person or business that “permits” another person (i.e., an employee) to abuse the vulnerable person. In this case, the Court of Appeals ruled that a private ambulance company “permitted” its employee to sexually abuse incapacitated and elderly persons on the way to the hospital because it had failed to investigate prior complaints against the employee of sexual touching. The Court held that a private company can be liable for the abuse of elderly and unconscious if they are aware of a “substantial risk” of abuse. What this means is that a business that provides care for a vulnerable person (especially health care providers) has a duty to promptly investigate reports of abuse by its employees and to possibly remove suspected employees pending investigation. Keep in mind that failure to act promptly and appropriately could result in up to triple damages against the offending company.

Wyers v. American Medical Response Northwest, Inc., 268 Or App 232 (2014).

Six women (“Plaintiffs”) filed civil suits in 2009 against American Medical Response Northwest, Inc., (“AMRN”) an ambulance company, for allowing its employee, Lannie Haszard, to sexually abuse them while they were being transported to the hospital. None of the Plaintiffs had reported their abuse to AMRN prior to filing their complaints.

Plaintiffs were not the only people that Haszard abused. In 2006, a woman, Spain, was being transported by ambulance when she woke up to find Haszard rubbing her hand against his crotch. Spain screamed and when the driver of the ambulance asked what happened, Haszard responded that Spain was delirious. Spain reported by phone that Haszard had molested her. AMRN did not respond. A month later, another woman, Whalen, reported that Haszard was leering at her as she changed into a hospital gown after Haszard had transported her to the hospital. Whalen reported the incident to Haszard’s manager, telling the manager that Haszard was sexually aroused as he watched her. The manager told Whalen that she “must have been imagining things.” Nonetheless,

the manager had a discussion with Haszard “and the message was well received” that he should avoid leering.

In December 2006, an elderly woman’s son reported to AMRN’s human resources department that Haszard had inappropriately touched her. AMRN’s human resources manager sent an email wondering if they should contact police about the report. No one from AMRN reported the incident to the police. In March 2007, another woman, a knife-wound victim, reported to Haszard’s supervisor that she had been sexually abused. In response, Haszard’s manager and human resources division did not conduct any investigation other than to ask Haszard if the allegations were true. Haszard denied the allegations. AMRN did not report any of the allegations to the police.

Soon thereafter, a woman who had been transported to the hospital accused Haszard of similar conduct (inappropriate touching). Haszard’s manager, Verkest, told the woman that he would not call the police, but that she was free to do so. Despite his refusal to report the incident, Verkest called the police and reported that the woman wanted to make a complaint about



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Haszard; however, he neglected to inform the police of the prior allegations of abuse. The police independently discovered a previous complaint about Haszard, which led to an indictment for several counts of sexual abuse to four separate victims (none of which were one of the Plaintiffs). Haszard pleaded guilty to several counts of attempted sexual abuse and AMRN fired him.

Plaintiffs each brought a civil claim for “abuse of a vulnerable person” under ORS 124.100, which states that:

“[a]n action may be brought under this section against a person for permitting another person to engage in physical * * * abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the * * * abuse.”

AMRN filed a motion for summary judgment arguing that it did not “permit” Haszard to abuse Plaintiffs. AMRN asserted that according to several dictionaries, the definition of “permit” requires intentional or knowing conduct and that the phrase “knowingly acts or fails to act” implies that a plaintiff must show that the employer had actual knowledge in order to recover. Plaintiffs argued that the standard only requires a defendant to act or fail to act when “a reasonable person should, under the circumstances, have known that the abuse was likely to occur.” In other words, Plaintiffs asserted that notice of prior incidents is all that is needed. The trial court ruled in favor of AMRN, stating that the term “permit” requires intentional conduct, not mere negligence. Plaintiffs appealed.

The parties renewed their arguments regarding the definition of “permit.” The Court of Appeals rejected the dictionary definitions of “permit” without discussion. The Court then interpreted ORS 124.100 by reviewing its text, context, and legislative history. Ultimately, the Court accepted Plaintiffs’ proposed definition because the legislature did not require actual knowledge of abuse,

but rather “knowledge of facts establishing that it knew of the substantial risk” of abuse. AMRN also argued that the statute should be read narrowly in light of the list of exemptions in the statute, which suggested that the legislature did not intend to target corporate entities. The Court reasoned that the long list of exemptions actually benefited Plaintiffs’ argument because the absence of a specific exemption for ambulance businesses like AMRN suggested that the legislature did not intend to protect them.

In conclusion, the Court ruled that based on the record before the trial court, there was a genuine issue of material fact as to whether AMRN “permitted” Haszard to abuse Plaintiffs because a jury could conclude that AMRN was sufficiently on notice of past reports of abuse to prevent the abuse of the Plaintiffs. The Court reversed the trial court ruling and remanded for further proceedings.



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