

PROFESSION

Drawing the line on racially motivated patient demands

Patients' right to choose who treats them is limited when requests are discriminatory. Health care facilities are advised to have policies for such cases.

By **KEVIN B. O'REILLY**, *amednews* staff. *Posted March 4, 2013.*

When patients make demands about who should care for them based on race or ethnicity, the correct response is to refuse those requests, say experts on health law and medical ethics. With such demands rarely voiced, physician practices ought to make sure all members of the team know how to address them properly.

The issue is in the news after a recent case in Flint, Mich. An African-American nurse, Tonya L. Battle, accused her employer, Hurley Medical Center, of acceding to the demand of a white man that no black health professionals attend to the needs of his infant being cared for in the neonatal intensive care unit.

In a lawsuit filed in Genesee County Circuit Court in January, Battle said a charge nurse acquiesced to the request and says a note in all caps was placed in the infant's chart reading, "No African-American nurse to take care of baby." The father pulled up his sleeve to show another nurse a swastika tattoo, the complaint said.

A nurse manager approved the decision, and no black nurse was assigned to care for the infant during the month the baby was cared for in the NICU, Battle's complaint said. Two other black nurses at Hurley later joined the lawsuit.

On Feb. 23, Battle and Hurley Medical Center reached a settlement and released a joint statement saying they resolved the matter "amicably." The situation in the NICU occurred because the hospital's policies on racial discrimination "were not well enough understood and followed, causing the perception that Hurley condoned this conduct." The hospital pledged to address the problem in "future training sessions to ensure that employees are prepared to appropriately handle situations like this."

Battle's attorney, Julie A. Gafkay, did not disclose what, if any, financial settlement was reached.

"The request should have been denied, and all hospital personnel should have realized immediately that it should have been," she said. "The hospital promises to use this as a learning experience, to make sure that it doesn't happen again and that the policy on granting such a request is known by all employees — from the floor up to the CEO."

How patient rights are limited

Legal and ethics experts agreed that granting discriminatory patient demands is unwise. Case law is firmly on the side of health care organizations refusing to accede to such requests, said David C. Harlow, principal of the Boston-based Harlow Group, a health care law and consulting firm.

For example, in April 2010, the 7th U.S. Circuit Court of Appeals ruled in favor of a black nurse who sued the nursing home that employed her for acceding to the request of a white patient who did not want to be cared for by any African-American nurses. The nursing home argued that it was legally obliged to do so to respect patient rights, and that it was protecting its black nurses by having them steer clear of the hostile, racist patient.

"The basic idea is that patients have some rights, but they don't have the right to be attended only by someone of a particular race," said Harlow, who blogs on medical-legal topics at healthblawg.typepad.com. He added that clinics and other health care organizations should disclose their nondiscriminatory practices prominently to patients and train employees on how to deal with such requests. The way to protect health professionals from racist patients is to allow them to make their own choices about those patient assignments, Harlow said.

Refusing racially motivated requests also is the ethically correct course to take, said Nancy Berlinger, PhD, a research scholar at the Hastings Center, a bioethics think tank based in Garrison, N.Y.

"Patients have a right to refuse medical treatment, but that doesn't create a right to demand a certain kind of treatment," she said. "You have to be mindful that patients and families are under very stressful conditions when someone is sick, but there are limits on what they can reasonably require health care providers to do."

Patients are, of course, free to seek out physicians who suit their preferences, but health care organizations need not acquiesce to requests rooted in hatred, Berlinger said. Reassigning health professionals on the basis of race not only sets back the goal of a society free from discrimination but also could endanger patients by upsetting the usual flow of work and provision of care, she added.

In 2009, the American Medical Association's House of Delegates adopted policy saying that health care organizations

ought to “adopt uniform guidelines for physicians to follow” when dealing with patients who verbally abuse health professionals based on race. Hospitals also should have a way to ensure continuity of care for patients who need to be transferred because they refuse to be treated by physicians or health professionals because of their race or ethnicity, the AMA says.

The American Hospital Assn. does not have policy addressing how hospitals should respond to racially motivated care demands, said a spokeswoman for the organization.

ADDITIONAL INFORMATION:**WEBLINK**

“Guidelines for Handling Derogatory Conduct in the Patient-Physician Relationship,” American Medical Association, adopted June 2009 (ssl3.ama-assn.org/apps/ecommm/PolicyFinderForm.pl?site=www.ama-assn.org&uri=/ama1/pub/upload/mm/PolicyFinder/policyfiles/DIR/D-373.998.HTM)

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