
Does ED Visitor Arrive with a Gun and a Carry Permit?

Policy needed to determine next step

An attorney recently received a late-night call from a client hospital's on-call administrator. The situation: A family member visiting an ED patient was carrying a gun.

"The visitor did have a carry permit. But staff was understandably very nervous about allowing visitors to carry guns anywhere in the

hospital," says **William M. Mandell**, JD, an attorney at Pierce & Mandell in Boston.

Mandell recommended hospital security personnel ask the visitor to hand over the weapon to be locked up securely during the visit. "The visitor complied," he says.

Mary C. Malone, JD, an attor-

ney in the Richmond, VA, office of Hancock, Daniel, Johnson & Nagle, says, "Unfortunately, EDs have become places where the presence of weapons by patients or visitors is a serious threat."

The first issue is how to determine whether the person is carrying a weapon. "Some EDs now have metal

detectors that can be helpful in this regard. But others simply rely on the patient being truthful when asked the question,” Malone notes.

What does one do if someone brings a weapon into the ED? “Some policies require that the patient either have the weapon taken off premises by a friend or family member, or turn over the weapon over for safekeeping until the patient is discharged,” Malone says.

The ED must consider three things: Who will take charge of the weapon? How will it be secured? How and when will the weapon be returned to the patient?

“Determining the answers to those questions is not so easy,” Malone warns. She gives the example of a suicidal patient who presents with a weapon, but the hospital is unable to secure a detention order, so the patient is discharged from the ED. One possible solution is arranging for law enforcement to receive and hold the weapon. “However, there are a number of legal issues that need to be considered before pursuing such a model,” Malone cautions. These include laws affecting property rights and patient privacy regulations.

“If you can address those issues successfully, then this type of arrangement can benefit both the hospital and law enforcement,” Malone says. The risk of the weapon being used in an illegal and dangerous manner, on hospital premises or otherwise, is reduced.

Another difficult question: How should the ED respond if patients refuse to relinquish weapons? “There should be an emergency call placed to law enforcement if there is any indication that the person with the weapon may be violent or threatening,” Malone says.

Gun Permits Included

Malone notes most hospitals have instituted a “no weapons” policy that prohibits people, including those with gun permits, from bringing firearms or any other weapon on hospital premises. “Many state laws provide a good foundation for such policies,” she notes. For example, Virginia Code § 18.2-308.01(C) states that, “the granting of a concealed handgun permit pursuant to this article shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.”

Although “no weapons” policies help protect ED staff and patients, Malone says, “they also raise questions regarding what to do when a patient presents — to the ED, for example — carrying a weapon.”

Mandell’s firm recently drafted the following policy for a client hospital:

“No weapon, non-pharmaceutical substance, or other unauthorized item or substance that may be a danger or threat to the public safety of the hospital or its community may be brought into the hospital or onto hospital property by any individual, except for weapons that are part of the equipment normally carried in the line of duty by an authorized agent of a federal, state, or local government or law enforcement authority or the hospital public safety staff, as approved by the hospital public safety director.

“Where there is no serious danger presented to the hospital or its community as determined by the hospital, any illegal or dangerous item posing a threat to public safety found in the possession of a patient who is not in police

custody or is not being pursued by the police as a criminal suspect shall be reported to the [local] police department and confiscated and secured by the hospital public safety staff until such item can be turned over to the appropriate law enforcement authority consistent with the patient’s civil rights.

“Any weapon in the legal possession of any patient or visitor, except for a weapon that is part of the equipment normally carried in the line of duty by an authorized agent of a federal, state, or local government or law enforcement authority, or the hospital public safety staff, as approved by the hospital public safety director, must be declared upon such individual’s arrival and turned over to the hospital public safety [staff] for secure storage until the patient or visitor departs the hospital.”

Malone says hospital weapons policies should include:

- a total or partial ban on permitting weapons on hospital property;
- a process to determine whether a person may have possession of a weapon.

“There should also be a process for securing weapons brought onto hospital property, including any appropriate role for interaction with law enforcement,” Malone says. ■

SOURCES

- **Mary C. Malone**, JD, Hancock, Daniel, Johnson & Nagle, Richmond, VA. Phone: (866) 967-9604. Email: mmalone@hdjn.com.
- **William M. Mandell**, JD, Pierce & Mandell, Boston. Phone: (617) 720-2444. Fax: (617) 619-7231. Email: bill@piercemandell.com.

To read more *ED Legal Letter* content, earn credit for this activity, view the latest breaking news, and much more, please visit AHCMedia.com.