

What are the Defenses to Allegations of Assault and Battery?

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When a patient alleges that you committed an assault or a battery against him or her, you would probably be fearful that you have few ways in which to protect yourself from these unproven assertions. Luckily, there are several defenses to both intentional torts.

Privilege

The first defense against assault and battery is privilege. It applies when a patient, as an example, attacks you and you defend yourself. In order for the defense to apply, however, the attack must be truly so (called “justifiable motive”). If a suit were filed by a patient alleging either tort, the court will require evidence that the defense of privilege applies. In other words, you would have to establish truthfully and factually that you were justified in defending yourself. (1)

Mistake of Law or Fact

This defense might also be raised along with the defense of privilege. Instead of being acting in self-defense, with this defense, you thought you were going to be assaulted or battered, so you acted to protect yourself. Again, the application of this defense would depend upon truthful testimony from you as the nurse, truthful testimony from the patient, and truthful testimony from other witnesses that you believed an assault or battery was going to take place. (2)

Self-Defense

This defense is just what it says: you were acting to protect yourself from harm and in the situation, you had no recourse to other lawful means (e.g., calling security). Only reasonable force is accepted when using this defense when the attacker is using non-deadly force. (3)

If the patient or a family member is using deadly force (e.g., a gun or some other instrument that threatens your life or serious bodily harm), then you as the nurse would be permitted to use deadly force to protect yourself as well. (4) In other words, striking a patient or family member who is about to hit you would be OK, but grabbing his arm and breaking it would not be acceptable. By the way, there is no duty to retreat from the attacking patient or family member unless it can be done safely. (5)

Consent

Consent as a protection against allegations of assault and battery means that the patient has given his or her informed consent for the treatment in question. The consent can't be fraudulently obtained nor can the patient be coerced into giving consent. Also, as the nurse, you can't exceed the parameters of the consent the patient has given.

In the health care setting, consent can be express, as with a verbal "yes" or a written document. It can also be inferred. As an example, if you as the nurse are doing an assessment of the patient upon admission, and you tell the patient you are going to take his or her vital signs and the patient extends his arm for you to take his blood pressure, consent has been given. In contrast, if the patient says "Oh, no you aren't", then consent has been withheld.

Remember that in an emergency, consent for treatment is implied unless there are directions to the contrary (e.g., a living will or a DNR order).

Necessity

This defense is similar to the privilege defense. It involves the need to interfere with the rights of another—freedom from fear of harmful contact or harmful contact- in order to protect that person. For example, if a patient in the ER is threatening to injure another patient in the ER and goes toward the patient in a threatening manner, the nurse protects that patient by pushing him or her out of the offending patient's reach so he or she is not harmed. (6)

Statute of Limitations

The state statute of limitations, the time frame within which an individual must *file* a case in court, is another protection against allegations of assault and battery. Usually, such a suit must be filed within 2 years from the time the tort took place, but not all states use this time limitation.

Assault and battery assertions against you can be defended. It is always best not to say anything about the allegations except to your attorney so that he or she can evaluate the situation from which the allegations arose and advise you as to your defenses in the situation.

FOOTNOTES

1. Henry Campbell Black (1991). *Black's Law Dictionary*. 6th Edition. St. Paul, MN: West Publishing Company, 832.
2. Robert D. Miller (2006), "Civil Liability", *in* *Problems In Health Care Law*. 9th Edition. Sudbury, MA: Jones and Bartlett, Chapter 11 (587-680).
3. Henry Campbell Black, *supra* note 1, at 947.
4. *Id.*

5. Id.

6. Robert D. Miller, *supra* note 2.

GENERAL REFERENCE:

Dan Dobbs (2001). The Law Of Torts. Volume I. St. Paul, MN: West Group, Chapters 23-35, 47-66 (with regular updates).

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