

Hospital Not Held Liable for Nurse's Consensual Affair with Patient

Labor & Employment Advisor — Spring 2010

By Darren Feider

Generally, an employer is not responsible for criminal acts of its employees unless there is a special relationship between the employer and the third party who is injured by the employee. In *Kaltreider v. Lake Chelan Community Hospital*, 153 Wn. App. 762 (2009), the Washington Appellate Court held that the local community hospital had no duty to protect a former patient from having an affair with her nurse because the patient was not a vulnerable adult and the nurse's sexual misconduct was not foreseeable (and, in fact, was consensual). In *Kaltreider*, the patient had voluntarily sought in-patient treatment for alcohol dependency. While in the hospital, she struck-up a consensual affair with a male nurse and they ended up in having sexual relations at the hospital. After the nurse failed to show for a prearranged July 4th rendezvous with the patient, their relationship was terminated. The patient then sued the hospital, claiming that as an alcohol dependent patient she had been assaulted in the storage room and that the hospital was responsible for the male nurse's conduct.

The *Kaltreider* court found that an employer generally has no legal duty to prevent an employee from intentionally harming a third person. An exception exists when there is a special relationship between the employer and the third person. This special relationship is often found with children, developmentally disabled individuals or the aged who may be unable to protect themselves. In *Kaltreider*, the patient was able to protect herself as she had voluntarily admitted herself into the program and had voluntarily engaged in sexual acts with the male nurse. Under these circumstances, the court found there was no special relationship. Even if there had been such a relationship, the hospital would not have been liable: the male nurse's alleged sexual misconduct was not reasonably foreseeable as he had no prior sexual assaults at the hospital. His actions were outside of the scope of his duties, and therefore, the hospital had no duty to protect the patient.

The take away from *Kaltreider* is that employers can be responsible for the criminal acts including sexual assaults, of their employees. However, in order to be responsible for such conduct, the employer must either have a vulnerable plaintiff or be on notice through prior acts by the employee that an assault is possible. Employers should be especially vigilant whenever they become aware that their employees have assaulted others and/or their business serves vulnerable individuals, like residential care facilities. Absent those situations, it is far less likely that the employer would be found responsible for an employee's criminal acts toward third parties.